Case No COMP/M.5658 – UNILEVER/SARA LEE

Only the English text is authentic.

REGULATION (EC) No 139/2004

MERGER PROCEDURE

Article 8 (2)

Date: 17/11/2010

EUROPEAN COMMISSION

Brussels, 17.11.2010

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PUBLIC VERSION

COMMISSION DECISION

of 17.11.2010

declaring a concentration to be compatible with the internal market and the EEA Agreement

(Case No COMP/M.5658 – Unilever/Sara Lee Body Care)

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(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the Agreement on the European Economic Area, and in particular Article 57 thereof,

Having regard to Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings[1], and in particular Article 8(2) thereof,

Having regard to the Commission's Decision of 31 May 2010 to initiate proceedings in this case,

Having given the undertakings concerned the opportunity to make known their views on the objections raised by the Commission,

Having regard to the opinion of the Advisory Committee on Concentrations[2],

Having regard to the final report of the Hearing Officer in this case [3],

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1 OJ L 24, 29.1.2004, p. 1. With effect from 1 December 2009, Articles 81 and 82 of the EC Treaty have become Articles 101 and 102, respectively, of the Treaty on the Functioning of the European Union ("TFEU"). The two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 101 and 102 of the TFEU should be understood as references to Articles 81 and 82 of the EC Treaty where appropriate. The TFEU also introduced certain changes in terminology, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this Decision.

2 OJ C

WHEREAS:

(1) On 21 April 2010, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 (hereinafter referred to as "the Merger Regulation") by which the undertakings Unilever N.V., the Netherlands, and Unilever Plc, United Kingdom, (hereinafter collectively referred to as "Unilever" or as "the notifying party") acquire control of the whole of the undertaking Sara Lee Household and Body Care International, the Netherlands (hereinafter referred to as "Sara Lee"), belonging to Sara Lee Corporation, USA (hereinafter referred to as "Sara Lee Corp"), within the meaning of Article 3(1)(b) of the Merger Regulation, by way of irrevocable binding offer announced on 25 September 2009. Unilever and Sara Lee are collectively referred to as "the Parties" throughout this Decision.

(2) After examination of the notification, the Commission adopted a Decision on 31 May 2010 (hereinafter referred to as “the 6(1)(c) Decision”), concluding that the operation falls within the scope of the Merger Regulation and raises serious doubts as to its compatibility with the internal market and the functioning of the EEA Agreement and initiated proceedings pursuant to Article 6(1)(c) of the Merger Regulation.

(3) On 12 August 2010, a Statement of Objections was sent to Unilever pursuant to Article 18 of the Merger Regulation.

(4) Unilever replied to the Statement of Objections on 27 August 2010.

(5) At the request of Unilever, the time-period for taking a final decision in this case was extended by 13 working days on 26 August 2010, pursuant to the second subparagraph of Article 10(3) of the Merger Regulation.

(6) The time-period for taking a final decision in this case was further extended by two working days on 16 September 2010, pursuant to the second subparagraph of Article 10(3) of the Merger Regulation.

(7) On 21 September 2010, Unilever offered commitments with a view to rendering the proposed concentration compatible with the internal market. Those commitments were modified and the final version of the commitments was submitted to the Commission on 12 November 2010.

(8) The time-period for taking a final decision in this case was again further extended by five working days on 11 October 2010, pursuant to the second subparagraph of Article 10(3) of the Merger Regulation.

I. THE PARTIES

(9) Unilever, an Anglo-Dutch company[4], is a worldwide supplier of fast-moving consumer goods and has primary share listings on Euronext Amsterdam (through

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3 OJ C

4 Unilever has a dual-listed structure comprising Unilever N.V. and Unilever Plc. The two entities exist as separate companies but operate as a single economic unit.

Unilever N.V.) and the London Stock Exchange (through Unilever Plc). Its principal businesses are in the food, home care and personal care categories. In the home care sector, Unilever is a leading supplier of products for fabric and surface cleaning and hygiene. Unilever's personal care division supplies deodorants, bath and shower products, skin care products, oral care products and hair care products.

(10) Sara Lee Corp is a worldwide supplier of branded consumer goods, operating in the meats, bakery, beverage and household and body care sectors with its headquarters in the United States of America and listed on the New York and Chicago Stock Exchanges. The target company - Sara Lee - is comprised of the global body care business which manufactures and supplies bath and shower products, deodorants, baby care products, men's toiletries and oral care products worldwide on one hand and the European laundry care business supplying fabric cleaning and conditioning products and laundry aids on the other.

II. THE OPERATION AND THE CONCENTRATION

(11) On 25 September 2009, Unilever made an irrevocable binding offer for Sara Lee Corp's worldwide body care and European laundry care businesses. The acquisition by Unilever is structured as a number of purchases of shares and assets comprising Sara Lee Household and Body Care International, as set out in the draft Sale and Purchase Agreement (the "SPA"). Sara Lee Corp agreed to accept the binding offer subject to consultation with relevant employee representatives, which have been fulfilled.

(12) Since after completion of the notified transaction Unilever will own all the shares and assets of Sara Lee, the proposed transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. UNION DIMENSION

(13) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion[5] (Unilever: EUR 39 823 million, Sara Lee: EUR 756 million). Both undertakings have a Union-wide turnover in excess of EUR 250 million (Unilever: [...]*, Sara Lee: [...]*), but they do not achieve more than two-thirds of their aggregate Union-wide turnover within one and the same Member State. The notified operation therefore has a Union dimension.

5 Turnover calculated in accordance with Article 5(1) of the Merger Regulation.

* **Parts of this text have been edited to ensure that confidential information is not disclosed; those parts are enclosed in square brackets and marked with an asterisk.**

IV. COMPETITIVE ASSESSMENT

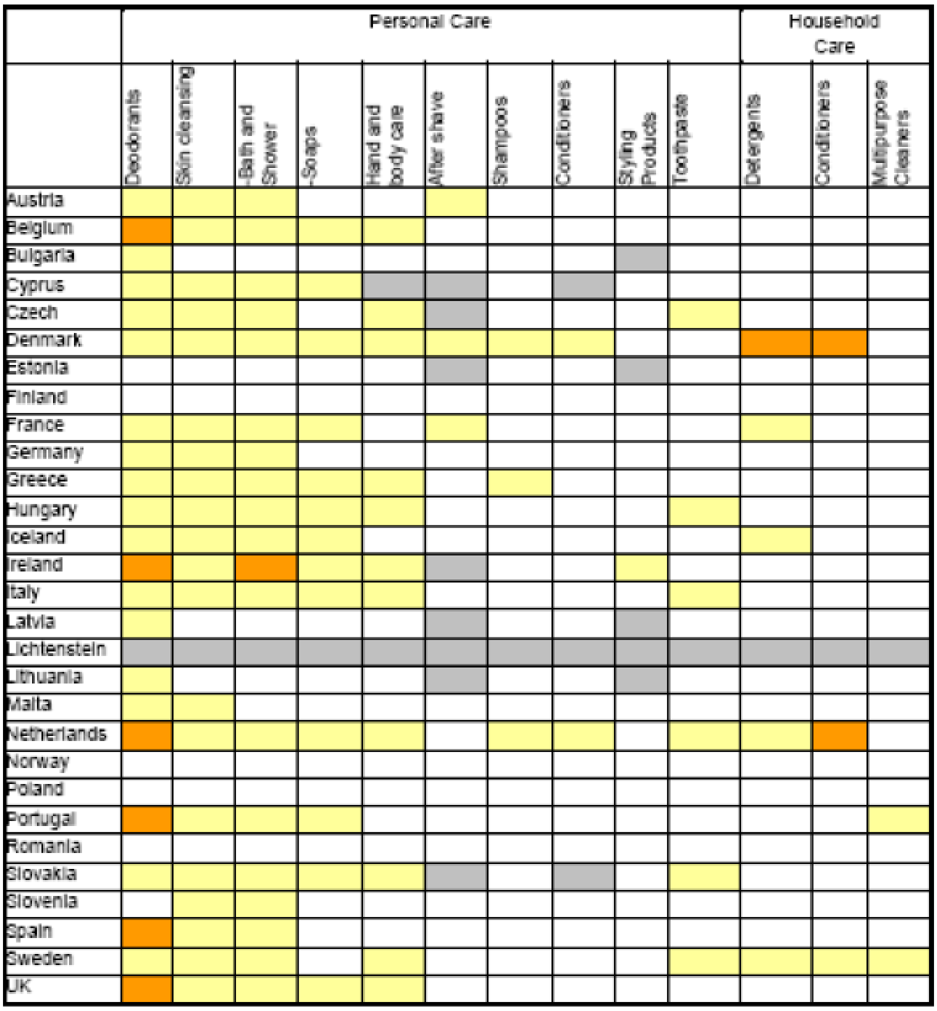
IV.1. Introduction

(14) Unilever and Sara Lee are both active in the supply of personal care and home care products. According to the Parties[6], their activities overlap in the following categories: deodorants, skin cleansing (products for personal washing like bath and shower and soap products), skin care (products designed to moisturise and nourish skin on the hands and body), fabric care (detergents, conditioners and laundry aids), aftershave treatments, oral care (toothpaste), hair care (shampoo, conditioners and styling products), and household cleaning (multi-purpose cleaners). An overview of the Parties' market shares in different product categories is provided in Table 1.[7]

Table 1: Overview of Parties' Market Shares in Member States 2008 – Source: Form CO

6 See Form CO, paragraph 6.3.

7 Table 1 only provides a broad overview based on the Form CO, in particular the categories mentioned in the table should not be interpreted as relevant product markets.



Source: Nielsen/IRI.

Notes: [1] Sara Lee has no sales in Luxembourg or Liechtenstein, thus there is no overlap on any product markets in these countries.

Key:

- No overlap, or combined market share under 15%
- Combined market share between 15% and 40%, or combined market share over 40% (with increment <2%)
- Combined market share above 40% (with > 2%)
- No market data

(15) All the segments affected by the transaction have similar features, being differentiated product markets where the customers of the Parties are mainly large retailers. However, the degree of product differentiation is highest in deodorants, followed by bath&shower products, with fabric care products being slightly less differentiated. Correspondingly, private label products have a lower share in deodorant markets compared to bath & shower products or detergents.

(16) In each affected market, two stages exist in the sales process, with manufactures such as Unilever and Sara Lee supplying products to retailer customers and then final consumers purchasing products from retailers.

IV.2. Deodorants

The deodorant category: a differentiated market and dominated by brands

(17) Deodorants are products which minimise or eliminate the negative effects of sweating through control of odour and/or wetness.

(18) The deodorant category in the Union has a total value of approximately EUR 2.7 billion (2009) and has been growing constantly over the last ten years. According to the Parties, value growth was between [5-10]*% in 2008. Looking at the national markets covered in more detail in section IV.2.3.2, the United Kingdom is the largest national market with value sales to final customers of [...]*, followed by Germany ([...]*) and France ([...]*), Spain ([...]*) and the Netherlands ([...]*) and the smaller markets are Belgium ([...]*), Portugal ([...]*), Denmark ([...]*) and Ireland ([...]*).

(19) Deodorants are increasingly differentiated according to gender and most brands have variants marketed specifically to male and female consumers (hereinafter referred to as "male variants" and "female variants"). Certain brands are entirely dedicated to either male or female consumers (such as Axe which is targeting male consumers only). Male-specific and female-specific deodorants (hereinafter referred to as "male deodorants" and "female deodorants") can generally be distinguished by their fragrances, marketing strategies and packaging (typically white and pale coloured packaging for female deodorants and black, dark blue or silver packaging for male-deodorants). In some Member States (especially Spain) a "unisex" category exists, with products appealing to both male and female consumers. Female deodorants together with unisex deodorants are collectively referred to as "non-male deodorants" (and similarly, female variants together with unisex variants are referred to as "non-male variants") throughout this Decision.

(20) Deodorants are also sold in different formats. The notifying party distinguishes between contact (primarily roll-ons, creams, stick and wipes) and non-contact formats. Most of the sales of a brand often derive from one specific format, although the brand is available also in other formats.

(21) Deodorant brands are typically associated with certain core functionalities, the three main ones being "efficacy"[8], "skin caring" or "fragrance". In practice, brand equity is built under one of these three main propositions although the brand may exist in variants claiming properties extending beyond their core brand proposition. Brands, or variants of the brand, may also claim value-added benefits such as "no white marks"[9] or hair minimisation or be particularly targeted to a certain market segment such as teenage girls.

(22) Finally, in relation to pricing, brands occupy a wide range of price positions falling into three broad categories according to their relative positions: premium-priced, mid-priced and low-priced brand. Pricing varies in national markets; in general non-contact deodorant variants are sold at prices between EUR 7 and EUR 40 per litre whereas contact deodorants are more expensive (on average between EUR 20 and EUR 80 per

8 Efficacy in terms of credentials for minimizing sweat and odour.

9 "no white marks" is a term used in the industry to describe a deodorant with credentials for not leaving any white marks/traces on the consumer's clothing.

litre)[10]. Such a large price spectrum highlights the differentiated nature of the deodorant market.

The brands sold by the Parties

(23) **Sara Lee's** leading brand is Sanex, which is present in all the national markets analysed in detail in section IV.2.3.2. Its marketing focuses primarily on the promises of healthy skin, although customers also value Sanex for its efficacy credentials. The focus on health is exemplified by the launch of the Sanex "Nature Protect" range which contains natural mineral alum. Sanex has a female bias, only a relatively small proportion of its sales ([20-30]*%) are achieved with male variants. Sanex is sold as an antiperspirant aerosol and as a roll-on (tending to be stronger in roll-ons) and, in some Member States, in the stick format. In terms of price points, Sanex normally occupies a mid-price position.

(24) Sara Lee also supplies deodorants under other brands including Radox (United Kingdom and Ireland), Williams (Belgium, Denmark, France and Spain), Duschdas (Germany); Monsavon (France) and Neutral (Denmark, the Netherlands and Sweden). These brands are much less important in the Sara Lee deodorant portfolio compared to the main brand Sanex.

(25) **Unilever** has three core Union-wide brands: Axe, Rexona and Dove. In addition to the core brands, it has two brands present in a certain national markets: Vaseline (Vasenol in Portugal) and Impulse.

(26) Unilever's largest brand, Axe (known as Lynx in the United Kingdom and Ireland) is an exclusively male deodorant. It is heavily targeted at young males (between 15 and 25) with strong efficacy claims and a distinctive black/silver packaging. Its marketing is based upon its "seductive fragrances". Its self-professed mission is to give the Axe consumer the edge in attracting the opposite sex with its so-called "Axe effect". Axe is sold predominantly as an aerosol/spray although it is also available in a roll-on format. Axe is a premium-priced product.

(27) Rexona (known as Sure in the United Kingdom and Ireland) is positioned as an efficacy product. Its marketing proposition is its ability to continue to work even during heavy sweating activities such as sports. Rexona also has more neutral propositions promoting skin care and more fragrance based variants targeting teenage girls. Like Sanex, Rexona is available in male and female variants although its credentials are stronger in the female- area. It is mainly sold in aerosol format but it is also available as an antiperspirant roll-on and stick. Rexona is a mid-priced product (on average [...]* cheaper than Axe).

(28) Dove deodorants (part of the wider Dove personal care portfolio) were initially launched in 1998 and have a particular focus on superior moisturising to fight skin dryness. Dove tends to have a stronger position in aerosols although it is also available in contact formats such as roll-ons and sticks. The brand used to be exclusively

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10 Form CO, Annex DEO 6.14 "*Finnegan – Deodorant price charts*". Prices for deodorants in a contact-format (format like stick or roll-on which is in direct contact with the skin, as opposed to sprays which are a non-contact form) are lower in the United Kingdom (between EUR 10 and EUR 40 per litre) and significantly higher in France (between EUR 50 and EUR 95 per litre).

targeted at women but a range of products under the Dove Men+Care brand, including deodorants, was launched across several Member States in the Union in January 2010. Dove is more of a premium product targeted for sale at a [...]* price premium to Rexona.

(29) Vaseline is marketed with a strong focus on skin health and contains an ingredient which mimics the skins own protection layer and makes the skin less prone to irritation. Vaseline is available as an aerosol spray, roll-on and cream. Vaseline products have a female bias but Vaseline for Men was launched in some national markets in early 2008 and the range became more widely available in early 2009. [...]*[11].

(30) Impulse is a fragranced body spray deodorant marketed to teenage girls and younger women. Unilever's intention is to target women with a young, fun and sexy image. This range, marketed only in some Member States (the United Kingdom and Ireland, the Netherlands, Spain and Portugal), is priced as a premium product.

Main competitor brands in the EEA

(31) Beiersdorf markets Nivea, one of the main deodorant brands in the EEA. Nivea deodorants exist in both male and female variants ([40-50]*% of all Nivea deodorant sales are in male variants in the markets affected by the transaction). The brand is available in all main formats but has a particularly strong market presence in roll-ons. Nivea deodorants for the female market are sold with a skin-caring proposition, using as a marketing argument "smooth and beautiful underarms, ease of shaving and softer skin". Nivea deodorants generally occupy a mid-market price position.

(32) Henkel is an established supplier in the deodorant market with its brand Fa. Fa is primarily a female-oriented brand marketed under a fragrance based/feminine proposition. In spring 2008, Fa included more natural lines in its product range such as Fa Rice Dry and Fa Natural. It is positioned as a lower priced product. Through the supply of the Right Guard brand in the United Kingdom and Ireland, Henkel has also developed a position in male products in those Member States, orientated towards efficacy. The brand also has a female variant. Right Guard products are marketed with a strong emphasis on efficacy throughout the day and a mid-price positioning.

(33) Colgate-Palmolive includes brands such as Palmolive and Soft&Gentle in its deodorant range. Both brands are fragranced products although Palmolive deodorant is also sold under a skin-friendly proposition and the Soft&Gentle product range includes variants targeted at efficacy and skin care. Marketing of Palmolive and Soft&Gentle is directed at the female market and both brands occupy a mid-price positioning. In addition, the company is marketing deodorants under the Mennen brand in Central Europe.

(34) L’Oreal is active in a number of Union markets as a supplier of deodorants with brands such as Narta, Ushuaïa and Garnier Mineral. Narta is a mid-priced antiperspirant with a focus on efficacy and freshness. It targets the female market but also includes male variants. Ushuaïa is a fragrance deodorant prominently aiming at female customers in Belgium and France with a mid-low price positioning. L’Oreal's product range also

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11 [...]*

includes Airness, which is a male deodorant with a similar positioning as Axe, and Garnier Mineral, recently launched in a number of Union markets with a skin-friendly brand positioning. In addition, L'Oreal has a licence from Colgate-Palmolive to use the Mennen brand in Belgium and France.

(35) Procter & Gamble markets the brands Mum, Secret, Gillette and Old Spice. Those brands currently have a very limited presence in the markets concerned except in Ireland and, to a lesser extent, in the United Kingdom and Portugal. Revlon supplies the Mitchum brand (male and female) in the United Kingdom and Ireland with an efficacy-orientated proposition and a premium-price positioning. Coty is active in a number of Union markets with its brand Adidas. Adidas is a mid-priced anti-perspirant focused on effective protection for highly active people, with a particular focus on sports. It has variants for women within its product range although the brand appeals more to male consumers. Coty has also recently launched the Playboy brand in several Member States, which is a fragranced deodorant targeted at young males, with a lower price positioning than Axe.

IV.2.1. Relevant Product Market

(36) The notifying party submits that there is only one market for all types of deodorants hence it is not appropriate to define relevant product markets more narrowly based on main differentiating factors such as gender or format.

(37) In previous decisions dealing with deodorants, the product market definition has been left open, without delineating the market according to further sub-segmentation[12]. However, in the more recent Commission Decision[13], it was suggested that there may be a separate "men's care" market including deodorants for men. There was no need to reach a definitive conclusion in that case.

(38) Generally, deodorants display a mix of various differentiating features - most notably a differentiation according to gender and according to formats (spray, roll-on, stick) - but also features such as fragrances, propositions and functional benefits (like emphasis on skin care, efficacy, fragrance, "no white marks" features, antiperspirant function), and pricing positioning differ. Consistent with the previous indications about specific men's products, the market investigation in this case has confirmed the prominent role of gender segmentation for deodorants. Balancing supply and demand side factors, the conclusion of the investigation leads to a separation of the deodorants category into a male and a non-male market, while other distinctions (notably according to format) do not warrant such separation in terms of product market definition.

IV.2.1.1. Male and non-male deodorants

(39) In the Member States concerned, deodorants are essentially marketed as either male deodorants or as non-male deodorants (non-male may, in some Member States, include deodorants marketed or perceived as unisex, in addition to female). Deodorants targeted

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12 Commission Decision of 15 July 2005, M.3732 - Procter & Gamble/Gillette; Commission Decision of 18 October 1995, IV/M.630 – Henkel/Schwarzkopf; Commission Decision of 23 February 1992, IV/M.186 – Henkel/Nobel.

13 Commission Decision of 20 April 2006, case COMP/M.4193 L'Oreal/The Body Shop.

specifically at male consumers tend to be marketed using dark colours and more masculine fragrances and marketing tends to be centred around masculine attributes deploying efficacy, sports or sex-appeal features. Non-male deodorants, on the other hand, typically use softer colours on packaging, feminine (or neutral) fragrances. Some offer skin caring benefits or specific added benefits such as "no white marks" or hair minimizing features, besides a basic efficacy proposition.

(40) The investigation has not confirmed the market definition proposed by the Parties whereby male deodorants form part of the same relevant product market as non-male deodorants. Instead, the investigation has shown that male and non-male deodorants are two distinct product markets.

Male deodorants are marketed differently from non-male deodorants and have different features

(41) Deodorants are branded goods where the brand plays a prominent role in competition between deodorant suppliers. Within the deodorants category, the male-branded deodorants are clearly distinct from non-male-branded deodorants.

(42) The brands used for male deodorants essentially fall into two categories. The first group are strongly male-oriented brands such as Axe/Lynx, Mennen, Adidas, Gillette, Williams, and L'Oreal Men expert. Some of those brands have obtained their strong masculine connotation from deployment in neighbouring personal care markets (for example Gillette or Williams from shaving). Those specific male brands represent typically [50-60]*%-[60-70]*% of the total male deodorant markets.

(43) The second type of male deodorants is the specific male variant of brands traditionally present in non-male variants such as Rexona for Men, Nivea for Men, Fa for Men, or the recently launched Unilever's Dove for Men. These male variants are clearly differentiated from their non-male counter-parts in terms of appeal, fragrance, marketing campaigns and packaging. Figure 1 shows how marketing aims to differentiate the product presentation by using, for example, darker or metallic colours and the addition of the word "men" on the product.

Figure 1 – pictures of male and non-male/female variants of some deodorants brands

non-male male non-male male non-male male non-male male

(44) Although it is true that both male and non-male deodorants have similarities in terms of the core function of preventing odour and sweating, one has to consider that the perception of these kinds of branded consumer goods is heavily shaped by their marketing image. Deodorants are a category on which massive advertisement and marketing costs are spent; brand image and the proposition a product offer are key to creating a relationship with the actual product for the end-consumers and their expectations. Suppliers are building on this trend and are developing bespoke products specifically designed, composed and marketed towards male consumers.

(45) Consistent with the efforts of deodorant suppliers to clearly differentiate male deodorants from female/unisex deodorants, the market investigation shows that a great majority of retailers consider that there are significant differences between male and non-male deodorants; many of them pointing to differences in terms of packaging and to fragrance, and to different advertising/marketing campaigns, each focused on the respective target group. [14]

Gender differentiation between male-deodorants and non-male-deodorants is strong across Member States and is increasing

(46) The trend is towards further gender differentiation, which is already significant in the deodorant category with male deodorants forming a large proportion of all deodorants. According to figures provided by Unilever, a significant proportion ([40-50]*%) of all deodorants sold in the EEA are male-specific deodorants.[15] Looking at individual Member States which were analysed in more detail in the investigation, the proportion of male deodorants in the relevant markets varies between [30-40]*% in Spain to [50-60]*% in the United Kingdom and Ireland (see Table 3).

Table 2 - 2009 EEA sales of deodorants by gender – Source: Form CO.

	Turnover (EUR 000)	Percentage of total
Female	[...]*	[40-50]*%
Male	[...]*	[40-50]*%
Unisex/Other	[...]*	[10-20]*%
Total	2 748 062	100%

Table 3 - 2009 sales of deodorants by gender per Member State – Source: Form CO.

	Male	**Non-male**	
		Female	**Unisex**
Ireland	[50-60]*%	[50-60]*%	
United Kingdom[16]	[50-60]*%	[50-60]*%	

[14] Questionnaire to customers on deodorants sent on 23 April 2010, question 15.

[15] Form CO, paragraph 6.109.

[16] Total market size of all deodorants combined is larger than the sum of the gender segments, as the Parties were not able to provide the full data due to the limits of Nielsen database (see Note to Table 6.24 in the

Belgium	[40-50]*%	[50-60]*%	
Denmark	[40-50]*%	[30-40]*%	[10-20]*%
Netherlands	[30-40]*%	[40-50]*%	[10-20]*%
Portugal[17]	[40-50]*%	[50-60]*%	
Spain	[30-40]*%	[10-20]*%	[40-50]*%

(47) The trend towards greater gender differentiation (and male-specific products) was mentioned by the majority of the respondents in the market investigation.[18] Recent male-specific brand introductions confirm that trend; for example Unilever's Dove Men+Care, L'Oreal's Men expert brand, Procter & Gamble's Gillette, and Coty's Playboy, all of which are new brands exclusively targeted at male consumers. The Parties explain that "*manufacturers strive for product differentiation by offering distinct products for men and women*" as part of the drive to increase sales.[19]

(48) Unilever, in its reply to the Statement of Objections, stated that it does not agree with the distinction between male and non-male deodorants. Unilever argues that a lot of brands have both male and female variants and puts forward that a third or more of the male market is made up of brands that are present in both male and non-male markets (like Nivea or Rexona) and that these brands take up half or more of the non-male market.

(49) That argument cannot be upheld. First, Unilever itself acknowledges that up to two-thirds of the male market is composed of specific male-oriented brands which have no presence or only a very small presence in the non-male market. Such a proportion is significant and has to be taken into account. Second, brands like Rexona or Nivea which are present on both gender markets are clearly split into male and female brand variants which are marketed differently, even if they have a common umbrella brand.

(50) Unilever also submits that differences in packaging and product associations do not necessarily imply separate markets, putting forward that roll-on and sprays are also packaged differently, and have different added benefits (such as leaving no white marks or products that care for the skin) are also marketed differently. Unilever submits that marketing alone cannot justify separate male/non-male markets, and that marketing varies even within a gender group (Rexona "Girl" variant has different packaging than Rexona woman/men).

Form CO). There is, however, no reason to believe that the split between male and female deodorants would be significantly different if those additional sales were taken into account.

17 For Portugal, the Parties did not provide separate figures for female deodorants and for unisex deodorants, but instead gave combined figures for non-male deodorants, basing themselves on Nielsen data.

18 Questionnaire to customers on deodorants sent on 23 April 2010, question 18. Questionnaire to competitors on deodorants sent on 24 April 2010, question 24.

19 Form CO, paragraph 6.110.

(51) Unilever's arguments have to be put into perspective. It is not argued by the Commission that marketing differences alone justify separate markets. Separate markets result from absence of demand-side and supply-side substitutability.[20] However, marketing/branding of *branded goods* like deodorants is an important factor in both the consumer choice and the suppliers' abilities to successfully put their products on the market. It is not contested that marketing varies even within a gender segment as the Rexona Girl example shows. However, Rexona Girl is a new niche product, trying to address specific consumers within a gender group (like Dove pro age for mature women). On the contrary, male deodorants are now a well-developed concept and an established category, which represents up to half of the total deodorant sales in some Member States.

Unisex deodorants are marketed distinctly from male deodorants

(52) As shown in Table 2 and Table 3, in some Member States – notably in Spain – there is a category of gender-neutral 'unisex' deodorant products which are distinct from male-specific products but are not marketed as female deodorants. Such unisex products typically take a neutral approach with respect to packaging, marketing and fragrances and sometimes may have a more clinical appeal – for example the non-male variants of Sanex in Spain are considered to be unisex.

(53) While unisex deodorants are popular in Spain (and to a lesser extent in some other Member States), the unisex segment is not evident in other national markets. In Belgium for example, none of the retailers classified any deodorant brand as being 'unisex', and Belgian retailers have instead indicated Sanex (presumably the non-male variants) as belonging to the female-category.[21] [reference to parties' internal documents][22] or that [reference to parties' internal documents][23].

(54) In any event, even if it is more meaningful in some Member States than others to consider a unisex category, brands with more neutral proposition are seen either as female-oriented or unisex depending on the Member State, and even depending on the particular retailer or supplier within a Member State. This is demonstrated in detail in the part specific to Spain (see Section IV.2.3.2.6). Indeed, the boundaries between unisex and female deodorants are very unclear, and the attribution of a particular product into one or another category can be arbitrary. In contrast, male deodorants are always clearly distinct from their non-male (female or unisex) counter-parts.[24]

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[20] See recitals (66)-(114).

[21] Questionnaire to customers on deodorants sent on 23 April 2010, question 16.

[22] [...]*.

[23] [...]*.

[24] In its response to Statement of Objections, Unilever argues, while generally advocating for a single deodorant market without a gender distinction, that with respect to Spain, that if a segmentation according to gender is to be considered, unisex and female deodorants should belong to different markets (whereby no overlap would exist between the Parties' non-male brands in Spain, as the Nielsen data qualify all Sanex products as unisex and all Dove and Rexona products as female). These arguments are discussed in Section IV.2.3.2.6 where it is concluded that a further distinction between non-male deodorants and female and unisex deodorants cannot be sustained for the Spanish market where unisex deodorants are the most

The competitive landscape differs significantly for male deodorants and non-male deodorants, and the constraints on Unilever are clearly different

(55) The competitive landscape of the male and non-male deodorant market differs significantly. Male deodorants include a number of brands which are either not at all or marginally competing in the non-male market. The prime example is Unilever's Axe/Lynx brand as an exclusively male brand. Axe/Lynx is the clear market leader in a number of Member States, representing alone up to the half of the total male deodorant market (Ireland [50-60]*%, United Kingdom [40-50]*%, Belgium [40-50]*%, the Netherlands [40-50]*%, Spain [30-40]*%). A similar argument can be made with Unilever's leading Dove brand, which has strong positions in a number of non-male markets, whereas it currently only has a very small presence in male market.

(56) Although a number of competitors are present in both male and non-male deodorants, their strength significantly varies between those two. Unilever is the leader in almost all the Member States analysed in the Statement of Objections (except Denmark) in both male and non-male markets. However, the nature and strength of the main competitors varies significantly between male and non-male markets. The market shares of Unilever and its three main competitors in the male and non-male markets are presented in Table 4.

Table 4: Comparison of market shares of Unilever and its three main competitors on male and non-male deodorants markets (value, 2009) - Source:Form CO.

	Male		**Non-male**	
	Unilever in %	**three main competitors in %**	**Unilever in %**	**three main competitors in %**
Belgium	[50-60]*%	Beiersdorf: [20-30]*% Coty: [5-10]*% L'Oreal: [5-10]*%	[30-40]*%	Henkel: [10-20]*% Sara Lee [10-20]*% Beiersdorf: [10-20]*%
Denmark	[10-20]*%	Unicare: [20-30]*% Saether A/S: [10-20]*% Beiersdorf: [10-20]*%	[20-30]*%	Sara Lee [20-30]*% Unicare: [10-20]*% Beiersdorf: [10-20]*%
Ireland	[70-80]*%	Beiersdorf: [5-10]*% Procter & Gamble: [0-5]*%	[60-70]*%	Beiersdorf: [10-20]*% Colgate: [10-20]*%

widespread. Essentially, the investigation shows that a mixed perception exists as to which deodorants are considered unisex or female-specific among the market participants in the Spanish market, and the Nielsen classification of deodorants as unisex and female in Spain is also based on criteria which do not correspond to the general perception. Nielsen explained that the differences between female and unisex deodorants are far less clear than those for male deodorants, and that Nielsen's clients, such as Unilever, often request that data for female-specific and unisex deodorants are combined into a single group (particularly because unisex and female-specific products are not clearly distinguishable) while male deodorants products are in another group.

		Coty: [0-5]*%		Sara Lee [5-10]*%
Netherlands	[40-50]*%	Beiersdorf: [20-30]*% Coty: [0-5]*% Henkel: [0-5]*%	[30-40]*%	Beiersdorf: [10-20]*% Sara Lee: [10-20]*% Henkel: [5-10]*%
Portugal	[40-50]*%	Beiersdorf: [30-40]*% L'Oreal: [0-5]*% Conter: [0-5]*%	[40-50]*%	Beiersdorf: [20-30]*% L'Oreal: [10-20]*% Sara Lee: [5-10]*%
Spain	[50-60]*%	Sara Lee [10-20]*% Beiersdorf: [10-20]*% G. Puig: [5-10]*%	[20-30]*%	Sara Lee [20-30]*% Private labels: [20-30]*% G.Puig: [5-10]*%
United Kingdom	[60-70]*%	Henkel: [5-10]*% Coty: [5-10]*% Procter & Gamble:[5-10]*%	[50-60]*%	Colgate: [5-10]*% Revlon: [5-10]*% Sara Lee [5-10]*%

(57) The strength of suppliers varies between the male and non-male markets. To take Belgium as an example, the strongest of Unilever's competitors in non-male deodorants - Henkel (Fa) and Sara Lee (Sanex) - both have greater than [10-20]*% market shares, whereas they have market shares below [0-5]*% in male deodorants. Coty (Adidas, Playboy) is the second largest competitor to Unilever in Belgian for male deodorants ([5-10]*%), but is almost absent in the non-male deodorant market (market share below [0-5]*%). Beiersdorf is the only strong competitor in both markets in Belgium.

(58) The differences between the composition and strength of the main competitors are also demonstrated in the other Member States. Generally, Colgate is stronger in the non-male market (with Palmolive and Soft&Gentle – which are rather female-oriented brands). The same applies to Henkel with Fa which is always much stronger in the non-male market than in the male market (except in the United Kingdom and Ireland where Henkel's main brand is Right Guard which is relatively strong in the male market). Coty has higher shares in male with Adidas and Playboy, its presence in the non-male deodorant market is very small. Procter&Gamble also primarily competes in the male market with Gillette and Old Spice (its female brand Secret in the United Kingdom and Ireland has a very small market share).

(59) Sara Lee (with Sanex) is consistently strong in non-male markets, taking the top-3 position for Unilever's competitors in all markets presented in Table 4. The only Member State where Sara Lee is a significant competitor in male market is Spain, where it also sells Williams (a male-only brand). Among the most significant international competitors, it is essentially only Beiersdorf who managed to develop

sizeable positions in both male and female deodorants, with Nivea and Nivea for Men. Some local brands also occasionally have a more material presence in both male and non-male markets (like L'Oreal's Narta and Narta for Men in Portugal, or L.Puig's brands in Spain).

(60) Given that the presence and strength of the main competitors and their brands differ significantly across the male and non-male deodorant markets, the competitive landscape and the constraints are thus significantly different for both markets.

(61) Unilever, in its reply to the Statement of Objections, argues that the differences in competitive landscape are overstated, arguing that most large competitors are present in both male and non-male markets. Also, it argues that some competitors are stronger in non-male markets because Axe takes up a very significant portion of the male market.

(62) These arguments cannot invalidate the conclusion that the competitive landscape and constraints are significantly different for male and non-male markets. Most of the suppliers have stronger positions in either one market or the other (the only exception from a large competitor being Beiersdorf), as determined by the composition of their brand portfolio. The large market share of Axe in the male market cannot explain alone the significantly different positions of competitors in male and non-male markets. The strong or weak presence in male or non-male market is due to the primary gender orientation and/or success of a particular producers' brand within its target group of consumers. This is best demonstrated by Sara Lee and the success of its non-male Sanex deodorants in a number of Member States, whereas Sanex for Men is not a strong brand in most of those Member States. In any event, the fact that the male market is largely dominated by Axe (without having any presence in non-male market) is itself proof that that the competitive landscape is significantly different in the two markets.

*Gender differentiation [...]**

(63) [reference to parties’ internal documents].[25],[26]

(64) [reference to parties’ internal documents]

(65) [reference to parties’ internal documents][27]

Demand-side substitution

(66) The Commission Notice on the definition of relevant market for the purposes of Community competition law (hereinafter the “Relevant Market Notice”)[28] attributes a prominent role to the demand substitutability in the definition of the relevant product market. The market investigation provided a number of elements which allow for the

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25 [...]*

26 [...]*

27 [...]*

28 *OJ C 372 , 09/12/1997, p. 5.*

conclusion that male and non-male deodorants are not substitutable from a demand side point of view.

Retailers distinguish between male and non-male deodorants and present them separately in retail outlets

(67) A clear majority of retail customers across all Member States confirmed that they differentiate deodorants according to gender in the market investigation, with almost all confirming that they distinguish male-specific deodorants from female-specific or from unisex deodorants.[29]

(68) Indeed, most retailers across Member States organise their shelf space so as to visually distinguish male from female deodorants (and unisex when relevant) on their shelves.[30] While some retailers have a separate "men's shop" with male-specific toiletries including male deodorants, others place male and female deodorants separately in different locations on the deodorant shelf, or even on different shelves. This is not disputed by Unilever.

(69) Such a gender-specific distinction of deodorants on the retailers' shelves indicates that most shoppers indeed look for a gender-specific deodorants, and then choose amongst the available deodorants for a gender-specific one. The prominent position of gender differentiation in the hierarchy of a consumers' decision of which deodorant to buy is also acknowledged by the Parties.[31]

Price differences between male and female deodorants

(70) The investigation also points to significant differences in average price of male and non-male deodorants.

(71) A price comparison has been conducted on the basis of average prices of male and non-male deodorants for a number of national markets. To avoid combining prices of different formats (which indeed have different prices per litre or per kg), comparisons were made between male and non-male markets of the same format. Figure 2 presents the results for the most important formats (aerosol sprays and roll-on).

Figure 2: Comparison of historic average prices of male and non-male deodorants of a particular format (spray and roll-on) in Belgium, the Netherlands, Denmark, Spain, Portugal, the United Kingdom and Ireland[32]

[...]*

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[29] Question 12 of the questionnaires to customers on deodorants sent on 23 April 2010.

[30] Questionnaire to customers on deodorants sent on 23 April 2010, question 13

[31] Form CO, paragraph 6.104.

[32] The Member States cited correspond to those Member States where competition concerns were identified in the Statement of Objections.

(72) In almost all Member States, the average price of male deodorants is higher than non-male deodorants both in the spray and roll-on formats (with the exception of the Netherlands in the roll-on format). Such a difference in average prices is sometimes quite significant – in general the price gap is about [0-30%]*.

(73) In its reply to the Statement of Objections, Unilever argues that the pricing comparison is not very telling. It explains that average prices in the male market are higher because of the presence of male-focused brands like Axe, Gillette or Adidas which tend to have a premium price positioning, and due to the additional factor that Axe has a high price per litre price as it is sold in a smaller format. Unilever submits that brands which are present in both gender markets show no clear pattern when comparing prices of their male and non-male variants, so no real male-specific premium is noticeable with these brands. Apparent overall patterns are driven by the brand mix, rather then by any fundamental differences of competitive conditions (which would be manifested in all brands). Unilever also submits that promotions tend to take place across the entire brand and are not limited to just one gender-specific product.

(74) As Unilever points out, average prices are higher for male deodorants because of the brand mix (meaning that more premium and higher priced brands have a larger presence in the male deodorant market). This only confirms that the brand composition is indeed different for the two markets, and male consumers on average spend more on premium-priced products. It is true that a price premium for male deodorants] does not consistently exist for brands with a sizeable presence on both gender markets, but there are also price differences between average prices of male and non-male variants of such brands present in both markets. Unilever argues that where such difference in average prices occurs, it is also primarily driven by a different brand mix (for example premium variants launched for one gender). Again, this shows that the composition of variants is different for these brands (for example some female-branded products have premium-positioned variants like hair-minimizing, or variants designed for girls which do not exist in the male deodorant market.

(75) As demonstrated in Figure 2, a significant degree of co-movement of prices can be observed. However, there are also many examples where the price levels move in different directions (for example, roll-on deodorants in Belgium at the beginning of 2009, spray deodorants in Spain in late 2007 and others). While certain factors clearly influence both the prices of male deodorants and non-male deodorants in a similar way (such as production costs), the fact that prices may move in different directions shows that factors that are specific to either the male or female market also exist. Generally, the average price difference between male- and non-male deodorants is different in different Member States, but it does vary over time in the same Member State. This indicates that, in principle, a merger may create scope for increasing prices in one market without having the same effect in the other.

(76) Unilever contests the reliability of the analysis. It argues that a co-movement analysis which may be more relevant for market definition tends to show a significant co-movement of prices. Unilever criticises the fact that no statistical tests were included in the analysis as to the co-movement of prices and that only two examples are provided where prices have not moved in the same direction. Unilever argues that both of those examples are due to different brand mix and do not reflect the general difference between the competitive conditions. According to Unilever, the increase of

prices of male-deodorants in the roll-on segment in Belgium was influenced by the introduction of new premium variants (Nivea for Men's "Silver protect"), while in Spain, the increase in prices of male-deodorants in the spray segment was influenced by the launch of several premium Axe variants, coinciding with a period of a relative weakness of private label products in the male market, and a launch of premium male gift packs around Christmas.

(77) It is not excluded that the differences in price movements may coincide with launches of new premium products and the relative weakness of private label products (such as the examples of Belgium and Spain as argued by Unilever), so that the modified brand mix moves the average price of a given gender market in a different direction than the other market. However, this just shows that events which are specific to male or non-male markets and which have an influence on the average price level may occur separately for each market. The fact that average prices have moved in different directions at given times is also in line with the possibility that price increases may occur on only one market, independently from the other market.

Differences in the growth of the male and the non-male deodorant market

(78) Another feature that distinguishes male and non-male deodorants is the different market-growth. As can be seen from Table 5, the male deodorant market grew faster (or showed a lower decline) than the non-male deodorant market between 2008 and 2009 in all seven Member States where competition concerns were identified. The greatest divergences in growth rates were in Denmark (where the male market grew at [5-10%]* compared to sales of non-male-deodorants which grew at [0-5%]*), the Netherlands (male: [5-10%]*; non-male: [0-5%]*) and Portugal (male: [5-10%]*; non-male: [0-5%]*).

Table 5: Growth rates of male and non-male deodorant markets between 2008 and 2009 – Source: Form CO.

	Male	Non-male
Belgium	[5-10%]*	[5-10%]*
Denmark	[5-10%]*	[0-5%]*
Ireland	-[10-20%]*	-[10-20%]*
The Netherlands	[5-10%]*	[0-5%]*
Portugal	[5-10%]*	[0-5%]*
Spain	[0-5%]*	[0-5%]*
United Kingdom	[0-5%]*	[0-5%]*

(79) The different growth rates may also reveal differences in penetration of deodorants within male and within female consumer groups and differences in the frequency of

use of deodorants between genders, as suggested by some respondents in the market investigation [33] [reference to parties' internal documents].[34]

(80) In its reply to the Statement of Objections, Unilever submits that different growth rates do not necessarily suggest separate markets, taking the example of plasma and LCD televisions where sales are growing in a different ways for each but both are considered to be part of the same market. Unilever also points to some Member States where differences in growth rates were not as significant as in others. Unilever submits that there are greater differences between the growth rates of Sanex and Dove products and that such differences did not affect the finding that those brands are close competitors.

(81) It is not argued that different growth rates are of themselves proof of separate markets, but they are rather seen as an additional element showing that the dynamics of the two markets are different. It is true that the differences in growth rates are not the same in all Member States – such differences are more significant in some then in others.[35] The LCD/Plasma example suggested by Unilever in previous recital is misplaced, since those two products do not address distinct consumer groups, unlike male deodorants and non-male deodorants. The Dove/Sanex example given in previous recital is also misplaced. While Dove and Sanex are generally close competitors and compete for the same target group of consumers, male and non-male deodorants have different attributes as they target a distinct set of consumers. The growth of a particular brand (like Sanex) only reflects the success of that particular brand, and does not reflect a general market trend.

Cross-gender usage of deodorants

(82) Male deodorants are clearly designed for male consumers, and women do not typically use those products. As illustrated by the figures provided by Unilever[36], only a small fraction of male deodorant brands' users are women in the five largest Member States (for which such data is available). According to those data, the percentage of female users of the main male-deodorant brands was generally in the range of [0-10]*%, with

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33 See for example the response of [retailer] to question 15 of Questionnaire to customers on deodorants sent on 23 April 2010.

34 [...]*

35 Unilever does not dispute that the differences in growth rates were significant in Denmark, the Netherlands and Portugal (where the difference is […]*) but submits they are smaller in the other Member States. However, even in some of those Member States the differences are also notable – in Spain, there is a difference of [80-90%]* and in the United Kingdom, [40-50%]*. It is less notable in Belgium ([10-20%]*) and Ireland ([0-5%]*).

36 Form CO, Table 6.7 at page 54 (data as of December 2009), and more recent (March 2010) and extended figures from additional submission of Unilever of 27 July 2010 (with an explanatory email of 3 August 2010). As explained by the Parties, those percentages are derived as follows: TNS World Panel tracks consumer purchasing and usage habits. Usage data is collected through a 7 day diary maintained by a panel of consumers (including men and women). Each consumer identifies every occasion they used a deodorant and records the brand and sub-brand of deodorant they used from a list (there is also an option for "Brand A (Other)", for panellists who can not remember the sub-brand name). "Usage" comprises all the times that a deodorant is used in a week (frequency multiplied by number of users).

some small exceptions.[37] Thus, male deodorants are clearly not an option for female consumers who are likely to represent at least half of the total consumer population for deodorants. This means that male deodorants do not represent a significant direct competitive constraint to deodorants used by women, which is in line with the Parties' argument that Unilever's male-orientated Axe deodorant essentially does not compete with Sanex (and per analogy with other unisex or female brands).

(83) Within the non-male category, there are female deodorants, but also deodorants with a neutral, unisex proposition which in principle appeals to both sexes (the level of that appeal differs from Member State to Member State). A certain proportion of male consumers indeed prefer to use more neutral unisex deodorants to male-specific deodorants. This is particularly evident in Spain, where unisex deodorants are the most common. However, according to the figures provided by Unilever[38], up to approximately [60-70]*% of the non-male/unisex variants of Sanex in Spain are used by women. Other brands in Spain which are specifically non-male have an even greater proportion of female users (roughly [70-90]*%).[39] According to the same figures provided by Unilever, the percentages of female users is even higher (sometimes significantly) in other Member States, suggesting that even fewer men use non-male deodorants in those Members States.

(84) Based notably on those cross-gender figures, the Parties argue that no "hard lines" between male and female deodorants typically exist, and therefore all deodorants, irrespective of gender differentiation, should be considered as a single market. In its reply to the Statement of Objections, Unilever argues that up to 30% of non-male deodorant products are used by males, which Unilever argues is significant. Unilever notes that gender differentiation is not very developed in Spain, [...]*.

(85) [...]*.

(86) As regards the data on cross-gender submitted by Unilever, they have to be interpreted carefully. Those figures vary quite significantly according to the precise timeframe (for example, earlier figures in the Form CO for the United Kingdom showing that men account for [10-20]*% of Rexona for Women users and [20-30]*% of Nivea for

[37] The percentage of female users of Axe was [0-5]*% in France, [0-5]*% in Germany, [0-5]*% in Spain, [0-5]*% in the United Kingdom and [10-20]*% in Italy (being an exceptional situation). For Nivea for Men, the percentage as [0-5]*% in France, [5-10]*% in Germany, [0-5]*% in Spain, [0-5]*% in the UK and [0-5]*% in Italy. For Rexona for Men, the percentage was [0-5]*% (France), [5-10]*% (Germany), [0-5]*% (Spain) and [0-5]*% (United Kingdom), data for Italy not available. See table 6.7 at page 54 of the Form CO. The subsequent submission by Unilever of 27 July 2010 provided more recent data for some additional brands in three Member States – in the United Kingdom the percentages would be Axe [0-5]*%, Nivea for Men [0-5]*%, Rightguard for Men [5-10]*%, Rexona for Men [5-10]*%, Vaseline for Men [5-10]*%; for France – Axe [0-5]*%, Nivea for Men [0-5]*%, Rexona for Men [0-5]*%, Narta for Men [5-10]*%, Sanex for Men [0-5]*%, Yves Rocher for Men [0-5]*%; for Spain – Axe [0-5]*%, Nivea for Men [0-5]*%, Rexona for Men [0-5]*%, Sanex for Men [0-5]*%.

[38] [...]*

[39] [...]*

Women users; subsequently received data show only [0-10]*% of male users for Rexona for Women and [0-10]*% for Nivea for Women).[40]

(87) Furthermore, the figures show that the highest male usage ([20-30]*%) relate to Sanex in Spain, whereas other Spanish non-male deodorant brands have lower figures (in the range of [10-30]*%)[41]; in other Member States, those figures are generally within a significantly lower range.[42] Consequently, if one looks at the market in totality, the figures relating to cross-gender use are significantly lower. In addition, Sanex, as a relatively gender-neutral brand, has developed and launched a male variant (although it is generally not very successful). The decision of Sara Lee to develop a specific male Sanex deodorant demonstrates that the non-male /unisex Sanex deodorant (which in principle could be expected to appeal to both genders) was not enough to target the specific male deodorant market.

(88) Taking all these elements into account, the figures presented by Unilever which refer to the percentage of male users of certain non-male (unisex) brands are not sufficiently strong and robust so as to justify the existence of a separate deodorant market where male and non-male deodorants are be distinguished. In particular, cross-gender usage should be regarded also from the other side: men's deodorants are essentially used only by men and not by women (a fact not disputed by Unilever), which strongly suggests an absence of demand-side substitution for female consumers.

(89) The Parties also point to interaction indices showing a relatively high level of interaction between certain male and non-male deodorant brands in some cases (in particular, Axe is recorded as having a relatively high 'switching' with some female brands in the panel data). At the same time, the Parties explain that Axe is a very distant competitor to non-male deodorant brands such as Sanex, Rexona for women or Dove for women, a fact confirmed by the market investigation. However, the consumer panels used for the calculation of switching and interaction indices relate to purchases and not the actual use of the products. The purchaser may also buy

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40 Data submitted by Unilever on 27 July 2010.

41 According to data submitted by Unilever on 27 July 2010 these figures for Spain are: Nivea for Women [20-30]*%, Rexona for Women [20-30]*%, Dove for Women [10-20]*%, Byly for Women [20-30]*%. According to earlier figures from the Form CO the figures for Spain are [20-30]*% for Nivea for Women and [20-30]*% for Rexona for Women.

42 United Kingdom - according to data submitted by Unilever on 27 July 2010: Dove for Women [5-10]*%, Nivea for Women [5-10]*%, Soft&Gentle [0-5]*%, Rightguard for Women [0-5]*%, Sanex for Women [20-30]*%, Rexona for Women 5-10%, Vaseline for Women [10-20]*%. According to earlier figures from the Form CO: Rexona for Women [10-20]*%, Nivea for Women [20-30]*%, Right Guard for Women [5-10]*%.

France: according to data submitted by Unilever on 27 July 2010: Dove for Women [5-10]*%, Nivea for Women [5-10]*%, Sanex for Women [10-20]*%, Rexona for Women [5-10]*%, Fa for Women [0-5]*%. Narta for Women [0-5]*%, Tahiti for Women [0-5]*%, Ushuaia for Women [0-5]*%, Yves Rocher for Women [0-5]*%. According to earlier figures from the Form CO: Rexona for Women [0-5]*%, Nivea for Women [0-5]*%, Narta for Women [0-5]*%.

Germany - according to earlier figures from the Form CO (no later figures provided): Rexona for Women [0-5]*%, Nivea for Women [20-30]*%, Fa for Women [10-20]*%. No figures provided for Italy.

deodorants for other family members[43], meaning that the purchase switching patterns observed cannot be directly interpreted as sign of actual substitutability.[44]

(90) The Parties also note that the distinction between unisex and female deodorants is not as clear, and in some cases it may be difficult to categorize a brand within the unisex or female segment. Indeed, in Spain for example, the investigation shows that the non-male Sanex deodorant (which is classified by the Parties as unisex based on Nielsen) competes significantly with non-male versions of Dove and Rexona (which were both classified as female). However, this fact is entirely in line with a product market definition based on a non-male market, where male deodorants are clearly separated from non-male deodorants.

(91) The Parties also imply that the gender distinction between deodorants is blurred because shoppers purchasing deodorants may be different from the end user (for example, mothers buying deodorant for their teenage children, or wives/girlfriends buying deodorants for their male partners). The Parties explain that in marketing strategies, producers may target the shoppers, by making male gift packs attractive to the shoppers who may not be male, for example. However, the fact that the purchaser or the decision-maker may not be the same person as the end-user of the product does not contradict the finding that from a demand-side, male deodorants are clearly distinct from non-male deodorants. Taking the gift packs as an example, when a wife/girlfriend buys a gift pack for her husband/boyfriend, that gift pack should be appealing to her as a purchaser, but she would clearly be buying it for the needs of the male consumer, and hence chooses between male deodorant gift-packs.

SSNIP tests of the gender segments using an economic merger simulation model

(92) In addition to the market investigation, an economic model based on Nielsen scanner data received from Unilever has been used. The precise methodology, limitations and results of this exercise are presented in the Annex, which also discusses Unilever's observations on the model.[45].

(93) The model's results tend also to support the qualitative findings of the investigation related to the market definition. In particular, a test based on a small but significant

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43 This feature relates to consumer panels consisting of households (as the Parties acknowledge explicitly), but also to panels consisting of in individual purchasers, who still may be purchasing products for other users/family members

44 In its reply to the Statement of Objections, Unilever argues that it is not correct to explain the flaws of the data with 'false switching' recorded due to purchasing for other family members Unilever states that since the data compares purchasing behaviour at the buyer level over two consecutive years, the household effect can only trigger a significant spurious closeness between male and non-male deodorants if over the course of the two consecutive years there was significant change in the gender distribution of the households represented by individual buyers, which according to Unilever does not occur.
Unilever's explanations do not seem to be correct. If buying habits within a family change, that change is also recorded as a switch. For example, when a teenage son starts to use deodorants, it is his mother who purchases those deodorants. There would also be a 'switch' recorded where the son starts buying deodorants on his own (instead of parents), or when he moves out of the home. The reason why this spurious effect mostly relates to Axe may indeed be explained by the fact that Axe is a very popular brand with teenage boys and it is a product bought by many families for their children.

45 See the Technical Annex for more details.

permanent increase in price ("SSNIP test")[46] of the gender segments (male/non-male) has been run to see whether they can be separated in the context of anti-trust.

(94) The simulations show that the profits of a hypothetical monopolist of the male (non-male) segment would increase if the prices of all male (non-male) deodorants increased by 5%. These results support the conclusions of the market investigation. They confirm that a hypothetical monopolist in the non-male market would not be constrained by the male deodorant products, indicating that those products belong to a separate market.

Table 6: Percent change in profits due to a 5% SSNIP, separately for the different nests (segments)

		Segment	
country	Model	Male	Non-male
Belgium	one-level	8	9
	two-level	7.5	11.2
The Netherlands	one-level	7.5	10.7
	two-level	6.7	11.3
Spain	one-level	23	26
	two-level	22.2	24.6
The United Kingdom	one-level	3.4	4.2
	two-level	3.6	4.5

Note: Based on the estimates of Table 5 and Table 6 of the Technical Annex.

Supply-side substitution

(95) According to the Relevant Market Notice, supply-side substitution may be taken into account if suppliers are able "*to switch production to the relevant products and market them in the short term*." Thus, supply-side substitution involves entry from existing adjacent activities at a low cost and without incurring irreversible investments and implies the ability to substitute production of one good for another at short notice in response to relative price variations[47] Only if these conditions are met will supply-side

[46] A SSNIP test answers the question whether the parties' customers would switch to readily available substitutes in response to a hypothetical small (in the range 5 % to 10 %) but permanent relative price increase in the products being considered. If substitution were enough to make the price increase unprofitable because of the resulting loss of sales, additional substitutes are included in the relevant market. This would be done until the set of products and geographical areas is such that small, permanent increases in relative prices would be profitable (see paragraph 17 of the Relevant Market Notice).

[47] According to the Relevant Market Notice (paragraph 24), potential competition is not taken into account when defining markets, since the conditions under which potential competition will actually represent an effective competitive constraint depend on the analysis of specific factors and circumstances related to the conditions of entry.

substitutability have an impact in terms of effectiveness and immediacy equivalent to the demand substitution effect.

(96) Supply-side substitution translates into market aggregation, that is, a broadening of market boundaries to include a larger group of products or geographical areas. However, the Relevant Market Notice also points out that aggregation makes sense only when production substitution among a group of products is found to be technologically feasible and economically viable for most, if not all, firms selling one or more of those products.

(97) The Parties submit that from a supply-side point of view, all deodorants belong to the same market. They argue that production technology and the know-how in order to produce male, female or unisex deodorants are very similar. They explain that male/female or unisex deodorants can be produced on the same production line and that all manufacturers produce or could produce the various gender deodorants. Only packaging and marketing differ slightly.

(98) According to the Parties, once produced, no significant cost or time delays arise in bringing different gender variants to market. They support their reasoning by noting that most male deodorant products started as female- or unisex deodorant products, and male variants were subsequently developed (with Adidas and Axe being the exceptions).

(99) In its Form CO, Unilever also detailed the time and costs needed to launch its last male variant – Dove for Men. The information provided shows that the launch of Dove for Men took [...]* between the initial project ([…]*) and the first launch […]* and had a total advertising and promotion (A&P) budget of EUR[…]* for deodorants and skin cleansing products in the first year for a European-wide rollout..[48] Unilever explains that with this launch, it was targeting a long term market share of […]* in male deodorant markets.

(100) The Parties argue that the launch of Dove for Men is not a representative case for the ease of switching supply between deodorants targeted for men and those for women mainly because [...]*.

(101) The Parties explain that ease of supply-side switching between different gender variants of deodorants can be evidenced by the success of deodorant products such as Nivea for Men, Rexona for Men and Sanex for Men. [...]*. Rexona for Men finally reached [0-5]*% share value in France and [0-5]*% in Germany after one year. [...]*

(102) The results of the investigation do not support the Parties' view that male and non-male deodorants are supply-side substitutes for the purposes of relevant product market definition.

(103) The investigation reveals that an extension of a well known male/female/unisex deodorant brand into a different gender category would in principle be "possible" for the major deodorant suppliers, however, such an extension would still require significant time to prepare and launch the product, even if the existing production lines could be used to produce the products.

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48 [...]*

(104) In the market investigation, the Parties' competitors suggest that the average time to launch a new product/variant would be approximately two years (between one year to three years depending on the competitor and on the complexity of the project).[49] Such ranges are in line with Unilever's submissions ([...]*).

(105) Such long time frames to launch the products demonstrates that the requirements for supply-side substitution as laid down in the Relevant Market Notice are not met. It is not the case that most, if not all, suppliers would be able to switch production to the relevant products and market them in the short term. Time frames of one to three years to extend an existing brand into a different gender cannot be regarded as sufficiently immediate for the purpose of supply-side substitution. This would equally hold true even if the time frame were only that of [...]*. This is all the more applicable in the context of fast-moving consumer goods such as deodorants, where there are significant costs and lead times (such as product development, testing, marketing strategy, advertising) before the products can actually be sold. Moreover, the significant investments and risks associated with such extensions render supply-side substitution unlikely.

(106) Finally, even if a number of unisex/female deodorants have their male variants, the success and competitive position of those male variants were developed gradually over time and are a consequence of significant development and commercial efforts, and of important investments. Therefore, a possible increase of production and sales of these male or female /unisex deodorants has to be treated in the competitive assessment as part of expansion/entry analysis, rather than supply-substitution.

(107) In its reply to the Statement of Objections, Unilever argues that most brands are already present in both markets. In Unilever's view, those brands such as Rexona or Nivea with an existing presence in both markets (making a third or more of male and half or more of non-male market) can switch production capacity or outsource to boost supplies in a different gender market with immediacy and effectiveness equivalent to demand substitution effect. Unilever submits that there are no barriers to switching supplies, and advertising/marketing/promotional budgets can be re-balanced between gender variants. Unilever gives the example of Beiersdorf's Nivea – the brand started to focus its advertising investments on male deodorants in 2009 and managed to increase its share of the male market, after it had invested more in the non-male market in the previous years. Unilever also points to L'Oreal first launching Garnier (a non-male deodorant brand), and subsequently launching L’Oreal Men expert brand, which is targeting the male market. .

(108) The Relevant Market Notice laid down strict conditions for supply-side substitution, which emphasize that suppliers should be able to switch production and market the products in the short term without incurring significant additional costs or risks in response to small and permanent changes in relative prices.[50] The Relevant Market Notice further specifies that different qualities of a product will be grouped into one product market, provided that *most of the suppliers* are able to offer and sell the

[49] Questionnaire to competitors on deodorants sent on 25 June 2010, question 20.

[50] Paragraph 20 of the Relevant Market Notice.

various qualities immediately and without the significant increases in costs.[51] When supply-side substitutability would entail the need to adjust significantly existing tangible and intangible assets, or would entail additional investments, strategic decisions or time delays, it will not be considered at the stage of market definition.[52] Contrary to the arguments pout forward by Unilever, most deodorant suppliers are not able to offer and sell both male and non-male deodorants immediately without incurring significant additional costs or risks.

(109) First, as noted by Unilever, brands that are present in both gender markets constitute a relatively small part of the male market – up to two thirds of the male market is made up of specific male deodorant brands with no material presence in the non-male market. Unilever's argument that expansion into a different gender market is a matter of rapidly switching capacities is therefore not relevant to those brands, as they would have to first undergo a timely and costly process of developing and launching a new gender variant.

(110) Second, even for brands present in both gender markets, an expansion of those brands in a particular segment in case of a small but significant price increase is not the result of a mere increase in production (as with commodities such as paper). Deodorants are branded goods whereby expansion builds upon important strategic decisions, investments and adjustment of marketing efforts, and occurs gradually rather than immediately (unlike winning an account from an important paper customer). Significant risks are also involved, as the sunk costs incurred may not always bring higher returns if the product is not well perceived by consumers. A deodorant brand has to convince consumers that it has the right product to fit the consumers' needs. In order to expand, suppliers invest in developing and marketing new innovations, product re-launches, and support them with intense marketing, advertisement and promotional activities. The Parties' presentation of supply-side substitution as easy and immediate is overly simplistic.

(111) This is also demonstrated by the example that the Parties offer – Nivea "switching" marketing expenditures from non-male to male deodorants between 2008 and 2009. The example is not just a mere (and immediate) switching of marketing expenses, but it coincides with an adjustment of the Nivea's male product range with the introduction of more premium equivalents and more importantly, with the introduction of a new premium product with an innovation feature – Nivea Silver Protect (as the Parties themselves explain). Such new strategic launches take a significant amount of time to prepare. The particular example of Nivea involves an increase of advertising spending/expenditure by about [...]* in Western Europe for male deodorants (with a corresponding decrease in advertising expenditure for non-male deodorants). The Parties argue that as a result of that "switch", Nivea for Men increased its market share in almost all markets. The annual increase ranged from as little as [0-5] percentage points in Portugal, [0-5] in the United Kingdom, [0-5] in the Netherlands and [0-5] in Belgium. The Parties omit to mention that in Spain, Beiersdorf's market share declined

51 Paragraph 22 of the Relevant Market Notice.

52 Paragraph 23 of the Relevant Market Notice. The Notice specifies that examples where supply-side substitution did not induce the Commission to enlarge the market definition are offered in the area of consumer products where suppliers are in principle able to produce the products, but there are other costs and lead times involved, such as those needed for advertising, product testing and distribution.

by [0-5] percentage point. The Nivea example thus rather proves that a shift in focus between the male and female markets is indeed not immediate but is rather a major strategic choice, involving significant investments and risks.

(112) Another example of a switch in market focus offered by the Parties is L'Oreal, which first introduced a female-oriented Garnier Mineral product, and is subsequently launching the Men Expert brand. Similarly, the example of L'Oreal has little to do with supply-side substitution, but is rather an example of a strategic decision involving an attempt to enter into the male and female markets separately. The Parties' argument that 'switching' marketing/advertisement and promotional budgets is proof of supply-side substitution is misconceived, as such 'switching' is simply a strategic decision to focus expansion or entry into a particular area (similar to switching advertising focus between Sanex bath & shower range and Sanex deodorant range).

(113) For the reasons specified in recitals (108)-(112) and in line with the Relevant Market Notice, such switching of a suppliers' focus between male and non-male deodorants – even if a particular brand has both male and female variants – will not be considered in the market definition.

Conclusion on gender differentiation

(114) It is thus concluded for the purposes of this case that male deodorants and non-male deodorants are separate relevant product markets.

IV.2.1.2. Deodorants by format

(115) Broadly speaking, deodorants tend to be supplied in contact forms (primarily roll-ons and sticks and occasionally wipes and creams) and non-contact forms (primarily aerosol sprays and occasionally pump sprays).

(116) The Parties submit that the appropriate product market definition for deodorants is a single (albeit differentiated) market for all types of deodorants. Considering a potential delineation of the market by format, the Parties recognize that demand-side substitutability arguments may not be sufficiently clear to conclude that all format types form part of a single product market. However, they submit that supply-side factors strongly suggest that that format is not a credible basis upon which to segment the deodorants product market.

Demand-side substitution

(117) The Parties explain that end-consumers seem to have a preference for one format over another, in particular between non-contact (aerosol sprays, pump sprays) and contact (roll-ons, sticks, creams and wipes) deodorants. They put forward that a proportion of consumers are so-called "repertoire purchasers", buying contact deodorants primarily for sports or for travelling (airline travel restrictions, for example, require use of a smaller format) and aerosol sprays primarily for use at home, but with some inter-changeability between uses.

(118) They admit that the evidence as to demand-side substitutability like switching behaviour or price difference may not be sufficiently clear to conclude that all format types form part of a single product market.

(119) The market investigation revealed that consumers tend to have purchasing preferences for one format over another. For many consumers, different formats may not be substitutable. The preference for one format over another can depend on a number of factors. Such factors could be health issues or consumers' skin types, perception of performance of a particular format, perception of environmentally-friendliness (sprays were considered to harm the ozone layer), the age of the user (sprays for younger people, roll-on for older), the price of a given format and preferences may also vary according to the gender of the user.

(120) A wide majority of the competitors nevertheless explain that end-customers perceive sprays, roll-ons and sticks deodorants as substitutes since all formats fulfil the same need[53]. As a general pattern does not seem to exist with regard to the choice of the deodorant format, all the manufacturers offer their products in a range of format types (at least both contact and non-contact) in order to meet all customers' preferences and give them the possibility to choose the format that better suits their needs [54]. For example, the recently launched Dove for Men + Care range includes aerosols, roll-ons and sticks within its deodorants product range.

(121) Although some brands may be stronger in one format, it is not necessarily due to difficulties in entering a different format. For instance, certain consumers associate the roll-on format with skin health, and the aerosol format is often associated with efficacy or fragrance. Depending on the segment of customers that a brand tries to target, a particular type of format may be chosen.

(122) Elements therefore exist which show that different formats are not substitutable for many end-consumers, however the mixed evidence does not fully support the conclusion that there is no demand-side substitutability between various deodorants formats.

Supply-side substitution

(123) From a supply-side point of view, the Parties explain that the production processes for deodorants of different formats are quite different and therefore production lines for one deodorant format cannot be used for another type of deodorant format.

(124) Aerosol deodorants are manufactured on a filling line. Aerosol cans are placed on the filling line and filled with the ingredients (including perfume, alcohol and antiperspirant). The cans are filled with liquefied gas and then undergo test baths (that is, they are transported through hot water to raise internal pressure and test for leaks) and are capped. The final product is wrapped, placed in trays, labelled/bar coded and palletised.

(125) Roll-on deodorants (and other contact formats), on the other hand, do not require gas or a test bath. Bottles/packs are placed on the production line and are filled with the product (which is mixed off-line). For example, in the case of roll-on deodorants, a roller ball is inserted in the packaging which is capped and labelled. The product is wrapped and placed in trays (as for aerosols).

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53 See question 15 of questionnaire to competitors on deodorants sent on 24 April 2010.

54 See Annex 6.11 to the Form CO

(126) However, the Parties explain that a manufacturer can nonetheless switch production volumes between different formats easily and quickly by purchasing additional capacity from third party co-packers which manufacture all types of formats on behalf of manufacturers.

(127) According to the Parties, co-packers generally supply standardised packaging (aerosol cans, roll-ons) which can be adapted to the suppliers' requirements by adjusting the colour and labelling for the brand. On that basis, a co-packer can supply a new format within [...]* months with an investment of under [...]* (for small volumes of less than five million units).

(128) [...]*. Once branded products suppliers like Unilever and Sara Lee set up the production capabilities with co-packers meeting their specific packaging requirements, production can subsequently be re-activated with even shorter lead times. Unilever thus explains that as a result, a manufacturer of one format of deodorant can readily switch to production of deodorants in alternative formats. In addition, there would be no significant costs or time delays in bringing different format variants to market.

(129) Indeed, although different formats need separate production lines and use different production processes, a majority of respondents indicated that they rely on third party manufacturers for the production of a new format, mainly for cost efficiencies and risk management reasons.[55] As one competitor notes, "*outsourcing of parts of the production is common in the deodorant industry. However, essentially all major suppliers of deodorants (other than private label) have their own production*."[56]

(130) The market investigation thus confirms that the important presence of a relatively large number of third party co-manufacturers allows brand owners to easily avoid any issue linked to the production specific to each type of deodorant format, if they lacked spare capacities in-house.

(131) The investigation also confirmed that the time and costs necessary to deliver a new format of a brand, or to adapt to a demand increase of a certain format, are not obstacles for any of the brand owners willing to place such new formats on the market. The time-frames provided by the Parties for the supply of a new format by co-packers were broadly confirmed, and an existing manufacturing relationship between a brand owner and third-party co-packer (which is common in the industry) would make it even easier, several competitors mentioning that they would need one to three months for doing so with an existing co-packer.[57]

(132) Production is thus not a major issue when switching into a different format. Moreover (and contrary to gender distinctions), such a switch would not entail any major costs or delays in terms of additional branding/marketing development, advertisement and promotional activities.

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55 Question 8 of Questionnaire to competitors on deodorants sent on 24 April 2010.

56 Reply of Henkel to question 8 of Questionnaire to competitors on deodorants sent on 24 April 2010.

57 Question 8 of Questionnaire to competitors on deodorants sent on 24 April 2010.

(133) Indeed, a wide majority of competitors pointed out that they do not adjust brand/marketing propositions to formats, and that this is the same regardless of the format.[58] Thus, a new format of a particular existing brand can be placed on the market without any specific advertising/marketing efforts, as the particular brand proposition (including the specific variants of a brand, formulations, fragrances and added functionalities) already exists. An example of a particular range of deodorant products with the same fragrances, packaging design, appeal and marketing is shown in Figure 3.

Figure 3: Picture of a particular deodorant range of Rexona Men with multiple formats available (stick, spray and roll-on)

(134) Most major brands offer multiple formats (or the most prevalent formats in a given market). As Henkel notes, "*Typically a manufacturer will offer all types of formats within each brand. Furthermore, the overall performance does not differ significantly between the different formats.*"[59] In addition, suppliers usually place different formats on the market simultaneously when launching a new brand range/variant.

(135) The marketing/branding and advertisement efforts are the main difference to gender distinction in the context of supply-side substitution. In order to be successful on the market, a new gender variant usually involves building a new and often quite distinct brand proposition targeting a different group of consumers. As explained in recitals (95) - (114)), the costs, risks, strategic decisions and time involved are significant due to the importance of marketing/branding, advertisement and promotional activities. It was also demonstrated that the majority of latest new launches of brands or brand variants are developed specifically for male or non-male markets (see recital (47)). This is different to formats, where new brands or brand variants usually cover a range of formats.

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58 Question 18 of Questionnaire to competitors on deodorants sent on 24 April 2010.

59 Reply of Henkel to question 18 of Questionnaire to competitors on deodorants sent on 24 April 2010.

(136) Indeed, putting more deodorants in a particular format on the market (or adding another format) can be executed quickly enough, without incurring significant investments in marketing/advertisement or involving significant risk. Therefore, supply-side substitutability supports the conclusion that the markets should not be separated according to format.

Conclusion on different formats

(137) Taking all the elements into account, on balance, it is concluded that all deodorants belong to the same relevant product market regardless of format. Format will however be taken into account in the competitive assessment, in particular in the context of analysing the closeness of competition.

IV.2.1.3. Other Distinctions

(138) Deodorants can have other differentiating attributes although they are not as prominent as gender and format. Based on the investigation, neither of the further distinctions justifies a further split of the relevant product markets. Nevertheless, those further differentiating features are taken into account in the competitive assessment.

(139) As regards different variants or added benefits (such as fragrance orientation, skin friendly attributes, "no white marks"), they address different consumer preferences, but are always marketed under the umbrella of a male deodorant variant or a female deodorant variant, and represent the next level of differentiation after gender. One product often has more attributes (such as both an efficacy and a fragrance proposition) and the borders between these attributes can be fluid, so it is not always possible to draw clear lines between the variants. Competitors explain that these differentiating factors are considered to be the main benefits for consumers, but the vast majority of competitors give greater weight to segmenting deodorants by gender and format, including for the purposes of their internal reporting and market analysis.[60]

(140) Such secondary functionality-oriented differentiation also applies to a possible distinction between deodorants and anti-perspirants (the latter reducing sweat in addition to regulating odour). Generally, antiperspirant capabilities are seen only as one of many added benefits of deodorants.[61] The Parties' agree with this position and explain that such a distinction plays a limited role in consumers' decision-making process, which is also reflected by the fact that both deodorants and antiperspirants are invariably marketed in retail outlets under a common "deodorants" banner, and many products combine both deodorant and antiperspirant qualities.[62] The results of the investigation do not support a segmentation of the market between deodorants and anti-perspirants.

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[60] See replies to questions 13 and 30 of Questionnaire to competitors deodorants sent on 24 April 2010.

[61] See for example the reply of Henkel to question 30 of the Questionnaire to competitors on deodorants sent on 24 April 2010, where Henkel refers to possible distinctions according to functionality, stating that those distinctions "*could be fragrance, anti-transpiration, care or no residue, which are usually perceived as the main benefits of the product in question*."

[62] Form CO, paragraph 6.142.

(141) Private label deodorants are considered to be part of the same market as branded products in this Decision, as they compete with brands for the end-consumer.

IV.2.1.4. Conclusion on Relevant Product Market

(142) It is therefore concluded that the relevant product markets are the market for male deodorants and a market for non-male deodorants.

IV.2.2. Relevant Geographic Market

(143) The Parties submit that the relevant geographic market for deodorants is national.

(144) In previous Decisions[63], the geographic markets for personal care products, including deodorants, have been analysed on a national basis. It has been noted that, even though many companies had started using brands on a European basis and there were international buying organisations, market shares and consumers' preferences diverged among Member States, and there were significant retail price differences across Member States.

(145) The Parties agree with this analysis. Notably, the Parties argue that procurement and price negotiation takes place predominantly on a national basis, even for those customers that operate on a wider-than-national basis.

(146) The market investigation confirmed that the geographic market for deodorants remains national in scope. Customers and competitors across all Member States explain that prices and consumer preferences for brands, formats and gender varieties differ between Member States. Local brands still play an important role in several Member States. Moreover, almost all market participants confirmed that price negotiations and procurement are conducted at national level.

(147) For the purpose of this Decision, the deodorant markets are analysed on a national level.

IV.2.3. Compatibility with the Internal Market

(148) The market investigation in this case confirmed that the proposed transaction would significantly impede effective competition in a number of deodorant markets. The competitive assessment for deodorants is presented in two main parts (see Section IV.2.3.1 and Section IV.2.3.2. In the first part (IV.2.3.1), a general assessment is conducted, whereas a detailed and individual assessment on a market-by-market basis is provided in the second part (IV.2.3.2).

IV.2.3.1. General assessment

(149) The general arguments put forward by the notifying party in the notification and its responses to the Article 6.1(c) Decision as well as in its reply to the Statement of Objections are discussed in this section, followed by an analysis of certain elements common to all the national markets, including a description of the merger simulation

63 Commission Decision of 30 July 2003 in Case No. COMP/M.3149 - Procter & Gamble/Wella; Commission Decision of 15 July 2005 in Case No. M.3732 - Procter & Gamble/Gillette and Commission Decision of 30 July 2008 in Case No. M.5230 Capman/Litorina/Cederroth.

that has been used as well as general issues of potential countervailing buyer power and entry.

IV.2.3.1.1. Main arguments of the notifying party

(150) The notifying party submits that the transaction would not impede effective competition in the affected markets for deodorants. Unilever puts forward several core arguments at a general level and supports them with examples from certain Member States. [64]

(151) First, Unilever submits that deodorant markets are characterised by a large number of brands and variants serving particular needs and tastes in terms of prices, packaging, format, general and secondary attributes. In such a differentiated product market, the Parties' market shares are not a true reflection of the competitive interaction between them and, according to the notifying party, overstate the effects on competition resulting from the transaction. Market shares in a differentiated product market are, according to the notifying party, mainly "providing a filter" by which markets requiring in-depth analysis can be identified[65].

(152) Second, the notifying party submits that Sara Lee's brand, Sanex, with its female bias and its healthy skin proposition, does not compete closely with the brands representing a significant proportion of Unilever's share of supply. This would most notably be the male-orientated brand Axe, which accounts for [30-50%]* of Unilever's deodorant sales in all national markets concerned.

(153) Meaningful competitive interaction between Sanex and Unilever's brands would hence be limited to Dove and Rexona. The notifying party submits however, that even for those brands, the differences are stronger than the similarities. Sanex shares a general skin caring proposition with Dove although Dove's proposes moisturising to achieve beautiful skin whereas Sanex has a more healthy skin proposition aiming at avoiding skin irritation through natural ingredients. Also, Dove is on average more expensive than Sanex, which has a mid-price positioning. Sanex shares similar price positioning and efficacy attributes with Rexona, but Rexona does not exhibit the same healthy skin proposition offered by Sanex .

(154) Third, the notifying party puts forward that the deodorant market in the Union is highly competitive with a large number of multi-national and local suppliers across the spectrum, including in the skin care and efficacy segment where Sanex competes. Those suppliers own a large number of brands which will continue to spur the competitive rivalry in the affected markets post transaction.

(155) Fourth, the notifying party contends that retail customers exert strong countervailing buyer power on personal care manufacturers, which tend to be dependent on a handful of retail customers for the majority of their deodorant sales. In the affected markets, the notifying party submits that the retail segment is significantly concentrated and such a market structure enables retailers to exercise a strong competitive constraint on

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64 Form CO, paragraph 6.40.

65 Form CO, paragraph 6.159.

suppliers in three different ways: as customers with the possibility to delist, as "gatekeeper" controlling the access to shelf-space, promotional slots and setting retail prices as well as competitor with their own private label brands.[66]

(156) Finally, according to the notifying party, suppliers in adjacent product and geographic markets are well-positioned to expand into deodorants, exerting an additional competitive constraint[67]. The notifying party puts forward that there are no significant barriers to entry and expansion in the deodorant markets. Whilst branding is normally considered to represent a barrier to entry/expansion in markets of this nature, the ability of suppliers active in adjacent markets to stretch their brands into neighbouring markets represents an often used starting point to successful market entry or expansion in the deodorant sector.

(157) According to the notifying party, there are several examples of recent brand extensions into deodorants, including Sanex's launch of Monsavon deodorants in France (from skin care), Procter & Gamble's entry in deodorants under the Gillette brands in United Kingdom, Italy and France (from shaving products) and Puig's extension of the Actovit/Lactovit range from skin care to deodorants (in Spain). Regarding extension of a deodorant line into adjacent geographic markets, the notifying party cites L'Oreal's Garnier Mineral from the Czech Republic, Poland, Hungary and Romania to 13 other European countries, Henkel's launch of the Right Guard brand in Germany in 2010 and Coty's entry into Spain with the Playboy brand in 2008.

IV.2.3.1.2. Likelihood of price increases

Elements to consider in the differentiated deodorant market

(158) In differentiated markets such as the market for deodorants, market shares, although providing an indication of the market power of the Parties may not fully reflect the competitive interaction. Indeed market shares may over or underestimate the effects of a transaction depending inter alia on the closeness of substitution between the merged products.

(159) The market investigation therefore included detailed questions (in questionnaires and follow-up interviews) to the five biggest retailers within each relevant national market as well as the six main multinational competitors. It also addressed questions to competitors with a more limited presence in national markets. Moreover, a large amount of internal documents of the Parties were reviewed in detail in relation to deodorant markets.

(160) This Decision firstly examines the elements pointing towards price rises before discussing countervailing factors like entry or potential buyer power of retailers in line with the framework for analysing non-coordinated effects in the Guidelines on the assessment of horizontal mergers under the Council regulation on the control of concentrations between undertakings (hereinafter referred to as “the Horizontal

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[66] Form CO, paragraph 6.99.

[67] Form CO, paragraphs 6.79 to 6.97.

Merger Guidelines")[68], before balancing all factors and reaching a conclusion on the impact of the transaction.

The merging firms are close competitors with regard to certain brands

(161) In assessing mergers in differentiated markets, the degree of substitutability between the merging firms' products is an essential element in assessing the effects of the merger. The higher the degree of substitutability between the products of the Parties, the more likely it is that the merging firms will be able to raise prices significantly after the merger. To correctly assess the ability of the notifying party to raise prices, the analysis has to be considered at the level of brands, since the interaction between different brands of Unilever and Sara Lee respectively varies according to the brands.

(162) The notifying party argues that the Parties are not close competitors, underlining that Sara Lee's brands do not compete with the main brand of Unilever, namely Axe. A more detailed and refined analysis of the closeness of competition between Unilever and Sara Lee's brands is provided in the competitive assessment tailored to each Member State in Section IV.2.3.2. Two aspects, however, which are common to all national markets concerned, are addressed immediately as they were raised as a general argument by Unilever.

(163) First, it is not claimed that all of the Parties' brands are close competitors with the core brand of Sara Lee, namely Sanex. Axe is clearly focused on the male market. In the non-male market, the closeness of competition analysis should consider the Unilever brands Dove and Rexona in particular, and Vaseline in certain Member States.

(164) Second, it is not argued that Unilever's brands are the only brands that have a comparable brand positioning to Sanex. Notably, Beiersdorf's brand, Nivea, also appears to be positioned close to Sanex. The fact that Sanex, Dove, Rexona and Nivea are relatively close competitors is in line with the experience of customers and competitors. Respondents in the market investigation indicated[69] that, in general, the Sanex brand is positioned in the medium to high segment of the product spectrum and competes directly with Unilever's brands Dove and Rexona and Beiersdorf's Nivea.

(165) [reference to parties' internal documents][70] [reference to parties' internal documents][71]. For deodorants with specific attributes like skin care as well as the non-white mark sub-segment of the female deodorant segment, Sanex and Nivea are the only alternatives to Unilever's Dove and Rexona label.

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68 OJ C31/5, 5.2.2004 .

69 Questionnaire to customers on deodorants sent on 23 April 2010, questions 27 and 30. Questionnaire to competitors on deodorants sent on 24 April 2010, question 56.

70 [...]*.

71 [...]*.

(166) The analysis of a number of interaction studies submitted with the Form CO[72] shows a high interaction between Unilever brands Vaseline (in Member States where that brand is available) Dove, Rexona and Sara Lee's brand, Sanex.

Sara Lee contributed to important innovations in the market

(167) The competition within the deodorant markets also has an innovation dimension. The investigation showed that Sara Lee was, via Sanex, contributing to the major innovations on the market, notably with its new 'natural' deodorants composition and a upside down roll-on deodorant.

(168) In the market investigation, a number of respondents in several Member States mentioned that Sanex has been able to grow in certain markets, in particular with its "Nature Protect" deodorants. The “Nature Protect” deodorant range launched by Sanex in 2008 is a deodorant with minerals (alum stones - Pierre d’Alum[73]) as active ingredients instead of antiperspirants. The natural origin of the product gained success as many consumers were concerned about negative influence of certain ingredients such as aluminum which was said to be causing breast cancer.

(169) Another significant innovation stemming from Sara Lee is a deodorant with an upside-down roll-on device. Upside-down roll-on deodorant is characterised by a dispenser of viscous liquid comprising a container, a fitting connected to the container and a roller. This device enables the user to soften their underarms while keeping the flow of the product smooth and free-running. It avoids unwanted leakage and dryies of the surface of the roller when the dispenser is not in use. Therefore the dispenser is immediately ready for use whenever the consumer wants it[74].

(170) Sara Lee registered a patent in 2004 for its upside down roll-on deodorants and was the first supplier to launch that product on the market and was subsequently able to gain market share in the non-male market with that innovation.[75] Unilever introduced a similar product in 2008 and L'Oreal introduced one in 2009.

(171) Unilever does not deny that Sanex has contributed to innovations, but contested that Sara Lee "is uniquely innovative" and that the proposed transaction would change the current dynamics of innovation in the market.[76] According to Unilever, such a change would not occur because the market is characterised by a significant degree of creativity and Sanex innovations are not standout innovations[77], - they have all been replicated by other suppliers within a short period of time. As Unilever explains, the launch of Sanex

72 See Figures 6.7, 6.14 and 6.22 Form CO.

73 Alum is a mineral from volcanic rock that is found as a crystal in its natural state.

74 See Sara Lee International patent filling dated 10 May 2004, available in Appendix 2 of the L'Oreal Memorandum dated 04.05.2010.

75 The analysis of the non-male market in Belgium provides more details – see Section IV.2.3.2.1.1.

76 See the Reply to the Statement of Objections, paragraphs 5.14 and 5.15.

77 Parties' Reply the 6(1)(c) Decision, 14/06/2010, paragraphs 2-46 and 2-47 and annex 16.

NaturProtect was followed quickly by the launch of other products by competitors, notably L'Oreal's Garnier Mineral, and Unilever's Rexona Mineral which, according to Unilever, have achieved higher market shares than Sanex NaturProtect in several Member States.[78]

(172) Innovations such as upside-down roll-on deodorants and minerals as active ingredients are significant, as competitors quickly launch comparable products on the market, thus revealing that the innovation was important.

(173) The two Sara Lee innovations – upside-down roll-on and minerals as active ingredients - were indeed recognised as representing significant innovations on the market. At the same time, however, it is acknowledged that other companies like Unilever or Beiersdorf also introduce new concepts on the market like the “no white marks” deodorant (Unilever) or hair-minimizing deodorant which was first introduced on the market by Beiersdorf.[79] Customers and competitors both confirmed that innovation is an important aspect in the deodorant market in general and a necessary attribute for success.[80] Broadly speaking, the above-discussed innovations were also identified by third-party market reports provided by the Parties.[81]

(174) It can therefore be concluded that Sara Lee has contributed to overall innovation on the market. While it is not alone, Sara Lee’s contributions are an important feature distinguishing it from other deodorant suppliers.

The merger simulation shows price increases

(175) The Statement of Objections used an economic model to predict the likely impact of the Unilever/Sara Lee transaction on the deodorant markets.[82] The model has two components. The demand side describes how consumers chose a deodorant product. The supply side describes how producers chose their prices. The two sides are interlinked and define a static market equilibrium.

(176) For the demand side, the so called one-level and two-level nested logit models were used. The one-level model postulates that consumers view the products with male proposition as more similar to each other than to non-male deodorant products, and non-male deodorant products are perceived to be more similar to each other than to male-deodorants. The two-level model is a refinement of the one-level structure. In the latter model, consumers perceive products with the skin friendly proposition as closer substitutes than others within the male or non-male segments.

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78 See the Reply to the Statement of Objections, paragraph 5.19.

79 See Questionnaire to competitors on deodorants sent on 25 June 2010, question 15.

80 See questionnaire to customers on deodorants sent on 24 April 2010, question 61 and questionnaire to competitors on deodorants sent on 25 June 2010, question 15.

81 [...]*

82 See the Technical Annex for a detailed description of the model and the results.

(177) The strength of demand substitution within and across these segments and sub-segments can be estimated using standard econometric techniques. For this purpose, detailed product level scanner data by Nielsen were used for four Member States-Belgium, the Netherlands, Spain, and the United Kingdom. For each Member State, separate estimations were made, both with the one-level and two-level nested logit models.

(178) On the supply side, the model assumes that producers compete by setting their products' prices while viewing demand as described by the estimated model. This defines a standard, static Bertrand-Nash market equilibrium.

(179) The model can be used to simulate post-merger prices by assuming that after the merger, the merging brands are priced by the same firm, while they were competing with each other pre-merger. The elimination of competition between them creates an incentive to increase prices. The predicted price increase is obtained by comparing the model's post-merger market equilibrium to the prevailing pre-merger equilibrium.

(180) The model takes into account the distinction between male and non-male deodorants by placing them in different nests. However, the simulation takes account of any potential switching between male and non-male deodorant brands and produces a price prediction for both markets.

(181) The model's predicted price increase should be interpreted as a permanent shift in the price level. As a result of normal competitive interaction in the market, the observed prices can fluctuate around that price level. Even in the absence of mergers, the data might show significant price changes from period to period. These "regular" changes might continue to occur after the merger but around an elevated mean price level. The model's predictions attempt to quantify how much higher this mean price level would be as a result of the merger.

(182) According to the main results reported in the Statement of Objections, simulations predict for the non-male segment price increases around 6% in Belgium,[83] 5%-6% in the Netherlands,[84] 2% in Spain,[85] and about 4% in the United Kingdom.[86,87] The main source of these average price increases arise from the incentives to increase Sanex prices, which are predicted to go up substantially (over 10%). In Spain, however, the Sanex price increase is expected to be smaller (5%). Unilever's brands show a more moderate but still significant price increase. The results were also subjected to several robustness checks in the Statement of Objections.[88]

83 With a 90% confidence interval of [2.6, 13.5]*%.

84 With a 90% confidence interval of [1.1, 9.8]*%.

85 With a 90% confidence interval of [0.2, 5.9]*%.

86 With a 90% confidence interval of [2.5, 6.0]*%.

87 The overall (male and non-male combined) price increases were around [5-10]*% [1.9, 9.8], [0-5]*% [1.7, 6.1], [0-5]*% [0.4, 6.2], and [0-5]*% [1.4, 3.8] for Belgium, the Netherlands, Spain, and the United Kingdom, respectively.

88 See Technical Annex for more details.

(183) The Statement of Objections emphasised that the model had several limitations due to the necessary restrictions in its assumed structure.[89] As explained further in the Technical Annex, such restrictions are standard in the economic literature of merger simulations. However, they constrain the results' possible scope of interpretation. The assessment of the results must be put in context with the other qualitative and quantitative analysis carried out during the investigation.

(184) Nevertheless, according to the Statement of Objections' conclusion, the modelling exercise does significantly increase the overall reliability of the assessment. The models' predictions are based on the processing of, and extrapolation from, tens of thousands of case relevant observations, which themselves represent aggregations of millions of consumer transactions. The value of the econometric estimations and merger simulations lies in the attempt to take on board the information content of this massive set of consumer data.

(185) Unilever criticises the model on several counts.[90] First, it emphasises that the restrictions the nested logit model puts on the data make it unsuitable for evaluating the transaction's likely effects. Second, it argues that the chosen estimation methodology (instrumental variables estimation) is not appropriate as the available instrumental variables are weak. Third, the model's limitation in describing the vertical relationship between retailers and producers reduces its capability of predicting the price effects of the merger.

(186) The assessment of Unilever's critique has involved carrying out further robustness checks, as well as reemphasising the Statement of Objections' stand on the proper, cautious interpretation of the results. The robustness checks have included modelling refinements (along the lines suggested by Unilever) and re-estimations, implementation of weak instrument robust parameter tests, and cost calibration exercises. The results have shown that (i) the estimation/identification methodology, within the framework of the models used, is reliable; and (ii) if the results change due to the modelling refinements the direction of change is upwards: the predicted price increases are higher than those of the Statement of Objections.

(187) Overall, the final assessment of the modelling is that the estimated price effects are robust and most likely conservative in the sense that they do not overpredict the likely price effects of the transaction. Still, because of the statistical and modelling uncertainty, which is inevitable in such exercises, the interpretation has to be cautious, and the results should be nested into the collection of the other qualitative and quantitative evidences that is available.

Table 7: Overview of estimated price increases

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89 These limitations of the model involve the implied substitution patterns (see section 3.3 of the Technical Annex), as well as the form of competition (no entry, fixed retailer markup; see section 4.4 of the Technical Annex).

90 See Annex 4 of the Reply to the Statement of Objections and section 7 of the Technical Annex.

	Overall	Genders		Brands					
		male	non-male	AXE	DOVE	REXONA	SANEX	IMPULSE	VASELINE
Belgium	4.2	1.2	6.2	0.5	10.3	3.5	18.2		
Spain	2.1	2.3	2	1.7	3.4	3.4	5.3		
The Netherlands	3.8	1.1	5.7	0.7	10.2	2.8	20.6		10.9
The United Kingdom	2.5	1	4	0.7	2.8	2.5	30.7	1.9	2.7

Note: see the Technical Annex for the confidence intervals and more technical details.

*Unilever expects [...]**

(188) [reference to parties' internal documents][91].

(189) [reference to parties' internal documents][92]. [reference to parties' internal documents][93]. [reference to parties' internal documents][94]

Figure 4: Unilever's profitability across categories

[...]*

(190) [...]*.[95] [...]*.[96]

(191) [...]*.

(192) [...]*[97][98]

(193) [...]*.[99] [...]*.[100]

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91 [reference to parties' internal documents]

92 [reference to parties' internal documents]

93 [reference to parties' internal documents]

94 [reference to parties' internal documents]

95 [...]*.

96 [...]*.

97 [...]*

98 [...]*.

99 [...]*.

100 [...]*.

(194) [...]*.

(195) [...]*.

(196) [...]*.

(197) [...]*.[101]

(198) [...]*.

IV.2.3.1.3. Lack of countervailing buyer power

The notifying party's arguments

(199) The notifying party argues that any attempt to raise prices would be countered by the buyer power of retailers. Such countervailing buyer power would result from their double role as not only customers but also those controlling market access and competitors supplying private label products.

(200) The notifying party explains that retailers because of this double role are able to acquire products from manufacturers at competitive prices, enabling them to make satisfactory margins. If retailers dislike the terms or conditions proposed by manufacturers, they can renegotiate them by using their possibility to grant access to shelves for the products of the Parties. They can threaten to *delist*, even in relation to stronger brands. This would be possible either through *delisting* of a supplier's secondary brand, refusal to stock new variants of the leading brand or reducing the number of stock keeping units ("SKUs") that are displayed of the leading brand.

(201) The notifying party also argues that retailers can determine the competitive success of a brand that is listed in a number of ways, such as deciding to increase or decrease *shelf space*, determining shelf location, pricing strategy and promotional opportunities and deciding whether to distribute a supplier's "new innovations"[102]. In this context, great attention is given to the number of SKUs of a given supplier which will be carried, how many facing each SKU has and where on the shelves this SKU will be placed (top, bottom or eye level). This is an area where competitors seek to persuade retailers to optimise the presentation and merchandising of the products through category management activities. [...]*

(202) The notifying party puts forward that retailers act as competitors of manufacturers through sales of private label products which have two main advantages from the

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[101] A competitor submitted a price-concentration analysis with the aim of showing that higher concentration would result in higher prices if everything else were left constant. All three submissions were contested by Unilever in the course of the proceedings, pointing out the general limitations of the methodology as well as the limitations of the particular application used by this competitor. Price concentration analysis generally, in itself, is not sufficient to make a firm decision as it indicates only correlation but not necessarily causation between prices and market structure. Moreover, in this particular case, after correcting the data problems found in a further revision, the estimation remains imprecise. The competitor was not able to overcome these issues since the Parties did not give access to their more detailed database. As a result, this analysis was given no weight in this Decision.

[102] See paragraph 6.99 (b), Form CO.

supermarkets' point of view. Supplying own label products allows retailers to drive consumers' loyalty to their stores and improve volume sales. In addition, the notifying party submits that it gives retailers sharper visibility on manufacturing costs and an ability to exert some pricing pressure on suppliers of the deodorant category.

(203) Unilever has, during the procedure, underlined that analysis of retailer buyer power should take into account all the elements mentioned in the Horizontal Merger Guidelines[103]. The Horizontal Merger Guidelines[104] describe countervailing buyer power as "*the bargaining strength that the buyer has vis-à-vis the seller in commercial negotiations due to its size, its commercial significance to the seller and its ability to switch to alternative suppliers"*. They indicate a number of non-exclusive different ways in which buyer power could arise. This includes (i) the ability to resort, within a reasonable timeframe, to alternative sources of supply should the supplier decide to increase prices or to deteriorate quality of the conditions of delivery; (ii) the ability to threaten to vertically integrate into the upstream market; (iii) the ability to sponsor upstream promotion or entry for example by persuading a potential entrant to enter by placing large orders to this company, or (iv) the ability to refuse to buy other products manufactured by the supplier or delaying purchases, particularly for durable goods.

(204) The notifying party submitted that in previous decisions like Procter & Gamble/Gillette[105], but also in statements of national competition authorities within the Union, buyer power has been established.[106]

(205) In a situation where the combined entity holds high market shares with a significant advance compared to its main competitor and the merger eliminates one of the strongest competitive constraints on Unilever's brands, the proposed merger is likely to provide Unilever with the incentives to unilaterally increase prices or reduce promotional pressure and thereby cause consumer harm. Therefore, it has to be carefully analysed whether buyer power is capable of being a mitigating factor in a case which results in anti-competitive effects in several deodorants markets.

(206) However, such an analysis of buyer power has to be carried out on a case by case basis and cannot rely on previous decisions, in particular if those references are not related to the deodorant market or a neighbouring personal care market[107]. Unilever fails to

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[103] Unilever’s reply to the request for information dated 25 June 2010, paragraph 7-4 as well as Reply to the Statement of Objections Section 6.

[104] Horizontal Merger Guidelines paragraphs 64 to 67.

[105] Commission Decision of 15 July 2005 in Case No. M.3732 - Procter & Gamble/Gillette.

[106] See Reply to the Article 6.1(c) Decision paragraph 2.34 as well as the Reply to the Statement of Objections, paragraphs 6.5 – 6.7. Reference is made to Ireland (food and grocery markets), the United Kingdom (grocery markets), the Netherlands (savoury snacks), France (no specific market), Nordic countries (food markets) and Spain (food market).

[107] The Parties refer to paragraph 24 of the Procter & Gamble/Gillette Decision dealing with oral care products. There it is stated that "*customers' buyer power is an important mitigating factor for potential competition problems brought about by the merger*". While this factor was taken into account in the assessment of the horizontal overlap, it was ultimately argued that it was not sufficient to counteract the potential adverse effects of the merger. Later in the Decision, reference is made to buyer power, but in the context of potential conglomerate effects.

explain why in its view a generalisation of case specific findings with different market structures compared to the present transaction would be suitable.[108] Moreover, several of the documents mentioned by Unilever provide a more nuanced view and indicate that in addition to buyer power also the market power of branded suppliers has to be taken into account.[109]

(207) The analysis of buyer power must address the question whether and to what extent the buyers would be in a position to resist such a price increase. If the buyer is able to withstand price increases through shifting of supplies, upstream vertical integration or delistings, the exercise of bargaining power is likely to prevent the merged entity to increase prices post-merger. If, on the contrary, retailers are not in a position to switch to sufficient alternatives or delist because some of the supplier's products are "must-have", that is, the retailers must keep on the shelves in order not to lose substantial sales, it is unlikely that countervailing buyer power will counteract anticompetitive effects of the merger.

(208) The arguments of the notifying party are addressed in the context of the key elements mentioned in the Horizontal Merger Guidelines. The respective margins of Unilever are used as an indication of the bargaining strength of the retailers and the notifying party. Before addressing the ability and incentive of retailers to resist price rises, it is also important to assess Unilever's strong position on the deodorant markets.

Unilever is already the leading supplier in deodorants

(209) Even prior to the proposed transaction, Unilever was the leader in deodorants in several Member States and has a unique portfolio of brands including Axe (Lynx in the United Kingdom and Ireland), Rexona (Sure in the United Kingdom and Ireland) and Dove. This rather unique position is not only reflected in the respective market shares, but also in the weighted distribution Unilever is able to achieve across Member States, which is only matched by a few competitors.[110]

(210) In addition, if category management takes place in Member States for deodorants, it is Unilever that acts as category manager or advisor.[111] Although it is true that most retailers do not think category management actually leads to favouring own products as retailers verify the recommendations given by the category manager, this just demonstrates the importance of Unilever on the market and puts the company in a unique position vis-à-vis all its competitors, reinforcing its general degree of influence on the retailers and on the market.

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[108] In that respect, Unilever seems to ignore the particularities of the case at hand. At the same time, Unilever accuses the Commission in the Reply to the Statement of Objections that it had ignored specific characteristics of national markets, see paragraph 4.29.

[109] See for example the Competition Commission, The supply of groceries in the UK: market investigation, 30 April 2008, paragraph 9.21: "*we found that buyer power of even the largest grocery retailers may be offset by the market power possessed by suppliers of the most prominent branded goods*".

[110] For details see Table 17 for Belgium, Table 26 for Ireland, Table 34 for Spain, Table 49 for the Netherlands, Table 54 for Portugal, Figure 56 for the United Kingdom.

[111] Unilever acts as a category manager for several retailers in the United Kingdom, Ireland and Spain – see Annex 8.15 Form CO.

(211) Unilever’s average gross margins across its brands are usually above [...]*% in each Member State and often reach [...]*% in some Member States.[112] While it is true that Unilever's business model requires that a significant part of the margin is spent on establishing the brand, once a strong brand has been established, it provides the supplier with bargaining power vis-à-vis its customers.[113]

(212) In conclusion, Unilever has already obtained a sizeable position within the deodorant market, which allows it to have a better bargaining position compared to its competitors. This position would be further enhanced by the proposed transaction and cannot be countered by retailers as their bargaining position is further weakened.

Retailers may pass-on price increases to end consumers

(213) An assessment of retailer buyer power focuses on the ability of retailers as customers to resist price rises. At the same time, the Horizontal Merger Guidelines explicitly refer to situations in which "*it may be important to pay particular attention to the incentives of buyers to utilise their buyer power*".[114] In this case, there are indications that even if one were to accept a certain purchasing power of retailers, it is not evident that in all cases a price increase of Unilever's products would, as such, contradict the economic interests of retailers.

(214) Retailers and suppliers stated in the market investigation that key issues in negotiations for a retailer usually relate to the level of investments provided by suppliers (such as promotional support), expected sales growth, and the profit made by the retailers on selling the products.

(215) During such negotiations, the main focus of the retailers in price discussions is to achieve an advantage vis-à-vis the other retailers (or to avoid suffering a disadvantage) and to secure their margins, rather than the actual price itself.[115] [...]* Price increases have been accepted in the past by retailers if those appeared justified, usually by increases of raw material prices, re-launches or improvements of products (when a higher price could be justified by an increased perceived value for the consumer), or by an increased advertisement support.

(216) Indeed, retailers across the Member States concerned generally confirmed that they would accept price increases if applied generally in the market.[116] As an Irish retailer puts it- "(a general price increase) w*ould be amenable if all retailers were to implement*

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112 [...]*.

113 For more details see recitals (255)-(274).

114 See Horizontal Merger Guidelines, paragraph 66.

115 This is also confirmed by Unilever in the Reply to the Statement of Objections– see paragraph 6.58.

116 See replies to Questionnaire to customers on deodorants sent on 25 June 2010, question 12.

the price increase[117]". Likewise, a Spanish retailer indicated that it "*would pass on the price increase as [the retailer's] competitive position would be the same*".[118]

(217) It is not excluded that a general increase in the list prices of certain products (such as certain Sanex SKUs), applied to all retailers simultaneously, could indeed be successfully implemented by Unilever post-merger, if such increases were managed in a way as to ensure that the relative competitive positions of retailers would not be affected.

(218) Unilever has argued that such a hypothesis, while theoretically logical, is not directly relevant to the question at hand and submitted several observations: [...]* Even if justifications have been provided, Unilever claims that retailers would still request compensation with rebates and refers to the response of [retailer], [retailer] and [retailer] indicating that an increase in list prices would not be acceptable without compensation.

(219) In addition, Unilever referred to the market investigation and argued that retailers expressed doubts on how they can be sure that Unilever indeed would uniformly increase prices across all customers – retailers therefore face uncertainty on whether their competitors would pass-on the price increase or not.

(220) Since retailers' ultimate aim is to remain competitive vis-à-vis other retailers, they would rather reduce their margins than lose customers. Thus, competition among retailers ensures that suppliers are under pressure to provide discounts or more promotions.

(221) Unilever's reference to the current situation in the United Kingdom and Ireland seems to be misplaced as it neglects the structural change in the market caused by the proposed transaction which would be applicable to all retailers active in the market. It transpires from the market investigation that retailers usually pass on price increases when they anticipate that it is not an idiosyncratic price increase, but rather a general one applicable to the entire market like for example an increase in raw materials.[119]

(222) While several retailers confirmed that they could never be sure that their competitors would receive the same supply conditions, it was also indicated that retailers try to resolve the uncertainty by observing the pricing behaviour of the market before deciding on a pass-on.[120]

(223) In light of these answers, it is concluded that the proposed transaction may allow Unilever, as the leading supplier often controlling more than half of the total market, to implement a price increase post-merger. First, the merger would result in a structural change in the market common to all retailers, therefore retailers have more certainty that the requested price increase they are facing is similar to the one for all competitors. Second, a general price increase would leave the retailers target margin and its relative

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117 See reply from [retailer] to Questionnaire to customers on deodorants sent on 25 June 2010, question 12.

118 See reply from [retailer] to Questionnaire to customers on deodorants sent on 25 June 2010, question 12.

119 See replies to Questionnaire to customers on deodorants sent on 25 June 2010, question 15.

120 While a retailer increasing its prices could face the risk of losing sales if other retailers are not following, such a risk can be reduced by increasing prices only in a subset of retail outlets, which can be used to see the reaction of the competitors.

competitive position unchanged. Third, the price increase could be complemented by minor product modifications or repositioning, providing an additional context for the general price increase.[121]

(224) In any case, it cannot be concluded that retailers have the necessary buyer power to be able to counter likely price increases following the proposed merger.

Even if large retailers were to have some bargaining power, this is not the case for all retailers

(225) The countervailing buyer power defence rests on the presumption that powerful buyers will be able to protect themselves – and thus, ultimately, also final consumers – against adverse changes in the terms of supply following the notified merger. The size of the buyers is seen as one of the elements that can contribute to buyer power in the Horizontal Merger Guidelines: "*It is more likely that large and sophisticated customers will possess this kind of countervailing buyer power than smaller firms in a fragmented industry*".[122] However, even if some buyers were to have some bargaining power, it has been found that not all buyers would have the same degree of it.

(226) In all the national markets for which competition concerns have been identified, the degree of concentration on the retail side varies as can be seen in Table 8. In all Member States, the difference between the leading retailers is often significant and in each Member State a number of smaller retailers are buying from the Parties.

Table 8: Percentage of deodorant value sales accounted for by major retailers – Source: Form CO

		Customer 1	Customer 2	Customer 3	Customer 4	Customer 5	Customer 6	Combined
Belgium	National sales	[30-40]*	[20-30]*	[10-20]*	--	--	--	[60-70]*
	Unilever sales	[30-40]*	[20-30]*	[10-20]*	--	--	--	[70-80]*
Netherlands	National sales	[20-30]*	[10-20]*	[10-20]*	[5-10]*	--	--	[60-70]*
	Unilever sales	[30-40]*	[30-40]*	[10-20]*	[10-20]*	[5-10]*	--	[90-100]*
United Kingdom	National sales	[20-30]*	[10-20]*	[10-20]*	[5-10]*	[10-20]*	[5-10]*	[80-90]*
	Unilever sales	[30-40]*	[10-20]*	[10-20]*	[5-10]*	[10-20]*	[5-10]*	[80-90]*
Ireland	National sales	[30-40]*	[20-30]*	[10-20]*	[5-10]*	[5-10]*	--	[80-90]*

121 [...]*

122 Horizontal Merger Guidelines, paragraph 65. See in addition paragraph 67 Horizontal Merger Guidelines: "*Countervailing buyer power cannot be found to sufficiently off-set potential adverse effects of a merger if it only ensures that a particular segment of customers [...]* is shielded from significantly higher prices or deteriorated conditions after the merger.*"

	Unilever sales	[30-40]*	[20-30]*	[10-20]*	[0-5]*	[5-10]*	--	[80-90]*
Spain	National sales	[10-20]*	[10-20]*	[5-10]*	[5-10]*	--	--	[40-50]*
	Unilever sales	[10-20]*	[20-30]*	[5-10]*	[5-10]*	--	--	[50-60]*
Portugal	National sales	[30-40]*	[10-20]*	[10-20]*	[5-10]*	--	--	[70-80]*
	Unilever sales	[20-30]*	[10-20]*	[5-10]*	[5-10]*	--	--	[60-70]*
Denmark	National sales	[30-40]*	[10-20]*	[5-10]*	[20-30]*	[10-20]*	[0-5]*	[90-100]*
	Unilever sales	[20-30]*	[20-30]*	[10-20]*	[20-30]*	[5-10]*	[0-5]*	[90-100]*

(227) In Belgium for example, the three largest retailers account for [60-70%]* of the total national deodorants sales, but the leading retailer accounts for [30-40%]* - almost three times as large as the third leading retailer. The size of retailers varies significantly in the Netherlands as well. The four largest retailers account for [60-70%]* of the total national deodorants sales. While the leading retailer represents [20-30]*% of the sales, the fourth largest only accounts for [5-10%]* of the sales. In Spain, the degree of concentration on the retailer side is significantly lower compared to the other Member States.

(228) Although varying size is already an indication that not all retailers have the same importance as a potential distributor for Unilever to get access to the market, Unilever re-iterated in several submissions[123] that it is not correct to claim that countervailing buyer power is limited to the larger one or two customers in the market such that the benefits will not felt by customers more generally.

(229) In particular, Unilever argued that even small retailers with a market share of 5% represent a significant volume and value of Unilever's deodorants sales, which can not be distributed through other channels in case of a delisting. Such a loss can only be ignored if one assumes that customers would switch retailers if they were not able to find their preferred brand. However, according to Unilever, no examples are available showing that customers would indeed behave in such a way. To the contrary, examples of delistings in the United Kingdom and Spain would suggest the opposite.

(230) Moreover, Unilever submitted, the intense competition among retailers provides sufficient incentives for small retailers to form buying groups or employing a different business model. In particular, buying groups should be considered as "formidable negotiators".[124]

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[123] Reply to the Article 6.1(c) Decision, paragraphs 2.35 to 2.39 and Reply to the Statement of Objections, paragraphs 6.16 to 6.25.

[124] See the Reply to the Statement of Objections, paragraph 6.23.

(231) [...]*

(232) The arguments put forward by the notifying party are not sufficiently convincing to conclude that smaller retailers have the same bargaining power as large ones. Unilever suggests that size does not matter when determining bargaining power (and therefore ultimately buyer power) of a retailer, which is a questionable assumption. The smaller the buyer, the easier it would be for a supplier to sell the delisted products to other buyers: while it would be possible for Unilever to shift 5% of its sales to other retailers very easily for example, shifting 30% of the entire volume would only be possible if a significant incentive were to be granted lowering prices and profits. Thus, while a [...]*% loss in the United Kingdom might, as Unilever argued, be equivalent to its sales in Denmark or Ireland, this comparison is meaningless when assessing Unilever's position in the United Kingdom. It is not clear why Unilever's economic dependency on an individual retailer is determined by the retailer's size in proportion to another national market in which Unilever is active. It can rather be argued that for a supplier with a global presence in deodorants like Unilever, dependency on a retailer in a particular Member State is very unlikely as each retailer represents only a minor part of the notifying party's deodorant business.

(233) In addition, comparing smaller retailers' share of Unilever' national sales with the notifying party's overall market share in a Member State shows that the relationship between those retailers and Unilever is rather asymmetric. While smaller retailers usually represent less than 10% of Unilever's deodorant sales, Unilever would, post transaction, account for at least [40-50]*% of national non-male-specific deodorant sales across Belgium, Denmark, Ireland, the Netherlands, Spain, Portugal and the United Kingdom. Consequently, replacing Unilever and its well-known brands is more difficult for a retailer than it is for Unilever to find alternative ways of distribution for a relative small share of its sales. Indeed, a number of retailers confirmed in their reply to the market investigation that Unilever has a unique position within the deodorant category as customers expect its brands Axe, Rexona and Dove to be on the shelves, and indicated that a substantial amount of their customers would switch to other retailers if these brands were no longer available.[125]

(234) As one retailer based in the United Kingdom explains with regard to the balance of power vis-à-vis Unilever: "*retailers do have good negotiation powers but on deodorants this isn't weighted in our favour as Unilever has key brands that customers want and this therefore strengthens their position*".[126] Another retailer explains that "*Customers expect certain products to be stocked by retailers (including most obviously the Unilever brands), and for there to be a wide variety of choice. Therefore retailers are required to ensure these brands are listed or face the prospect of losing sales to competitors.*"[127]

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[125] See replies to Questionnaire to customers on deodorants sent on 25 June 2010, question 17. In all seven Member States for which competition concerns have been identified in this Decision, at least half of the responding retailers indicated that a significant number of their customers would switch to another retailer if particular brands were not available.

[126] Reply of [retailer]'s to Questionnaire to customers on deodorants sent on 25 June 2010, question 16

[127] Reply of an anonymous British retailer to Questionnaire to customers on deodorants sent on 25 June 2010, question 16.

(235) Moreover, Unilever has not been able to demonstrate that delistings of smaller retailers lead to a significant decline in its output. The Reply to the Statement of Objections refers to the Reply to the Article 6.1(c) Decision, in which examples of delistings, [...]* were put forward to show Unilever's loss of turnover with these companies as a result of a delisting. Although these retailers are not small in size, the delistings have been analysed in more detail.

(236) [...]*.[128],[129] While it is correct to say that Unilever lost turnover as a consequence of delisting with that particular customer, a detailed analysis of the [...]* market before and after the delisting at [...]* indicates that Unilever's claim that the delisting was the reason for its declining market share in [...]* cannot be supported.

(237) Comparing Unilever's sales before and after the delisting [...]* with its sales at all other retailers, it can be concluded that the value sales [...]* do not significantly differ from the evolution of the rest of the market during that period [...]* indicating that a decline in sales at [...]* could also be explained by other factors prevalent in the overall market. [...]*[130]

Table 9: Comparison of Unilever's deodorant sales in [a specific retailer] and outside [the specific retailer] – own calculations based on wholesale value data – September 2008 = 100.

[...]*

(238) The second example is linked to different products [...]*, and therefore not applicable to the deodorants market.[131] The third case provides an indication that customers would switch retailers if several Unilever brands were not available at the same time. [...]*.[132] [...]*[133]

(239) With the exception of Superunie, none of the buying groups mentioned by Unilever have been included in the list of the six main customers provided by Unilever for the purposes of the market investigation. This tends to show that none of these buyers have the same size and purchasing capacity as the Parties' main retail customers.[134] In addition, Unilever only submits a general description on different forms of alliances like buying groups, franchises or symbol groups.[135] What becomes clear from Unilever's

[128] [...]*

[129] [...]*

[130] [...]*

[131] [...]*

[132] [...]*

[133] [...]*

[134] Indeed, most buying groups represent between [...]* of Unilever's national deodorant sales. The only exceptions can be found in Spain, the Netherlands and Denmark, where alliances account for [...]*

[135] See paragraphs 6.20-6.24 of the Reply to the Statement of Objections.

submission is that most of these organisations lack the clear hierarchical structure of a central organisation as large retailers like [retailer], [retailer] and others enjoy. Therefore, central elements and pre-conditions (like for example same product range, planogram, promotion programme) for potential bargaining power seem to lack from the outset. [...]*. Based on the information available about the scope of the negotiations of buyer groups compared to retailers, it cannot be concluded that buyer groups are in the same position of strength as large retailers.

(240) Unilever also provided[136] a comparison between Unilever's gross margin (as a percentage of its turnover) on deodorant sales to its five largest customers in Member States where concerns have been identified with Unilever's average gross margin on sales to all its other customers in all countries.

(241) [...]*. These variations seem to suggest that Unilever promotes brands differently across retailers and might even be able to use retailers strategically.

(242) As to the argument that competition among retailers will equalise the gross margins Unilever achieves across retailers and ultimately ensure that end-customers are shielded from adverse effects of the transaction, Unilever explained in the Reply to the Statement of Objections that buyer power of larger retailers will be transmitted to smaller ones as follows: "*The very fact that a smaller retailer expects a larger retailer to get a lower price improves the small retailer's bargaining power since it has less to lose from disagreement. The retailer has less to lose from delisting the products since it would earn less from these products anyway if they are sold at a lower price in the lager stores.*"

(243) An important assumption for this mechanism to work is that customers were to switch stores in case of a price difference. However, Unilever fails to explain why customers would switch in case of a price difference between retailers if they were – according to Unilever – not willing to switch in case their preferred brand would not be available in a supermarket. Absence of switching would ultimately result in a lack of bargaining power on behalf of smaller retailers. Even if switching were to occur, it is not clear from Unilever's submission how the feedback mechanism in the bargaining between different retailers would ultimately result in similar conditions across all retailers independent of their size or business model.

(244) It seems therefore valid to conclude that the equal margins across retailers are - contrary to Unilever's submission - not an indication that all Unilever's customers have strong bargaining position. They only show that all customers, small or large, have roughly the same bargaining position (or lack thereof) vis-à-vis Unilever. [...]*[137].

(245) In light of the absence of convincing arguments why smaller retailers would have market power and the [...]* margins achieved by Unilever in these markets for small and large customers (between [...]*% and [...]*%), it is logical to conclude that Unilever holds significant selling power in relation to both large and small customers.

Ability to integrate vertically as an element of buyer power - private label deodorants

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136 [...]*.

137 [...]*

(246) The deodorant market is primarily driven by branded products. The share of private label in deodorants is remarkably low when it is compared to many other consumer goods markets.[138] This is a strong indicator that customers are not in a position to credibly threaten to vertically integrate into the upstream market in the sense of the Horizontal Merger Guidelines.

(247) Although Unilever agrees with the analysis that the penetration of private label in the deodorant category is lower than in other consumer goods markets[139], this should not be seen as an indication that retailers would not be able to vertically integrate. Moreover, the share of private label in the overall deodorant market exceeds Sanex share either in value or in volume.

(248) Furthermore, Unilever argues[140] that price competition between brands is so intense that there is no need for retailers to add private label to alter their bargaining position in relation to branded suppliers. However, even a small share of private label allows the retailer to increase competition among suppliers for shelf space as well as gaining insights into the underlying cost structure.[141]

(249) Finally, Unilever points to replies of retailers in the market investigation stating that they have the intention to increase their private label offers during the next 1-2 years.[142]

(250) Reviewing the notifying party's arguments, it is noted that competition concerns have mainly been identified in the non-male deodorants markets in several Member States. In those non-male markets, the private label share in value never exceeds the one of Sanex. In Member States such as Denmark, Sanex is ten times larger than private label. In the Spanish male deodorants market, Sara Lee also has a higher value share than private label brands.

(251) Manufacturers active across the EEA perceive private labels as small and limited competitors, with hardly any impact on their pricing[143] – unless the brand is positioned at the entry level, which is not the case for Unilever brands, which are positioned in the medium to high-end segment. Although competitors confirmed Unilever's submission that private label deodorants allow retailers to have insights into the suppliers' production costs, a majority indicated as well that private label will continue

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138 See Decision in case M.5644 Kraft Foods /Cadbury of 6 January 2010 where the share of private label for chocolate tablets was [10-20]*% in UK and Ireland and [20-30]*% in Portugal and France. See also decision in case M.4533 SCA/P&G of 5 September 2007 where private labels were found to "predominate" in Western Europe in toilet papers, handkerchiefs and kitchen towels.

139 See paragraph 6.26 of the Reply to the Statement of Objections.

140 See paragraph 6.28 of the Reply to the Statement of Objections.

141 See paragraph 6.29 of the Reply to the Statement of Objections.

142 See paragraph 6.30 of the Reply to the Statement of Objections.

143 The exception is Spain where private label has a market share of [20-30]*% in the non-male market and local competitors feel the impact of retailers' own brands on their pricing – see Questionnaire to competitors on deodorants sent on 24 April 2010, question 52.

to have a limited presence because deodorants require a significant amount of investment in advertisement, brand awareness and promotion, which makes it difficult for private label to prosper.[144]

(252) This view was confirmed by customer replies in the market investigation. Even in the current economic situation, customers do not appear interested to switch to less expensive private label products to any significant extent.[145] Both customers and competitors confirmed that the private label option is not flagged by retailers in the negotiations with branded good suppliers.[146]

(253) When asked why private label penetration is particular low for deodorants, a number of reasons were provided. Several retailers referred to the importance of brands and the need to invest into advertisement and marketing since the product is very "personal and sensitive". Private label brands could not compete on that level, in particular in those Member States were according to a few retailers prices for branded products are low.[147] Several retailers indicated that they expect to introduce or re-launch private label deodorants, but on a small scale.[148]

(254) Based on low degree of substitutability between branded and private label deodorants among end-consumers, it does not appear that supermarket chains can credibly threaten to source private label in negotiating prices for branded products. It is therefore concluded that upstream vertical integration as an alternative to sourcing branded products is not an important source of buyer power for retailers in the deodorant market[149].

Delisting of brands by retailers

(255) With respect to delisting, a distinction should be made between "regular" delisting and non-regular delisting. Regular delisting is decided annually by retailers in the framework of a category review and they tend to eliminate products with a poor track record in terms of performance[150]. This type of delisting is often the result of discussions between the retailer and the category manager or advisor who is frequently being asked to identify

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144 Questionnaire to competitors on deodorants sent on 24 April 2010, questions 48, 49 and 51.

145 Questionnaire to customers on deodorants sent on 25 June 2010, question 23.

146 Questionnaire to customers on deodorants sent on 23 April 2010, question 35 and Questionnaire to competitors on deodorants sent on 24 April 2010, question 51.

147 See remark by a British retailer in its response to Questionnaire to customers on deodorants sent on 23 April 2010, question 32(d) as well as an Irish retailer in its response to Questionnaire to customers on deodorants sent on 25 June 2010, question 23.

148 See replies to Questionnaires to customers on deodorants sent on 25 June 2010, question 23. The replies for Spain deviate from those of the other Member States as private label in Spain has already achieved a relatively high presence. For a detailed analysis of private labels see the country specific analysis in section IV.2.3.2.2.

149 The merger simulations fully take into account the competitive pressure that private label exercise on the branded deodorants when consumers make their choice in the supermarket.

150 Form CO, page 387.

underperforming SKUs for delisting, on the basis of objective criteria defined by the retailers. In that role, a category advisor must make recommendations on an objective and transparent basis. As Unilever rightly points out "*Recommendations to delist SKUs must be backed up by sales or performance data. Thus even when Unilever is category adviser it may recommend to delist its own SKUs if they are underperforming*"[151].

(256) Retailers have unanimously confirmed that they undertake on a regular basis (one or several "windows" per year) this category review which might lead to delistings of underperforming SKUs)[152]. For instance, a Danish retailer explained that "*we have 5-6 annual so called windows, where new products are listed and bad selling items are de-listed. In 2010 this happens in week 2+10+22+36+44. The general principle is one in = one out, which means that when a new item is listed another is de-listed, thereby ensuring that we do not overfill the shops"*. When asked about the reasons used to determine which SKU should go out, [retailer] submitted that it is linked to *"Poor sales figure, bad development in profitability or simply because another item is seen as more valuable in turnover and/or margin".*

(257) Likewise, a French retailer submitted that listing new items is likely to lead to a removal of some products from the shelves "*Due to shelves capacity's limits, adding new references result on a delisting of other references (from the same supplier). This kind of assortment strategy is fully shared with the suppliers named before, who react in a constructive way given that our objective is to optimize our category growth plan.* ".[153]

(258) Unilever agrees with the distinction of delisting into regular and non-regular.[154] It submits that non-regular delisting is a rare event at the end of an escalating level of threats available to the retailer and refers to examples presented to the Commission in the course of the investigation, which would clearly show that retailers have buyer power.

(259) Unilever's examples, however, are often not put into context. Sometimes they refer only to a threat of delisting without specifying whether the threat was executed or Unilever gave in. Moreover, they do not clearly distinguish between a regular delisting because of poor performance and a delisting during negotiations.[155]

(260) In addition, Unilever and retailers negotiate on a bi-lateral basis, thus, both sides take into account "threats" during the bargaining and anticipate such steps in their preparation – therefore, just looking at the steps taken by retailers during this bargaining procedure

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151 Form CO, page 388.

152 Questionnaire to customers on deodorants sent on 23 April 2010, question 49.

153 "*Les gondoles et notre capacité linéaire n'étant pas extensibles, ce rajout de référence éventuel se fait au détriment d'autres produits (pour un même fournisseur). Ce type de stratégie d'assortiment est entièrement partagé avec les fournisseurs cités, qui réagissent dans un esprit parfaitement constructif puisque l'objectif est d'optimiser notre plan de croissance catégoriel."*

154 See paragraph 6.31 of the Reply to the Statement of Objections.

155 [...]*

gives the wrong impression as it ignores not only Unilever's possibilities, but also the ultimate objective for each party during the negotiations.[156]

(261) [...]*[157]

(262) The overall portfolio of products a supplier is selling to a retailer is important if disagreement between the branded good supplier and a retailer about pricing arise. [...]*

(263) [...]*[158],[159]

(264) [...]*

(265) As a result, there may be financial consequences for the retailer when it decides whether to promote sales of a given Unilever SKU or brand or not. These consequences might go beyond the specific products in question, and could spill over to other deodorant brands. [...]*

(266) In the Reply to the Statement of Objections, Unilever refers to several statements made by competitors, which, according to the notifying party, confirms that retailers have buyer power.[160] A closer look at those references shows that several competitors submitted important qualification on when retailers have buyer power. Beiersdorf, for example, states that "*the smaller the manufacturer is, the more easily the retailer may exert its buyer-power [...]* in relation to deodorants, it is Unilever where the buyer-power faces limits.",* Henkel adds that buyer power is "*Diminished when the manufacturer has a very large overall product portfolio, a significant market share for a certain product category or a "must have" brand [...]*. Due to all these factors, retailers are less likely to delist a Unilever brand.",* L'Oreal also refers to the size of the supplier and refers in particular to Unilever with its important brand as an example where such a buyer power would be limited.[161]

(267) The relevance of Unilever's size and the number of brands in its deodorant portfolio is also reflected in customers' replies. The ability for a retailer to switch to other suppliers and the ability to deny access to final customers are closely linked. Several retailers in the Netherlands, the United Kingdom and Spain have identified Unilever's brands for deodorants as must-have brands ("*brands with few relevant alternatives which need to be kept on the shelves to avoid loss of substantial sales*")[162]. Delisting top brands with

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156 [...]*

157 [...]*

158 See Annex 8-11 Form CO.

159 Unilever has a standard published national list price for its products with standard terms and conditions regarding matters such as payment terms, minimum order quantity and order and delivery conditions. These list prices are the starting point for negotiations with retailers on discounts and rebates

160 See paragraph 6.33 of the Reply to the Statement of Objections, where Unilever refers to Henkel, Beiersdorf, Procter & Gamble, Colgate-Palmolive and L'Oreal.

161 See replies to Questionnaire to competitors on deodorants sent on 25 June 2010, question 5.

162 Questionnaire to customers on deodorants sent on 23 April 2010, question 53.

high consumer recognition would be detrimental for them. Moreover, Unilever stands out due to the strength of its overall brand portfolio. Delisting important Unilever brands such as Axe, Dove or Rexona would clearly endanger retailers' turnover in the deodorant category.[163]

(268) In its reply to the Article 6(1) (c) Decision as well as in its Reply to the Statement of Objections[164], Unilever rejected the suggestion that any of its brands are must-have brands. Unilever argues that while a retailer delisting is a lost profit that Unilever cannot recover, retailers can replace Unilever products with those of rivals, thereby largely compensating them for any loss. On the other hand, it would be hard for Unilever to find alternative outlets to market for the product not sold through the retailer. It argues that consumers are not likely to switch stores to the detriment of the retailer in the event that they cannot find their usual brand of deodorant in any particular store.

(269) To substantiate its argument – which is contrary to the feedback received during the market investigation[165] - Unilever provided brand loyalty figures[166] for the Parties and their competitors' brands. This information was provided by GFK/Europanel which defined loyalty as "*the proportion of a brand buyer's category purchasing that goes to the brand within a given 12 month period*". As an example, if a shopper spends EUR 10 on deodorants in a given year, EUR 3.5 of which is spent on Dove, then that shopper's loyalty to Dove is recorded at 35%.[167]

(270) The figures provided by the notifying party do not necessarily mean that brand loyalty would be particularly low in the deodorant markets or that customers of the Parties' brands would be less loyal toward their brands than consumers of competitors' brands. In the United Kingdom, the highest loyalty rates in value are for Rexona/Sure ([...]*) and Axe/Lynx ([...]*) whereas it is [...]* for Gillette and [...]* for Soft & Gentle and Nivea. In the Netherlands, Rexona ([...]*), Nivea ([...]*), Sanex ([...]*) and Axe ([...]*) have the highest loyalty rates in value. A similar picture arises in Belgium and in Spain. Finally in Ireland, Axe/Lynx ([...]*) and Palmolive ([...]*) have very loyal consumers followed by Rexona/Sure ([...]*). In general, loyalty rate for Dove is

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163 See replies to Questionnaire to customers on deodorants sent on 25 June 2010, question 17. Almost all retailers across the eight Member States covered by in-depth investigation indicated that their customers would either switch their deodorant purchases or their entire purchases to another retailer in case one of the core brands of the Parties would not be available in their stores.

164 Reply to the Article 6(1)(c) Decision, paragraphs 2.10 to 2.19 and the Reply to the Statement of Objections, paragraphs 6.35 to 6.41.

165 See replies to Questionnaire to customers on deodorants sent on 25 June 2010, question 17.

166 Reply from Unilever to a RFI dated 25 June 2010, paragraphs 4-1 to 4-7 and Annex 4.

167 The figure will therefore be influenced by the price as well as the sales volume of the product: more expensive products will count more towards the shopper's spend in that particular year. Moreover, market shares have also to be taken into account when analysing these purchasing patterns since it is more likely in the case of a brand with a high market share that a household which has initially purchased this brand, purchases the same brand in all its subsequent purchases. Finally, these figures bring information regarding the purchasing patterns of buyers of the products (for example a housewife purchasing deodorants for the whole family) but they are of limited relevance to assess the strength of the attachment of the end-consumer (the deodorant user) towards the brand.

significantly lower than the ones concerning Axe and Rexona. The picture as regards brand loyalty in Portugal is less clear.

(271) In order to place the loyalty figures into context and to substantiate the claim that consumers are more likely to switch brand than to switch stores, Unilever provided loyalty figures for retail stores and argued that consumers' loyalty to retail chains exceeds their loyalty to brands, thus customers rather stay with their retailer and switch to another deodorant brand in case their preferred one would not be available.

(272) These loyalty figures try to answer two isolated questions – loyalty to a deodorant brand, loyalty to a shop – but do not allow a conclusion on the question how many consumers would switch their retailer in case their deodorant brand were not available. Even if customers were on average more loyal to their retailer than to the brand, still behind the aggregated figures a significant share of customers exists for which the loyalty is the opposite. As switching customers would probably re-direct their entire shopping basket to another retailer the losses for the retailer could be significant.

(273) In the Reply to the Statement of Objections Unilever argued that even if they had "must have" brands, retailers could still delist other brands or only a few SKUs.[168] Moreover, Unilever indicated that there is a tension in defining Unilever's brands as must have brands and Sanex as an alternative to them.[169] Indeed, it is correct that retailers can exercise their bargaining power, if any, in steps; however, this is also correct for a supplier with several brands, which Unilever seems to ignore. Given that must have brands are defined as brands with few relevant alternatives, there is no tension between this concept and the possibility that Sanex is an alternative.

(274) Based on the results of its market investigation, and in particular submissions by retailers and competitors, it is concluded that the relationship between retailers and suppliers do involve a certain degree of mutual interdependence. The supplier needs the retailer in order to get access to the market, whereas the retailer needs the suppliers of the strong brands because the customers expect to find the branded products in the store. In addition if a retailer obtains conditions that are less attractive than its competitors, either in terms of prices or promotional investments, this will negatively contribute to the overall competitiveness of the retailer

The [...] story: an example of Unilever's selling power*

(275) In the Form CO,[170] Unilever provided an example regarding delistings carried out by retailer [...]* in [...]*. The delisting by [...]* occurred in a very particular context of difficult negotiations between Unilever and [...]*. This provides for a unique case study that shows the significance of the overall brand portfolio when disagreements between suppliers and retailers escalate into a major conflict.

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168 See paragraph 6.36 of the Reply to the Statement of Objections.

169 See paragraph 6.37 of the Reply to the Statement of Objections.

170 [...]*

(276) [reference to parties' internal documents][171]

Figure 5

[...]*

(277) This document precisely identifies the main types of threats that the retailer can apply to seek better trading conditions. On the other hand, it also shows that the supplier can offer the products at higher prices or with fewer promotional investments.

(278) While the relative strengths of the threats will likely influence the outcome of the negotiations, it is very unusual to observe an actual implementation of the threats. However, a careful case study of the negotiations between Unilever and [...]* for the year [...]* has been undertaken because this was a rare example of an actual breakdown of negotiations.

(279) [...]*[172]

(280) [...]*

(281) [...]*[173]

(282) [...]*[174]

(283) [...]*[175,176,177]

(284) [...]*

(285) [...]*[178]

(286) [...]*[179,180]

(287) [...]*[181]

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171 [reference to parties' internal documents]

172 [...]*

173 [...]*

174 [...]*

175 [...]*

176 [...]*

177 [...]*

178 [...]*

179 [...]*

180 [...]*

(288) [...]*

(289) [...]*[182]

(290) [reference to parties' internal documents][183]

(291) [...]*

(292) [reference to parties' internal documents][184].

(293) [...]*

(294) Bargaining power depends, in part on the relative damage to each party's profits that a failure to reach agreement can cause. This case study shows that Unilever has at its disposal tools that are particular to very large suppliers and which in this case allowed them to [...]* and achieve their objective [...]*.

The relative strength of retailers and branded good suppliers

(295) Finally, the outcome of the respective bargaining power of Unilever and the retailers as it is reflected in their margins on deodorant sales has also been analysed.

(296) The wholesale prices which Unilever charges to its retailers are the result of a sequence of bilateral negotiations. According to Unilever and other participants in the market[185], negotiations between retailers and suppliers usually start on the basis of a list price. In addition, [...]* are agreed to derive at the final price ("[...]*"), which is the price finally paid by the retailer. [...]*.[186]

(297) It is only subsequently and on the basis of the competitive situation between retailers that each retailer will set its prices to the final consumers and hence realise its margin. The prices to final consumers are constantly updated and adjusted with a view to the competitive situation between retailers.

(298) The relative strength of the two sides should be reflected in the benefits that each party (the supplier and the retailer) manages to earn on the specific product group over which they are bargaining. Unilever describes the deodorant market as a market where competition among suppliers is very fierce and where any supplier can easily be replaced by an equally good alternative. In such a particular context, there would be no reason for the retailer to accept an outcome of the negotiations that would leave the supplier with a significant margin.

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181 [...]*

182 [...]*

183 [reference to parties' internal documents]

184 [reference to parties' internal documents]

185 Questionnaire to customers on deodorants sent on 23 April 2010, questions 35 to 37.

186 [...]*

(299) In assessing buyer power pre-merger, it is interesting to compare the margins Unilever obtains with the margins retailers derive with respect to the products at stake. In a negotiation context, the relative strength of the two sides should be reflected in the benefits that each party (the supplier and the retailer) manages to earn on the specific product group over which they are bargaining.

(300) Unilever has argued that comparing supplier and retailer margins would be a misconception of the margin that is relevant for the assessment of relative bargaining power.[187] According to Unilever, differences in accounting operating margins for a downstream and an upstream business directly reflects differences in business models between the two brands – with a supplier/manufacturer incurring high investments in innovation and brand development, and a distribution/retail business focused on achieving high volumes. Instead Unilever has provided data on Unilever's and retailers' "share of surplus", where the surplus is defined as the sum of Unilever's surplus and retailers' surplus. Unilever's surplus [...]*, while the retailers' surplus is calculated as net retail price (net of value added tax, any discounts, buy-one-get-one free offers and so forth), less wholesale cost (which is the wholesale price paid to Unilever, net of any rebates, promotional support).

(301) For the year 2008, Unilever concluded that its share if total margin was [...]* depending on the Member State[188] confirming in Unilever's view that retailers have material bargaining power.

(302) However, the results of the surplus split cannot directly be transferred into a measurement of bargaining power as many other variables might have an impact on the surplus which can be achieved. Factors having an impact are the concentration at the supplier level, the degree of concentration at the retail level, the intensity of competition among market participants as well as country specific factors (purchasing power, elasticity of demand, business cycle). In particular, the price to end-consumers is subject to regular changes and is only determined after the negotiations between a supplier and a retailer. Unilever's lower share of the surplus in [...]* for example could be the result of its lower market share of around [20-30]*% and the presence of close competitor like Sara Lee, while higher margins in [...]* are potentially a result of Unilever's market share.

(303) Even if the share of surplus figures were an indication of bargaining power, it is not sufficient that buyer power exists prior to the merger, it must also exist and remain effective following the merger.[189] However, the main effect of the merger - as also Unilever concedes in the Reply to the Statement of Objections[190] – removes a

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[187] Reply from Unilever to a RFI dated 25 June 2010, paragraph 7-12 and paragraph 6.58 of the Reply to the Statement of Objections.

[188] Unilever provided data for the seven Member States covered in the Statement of Objections. Its share of the total surplus was [60-70]*% in Belgium, [30-40]*% in Denmark, [30-40]*% in Ireland, [50-60]*% in the Netherlands, [40-50]*% in Spain, [40-50]*% in the United Kingdom and [30-40]*% in Portugal.

[189] Horizontal Merger Guidelines, paragraph 67.

[190] See Annex 7 of the Reply to the Statement of Objections where it is stated in paragraph 36 that "*the only relevant effect of the merger is therefore a reduction in the number of good substitutes [...]*. This worsens*

substitute to Unilever's brands and therefore shifts bargaining power from the retailer to the supplier that is Unilever. While Unilever tries to play down this effect by arguing that in-store switching is more prevalent than moving shops, it fails to provide any evidence that goes beyond mere speculation – referring to literature from 1976 and 1985 not linked to the deodorant market and the delisting examples of [...]*, which as described in recital (235) - (238) are not supportive either. In addition, a majority of respondents indicated in the market investigation that Unilever's bargaining power will increase post-transaction allowing it to get better access to shelf-space, promotional slots and higher margins.[191]

(304) In conclusion, the surplus split analysis is not sufficient to support the claim that buyer power would exist post-merger.

General conclusion on countervailing buyer power

(305) Having assessed all the elements it is concluded that there is no indication that retailers would be in a position to resist a general price increase of Unilever post-merger.

IV.2.3.1.4. Sufficient entry unlikely to occur

(306) For entry to be considered a sufficient competitive constraint on the Parties, it has to be demonstrated that entry is likely, timely and sufficient to deter or defeat any potential anti-competitive effects of the merger.[192] In the this case, the market investigation revealed that entry into the deodorant markets is not only time consuming, but even if entry took place in the past it usually happened - with the exception of L'Oreal's entry with Garnier Mineral - on a small scale, insufficient to counteract the adverse effects on competition that will arise by the removal of a sizeable competitor like Sara Lee with its brand Sanex.

(307) Entry into the deodorant market can generally occur in three ways: entry of a new player not yet active in deodorants or a neighbouring personal care market; entry from a neighbouring personal care with an existing brand into deodorants or expansion of an existing male/non-male deodorant brand into the other gender deodorant market. Most of the current deodorant suppliers have entered deodorants from a neighbouring personal care market[193] and indeed such a type of entry is viewed by Unilever "*as the most likely source of new entry"*. [194]

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the inside option of the retailer compared to the inside option of the supplier and therefore increases the relative bargaining power of the supplier".

191 See reply to Questionnaire to customers on deodorants sent on 25 June 2010, question 7 and reply to Questionnaire to competitors on deodorants sent on 25 June 2010, question 6.

192 See Horizontal Merger Guidelines, paragraph 68.

193 See Form CO, paragraph 6.82: "*Dove (from soaps), Vaseline (from petroleum jelly), Radox (from bath & shower products), Nivea (from moisturising creams), Lactovit (from body milks), Palmolive (from soaps), Narta (from fragrances), Gillette (from shavings), Garnier (from skin and hair care) and Sanex (from shower gel) are all examples of this*."

194 See the Reply to the Statement of Objections, paragraph 7.2.

Barriers to entry are high

(308) Unilever, in the Form CO as well in the Reply to the Statement of Objections, argued that barriers to entry are low and that "*large, well resourced companies, with established track records in bringing new innovation to the market*"[195] should be considered as potential entrants.

(309) The market investigation does not support Unilever's submission. In particular, a majority of competitors, but also a high number of customers in the deodorant markets have indicated during the market investigation that entering (or expansion) the deodorant market – either from a neighbouring personal care market or as a new entrant - is difficult, and that barrier to entry in the deodorant markets are generally high.[196]

(310) According to these respondents, barriers to entry and expansion include access to technology and the investment to manufacture deodorants. While these barriers might be overcome by sourcing from "co-packers", as explained in Section IV.2.1, high barriers to entry/expansion continue to exist in the form of (i) significant advertisement and promotion (A&P) expenditure to create brand awareness and get access to shelf space from retailers and (ii) the willingness to accept losses over a couple of years after entry and ultimately the risk of failure, that is in spite of a launch supported by A&P expenditure the brand is not able to reach the "break-even" point and generate profits. In addition, it seems that (iii) less established brands of smaller suppliers and brands with a strong appeal in one gender would have additional difficulties to successfully launch the extension into the opposite gender segment.

Timely and costly

(311) Successful entry of a new brand or the introduction of a new gender variant by an existing deodorant supplier involves significant investments and time since the process of entry involves several stages as described by the notifying party[197]:

(a) Concept testing and product design: To develop a new product qualitative and quantitative consumer research is undertaken. If the company is already active in the deodorant market, it can rely on its existing packaging and formulations, if not, these aspects have to be developed.

(b) Strategy planning: The pricing and positioning of the product has to be decided, which involves detailed market analysis.

(c) Supply chain strategy: Organise for production either in-house or through third party co-packer.

(d) Distribution: Negotiations with retailers about listing in-store have to be organised and conducted and a promotional support plan might be agreed upon.

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195 See the Reply to the Statement of Objections, paragraph 7.2.

196 See Questionnaire to customers on deodorants sent on 23 April 2010, questions 61 and Questionnaire to competitors on deodorants sent on 24 April 2010, question 59.

197 See Form CO, paragraph 6.86.

(e) A&P: Advertising campaign and point of sale materials has to be developed.

(312) Unilever detailed the time and costs needed to launch their last male variant, Dove for Men. It appears from the information provided in the Form CO that the launch of Dove for Men took [...]* between the initial project ([...]*) and the first launch in [...]* ([...]*). The total advertisement amounted to EUR[...]* for deodorants and skin cleansing in Year 1 for a rollout in Europe[198] targeting a long term market share of [...]*% in men's deodorants.

(313) Unilever argued that there are several factors that explain the length of time to launch the project and the associated level of investment. [...]*

(314) Unilever's position that the launch of Dove Men+ Care is not fully representative of the complexity and costs of the launch of a new brand of deodorants at European level cannot be fully shared. [...]*[199] [...]* Garnier Mineral followed the same procedure as was first introduced in four Eastern European countries in 2009 and in 13 other European countries thereafter in 2010.

(315) The length of the launch process of a new deodorant brand is also exemplified by the timing of the new product development process which Sara Lee followed in the relation to [...]*[200][...]*

(316) Those durations are consistent with the length of the development process for Rexona for Men [...]*. According to Unilever, the investment in the Union launch was [...]* but this amount does not include advertisement and promotion expenses[201]. [...]*[202].

(317) Unilever argues that entry is possible without high A&P expenditure and refers to [...]*[203] and [...]*[204] and [...]*[205] [...]* Thus, the example cannot be used as a successful expansion into the male deodorant market as claimed by Unilever.

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198 [...]*

199 These costs are already significant for a launch of new variants as can be seen from the examples of Sanex NatureProtect and Nivea Silver Protect where the costs were according to Unilever EUR [...]* (Sanex) and at least EUR [...]* (Nivea) – See the Reply to the Statement of Objections, paragraph 4.26.

200 See Form CO, paragraph 6-126.

201 See Form CO, paragraph 6-125

202 Henkel, for instance, explains that the success of Rexona for Men was supported by high investments in marketing and in particular television advertisement. See Henkel's reply to competitors deodorants sent on 24 April 2010, question 27 c. In addition, the Unilever explained in relation to advertisement costs that "*An additional consideration is the gender of the target consumer. Male consumers have a different pattern of media consumption than female consumers – for example, they tend to watch less television, meaning that media planning in television needs to be far more accurate and targeted for male-biased products and therefore costs are significantly higher.*" - See paragraph 3.5 of Unilever's reply to the article 11 request, received on 14 July 2010.

203 See paragraph 7.4 of the Reply to the Statement of Objections.

204 [...]*

(318) According to Unilever, Union-wide advertising and promotional spending/expenditure for Sanex NaturProtect in 2009 amounted to [...]*. However, such an investment is not directly comparable to the one of a newcomer wishing to launch a new brand. Contrary to an entry of a new brand or a gender extension, the launch of Sanex NaturProtect is a more of an upgrade of an existing deodorant non-male-specific brand. Such upgrades are common in the market and should not be mixed up with new entry, in particular because the upgraded product usually replaces an existing one on the shelves, while a new entrant has to convince a retailer to delist other, competing brands. Moreover, new versions of existing brands can build upon the umbrella brand. Sanex NatureProtect therefore benefited from the marketing and advertisement expenses of the Sanex brand. Launching a new brand is a different and more burdensome process where expenses are likely to be much more significant.

(319) The view that entry/expansion is costly was widely confirmed by retailers across Member States[206] indicating that a strong brand, marketing and innovation are important aspects a new entrant has to take into account and therefore sufficient financial resources are necessary.[207]

(320) In addition, a majority of competitors notably affirmed that an extension of gender variant would require a significant marketing investment both in researching the proposition and then advertising (such as an individual advertisement campaign with television commercials and activities in other media)[208]. In marketing and advertisement campaigns, the messages are clearly different according the gender targeted, male deodorants typically focusing on virility, masculinity or sex appeal.

(321) Competitors confirmed these high costs of entry/expansion. One competitor for instance described the significant barriers to entry experienced by newcomers in deodorants in detail: "*Very substantial investments in advertisement and promotion are normally required to enter a new national market (and to remain competitive other time). The need for significant investments - being a barrier to entry - is a very specific feature of the deodorant business. In general, the deodorant business is highly promoted which requires substantial financial power. Having a broad brand portfolio is equally very important.*"[209]

(322) A second competitor noticed that "*While deodorants manufacturers have in the past and also currently expanding their existing deodorant products into new national markets,*

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205 [...]*

206 See Questionnaire to customers on deodorants sent on 23 April 2010, question 61.

207 See for example response of a Danish retailer: "*unless the suppliers spend a lot of money for above the line marketing it is almost impossible to introduce a brand successfully*." Similar a Dutch retailer "*patience and willingness to continuously invest during a longer period to build the new brand*." And one active in the United Kingdom, who explained that no new entry can be expected as this "*would require significant investment*."

208 Questionnaire to competitors on deodorants sent on 24 April 2010, question 27 b, see replies of Procter & Gamble, L'Oreal , Henkel .

209 See reply from Beiersdorf to Questionnaire to competitors on deodorants sent on 24 April 2010, question 11.

such an expansion requires a considerable effort, in particular in terms of required spending (…). The introduction of a completely new brand in a given country requires very intensive marketing and advertising before and also in the first year following the introduction of the new brand. Due to these additional costs, a manufacturer typically has to operate the new product at a loss in that particular country for the first couple of years"[210].

(323) Likewise a third competitor submitted that "*in order to launch successfully a new entrant would need to invest heavily in marketing, promotion and advertising to impose a brand in this category of products. This is true whether your brand is not yet active in that local market or whether it is already present in other categories* [...]* *Retailers generally will privilege bigger suppliers in their choices of listing new products and promotional slots are also more easily given to stronger partners. Both facts will rather favour the bigger players to be successful on the market*"[211].

(324) The investigation also shows that a successful expansion into a new gender segment can be very difficult (that is more costly and timely) for some brands present on the market, namely those brands which are positioned with a very strong gender appeal. [...]*. Similarly, it is reasonable to assume that extending Axe/Lynx into the female market would involve significant risks of damage to the core brand's perception which is extremely male oriented. A possible extension would presumably require a very sophisticated marketing strategy which could probably not be successful without a significant preparation phase and media investments. This is not contested by Unilever. The notifying party also admits that there is no expectation that competitors brands that are currently very male-orientated (such as Mennen - L'Oreal/Colgate-Palmolive, or Gillette - Procter & Gamble) will be extended into female deodorants.[212] The same can be said about competitors active in neighbouring personal care categories. Although most of the current deodorant suppliers have entered the deodorant market from these neighbouring markets, no key personal care supplier is left who could enter deodorants.[213]

(325) Therefore, the elements put forward by the notifying party do not contradict the qualitative results of the market investigation: entering a national market with a new

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210 See reply from Henkel to Questionnaire to competitors on deodorants sent on 24 April 2010, question 11.

211 See reply from L'Oreal to questionnaire to competitors on deodorants sent on 23 April 2010, question 11.

212 However, the Parties justify it by the fact that the owners of those brands have other brands available to them that are already well represented in the supply of female (Soft & Gentle in the case of Colgate-Palmolive) or have significant potential in the supply of female deodorants (Venus and Olay in the case of Procter & Gamble, owner of the Gillette brand). This view does not seem to be shared by the competitors and justified by figures. Indeed, in the United Kingdom, Colgate gave up being present on the male market (after having undertaken a cost-benefit analysis). Furthermore, according to market share tables provide by the Parties, Procter & Gamble is present only in four countries in the EEA with female deodorants (United Kingdom, Ireland, Lithuania, Czech Republic) with market shares materially not exceeding [0-5]*% except of Lithuania and these market shares declining or stagnating in all four countries. This is not supportive of Procter & Gamble's "significant potential in the supply of female deodorants" as claimed by the Parties.

213 See Figure 2.1 of Unilever's reply to the Article 6.1(c) Decision, where the notifying party list the key personal care suppliers. All of these – Sara Lee, Unilever, Procter & Gamble, Colgate-Palmolive, Henkel, Beiersdorf, L'Oreal, Coty and Johnson & Johnson are already active in deodorants.

brand is an onerous and cumbersome process which requires significant investments in time and money.

Risk of failure and Garnier's entry

(326) Linked to the high A&P expenditures is the risk of failure. Competitors highlight the history of a brand, technology and capacity to extend as factors for a successful launch and explain that such an extension would be more difficult for less established brands or players[214]. A fact that is acknowledged as well by Unilever when it argues that "*large, well resourced companies, with established track records in bringing new innovation to the market*"[215] should be considered as potential entrants.

(327) While Unilever does not deny that a risk of failure exists, it argues that the potential rewards should also be taken into account and refers in particular to L'Oreal's entry with Garnier Mineral and previous entries.[216] According to Unilever, the proposed transaction would not change these "dynamics" and entry will be a continuing feature of the market post-transaction.[217]

(328) The notifying party mentions Procter & Gamble's entry in deodorants under the Gillette brands in several Member States in July 2010, Puig's extension of the Actovit/Lactovit range from skin care to deodorants (in Spain) in 2007, as well as L'Oreal's Garnier Mineral entry in 13 countries in January 2010 (following a launch in Poland, Hungary, Czech Republic and Romania) or Coty's entry into Spain with the Playboy brand in 2008.

(329) The result of these entries, in particular the one of Garnier, will be assessed in the parts related to each Member State. However, several of these entries (Gillette or Playboy) are only relevant for the male market which, with the exception of Spain, has not been identified as a market where competition concerns would arise. Moreover, a preliminary assessment of Garnier's entry indicates that in spite of L'Oreal's strong support during the initial launch the brand seems to have difficulties to establish itself on the shelves.

(330) In addition, retailers responding to the market investigation did not confirm that new entry into the non-male deodorant market can be expected in the next two years. Some retailers, in particular in the United Kingdom and Ireland, even argued that new entry is very unlikely due to the dominant position of Unilever on the shelves.[218] Clearly, the proposed transaction further enhances Unilever's position across Member States and by

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[214] See replies of L'Oreal Spain and Henkel to Questionnaire to competitors on deodorants sent on 24 April 2010, question 27 d.

[215] See the Reply to the Statement of Objections, paragraph 7.2.

[216] See the Reply to the Statement of Objections, paragraph 7.4.

[217] See the Reply to the Statement of Objections, paragraph 7.4.

[218] An Irish retailer stated that "*there are perceived high barriers to entry as a consequence of the dominant position of brands such as Sure and Lynx*" Similar a retailer in the United Kingdom "*Given the strength of the brands in this market, we consider that barriers to entry are high*". See reply of BWG to Questionnaire to customers on deodorants sent 23 April 2010, question 61.

adding an additional brand to its existing portfolio allows it to fight entry more effectively as it occupies more promotional slots, is active across all segments and can use its brands strategically against new brands trying to enter than it does already today. Consequently, contrary to Unilever's submission the proposed transaction would change the dynamics of entry and might even increase the barriers to entry.[219]

(331) Moreover, for entry to be considered a sufficient competitive constraint on the Parties, it must be shown to be likely, timely and sufficient to deter or defeat any potential anti-competitive effects of the merger.[220] Also, the analysis of entry must be seen in the context of a strong player trying to protect its market share and its market position. The Horizontal Merger Guidelines states clearly that[221] "*For entry to be likely, it must be sufficiently profitable taking into account the price effects of injecting additional output into the market and the potential responses of the incumbents. (…). And entry is likely to be more difficult if the incumbents are able to protect their market shares by offering long-term contracts or giving targeted pre-emptive price reductions to those customers that the entrant is trying to acquire".*

(332) [reference to parties' internal documents].

(333) [reference to parties' internal documents][222]

(334) While it is not disputed that it is part of the competitive interaction that companies constantly observe their respective activities and reflect on counter-strategies/reactions, the combination of Unilever's broad portfolio of brands and its already leading position with market shares well above 40% in several Member States seems to indicate that Unilever has not only the ability, but also the incentive to prevent entry of new brands or expansion of existing ones. In particular, since through its leading position and its activity across the entire deodorant market it would be the one suffering most from such entry, while smaller competitors might not see the need to respond if the entrant is positioned on a different segment of the market.

(335) Therefore, in addition to the barrier to entry coming from the creation of brand awareness and access to shelf space, a potential entrant has to take into account the likely reaction of a powerful incumbent like Unilever.

*Unilever's [...]**

(336) [reference to parties' internal documents]

(337) [reference to parties' internal documents]:[223]

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219 In particular competitors expect that Unilever will be able post-transaction to increase its presence on the shelves, get better access to promotions because of its increased bargaining position. This has been supported by some retailers across Member States. See replies to of Questionnaire to competitors on deodorants sent on 25 June 2010, question 6 and Questionnaire to customers on deodorants sent on 25 June 2010, question 5.

220 Horizontal Merger Guidelines, paragraph 68.

221 Horizontal Merger Guidelines, paragraph 65.

222 [reference to parties' internal documents]

(a) [reference to parties’ internal documents]

Figure 6: [...]*

(b) [reference to parties’ internal documents][224]

(c) [reference to parties’ internal documents]

(d) [reference to parties’ internal documents]

(e) [reference to parties’ internal documents][225]

(f) [reference to parties’ internal documents]

*[...]**

(338) [reference to parties’ internal documents][226],[227]

(339) It is not denied that Unilever is still facing competitors post-transaction, but the competitive constraint on Unilever would be reduced once Sara Lee has been acquired. Moreover, the fact that Unilever has already [...]* prior to the merger would not be reduced by the proposed transaction, to the contrary Unilever's increased market share, the addition of another brand like Sanex rather strengthens its ability and incentive to fight entry.

(340) [...]*[228]

Table 10: [...]*

[...]*

(341) L'Oreal's subsidiaries active in the Member States mentioned in Table 10 submitted that Unilever's sizeable increase in A&P expenditure and price drops of around 10% has made it very difficult to recruit new consumers. L'Oreal even argued that in the case of the United Kingdom and Ireland, "*the market dynamics which gave Garnier*

223 [...]*

224 [reference to parties’ internal documents]

225 [...]*

226 [...]*

227 [...]*

228 [...]*

reasons to believe in a successful entry and a reasonable prospect of profit have vanished."[229]

(342) L'Oreal even argued that its example will have wider consequences as "*this will raise the already very high barriers to entry [...]*. Indeed, potential new entrants and even suppliers from a neighbouring personal care market will see Unilever's response to Garnier's entry, the significant advertisement and promotion expenditure required, difficulty and high cost to gain access to shelf space*."[230] A view confirmed in the market investigation by Colgate-Palmolive which argued that "*based on the recent Garnier experience [new entry] is unlikely*."[231]

(343) Finally, the scepticism voiced by L'Oreal and Colgate-Palmolive related to the success of the Garnier entry has been confirmed – at least for the United Kingdom – by a detailed analysis of entry [...]*. [...]*.[232] [...]*.[233]

General conclusion on entry

(344) Therefore, it is concluded that barriers to entry are significantly high in the deodorant markets in general and that [...]*. The success and failures of some of these entries will be assessed in the parts related to each Member State.

IV.2.3.2. Country-specific assessment

(345) The transaction results in a number of affected deodorant markets within the EEA, namely Belgium, Bulgaria, the Czech Republic, Denmark, Germany, Ireland, Greece, Spain, France, Italy, Cyprus, Latvia, Lithuania, Hungary, Malta, the Netherlands, Austria, Portugal, Slovakia, Sweden and the United Kingdom.

(346) As illustrated in Table 11, for Austria, the Czech Republic, Hungary, Italy, Latvia, Lithuania, Slovakia and Sweden, the overlap is either insignificant (below [0-5]*%) or the combined market share of the Parties as well as the concentration levels are within the ranges identified in the Horizontal Merger Guidelines for which it is unlikely that competition concerns would arise.[234]

Table 11: Market shares for selective Member States – male, non-male and overall deodorants – 2009 – Source: Form CO

[229] See document "M.5658 Unilever / Sara Lee – L'Oreal subsidiaries' comments on the SO", 14 September 2010, page 5 and 9.

[230] See document "M.5658 Unilever / Sara Lee – L'Oreal subsidiaries' comments on the SO", 14 September 2010, page 11.

[231] See reply to Questionnaire to competitors on deodorants sent on 24 April 2010, question 45.

[232] [...]*

[233] [...]*

[234] See paragraphs 18-20 of the Horizontal Merger Guidelines.

Country	Market	Unilever	Sara Lee	Combined	Post-merger Herfindahl-Hirschmann Index (HHI)	Change in HHI
Czech Republic	Overall	[20-30]*%	[0-5]*%	[20-30]*%	[1000-1500]*	[70-80]*
	Male	[10-20]*%	[0-5]*%	[10-20]*%	[1500-2000]*	[50-60]*
	Non-male	[20-30]*%	[0-5]*%	[20-30]*%	[1000-1500]*	[80-90]*
Italy	Overall	[10-20]*%	[0-5]*%	[10-20]*%	[1500-2000]*	[30-40]*
	Male	[10-20]*%	[0-5]*%	[20-30]*%	[2500-3000]*	[40-50]*
	Non-male	[10-20]*%	[0-5]*%	[10-20]*%	[1500-2000]*	[20-30]*
Latvia	Overall	[20-30]*%	[0-5]*%	[20-30]*%	[1500-2000]*	[0-10]*
	Male	[10-20]*%	[0-5]*%	[10-20]*%	[1000-1500]*	[0-10]*
	Non-male	[20-30]*%	[0-5]*%	[20-30]*%	[1500-2000]*	[10-20]*
Lithuania	Overall	[10-20]*%	[0-5]*%	[10-20]*%	[1000-1500]*	[70-80]*
	Male	[5-10]*%	[0-5]*%	[10-20]*%	--	--
	Non-male	[20-30]*%	[0-5]*%	[20-30]*%	[1500-2000]*	[120-130]*
Hungary	Overall	[20-30]*%	[0-5]*%	[30-40]*%	[1500-2000]*	[50-60]*
	Male	[20-30]*%	[0-5]*%	[20-30]*%	[1500-2000]*	[10-20]*
	Non-male	[30-40]*%	[0-5]*%	[30-40]*%	[1500-2000]*	[90-100]*
Austria	Overall	[30-40]*%	[0-5]*%	[30-40]*%	[2000-2500]*	[0-10]*
	Male	[40-50]*%	< [0-5]*%	[40-50]*%	[2500-3000]*	[0-10]*
	Non-male	[20-30]*%	[0-5]*%	[20-30]*%	[2000-2500]*	[0-10]*
Slovakia	Overall	[20-30]*%	[0-5]*%	[20-30]*%	[1500-2000]*	[20-30]*
	Male	[10-20]*%	[0-5]*%	[20-30]*%	[1500-2000]*	[20-30]*
	Non-male	[20-30]*%	[0-5]*%	[20-30]*%	[1500-2000]*	[20-30]*
Sweden	Overall	[50-60]*%	[0-5]*%	[50-60]*%	[3500-4000]*	[30-40]*
	Male	[50-60]*%	[0-5]*%	[50-60]*%	[4000-4500]*	[0-10]*
	Non-male	[40-50]*%	[0-5]*%	[40-50]*%	[3000-3500]*	[60-70]*

(347) For Bulgaria and Malta, market shares are only available for the overall deodorant market and not for the potential male and non-male deodorant markets. In Bulgaria, the combined market share of the Parties post-transaction would be [20-30]*% with an increment coming from Sara Lee of [0-5]*%, while in Malta Sara Lee achieved a market share of [5-10]*% and Unilever had [10-20]*% resulting in a combined share of [20-30]*%.[235]

(348) In addition, in all these Member States sizeable competitors are present. Therefore, it can be concluded that the concentration is not likely to lead to a significant impediment of effective competition as regards the deodorant markets (overall, male or non-male) in Austria, Bulgaria, Czech Republic, Hungary, Italy, Latvia, Lithuania, Malta, Slovakia and Sweden. The remaining Member States are analysed in more detail in sections.

IV.2.3.2.1. Belgium

IV.2.3.2.1.1. Non-male deodorant market

(349) A number of factors indicative of significant non-coordinated effects are present in the non-male deodorant market in Belgium.

Merging firms have high market shares

(350) According to the Parties, the non-male deodorant market in Belgium had a total value of EUR 35.2 million 2009, [90-100]*% of which is covered by supplier brands and the remaining [5-10]*% by private labels. The non-male market in Belgium has experienced an increase in value of [5-10]*% between 2008 and 2009.

(351) Unilever is active in the non-male deodorant market in Belgium with its brands Rexona and Dove, while Sara Lee serves the Belgian non-male deodorant market with its brand Sanex.

Table 12: Market shares in the non-male segment for deodorants, in value, 2009, Belgium – Source: Form CO.

	2009	
	000 €	**%**
UNILEVER	[...]*	30-40
- DOVE	[...]*	10-20
- REXONA	[...]*	20-30
SARA LEE	[...]*	10-20
- SANEX	[...]*	10-20
COMBINED	[...]*	**50-60**
BEIERSDORF	[...]*	10-20
COLGATE	[...]*	0-5
COTY	[...]*	0-5
HENKEL	[...]*	10-20
L'OREAL	[...]*	0-5

[235] See Form CO, page 66.

PRIVATE LABEL	[...]*	5-10
OTHERS	[...]*	0-5
TOTAL MARKET	35 207	**100.0**

(352) The Parties achieve a combined market share of [50-60]*% which has increased by roughly [0-5] percentage points between 2008 and 2009. It exceeds by nearly three times the share of its nearest competitors Henkel with its brand Fa ([10-20]*%) and Beiersdorf with its brand Nivea ([10-20]*%). Other competitors with a more limited share of the market are private labels ([5-10]*%) and L'Oreal with its brands Narta and Ushuaia ([0-5]*%)

(353) The most successful supplier in the market is Sara Lee with its brand Sanex, whose sales increased by [10-20]*% (compared to the overall market growth of [5-10]*%). [reference to parties’ internal documents][236],[237].

(354) Unilever grew by [10-20]*%, mainly resulting from the Dove brand, which shares a similar skin caring positioning.

(355) The competitors Beiersdorf (+[10-20]*%) and Henkel (+[10-20]*%) have experienced similar increases of their sales as Unilever. By contrast, L'Oreal sales (Narta and Ushuaïa) have decreased by [20-30]*% in 2009. The impact of the introduction of Garnier Mineral in January 2010 in Belgium is discussed separately in recitals 441-455.

(356) Such high market shares suggest that the merged entity is likely to enjoy significant market power in the absence of any mitigating factors. Furthermore, the overlap between the Parties is significant with Unilever holding a [30-40]*% market share pre-merger (with [20-30]*% for Rexona, the leading non-male brand, and [10-20]*% for Dove) and Sara Lee a [10-20]*% share. This is indicative of strong non-coordinated effects.

(357) In the market investigation, several respondents expected that the merger would lead to anticompetitive effects for deodorants products in Belgium.[238]

(358) In its reply to the Statement of Objections, Unilever submitted that several respondents to the market investigation did not specifically predict a price increase for deodorants[239], although they identified potential anticompetitive effects. In particular, Unilever pointed out to L'Oreal's response which did not, according to Unilever, have any clear view as to whether price increases are likely post-merger.

(359) In fact, L'Oreal clearly submitted that a price increase is a likely outcome due to the significant change in the structure of the Belgian non-male deodorant market[240]. As

236 [reference to parties’ internal documents]

237 [reference to parties’ internal documents]

238 See replies to Questionnaire to customers on deodorants sent on 23 April 2010, questions 63 to 65.

239 Reply to the Statement of Objections, paragraph 8-3.

240 Questionnaire to customers on deodorants sent on 25 June 2010 ,reply to Question 13 provided by L'Oreal.

pointed out by L'Oreal, "*(A price increase) is more likely to happen if a supplier has an undisputable leadership and can convince the retailers that he can alone significantly change the price perception of a category through a general price increase of its own brand"*, which is, as reiterated by L'Oreal throughout the questionnaire, precisely the situation of Unilever post-transaction. Consequently the takeover of Sanex by Unilever "*could possibly lead to less promotional pressure and as a consequence high prices for the consumers"*. Likewise, a Belgian retailer submitted that the merger would lead to *"less players=> less promotion=> less advantage for the customer*"[241]

Merging firms are close competitors

(360) An important aspect for assessing unilateral effects arising from the proposed merger is the degree of substitutability between the Parties' non-male deodorants. The higher the degree of substitutability between their products, the more likely it is that the Parties will be able to significantly raise prices to retailers for non-male deodorants.

(361) All retailers active in Belgium explained that the Parties are close competitors. In particular, with respect to Dove and Sanex, those retailers explained that they share comparable attributes and are therefore directly competing in the market.[242] A majority of retailers considered that Dove, Sanex and Nivea are similarly positioned as umbrella skin-caring brands[243]. One retailer takes the view that Sanex and Rexona are close competitors because both brands have an efficacy claim for sports activities[244]. By eliminating a close competitor, the merger would eliminate the primary source of competitive pressure that prevails in the non-male deodorant market.

(362) With respect to brands of the main competitors, a distinction should be made between Nivea (Beiersdorf) and Fa (Henkel). Nivea deodorants are sold with a skin-caring proposition which is broadly comparable with the attributes of Dove and Sanex. Its price positioning (mid-range to premium) is also relatively akin to Dove and Sanex.

(363) Fa, on the other hand, is a brand positioned at the entry level to mid-range which is marketed under a fragrance based/feminine proposition and it does not share the skin-caring proposition of Dove and Sanex.

(364) One retailer explained in that regard that "*In the current situation (pre-transaction), Sanex products are directly competing with Dove and the existence of Sanex keeps a certain balance. With this competitor disappearing, there are not much alternatives for consumers of deodorants for sensitive skin. The closest competitor that will be left is Nivea, which still is perceived differently by the consumer*"[245]. Likewise, another

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241 See reply from [retailer] to Questionnaire to customers on deodorants sent on 25 June 2010, question 5 b).

242 Questionnaire to customers on deodorants sent on 23 April 2010, questions 27 and 30.

243 See replies by [retailer] and [retailer] to Questionnaire to customers on deodorants sent on 23 April 2010, questions 27 and 30.

244 See replies by [retailer] to Questionnaire to customers on deodorants sent on 23 April 2010, questions 27 and 30.

245 See reply from [retailer] to Second phase Questionnaire to customers on deodorants sent on 25 June 2010, question 5 c).

Belgian retailer, referring to Dove and Sanex put forward that in the women segment only two suppliers have enough weight in terms of volume and range.

(365) In its reply to the Statement of Objections[246], Unilever acknowledged that Dove and Sanex are competing brands since they share a skin-friendly platform. Unilever nevertheless considered that the closeness of competition between both brands is moderated by the higher price positioning of Dove compared to Sanex. Unilever also claimed that the Statement of Objections failed to take into account the constraints imposed by competing brands such as Nivea, Fa and Narta[247]. According to Unilever, these brands have comparable weight and depth to Sanex. They argue that Nivea shares similar attributes and positioning with Sanex and Fa has a comparable price positioning.

(366) With respect to the price positioning of Dove compared to Sanex, Unilever itself downplays in the Form CO the relevance of the pricing analysis in Belgium. Unilever considers that these pricing results, based on Nielsen data, need to be treated with some caution given the frequent use of discount coupons, which are not captured in the Nielsen pricing data[248]. Approximately 9 out of 10 promotions for deodorants in Belgium are driven by coupons and the average discount on a coupon is roughly 10-20%.

(367) Moreover, the higher price positioning of Dove compared to Sanex is mainly the result of recent price increases of Dove whereas Sanex's prices have not followed the same trend. In the skin segment, Figure 7 and Figure 8 show that Dove (as well as Rexona) increased its prices per litre quite substantially in 2008 and 2009 whilst Sanex remained constant (in sprays) or increased moderately (in roll-ons). This evolution [reference to parties' internal documents][249] and is acknowledged by Unilever in the reply to the Statement of Objections[250]. That widening of the price gap does not show that Dove and Sanex are distant competitors but rather that Sanex has pursued an independent pricing strategy in Belgium, which will be abandoned post-transaction.

Figure 7: Evolution of price per litre of non-male roll-on deodorants in Belgium between April 2006 and March 2009

[...]*

Figure 8: Evolution of price per litre of non-male spray deodorants in Belgium between April 2006 and March 2009

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246 Reply to the Statement of Objections, paragraphs 8-4 to 8-6.

247 As Narta has a [0-5]*% market share in the non-male deodorant market in Belgium (reply to the statement objections, paragraph 8-6), the competitive constraint that this brand exerts on the merging parties appears to be particularly limited

248 Form CO, paragraph 6-183

249 [reference to parties' internal documents]

250 In footnote 68 of the Reply to the Statement of Objections, where Unilever states that Dove "*has seen an increase in average prices since 2007*".

[...]*

(368) It is not contested that Nivea is in a cluster of close competitors together with other brands with skin caring proposition - Dove and Sanex. It is not argued that Sanex is Dove's closest competitor but rather that Dove and Sanex are close competitors and that therefore a potential price increase is more likely to be sustainable if those two brands merge. However, as mentioned in recital (364), one retailer explains that Nivea is perceived differently by consumers than Dove and Sanex.

(369) Unilever did not substantiate why Fa should be considered as a close competitor to Sanex or Dove in its reply to the Statement of Objections, except in relation to price. The available evidence in the market investigation suggests the opposite. None of the customers that responded to the market investigation identified Fa as a close competitor of either Dove or Sanex. One respondent considered that Fa is a close competitor of Rexona due to their particular focus on efficacy[251] and another one submitted that Fa's strength lies in fragrances whilst Dove is positioned in skin care[252]. Unilever describes Fa as "*having a large number of trendy and inspiring fragrances with colourful and feminine packaging and a tagline of "feel-good freshness*"[253], a positioning which is significantly different from skin caring propositions carried by Dove or Sanex.

(370) This closeness of competition between Dove and Sanex is also reflected in an interaction analysis submitted with the Form CO[254], conducted by GFK/Europanel, which shows a high interaction between Dove and Sanex, although the interaction with Rexona is less strong. The interaction index is also high between Sanex and Nivea, suggesting that Dove, Sanex and Nivea are close competitors.

(371) On 26 July 2010, Unilever provided an updated analysis of this interaction data [255]. This analysis focuses on the competitive dynamics between Rexona, Dove and Sanex.

(372) Europanel calculates these interaction indices using the data on households/individual purchases from the consumer panels that it operates in each country. The Europanel interaction indices are based on the actual purchasing behaviour of a large sample of purchasers in each country and hence give insights, according to Unilever, into purchasers' actual behaviour in each country.

(373) Europanel calculates an interaction index for each pair of brands covered by this analysis. The index is the ratio of actual switching between the two brands to the expected level of switching if buyers switched in proportion to market shares. Therefore,

[251] See reply by [retailer] to Questionnaire to customers on deodorants sent on 23 April 2010, question 30.

[252] See reply by [retailer] to Questionnaire to customers on deodorants sent on 23 April 2010, question 30.

[253] Form CO, paragraph 6-63

[254] See Figure 6.7 Form CO.

[255] "*M.5658 Unilever/Sara Lee Body Care: Supplementary submission regarding interaction indices*" submitted on 26 July 2010.

if the index is higher than 100, then the actual switching is greater than expected, which indicated that these brands are close substitutes. Conversely, if the index is less than 100, then it would indicate that these brands are not close substitutes.

(374) After having examined the data, it is considered that these results should be interpreted cautiously. Since an individual customer may purchase deodorants also for other family members, the switching patterns observed cannot be directly interpreted as a sign of actual substitutability. A female customer who is tracked as switching from, say Sanex for women to Sanex for Men, or another male brand may in reality have simply been purchasing a deodorant for her son or her partner without having changed her actual usage pattern.

(375) Although contaminated by these factors, the switching data may however contain information about actual substitutability and hence closeness of competition. Each brand may in a given period lose customers to (all) other brands and simultaneously win customers from all other brands. The sum of lost and won customers between two brands, the total gross switching is thus an indicator how closely the two brands are competing. The interaction indices presented in Unilever's submission of 26 July 2010 are reproduced in Figure 9.

Figure 9: Interaction index for non-male Sanex in Belgium

[...]*

(376) The interaction indices presented by Unilever are a comparison of the actual gross consumer switching of the brand (here, Sanex for Women) with the "expected" switching based on the proportions of the competing brands' market shares in the total deodorant category (combining male and non-male).[256] A high interaction of Sanex with a given brand is not in itself indicative of significant switching figures between Sanex and this brand because this high index can be brought about by the small share of the brand. In this example, Adidas (Coty) has a high interaction index with Sanex for Women ([150-170]), but it market share is quite small. When the market share is taken into account, the actual consumer switching as observed in the panels is significantly lower than the interaction index alone would suggest.

(377) Therefore, while interaction indices provide some insights about the closeness of brands, the gross switching information provides a more illustrative picture about the actual switching patterns of consumers.

(378) Upon request, the Parties submitted the underlying data used by GFK/Europanel containing the actual switching data. Based on the same data as used for the depicted interaction index, Figure 10 shows, in descending order for each brand, their share of total gross switching to and from Sanex for Women in 2009. Consistent with the method used by GFK/Europanel, the total gross switching is compared with the proportions of the competing brands' market shares in the total deodorant category ("value of competitors").

[256] The market shares are calculated on the basis of the brands' sales within the panel. This may to some extent vary from the market shares based on Nielsen data, but in general provides a rather consistent picture with those.

Figure 10: Gross switching for non-male Sanex in Belgium

[...]*

(379) Figure 10 shows more consistent results for the interaction with Sanex for Women. While Nivea for Women ([10-20]*%) has the highest level of gross switching with Sanex for Women, Dove for Women ([10-20]*%) Rexona for Women ([10-20]*%) and Fa for Women ([10-20]*%) also interact significantly with Sanex.

(380) In its reply to the Statement of Objections[257], Unilever considered that these switching or interaction data suggest that Nivea is the closest competitors to Sanex, with interaction noticeably higher than Dove. The share of gross switching to and from Sanex accounted by Nivea ([10-20]*%) is deemed by Unilever as "*disproportionately high*" compared to its value share and would therefore show that Nivea is the closest competitor to Sanex.

(381) These data indicate that Dove and Nivea are close competitors to Sanex whilst Fa and Rexona are more distant. Due to the complexity of the assessment, it is not appropriate in this particular case to label one particular brand as "the closest" competitor for the purpose of drawing conclusions about the competitive constraints exercised by some individual brands. The switching data confirms in general the results of the market investigation: Dove, Sanex and Nivea are close competitors in the Belgian non-male market.

(382) The gross switching data show that of all the Sanex users that switched to or from a non-Sanex female brand, [40-50]*% switched to or from a Unilever brand.[258] These figures confirm that the risk of losing sales to Unilever appear to be an important constraint on Sanex prior to the merger. Such switches would not constrain Sanex after the transaction since the switches would no longer be considered lost to the merged entity.

(383) Unilever argues[259] that the majority ([50-60]*%) of gross switching by Sanex purchasers is to or from non-Unilever brands, including the brand that interacts the most with Sanex (Nivea) and two of the top four closest brands to Sanex (Fa and Nivea). This does not, however, mean that Unilever brands are not constraining Sanex. The indication from the consumer panel data that more than [40-50]*% of all Sanex switching within the non-male market in Belgium occurs with Unilever's brands means that Unilever is indeed a very significant constraint on Sanex. Even if the other half of switching is to or from other brands, the merger instantly removes nearly half of the total competitive constraint previously exercised on Sanex. This increases the possibility for a price increase of Sanex post-merger.

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257 Reply to the Statement of Objections, paragraph 8-6 (iv) a).

258 This figure is calculated taking into accounts only non-male brands. When certain brands were not clearly defined as male and non-male (for example private label, or the category of 'others'), the non-male value was calculated according to the proportions of male and non-male turnovers which this particular supplier(s) or brands achieve in the respective country (turnover split taken from market share tables provided by Parties – Annex 7.1 of the Form CO).

259 Reply to the Statement of Objections, paragraph 8-10.

(384) These switching data therefore confirm the results of the market investigation and indicate that the most direct competitors to Sanex for Women are Nivea and Dove with Fa and Rexona being more distant. However, the relatively high level of gross switching with Axe Bodyspray and Rexona for Men indicates that the data must be interpreted with caution.

Assessment on the basis of format and product attributes

(385) More detailed data about the SKUs sold at brand level in Belgium have also been analyzed. These data provide information by product attributes, in particular format (crème, roll-on, spray, wipes, vapo) but also other characteristics (skin friendly, fragrance, anti-perspirant or AP, efficacy, nowhite-marks, girl or others). The sub-segmentation is based on a classification provided by Unilever[260].

(386) This refinement can in general help to identify in more detail in which sub-segments the Parties brands are positioned and show where a significant overlap exists.

(387) Table 13 shows the characteristics of the products in the non-male market in general. A similar analysis is also presented on the basis of formats. Finally, an analysis which combines price points and product characteristics is presented.

Table 13: Belgium: Deodorants: 2009: sub-segment shares value – non-male.

Non-Male 2009 [...]*	**Skin Care**	**Fragrance**	**Antiper-spirant**	**Efficacy**	**No White Marks**	**Girl**	**Without Characte-ristic**
Rexona	[5-10]*%		[20-30]*%	[60-70]*%	[30-40]*%	[20-30]*%	[40-50]*%
Dove	[30-40]*%		[20-30]*%		[20-30]*%		[20-30]*%
Sanex	[20-30]*%		[20-30]*%	[0-5]*%	[20-30]*%		[30-40]*%
Combined	**[60-70]*%**		**[60-70]*%**	**[60-70]*%**	**[90-100]*%**		
Nivea	[30-40]*%		[20-30]*%	[10-20]*%			
Ushuaia		[5-10]*%					
Narta				[5-10]*%	[5-10]*%		
Fa		[80-90]*%		[5-10]*%		[70-80]*%	
Others	[0-5]*%	[5-10]*%	[5-10]*%	[5-10]*%	[0-5]*%		[0-5]*%
Share of non-male segment[261]	[40-50]*%	[20-30]*%	[60-70]*%	[20-30]*%	[10-20]*%	[5-10]*%	[10-20]*%

[260] This classification is also used for calculation of the predicted price increases in the merger simulation

[261] The sum of percentage of each segment is superior to 100% because one given SKU can have several characteristics (AP, skin care, no white marks, etc).

Turnover of segment in million EUR	**13.9**	**7.0**	**20.5**	**7.7**	**3.7**	**3.0**	**4.9**

(388) As can be seen from Table 13, Sanex is only present in three sub-segments (with a very small presence in efficacy) skin, AP and "no white marks"]. Firstly, Dove appears to be a close competitor in that it is present in exactly the same three sub-segments as Sanex, and only in these three sub-segments. Also, three of the four brands of the other competitors are absent from these three sub-segments, with the exception of Narta which has a small presence in the no white marks sub-segment. While Nivea is present in the skin care and AP sub-segments, Fa has a particular strength in the fragrance and girl sub-segments (where the Parties' brands are hardly present, except Rexona in the girl sub-segment) and Ushuaia can only be found in the fragrance sub-segment.[262]

(389) To complement the analysis of closeness of competition, the non-male market has been segmented by format. This assessment focused on two specific formats, namely sprays and roll-ons which account for 73% and 23% of all non-male deodorants sold in Belgium, respectively.

(390) Further segmenting the non-male market according to format does not alter the analysis regarding the overall non-male market. Market presence and market shares in sprays and roll-ons are broadly comparable to the overall market shares although Nivea and Sanex appear to be stronger in roll-ons than in sprays.

Table 14: Belgium: Deodorants: 2009: sub-segment shares value – non-male sprays.

Non-Male spray 2009 [...]*	Skin Care	Fragrance	Anti-Perspirant	Efficacy	No White Marks	Girl	Without Characte-ristics
Rexona	[5-10]*%		[20-30]*%	[70-80]*%	[30-40]*%	[20-30]*%	[50-60]*%
Dove	[30-40]*%		[20-30]*%		[20-30]*%		[20-30]*%
Sanex	[10-20]*%		[10-20]*%	[0-5]*%	[20-30]*%		[20-30]*%
Combined	**[60-70]*%**		**[60-70]*%**	**[70-80]*%**	**[90-100]*%**	**[20-30]*%**	**[90-100]*%**
Nivea	[30-40]*%		[20-30]*%				
Ushuaia		[10-20]*%					
Fa		[80-90]*%				[70-80]*%	
Narta				[5-10]*%	[0-5]*%		

262 Nivea has a small presence in the no-white mark segment, however, it is well below [0-5]*%.

Others	[0-5]*%	[5-10]*%	[5-10]*%	[10-20]*%	[0-5]*%		[0-5]*%
Share of non-male spray segment[263]	[30-40]*%	[20-30]*%	[50-60]*%	[20-30]*%	[10-20]*%	[10-20]*%	[10-20]*%
Turnover of segment in million EUR	**9.1**	**5.8**	**13.9**	**5.5**	**2.5**	**2.6**	**4.2**

Table 15: Belgium: Deodorants: 2009: sub-segment shares value – non-male Roll-on.

Non-Male Roll-on 2009 [...]*	**Skin Care**	**Fra-grance**	**Anti-Perspirant**	**Efficacy**	**No White Marks**	**Girl**	**Without Characteristics**
Rexona	[0-5]*%		[10-20]*%	[40-50]*%	[30-40]*%	[20-30]*%	
Dove	[10-20]*%		[5-10]*%		[20-30]*%		[10-20]*%
Sanex	[30-40]*%		[30-40]*%		[30-40]*%		[80-90]*%
Combined	**[40-50]*%**		**[50-60]*%**	**[40-50]*%**	**[90-100]*%**	**[20-30]*%**	**[90-100]*%**
Nivea	[50-60]*%		[30-40]*%	[30-40]*%			
Ushuaïa							
Fa		[90-100]*%		[10-20]*%		[70-80]*%	
Narta				[0-5]*%	[5-10]*%		
Others	[0-5]*%		[0-5]*%	[0-5]*%			[0-5]*%
Share of non-male roll-on segment[264]	[50-60]*%	[10-20]*%	[70-80]*%	[20-30]*%	[10-20]*%	[5-10]*%	[5-10]*%
Turnover of segment in million EUR	**4.3**	**1.3**	**6.0**	**2.0**	**1.2**	**4.0**	**0.7**

(391) Finally, these product characteristics have been combined with average prices for the last three years. Figure 11 and Figure 12 show the price positioning of the main brands

[263] The sum of percentage of each segment is superior to 100% because one given SKU can have several characteristics (AP, skin care, no white marks, etc).

[264] The sum of percentage of each segment is superior to 100% because one given SKU can have several characteristics (AP, skin care, no white marks, etc).

in (i) the skin care sub-segment and (ii) the no white-marks sub-segment for spray and roll-ons respectively.

Figure 11: Average price points for Belgian non-male deodorants, skin care segment (spray deodorants) for 2007, 2008 and 2009

[...]*

Figure 12: Average price point for Belgian non-male deodorants, nowhite marks (spray deodorants) in 2007, 2008 and 2009.

[...]*

(392) Combining the product characteristics with average prices indicates that Sanex has not been able to achieve similar prices as the other brands in the spray skin sub-segment during the last three years. While Rexona, Dove and Nivea increased their average prices by [...]* or more, Sanex increased much less. In the no white marks sub-segment it seems that Nivea and Dove have repositioned prices upwards to the high end of the market with Sanex remaining at a price point at least [...]* below the leading brands.

(393) In the roll-on market, Sanex and Rexona's price positioning were broadly comparable until 2008 but as already noticed in the spray sub-segment, Sanex (or Nivea in this case) has not been able to achieve similar price increases as Dove and Rexona in the skin care sub-segment over the last three years. This price increase has not impacted Rexona and Dove's sales which have increased by [...]* in value, in line with market average. Sanex is now positioned at the low end of the market.

Figure 13: Average price point for Belgian non-male deodorants, skin care segment – (roll-on deodorants) in 2007, 2008 and 2009.

[...]*

(394) In the no white marks sub-segment, Sanex, Dove and Rexona have a relatively similar price positioning whereas Narta is [...]* more expensive as shown in Figure 14.

Figure 14: Average price point of Belgian non-male deodorants, no white marks segment (roll-on) in 2007, 2008 and 2009.

[...]*

(395) The analysis of the sub-segments basically confirms the qualitative evidence collected during the first phase market investigation, namely that Sanex appeals to non-male customers sensitive to soft skin and no white marks attributes. Dove is the closest competing brand to Sanex, Nivea is also close for skin care attributes.

Demand estimation and merger simulation

(396) In order to complement the other elements in the [investigation, an economic model has been used to predict the likely outcome of the transaction in Belgium.[265] The various parameters of the model, as well as its potential limitations, are described in the Annex to this Decision.

(397) Table 16 summarises the results of the merger simulations in terms of percentage of price increase relative to the pre-merger price level. The figures are averages over the sample periods of estimation. The overall figures include the price changes of all competitors in the sample. They can be further broken down in male and non-male markets and according to individual brands.

Table 16: Estimated price increases in Belgium

		gender segments		brands			
	overall	male	non-male	AXE	DOVE	REXONA	SANEX
one-level n.logit	5.2	2	6	1.6	6.2	6.1	19.9
two-level n.logit	4.2	1	5.3	0.5	8.6	3.3	14.5

Note: see the Technical Annex for the confidence intervals and more technical details.

(398) The overall simulated price increase for the total deodorant category would be in the region of 4%-5%. This overall price increase is driven by the non-male market (6% price increase[266]) because it is in this segment that the overlap is stronger between the merging brands, while Sanex is rather weak in the male segment.[267]

(399) On the brand level, the predicted price increases show a significant degree of dispersion. While Unilever's own brands react weakly (Axe) or moderately (Rexona, Dove), Sanex is predicted to have quite strong price increases. Sanex' strong price increases do not translate to equally strong overall price increases in the market due to the size of Sanex and the relatively weak reactions of competitors.

(400) The high level of market shares, the elements showing that the transaction will eliminate a close competitor of Unilever's brands, the expected price increases, either at the overall level or the brand level are all strong indications of non-coordinated effects in the absence of any mitigating factors.

The merger will eliminate an important competitive force

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[265] See the Technical Annex for a detailed description of the model, the results, the Parties' response and the Commission's assessment.

[266] With a 90% confidence interval of [2.6, 13.5]*%.

[267] As explained in recital (181) and in more detail in the Technical Annex, the assessment of the merger simulation and in particular the predicted price increases must be put into context with other qualitative and quantitative analysis of each specific market.

(401) The recent strong growth of Sanex in the non-male market is highlighted in recital (353). Moreover, some customers and a significant number of competitors consider Sanex to be a growing force in the market, in particular, with its "Nature Protect" deodorants in Belgium. The proposed transaction will therefore eliminate a close competitor, namely Sanex, to Unilever's core brands – Dove and Rexona – which has been a growing independent competitive force in the Belgian market.

(402) Unilever indicates that the Belgian non-male market is particularly dynamic[268] and that other brands such as Fa and Nivea have also performed well in the last years. Nonetheless, according to Unilever, none of these brands have achieved the same level of performance as Sanex (+300%) in the last years. Fa grew by [20-30]*% between 2005 and 2008 and Nivea has slightly decreased (from [10-20]*% market share in 2005 to [10-20]*% in 2008).

(403) Sanex is also considered an innovative competitive force. According to one competitor, the most important innovations during the last years relate to the composition of the deodorant (such as "Pierre d'Alun" launched by Sanex or the anti-trace deodorant first introduced in the market by Rexona) or the packaging of the deodorant (such as the roll-on upside down deodorant of Sanex)[269].

(404) The evolution of upside down roll-on deodorants in Belgium illustrates how Sanex has managed to increase its position in the Belgian non-male deodorant market, and how it changed the standard packaging on the roll-on segment. It also illustrates the subsequent follower reaction by Unilever.

(405) Sanex launched the upside down roll-on deodorants in 2006. Roll-on upside down roll-on deodorants represented [10-20]*% of roll-on deodorants in 2006. Sanex represented [90-100]*% of the roll-on upside down roll-on category in 2006 and 2007, but subsequently Unilever succeeded in following the approach by launching its own upside down roll-on deodorant in Belgium (through Rexona and Dove). L'Oreal only followed two years later in 2010 (through Garnier Mineral

(406) The success of the 'upside-down' packaging was remarkable. Since 2006, such roll-ons have been in constant progression constituting [50-60]*% of the non-male roll-on demand today[270]. Thanks to its original innovation, Sanex is still the leading supplier for upside down roll-on products ([40-50]*% of the upside down roll-on deodorants are sold by Sanex) but it is significantly challenged by Unilever ([30-40]*%), and with a distance followed by L'Oreal ([10-20]*%). Interestingly, upside-down roll-on deodorants are considered to be by some market participants as a Unilever innovation.[271] This may well reflect the strength of Unilever which ican react to novel

268 Reply to the Statement of Objections, paragraphs 8-18 and 8-19.

269 See non-confidential memorandum of L'Oreal "Complementary contribution on innovation" dated 21.07.2010.

270 See non-confidential memorandum of L'Oreal "Complementary contribution on innovation" dated 21.07.2010, page 11.

271 See reply of Colgate-Palmolive to Questionnaire to competitors on deodorants sent on 25 June 2010, question 15.

features such as this one introduced by Sara Lee and create a competitive response by applying those features with its leading brands across multiple geographies. In any event, the example shows how competition between Sara Lee and Unilever has permitted a gradual development of an innovation into an established product feature on the market

(407) Unilever argues that Sara Lee is not the only supplier introducing innovations in the marketplace, pointing to several innovations launched by Unilever, Henkel, L'Oreal and Beiersdorf[272].

(408) It is not argued that Sanex is the only source of innovation in the market. However the innovations that Sara Lee brought into the market, combined with other characteristics as its strong brand equity and the significant space that Sanex occupies on retailers 'shelves, is one of the factors that contributed to its recent growth in the non-male market.

(409) It is therefore concluded that the merger would not only remove a close competitor to Unilever's brands, but also a growing and innovative competitor which has spurred competitive rivalry in the Belgian non-male deodorant market.

Private label competition

(410) Unilever submitted that the Statement of Objections failed to analyze the role of private labels as a competitive constraint on branded suppliers[273]. Unilever underlines that private label products account for more sales of non-male deodorants in volume terms in Belgium than any individual brand. Key retailers in Belgium ([retailer], [retailer] and [retailer]) have developed private label ranges and stated in the market investigation that they intend to augment their private label product range. Consequently, the market share of private label products is increasing in value terms. Unilever explains that it internally takes into account the price of private label products in establishing market average prices[274].

(411) The elements put forward by Unilever do not alter the conclusions on weak competition from private label products. First, it is not clear why total sales of private label products in volume terms would be a good indicator of the competitive constraints exerted by private label products on branded products]. In differentiated branded product markets such as deodorants, sales in value and their associated market share will usually be considered to better reflect the relative strength of each brand[275]. In value, private label products have a share of [5-10]*% which is significantly below those of the main non-male deodorant brands in Belgium. Moreover, the total share of private label products brings together products of several "suppliers", which adds to the complexity of the competitive interaction.

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[272] Reply to the Statement of Objections, paragraphs 8-21.It is unclear what Unilever means by "innovations" since it also includes in "innovations" the introduction of a new brand like Narta in 2007, which is in any event undergoing a strong decline in Belgium.

[273] Reply to the Statement of Objections, paragraphs 8-12 to 8-15.

[274] Unilever refers to Annex 12 of the reply to the Statement of Objections, which shows [...]*

[275] Paragraph 55 of the Relevant Market Notice.

(412) Second, whilst it is true that private label products sales have increased by [10-20]*% between 2008 and 2009, this growth is comparable to the growth of Unilever's brands (+[10-20]*%) as well as Nivea (+[10-20]*%) or Fa (+[10-20]*%) and significantly below the increase of sales of Sanex (+10-20%). Taking into account the smaller customer base of private label products, it does not appear therefore that private label products sales show a significant degree of dynamism compared to the main branded suppliers.

(413) Third, Unilever's interpretation of the retailers' answers to the market investigation regarding private label products cannot be shared. The main retailer in deodorant sales in Belgium which accounts for [30-40]*% sales of deodorants[276] ([30-40]*% for Unilever brands and [40-50]*% for Sanex) indicated during the market investigation that it does not sell private label deodorants[277] and that it does not have the intention to launch private label products in the near future[278]. When asked about the rationale of this strategy, the retailer explained that deodorants are a market where brands still have a value and the role of private label products is limited[279]. Likewise, another retailer does not sell private label deodorants.[280]

(414) A third retailer has introduced a private label range in deodorants but considers that "*customers prefer brands*"[281]. This customer does not believe that it will increase its private label share in the future compared to branded deodorants[282], even if he intends to do so.

(415) Finally a fourth retailer has two private label products in its stores, “Care” and “365”.Care is at least 15% cheaper than comparable branded national products[283] and according to this retailer, 365 has no real competitors among the national brands since it is a brand that is exclusively focused on price[284].

(416) This retailer submits that “*we believe that a lot of customers are very loyal to their national brand of preference*”[285]. When asked more specifically about its private label

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276 Form CO, Table 6-17.

277 See reply by [retailer] to questionnaire to customers on deodorants sent on 23 April 2010, question 31.

278 Idem, questions 32 e) and 32 f).

279 See reply from [retailer] to Question 32 a) to questionnaire to customers on deodorants sent on 23 April 2010"*Not present, brands have a strong emotional value and PL (private label) can only play a limited role*". See also reply from [retailer] to Questionnaire to customers on deodorants sent on 25 June 2010, question 23 a) "*No, it is difficult to introduce a private label in a category where the emotion of the brand is so strong”*.

280 See reply by [retailer] to questionnaire to customers on deodorants sent on 23 April 2010, question 30.

281 See reply from [retailer] to questionnaire to customers on deodorants sent on 25 June 2010, question 23 a).

282 Idem, question 23 c).

283 See reply by [retailer] to questionnaire to customers on deodorants sent on 23 April 2010, question 32 c).

284 Idem, question 33.

285 Idem, question 32 d).

range, it puts forward that "*our assortment of private label deodorants is quite limited and the presence of private label deodorants in our shelves is quite new. Deodorant is experienced by the customer as being a sensitive product. The perfume used in a deodorant is for instance very personal to each customer. Also the effectiveness of the deodorant and the effect on the skin of customers play a crucial role. Finally, the impact of publicity is huge for these products. Therefore, the customer is quite loyal to its deodorant as it provides him security and confidence*".[286]

(417) This customer recently introduced six new SKUs of private label deodorants in light of the higher price–sensitivity of his customers in the context of the economic crisis. However he believes that [287]"*Due to the strong position of national brands, the private label market share will remain rather small*".

(418) In light of these elements, it is concluded that private label products do not represent a significant competitive constraints on branded suppliers.

Lack of countervailing buyer power

(419) The general arguments put forward by the notifying party concerning countervailing buyer power is discussed in Section IV.2.3.1.3 where it is explained why it is unlikely that the unilateral effects of the merger would be countered by the buyers of the Parties' deodorants. In this section, the analysis focuses on features of the Belgian market.

Belgian retail market

(420) The Belgian retail market is concentrated. The three largest retailers account for [70-80]*% of the total national deodorants sales.[288] However, the leading retailer accounts for [30-40]*% of the total national deodorants sales, almost three times as large as the third largest retailer. In addition, there are a number of even smaller retail formats in Belgium.

(421) As explained in Section IV.2.3.1.3, there is no generally convincing reason why smaller retailers would benefit from the potential buyer power of the largest retailers. Thus, even if countervailing buyer power were to exist for the larger retailer, it is unlikely to sufficiently off-set potential adverse effects of a merger since it would only ensure that a particular segment of customers, with particular bargaining strength, is shielded from significantly higher prices or deteriorated conditions after the merger.[289]

(422) Unilever rejects this conclusion arguing that small retailers either should not or do not get a worse deal than larger ones (that is, they have less bargaining power). It would

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[286] See reply from [retailer] to Questionnaire to customers on deodorants sent on 25 June 2010, question 23 a).

[287] Idem, question 23 c).

[288] See Table 6.17 Form CO.

[289] See paragraph 67 Horizontal Merger Guidelines.

therefore not be the case that only a proportion of customers would be protected by countervailing buyer power[290].

(423) First, it is not proven that large buyers have bargaining power. However, in any case, should such buyer power exist for large retailers, Unilever's arguments that the same degree of buyer power lies with small retailers cannot be sustained.

(424) In assessing buyer power, it is essential to look at the alternatives available to the Belgian retailers. In some segments where Unilever's brands and Sanex are close competitors or even the sole competitors on the market, supermarkets could not switch to alternative brands with the required level of recognition to compete with those of the Parties. Post-merger, out of the five brands which have a relatively sizeable market position (above 10% market share) in the non-male deodorant market in Belgium (Dove, Rexona, Sanex, Nivea and Fa), the Parties would own three (Dove, Rexona and Sanex).

(425) In a market where all other suppliers hold only one brand (except two small brands of L'Oreal), it is clear that a shelf with only Nivea, Fa and L'Oreal's brands would not be complete in terms of brands that customers expect to find in the stores. If the retailer is not willing to entirely eliminate Unilever's products from the shelves, even a partial delisting of important Unilever brands such as Axe, Dove or Rexona would clearly endanger the retailer's turnover in the deodorant category.

(426) Private label products are not an alternative either. Although Belgian retailers have in general submitted during the market investigation that they achieve significantly higher margins in private label products[291] the market investigation shows that they are not in a position to switch to private label products as an alternative to the brands of the Parties. Despite a slight increase of private label products in recent years, its share remains low and private labels do not constitute a sufficient alternative to the brands of the merged entity.

(427) In conclusion, retailers would not be in a position to switch to private label products or other brands without risking losing sales which limits their bargaining power in relation to Unilever.

(428) The strong position of Unilever as a supplier of deodorants is also reflected by the weighted distribution in retail stores of the different suppliers in Belgium. Weighted distribution represents the share of sales of deodorants accounted for by all the stores in which the brand is stocked. It is a measure of the retail exposure given to a brand and thus of the willingness of those retailers to display a particular brand on the shelves. Table 17 shows that for non-male brands, Unilever's brands managed to secure widespread distribution compared to its competitors. Only Nivea and Fa for Women achieve a similar retail exposure as the Parties.

Table 17: Weighted distribution in Belgium

[290] Reply to the Statement of Objections, paragraph 8-28.

[291] Questionnaire to customers deodorants sent on 25 June 2010, question 1.

BELGIUM

	Moving Annual Total (MAT)	Year to date (YTD) 2010
Rexona for Women	[…]*	[…]*
Dove for Women	[…]*	[…]*
Nivea for Women	[…]*	[…]*
Fa for Women	[…]*	[…]*
Sanex for Women	[…]*	[…]*
Adidas for Women	[…]*	[…]*
Mennen total	[…]*	[…]*
Narta for Women	[…]*	[…]*
Ushuaia for Women	[…]*	[…]*
Garnier Total	[…]*	[…]*
Printil Total	[…]*	[…]*

(429) Dove, Rexona, Sanex, Nivea, and Fa are the brands with the highest weighted distribution. Post-transaction, Unilever will control three out of these five brands with the highest weighted distribution rate in the non-male market. Moreover, Unilever controls Axe with a very strong position on the deodorants for male market, accounting for [40-50]*% of the sales. The transaction would therefore reinforce Unilever's position as unavoidable trading partner for the retailers.

(430) Unilever considers that the notion of "unavoidable trading partner" is ill-founded[292] since, according to Unilever, "must-have" brands are an ill-defined concept in the context of relative bargaining power between manufacturers and retailers. Unilever puts forward that there are some brands that retailers are keen to have on shelf due to their share of sales but similarly manufacturers are keen to have a trading partner in each of the retailers, otherwise those volumes are likely to be switched to alternative brands (rather than alternative retailers).

(431) Unilever's arguments cannot be accepted. It is not contested that retailers need some brands as much as manufacturers need an access to the market. However, the balance of power between retailers and manufacturers depends upon the market share of the brand. Unilever controls more than half of the total market and possesses the most successful brands with high notoriety and customer base in Belgium. As retailers indicate, end-consumers expect to find these strong and popular brands on the shelves, and retailers cannot ignore this. The combination of powerful brands, which are considered by retailers as necessary, in the hands of a single supplier is a major shift in the structure of the Belgian market.

(432) Unilever also argues that the available responses to the market investigation seem to indicate that retailers in Belgium have bargaining power[293]. Unilever points to the responses of one retailer submitting that there are no must-have brands as well as responses indicating that retailers would not accept price increases from the merged entity.

(433) However, the investigation does not support Unilever’s arguments. The largest Belgian retailer clearly submitted that a substantial amount of customers would switch to other retailers if they were not stock one of their brands, and this would have a negative commercial impact on them[294]. The retailer quoted by Unilever considers that three options were possible (major switches to other retailers if some brands are absent, switch of deodorant purchases to other retailers, switch to other deodorants in the same store) depending on the customers but notes that “*Customer is very attached to the brand*”[295].

(434) Based on its experience, [...]* also explained that a substantial amount of customers would switch to other retailers if we were not to stock one or more of Unilever's brands. The [...]* case provides an indication that customers would switch retailers if several Unilever brands were not available at the same time[296]. According to a survey [...]*, roughly 30% of [...]* customers indicated that they switched supermarkets to get their preferred brands.

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292 Reply to the Statement of Objections, paragraph 8-29.

293 Reply to the Statement of Objections, paragraph 8-27.

294 See reply from [retailer] to second phase Questionnaire to customers on deodorants sent on 25 June 2010, question 17.

295 See reply from [retailer] to Questionnaire to customers on deodorants sent on 25 June 2010, question 17.

296 See Recital (275) for further details.

(435) "Non-regular" delistings (which are not linked to removal of underperforming products) are exceptional given that retailers fear that such behaviour would have negative impact on their turnover and profitability in the light of the significance of the top brands in their assortment. Unilever cited the example of [...]*, [...]*. However, as explained in detail in recital (276), such delistings took place in the context of extremely tough negotiations between Unilever and [...]*, which resulted in the conclusion of a contract whereby [...]* might be forced to continue listing Unilever SKUs [...]*.

(436) The combination of the Parties' strong brands in the hands of a single supplier would shift bargaining power (if any) from the retailer to the supplier, by severely reducing the set of credible alternatives that the retailer can choose from to replace Unilever's products if it so chooses.?. In the post-merger market structure, Unilever would thus become an unavoidable trading partner in deodorants in Belgium in relation to price setting, promotions, new listings and placement on shelves.

(437) Furthermore, it is not sufficient that buyer power exists prior to the merger, it must also exist and remain effective following the merger. This is because a merger of two suppliers may reduce buyer power if it thereby removes a credible alternative. In this case, the merger will remove one of the two main suppliers considered to be close competitors in the market, since the market investigation did not reveal that there is a set of credible alternative suppliers which could replace Sanex in terms of product characteristics and innovation capabilities. It will also bring together three of the five main brands in the deodorant market, which has a direct negative impact on the ability and incentives of retailers to use their alleged countervailing buyer power.

(438) Therefore, it is concluded that countervailing buyer power post-merger cannot be considered as a mitigating factor which is likely to off-set any of the potential adverse effects of the proposed transaction.

Sufficient entry unlikely to occur

(439) The market investigation has revealed that entering the deodorant market – either from a neighbouring personal care market or as a new entrant is difficult. Even if the technology required and the investment to manufacture deodorants could be considered as "accessible", high barriers to entry exist in the form of significant advertisement and promotion (A&P) expenditure to create brand awareness and get access to shelf space from retailers.

(440) In addition to the barriers to entry from the creation of brand awareness and access to shelf space, a potential entrant would have to take into account the likely reaction of a powerful incumbent like Unilever. In Belgium, Unilever's leading position with market shares above 50% indicates that Unilever has a strong incentive to prevent entry of new brands or expansion of existing ones as it would be through its leading position the one suffering most from such activities.

(441) [...]*, Unilever's increased market share with the addition of another brand like Sanex strengthens its incentive to fight entry.

(442) Also, the combination of an unrivalled number of main brands in the hands of a single supplier increases the possibility for Unilever to adjust its products accordingly, preventing the competitor's product from having a unique product proposition. With one additional brand, Unilever's ability to slightly reposition its products to squeeze

the new entrant will also be improved. Consequently, the addition of a new brand to Unilever's already broad portfolio could increase barriers to entry.

(443) Apart from Garnier Mineral, the elements gathered during the market investigation showed that there has been no significant entry in the Belgian non-male deodorant market since L'Oreal's entry in 2007 with Narta. L'Oreal's sales have been decline recently ([20-30]*% between 2008 and 2009) and Narta's market share is now only [0-5]*%. Hence, this entry was not very successful.

(444) Despite the fact that the non-male deodorant market is growing, the market investigation revealed that retailers carefully select new products to be listed. Retailers in Belgium do not appear to respond to what the notifying party describes as consumers' continuing desire to be "*surprised and delighted"*[297] by an innovative set of new deodorants.

(445) Belgian retailers explained this very clearly. One retailer submitted that it is not possible to list the entire assortment of a new entrant, thereby diminishing its chances of success. "*Due to shelf space limitations, we are not able to follow the entire assortment of all suppliers. In case of innovations, we first evaluate the potential of the considered product/range – cf whether it will make the category grow, rather than cannibalizing other products turnover and whether it will increase penetration in the category"*[298]. The leading retailer also confirmed that it is unable and unwilling to list the entire product range of a new supplier in its stores. Another retailer cites the example of Garnier Mineral which requested the listing of 10 SKUs; this retailer accepted to list only a few of them[299]. In the case of Dove for Men, retailers indicated [...]*[300].

(446) One competitor explains that "*Generally retailers do not favour new suppliers to stimulate competition. Space is limited, so any new supplier has to take the place of another product. Listing of new products only take place if the chances of adding value to the overall category value are very high or if huge investments are granted to the retailers to buy distribution."*[301] A second competitor stated that new suppliers can be favoured in only two instances: in case of a niche product; or if the supplier demonstrates that the retailer will significantly increase its margin.[302]

(447) Indeed, apart from re-launches of existing products and brand extensions (such as adding new variants to a brand), the only significant new entry in the Belgian non-male deodorant market in recent years was Garnier Mineral in January 2010. Unilever,

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297 Form CO, paragraph 6-196.

298 See reply by [retailer] to questionnaire to customers on deodorants sent on 23 April 2010, question 56.

299 See reply by [retailer] to questionnaire to customers on deodorants sent on 23 April 2010, question 57.

300 See replies to questionnaire to customers on deodorants sent on 25 June 2010, question 8.

301 See reply from Beiersdorf to Questionnaire to competitors on deodorants sent on 25 June 2010, question 23.

302 See reply from Henkel to questionnaire to competitors on deodorants sent on 25 June 2010, question 23.

in the Form CO emphasizes the Garnier entry as it is carried out by a major international supplier L'Oreal with a high level of investment supporting the launch. Indeed, Garnier represents the most significant entry of a new competitor in recent years.

(448) As it only took place in January 2010, it is too early to conclude on the outcome of Garnier’s entry in the long term. This is also the opinion of all the retailers which responded to the market investigation[303].

(449) Unilever reacted immediately to the Garnier Mineral entry by launching Rexona Mineral in Belgium in February 2010. [...]*

(450) Unilever submits, however, that Garnier Mineral provides an actual example of the ability of competitors to enter the non-male segment, which should not be dismissed despite its recent launch. The launch shows every sign of being ‘significant’, according to Unilever.

(451) Information has been available for 8 months since the product was launched in Belgium with 12 SKUs[304]. Based on the most recent data, in the first six months, Garnier Mineral achieved wide distribution of [80-90]*%, accounting for a [0-5]*% share of shelf and a [0-5]*% share of the non-male segment. According to Unilever, the brand has shown consistent growth in market share since its launch.[305] Available monthly Nielsen data show significant fluctuations of Garnier Mineral' market share and do not allow to identify any noticeable trend.

(452) Unilever also mentions the recent entry of Gillette which reached a market share of [0-5]*% in the male segment (week 28 2010) after its launch “*in 2010*”[306]. The very different competitive landscapes between the male market and the non-male market is described and it is established that the factors favouring or hindering entry do not have the same impact in the male and non-male markets. It is therefore impossible to draw any conclusion for the non-male market regarding the introduction, successful or not, of a new brand in the male market. It is even more difficult to determine whether the launch of Gillette was a success, given it was only launched on 1 July 2010 and that a market share on week 28 reflects purchases made during the week of the launch or the week after, when customers demonstrate high curiosity for the new product.

(453) Consequently, it is unlikely that new entry will occur in the Belgian non-male market to the extent that it will counteract the adverse effects of the merger.

Overall conclusion

(454) It is therefore concluded that the notified concentration is likely to significantly impede effective competition on the market for non-male deodorants in Belgium.

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303 See replies to questionnaire to customers on deodorants sent on 23 April 2010, question 57.

304 Garnier proposed 10 SKUs to be listed by [retailer].

305 Reply to the Statement of Objections, paragraph 8-34.

306 Reply to the Statement of Objections, paragraph 8-36.

IV.2.3.2.1.2. Male deodorant market

(455) According to the Parties, the Belgian male deodorant market had a total value of EUR 26.8 million in 2009. It experienced an increase in value of [5-10]*% between 2008 and 2009. Unilever is active in the male deodorant market mainly with its brand Axe, followed by Rexona for Men. In addition, Unilever has launched in 2009/2010 a new deodorants series Dove for Men. Sara Lee serves the Belgian male deodorant market with its brand Sanex and has only minor sales with its Williams brand.

Table 18: Belgium: Deodorants - 2009 market shares and value, male market – Source: Form CO.

	Men	
	000 €	**%**
UNILEVER	[...]*	50-60
- AXE	[...]*	40-50
- DOVE	[...]*	0-5
- FABERGE	[...]*	0-5
- REXONA	[...]*	5-10
- ZZ OTHERS	[...]*	0-5
SARA LEE	[...]*	0-5
- SANEX	[...]*	0-5
- WILLIAMS	[...]*	0-5
- ZZ OTHERS	[...]*	0-5
COMBINED	[...]*	**50-60**
BEIERSDORF	[...]*	20-30
COLGATE	[...]*	0-5
COTY	[...]*	5-10
HENKEL	[...]*	0-5
L'OREAL	[...]*	5-10
PRIVATE LABEL	[...]*	0-5
OTHERS	[...]*	0-5
TOTAL	26 809	**100.0**

(456) Post-merger, the Parties would achieve a combined market share of [50-60]*% (Unilever [50-60]*%, Sara Lee [0-5]*%), followed by Beiersdorf ([20-30]*%), Coty ([5-10]*%) and L'Oreal ([5-10]*%). In spite of this high market share, the proposed transaction will not result in a significant impediment of effective competition for several reasons.

(457) First, Sara Lee has a limited presence in the market. Its main brand Sanex for Men accounted for [0-5]*% market share and was declining compared to 2008, while the market was growing.

(458) Second, Sanex for Men is not perceived as a close competitor to Unilever's main brand Axe, which accounts for more than [80-90]*% of Unilever's presence in the male market. While Sanex for Men is perceived as a brand with skin care attributes, retailers

consider Axe to occupy a unique position within male deodorants because of its brand recognition, orientation towards teenagers and young men as well as fragrance.[307] This is also confirmed by average pricing figures showing that Axe is usually [...]* more expensive than Sanex.[308]

(459) Third, in the male deodorant market several other competitors are active with a similar or significantly higher presence that Sara Lee. Beiersdorf with its Nivea for Men range achieved a market share of [20-30]*% and is in general perceived as a close competitor to Unilever's Rexona for Men brand. Coty, with its Adidas brand, has a similar position as Axe. In addition, L'Oreal and Henkel are well-known suppliers in the deodorant market positioned with their brands at similar price points as Sanex for Men.

(460) Based on these elements, it can therefore be concluded that the concentration is not likely to lead to a significant impediment of effective competition as regards the market for male deodorants in Belgium.

IV.2.3.2.2. Denmark

IV.2.3.2.2.1. Non-male deodorant market

Preliminary remarks on market definition for Denmark

(461) In the reply to the Statement of Objections, Unilever put forward that there is a single, albeit differentiated, market for all types of deodorants in Denmark. Alternatively, a distinction could be made between male, female and unisex deodorants. In the latter case, no competition concerns should, according to Unilever, arise as there would be no overlap between Unilever's "female" brands Dove and Rexona and the "unisex" brands of Sara Lee (Sanex and Neutral).

(462) The market definition for deodorants is discussed in Section IV.2.1.1. Male deodorants form a distinct market from non-male deodorants. In this section, specific features of the Danish market are discussed.

(463) First, it is acknowledged that in Denmark the Nielsen classification on which market share data is based distinguishes between three categories, "male", "female" and "family". However, data classifications cannot determine market definitions.[309] At the same time, the classification of GFK on which the switching analysis is based distinguishes between "for men" on the one hand and "for woman + Unisex" on the other hand.

(464) Responses in the market investigation show the difficulties in distinguishing between unisex and female brands. When asked to list the brands considered to be male, female and unisex respectively, one retailer simply deleted the reference to a "unisex" category

[307] See reply to Questionnaire to customers on deodorants sent on 23 April 2010, question 27 and question 30.

[308] See Form CO figure 6.5 and figure 6.6.

[309] See Unilever's reply to the Commission's letter of facts sent on 1 October 2010 paragraph 16.

and stated that deodorants *"are placed in the male category or female category"*.[310] Sanex was included in the "female" category, together with Rexona, Nivea, Palmolive and Dove. Another retailer indicated that Sanex is positioned within the "unisex" deodorants, but also within the "female" products, together with Rexona, Dove, Palmolive or Nivea. It explained that unisex deodorants are placed on the shelves with "female" deodorants. [311]

(465) The largest Danish retailer refers to Sanex together with Rexona and Palmolive as "unisex" products.[312] However, a hypermarket owned by the same group explained that Sanex deodorants are placed in the shelves together with Rexona, Dove and Nivea in the "damenduft"/fragrance for women shelf.[313]

(466) [reference to parties' internal documents] [314]

(467) It is concluded that a specific market definition for the Danish market which would distinguish between unisex and female deodorants is not supported by the market investigation.

Non-coordinated effects in the non-male deodorant market

(468) A number of factors indicative of significant non-coordinated effects are present in the non-male deodorant market in Denmark.

Market structure

(469) According to the Parties, the non-male deodorant market in Denmark had a total value of EUR 27.2 million in 2009. It is a relatively fragmented market with very limited presence of private label products. A specific feature is the presence of prestige brands in the major retail outlets, which is not common in other Member States.

(470) *Sara Lee* is the market leader in the non-male deodorant market with [20-30]*% market share. It is present with Sanex as well as Neutral. Sanex is a particularly strong brand in Denmark.

(471) Moreover, Sanex is a growing force: It has seen its sales increasing by almost [0-10]*% in value (between 2008 and 2009), compared to an overall growth rate of [0-10]*% in

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310 See reply from [retailer] to Questionnaire to customers on deodorants sent on 23 April 2010, question 12 and 16.

311 See reply from [retailer]to Questionnaire to customers on deodorants sent on 23 April 2010, question 14 and 16. In Superbrugsen, a retailer owned by Coop, Sanex deodorants are placed on the shelf together with Nivea, Rexona and Dove (See Unilever's Reply to the Statement of Objections, Annex 19.).

312 See [retailer] reply to Questionnaire to customers on deodorants sent on 23 April 2010, question 16.

313 See Unilever's Reply to the Statement of Objections, Annex 19.

314 [reference to parties' internal documents]

the non-male deodorant market in the same period. [reference to parties' internal documents].[315]

(472) Neutral has a [5-10]*% market share and has been growing by almost [20-30]*% in value. Its relatively strong market position adds an important element to Sara Lee's overall strength.

(473) *Unilever* is the number two player with a market share of [20-30]*%. It is present with its core brands Dove and Rexona. Unilever sales were rather stable between 2008 and 2009 (+[0-5]*%).

(474) *Beiersdorf* with its Nivea brand is the number three supplier. It has, however lost some market share lately as sales fell by [0-5]*% between 2008 and 2009.

(475) *Colgate-Palmolive* has been growing in Denmark ([10-20]*% between 2008 and 2009). Colgate-Palmolive's market presence, however, is still very modest (their value market shares increased from [0-5]*% in 2008 to [0-5]*% in 2009).

(476) *L'Oreal's* introduction of Garnier Minerals only occurred in 2010 so no market share was achieved in 2009. Garnier Mineral will be discussed in more detail in recitals (553).

(477) The transaction would bring together the two leading players in the Danish market controlling post-transaction four out of the five biggest brands.[316]

(478) Table 19 shows the fragmented market structure in Denmark and the very limited presence of private label products ([0-5]*%). It also highlights the presence of the prestige brands.

Table 19: Market shares in the non-male deodorant market in value, 2009, Denmark[317]

	2009	
	000€	**%**
UNILEVER	[...]*	20-30
- DOVE	[...]*	5-10
- REXONA	[...]*	10-20
SARA LEE	[...]*	20-30

[315] [reference to parties' internal documents]

[316] Beiersdorf is the only competitor with a brand (Nivea) that achieves a turnover higher than Neutral The competitors Unicare and E.Tjellessen have higher market shares than Neutral, but this results from the combined turnover of several brands. According to Unilever's internal documents, Unicare's brand adidas [...]*. However, considering that adidas's sales are made predominantly in the male deodorant market, where Unicare holds a market share almost three times its market share in the non-male deodorant market, it can reasonably be assumed that no Unicare brand has a market presence at least similar to Neutral ([5-10]*%).

[317] The non-male deodorant market in Denmark includes deodorants for women and family. The Parties submitted data for a third category, "other". However, as the Parties are not active within this third category, the market shares for the non-male deodorants market were calculated without taking into account this "other" category. For the sake of the completeness it should be noted that there are only three competitors active within this category, namely L'Oreal (2009 sales of EUR [...]*), SAETHER (2009 sales of EUR [...]*) and United Drugstores (2009 sales of EUR [...]*).

- NEUTRAL	[...]*	5-10
- SANEX	[...]*	10-20
COMBINED	[...]*	**40-50**
BDF	[...]*	10-20
Unicare	[...]*	10-20
E.Tjellesen	[...]*	5-10
Lancome	[...]*	0-5
Colgate	[...]*	0-5
SBI	[...]*	0-5
Elisabeth Arden	[...]*	0-5
SAETHER	[...]*	0-5
Cederroth	[...]*	0-5
Nygaard Cosmetics	[...]*	0-5
L'OREAL	[...]*	0.5
PRIVATE LABELS	[...]*	0-5
United Drugstores	[...]*	0-5
OTHERS	[...]*	0-5
TOTAL	27 291	**100.0**

(479) A number of the prestige brands are present in Denmark through distributors. Unicare, the largest distributor with focus on the prestige segment, has a relatively high market share. However, almost all of its brands (the exception is Adidas with [0-5]*% market share) achieve market shares below [0-5]*%.[318]

(480) Saether supplies a range of premium/prestige deodorants such as Boss. Elisabeth Arden is present in the prestige segment with brands such as Chloe and Elizabeth Arden. Lancome, primarily supplies Biotherm and Lancome.[319]

(481) Although Unicare grew strongly between 2008 and 2009 in comparison with the general market, many of the smaller suppliers suffered a loss of sales. For example, E.Tjellesen (which supplies primarily Gosh and Nothing) saw its sales decreasing by [20-30]*%. Lancome fell by [0-10]*% and SBI (which supplies Vanderbilt) by [0-10]*%.

Prestige brands – mass market brands

(482) The Parties argue that the "prestige brands" can compete on price with mainstream brands as they are typically sold on deep price promotion.[320] Nevertheless, the price

[318] See footnote 316.

[319] See Form CO, paragraph 6.352.

[320] See Form CO, paragraph 6.351.

difference between these brands and the "mass market brands" such as the brands of the Parties remains significant. [321]

(483) The significant price differences are illustrated by Figure 15 and Figure 16 showing the average selling price per brands in Denmark for contact and non-contact formats. While the Parties' brands are positioned at an average price similar to competitors like Beiersdorf (Nivea), Coty (Adidas) and Colgate-Palmolive, brands like Hummel, Kappa or Vanderbilt are priced almost twice as high:

Figure 15: Denmark Deodorant Prices Weighted by Volume, Contact (Source: Form CO)[322]

[...]*

Figure 16: Denmark Deodorant Prices Weighted by Volume, Non-Contact (Source Form CO)[323]

[...]*

(484) In the reply to the Statement of Objections, Unilever stresses that the prices of prestige brands have fallen significantly relative to mass market brands.[324] According to Unilever, there was a steady decline in average retail price for prestige brands between 2005 and 2009.

(485) It may well be the case that the price gap between prestige and mass market brands has narrowed. However, it is difficult to draw firm conclusions on the basis of the analysis provided by Unilever. First, Unilever does not provide any detail as to which criteria were used to distinguish between prestige and mass market brands for this price evolution analysis.[325] Also, the brands taken into account are not the same throughout that period. Finally, the data includes some surprising information, notably a spectacularly price volatility of Gucci, a brand distributed by Saether. It price varied between [...]* per unit in 2005, [...]* per unit in 2006, [...]* per unit in 2007, [...]* per unit in 2008 and [...]* per unit in 2009.

(486) The Parties also argue that the growth of Unicare's sales by volume ([10-20]*%) is significantly stronger for 2009 than its growth in value terms ([10-20]*%), suggesting that the average price paid for the prestige brands is falling over time. Again, the information should be interpreted with caution and cannot automatically be attributed to a deliberate strategy on the part of Unicare. It appears that parallel imports of prestige

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321 [...]*

322 See Figure 6.28, Form CO. Size of the circle represents volumes of SKUs sold in each EUR 0.5 average price band. Red spot indicates weighted average selling price for the brand. This data is price per unit due to the nature of the data available.

323 See Figure 6.29, Form CO.

324 See Unilever's Reply to the Statement of Objections, paragraph 14.11.

325 For example, Dolce and Gabbana, a brand supplied by Unicare, was included within the "mass market" brands. Also, regarding Unicare's brands, it is not explained why brands such as Naomi Campbell ([...]*), Gant ([...]*) and Moschino ([...]*), were considered as mass market brands, while Lamborghini ([...]*) was included within the prestige brands. Neither is it explained why Gosh and Nothing, two brands supplied by E.Tellejen should be considered as "prestige brands".

brands may be an important phenomenon in Denmark. Unicare has noted that supermarkets sell products represented in their portfolio but that were obtained through other channels. This should result in lower prices for such products[326].

(487) Moreover, the largest supplier of the prestige brands considers itself particularly disadvantaged by its position, given that it *"is depending on the brand owner, and cannot freely decide, for example, when to launch a new SKU's. A distributor cannot "follow" the trend of the market as easily as, for example, Unilever".*[327]

(488) [reference to parties' internal documents][328],[329],[330]

(489) Finally, it has not been argued that prestige brands belong to a separate market. Despite their particular position on the market[331], the sales of prestige brands are included in the calculation of the market shares.[332] Due to their high price, the effect on the market shares are particular significant when these are measured by value. This effect on market shares can be seen by looking at the volume figures. Calculating market shares for the non-male market based on volume results in a combined market share of [50-60]*% for the Parties in 2009 (Unilever [20-30]*%, Sara Lee [20-30]*%) compared to [40-50]*% measured in value. [333]

Conclusion on market structure

(490) Sara Lee is the number one deodorant supplier in Denmark, and has been one of the most successful suppliers in terms of market expansion in recent years. This performance is even more significant if considering that Sara Lee's customer base was already large before this expansion.

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326 See non confidential minutes of a conference call with Unicare on 13 September 2010.

327 See non confidential minutes of a conference call with Unicare on 13 September 2010.

328 [reference to parties' internal documents]

329 [reference to parties' internal documents]

330 [reference to parties' internal documents]

331 [...]*

332 If a market were defined excluding prestige brands, the market share of the Parties would be dramatically higher. Although a detailed breakdown of the non-male deodorant market in the different brands is not available, a rough calculation is possible assuming that the relative share of the highest price segment is similar for the non-male deodorant market compared to the overall market, i.e. represents a value share of roughly [20-30]*%. Recalculating the market shares of the Parties by taking out this prestige segment provides the following estimates: Unilever [20-30]*%, Sara Lee [30-40]*% and combined market share of [60-70]*%.

333 Comparing value and volume market shares for the overall deodorant market in 2009 of Unilever with those of Unicare and Saether further illustrates this point. Unilever has a value market share of [10-20]*%, Unicare is close with [10-20]*% and Saether [5-10]*%, the difference between Unilever and its competitors becomes significantly wider when market shares are measured in volume: Unilever has [20-30]*%, followed by Unicare with [10-20]*% and Saether [0-5]*%.

(491) Furthermore, the transaction would bring together the two leading suppliers as well as four of the five leading brands in an otherwise fragmented market. The overlap between the Parties is significant with Unilever holding a [20-30]*% market share pre-merger and Sara Lee a [20-30]*% share. Such a market structure is indicative of non-coordinated effects.

Unilever and Sara Lee's brands are close competitors

(492) In assessing the likely non-co-ordinated effects of the transaction in the differentiated non-male deodorants market, it is necessary to analyze whether the brands of the Parties are close competitors.

(493) The closeness of competition between Unilever and Sara Lee brands is analysed based on responses in the market investigation as well as internal documents and switching data. The strength of different brands when looking at market segments according to formats is also analysed, to complement the assessment.

(494) The Parties argue that a number of other significant suppliers are close competitors to their brands.[334] It is not contested that the Parties face rivalry from competitor brands such as Nivea. However, the interaction between the Parties' brands is significantly stronger than expected based on market shares.

(495) First, the responses of retailers in the market investigation show a somewhat mixed picture. Only one of the three responding retailers clearly identified Sanex as the closest competitor to Unilever brands.[335] However, they all mentioned Rexona as a close competitor to Sanex in terms of price and product range.[336] Two of them also pointed to the closeness of competition between these brands in terms of brand recognition.[337] Two retailers consider Dove and Sanex as close competitors in terms of price and product range.[338]

(496) [reference to parties' internal documents][339],[340]

(497) [reference to parties' internal documents][341],[342]

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334 In the Reply to the Statement of Objection, Unilever argues that Nivea has a similar skin care proposition to Dove and Rexona. Reference is also made to Palmolive, a brand which has a natural/skin care proposition and would be "particularly strong in roll-on formats". Garnier Mineral is also mentioned by Unilever as competing with Dove (*"Garnier Mineral has similar skin care and "natural" attributes as Dove"*) and Rexona, in particular with Rexona Natural Mineral and Dove Go Fresh.

335 See reply from [retailer] to Questionnaire to customers on deodorants sent on 23 April 2010, question 30.

336 See replies to Questionnaire to customers on deodorants sent on 23 April 2010, question 29.

337 See replies from [retailer] and [retailer] to Questionnaire to customers on deodorants sent on 23 April 2010, question 29.

338 See replies from [retailer] and [retailer] to Questionnaire to customers on deodorants sent on 23 April 2010, question 29.

339 [reference to parties' internal documents]

340 [reference to parties' internal documents]

(498) In order to assess the closeness of competition between the brands, Unilever provided interaction indices. Figure 17 shows the interaction index for Sanex for women (2009).[343]

Figure 17: Interaction index for non-male Sanex in Denmark

[...]*

(499) Unilever notes that, according to the index, Sanex interacts with many brands. Although it interacts with Dove ([150-170]*) and Rexona ([120-140]*), Sanex also has an equal or higher level of interaction with several third parties' brands, notably Palmolive for Men ([270-290]*), Palmolive women/unisex ([120-140]*), Hugo Boss for Men ([120-140]*) as well as Nivea women/unisex ([120-140]*).

(500) The interaction index shows some results that appear rather counterintuitive such as high interaction with certain male brands. Sanex for women has a very high interaction index with Palmolive for Men ([270-290]*), as well as Sanex for Men ([250-270]*).

(501) The interaction indices presented by Unilever are a comparison of the actual gross consumer switching of the brand (here, Sanex for Women) with the "expected" switching based on the proportions of the competing brands' market shares in the total deodorant category (combining male and non-male deodorants).[344] A high interaction of Sanex index with a given brand is not in itself indicative of significant switching figures between Sanex and this brand because this high index can be brought about by the small share of the brand. When the market share is taken into account, the actual consumer switching as observed in the panels is significantly lower than the interaction index alone would suggest.

(502) Therefore, while interaction indices provide some insights about the closeness of competition between brands, the gross switching information provides a more illustrative picture about the actual switching patterns of consumers.

(503) Figure 18 shows in descending order for each brand their share of total gross switching to and from Sanex for Women in 2009.

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341 [reference to parties' internal documents]

342 [reference to parties' internal documents]

343 Each brand may in a given period lose customers to (all) other brands and simultaneously win customers from all other brands. The sum of lost and won customers between two brands, the total gross switching is an indicator of how closely the two brands are competing. The interaction indices presented by the Parties are a comparison of the actual gross consumer switching of the brand (here, Sanex for Woman) with the "expected" switching based on the proportions of the competing brands' market shares in the total deodorant category (combining male and non-male deodorants). The market shares are calculated on the basis of the brands' sales within the panel. This may to some extent vary from the market shares based on Nielsen data, but in general provides a rather consistent picture with those.

344 The market shares are calculated on the basis of the brands' sales within the panel. This may to some extent vary from the market shares based on Nielsen data, but in general provides a rather consistent picture with those.

Figure 18: Gross switching for Sanex for Women in Denmark [345]

[...]*

(504) Looking at those Sanex users that switched to a non-Sanex brand, [20-90]*% switched to a Unilever brand. Since Unilever's share of sales in the gross switching data is [20-30]*% this indicates stronger interaction between Sanex for women and Unilever brands than the market shares would suggest.

(505) This proportion is even higher, when considering only the non-male brands[346]: [20-30]*% of Sanex users switched to the two Unilever brands Rexona and Dove. In the gross switching data, these two brands hold [20-30]*% of the sales of the non-male brands confirming that the interaction with Unilever is significantly stronger than what their market shares suggest. This may support the finding that an important part of the market is occupied by prestige brands that are rather distant substitutes for the mass-market brands.

(506) The switching data show that the share of users that switched between Sanex and Unilever brands is lower in Denmark than in many other Member States. This can be explained by the fact that Unilever is less strong in Denmark than elsewhere. As a result, the reduction in competitive constraint on Sanex from Unilever is comparatively smaller.

(507) However, the opposite is true for the Unilever brands in Denmark compared to other Member States. Since Sanex is particularly strong in Denmark, the reduced competitive pressure on Unilever's brand will be particularly significant. The incentive to increase the prices of Unilever's products after the transaction will therefore be stronger. Hence, it is important to look at switching data from the point of view of Unilever brands in Denmark.

(508) Unilever also provided switching data for Dove and for Rexona for women. These show that the highest levels of interaction with Dove from non-male brands excluding Rexona are from Palmolive ([140-160]*) and Sanex ([120-140]*). Neutral also has a high level of interaction with Dove ([120-140]*), superior to Nivea ([100-120]*). The highest levels of interaction with Rexona for women from non-male brands excluding

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345 The data for Denmark is distorted by the aggregation of a large number of brands into the category "other". This category accounts for more than [30-40]*% of the gross switching and of the market. According to Unilever (see paragraph 14.14 of the reply to the Statement of Objections) prestige brands other than Boss and Vanderbilt were included in the category of "others". However, it is doubtful that this high interaction is representative of significant closeness of competition between Sanex and one of these individual brands. In order to improve the readability of the graph, the scaling has been adapted to allow focusing on the identified brands.

346 This figure is calculated taking into accounts only non-male brands (These numbers differ slightly from the one initially provided in the Statement of Objection, due to the correction of an error). When certain brands were not clearly defined as male and non-male (for example the category of 'others'), the non-male value was calculated according to the proportions of male and non-male turnovers which this particular supplier(s) or brands achieve in the respective Member States (turnover split taken from market share tables provided by Parties – Annex 7.1 of the Form CO).

Dove are from Date ([310-330]*), Palmolive ([210-230]*) and Neutral ([180-200]*). The interaction levels with Nivea ([150-170]*) and Vanderbilt ([130-150]*) are also higher than with Sanex ([120-140]*).

(509) The gross switching data reproduced in Figure 19 show a relatively different but informative picture.

Figure 19: Gross switching for Dove in Denmark [347]

[...]*

Figure 20: Gross switching for Rexona for Women in Denmark [348]

[...]*

(510) The highest level of gross switching to/from Dove and Rexona is with Sanex, which is also acknowledged by Unilever[349]. Looking at Dove users that switched to another brand, [10-20]*% switched with Sanex, only [0-10]*% switched with Nivea and [0-10]*% with Palmolive. For Rexona, [10-20]*% switched with Sanex, [0-10]*% with Nivea, [0-10]*% with Palmolive and only [0-10]*% with Vanderbilt.[350]

(511) Indeed, of all the Dove users that switched to a non-Unilever brand, [20-30]*% switched to Sara Lee. Since Sara Lee's share of sales in the gross switching data is [10-20]*% this indicates stronger interaction between Dove and Sara Lee than the market shares would suggest.

(512) That proportion is higher when only taking into account the non-male brands: of all Dove users that switched to or from another non-male brand[351], [30-40]*% switched with Sara Lee's brands. Since Sara Lee's share of sales in the sample is [20-30]*% the interaction with Sara Lee is confirmed as significantly stronger than the market shares would suggest.

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347 The data for Denmark is distorted by the aggregation of a large number of brands into the category "other". This category accounts for more than [30-40]*% of the switching and of the market. To improve the readability of the graph, the scaling has been adapted to allow focusing on the identified brands.

348 The data for Denmark is distorted by the aggregation of a large number of brands into the category "other". This category accounts for more than [30-40]*% of the switching and of the market. To improve the readability of the graph, the scaling has been adapted to allow focusing on the identified brands.

349 See Unilever's Reply to the Statement of Objections, paragraph 14.18 (iv).

350 See Unilever's Reply to the Statement of Objections, para. 14.18 (iii).

351 This figure is calculated taking into accounts only non-male brands. When certain brands were not clearly defined as male and non-male (for example the category of 'others'), the non-male value was calculated according to the proportions of male and non-male turnovers which this particular supplier(s) or brands achieve in the respective Member State (turnover split taken from market share tables provided by Parties – Annex 7.1 of the Form CO).

(513) When considering the switching data for Rexona for women, of all those who switched to a non-Unilever brand, [20-30]*% switched to Sara Lee. Since Sara Lee's share of sales in the gross switching is [10-20]*% this indicates stronger interaction between Rexona and Sara Lee than the market shares would suggest. This proportion is again higher when considering only non-male brands: of all Rexona users that switched to a non-Unilever brand [352], [30-40]*% switched to Sara Lee's brands. Since Sara Lee's share of sales in the gross switching data is [20-30]*%, the interaction with Sara Lee is confirmed as significantly stronger than the market shares would suggest.

Sub-segmentation of the market by format

(514) Segmentation by format within the non-male deodorants market shows that brands are not equally strong in the different segments, which adds another element to the competitive interaction between brands. Table 20 shows market shares by format:

Table 20: Market shares (value) by format in the non-male deodorant market, Denmark, 2009.

	STICK		ROLL-ON		OTHER		AERO-SOL	
	'000 €	%	'000 €	%	'000 €	%	'000 €	%
UNILEVER	[...]*	[0-5]*	[...]*	[20-30]*	[...]*	[0-5]*	[...]*	[20-30]*
- DOVE	[...]*	[0-5]*	[...]*	[5-10]*	_	_	[...]*	[5-10]*
- REXONA	[...]*	[0-5]*	[...]*	[10-20]*	_	_	[...]*	[10-20]*
SARA LEE	[...]*	[10-20]*	[...]*	[40-50]*	[...]*	_	[...]*	[5-10]*
- NEUTRAL	[...]*	[0-5]*	[...]*	[5-10]*	[...]*	_	_	_
- SANEX	[...]*	[10-20]*	[...]*	[30-40]*	_	_	[...]*	[5-10]*
COMBINED	[...]*	**[10-20]***	[...]*	**[60-70]***	[...]*	**[40-50]***	[...]*	**[20-30]***
NIVEA	[...]*	[5-10]*	[...]*	[10-20]*	_	_	[...]*	[5-10]*
E.TJELLESEN	_	_	[...]*	[0-5]*	_	_	[...]*	[10-20]*
CEDERROTH	_	_	[...]*	[0-5]*	_	_	[...]*	[5-10]*
Elisabeth Arden	[...]*	[20-30]*	_	_	[...]*	[0-5]*	[...]*	[5-10]*
LANCOME	[...]*	[20-30]*	[...]*	[0-5]*	[...]*	[50-60]*	[...]*	[0-5]*
COLGATE	_	_	[...]*	[5-10]*	_	_	[...]*	[0-5]*
NYGAARD COSMETICS	_	_	_	_	_	_	[...]*	[0-5]*
L'OREAL	_	_	_	_	_	_	[...]*	[0-5]*
SAETHER A/S	[...]*	[20-30]*	[...]*	[0-5]*	_	_	[...]*	[0-5]*
SBI	_	_	[...]*	[0-5]*	_	_	[...]*	[5-10]*
UNICARE	_	_	[...]*	[0-5]*	[...]*	[0-5]*	[...]*	[20-30]*
UNITED DRUGSTORES	_	_	[...]*	[0-5]*	_	_	[...]*	[0-5]*

352 This figure is calculated taking into accounts only non-male brands. When certain brands were not clearly defined as male and non-male (for example the category of 'others'), the non-male value was calculated according to the proportions of male and non-male turnovers which this particular supplier(s) or brands achieve in the respective Member State (turnover split taken from market share tables provided by Parties – Annex 7.1 of the Form CO).

OTHERS	_	_	[...]*	[0-5]*	[...]*	[0-5]*	[...]*	[0-5]*
TOTAL	**869**	**100**	**12 976**	**100**	**598**	**100.0**	**12 260**	**100**

Source: Form CO/AC Nielsen. Notes: Private Labels not available on a by gender by applicator basis; sub segment total sales are underestimated.

(515) Unilever sales are roughly equally split between the roll-on and aerosol formats (it is almost absent from sticks). Sanex is much stronger in roll-on formats. The same is true for Nivea and Colgate-Palmolive.

(516) Almost all other competitors, notably the high-end brands, are significantly stronger in aerosol formats than in roll-on formats[353]. While Sara Lee increases Unilever's position only by [5-10]*% to [20-30]*% in the aerosol segment, the increment is [40-50]*% for the roll-on segment. Unilever, with a combined share of almost [60-70]*%, would become the uncontested leader in non-male roll-ons. In this segment, Colgate-Palmolive is also present with a market share of [5-10]*%. [...]*[354]

(517) The analysis of the segments basically confirms that Unicare brands are far from able to exert the competitive pressure put forward by the Parties. Unicare has a very limited presence, below [0-5]*% in the roll-on segment, where the Parties are the strongest.

The merger will eliminate an important competitive force constraining the Parties

(518) Sanex is a growing force in the non-male deodorant market. It has seen its sales increasing by almost [0-10]*% in value in this market, compared to an overall growth rate market of [0-10]*%. [reference to parties' internal documents][355]

(519) Neutral's market position is also important in Denmark. [...]*[356] [...]*[357]

(520) The merger therefore would remove a close competitor to Unilever's brands which has spurred competitive rivalry in the Danish non-male deodorant market.

(521) Moreover, Sara Lee is particularly strong player in Denmark, but it is currently significantly constrained by Unilever brands. In this respect, the market structure combined with a higher interaction between the Parties' brands indicates likelihood of unilateral effects in the absence of countervailing factors.

Lack of countervailing buyer power

(522) Section IV.2.3.1.3 addresses why, from a general point of view, the buyer power of retailers is unlikely to effectively counter the unilateral effects of the merger. This section looks at those elements in the context of the Danish market.

353 One exception is Lancome which is the only competitor active across all formats.

354 [...]*

355 [...]*

356 [...]*

357 [...]*

Retail sector in Denmark

(523) The retail market is highly concentrated in Denmark. The three biggest retailers account for [60-70]*% of the national deodorants sales as shown in Table 21:

Table 21: Percentage of deodorant sales accounted for by retailers, Denmark 2009[358]

	[retailer1]	**[retailer2]**	**[retailer3]**	**[retailer4]**	**[retailer5]**	**[retailer6]**	**Total**
Unilever	[20-30]*%	[20-30]*%	[10-20]*%	[20-30]*%	[5-10]*%	[0-5]*%	[90-100]*%
Sara Lee	[30-40]*%	[10-20]*%	[10-20]*%	[30-40]*%	[5-10]*%	[0-5]*%	[90-100]*%
Total deodorants	[30-40]*%	[10-20]*%	[5-10]*%	[20-30]*%	[10-20]*%	[0-5]*%	[90-100]*%

Source: Nielsen

(524) In Unilever's view, the position of the two leading retailers is underestimated as it does not integrate the sales of discounters owned by these retailers. Unilever assumes that at least 80% of the "discounters" sales are actually through discounters owned by [retailer] and [retailer]. The remainder are primarily discounts stores owned by [retailer] .[359]

(525) In the reply to the Statement of Objections, Unilever also points to replies from retailers in order to conclude that at least two retailers *"acknowledged that suppliers have a concentrated customer base with significant buyer power, at least to a degree"*.[360]

(526) Unilever's argument has to be analysed in the context of the overall replies by the retailers. When asked to provide its comments with respect to the argument that branded manufacturers are facing a concentrated retailer-customer side with significant buyer power,[361] one retailer indicated that this is *"correct to a certain degree"*.[362] One of the largest retailers answered that *"that may be correct for various*

358 See Unilever's reply to the Commission's request for information sent on 23 September 2010.

359 Reply to the Commission's request for information sent on 23 September 2010, paragraph 4.

360 Unilever refers to the replies of [retailer] and [retailer] to Questionnaire to customers on deodorants sent on 25 June 2010.

361 The question was formulated as following: "It is often argued that branded manufacturers like Unilever and Sara Lee are facing a concentrated retail-customer side with significant buyer power. While for you, as a retailer the turnover coming from deodorant sales of Unilever seems rather limited compared to your overall turnover, for Unilever the turnover made via each retailer is very important (since there are only few major retailers which are the 'gate' to the market). Therefore, retailers have a better bargaining position in negotiations with suppliers. Please comment on this".

362 See reply from [retailer] to Questionnaire to customers on deodorants sent on 25 June 2010, question 16.

product categories".[363] One of the suppliers of prestige brands does not share Unilever's views regarding retailers' alleged buyer power.[364]

(527) It is not contested that the retail sector in Denmark is highly concentrated. However, Table 21 shows important variations of market shares of retailers. Thus, even if countervailing buyer power were to exist for the largest retailers, this would only ensure that a particular segment of customers with particular bargaining strength is shielded from significantly higher prices or deteriorated conditions after the merger.[365]

(528) Moreover, certain brands may even for the strongest retailers be a necessary product in their deodorant shelves.

Supplier power - must have brands

(529) Post transaction, the Parties would own the two most sold brands in Denmark (Rexona and Sanex). Moreover, the transaction will bring together four of the five main brands in the deodorant market, which has a direct impact on the ability and incentives of retailers to use their alleged countervailing buyer power. Combination of the Parties strong brands in Denmark in the hands of a single supplier would reduce the set of credible alternatives that the retailer can choose from to replace Unilever's products if he has the willingness to do so. In the Danish market structure, it would be very difficult for the retailer to construct a deodorant shelf without Unilever's products. If the retailer is not willing to entirely eliminate Unilever's products from the shelves, even a partial delisting of important Unilever brands such as Axe, Dove or Rexona would clearly endanger the retailer's turnover in the deodorant category.

(530) The market investigation indicates that "must have" deodorant brands exist, although views of the retailers differ to some extent on the brands that a retailer would necessarily have to include in its shelves.

(531) When asked if some brands/SKUs have such a significant presence on the market that they cannot credibly be delisted, retailers indicate that *"some brands are significant and would be missed if we delist them"*.[366] Moreover, the majority of retailers indicated that their customers would either switch their deodorant purchases or their entire purchases to another retailer in case one of the core brands of the Parties would not be available in their stores.

(532) The leading retailer in Denmark identifies both Sanex and Nivea as "must have" brands.[367] Another retailer as well identifies Sanex as a "must have" brand both for

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363 See reply from [retailer] to Questionnaire to customers on deodorants sent on 25 June 2010, question 16.

364 See non confidential minutes of a conference call with Unicare on 13 September 2010.

365 See paragraph 67 of the Horizontal Merger Guidelines.

366 See reply from [retailer] to Questionnaire to customers on deodorants sent on 23 April 2010, question 53.

367 See reply from [retailer] to Questionnaire to customers on deodorants sent on 23 April 2010, question 28.

"unisex" deodorant and for "female" deodorant. Other brands are also cited, like Rexona and Garnier Mineral or Neutral and private label products.[368]

(533) In its reply to the Statement of Objections, Unilever points out that one retailer only mentioned its own private label brands as a "must-have" brand, and considered that no brand/SKU is so significant that they cannot credibly threat to delist them. However, when questioned about the possibility of finding alternative products if not able to stock either Party's products, the answer is less clear: *"yes, both Sanex and Rexona would cause great loss in turnover for us if they were still sold in other channels"*.[369]

(534) The strong position of Unilever and Sara Lee as deodorant suppliers is also reflected in their presence in the retail channels, which is illustrated by the data on weighted distribution. Weighted distribution represents the share of sales accounted for by all the stores in which the brand is stocked. It is therefore a measure of the retail exposure given to a brand. Table 22 shows that Unilever, Sara Lee and Beiersdorf managed to secure widespread distribution compared to their competitors in Denmark[370].

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368 Although, it is also submitted that *"there are so many brands on the market that is always possible to find alternative products"* if they would not be able to stock either Unilever's or Sara Lee's products, [retailer] however considers that *"Sanex is quite strong but other than that no"* when questioned about the existence of some brands/SKU's that would be so significant that a retailer cannot credibly threaten to delist them. See reply from [retailer] to Questionnaire to customers on deodorants sent on 23 April 2010, question 28, 53 and 54.

369 See reply from [retailer] to Questionnaire to customers on deodorants sent on 23 April 2010, question 54.

370 See Unilever's reply to the Commission's request for information sent on 23 July 2010.

Table 22: Deodorants weighted distribution, Denmark (excluding the hard-discount distribution)

	MAT	YTD 2009	YTD 2010	21 JUNE 2009	20 JUNE 2010
T. AXE	[…]*	[…]*	[…]*	[…]*	[…]*
T. DOVE.	[…]*	[…]*	[…]*	[…]*	[…]*
T. REXONA	[…]*	[…]*	[…]*	[…]*	[…]*
T. NIVEA	[…]*	[…]*	[…]*	[…]*	[…]*
T. SANEX	[…]*	[…]*	[…]*	[…]*	[…]*
T. NEUTRAL	[…]*	[…]*	[…]*	[…]*	[…]*
T. WILLIAMS	[…]*	[…]*	[…]*	[…]*	[…]*
T. BOSS	[…]*	[…]*	[…]*	[…]*	[…]*
T. ADIDAS	[…]*	[…]*	[…]*	[…]*	[…]*
T. VAN GILS	[…]*	[…]*	[…]*	[…]*	[…]*
T. HUMMEL	[…]*	[…]*	[…]*	[…]*	[…]*
T. VANDERBILT	[…]*	[…]*	[…]*	[…]*	[…]*
T. PALMOLIVE	[…]*	[…]*	[…]*	[…]*	[…]*

(535) Axe, Dove, Rexona, Sanex, Neutral, Nivea and Palmolive are the brands with the highest weighted distribution. The other brands appear to have less than full access to all retail channels.

Private label products

(536) Private label products only represented [0-5]*% of the Danish non-male deodorant market in 2009. This share has even decreased from [0-5]*% in 2008. Hence, private label products do not provide a possibility for retailers to counterbalance the increasing market power obtained by Unilever through the merger.

(537) In its reply to the Statement of Objections, Unilever contested the private label products market share in the non-male deodorants market ([0-5]*%), although it finally agrees that *"the presence of private label products is limited in this market"*. [371]

(538) The limited market presence of private label products is also confirmed by retailers. The leading retailer in the Danish market (accounting for at least [30-40]*% of the total deodorants sales) explained that their private label products represent less than [0-5]*% of total deodorant sales.[372]

(539) In its reply to the Statement of Objections, Unilever maintains that private label products offer a significant competitive constraint on the Parties despite their limited market presence.

(540) The analysis about interaction between brands has not specifically considered private label products. Clear conclusions cannot be drawn based on the answers in the market investigation to the specific question about closeness of competition. When asked which brands retailers consider to be a close competitor to their private label products in terms of quality, product range and other characteristics, they indicated that Sanex, Neutral, Nivea and other retailers' private label products are close competitors to their private label products. However, it is not surprising that a retailer would mention the key mass-market brands as competitors to their private label products rather than the prestige brands. When asked which brands they consider as the closest substitutes for Sanex, only one retailer mentioned private label products.[373]

(541) In general, the market investigation confirms the weak role of private label products in Denmark. Only one retailer expressed its intention to increase sales of private label products. However, when asked about plans to increase the share of their private label

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[371] This is also supported by the market investigation, although Unilever tries to prove the contrary [...]*. Unilever mentions two competitors' replies, where the share of private label products was cited at [5-10]*%. However, one of these two competitors also considers that, despite the [5-10]*% of market share, *"private label plays a very limited role"*. The other competitor referred to by Unilever also indicated that *"the value share of private label has declined from [5-10]*% to [5-10]*% in the first quarter of 2010, a decline in absolute terms of [0-5]*%."*. These answers should therefore been considered as referring to private label products' position in the overall deodorant market. According to the figures provided by Unilever in the general part of the reply to the Statement of Objections, in Denmark private label products account for [0-5]*% of the market in value and [0-5]*% in volume.

[372] See reply from [retailer] to Questionnaire to customers on deodorants sent on 23 April 2010, question 31.

[373] See reply from [retailer] to Questionnaire to customers on deodorants sent on 23 April 2010, question 30.

products significantly in the next 1-2 years, it answers negatively, *"because private label does not perform very well in personal care categories"*.[374]

Conclusion on buyer power

(542) The high retailer concentration in Denmark could indicate that the largest retailers have a strong negotiation position in relation to suppliers of deodorants. However, Unilever and Sara Lee are in an equally strong position in their negotiations with retailers given their strong brands and broad presence in the retail sector. Merging the number one and number two suppliers in the market as well as four of the five largest brands would enhance this position substantially. [...]*

(543) Moreover, high retail concentration does not mean that all retailers in the market are in the same market position as regards the deodorant suppliers. Smaller retailers are in a very different position to the largest retailers when negotiating with suppliers compared.

(544) Finally, private label products have a very limited impact in Denmark. Hence, negotiation power arising from the possibilities retailers would have to substitute the Parties brands with private label brands is particularly limited in Denmark.

(545) Therefore, it can be concluded that countervailing buyer power post-merger cannot be considered as a mitigating factor which is likely to off-set any of the potential adverse effects of the proposed transaction.

Sufficient entry unlikely to occur

(546) Section IV.2.3.1.4 analysed, from a general point of view, that entry in deodorant markets is difficult because of high barriers resulting from the need to create brand awareness and access to shelf space. A potential entrant would also have to take into account the likely reaction of a powerful incumbent like Unilever, [...]*. In this section, particular features of the Danish market are discussed, complementing the general analysis.

(547) Unilever argues that the prospect of new entry is a particular competitive constraint in Denmark due to new entry of prestige brands. Unilever explains that "*Unicare frequently refreshes its range in the market, for example launching David Beckham in September 2005, Hummel in October 2005 and Kappa in November 2008"*.[375]

(548) First, the brand and price positioning of prestige brands is distant from the Parties brands. Since the existing prestige brands do not exercise a sufficient competitive constraint on the mainstream brands of the merged entity, this is equally likely to be the case for new prestige entry. Furthermore, these brands individually have very limited market shares.

[374] See replies from [retailer] to Questionnaire to customers on deodorants sent on 23 April 2010, question 32, and Questionnaire to customers on deodorants sent on 25 June 2010, question 23.

[375] See Form Co, paragraph 6.355.

(549) LECG has, on behalf of a competitor, submitted a detailed analysis of brands entering the Danish market between 2007 and 2010[376]. The study shows that although 22 new brands were introduced in Denmark during that period, those brands obtained only a minimal market share. In June 2010 [5-10]*% of total sales was accounted for by these brands. Most of these examples are high end deodorants from strong fashion brands that are already well known[377]. At the end of the period, only two brands had a market share above [0-5]*% (Kappa with [0-5]*% and Garnier with [0-5]*%). Kappa clearly belongs to the high priced segment (see Figure 15). Garnier Mineral is discussed separately in recital (553).

(550) In the reply to the Statement of Objection, Unilever argues that *"even if prestige brands only obtained a small market share each"*, they account for a significant share of the market in aggregate. Unilever provided data in order to show that of the 30 brands gaining market share in Denmark in the past two years no less than 21 are prestige brands and half of these appeared to be new on the market. According to Unilever, this would clearly demonstrate that new entries by prestige brands are a competitive force in the market.

(551) The new data provided by Unilever confirms the limited market share achieved by the new prestige brands. Out of the 10 brands referred to by Unilever as new prestige brands, only two achieved a market share higher than 1%, which it further reinforces the view that these new prestige brands are very different from the mass market brands. The fact that there is a high turnover of brands within the prestige segment so that relatively young brands take up a significant share of total sales cannot bring into question that they (taken together) exercise a very limited constraint on the mainstream brands.

(552) In the reply to the Statement of Objection, Unilever also elaborates on the entry of Garnier Mineral, which was introduced in Denmark in February 2010. It is explained that Garnier Mineral's succeeded in achieving a weighted distribution of [80-90]*% and a relatively high proportion of shelf space ([0-10]*%) in the non-male market.

(553) It is difficult to predict how the market position of Garnier Mineral will develop although latest information indicates that Garnier Mineral has not been able to maintain its initial market share.[378] Information on the latest developments of monthly market shares that Garnier Mineral achieved since its introduction show that Garnier Mineral has been loosing market share in recent months after having achieved a [5-10]*% value market share in April.[379]

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[376] *"Dynamics of entry"*, submitted on 26 July 2010, under the number 20100726.

[377] Such as for instance Versace, Bjorn Borg or Christina Aguilera.

[378] See Unilever's Reply to the Commission's request for information sent on 15 September 2010.

[379] In order to sustain their argument that Garnier Mineral is a successful entrant, Unilever refers to [a retailer's] reply in the market investigation, which describes Garnier Mineral's entrance on the market as "relative successful". Indeed, at that moment in time, Garnier Mineral was achieving a 5-10% market share in the non-male-specific deodorant market in Denmark. This is not the situation any more. Moreover, [the retailer's] answer is more nuanced than put forward by Unilever. Indeed, [the retailer] also explained that "as advertising started only a month ago it is still too early to evaluate the success". See reply from [retailer] to Questionnaire to customers on deodorants sent on 23 April 2010, question 58 and 59.

(554) Unilever reacted immediately to the entry by Garnier Mineral by launching Rexona Mineral in May 2010. [...]*[380]

Figure 21: Garnier Mineral in Denmark since launch – Source: Nielsen

[...]*

(555) Despite a high number of new "prestige brands" in the Danish market, these entrants do not effectively constrain the Parties due to their different market position and very low market shares. The recent entry in the "mass-market" segment by Garner Mineral is difficult to assess at this stage. Market shares have in recent months been decreasing from the peak of [5-10]*% in April.

(556) It is concluded that sufficient new entry to counteract the adverse effects of the merger in the Danish non-male deodorant market cannot be expected to occur.

Overall conclusion

(557) It is therefore concluded that the notified concentration is likely to significantly impede effective competition on the market for non-male deodorants in Denmark.

IV.2.3.2.2.2. Male deodorant market

(558) According to the Parties, the Danish male deodorant market had a total value of EUR 4.4 million in 2009. It experienced an increase in value of [0-10]*% between 2008 and 2009. Unilever is active in the male deodorant market with its brands Axe and Rexona for Men. Sara Lee serves the Danish male deodorant market with its brand Sanex for Men and has sales with its Williams brand.

(559) The Parties would post-merger achieve a combined market share of [20-30]*% (Unilever [10-20]*%, Sara Lee [5-10]*%). Other competitors active in the Danish male deodorant market are Unicare ([20-30]*%) Saether ([10-20]*%), Beiersdorf ([10-20]*%) and L'Oreal ([0-5]*%).

(560) Given the limited combined market share post-merger and the fact that retailers did not consider Sanex for Men or Williams to be close substitutes for Unilever's Axe or Rexona for Men brands, but rather Adidas, Hummel or Kappa[381], it is concluded that the proposed transaction would not result in a significant impediment of effective competition in the market for male deodorants in Denmark.

IV.2.3.2.3. Germany

(561) In Germany, the overall deodorant market had a value of EUR 634.5 million in 2009, (EUR 373.8 million non-male deodorant market; EUR 260.7 million male deodorant

[380] See Unilever's Reply to the Commission's request for information sent on 25 June 2010, question 19.

[381] See reply to Questionnaire to customers on deodorants sent on 23 April 2010, question 30.

market). Independent of the relevant product market definition, the proposed transaction will only give rise to an insignificant change in the market structure since the combined market share as well as the increment is low and several sizeable competitors exist post-transaction.

Table 23: Germany – Deodorant market shares in value – 2009 – Source: Form CO.

	Unilever	Sara Lee	**Combined**	Competitors
Overall	[20-30]*%	[0-5]*%	**[30-40]*%**	Beiersdorf [20-30]*% Henkel [5-10]*% Coty [5-10]*%
Male	[30-40]*%	[0-5]*%	**[30-40]*%**	Beiersdorf [20-30]*% Coty [10-20]*% Henkel [5-10]*%
Non-male	[20-30]*%	[0-5]*%	**[30-40]*%**	Beiersdorf [20-30]*% Private Label [10-20]*% Henkel [5-10]*%

(562) The combined market share on the male as well as the non-male deodorant market would be below [30-40]*% and the increment brought about the transaction would be at most [0-5]*%. In both markets, several competitors, in particular Beiersdorf with almost [20-30]*% market share, but also Henkel, Coty and Private Label are present. In addition, all retailers considered Sara Lee's Duschdas brand to be a close competitor to Henkel's FA brand and Beiersdorf 8x4 brand, all positioned at the lower end of the market, where Unilever is not active.[382] Respondents to the market investigation did not anticipate any anti-competitive impact on competition as sufficient alternatives would be available post-transaction.[383]

(563) Based on these elements, it is concluded that the concentration is not likely to lead to a significant impediment of effective competition as regards the markets for male and non-male deodorants in Germany.

IV.2.3.2.4. Ireland

IV.2.3.2.4.1. Non-male deodorant market

[382] See replies of German retailers to Questionnaire to customers on deodorants sent on 23 April 2010, question 27 and question 30.

[383] See replies of German retailers to Questionnaire to customers on deodorants sent on 23 April 2010, question 54.

(564) A number of factors indicative of significant non-coordinated effects are present in the non-male deodorant market in Ireland.

Similarities with the market structure in the United Kingdom

(565) As mentioned by the Parties in the Form CO "*In important respects, the market for deodorants in Ireland is similar in character to the market for deodorants in the UK, and it follows that the key aspects of the competitive analysis are the same. The structure of supply of the deodorants market in Ireland is very similar to that of the UK, as can be seen below. Procurement by [...]* across its UK and Irish businesses as a whole is leading to increasing alignment of terms of trade to retailers generally, for the reasons mentioned below. Many channels of advertising and media support are common to both markets. As such, Unilever views conditions of competition within Ireland as derivative of those prevailing in the UK market*.[384]"

(566) The Parties accept that, in important respects, the market for deodorants in Ireland is similar in character to the market for deodorants in the United Kingdom. For that reason, the competitive assessment of the Irish market will, in some aspects, closely follow the assessment of the deodorant market in the United Kingdom.

Merging firms have high market shares

(567) According to the Parties, the non-male deodorant market in Ireland had a total value of EUR 12.4 million in 2009, [90-100]*% of which is covered by supplier brands and the remaining [0-5]*% by private labels. It experienced a decrease in value of [20-30]*% between 2007 and 2009. Unilever is mainly active through its brands Dove, Sure (which is the best selling brand), Impulse and Vaseline while Sara Lee serves market with its brands Sanex and Radox.

Table 24: Parties market shares in value by brands – Ireland, non-male deodorants. Source: Form CO

	2009	
	000 €	**%**
UNILEVER	[...]*	[60-70]*
- DOVE	[...]*	[10-20]*
- IMPULSE	[...]*	[5-10]*
- SURE	[...]*	[30-40]*
- VASELINE	[...]*	[0-5]*
SARA LEE	[...]*	[5-10]*
- RADOX	[...]*	[0-5]*
- SANEX	[...]*	[5-10]*
COMBINED	[...]*	**[60-70]***
ACCANTIA	[...]*	[0-5]*
BEIERSDORF	[...]*	[10-20]*
COLGATE	[...]*	[10-20]*
COTY	[...]*	[0-5]*
GILLETTE	[...]*	[0-5]*

[384] Form CO, paragraph 6.252

CUSSONS	[...]*	[0-5]*	
HENKEL	[...]*	[0-5]*	
REVLON	[...]*	[0-5]*	
PRIVATE LABELS	[...]*	[0-5]*	
OTHERS	[...]*	[0-5]*	
TOTAL	12 449		**100.0**

(568) The Parties achieve a combined market share of [60-70]*%. It will exceed by five times the share of its nearest competitors Colgate-Palmolive with its brands Palmolive and Soft&Gentle ([10-20]*%), Beiersdorf with its brand Nivea ([10-20]*%) and Revlon with its brand Mitchum ([0-5]*%). Other branded players as well as private labels ([0-5]*%) hold insignificant market positions (below [0-5]*%) in the non-male deodorant market.

(569) The market has decreased in value terms by [20-30]*% between 2007 and 2009, probably due to the dire economic situation in Ireland. Although all brands have seen their sales drop, the impact on firms' market position varies significantly. Unilever has been the most successful supplier since its market share has increased from [50-60]*% in 2007 to [60-70]*% between 2007 and 2009. Though to a smaller extent, Beiersdorf has also increased its market share (from [5-10]*% in 2007 to [10-20]*% in 2009) as well as Revlon (from [0-5]*% to [0-5]*%).

(570) Conversely, Colgate-Palmolive market share eroded significantly during the same period (from [10-20]*% in 2007 to [10-20]*% in 2009). Sara Lee's market share also slightly decreased (from [5-10]*% to [5-10]*%) but this decrease is mainly due to Radox (whose share went from [0-5]*% to [0-5]*%). [...]*[385] [...]*. Sanex's share remained stable (from [5-10]*% in 2007 to [5-10]*% in 2009).

(571) The combined high market share suggests that the merged entity is likely to enjoy significant market power in the absence of any mitigating factors

(572) Furthermore the overlap between the Parties is significant with Unilever holding a [60-70]*% market share pre-merger and Sara Lee a [5-10]*% share. This is indicative of strong non-coordinated effects which would likely lead to higher prices and/or reduced quality and choice. Following the acquisition of Sara Lee, Unilever will control four out of the six major brands in the non-male deodorant market in Ireland (Sure, Dove, Impulse and Sanex). No other supplier holds more than one significant brand in the market.

(573) In its reply to the Statement of Objections, Unilever contested Sara Lee's position by referring to a retailer which argued that "*Sanex is insignificant on the Irish market*"[386]. However, Sara Lee only represents [0-5]*% of the retailer's turnover in deodorants[387]. This share is not representative of the structure of the Irish market in which Sanex reaches a market share of [0-5]*% on the overall deodorant market and even [5-10]*%

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385 Form CO, paragraph 6-262. [...]*

386 Questionnaire to customers on deodorants sent on 23 April 2010, question 63.

387 Questionnaire to customers on deodorants sent on 23 April 2010, question 4.

in the non-male deodorant market. In addition, this retailer is not even mentioned as one of top five retailers in terms of deodorant sales in Ireland (neither for Unilever nor for Sara Lee)[388]. Thus, this statement cannot be considered to be representative of Sanex's position on the Irish market.

Merging firms are close competitors

(574) Besides market shares, another important aspect for assessing the unilateral effects arising from the proposed merger is the closeness of the Parties' non-male deodorants. The higher the degree of substitutability between their products, the more likely it is that the Parties will significantly raise prices to retailers. In addition to pointing to high market shares, retailers explained that the Parties are close competitors. In particular, Dove and Sanex share skin-caring attributes which explains why two out of three retailers considered that the closest competitor of Sanex would be Dove. One retailer also indicated that Sanex would be the closest competitor to Vaseline.

(575) Unilever submitted that a number of significant suppliers will continue to impose a competitive constraint on Unilever post-transaction. It notably argues that the responses in the market investigation pointed to Nivea (Beiersdorf), Soft&Gentle (Colgate-Palmolive) and Natrel (Henkel) as close to Sanex [389]. However, closer inspection of these brands and their characteristics leads to the conclusion they do not exercise a particularly strong constraint on the main brands.

(576) Soft&Gentle (the main brand of Colgate-Palmolive) is described by the Parties as follows: "*Soft & Gentle has a focus on fragrances, although the product range includes variants targeted at efficacy and skin care. All the products in the Soft & Gentle range contain an element of fragrances or exotic oils, alongside the antiperspirant effect and functionality of the product. Advertising is directed at the female market with an emphasis on mood enhancing, confidence, feel good-factor and escapism.*"[390] The characteristics of Soft&Gentle do not include it in the range of "skin-care" deodorants where Dove, Vaseline, Sanex and Nivea are positioned. In addition Colgate-Palmolive with its Soft&Gentle brand was the one with the most declining market share on the market (losing [...]* percentage points from 2007 to 2009). Only one out of three Irish retailers considered Soft&Gentle to be a close competitor to Dove, and another mentioned the brand as among the closest competitors to Sure. None of them mentioned the brand as among the closest competitors to Sanex.[391] Moreover, Soft&Gentle is not considered as interacting significantly Sanex neither in the interaction index provided by the Parties nor in the gross switching analysis

(577) Regarding Natrel (Henkel's second brand after Right Guard), one Irish retailer mentioned this brand as the closest competitor to Sanex whereas the two other considered Dove as the closest Sanex's competitor. However, Natrel has an extremely

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[388] Form CO, paragraph 6.256.

[389] Questionnaire to customers on deodorants sent on 23 April 2010, questions 27 and 30.

[390] Form CO, paragraph 6.64.

[391] Questionnaire to customers on deodorants sent on 23 April 2010, question 30.

limited position knowing that Henkel achieve a market share of [0-5]*% with its two brands (Right & Guard and Natrel). In addition, Natrel was not discussed in the Form CO of the Parties. As such, Natrel is unlikely to constrain the combined entity's position to any appreciable extent.

(578) Finally, Nivea was not mentioned by any of the retailers as the closest brand to Sanex but has been referred as the closest brand to Dove by two retailers. Indeed, Nivea is in a cluster of close competitors together with other brands with a skin caring proposition - Dove, Sanex and Vaseline. It may not be appropriate in this particular case to label any of these particular brands as "the closest" for the purpose of drawing conclusions about the competitive constraints. While Nivea may score closer to Dove in some brand positioning characteristic, other elements suggest that it may be Sanex which is more closely competing with Dove in some format.

Assessment on the basis of format

(579) Looking at market shares by formats reveals additional elements regarding the closeness of substitution between Dove and Sanex. In addition to being skin-friendly brands, Dove and Sanex have a particular strength in the roll-on format ([20-30]*% of the non-male Irish market) since their market share for roll-on formats is significantly above their overall non-male share ([20-30]*% in roll-on formats and [10-20]*% overall for Dove, [10-20]*% in roll-ons formats and [5-10]*% overall for Sanex).

(580) Shares of sales between roll-ons and aerosols[392] formats are more equally spread for Nivea, Colgate-Palmolive and Vaseline brands whereas Sure is rather an aerosol brand and Impulse is exclusively available in spray format. Other brands (Right Guard, Secret, Adidas) are only available in spray formats except for Mitchum.

Table 25: Ireland: Non-male deodorants, 2009: market shares – Source: Form CO.

	ROLL-ON		**AEROSOL**	
	000 €	**%**	**000 €**	**%**
UNILEVER	[...]*	[40-50]*	[...]*	[60-70]*
- DOVE	[...]*	[20-30]*	[...]*	[10-20]*
- IMPULSE	[...]*	[0-5]*	[...]*	[10-20]*
- SURE	[...]*	[20-30]*	[...]*	[30-40]*
- VASELINE	[...]*	[0-5]*	[...]*	[0-5]*
SARA LEE	[...]*	[10-20]*	[...]*	[0-5]*
- RADOX	[...]*	[0-5]*	[...]*	[0-5]*
- SANEX	[...]*	[10-20]*	[...]*	[0-5]*
COMBINED	[...]*	**[60-70]***	[...]*	**[70-80]***
BEIERSDORF IRELAND	[...]*	[10-20]*	[...]*	[10-20]*
COLGATE PALMOLIVE	[...]*	[10-20]*	[...]*	[10-20]*
COTY	[...]*	[0-5]*	[...]*	[0-5]*
GILLETTE	[...]*	[0-5]*	[...]*	[0-5]*

392 Aerosols and roll-on formats represent [90-100]*% of the formats sold in the non male deodorant market in Ireland.

HENKEL	[...]*	[0-5]*	[...]*	[0-5]*
REVLON	[...]*	[5-10]*	[...]*	[0-5]*
OTHERS	[...]*	[0-5]*	[...]*	[0-5]*
TOTAL	2 506	**100.0**	**9 478**	**100.0**

(581) Table 25 therefore confirms the market investigation that Sanex is a close competitor to Dove (and to a lesser extent to Nivea).

Switching data analysis

(582) Unilever also provided interaction indices for Sanex for Women for the year 2009. This data submitted on 26 July 2010[393] build on detailed purchase records of individuals and, as previously explained in recital (374) when addressing the Belgian market, should be interpreted cautiously.

(583) Although contaminated by these factors, the switching data may however also contain information about actual substitutability and hence closeness of competition. Each brand may in a given period lose customers to (all) other brands and simultaneously win customers from all other brands. The sum of lost and won customers between two brands, the total gross switching is thus an indicator how closely the two brands are competing. The interaction indices presented in Unilever's submission of 26 July 2010 are shown in Figure 22.

Figure 22: Interaction index for non-male Sanex in Ireland

[...]*

(584) The Parties explain that, although the data show that Sanex for Women interacts more closely with Vaseline ([180-200]), Dove for Women ([110-130]) and Sure for Women ([110-130]), or even [180-200] with Sure for Girl), Sanex for Women has also an equal or higher level of interaction with several third parties' brands, notably Nivea ([110-130]) Coty/Adidas ([200-220]), Revlon/Mitchum ([200-220]) and Henkel/Right Guard for Men and Women ([150-170]/[110-130])[394]. A higher degree of interaction is also evident with Sanex for Men ([240-260]) and Radox for Men ([280-300]).

(585) The interaction indices presented by Unilever are a comparison of the actual gross consumer switching of the brand (here, Sanex for Woman) with the "expected" switching based on the proportions of the competing brands' market shares in the total deodorant category (combining male and non-male)[395]. A high interaction index alone

393 "*M.5658 Unilever/Sara Lee Body Care: Supplementary submission regarding interaction indices*" submitted on 26 July 2010.

394 With regards to Right Guard, Mitchum for Women or Adidas of Women, none of the three Irish retailers mentioned these brands as the closest competing brands to Dove, Rexona, Vaseline or Sanex. In addition, these brands have low shares of respectively [0-5]*% for Mitchum, [0-5]*% for Right Guard and [0-5]*% for Adidas.

395 The market shares are calculated on the basis of the brands' sales within the panel. This may vary from the market shares based on Nielsen data to some extent, but in general provides a rather consistent picture with those.

therefore does not account for the absolute size of a brand in the market. When the market share is taken into account, the actual consumer switching as observed in the panels is significantly lower than the interaction index alone would suggests.

(586) Therefore, while interaction indices provide some insights about the closeness of brands, the gross switching figure from and to a brand provides a more illustrative picture about the actual switching patterns of consumers. The Parties have submitted the underlying data used by GFK/Europanel containing the actual switching figures. Based on the same data as used for the interaction index, Figure 23 shows in descending order for each brand their share of total gross switching to and from Sanex for Women in 2009. Consistent with the method used by GFK/Europanel, the total gross switching is compared with the proportions of the competing brands' market shares in the total deodorant category ("value of competitors").

Figure 23: Gross switching for non-male Sanex in Ireland

[...]*

(587) On this basis of this data, the proportion of buyers switching from Sanex to other brands in the market was calculated. In that respect, of all the Sanex for Women customers that switched with another non-male brand, [50-60]*% interacted with a Unilever brand. Of all the Sanex for Women customers that switched with a non-Sanex brand (either male or non-male) [50-60]*% interacted with a Unilever brand.

(588) The level of switching from the panel data is in line with Unilever's market share. In fact, this only confirms that the Parties' very high market shares are a good proxy for analysing the effects of the transaction.

(589) The indication from the consumer panel data that around [40-50]*% of all Sanex switching within the non-male market in Ireland occurs in relation to Unilever's brands means that Unilever does indeed represent a very significant constraint on Sanex. Even if the other half of switching is with other brands, the merger instantly removes half of the total competitive constraint previously exercised on Sanex. This means that the incentives for price increase of Sanex are significant post-merger.

Conclusion on closeness of competition.

(590) The market investigation demonstrated that the majority of retailers considered Dove to be a close competitor to Sanex. In addition, the format analysis indicates that Dove and Sanex are the two brands which are particularly strong in roll-on. Finally, switching analysis data shows Sanex is switching a lot with Sure and Dove.

(591) It is concluded that the merger would eliminate an important competitive force on the market which significantly contributes to constrain Unilever on the non-male deodorant market in Ireland.

Lack of countervailing buyer power

(592) The reasons why a potential price increase after the merger is unlikely to be defeated by countervailing buyer power is analysed in section IV.2.3.1.3. These reasons equally apply to the Irish non-male deodorant market.

(593) The penetration of private labels in this market is extremely limited ([0-5]*%)[396] although Irish retailers have in general submitted during the market investigation that they achieve significantly higher margins in private labels[397].

(594) In its reply to the Statement of Objections, Unilever argues that one retailer planned to introduce private label without clear timeline.

(595) Nevertheless, Unilever does not mention that the two retailers do not predict an increase in the share of private labels in the next 1-2 years[398]. One argues that the demand is too low and that "*The deodorants category has been so deflated in the past 12-18 months that the price gap between branded and private label deodorants is negligible. Also the strength of many of the deodorant brands is such, and the retail price so low, that own brand is not very attractive to consumers in this category* "[399] and the second mentions that the private labels were mainly "*launched in response of the economic situation*".

(596) As a consequence, customers would not be in a position to switch to private labels after the merger to counterbalance the increasing market power obtained by the new entity.

(597) In its reply to the Statement of Objections, Unilever argues that Irish market is highly concentrated and reiterates that given that the combined share of top three retailers is over [70-80]*% (and the top five over [80-90]*%), the customer structure is particularly concentrated, inferring buyer power. It also puts forward that even the smallest of the top five accounts for a significant percentage of Parties sales ([10-20]*% for Unilever and [5-10]*% for Sara Lee). Unilever further argues that losing sales even for this relatively smaller distributor would mean not being able to make-up significant business elsewhere. Unilever also submits that there is no evidence that small retailers get a worse deal compared to larger retailers. Because smaller retailers have sufficient alternatives to Unilever's deodorants at their disposal they are able to achieve good terms with Unilever.

(598) Even though the three biggest retailers account for [70-80]*% of the national deodorant sales, important variations occur amongst them: the main retailer accounts for more than [30-40]*% of the national deodorants sales whereas the second and the third retailers account respectively for [20-30]*% and [10-20]*% of sales. Fourth and fifth retailer are significantly smaller (both hold [5-10]*% each).

(599) First, the concentration of customers on which Unilever bases its argument cannot itself be indicative of countervailing buyer power. While the market share of the largest retailer is [30-40]*%, it remains small compared to the Parties' combined market share of [70-80]*% of all deodorant sales (male and non-male). Also, as a

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[396] In addition, the private label share has remained stable in the last three years ([0-5]*% in 2007).

[397] Questionnaire to customers on deodorants sent on 25 June 2010, question 1.

[398] Questionnaire to customers on deodorants sent on 25 June 2010, question 23.

[399] Questionnaire to customers on deodorants sent on 25 June 2010, question 23 a).

retailer indicates, end-consumers expect to find Unilever's strong and popular brands on the shelf, and retailers cannot ignore this[400].

(600) In such a market structure, it would seem unrealistic for the retailer to construct a deodorant shelf without one or several important Unilever brands which makes Unilever an unavoidable trading partner in relation to prices setting, promotions, new listings and placement on shelves. In a market where all other suppliers would hold only one non-male brand, it is clear that a shelf with only Nivea, Soft & Gentle and Palmolive would not be complete in terms of set of brands that the customer expects to find in the stores and product attributes.

(601) The fact that top five retailers have a high proportion of the total market does not therefore give these retailers buyer power, as could potentially be the case with perfectly substitutable homogeneous goods where customers could switch all their demand to other readily available alternatives. This is simply not the case here since consumers consider the merger would bring together close substitutes (Sanex is perceived as being close to Vasenol and Dove) for which the number of alternatives are limited. The finding is equally relevant for the retailers, who must assemble a portfolio of brands on the shelf that adequately cover the needs of all customers.

(602) Second, as explained in Section IV.2.3.1.3, even if a large retailer were to derive some degree of bargaining power from its large size or a sophisticated purchasing strategy, there is no generally convincing reason why other retailers should also be positively affected. Thus, even if countervailing buyer power were to exist for the larger retailer, it is unlikely to sufficiently off-set potential adverse effects of a merger since it would only ensure that a particular segment of customers, with particular bargaining strength, is shielded from significantly higher prices or deteriorated conditions after the merger.[401]

(603) Third, when comparing smaller and larger retailers, it is not argued that large buyers have bargaining power. The analysis rather answers the question whether smaller retailers would benefit from a hypothetical situation in which large buyer had some bargaining power. In this context, even if large retailers would have buyer power, Unilever's arguments that the same degree of buyer power lies with small retailers cannot be sustained.

(604) The very strong position of Unilever compared to its competitors and the fact that Unilever is an unavoidable trading partner, are also reflected by the weighted distribution in retail stores of the different suppliers in Ireland. Weighted distribution represents the share of sales accounted for by all the stores in which the brand is stocked. It is therefore a measure of the retail exposure given to a brand. Table 26 shows that Unilever managed to secure widespread distribution compared to its competitors[402].

Table 26: Deodorants weighted distribution, Ireland

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400 Questionnaire to customers on deodorants sent on 25 June 2010, question 16

401 See paragraph 67 of the Horizontal Merger Guidelines.

402 [...]*

	Ireland	
	Same Period YAGO	Previous Period
LYNX	[...]*	[...]*
DOVE	[...]*	[...]*
SURE	[...]*	[...]*
IMPULSE	[...]*	[...]*
	[...]*	[...]*
NIVEA	[...]*	[...]*
	[...]*	[...]*
SOFT & GENTLE	[...]*	[...]*
	[...]*	[...]*
SANEX	[...]*	[...]*
RADOX	[...]*	[...]*
	[...]*	[...]*
GARNIER	[...]*	[...]*
MEN EXPERT	[...]*	[...]*
	[...]*	[...]*
MITCHUM	[...]*	[...]*
	[...]*	[...]*
RIGHT GUARD	[...]*	[...]*
	[...]*	[...]*

(605) Lynx, Dove, Sure, Impulse, Nivea and Soft&Gentle are the brands with the highest weighted distribution in Ireland (above [...]*). Post-transaction, Unilever will control five out of the seven brands with the highest weighted distribution rate, and reinforce its position as unavoidable trading partner for the retailers.

(606) Unilever also states that the retailers have alternative sources of supply than the Parties brands and that consumers would rather switch brand than switch store. To substantiate this position, Unilever points to figures which show that loyalty to major

Irish retailers is generally significantly higher ([...]*) than to Unilever and Sara Lee brands ([...]*)[403].

(607) This statement was not confirmed in the market investigation. Indeed, all Irish retailers stated that if their store were not to offer a particular deodorant brand of Unilever/Sara Lee, the customers would switch to other retailers (for the whole shopping basket or for the deodorants only)[404].

(608) Furthermore, the loyalty figures do not – as claimed by Unilever – confirm that customers would rather continue buying from their retailer than switch brands when their preferred deodorant brand is not available. First, these figures try to answer two isolated questions – loyalty to a deodorant brand, and loyalty to a shop – but do not allow a conclusion as to how many consumers would switch retailers if their deodorant brand were not available. Second, even if customers were, on average, more loyal to their retailer than to the brand, there is a significant share of customers for which the loyalty for a brand is important. As switching customers would probably re-direct their entire shopping basket to another retailer, the losses for the retailer could be significant even if a relatively smaller percentage of consumers would switch shops. Finally, if customers were to stay with the same retailer if their deodorant brand were be available, one would expect that retailers were to exploit such behaviour and sell only those items on which they can earn the highest margins. The market reality is different.

(609) To illustrate the retailer buyer power, Unilever quotes the reply of only one competitor on the Irish market which stated "*Retailers can constrain SKU listings and breadth of distribution. Retailers work on their own timescales in Ireland, often making late confirmations of promos/listings/reversing prior commitments and have the power not to run promotion plans which could be disruptive to manufacturers*" *Delisting is used as a threat by retailers".*

(610) The position towards retailers of a supplier which holds market shares of [0-5]*% in the overall deodorant segment and [0-5]*% in the non-male segment cannot be compared with Unilever which will hold, post merger, market shares of [70-80]*% on the overall deodorant market and [60-70]*% in the non male segment. With regards to delisting, [...]*

(611) Finally, it is not sufficient that buyer power exists prior to the merger; it must also exist and remain effective following the merger. This is because a merger of two suppliers may reduce buyer power if it thereby removes a credible alternative. In the present case, the merger will remove one of the two main suppliers considered to be the closest competitors in the market, since the market investigation did not reveal that there is a set of credible alternative suppliers which could replace Sanex in terms of product characteristics. It will also bring together four out of the six main brands in the deodorant market, which has a direct impact on the ability and incentives of retailers to take advantage of their alleged countervailing buyer power.

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[403] Reply to the Statement of Objections, paragraph 13.18 and Figure 13.1.

[404] Questionnaire to customers on deodorants sent on 25 June 2010, question 17.

(612) Therefore, it can be concluded that countervailing buyer power post-merger would not be sufficient to off-set any of the potential adverse effects of the merger.

Sufficient entry unlikely to occur

(613) The market investigation indicated that entering the deodorant market – either from a neighbouring personal care market or as a new entrant - would be difficult. Even if the technology required and the investment to manufacture deodorants could be considered as "accessible", high barriers to entry exist in the form of significant advertisement and promotion (A&P) expenditure to create brand awareness and get access to shelf space from retailers.

(614) The general perception of the market is that these barriers to entry exist and are significant. As stated by a retailer *"There are perceived high barriers to entry as a consequence of the dominant position of brands such as Sure and Lynx"* although *"Physically there is no barrier that should stop a new entry eg intro of Garnier range"*[405].

(615) [...]* (see recital (332))

(616) In addition to the barrier to entry coming from the creation of brand awareness and access to shelf space, a potential entrant would have to take into account the likely reaction of a powerful incumbent like Unilever. [...]*, to the contrary Unilever's increased market share, the addition of another brand like Sanex rather strengthens its ability and incentive to fight entry.

(617) Unilever submitted that the prospect of new entry is a real competitive constraint in Ireland. In order to illustrate it, Unilever mentioned a potential launch of the Playboy brand by Coty in 2010 and more vigorous competition from Gillette in the light of the wider European launch of deodorants under this brand in July 2010. These potential entries and expansions concern the male market and as such they are of limited relevance to assess potential constraints exercised by new entries in the non-male market.

(618) With respect to the recent entry of Garnier Mineral, as it only took place in January 2010, it is probably too early to conclude on the outcome of this entry. However a preliminary assessment follows.

(619) First, it is worth noting however that Unilever reacted immediately to the entry of Garnier Mineral, by launching Sure Mineral in Ireland in January 2010.

(620) [...]*

(621) While Unilever correctly points out that these measure are a sign of competitive interaction and are in no way sign of illegal conduct, they do contribute to making entry more difficult to succeed and hence less likely to be undertaken.

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[405] Questionnaire to customers on deodorants sent on 23 April 2010, question 61.

(622) In its reply to the Statement of Objections, Unilever emphasises that Garnier achieved a weighed distribution of [...]* and a market share of [0-5]*% in non-male-specific deodorants, arguing that this demonstrates that new entrants can penetrate the market.

(623) Given the costly investments and the time needed for the launch of Garnier Mineral, a share of [0-5]*% for a company as L'Oreal shows that the brand seems to have difficulties in establishing itself on the shelves. In addition, the low impact of Garnier Mineral entry has been confirmed by all the responding retailers. Indeed, one retailer argued the entry of Garnier Mineral had a "*low impact in the deodorant market*[406]", the second one stated that Garnier Mineral is present in the shelves but that "*it would not be part of their top seller list*"[407] and the last one notably recently refused to list 6 out of 12 proposed Garnier SKU's[408].

(624) Despite the significant efforts of L'Oreal which is one of the very few companies potentially able to make such a relatively large-scale entry into the market, the developments so far strongly suggest that Garnier Mineral will not be a success in the Irish market. With regards to the entry of Garnier in Ireland, L'Oreal itself explained "*the market dynamics which gave Garnier reasons to believe in a successful entry and a reasonable prospect of profit have vanished…*"[409]

(625) Therefore, it is unlikely that new entry will occur in the Irish non-male-deodorant market so as to counteract adverse effects of the merger.

Overall conclusion

(626) It is therefore concluded that the notified concentration is likely to significantly impede effective competition on the market for non-male deodorants in Ireland.

IV.2.3.2.4.2. Male deodorant market

(627) The Irish male deodorant market had a total value of EUR 12.6 million in 2009. Due to the impact of the financial and economic crisis, it experienced a decline in value of [10-20]*% between 2008 and 2009. Unilever is active in the male deodorant market with its main brands Lynx and Sure for Men. In addition, Brut and Vaseline are sold on the market. Sara Lee serves the Irish male deodorant market with its brand Sanex for Men.

(628) The Parties would post-merger achieve a combined market share of [70-80]*% (Unilever [70-80]*%, Sara Lee [0-5]*%). Other competitors active in the Irish male market are Beiersdorf ([5-10]*%), Procter & Gamble ([5-10]*%), Coty ([0-5]*%), Henkel ([0-5]*%) and Revlon ([0-5]*%). In spite of this high market share, the proposed transaction will not result in a significant impediment of effective competition for several reasons.

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406 Questionnaire to customers on deodorants sent on 23 April 2010, question 59.

407 Questionnaire to customers on deodorants sent on 23 April 2010, question 59.

408 Questionnaire to customers on deodorants sent on 23 April 2010, question 57.

409 See L'Oreal subsidiaries comments on the Statement of Objections – 14 September 2010.

(629) First, the increment resulting from the transaction is limited as Sara Lee had a market share of [0-5]*% in the Irish male deodorant market. Thus, the competitive landscape would not change significantly due to the merger.

(630) Second, the wide majority of retailers does not consider Sanex for Men to be a close competitor to either Lynx or Sure for Men.[410] In their response to the market investigation, they considered Coty's Adidas or Beiersdorf's Nivea for Men as close competitors to Unilever's male brands, which are more oriented towards efficacy and fragrance compared to Sanex for Men's health proposition.[411] In addition, [50-60]*% of Sanex for Men deodorants are sold as roll-ons, while roughly [90-100]*% of Lynx and [80-90]*% of Sure for Men deodorants are sold as aerosols.[412]

(631) Finally, several competitors of similar or larger size compared to Sara Lee remain in the market with male brands like Gillette, Right Guard, Nivea for Men, Adidas or Mitchum for Men. Indeed, retailers active in Ireland either have not listed Sara Lee or indicated that sufficient alternatives would be available to replace it in the male deodorant market.[413]

(632) It is therefore concluded that the proposed transaction would not result in a significant impediment of effective competition in the market for male deodorants in Ireland.

IV.2.3.2.5. Greece

(633) The Greek deodorant market had a total value of EUR 39 million in 2009 (EUR [...]* for the male deodorant market; EUR [...]* for the non-male deodorant market). Unilever is mainly active in Greece with its brands Axe, Dove and Rexona, while Sara Lee achieved its turnover in 2009 with the Sanex brand.

Table 27: Greece – Deodorant market shares in value – 2009 – Source: Form CO.

	Unilever	Sara Lee	**Combined**	Competitors
Overall	[30-40]*%	[5-10]*%	**[30-40]*%**	Beiersdorf [10-20]*% Procter & Gamble [20-30]*% Sarantis [10-20]*%
Male	[40-50]*%	[0-5]*%	**[40-50]*%**	Beiersdorf [10-20]*% Procter & Gamble [5-10]*% Sarantis [20-30]*%
Non-male	[20-30]*%	[5-10]*%	**[30-**	Beiersdorf [10-20]*%

410 See replies to Questionnaire to customers on deodorants sent on 23 April 2010, question 30.

411 See replies to Questionnaire to customers on deodorants sent on 23 April 2010, question 27.

412 See Annex 7.1 to Form CO.

413 See replies to Questionnaire to customers on deodorants sent on 23 April 2010 question 54.

			40]*%	Procter & Gamble [30-40]*% Colgate [5-10]*%

(634) The post-merger position of the Parties in a potential male deodorant market would be [40-50]*%, mainly driven by Unilever's strong Axe brand which accounts for [30-40]*% of the male deodorant market alone, while Sara Lee achieves only [0-5]*% with its Sanex for Men brand. Sarantis, with [20-30]*% market share, Beiersdorf ([10-20]*%), Procter & Gamble ([5-10]*%) are the main competitors. Triplex and Henkel hold similar positions as Sara Lee with a market share of [0-5]*% and [0-5]*% respectively.

(635) The combined market share is lower in the non-male deodorant market with [30-40]*% market share. Unilever had [20-30]*% of the entire non-male deodorant market in 2009 with its Dove and Rexona brands. Sara Lee achieved a market share of [5-10]*% with Sanex. Other important competitors are the market leader Procter & Gamble ([30-40]*% market share) and Beiersdorf ([10-20]*%), while Colgate ([5-10]*%), Sarantis ([5-10]*%) and Henkel ([0-5]*%) are of similar size as Sara Lee.

(636) In addition to the presence of a number of sizeable competitors, the market investigation confirmed that Sara Lee's Sanex brand is not perceived as a close competitor to Unilever's brands for all relevant product markets. All responding retailers considered Sarantis' STR8 as the close competitor to Axe in the male market and a wide majority saw Sanex as rather close to Noxzema, but not Dove or Rexona in the non-male deodorant market.[414] Finally, almost all retailers did not expect any anti-competitive effects resulting from the proposed transaction as sufficient alternatives would be available.[415]

(637) Based on these elements, it can therefore be concluded that the concentration is not likely to lead to a significant impediment of effective competition as regards the markets for male and non-male deodorants in Greece.

IV.2.3.2.6. Spain

IV.2.3.2.6.1. Non-male market

Product market definition

(638) As a general starting point, Unilever puts forward that there is a tension between the finding that a separate market for male deodorants can be identified and the conclusion that female products form a single product market together with unisex deodorants. Unilever submitted that on the basis of distinct markets for male, unisex and female deodorants, no overlap would arise between the Parties' brands in Spain outside the male

414 See replies to Questionnaire to customers on deodorants sent 23 April 2010, question 30.

415 See replies to Questionnaire to customers on deodorants sent on 23 April 2010, question 63. Two retailers explicitly referred to the recent entry of L'Oreal's Garnier Mineral and argued that this entry would lead to more competition in the future – see response to question 59.

segment, as non-male variants of Sanex are only present in unisex deodorants while Rexona for Women and Dove are exclusively female deodorants.

(639) According to Unilever, the following reasons are relevant to consider that male, female and unisex deodorants are distinct in Spain[416].First, female deodorants are marketed differently from unisex variants in important respects and as a result there is a quite high male usage of unisex deodorants (A TNS panel study suggests [30-40]*% of users of Sanex for Women are men, [20-30]*% for Nivea for Women, [20-30]*% for Rexona for Women and [10-20]*% for Dove[417]). Some products such as Rexona for Women or Rexona Girl carry a clear gender identifier, which has been added to the product by Unilever in 2007.

(640) Second, according to Unilever, there are important differences between the competitive landscape for female and unisex deodorants. In Spain, the leading unisex brand is Sanex, which has no presence in the female deodorant segment. Nivea is also a significant supplier of unisex deodorants and again has no presence at all in the female segment. Puig has a materially more significant share of supply of unisex deodorant to its share of female deodorants ([10-20]*% in unisex and [5-10]*% in female). Private label products account for more than [20-30]*% share of supply in unisex deodorant but they account for a share of supply of female deodorants of just [0-5]*%.

(641) Third Unilever argued that female deodorants also have specific characteristics and display significant differences to unisex deodorants, in terms of packaging and greater reliance on fragrances as a differentiator.

(642) Unilever's position regarding the existence of a potential unisex market, distinct from a female market, is misleading and cannot be accepted. First Unilever does not explain how to distinguish a unisex deodorant from a female deodorant in Spain except for the classification provided by Nielsen and presented in the Form CO. The classification of products between female deodorants and unisex deodorants is not as clear as the Parties put forward. The market investigation showed that the distinctions between female products and unisex products are blurred given that some products are classified as unisex or female depending of who provides the information.

(643) For example, the absence of Nivea from the female segment is not confirmed by Nivea's website in Spain[418]. On this website, out of 16 Nivea deodorants SKUs which are considered as non-male-, 11 are classified under the heading "*for her*" (for female consumers only) whilst five are classified under the heading "*for her and for him*" (for female and male consumers).

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416 Reply to the Statement of Objections, paragraphs 10-4 to 10-6.

417 Form CO, Table 6.8 at page 54, and more recent and extended figures from additional submission of Unilever of 27 July 2010 (with an explanatory email of 3 August 2010). As explained by Unilever, these percentages are derived as follows: TNS World Panel tracks consumer purchasing and usage habits. Usage data is collected through a 7 day diary maintained by a panel of consumers (including men and women). Each consumer identifies every occasion when they used a deodorant and records the brand and sub-brand of deodorant they used from a list provided (there is also an option for ‘Brand A (Other)’, for panellists who can not remember the sub-brand name). Usage occasions comprise all the times that a deodorant is used in a week (frequency multiplied by number of users)

418 See http://www.nivea.es/subbrands/show/269.

(644) For a competitor, the only segment that clearly differentiates itself from the rest of the market is the male segment, due to strong differences in packaging (darker), fragrances and performance[419]. Differences between unisex and female- sensitive skin products are not clear since both exhibit comparable features in terms of packaging and attributes. Similarly, another competitor classifies Neutrobalance and Palmolive[420] as female products whereas these brands are unisex according to Nielsen.

(645) In the market investigation, whilst retailers could clearly identify male brands, the distinctions between unisex and female brands were much less clear (or even non-existent)[421]. For example, one retailer classifies Nivea as a "male" and a "female" brand but not as a unisex brand[422]. A second retailer classifies Rexona as "unisex" only but not as a female brand as claimed by Unilever[423]. A third retailer also classifies Nivea and Dove as "male and female" (but not unisex), Rexona and Sanex as "male, female and unisex".

(646) A Spanish competitor considers that its products compete in four different segments: male, sensitive skin (female), unisex and other benefits (which includes mainly no white marks products). Its main competitors (Dove, Sanex and Rexona) have also products which are classified in these four categories. Dove and Rexona also have products which are considered by this supplier as unisex, such as Dove original and Rexona Fresh[424]. Another manufacturer classifies all its products as unisex, even those (such as armpit depilation deodorants) which have a clear female appeal.

(647) During the market investigation, Nielsen has been contacted in order to clarify how it classifies non-male deodorants between female and unisex products in Spain[425]. Nielsen explained that in Spain it attributes gender-characteristics (male, unisex, female) to the deodorants SKUs based on the following rules: if an explicit male or female indication is on the packaging, the SKU will be classified by Nielsen as targeting male or as targeting female. If there is no explicit indication on the packaging, a SKU can still be classified by Nielsen as male or female if the producer expressly indicates to Nielsen that it is targeting men or targeting women. If there is no indication on the packaging and the producer does not explicitly ask Nielsen to give a male or female attribute to its SKU, the SKU will automatically be labelled as "unisex".

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419 See non confidential minutes of a conference call with Puig, 23 September 2010.

420 See reply from Colgate-Palmolive to questionnaire to competitors on deodorants sent on 24 April 2010, question 13.

421 Replies to questionnaire to customers on deodorants sent on 23 April 2010, question 15.

422 See reply from [retailer] to first phase questionnaire to customers on deodorants sent on 23 April 2010, question 16.

423 See reply from [retailer] to questionnaire to customers on deodorants sent on 23 April 2010, question 16.

424 See non confidential minutes of a conference call with Puig, 23 September 2010.

425 See non-confidential minutes of a conference call with Nielsen, 13 September 2010.

(648) Nielsen submitted that male deodorants always have a clear male indication on the packaging, so it is not difficult to distinguish them from the rest. The differences between female deodorants and unisex deodorants are much less clear – the packaging only sometimes bears the female connotation and then Nielsen has to rely on whether the producer indicates expressly that this is a female product or not. Some producers do not tell this expressly. Hence even if the product is targeted at women (such as hair minimizing or sensitive skin deodorants), it is still classified as unisex by Nielsen.

(649) Nielsen's clients, such as Unilever or other producers, often request that the data for female products and unisex products be combined into one group (particularly because unisex and female products are not clearly distinguishable) and then male products in another group[426]. This is for example the case when Nielsen calculates market shares on the basis of scanner data. Nielsen also explained that retailers in Spain make their own distinction for unisex deodorants – each retailer has a different perception of what is a unisex and what is a female deodorant. This explains why, on retailers' website, the same deodorant can be classified as female by one retailer and unisex by another retailer.

(650) Consequently, there is no sound basis to clearly delineate a female-specific product market and a unisex product market. Moreover, the additional arguments put forward by Unilever do not stand up to close scrutiny. According to the figures provided by Unilever, up to about [70-80]*% of the non-male/unisex variants of Sanex in Spain are used by women. Other brands which are specifically non-male in Spain show even a greater proportion of female users (roughly in the range of [70-80]*%-[80-90]*%). This shows a significant competitive interaction between unisex brands and female brands. A hypothetical monopolist in the female "market" would not be in a position to raise prices above competitive levels since an overwhelming majority of its customers would be ready to switch to unisex deodorants.

(651) As mentioned in the Section IV.2.1.1, there is a trend towards gender differentiation through the emergence of a specific male grooming segment which targets directly men. Unilever acknowledge the existence of this trend in Spain although it contends that this trend is at different stages of evolution in different geographic markets and is less marked in Spain and in other Southern European countries. However, this trend seems to be at a relatively advanced stage: according to figures submitted by Unilever[427], the percentage of female usage of male-branded deodorants is tiny in Spain: [0-5]*% for Sanex for Men, [0-5]*% for Nivea for Men and Rexona for Men, [0-5]*% for Axe. These very low percentages of cross-gender usage shows that female consumers do not consider male deodorants as alternatives and that they would therefore rather choose female or unisex deodorants, for which they represent [70-80]*%-[80-90]*% of users.

(652) Finally, the distinctions between male and non-male deodorants are clear for respondents to the market investigation, in terms of packaging, marketing, fragrances or even performances. On the other hand, none of the Spanish customers or

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426 [...]*

427 Form CO, Table 6.8 at page 54, and more recent and extended figures from additional submission of Unilever of 27 July 2010.

manufacturers active in Spain highlighted striking differences between unisex and female products: light-coloured packaging, sweet fragrances and main credentials are common features to both set of products.

(653) Therefore, the competitive assessment regarding Spain will be carried out on the basis of a distinction between a male and a non-male market. The latter market includes female and unisex deodorants and represents [60-70]*% of all sales of deodorants in Spain.

(654) In this non-male market, a number of factors indicative of significant non-coordinated effects are present.

Merging firms have high market shares

(655) According to the Parties, the non-male (women + unisex) deodorant market covering Spain had a total value of EUR 173.5 million in 2009, [70-80]*% of which is covered by supplier brands and the remaining [20-30]*% by private label. The market has experienced an increase in value of roughly [0-5]*% between 2008 and 2009. Unilever is active in the market through its brands Dove, Rexona and Impulso (Spanish variant of Impulse) while Sara Lee serves the market with its brand Sanex, which is the largest non-male brand in Spain.

Table 28: Market shares in the non-male market for deodorants, in value, 2009, Spain.

	2009	
	,000 €	**%**
UNILEVER	[...]*	[20-30]*%
- DOVE	[...]*	[10-20]*%
- REXONA	[...]*	[10-20]*%
- IMPULSO	[...]*	[0-5]*%
SARA LEE	[...]*	[20-30]*%
- SANEX	[...]*	[20-30]*%
- OTHERS SL BRANDS	[...]*	[0-5]*%
COMBINED	[...]*	**[40-50]*%**
BEIERSDORF	[...]*	[5-10]*%
PUIG	[...]*	[5-10]*%
COTY	[...]*	[0-5]*%
Procter & Gamble	[...]*	[0-5]*%
BRISEIS	[...]*	[0-5]*%
BYLY	[...]*	[5-10]*%
HENKEL	[...]*	[0-5]*%
COLGATE	[...]*	[0-5]*%
PRIVATE LABEL	[...]*	[20-30]*%
OTHERS	[...]*	[0-5]*%
TOTAL MARKET	173 571	**100.0**

(656) The merging parties achieve a combined market share of [40-50]*% which has slightly decreased by [0-5]*% between 2008 and 2009. All other branded suppliers, either firms

with international scope (Beiersdorf, Colgate-Palmolive, Henkel, Procter & Gamble) or more local companies (Puig, Briseis, Byly) have a share below [10-20]*%.

(657) The non-male market has increased in value terms by [0-5]*% between 2008 and 2009. The most significant increase in this market has been achieved by the private label category, whose sales have risen by [30-40]*%. Among branded suppliers, only Coty (+[5-10]*% but on a more limited level of sales) and Sanex (+[0-5]*%) have increased their sales. All other branded manufacturers declined, some of them dramatically (Beiersdorf: -[10-20]*%, Puig: -[10-20]*%, Colgate:- [10-20]*%; Henkel:-[5-10]*%, Procter & Gamble:-[5-10]*%). Unilever's drop was substantially smaller (-[0-5]*%) than those of alternative brands.

(658) Sara Lee and Unilever are the largest suppliers in the non-male [market, each of them being more than twice the size of the third largest branded supplier - Puig. A merger between the two largest suppliers leading to such high market shares suggests that the merged entity is likely to enjoy significant market power in the absence of any mitigating factors. Furthermore, the overlap between the Parties is also significant with Unilever holding a [20-30]*% market share pre-merger (with [10-20]*% for Dove and [10-20]*% for Rexona) and Sara Lee a [20-30]*% share (out of which [20-30]*% is achieved by Sanex). This is indicative of strong non-coordinated effects in the form of higher prices or reduced quality and choice. There are no other suppliers holding three major brands in the non-male deodorant market in Spain.

(659) In its reply to the Statement of Objections, Unilever did not contest that the merger would unite the market leader and its immediate follower. It submitted that several respondents to the market investigation did not specifically predict a price increase for deodorants in Spain[428], although they identified potential anticompetitive effects. In particular, Unilever pointed out two customers ([retailer] and [retailer]) and competitors' responses (including Beiersdorf, Henkel and Colgate as multinational suppliers and Lactovit and Byly as national suppliers) which did not, according to Unilever, indicate that they expect price increases post-merger.

(660) In fact, several answers, including some of those referred to by Unilever pointed out that that a price increase is a likely outcome due to the significant change in the structure of the Spanish non-male deodorant market[429]. For example L'Oreal[430] stated that "*the merger will allow them to increase prices to consumers because their products are the closest substitutes and they have a dominant market position (…). They will reduce the number of promotions which will result in fewer discounts and price reductions from consumers*". According to L'Oreal, the market is currently well balanced between Unilever and Sara Lee, which have comparable market share. With the acquisition of Sanex "*Unilever will control the market and will return to its traditional promotion policy and will raise the prices*"[431].

[428] Reply to the Statement of Objections, paragraph 10-3.

[429] See reply from L'Oreal to questionnaire to customers on deodorants sent on 25 June 2010, question 13.

[430] See reply from L'Oreal to questionnaire to competitors on deodorants sent on 24April 2010, question 64.

[431] See reply from L'Oreal questionnaire to competitors deodorants sent on 25 June 2010, question 13.

(661) Contrary to what Unilever explained, the fact that the transaction might lead to price increases is also the opinion of Beiersdorf which indicated that even if a price drop might be expected initially as a result of production savings and volume gains, Unilever "*as market leader (…) can take over all promotional slots, reducing the number of competitors in the market and then move the average price in the market upwards*"[432]. Likewise Henkel believes that a price increase is likely because of a removal of a strong competitive constraint on Unilever's premium brands. According to Henkel, the risk is particularly acute in Spain where Unilever and Sara Lee are the closest and the largest competitors[433].

Merging firms are close competitors in the non-male market

(662) An important aspect for assessing the unilateral effects arising from the proposed merger is the degree of substitutability between the Parties' non-male-deodorants. The higher the degree of substitutability between their products, the more likely it is that the Parties will significantly raise prices to retailers in relation to non-male deodorants.

(663) Customers having responded to the market investigation did not provide a clear-cut picture regarding closeness of competition between the Parties' brands. By contrast, several competitors indicated that the merging Parties' brands are perceived to be close substitutes since these brands share similar attributes in terms of brand equity and available variants[434]. One competitor submitted a report[435] which presents a consumer survey conducted in Spain suggesting that consumers perceive Unilever brands (Axe, Rexona and Dove) as "*almost identical*" to Sanex in many features, such as efficacy or naturalness. More specifically as regards the non-male market, the same study revealed that Dove and Sanex were perceived to be of similar quality in terms of "*gentle on the skin*" and "*good value for money*". Sanex with Rexona were perceived as almost identical in terms of "*gentle on the skin*", "*good in use*", "*natural*" and "*good value for money*" criteria.

(664) Unilever does not contest that there is competitive interaction between Dove, Rexona and Sanex. It states[436] that competition between these three brands is less direct than suggested in this Decision for three main reasons: (i) Sanex is a unisex deodorant while Dove and Rexona for Women are marketed specifically for women; (ii) Sanex is weighted towards roll-on formats (similar to Dove) while Rexona for Women is stronger in the aerosols segment; and (iii) Dove has a higher average price point than Sanex, notably in the roll-on segment.

[432] See reply from Beiersdorf to questionnaire to competitors on deodorants sent on 24 April 2010, question 73.

[433] See reply from Henkel to questionnaire to customers on deodorants sent on 24 April 2010, question 73.

[434] See reply from Henkel to questionnaire to customers on deodorants sent on 24 April 2010, question 56. See reply from Puig to questionnaire to customers on deodorants sent on 24 April 2010, question 45. See also non confidential minutes from a conference call with Puig, 23 September 2010.

[435] "*Closeness of competition between Unilever and Sara deodorant products in Spain – a report for L'Oreal, Patricia Lorenzo, Jorge Padilla, Nadine Watson, 26 July 2010*".

[436] Reply to the Statement of Objections, paragraph 10-8.

(665) The significant competitive interaction between unisex and female deodorants is discussed in section IV-2-1. With respect to format, Rexona is indeed stronger in sprays but Dove and Sanex have roughly the same representation in roll-ons and sprays (50/50). Other brands are stronger in contact formats (Nivea mainly in roll-ons, Byly in creams) or in sprays (Lactovit, Palmolive, private label products).

(666) On pricing, data communicated by Unilever show that the picture is different according to formats. In spray products Dove, Rexona, Sanex and Nivea are located close to each other on price terms[437], followed by Lactovit and Heno de Pravia (both Puig brands) at a lower price point. Looking at roll-ons products Dove is typically sold at the highest price followed by Nivea and then Sanex[438]whereas other rival products (Lactovit, Byly and Mum) tend to have lower price positions. In both segments private label products have much lower price positions than the cheapest branded products. These elements show that Dove, Rexona and Nivea are represented in the same pricing space (particularly in sprays) with rival brands priced slightly lower and private label products again below those rival brands.

(667) With a view to assessing the closeness of competition between the Parties and their competitors' male brands, the Parties provided in the Form CO regarding Spain a gains/loss analysis[439] for Sanex for Women. Unilever provided on 26 July 2010 an updated analysis of these interaction data. As mentioned above in the assessment related to the Belgian market, it is noted that these results should be interpreted cautiously since they may suffer from a significant contamination effect. For instance, since an individual customer may purchase deodorants also for other family members, the switching patterns observed cannot be directly interpreted as a sign of actual substitutability. A customer who is tracked as switching from, say Sanex for Women to Sanex for Men, or another male brand may in reality have simply been purchasing a deodorant for her son or her new partner without having changed her own usage pattern[440]. The interaction indices presented in Unilever's submission of 26 July 2010 are reproduced in Figure 24.

Figure 24: Interaction index for Sanex for Women in Spain

[...]*

(668) The highest interaction index is with Sanex for Men, probably reflecting the fact that less than [30-40]*% of Sanex for Women users are male (see recital 84) and the

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[437] Form CO, Annex Deo 6-14.

[438] Rexona has a similar positioning as Nivea but Rexona sells only small volumes of roll-on formats.

[439] See Figures 6.23 and 6-24 Form CO.

[440] Unilever claims that the survey panel is carried out at individual level in Spain and not at household level. This does not alleviate the risk of contamination since individual customers may purchase deodorants for the whole family.

contamination effect. Among non-male brands, the interaction indices of Sanex are the highest with Lactovit followed by Nivea, Dove, Rexona for Women and Byly.

(669) The interaction indices presented by Unilever are a comparison of the actual gross consumer switching of the brand (here, Sanex for Women) with the "expected" switching based on the proportions of the competing brands' market shares in the total deodorant category (combining male and non-male).[441] A high interaction index alone therefore does not necessarily suggest substantial actual switching from and to small brands. When the market share is taken into account, the actual consumer switching as observed in the panels is significantly lower than the interaction index alone would suggest.

(670) Therefore, while interaction indices provide some insights about the closeness of brands, the gross switching figure from and to a brand provides a more illustrative picture about the actual switching patterns of consumers. Upon request, the Parties have submitted the underlying data used by GFK/Europanel containing the actual switching figures. Based on the same data as used for interaction index, Figure 25 shows in descending order for each brand their share of total gross switching to and from Sanex for Women in 2009. Consistent with the method used by GFK/Europanel, the total gross switching is compared with the proportions of the competing brands' market shares in the total deodorant category ("value of competitors").

Figure 25: Gross switching for Sanex for Women in Spain

[...]*

(671) The main interactions of Sanex for Women can be found with all other brands and the private label category. However, the category "other brands" includes several small brands aggregated together (such as Palmolive, Fa, Coty, Kinesia, Heno de Pravia) and it is doubtful that this high interaction is representative of significant closeness between Sanex and one of these individual brands. The main interaction with individual brands is with Rexona and Dove (and Axe, although it is less than Axe's market share suggests). However the interaction with Axe indicates that the contamination effect is likely to be an important factor in the data, in particular given the fact that according to TNS Worldpanel data only [0-5]*% of Spanish females use male deodorant brands.[442]

(672) In general, and with the exception of Axe (for which gross switching is smaller than the proportionate market share) and Sanex for Men (for which it is the opposite), gross switching of Sanex for Women is relatively proportionate to the market shares of the competitors. This shows that market shares can be considered as a reasonable proxy to estimate the relative share of customers switching from/to Sanex for Women to/from other brands.

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441 The market shares are calculated on the basis of the brands' sales within the panel. This may to some extent vary from the market shares based on Nielsen data, but in general provides a rather consistent picture with those.

442 Form CO, Table 6.8 at page 54, and more recent and extended figures from additional submission of Unilever of 27 July 2010.

(673) Of all the Sanex for Women switchers that switched to or from a non-Sanex brand (either male or non-male) [20-30]*% switched to or from a Unilever brand. This figure confirm that the risk of losing sales to Unilever appear to be an important constraint on Sanex prior to the merger. These switches would not constrain Sanex after the transaction since the switches would no longer be considered lost to the merged entity.

(674) In order to assess whether Sanex represents a competitive constraint on Unilever's brands, Unilever has been asked to provide gross switching data for Dove and Rexona for Women respectively. As show in Figure 26 Sanex for Women is the main interacting brand with Dove and Rexona for Women, with the exception of aggregated small brands which cannot be considered as individually representative.

Figure 26: Gross switching for Dove in Spain

[...]*

Figure 27: Gross switching for Rexona for Women in Spain

[...]*

Assessment on the basis of format and product attributes

(675) A detailed analysis of different attributes associated by customers of non-male deodorants in Spain shows [reference to parties' internal documents].[443]

(676) In addition, it has been tried to identify in more detail in which sub-segments Sanex is positioned and where a significant overlap with Unilever's brands exists. Moreover, the combination of price points and product characteristics could complement the qualitative analysis of closeness between Unilever's brands and Sanex.The sub-segmentation is based on a classification provided by Unilever.

(677) The analysis shows that Sanex has a sizeable position in the skin care, AP, efficacy and the no white mark sub-segments. It has significant interaction with Unilever in all these sub-segments. Sanex competes in all the sub-segments where Rexona is present (skin care, fragrance, efficacy, and no white marks). The same is true with Dove (with the exception of the efficacy sub-segment) which in addition is present in the hair minimising sub-segment. Nivea is also present in these four sub-segments. Lactovit is also only present in two (skin care and AP). Fa only competes in the fragrance sub-segment and Byly is not present in the no white marks sub-segment. Conversely, the Parties' brands are hardly active in the fragrance and the hair minimising sub-segments.

443 [...]*

Table 29: Spain: Deodorants: 2009: sub-segment shares value – non-male.

Non-Male 2009 [...]*	Skin Care	Fragrance	Anti-Perspirant	No White Marks	Efficacy	Hair minimising	Girl	Without characteristics
Rexona	[0-5]*%		[10-20]*%	[30-40]*%	[30-40]*%		[90-100]*%	
Dove	[10-20]*%		[10-20]*%	[20-30]*%		[20-30]*%		
Sanex	[30-40]*%		[20-30]*%	[30-40]*%	[20-30]*%			
Royal Ambree		[10-20]*%						
Combined	**[50-60]*%**	**[10-20]*%**	**[50-60]*%**	**[80-90]*%**	**[60-70]*%**	**[20-30]*%**	**[90-100]*%**	
Nivea	[10-20]*%		[5-10]*%	[5-10]*%	[5-10]*%	[50-60]*%		
Puig (Lactovit-Heno)	[5-10]*%	[30-40]*%	[5-10]*%			[5-10]*%		
FA		[30-40]*%						
Byly	[5-10]*%		[5-10]*%		[10-20]*%	[10-20]*%		
Private labels	[10-20]*%	[10-20]*%	[10-20]*%	[0-5]*%				[80-90]*%
Others	[10-20]*%	[10-20]*%	[10-20]*%	[5-10]*%	[10-20]*%			[10-20]*%
Share of non-male market[444]	[60-70]*%	[0-5]*%	[80-90]*%	[10-20]*%	[30-40]*%	[0-5]*%	[0-5]*%	[5-10]*%
Turnover of segment in million EUR	**115.9**	**9.5**	**141.3**	**18.8**	**63**	**3.4**	**5.1**	**14.8**

Sub-segmentation by format

(678) Regarding a segmentation of the market by format, for the purpose of the assessment of closeness of competition, the assessment was focused on two specific formats, namely sprays and roll-ons which account respectively for [50-60]*% and [40-50]*% of all non-male deodorants sold in Spain.

444 The sum of percentage of each segment is above 100% because one given SKU can have several characteristics (AP, skin, white, etc).

(679) Within sprays in the non-male market, the findings are consistent with the results in the overall non-male market as shown in Table 30. There appears to be very significant interaction between the Parties in particular in the skin care, no white marks, AP and efficacy (for Sanex and Rexona) sub-segments.

Table 30: Spain: Deodorants: 2009: sub-segment shares value – spray non-male.

Non-Male Spray 2009 [...]*	Skin Care	Fra-grance	Anti-Perspi-rant	No White Marks	Effica-cy	Hair Minimi-sing	Girl	Without characte-ristics
Rexona	[5-10]*%		[20-30]*%	[30-40]*%	[60-70]*%		[90-100]*%	
Dove	[10-20]*%		[10-20]*%	[20-30]*%		[20-30]*%		--
Sanex	[20-30]*%		[20-30]*%	[30-40]*%	[20-30]*%	--		
Royal Ambree		[10-20]*%						
Combined	**[50-60]*%**	**[10-20]*%**	**[60-70]*%**	**[80-90]*%**	**[80-90]*%**	**[20-30]*%**	**[90-100]*%**	
Nivea	[5-10]*%	--	[5-10]*%	[5-10]*%	[5-10]*%	[50-60]*%		--
Puig (Lactovit-Heno)	[5-10]*%	[30-40]*%	[5-10]*%	--		[0-5]*%		--
Byly	--	--%		--	[5-10]*%	[10-20]*%		[10-20]*%
Colgate	[0-5]*%							
PL	[10-20]*%	[10-20]*%						[80-90]*%
Others	[5-10]*%	[10-20]*%	[10-20]*%	[0-5]*%	[5-10]*%			[70-80]*%
Share of non-male spray segment	[50-60]*%	[5-10]*%	[60-70]*%	[10-20]*%	[30-40]*%	[0-5]*%	[0-5]*%	[10-20]*%
Turnover of segment in million EUR	**55.3**	**9.5**	**66.6**	**18.8**	**32.2**	**1.7**	**4.4**	**16**

(680) Combining the product characteristics with average prices for the last three years provides additional support of the closeness between Sanex and Unilever's brands. Figure 28, Figure 29 and Figure 30 show the price positioning of the main brands in (i) the skin care sub-segment segment, (ii) the efficacy sub-segment and (iii) the no white marks sub-segment. In the skin care sub-segment Sanex is positioned close to both Rexona and Dove, and somewhat above Lactovit and other competitors. Rexona is

slightly more expensive in the efficacy sub-segment. In the no white marks sub-segment Sanex has moved its price position slightly above Dove and Rexona in 2009.

Figure 28 Average price points for Spanish non-male deodorants, skin care segment (spray deodorants) for 2007, 2008 and 2009

[...]*

Figure 29 Average price points for Spanish non-male deodorants, efficacy segment (sprays deodorants) for 2007, 2008 and 2009

[...]*

Figure 30 Average price points for Spanish non-male deodorants, no white marks segment (spray deodorants) for 2007, 2008 and 2009

[...]*

(681) The same exercise has been carried out in relation to the roll-on segment of the non-male market. As shown in Table 31, the interaction in skin, AP and white mark sub-segments appear clearly.

Table 31: Spain: Deodorants: 2009: sub-segment shares value – roll-on non-male.

Non-Male Roll-on 2009 [...]*	**Skin Care**	**Anti-Perspirant**	**No White Marks**	**Efficacy**	**Hair Minimising**	**Girl**
Rexona	[0-5]*%	[0-5]*%	[0-5]*%	[5-10]*%		[90-100]*%
Dove	[10-20]*%	[10-20]*%	[30-40]*%		[10-20]*%	
Sanex	[30-40]*%	[30-40]*%	[30-40]*%	[30-40]*%	--	
Combined	**[50-60]*%**	**[40-50]*%**	**[70-80]*%**	**[40-50]*%**	**[10-20]*%**	**[90-100]*%**
Nivea	[10-20]*%	[10-20]*%	[10-20]*%	[10-20]*%	[40-50]*%	
Puig (Lactovit-Heno)	[0-5]*%	[0-5]*%	--		[10-20]*%	
Byly	[5-10]*%	[5-10]*%	--	[20-30]*%	[10-20]*%	
PL	[10-20]*%	[10-20]*%		[10-20]*%		
P&G	[5-10]*%	[0-5]*%				
Others	[5-10]*%	[5-10]*%	[5-10]*%	[5-10]*%		
Share of non-male roll-on segment	[80-90]*%	[90-100]*%	[5-10]*%	[40-50]*%	[0-5]*%	[0-5]*%
Turnover of	**52.3**	**61.8**	**5.7**	**25**	**1.7**	**0.7**

segment in million EUR						

(682) Looking at price points, Figure 31 and Figure 32 show the price positioning of the main brands in (i) the skin care sub-segment segment and (ii) the no white marks sub-segment. In the skin care sub-segment, Sanex is positioned close to Rexona, with Dove and Nivea priced a little higher, especially in the no -white marks sub-segment. Private label products are priced dramatically lower than the branded alternatives in both spray and roll-on formats.

Figure 31 Average price points for Spanish non-male deodorants, skin care segment (roll-on deodorants) for 2007, 2008 and 2009

[...]*

Figure 32 Average price points for Spanish non-male deodorants, no white marks segment (roll-on deodorants) for 2007, 2008 and 2009.

[...]*

(683) Unilever disagrees[445] with the conclusion that because Dove, Sanex and Rexona for Women are each present in significantly varying degrees in the same four (or three) segments, this means that they are inherently closer competitors than competing brands only present in three (or two) sub-segments. This view cannot be shared. Customers who are attached to a particular attribute or characteristic and are seeking an alternative to their preferred brand would in all likelihood turn to competitors with the same or comparable deodorant in their product range, which increases the chances of these brands to be in competition in customers' minds.

(684) [reference to parties' internal documents][446], [reference to parties' internal documents][447] [reference to parties' internal documents]

Demand estimation and merger simulation

(685) In order to complement the other elements in the investigation, an economic model has been used to predict the likely outcome of the transaction.[448] The various parameters of the model, as well as its potential limitations, are described in detail in the Annex.

(686) Table 32 summarises the results of the merger simulations in terms of percent price increase relative to the pre-merger price level. The figures are averages over the sample periods of estimation. The simulation is carried out on the basis of data for all deodorants in Spain regardless of gender. As such it even allows for potential pattern

445 Reply to the Statement of Objections, paragraph 10-10 c) ii).

446 [reference to parties' internal documents]

447 [reference to parties' internal documents]

448 See the Technical Annex for a detailed description of the model, the results, the Parties' response and the Commission's assessment.

of substitution across the gender delineation. The overall figures include the price changes of all manufacturers in the sample. The table focuses on showing the overall price increase in deodorants as well as in the male market. Finally, the table also shows the predicted price increases for Unilever's and Sara Lee's main individual brands.

Table 32: Estimated price increases in Spain

		gender segments		brands			
	overall	male	non-male	AXE	DOVE	REXONA	SANEX
one-level n.logit	2.0	2.2	1.9	1.5	3.1	3.3	5.0
two-level n.logit	2.1	2.3	2.0	1.7	3.4	3.4	5.3

Note: see the Technical Annex for the confidence intervals and more technical details.

(687) In Spain, the overall simulated price increase in deodorants and in the non-male market would be in the region of 2%.[449] Although the predicted price increase for Sanex is higher than the one for Unilever brands, these prices increases do not show the same degree of dispersion as in Belgium, the Netherlands or the United Kingdom. This is due to the fact that the own-price elasticities are significantly higher than in the other three countries. This might be a reflection of the stronger than usual presence and importance of private label deodorant products in Spain.[450]

(688) The high level of market shares, the elements showing that the transaction will eliminate a close competitor of Unilever's brands, the expected price increases, either at the overall level or the brand level, are all strong indications of non-coordinated effects in the absence of any mitigating factors.

The merger will eliminate an important competitive force

(689) The proposed transaction will not only eliminate a close competitor to two of Unilever's core brands – Dove and Rexona – but will also eliminate a dynamic competitive force in the deodorant segment. Sanex is a growing force in the Spanish market, in particular in the non-male market, where it has seen its sales increasing by [0-5]*% in value, whereas all other competitors decreased with the exception of the private label category.

(690) Sara Lee managed to build a strong reputation as innovative supplier, notably through the introduction of natural deodorants (Sara Lee was the first supplier to launch deodorants with Pierre d'Alun). The invention relates to a method of preparing a

449 With a 90% confidence interval of [0.2, 5.9]*%.

450 As explained in recital (181) and in more detail in the Technical Annex, the assessment of the merger simulation and in particular the predicted price increases must be put into context with other qualitative and quantitative analysis of each specific market.

composition combining a burnt aluminium salt with the carrier liquid. This innovation allowed Sara Lee to grow significantly and to defend its share despite growth of private label products.

(691) Unilever contests that Sara Lee is alone in introducing innovations in the marketplace, pointing to several innovations launched by Unilever, Puig and Byly. Unilever also notes that private label products have increased their sales and market share more dramatically than Sara Lee[451].

(692) It is not contested that private label products have been a particularly dynamic competitor which has been growing in recent years in Spain. Likewise, it is not argued that Sanex is the only innovator in the market. However the innovations that Sara Lee brought into the market, combined with other characteristics as its strong brand equity and the significant space that Sanex occupies on retailers' shelves, is one of the factors that contributed to its recent growth in the non-male market.

(693) Therefore the merger would not only remove a close competitor to Unilever's brands, but also a dynamic competitor which has spurred competitive rivalry in the Spanish non-male deodorant market.[452]

<u>Competition from private label products</u>

<u>Unilever's position</u>

(694) Unilever considers that the Statement of Objections does not attribute sufficient importance to private label products in Spain. Unilever underlines that non-male private label deodorants in Spain have a [20-30]*% share of the market in value, ([30-40]*% by volume), their sales are growing at over nine times Sanex's rate of growth and the gross switching analysis shows that private label products accounts for greater amounts of switching to/from Sanex than any Unilever brand.

(695) Moreover, according to Unilever, private label products cover a similar range of variants and formats as branded products and are therefore of equivalent weight and deep. The packaging and branding of private label products are similar to those of branded counterparts. Retailers also seek to introduce innovations for their private label products, including some "me-too " innovations but also genuine original products such as "Deliplus Junior", launched by [retailer] and targeting younger users (from the age of 6) which is a novelty in the market. Retailers also heavily promote their private label products though they do not advertise (at least not in deodorants)[453].

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451 Reply to the Statement of Objections, paragraphs 10-13.

452 [...]*

453 *Unilever /Sara Lee Body Care: Spain – supplementary submission (private label deodorants)"* provided by Unilever on 15 September 2010.

(696) Unilever considers that these evidences should allow the Commission to conclude that private label products are effective (actual or potential) constraints in the non-male market in Spain[454].

Assessment

(697) Unilever's submissions regarding the role of private label products in the non-male deodorant market in Spain have been carefully assessed. In particular it has been sought to verify whether private label products exert a significant competitive constraint on the merging parties 'brands so as to prevent any anticompetitive outcome (such as price increase or reduction of innovation).

Private label products are growing but not to the detriment of Sanex or Unilever's brands

(698) Sales of private label products in the non-male market have increased by [30-40]*% between 2008 and 2009. The main competitors active in the non-male market were significantly hurt by this increase of private label products. Between 2008 and 2009, Colgate, Beiersdorf and Puig lost between [10-20]*% and [20-30]*% of their sales. One competitor explained that in this context some suppliers abandoned the market, such as P&G with its brand Mum[455].

(699) By contrast, Sanex managed to increase its overall sales in the non-male market by almost [0-5]*% during the same period. Sanex was the only branded player to increase its sales in this context of general decline of brands in the non-male market. This element shows that the significant rise in sales of private label products did not impact Sanex's market position at all and that private label products stole market share from all other suppliers but Sanex. This reflects that Sanex has a brand equity on the market which is sufficiently strong to resist to an increase of private label products such as the one which occurred in recently in Spain.[456] Unilever's drop in sales figures was substantially smaller (-[0-5]*%) than those of alternative brands, which show that Dove and Rexona have also to some extent been resistant to private label products.

(700) The decline of alternative brands in the context of an increase of sales of private label products has been reported by several respondents to the market investigation. One competitor submits that "*Private labels will grow in the next 2-3 years because of their low price in the general crisis context, increasing price sensitiveness – <u>more private labels launches taking the place of minor brands at the point of sale</u>*" and "*Private labels are growing at double digits whereas the category market is flat. On the other side, only top brands are not suffering from the SKU's reductions from the retailers. Both suggest a clear substitution from minor brands to private labels*"[457]

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454 Reply to the Statement of Objections, paragraphs 1-33 and 1-34.

455 See reply from Puig to questionnaire to competitors on deodorants sent on 23 April 2010, question 47.

456 [...]*

457 See reply from Puig to questionnaire to competitors on deodorants sent on 23 April 2010, question 38 and 39. See also non-confidential minutes from a conference call with Puig, 23 September 2010 where it stated that "*This increase of private labels' presence has occurred to the detriment of the smaller brands (such*

(701) Another local competitor shares this view. This supplier explains that in [retailer], one of the major Spanish retailer focusing on own brands, it is losing share to the benefit of private label products and in alternative trade channels, it faces aggressive trading conditions from retailers that are better matched by powerful suppliers such as Unilever[458]. Regarding specifically private label products, this producer explains that "*If the driver continues begging the price, private labels can follow growing. And only brands with important equity value or heritage can survive using two levers: relevant innovation and investment in mass media communication*"[459]

(702) Unilever disputes the finding that Sanex withstood private label products' growth. According to Unilever, private label products account for the highest level of gross switching to and from Sanex purchasers; Sanex's growth of [0-5]*% may be less than it might have been in the absence of constraint of private label products; private label products are considered by retailers as real alternatives to branded products and a majority of retailers consider enlarging their own brand range[460].

(703) The issues related to gross switching have already been addressed in recital (670). Gross switching to and from Sanex for Women is relatively proportionate to the market shares of the competitors. This would indicate that market shares can be considered as a reasonable proxy to estimate the relative share of customers switching from/to Sanex for Women to/from other brands. As the share of the private label category is relatively high, it can possibly explain the relatively high interaction index of private label products (taken as a whole) with Sanex.

(704) The second argument that Sanex's growth could have been ever higher is irrelevant and the same could be said regarding other competitors in the market. Sanex's expansion might also have been bigger in the absence of competition from Unilever's brands.

(705) Regarding the third argument, it is true that retailers mentioned in the market investigation their intention to expand their private label range. This is the case for two such retailers[461] which have a limited share of private label products in deodorants and it also applies to some extent to another one[462], which explained that increasing the share of private labels is always an objective of the business though they were not specifically targeting deodorants. A fourth retailer states that it plans to launch a private label range in 2011.

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as Puig's) but it has not severely impacted the major brands. Sanex, Dove and Rexona have maintained or increased their market presence. All the others have declined."

458 See non-confidential minutes from a conference call with Byly on 13 September 2010.

459 See reply from Byly to first phase questionnaire to competitors deodorants sent on 23 April 2010, question 38.

460 Reply to the Statement of Objections, paragraph 10-16.

461 See replies from [retailer] and [retailer].

462 See replies from [retailer].

(706) The key issue is whether the growth of private label products constraints the merging parties' brands. A majority of retailers considers that the increase of private labels primarily impacted alternative brands. One retailer explains that the rise of private label products has no significant effect on the main brands in their assortment, which are Sanex, Rexona, Axe and Nivea, but rather on second-tier brands such as Lactovit, Heno de Pravia, Tulipa Negro and Byly[463]. A second retailer does not think that its future private label products could easily replace Sanex or Unilever's brands[464]. A third distributor is of the opinion that the growth has no major effect on branded products[465] and seems to consider that Byly's or Puig's brands do not play in the same league as Unilever's or Sara Lee's. That retailer does not carry the Lactovit brand[466] and argues that Byly plays a limited role in several segments of the non-male market, such as sprays or anti-perspirant deodorants[467]. Only one of the retailers holds that all brands (including Sanex) have lost shares as a result of private label products' growth (its share of private labels – [5-10]*% - is much smaller than [retailer's] or [retailer's].)[468].

(707) That specific trend in the Spanish market is particularly evident in Figure 33, which shows the relative share of private label and suppliers' brands in the Spanish non-male market since early 2007. It is clear from the graph in Figure 33 that Unilever and Sara Lee maintained their relative position despite the growth of private label products, whilst alternative brands have significantly lost market share. If these trends continue, the Spanish market would be evolving towards the constitution of two major blocks, namely Unilever /Sara Lee on the one hand and private label products on the other hand.

Figure 33: Relative share of private label products and suppliers' brands in the Spanish non-male market since 2007

[...]*

(708) On 15 September 2010, Unilever provided upon request the gross switching figures related to private label products as well as Nivea, Byly and Lactovit[469], for the period

[463] See non-confidential minutes from a conference call with [retailer] on 1 October 2010. See also reply from [retailer] questionnaire to customers on deodorants sent on 14 September 210, question 4.

[464] See reply from [retailer] to questionnaire to customers deodorants sent on 14 September 2010, question 6 "*We would not be able to replace any of them. Customers who like a brand will not change easily, despite small differences on price*"

[465] See reply from [retailer] to questionnaire to customers on deodorants sent on 14 September 2010, question 4. "*Ninguna marca ha perdido venta como consecuencia da un increment de la marca privada porque las marcas de fabricante han crecido algo mas que las marcas privadas* ».

[466] See reply from [retailer] to questionnaire to customers on deodorants sent on 14 September 2010, question 8.

[467] See reply from [retailer] to questionnaire to customers on deodorants sent on 14 September 2010, question 9.

[468] See reply from [retailer] to questionnaire to customers deodorants sent on 14 September 2010, question 8.

[469] Competitors interaction Spain Q2.

between March 2009 and 2010. Consistent with the method used by GFK/Europanel, the total gross switching is compared with the proportions of the competing brands' market shares in the total deodorant category ("value of competitors").

(709) Those switching data show that the level of switching to and from private label products for Sanex is smaller than the value of its market share. This indicates that customers of private label products switch less to and from Sanex than they should do taking into account's Sanex's market position. The level of switching to and from Axe is also smaller than its market share would suggest. Those data show that the main brand in the male market (Axe) and the main brands in the non-male market (Sanex) are less constrained by private label products than rival brands. Indeed Byly and Lactovit account for a higher degree of gross switching to and from private label products than their market shares would suggest.

Figure 34: Gross switching for Private labels in Spain

[...]*

(710) This trend has not been reversed in 2010 according to Nielsen figures. Table 33 shows the evolution of several non-male brands in Spain during the period between August 2009 and August 2010. It confirms that Sanex and Unilever brands are maintaining their level of sales despite a (more moderate) growth of private label products. Nivea, Byly, Briseis, Puig and Fa are sharply declining.

Table 33: evolution of several non-male brands in Spain between August 2009 and August 2010.

August-2009-August 2010	Sanex	Dove	Rexona	PL	Nivea	Byly	Briseis	Puig	Fa
Evolution of sales (in value in %)	+[0-5]*%	+[0-5]*%	-[0-5]*%	+[10-20]*%	-[5-10]*%	-[0-5]*%	-[5-10]*%	-[10-20]*%	-[20-30]*%

[One specific retailer] represents the large majority of private label products ‘penetration and growth.

(711) Unilever explains in detail[470] that growth of private label products in Spain is not confined to [the specific retailer] and that even if it were, the evidence of [the specific retailer]’s ability to increase its private label range indicate that other retailers also have the same possibility to follow the same strategy, if expedient.

(712) With respect to the first point, Unilever indicated that other discounters such as [retailer] and [retailer] have private label products sales of deodorants comparable to [the specific retailer]. Whereas [40-50]*% of [the specific retailer]’s value sales of deodorants are private label products, the same figure is [20-30]*% for [retailer] and [20-30]*% for [retailer]. Those three retailers represent one third of Unilever’s sales of deodorants. [retailer] increased its private label products sales in value from [10-20]*% to [10-20]*%. According to Unilever, retailers continue to seek enlarging their private label

470 Reply to the Statement of Objections, paragraphs 10-18 to 10-25

range, as evidenced by replies made by [retailer] and [retailer] in the market investigation.

(713) Even if private label products' growth were considered to be a phenomenon specific to [the specific retailer], Unilever submitted this would still have market-wide relevance. Unilever described Spanish retailers as benchmarking their prices against [the specific retailer], selling products available at [the specific retailer] at lower prices than those not listed by [the specific retailer] and comparing their shopping carts with the same basket bought at [the specific retailer].

(714) As to the first issue, it is correct that "discounters" such as [retailer] and [retailer] have a significant level of private label deodorants available on their shelves and that their objective is to increase the penetration of private label products. At this stage however, the wide gap between [the specific retailer] and its retail competitors is not on the verge of being filled. As indicated by Unilever[471], [10-20]*% of deodorants sales in [retailer] were achieved in 2009 with private label products, [5-10]*% in [retailer], [0-5]*% in [retailer] (these three retailers accounting for [30-40]*% of Unilever's sales of deodorants[472]). This hardly compares with the [40-50]*% achieved in [the specific retailer] in 2009 and [50-60]*% for the first six months of 2010[473].

(715) The development of private label products is a priority for [the specific retailer][474]. [the specific retailer] accounts for the wide majority of sales of non male private label deodorants in Spain ([70-80]*%). It sales of all deodorants (including branded and private label products) is much smaller ([10-20]*%)[475]. In 2009, [the specific retailer] accounted for [60-70]*%[476] of the growth of sales of private label products despite its already high starting base. Even if private label products' growth is not strictly confined to [the specific retailer], it has not taken off in other retail chains. Thus, the growth observed in the sales of private label products is mainly the result of [the specific retailer]'s expansion in the deodorant category.[477]

(716) What is more, competing retail chains did not confirm in the market investigation that they intend to follow the same path as [the specific retailer]. One retailer explains that "*We are neither able to open 100 shops per year nor our claim for our customers is PL.*

471 Reply to the Statement of Objections, figure 10-1.

472 Form CO, Table 6-35.

473 See reply from [retailer] to questionnaire to customers on deodorants sent on 14 September 2010, question 1.

474 See non-confidential minutes from a conference call with [retailer], 1 October 2010.

475 Form CO, table 6-35.

476 See reply from [retailer] to questionnaire to customers on deodorants sent on 14 September 2010, question 1.

477 [...]*

We try to have a product variety instead of the leader and our PL"[478]. A second retailer denies any intention to go on a strategy similar to [the specific retailer]'s[479].

(717) As to the market-wide relevance, replies to the market investigation were mixed. For example, one retailer submits that it takes into account all products available on the market to set its private label products prices whereas a second retailer confirms that it takes [the specific retailer]'s prices as a benchmark[480].

(718) Competitors are however more convinced of the impact of [the specific retailer]'s policy on the rest of the trade. One Spanish supplier explains that although [the specific retailer]'s key reasons for success are specific to [the specific retailer], they have repercussions on others retailers policy. Larger manufacturers such as Unilever or Sara Lee have intensified promotions in order to remain competitive on prices in a context of soaring of private label products' sales. In this context, customers request more discounts and promotions and deodorant prices are pushed downwards. Consequently, even if other retailers have not reached the high rate of private label products available in [the specific retailer], branded products prices in other retailers' outlets tend to decrease as a result of this policy.

(719) This producer explains that this situation broadly explains the decline of alternative brands. With its market share and its brands with strong equity, Unilever is better placed than other manufacturers to match demands from trade partners[481]. It describes the situation as follows "*We try to give exclusive promotions to retailers with some value. But our customers want more discount and promotion like 3X2. Besides we are losing promotion activity for the pressure of Unilever +SL and Garnier, because they are accepting these aggressive conditions from Channel. In short those brands want to dominate the market buying promotion activity in all retailers*"[482]. [the specific retailer] also confirmed that if they have to delist brands to free up shelf space for their private label products (carrying many brands is a costly exercise), they will do it to the detriment of smaller brands, which are losing market share and do not have the same appeal to consumers as the main brands[483].

Sara Lee's increase in sales in 2009 is due to its brand equity and not to a particular response to private labels' growth.

(720) Unilever explained that the ability of Sara Lee to grow its share in Spain during 2009 was not due to any particular brand equity of Sanex, but rather to Sara Lee responding

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478 See reply from [retailer] to questionnaire to customers on deodorants sent on 14 September 2010, question 7 b).

479 See reply from [retailer] to questionnaire to customers on deodorants sent on 14 September 2010, question 7 b): "*Los costes derivado de esta estrategia no se compensarian con el incremo de las ventas*".

480 Replies to questionnaire to customers on deodorants sent on 14 September 210, question 7 c).

481 See non-confidential minutes from a conference call with Byly, 13 September 2010.

482 See reply from Byly to questionnaire to competitors on deodorants sent on 23 April 2010, question 41 b).

483 See non-confidential minutes from a conference call with [retailer] on 1 October 2010.

to competitive pressure from branded and private label deodorant suppliers, together with extreme pressure from the retail trade.

(721) In particular Unilever described the project [...]* which was a strategy implemented by [...]* to respond to the rise of private label products in Spain. The project involved launching a new [...]* deodorant in [...]* ml (instead of [...]* ml) at a recommended retail selling price (RSP) of EUR[...]* (instead of EUR[...]*). [...]*. As the reduction of the content was smaller than the decrease in prices, customers had a better deal and this strategy helped [...]* to maintain its sales of [...]* deodorants.

(722) [...]*

(723) The market investigation did not substantiate the picture described by Unilever. [...]* [...]* disagrees that the increase of private labels was originally the reasons for this price decrease or that Sara Lee had anticipated on any soaring in private label presence. Prices have gone down because of supply and demand factors, difficult economic conditions in Spain at the time of the price cut and competition from less expensive brands (including, but not limited to, private label products). Unilever [...]*[484] although [...]*.

(724) Internal documents provided by the Parties [...]*[485].

(725) [...]* it seems that the average price of sprays in 2009 has increased so as to compensate the decrease of the average price of roll-ons. The decrease in volume sales of sprays (-9%) is larger than the decrease in value sales (-4%), which is an indication of an increase of the average price of sprays (in roll-ons, volume sales have increased more than value sales, which exemplifies the price cut in roll-ons).

(726) [...]*[486] [...]* [487] [...]* not consistent with the picture depicted by Unilever regarding fierce competition from private label products and significant countervailing buyer power.

Conclusion on private labels and alternative brands

(727) Although the presence of private label is increasing in the Spanish non-male market, this growth takes place mainly in [the specific retailer] and is primarily impacting smaller brands, which are losing sales and market share. Unilever and Sara Lee brands are not suffering of this and some of their brands have even increased their market presence. It is therefore concluded that neither private labels nor alternative brands will exert sufficient competitive constraints on the new entity post-merger.

Countervailing buyer power

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[484] [...]*

[485] [...]*

[486] [...]*

[487] See Unilever's reply to the request for information sent on 25 June 2010, annex 1-1.

(728) Section IV.2.3.1.3 addresses, at a general level, why the buyers of the Parties' deodorants are not in a position to resist to a price increase to the point where it would not materialize.

(729) The arguments put forward in Section IV.2.3.1.3 also apply to the Spanish non-male-deodorant market. The Parties hold brands which are considered as must-carry by retailers such as Dove, Rexona and Sanex which are the three best selling brands in non-male deodorants in Spain. These three brands have all market shares above 10% in the non-male market (Dove [10-20]*%, Rexona [10-20]*%, Sanex [20-30]*%) whereas the fourth brand Nivea holds a market share of [5-10]*%.

(730) The merger will further enhance Unilever's position as a single supplier of an unrivalled strength and would further shift bargaining power (if any) from the retailer to the supplier. First it simply reduces the set of credible alternatives that the retailer can choose from to replace Unilever's products, if it chooses to do so. In such a market structure, it would be impossible for the retailer to construct a deodorant shelf without Unilever's products and Unilever would thus be an unavoidable trading partner in deodorants in Spain in relation to prices setting, promotions, new listings and placement on shelves. If the retailer is not willing to entirely eliminate Unilever’s products from the shelves, even a partial delisting of important Unilever brands such as Axe, Dove or Rexona would clearly endanger the retailer's turnover in the deodorant category.

(731) In a market where all other suppliers would only hold brands of significantly smaller consumer popularity, it is clear that a shelf without Unilever's deodorants would not be complete in terms of set of brands that the customer expects to find in the stores and product attributes. The merger will remove one of the independent significant competitive forces on the market and will even strengthen Unilever's pre-existing position.

(732) Unilever contends that it is not sufficient for a finding of an absence of buyer power that the merger reduces the set of alternative since any merger would have this effect, regardless of the market position of the incumbent suppliers. If significant credible alternatives (albeit a reduced set) remain available for the customer post-merger then the buyer would still have the ability to switch to alternative sources of supply, conferring bargaining power. Unilever submits that there would still be significant credible branded alternatives available to customers post merger, in particular, Nivea, Lactovit, Garnier Mineral and Byly[488].

(733) It is demonstrated that alternative brands do not exert significant competitive constraints on Unilever and Sara Lee.

(734) Likewise, if retailers decide to significantly increase the penetration of private label products (which they are not always prepared to do), they would rather delist smaller brands and maintain market presence of Unilever and Sara Lee. Even if [the specific retailer]'s policy to develop private label products has an impact on other retailers' strategy which request higher discounts from manufacturers, Unilever is better placed

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[488] Reply to the Statement of Objections, paragraph 10-29.

to accommodate these requests and therefore retailers lack sufficient alternatives to exert bargaining power towards Unilever.

(735) It thus appears that retailers lack sufficient alternatives that they can choose from in case of price increases. When asked about the risk of losing a substantial amount of their end-customers should retailers not carry the brands of the parties, evidences were mixed but some retailers expressed clearly their concerns in this respect. For example, one retailer unambiguously indicates that a substantial number of end-customers would switch to other retailers if they were not to stock Axe, Dove, Rexona or Sanex, which would have a negative effect on them[489]. A second retailer clearly expresses the same position[490] as well as a third one[491] which identifies Axe, Sanex and Rexona as must-carry brands without which sales would significantly decline.

(736) In that context, the submission of Unilever that the notion of an “unavoidable trading partner” is misconceived lacks factual foundation[492]. It is not contested that retailers need some brands as much as manufacturers need an access to the market. However, the balance of power between retailers and manufacturers depend upon the market share of the brand. Unilever controls almost [40-50]*% of the total market and possesses most successful brands with high notoriety and significant customer awareness. Also, as retailers indicate, end-consumers expect to find these strong and popular brands on the shelves, and retailers cannot ignore this. The combination of powerful brands, which are considered by retailers as necessary, in the hands of a single supplier is a major shift in the structure of the Spanish market. [retailer] stated clearly that it is not sustainable to reduce shelf space of major brands to the benefit of private label products. Only smaller brands with small brand equity and limited advertisement and media investments are likely to suffer from a substitution by private label products[493].

(737) The very strong position of Unilever's brands compared to its competitors is also reflected by the weighted distribution in retail stores of the different suppliers in Spain. Table 34 shows that Unilever managed to secure widespread distribution compared to its competitors in Spain[494].

Table 34: Weighted distribution in Spain

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489 See reply from [retailer] to questionnaire to customers on deodorants sent on 25 June 2010, question 17.

490 See reply from [retailer] to questionnaire to customers on deodorants sent on 25 June 2010, question 17.

491 See reply from [retailer] to questionnaire to customers on deodorants sent on 23 April 2010, question 54 where it is asked to identify must-carry brands *“.Axe, Sanex, Rexona porque en caso contrario las ventas saldrían perjudicadas.”*

492 Reply to the Statement of Objections, paragraph 10.30.

493 See non-confidential minutes from a conference call with [retailer], 1 October 2010.

494 See weighted distribution data submitted by the Parties on 29 April 2010 under the name BD100d_One pager plus – updated in April10.

Spain	Same Period YAGO	Previous Period
Rexona for Women	[…]*	[…]*
Dove For Men	[…]*	[…]*
Nivea For Women	[…]*	[…]*
Fa total	[…]*	[…]*
Sanex For Women	[…]*	[…]*
Adidas for Women	[…]*	[…]*
Garnier Total	[…]*	[…]*
Byly Total	[…]*	[…]*
Lactovit Total	[…]*	[…]*
Massimo Duti Total	[…]*	[…]*
Heno Total	[…]*	[…]*
Antonio Banderas Total	[…]*	[…]*

(738) Dove, Rexona for Women and Sanex for Women have the highest weighted distribution in Spain. The level of distribution for Unilever is comparable to what is found in other countries. This indicates that the strategy of [the secific retailer] regarding private label products does not appear to have significantly reduced Unilever's ability to get into almost all shelves in Spain. Post-transaction Unilever will control those three brands as well as Axe, which has a very strong position in the male market (almost [40-50]*%). The transaction would therefore reinforce Unilever's position as unavoidable trading partner for the retailers.

(739) Unilever contests the value of these elements related to weighted distribution data arguing that while Unilever and Sara Lee achieve [...]* distribution other important branded competitors have similar levels of distribution and have significantly increased their distribution over the last year.[495] Unilever mentions Beiersdorf ([...]*), Coty ([...]*), Byly ([...]*) and Puig ([...]*).

(740) Unilever's conclusions on weighted distribution are clearly misleading. Weighted distribution for Unilever and Sara Lee is also high at brand level ([...]* for Rexona for Women, [...]* for Dove, [...]* for Sanex for Women) which is not the case for other competitors. Looking at individual brands in the non-male market, it is rather clear that weighted distribution of these brands is lower and furthermore declining (except for Byly and Heno de Pravia): from [...]* to [...]* for Nivea for Women, from [...]* to [...]* for Fa, from 29 to [...]* for Adidas for Women and from [...]* for Lactovit (including presumably weighted distribution of Lactovit male products).

(741) In addition, Spain is a relatively fragmented distribution market, where the four biggest retailers account for less than [50-60]*% of the national deodorant sales and even among these four retailers important variations occur[496]. The two main retailers account each for around [10-20]*% of the national sales whereas the third and fourth retailers represent around [5-10]*% of the national deodorant sales. These four retailers account for [50-60]*% of Unilever and [50-60]*% of Sara Lee's deodorant sales, with roughly the same variations among these retailers as in the general picture. Thus, even if countervailing buyer power were to exist for the larger retailers, it is unlikely to sufficiently off-set potential adverse effects of a merger since it would only ensure that a particular segment of customers, with particular bargaining strength, is shielded from significantly higher prices or deteriorated conditions after the merger.

(742) Finally it is doubtful that buyer power, should it exists in the non-male market, will remain effective following the merger, given that the merger eliminates one significant alternative and strengthens the incumbent supplier with an additional strong brand.

(743) Therefore, due to the lack of potential alternatives, countervailing buyer power post-merger cannot be considered as a mitigating factor which is likely to off-set any of the potential adverse effects of this transaction.

Sufficient entry unlikely to occur

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[495] Reply to the Statement of Objections, paragraph 10-10 c), iv.

[496] See Figure 6-35, Form CO.

(744) The market investigation has in general shown that entering the deodorant market – either from a neighbouring personal care market or as a new entrant is difficult. Even if the technology required and the investment to manufacture deodorants could be considered as "accessible", high barriers to entry exist in the form of significant A&P expenditure to create brand awareness and get access to shelf space from retailers.

(745) In addition, a potential entrant would have to take into account the likely reaction of a powerful incumbent like Unilever. Unilever's increased market share with the addition of Sanex rather strengthens its ability and incentive to fight entry. [...]* In Spain the combination of Unilever's broad portfolio of brands and its already leading position with market shares around 45% seems to indicate that Unilever has not only the ability but also the incentive to prevent entry of new brands or expansion of existing ones as it would be through its leading position the one suffering most from such activities.

(746) Likewise, the combination of an unrivalled number of main brands in the hands of a single supplier increases room for Unilever to adjust its products accordingly preventing the competitor's product to have a unique product proposition. With one additional brand, Unilever's ability to reposition its products to squeeze the new entrant will also be improved. Consequently, the addition of a new brand to Unilever's already broad portfolio could increase barriers to entry.

(747) The elements gathered during the market investigation show that there has been no significant entry in the Spanish non-male deodorant market. Coty introduced the Playboy brand in 2008, but this brand is exclusively targeted at male customers and is therefore in direct competition with Axe but not Dove or Rexona for Women or Sanex. In its reply to the Statement of Objections, Unilever pointed to Reckitt Benckiser or Procter & Gamble as potential new entrants[497]. Procter & Gamble is already "present" in the market with Mum, a very weak ([0-5]*% market share) and declining brand. No indication regarding a potential entry of Reckitt-Benckiser has been gathered during the market investigation.

(748) Despite the fact that the non-male deodorant market is growing in Spain, the market investigation indicates that retailers carefully select new products to be listed. One competitor bring forward that "*Generally retailers do not favour new suppliers to stimulate competition. Space is limited, so any new supplier has to take the place of another product. Listing of new products only take place if the chances of adding value to the overall category value are very high or if huge investments are granted to the retailers to buy distribution.*"[498] A second competitor stated that new suppliers can be favoured in only two instances: in case of a niche product; or if the supplier demonstrates that the retailer will significantly increase its margin.[499] One retailer

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[497] Reply to the Statement of Objections, paragraph 10.36.

[498] See reply from Beiersdorf to questionnaire to competitors on deodorants sent on 25 June 2010, question 23.

[499] See reply from Henkel to questionnaire to competitors on deodorants sent on 25 June 2010, question 23.

stated clearly that it is cautious when it comes to store new products and only does it with a "one-in/one out" approach or if it brings enough value to the category.[500]

(749) Indeed, apart from re-launches of existing products and brand extensions (such as adding new variants to a brand), the only significant new entry in the recent years in the Spanish non-male deodorant market has been Garnier Mineral. Unilever, in the form CO, put a lot of emphasis on the Garnier entry, being carried out by a major international supplier L'Oreal with a high level of investment supporting the launch. Indeed, Garnier is the most significant entry of a new competitor in the recent years in the Spanish non-male market, and probably also in the next years to come.

(750) As the entry of Garnier Mineral only took place in January 2010, it is too early to conclude on the outcome this entry in the long run. In response to this entry Unilever reacted immediately by launching Rexona Mineral in Spain in February 2010. [...]*

(751) Most of the respondents to the market investigation consider this entry as relatively promising (but not entirely surprising given the high level of advertisement and promotion that only a very large company like L'Oreal could sustain). They are however sceptical on whether Garnier will be able to keep up in the long term.

(752) In terms of market share, Garnier reached a peak of [0-5]*% in April 2010 and then decreased. Its market seems to have stabilised around [0-5]*%-[0-5]*% of the non-male market. It weighted distribution is [...]*, which is well below the one of major brands (which is understandable) but also below weighted distribution of Byly, Lactovit or Nivea. And the prospects of being listed in [retailer] are scarce. [retailer] indicated that Garnier is covering a niche which is already covered by suppliers' brands and private labels and that it does not feel the necessity to fill the shelves with this product[501].

(753) It is therefore concluded that it is unlikely that new entry will occur in the Spanish non-male market so as to counteract the adverse effects of the merger.

Overall conclusion

(754) Consequently, it is concluded that the notified concentration is likely to significantly impede effective competition on the market for non-male deodorants in Spain.

IV.2.3.2.6.2. Male deodorant market

Merging firms have high market shares

(755) According to the Parties, the male deodorant market covering Spain had a total value of EUR 97.6 million in 2009, [90-100]*% of which is covered by supplier brands and the remaining [5-10]*% by private labels. The male deodorant market has experienced an increase in value of [0-5]*% between 2008 and 2009. Unilever is active in the

[500] See for example reply from [retailer] to questionnaire to customers on deodorants sent on 23 April 2010, question 57.

[501] See non-confidential minutes of a conference call with [retailer], 1 October 2010.

market through its brand Axe (which is by far the largest brand in the male market) and Rexona for Men while Sara Lee serves the market with its brands Sanex and Williams.

Table 35: Market shares in the market for male deodorants, in value, 2009, Spain.

	2009	
	,000 €	**%**
UNILEVER	[...]*	[50-60]*%
- AXE	[...]*	[30-40]*%
- DOVE	[...]*	[0-5]*%
- REXONA	[...]*	[10-20]*%
SARA LEE	[...]*	[10-20]*%
- SANEX	[...]*	[5-10]*%
- WILLIAMS	[...]*	[5-10]*%
COMBINED	[...]*	**[60-70]*%**
BEIERSDORF	[...]*	[10-20]*%
PUIG	[...]*	[5-10]*%
COTY	[...]*	[5-10]*%
P&G	[...]*	[0-5]*%
BRISEIS	[...]*	[0-5]*%
BYLY	[...]*	[0-5]*%
HENKEL	[...]*	[0-5]*%
PRIVATE LABEL	[...]*	[5-10]*%
OTHERS	[...]*	[0-5]*%
TOTAL MARKET	97 647	**100.0**

(756) The Parties achieve a combined market share of [60-70]*% which has decreased by roughly [0-5]*% between 2008 and 2009. It will exceed by six times the share of its nearest competitors Beiersdorf with its brands Nivea ([10-20]*%), Puig with its brand Lactovit ([5-10]*%) and Coty with its brands Adidas and Playboy ([5-10]*%). Three small suppliers (Procter & Gamble, Briseis and Byly) each have market shares below [0-5]*%.

(757) The male deodorant market has increased in value terms by [0-5]*% between 2008 and 2009. The most significant increase has been achieved by private label products, whose sales have risen by [20-30]*%. Unilever's brands (Axe and Rexona) have remained stable in general but the evolution of both brands has been different: Axe slightly declined (-[0-5]*%) but Rexona for Men saw a solid growth (+[5-10]*%). Sara Lee grew by [0-5]*% but again with differences between its two brands (Williams –[5-10]*%, Sanex +[10-20]*%). Beiersdorf (+[0-5]*%), Puig (+[0-5]*%) have experienced a small increase. Coty increased it sales significantly (+[10-20]*%).

(758) Unilever and Sara Lee are the largest suppliers in the market. Unilever is five times the size of its nearest branded competitor Beiersdorf and Sara Lee is slightly larger than Beiersdorf. A merger between the two largest suppliers leading to such high market shares suggests that the merged entity is likely to enjoy significant market power in the absence of any mitigating factors; Furthermore the overlap between the Parties is also significant with Unilever holding a [50-60]*% market share pre-merger (with [30-40]*% for Axe, the leading non-male brand in Spain, and [10-20]*% for Rexona) and

Sara Lee a [10-20]*% share (with [5-10]*% for Sanex and [5-10]*% for Williams). This is indicative of strong non-coordinated effects in the form of higher prices or reduced quality and choice. There are no other suppliers holding four major brands in the male deodorant market in Spain.

Merging firms are close competitors in the male deodorant market

(759) Another important aspect for assessing the unilateral effects arising from the proposed merger is the degree of substitutability between the Parties' male deodorants. The higher the degree of substitutability between their products, the more likely it is that the Parties will significantly raise prices to retailers.

(760) Customers having responded to the market investigation did not provide a clear-cut picture regarding closeness of competition between the parties' brands. By contrast, several competitors indicated that the merging parties' brands are perceived to be close substitutes since these brands share similar attributes in terms of brand equity and available variants[502].

(761) Unilever argues that the majority of Unilever's market position derives from its sales of Axe, which, according to Unilever, has a unique market position and a premium price positioning such that it is not a particularly close competitor to Sanex for Men and Williams. Unilever also underlines that the Parties' other brands (Sanex for Men, Williams and Rexona for Men) have competitors of equivalent size in the segment, namely Nivea for Men, Adidas (supplied by Coty) and Lactovit (supplied by Puig)[503].

(762) Whilst it is true that Sanex is a somehow more distant competitor to Axe, this is much less the case of Williams. The switching data and the assessment on the basis of format and products attributes show that the interaction between Williams and Axe is significant and that these two brands have comparable attributes in terms of fragrance and efficacy credentials. This is only in relation to price positioning that Axe can be found at higher price points than Williams (and all other brands).

(763) In relation to other competitors, it is correct that the set of brands available in the male deodorant market is broader than in the non-male deodorant market. The market positions of these rival brands are also comparable to those Sara Lee's brands taken individually. However, Unilever holds a very high market share pre-merger since it controls more than half of the market. Taking into account this very high market position pre-merger, the elimination of a close competitor is more likely than not to trigger significant non-coordinated effects

(764) With a view to assessing the closeness of competition between the Parties and their competitors' male brands, the Parties provided in the Form CO regarding Spain a gains/loss analysis[504] for Sanex for Men and Williams. As mentioned in Section IV-2-3-

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[502] See reply from Henkel to questionnaire to competitors on deodorants sent on 24 April 2010, question 56. See reply from Puig to questionnaire to competitors on deodorants sent on 24 April 2010, question 45. See also non confidential minutes from a conference call with Puig, 23 September 2010.

[503] Reply to the Statement of Objections, paragraph 10-42.

[504] See Figures 6.23 and 6-24 Form CO.

2-6-1 these results should be interpreted cautiously since they may suffer from a significant contamination effect. For instance, since an individual customer may purchase deodorants also for other family members, the switching patterns observed cannot be directly interpreted as a sign of actual substitutability. The interaction indices presented in the Form CO are shown in Figure 35.

Figure 35: Gain/loss analysis for Sanex for Men and Williams.

[...]*

(765) Among male brands, the interaction indices of Sanex for Men are the highest with Nivea for Men followed by private label products, Lactovit, Adidas and Rexona for Men, but much less significant with Axe. Likewise Williams has meaningful interaction indices with the same set of male brands (Adidas, Nivea, Tulipa, Negro, Rexona for Men) and its competitive interaction with Axe appear to be weaker. In the light of this broad range of products interacting with Sara Lee's male brands, it is not possible, on the basis of this set of data, to draw any firm conclusion on closeness on competition.

(766) The interaction indices presented by Unilever are a comparison of the actual gross consumer switching of the brand (here, Sanex for Men and Williams) with the "expected" switching based on the proportions of the competing brands' market shares in the total deodorant category (combining male and non-male).[505] A high interaction index alone therefore does not necessarily suggest substantial actual switching from and to small brands. When the market share is taken into account, the actual consumer switching as observed in the panels is significantly lower than the interaction index alone would suggest.

(767) Therefore, while interaction indices provide some insights about the closeness of brands, the gross switching figure from and to a brand provides a more illustrative picture about the actual switching patterns of consumers

(768) Upon request, the Parties have submitted the underlying data used by GFK/Europanel containing the actual switching figures. Based on the same data as used for the above depicted interaction index, Figure 36 shows in descending order for each brand their share of total gross switching to and from Sanex for Men as well as Williams. Consistent with the method used by GFK/Europanel, the total gross switching is compared with the proportions of the competing brands' market shares in the total deodorant category ("value of competitors").

Figure 36: Gross switching for male Sanex in Spain

[...]*

(769) The gross switching data are not conclusive as regard the interaction for Sanex for Men. The main interaction can be found with Sanex for Women and other brands, reflecting the fact that [30-40]*% of users of Sanex for Women are male. The brand interacts also, though to a lesser extent with private label products, Axe and Nivea for

505 The market shares are calculated on the basis of the brands' sales within the panel. This may to some extent vary from the market shares based on Nielsen data, but in general provides a rather consistent picture with those.

Men. Moreover, the category "other brands" includes several small brands aggregated together (such as, Fa, Playboy, Kinesia) and it is doubtful that this high interaction is representative of significant closeness between Sanex for Men and one of these individual brands. The main interaction with individual brands is with Axe, Rexona and Nivea and to a lesser extent Adidas, Lactovit and Dove.

Figure 37: Gross switching for Williams in Spain

[...]*

(770) Regarding Williams, the main interactions can be found with all other brands and the private label category. Again the category "other brands" includes several small brands aggregated together and it is doubtful that this high interaction is representative of significant closeness between Williams and one of these individual brands. The main interaction with individual brands is with Axe, Sanex for Women, Nivea for Women, Adidas and Rexona for Men.

(771) However, all the Sanex for Men users that switched to or from a non-Sanex brand (either male or non-male) [20-30]*% switched to or from a Unilever brand. The figure is the same regarding Williams. These numbers confirm that the risk of losing sales to Unilever appear to be an important constraint on Sanex and Williams prior to the merger.[506] These switches would not constrain these brands after the transaction since they would no longer be considered lost to the merged entity.

(772) [...]*[507] [...]*[508].

Assessment on the basis of format and product attributes

(773) More refined data at brand level based on scanner data covering Spain in 2007-2009 have been provided. The scanner data have been complemented by product attributes, in particular gender (male, non-male), format (crème, roll-on, spray, wipes, vapo) and further characteristics (skin care, fragrance, anti-perspirant, efficacy, no-white-mark, girl or others).

(774) This refinement could in general allow identifying in more detail in which sub-segments Sanex and Williams are positioned and where a significant overlap with Unilever's brands exists. Moreover, the combination of price points and product characteristics could complement the qualitative analysis of closeness between Unilever's brands, Sanex and Williams.

(775) Table 36 presents the main characteristics or each male brand available in Spain. It shows that Sanex/Williams (especially Williams) have a sizeable position in the

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[506] [...]*

[507] [...]*

[508] [...]*

fragrance sub-segment leading to a share of [70-80]*%, the no -white marks sub-segment, where only Unilever and Sara Lee's brands compete, the AP sub-segment and the efficacy sub-segment ([50-60]*% in each). Nivea is present in all four sub-segments except the no white marks one. Other competitors are present in three (Adidas), two (private label products) or only one of these sub-segments.

Table 36: Spain: Deodorants: 2009: sub-segment shares value - male.

Male 2009 **[...]***	**Skin Care**	**Fragrance**	**Anti-Perspirant**	**Efficacy**	**No White marks**	**Others**
Axe		[60-70]*%	[20-30]*%	[10-20]*%		
Rexona	[0-5]*%		[20-30]*%	[20-30]*%	[70-80]*%	
Dove	[0-5]*%		[0-5]*%	[0-5]*%		
Sanex/Williams	[20-30]*%	[5-10]*%	[5-10]*%	[5-10]*%	[10-20]*%	
Combined	**[20-30]*%**	**[70-80]*%**	**[40-50]*%**	**[50-60]*%**	**[80-90]*%**	
Nivea	[50-60]*%		[10-20]*%	[20-30]*%		
Adidas			[5-10]*%	[10-20]*%	[10-20]*%	
Lactovit	[10-20]*%					
Private label		[10-20]*%		[5-10]*%		[50-60]*%
Massimo Dutti		[5-10]*%				
Cotyastor						[5-10]*%
R Marcas						[20-30]*%
Don Algodon						[5-10]*%
Others	[5-10]*%	[10-20]*%	[10-20]*%	[5-10]*%	[0-5]*%	[5-10]*%
Share of male segment[509]	[20-30]*%	[30-40]*%	[50-60]*%	[40-50]*%	[5-10]*%	[0-5]*%
Turnover of segment in million EUR	**20.0**	**38.5**	**55.4**	**42.1**	**5.2**	**2.8**

Sub-segmentation by format

(776) Regarding a segmentation of the male market by format, for the purpose of this assessment of closeness of competition, the assessment focused on two specific

509 The sum of percentage of each segment is above 100% because one given SKU can have several characteristics (AP, skin care, white, etc).

formats, namely sprays and roll-ons which account respectively for [80-90]*% and [10-20]*% of all male deodorants sold in Spain.

(777) Within sprays in the male market, the findings are consistent with the results in the overall male market, except for the fragrance sub-segment, as shown in Table 37.

Table 37: Spain: Deodorants: 2009: sub-segment shares value – Spray male.

Spray Male 2009 [...]*	Skin Care	Fragrance	Anti-Perspirant	Efficacy	No White Marks	Others
Axe		[60-70]*%	[20-30]*%	[10-20]*%		
Rexona	[0-5]*%		[20-30]*%	[20-30]*%	[70-80]*%	
Dove	[0-5]*%		[0-5]*%	[0-5]*%		
Sanex/Williams	[20-30]*%	[5-10]*%	[5-10]*%	[5-10]*%	[10-20]*%	
Combined	**[20-30]*%**	**[70-80]*%**	**[50-60]*%**	**[50-60]*%**	**[80-90]*%**	
Nivea	[50-60]*%		[10-20]*%	[20-30]*%		
Adidas			[5-10]*%	[10-20]*%	[10-20]*%	
Lactovit	[10-20]*%					
Private labels		[10-20]*%		[5-10]*%		[50-60]*%
Massimo Dutti		[5-10]*%				
Cotyastor						[5-10]*%
R Marcas						[20-30]*%
Don Algodon						[5-10]*%
Others	[5-10]*%	[10-20]*%	[10-20]*%	[5-10]*%	[0-5]*%	[5-10]*%
Share of spray male segment[510]	[20-30]*%	[40-50]*%	[60-70]*%	[50-60]*%	[5-10]*%	[0-5]*%
Turnover of segment in million EUR	**20.0**	**38.5**	**55.4**	**42.1**	**5.2**	**2.8**

510 The sum of percentage of each segment is above 100% because one given SKU can have several characteristics (AP, skin, white, etc).

(778) Product characteristics were also combined with average prices for the last three years. Figure 38 and Figure 39 show the price positioning of the main brands in the efficacy sub-segment. It seems that Sanex is positioned close to Rexona and Adidas, whereas Axe can be found at the high end of the market.

Figure 38 Average price points for Spanish male deodorants, efficacy segment (sprays deodorants) for 2007, 2008 and 2009

[...]*

(779) The same exercise has been carried in relation to the roll-on segment of the male deodorant market.

Table 38: Spain: Deodorants: 2009: sub-segment shares value – roll-on male

Male Roll-on [...]*	Skin care	Anti-Perspirant	Efficacy	No White marks
Axe		[0-5]*%	[0-5]*%	
Rexona		[0-5]*%	[0-5]*%	
Sanex/Williams	[30-40]*%	[20-30]*%	[20-30]*%	[80-90]*%
Dove	[0-5]*%	[0-5]*%	[0-5]*%	
Combined	**[30-40]*%**	**[30-40]*%**	**[30-40]*%**	**[80-90]*%**
Nivea	[50-60]*%	[40-50]*%	[40-50]*%	
Adidas		[5-10]*%	[5-10]*%	
Private labels		[5-10]*%	[5-10]*%	
MUM				[10-20]*%
Others	[5-10]*%	[10-20]*%	[5-10]*%	
Share of male roll-on segment[511]	[70-80]*%	[90-100]*%	[80-90]*%	[0-5]*%
Turnover of segment in million EUR	**9.8**	**11.2**	**10.8**	**0.4**

(780) Looking at price points in the efficacy sub-segment, it is evident that Sanex and Rexona have the same positioning and followed a comparable trend in the last three

[511] The sum of percentage of each segment is above 100% because one given SKU can have several characteristics (AP, skin care, no white marks, etc).

years. Nivea is slightly more expensive ([10-20]*%) whereas Axe can be found at the high end of the market.

Figure 39 Average price points for Spanish male deodorants, efficacy segment (roll-on deodorants) for 2007, 2008 and 2009

[...]*

(781) The analysis of the sub-segments therefore indicates that Sanex and Williams compete directly with Unilever brands, Rexona for Men and to a lesser extent Axe, in terms of product attributes as regards efficacy and non-white marks, in sprays and in roll-ons.

(782) In terms of price positioning, Sanex/Williams and Rexona for Men have a similar price positioning in the efficacy sub-segment and the non-white marks one, whereas Axe is much more expensive. These pricing elements indicate that in the segments where Rexona for Men and Sanex/Williams are in direct competition with one another in terms of product attributes, they also strongly compete on prices. The elimination of Sanex/Williams would thus remove a significant alternative to Rexona for Men in these segments.

Demand estimation and merger simulation

(783) In order to complement the other elements in the investigation, an economic model has been used to predict the likely outcome of the transaction. [512] The various parameters of the model, as well as its potential limitations, are described in detail in the Annex.

(784) Table 39 summarises the results of the merger simulations in terms of percent price increase relative to the pre-merger price level. The figures are averages over the sample periods of estimation. The simulation is carried out on the basis of data for all deodorants in Spain regardless of gender. As such it even allow for potential pattern of substitution across the gender delineation. The overall figures include the price changes of all manufacturers in the sample. The table focuses on showing the overall price increase in deodorants as well as in the male market. Finally, the table also shows the predicted price increases for Unilever's and Sara Lee's main individual brands.

Table 39: Estimated price increases in Spain

		gender segments		brands			
	overall	male	non-male	AXE	DOVE	REXONA	SANEX
one-level n.logit	[0-5]*%	[0-5]*%	[0-5]*%	[0-5]*%	[0-5]*%	[0-5]*%	[5-10]*%
two-level n.logit	[0-5]*%	[0-5]*%	[0-5]*%	[0-5]*%	[0-5]*%	[0-5]*%	[5-10]*%

Note: see the Technical Annex for the confidence intervals and more technical details.

[512] See the Technical Annex for a detailed description of the model.

(785) In Spain, the overall simulated price increase in deodorants and in the male market would be in the region of [0-5]*%. Although the predicted price increase for Sanex is higher than the one for Unilever brands, these prices increases do not show the same degree of dispersion as in Belgium, Netherlands or the United Kingdom. This is due to the fact that the own-price elasticities are significantly higher than in the other three Member States. This might be a reflection of the stronger than usual presence and importance of private label deodorant products in Spain.[513]

Competition from private label products

(786) The share of private label products is this market is limited ([5-10]*%) and does not compare with its penetration in the non-male market. The share of private label products has nevertheless increased between 2008 and 2009 in the male deodorant market, passing from [5-10]*% to [5-10]*% (+[20-30]*% in value, +[20-30]*% in volume).

(787) Similarly to the non-male deodorant market, the increase of private label products penetration has not severely impacted the major brands of the Parties. Axe slightly shrank in value (-[0-5]*%) but saw a significant gain in volume (+[5-10]*%) reflecting a small drop in Axe spray prices[514]. Rexona for Men also increased its sales in value (+[5-10]*%) and in volume (+[5-10]*%). The same is true for Sanex (+[10-20]*% in value, +[0-5]*% in volume). Only Williams saw a decline of its market position, both in value (-[5-10]*%) and in volume (-[10-20]*%). These elements are consistent with the results revealed by the market investigation in the non-male market: the Parties' brands have been resistant to the surge of private label product.

(788) Unlike the non-male deodorant market, other male brands also grew despite the increasing presence of private labels. This was the case for Nivea (+[0-5]*% in value, +[10-20]*% in volume), Coty (+[10-20]*% in value, +[5-10]*% in volume) and Puig (+[0-5]*% in value, +[0-5]*% in volume). It appears that in the male deodorant market, private label products contribute to the overall growth of the category, reflecting the increasing penetration among male users of deodorants specifically labelled as targeting male consumers.

(789) [reference to parties' internal documents][515] [reference to parties' internal documents]

(790) Although the presence of private labels is increasing in the male deodorant market, it does not appear that the growing penetration of this category has impacted the main brands of the Parties (with the exception of Williams). Customers do not seem to view private label products as likely to replace Unilever's or Sara Lee's brands on the shelves, particularly for those brands with strong consumers awareness and which managed to maintain their position such as Axe, Rexona for Men and Sanex. On the other hand and unlike the situation in the non-male market, alternative rival brands do

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[513] As explained in recital (181) and in more detail in the Technical Annex, the assessment of the merger simulation and in particular the predicted price increases must be put into context with other qualitative and quantitative analysis of each specific market

[514] Axe is almost exclusively ([90-100]*%) sold in a spray format.

[515] [reference to parties' internal documents].

not seem to have particularly suffered from the increase of private labels products' penetration, which explains to a large extent the growth of the male category as a whole.

Lack of countervailing buyer power

(791) Lack of countervailing buyer power is analysed in Section IV.2.3.1.3 on a general level, including why the buyers of the Parties' deodorants are not in a position to resist to a price increase.

(792) The reasons put forward in Section IV.2.3.1.3 equally apply to the Spanish male deodorant market. The Parties hold very strong brands in the male deodorant market. For instance retailers generally explained that even when they undertake a category review, a potential delisting of Axe would not be considered, in the light of the overall strength of this brand in the market[516].

(793) The merger will enhance Unilever's position as a single supplier of an unrivalled strength and would further shift bargaining power (if any) from the retailer to the supplier. First, it simply reduces the set of credible alternatives that the retailer can choose from to replace Unilever's products if he chooses to do so. In such a market structure, it would be impossible for the retailer to construct a deodorant shelf without Unilever's products and Unilever would thus be an unavoidable trading partner in deodorants in Spain in relation to prices setting, promotions, new listings and placement on shelves. If the retailer is not willing to entirely eliminate Unilever’s products from the shelves, even a partial delisting of important Unilever brands such as Axe, Dove or Rexona would clearly endanger the retailer's turnover in the deodorant category

(794) This is particularly true in Spain where Unilever will control more than [60-70]*% of the male market and [50-60]*% of the overall deodorant market[517]. The combination of these brands in the hands of a sole supplier will significantly increase its bargaining power towards retailers when it comes to negotiating discounts at category level. The very strong position of Unilever compared to its competitors and retailers is also reflected by the weighted distribution in retail stores of the different suppliers in Spain. Weighted distribution represents the share of sales of deodorants accounted for by all the stores in which the brand is stocked. It is therefore a measure of the retail exposure given to a brand and thus of the willingness of those retailers to display a particular brand on the shelves. Table 40 shows that for male brands in Spain Axe and Rexona for Men managed to secure widespread distribution compared to its competitors, with the exception of Nivea for Men.

Table 40: Weighted distribution in Spain

Spain	Same Period YAGO	Previous Period

516 See replies to question 53 in questionnaire to customers on deodorants, sent on 23 April 2010.

517 Form CO, table 6-30.

Axe total	[...]*	[...]*
Rexona for Men	[...]*	[...]*
Dove For Men		[...]*
Nivea For Men	[...]*	[...]*
Fa total	[...]*	[...]*
Sanex For Men	[...]*	[...]*
Williams Total	[...]*	[...]*
Adidas for Men	[...]*	[...]*
Playboy Total	[...]*	[...]*
Garnier Total	[...]*	[...]*
Byly Total	[...]*	[...]*
Lactovit Total	[...]*	[...]*
Massimo Duti Total	[...]*	[...]*
Heno Total	[...]*	[...]*
Antonio Banderas Total	[...]*	[...]*

(795) Customers lack sufficient alternatives to exert countervailing buyer power. The share of private label products is still relatively limited ([5-10]*%). If retailers decide to significantly increase the penetration of private labels (which they are not always prepared to do), they would in general maintain market presence of Unilever and Sara Lee's products. Customers do not view private labels as likely to replace Unilever's or

Sara Lee's brands on the shelves, particularly for those brands with strong consumers awareness and which managed to maintain their position such as Axe, Rexona for Men and Sanex. Though growing, private label products are not strong alternatives that retailers could use to improve their bargaining position when facing a particularly strong supplier.

(796) Moreover, Spain is a relatively fragmented distribution market, where the four biggest retailers account for less than [50-60]*% of the national deodorant sales and even among these four retailers important variations occur[518]. The two main retailers sell each for around [10-20]*% of the national sales whereas the third and fourth retailers sell for around [5-10]*% of the national deodorant sales. These four retailers account for [50-60]*% of Unilever and [50-60]*% of Sara Lee's deodorant sales, with roughly the same variations among these retailers as in the general picture[519].

(797) Section IV.2.3.1.3 explains that even if a large retailer were to derive some degree of bargaining power from its large size or a sophisticated purchasing strategy, there is no generally convincing reason why other retailers should be also be positively affected. Thus, even if countervailing buyer power were to exist for the larger retailer, it is unlikely to sufficiently off-set potential adverse effects of a merger since it would only ensure that a particular segment of customers, with particular bargaining strength, is shielded from significantly higher prices or deteriorated conditions after the merger. Therefore, it is unlikely that even if countervailing buyer power were to exist, it would shield all customers from potential adverse effects of the proposed transaction as required by the Horizontal Merger Guidelines.[520]

(798) Furthermore, it is not sufficient that buyer power exists prior to the merger, it must also exist and remain effective following the merger. This is because a merger of two suppliers may reduce buyer power if it thereby removes a credible alternative. In this case, the merger will remove one of the two main suppliers considered to be the closest competitors in the market.

(799) Therefore, due to the lack of potential alternatives, countervailing buyer power post-merger cannot be considered as a mitigating factor which is likely to off-set any of the potential adverse effects of this transaction.

Sufficient entry unlikely to occur

(800) The market investigation has, in general, indicated that entering the deodorant market – either from a neighbouring personal care market or as a new entrant would be difficult. Even if the technology required and the investment to manufacture deodorants could be considered as "accessible", high barriers to entry exist in the form of significant advertisement and promotion (A&P) expenditure to create brand awareness and get access to shelf space from retailers.

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518 See Figure 6-35, Form CO.

519 Form CO, Table 6-35.

520 See paragraph 67 of the Horizontal Merger Guidelines.

(801) [...]* In the male market in Spain, the combination of Unilever's broad portfolio of brands and its already leading position with market shares well above [60-70]*% seems to indicate that Unilever has not only the incentive, but also the ability to prevent entry of new brands or expansion of existing ones as it would be through its leading position the one suffering most from such activities.

(802) In addition to the barrier to entry coming from the creation of brand awareness and access to shelf space, a potential entrant would have to take into account the likely reaction of a powerful incumbent like Unilever. [...]* The addition of two other brands like Sanex and Williams rather strengthens its ability and incentive to fight entry.

(803) Likewise, the combination of four main brands in the hands of a single supplier increases room for Unilever to adjusting its products accordingly preventing the competitor's product to have a unique product proposition. With two additional brands, Unilever's ability to reposition its products to squeeze the new will also be improved. Consequently, the addition of new brands to Unilever's already broad portfolio could increase barriers to entry.

(804) The elements gathered during the market investigation showed that there has been only one entry in the Spanish male deodorant market since 2007. Coty introduced the Playboy brand in 2008, which is targeted at male consumers and has a limited share of [0-5]*% of the male market. The level of share reached by Playboy cannot be considered as significant enough to impact the market position of the new entity.

(805) Despite the fact that the male deodorant market is growing, in the market investigation retailers indicates that they carefully select new products to be listed, especially given the limited shelf space available. A competitor stated that new suppliers can be favoured in only two instances: in case of a niche product; or if the supplier demonstrates that the retailer will significantly increase its margin.[521] One retailer stated clearly that it is cautious when it comes to store new products and only does it with a "one-in/one out" approach or if it brings enough value to the category.[522]

(806) It is therefore concluded that it is unlikely that new entry will occur in the Spanish male market so as to counteract the adverse effects of the merger.

Overall conclusion on the male deodorant market in Spain

(807) In the light of the particularly high combined market shares, the closeness of competition between some brands of the Parties, the limited impact of private label products' growth on the Parties' market position, the combination of significant brands in Unilever's portfolio and the fact that significant entry is unlikely to occur, it is concluded that it is more likely than not that the transaction would lead to a significant impediment of effective competition in the male deodorant market in Spain. In any case, the remedies submitted by Unilever are sufficient to remove any competition concerns in the Spanish male deodorant market.

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521 See reply from Henkel to Questionnaire to competitors deodorants sent on 25 June 2010, question 23.

522 See for example reply from [retailer] to Questionnaire to customers on deodorants sent on 23 April 2010, question 57.

IV.2.3.2.7. France

IV.2.3.2.7.1. Non-male deodorant market

(808) The French non-male deodorant market had a turnover of EUR 245 million in 2009. Unilever is active on this market with its brands Dove and Rexona, while Sara Lee supplies Monsavon and Sanex.

Table 41: France: Deodorants: 2009: market shares non-male market by value – Source: Form CO.

	000 €	%
UNILEVER	[...]*	[10-20]*%
- AXE	[...]*	[0-5]*%
- BRUT	[...]*	[0-5]*%
- DOVE	[...]*	[5-10]*%
- IMPULSE	[...]*	[0-5]*%
- REXONA	[...]*	[5-10]*%
SARA LEE	[...]*	[10-20]*%
- MONSAVON	[...]*	[0-5]*%
- SANEX	[...]*	[10-20]*%
- WILLIAMS	[...]*	[0-5]*%
COMBINED	**[...]***	**[30-40]*%**
BEIERSDORF	[...]*	[5-10]*%
BOURJOIS	[...]*	[0-5]*%
COLGATE	[...]*	[0-5]*%
COTY	[...]*	[0-5]*%
HENKEL	[...]*	[0-5]*%
L'Oreal	[...]*	[30-40]*%
PRIVATE LABEL	[...]*	[5-10]*%
OTHERS	[...]*	[0-5]*%
TOTAL	**244 773**	**100.0**

(809) The combined market share in the non-male deodorant market would be post transaction [30-40]*%, Unilever contributing [10-20]*% market share and Sara Lee [10-20]*%, allowing the merged entity to catch up with the current market leader L'Oreal[523] ([30-40]*% market share with its brands Narta, Garnier, Ushuaia). In addition, Beiersdorf's Nivea brand ([5-10]*%), private label ([5-10]*%), Colgate ([0-5]*%), Bourjois ([0-5]*%) and Henkel ([0-5]*%) are active as well.

(810) While the wide majority of customers and competitors expected no anti-competitive effects from the proposed transaction in France, one customer and a competitor

[523] In France L'Oreal distributes deodorants through its subsidiaries Lascad and Garnier.

expressed concerns with respect to the proposed transaction.[524] According to those customers and competitors, Unilever would become the market leader post-merger and might be able to affect prices for non-male deodorants. However, both respondents failed to explain in detail how Unilever would be able to harm competition with a market share of [30-40]*%.[525]

(811) Moreover, a significant number of alternatives are available in France. Not only is the French non-male deodorant market characterised by a large variety of brands, in addition several of these brands, in particular Dove, Narta, Nivea, and Ushuaia, are perceived by a majority of customers and competitors to be close competitors of Sara Lee's Sanex brand.[526] Monsavon seems to compete more within the fragrance segment against Ushuaia and Fa. Unilever's Dove was viewed as particular close to Nivea, while its Rexona brand was considered close to Narta.

(812) This analysis is also supported by the relative positioning of Dove, Rexona, Sanex, Nivea and L'Oreal according to format (contact and non-contact). While Rexona as well as Monsavon and FA are focused on non-contact (more than [70-80]*% of its sales), Sanex has split its sales roughly even between the two formats, similar to Nivea and L'Oreal.[527]

(813) Finally, almost all retailers responding in the market investigation confirmed that they would be able to replace Unilever's or Sara Lee's brands without problems[528] and explained that they would not accept a price increase for the Sanex brand post-merger, instead they would replace Sanex with alternatives or reduce its shelf space.[529]

(814) Based on these elements, it can therefore be concluded that the concentration is not likely to lead to a significant impediment of effective competition as regards the market for non-male deodorants in France.

IV.2.3.2.7.2. Male deodorant market

(815) The French male deodorant market had a turnover of EUR 214 million in 2009. Unilever is active on this market with its brands Axe, Brut and Rexona for Men, while Sara Lee supplies Williams and Sanex.

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[524] See replies to Questionnaire to customers on deodorants sent on 23 April 2010, question 63 and replies to Questionnaire to competitors sent on 24 April 2010, question 72.

[525] The competitor argued that "*The optimization of the product portfolio might enable the future combined company to optimize price positioning, but it is difficult to say to what extent.*" – See L'Oreal's reply to Questionnaire to competitors on deodorants sent on 24 April 2010, question 73. Similar [retailer] "*Previous experience showed that Unilever will have to pay off their purchase.*" – See [retailer]'s reply to Questionnaire to customers on deodorants sent 23 April 2010, question 64.

[526] See replies to Questionnaire to customers on deodorants sent on 23 April 2010, question 30 and replies to Questionnaire to competitors on deodorants sent on 24 April 2010, question 56.

[527] See Annex 7.1 of Form CO.

[528] See replies to Questionnaire to customers on deodorants sent on 23 April 2010, question 53.

[529] See replies to Questionnaire to customers on deodorants sent on 25 June 2010, question 11.

Table 42: France: Deodorants: 2009: market shares male market by value – Source: Form CO.

	000 €	%
UNILEVER	[...]*	[30-40]*%
- AXE	[...]*	[20-30]*%
- BRUT	[...]*	[5-10]*%
- DOVE	[...]*	[0-5]*%
- IMPULSE	[...]*	[0-5]*%
- REXONA	[...]*	[0-5]*%
SARA LEE	[...]*	[5-10]*%
- MONSAVON	[...]*	[0-5]*%
- SANEX	[...]*	[0-5]*%
- WILLIAMS	[...]*	[0-5]*%
COMBINED	[...]*	**[40-50]*%**
BEIERSDORF	[...]*	[5-10]*%
BOURJOIS	[...]*	[0-5]*%
COLGATE	[...]*	[0-5]*%
COTY	[...]*	[5-10]*%
HENKEL	[...]*	[5-10]*%
L'Oreal	[...]*	[20-30]*%
PRIVATE LABEL	[...]*	[0-5]*%
OTHERS	[...]*	[0-5]*%
TOTAL	214 229	**100.0**

(816) The combined market share in a male deodorant market would be post transaction [40-50]*%, with Unilever achieving [30-40]*% market share, mainly with its Axe brand ([20-30]*%) followed by Brut ([5-10]*%) and Rexona for Men with [0-5]*% market share. Sara Lee had a market share of [5-10]*% coming from two brands, Williams ([0-5]*%) and Sanex for Men ([0-5]*%). L'Oreal would remain the second largest supplier in the market with a share of [20-30]*%. In addition, Beiersdorf ([5-10]*%), Coty ([5-10]*%), Henkel ([5-10]*%) and private label ([0-5]*%) are active as well.

(817) Unilever's Axe brand and the two Sara Lee brands Sanex for Men and Williams are not perceived as close competitors by customers and competitors. Sanex for Men was never mentioned by respondents when asked about a close competitor. Instead reference was made to L'Oreal's Airness and Mennen brands, Coty's Adidas, Henkel's Scorpio and hardly to Williams and Brut.[530] Williams was considered to have as close competitors Gillette, Mennen, Brut and L'Oreal Men Expert.

(818) Moreover, Sanex for Men as well as Williams have their main focus in contact deodorants like sticks and roll-ons ([50-60]*% for Sanex for Men and [70-80]*% for Williams), segments in which Axe or Brut are active only to a minor extent (less than

530 See replies to Questionnaire to customers on deodorants sent on 23 April 2010, question 30 and replies to Questionnaire to competitors on deodorants sent on 24 April 2010, question 56.

10% of their turnover in 2009). Instead, the Unilever brands' main competitors are L'Oreal, Henkel, Coty and Beiersdorf in the aerosol segment.[531]

(819) Finally, customers and competitors did not expect anti-competitive effects resulting from the proposed transaction as sufficient alternatives would be available.[532]

(820) It can therefore be concluded that the concentration is not likely to lead to a significant impediment of effective competition as regards the market for male deodorants in France.

IV.2.3.2.8. Cyprus

(821) In Cyprus, the overall deodorant market had a value of EUR 5.2 million in 2008, (EUR [...]* non-male deodorant market; EUR [...]* male deodorant market). In the male as well as in the non-male deodorant market, the proposed transaction will only give rise to an insignificant change in the market structure as the combined market share as the increment is low and several sizeable competitors exist post-transaction.

Table 43: Cyprus – Deodorant market shares in value – 2008 – Source: Form CO.

	Unilever	Sara Lee	**Combined**	Competitors
Overall	[20-30]*%	[0-5]*%	**[20-30]*%**	Beiersdorf [10-20]*% Henkel [10-20]*% Sarantis [5-10]*%
Male	[10-20]*%	[0-5]*%	**[10-20]*%**	Beiersdorf [20-30]*% Sarantis [10-20]*% Henkel [10-20]*%
Non-male	[20-30]*%	[0-5]*%	**[20-30]*%**	Beiersdorf [10-20]*% Colgate [10-20]*% Henkel [5-10]*%

(822) The combined market share on the male as well as non-male deodorant market would be below 30% and the increment brought about the transaction would be at most [0-5]*%. In both markets, several competitors like Beiersdorf, Henkel, Colgate or Sarantis with a significant market share of around [10-20]*% or more are present.

531 See Annex 7.1 Form CO.

532 See replies to Questionnaire to customers on deodorants sent on 23 April 2010, question 63 and See replies to Questionnaire to competitors on deodorants sent on 24 April 2010, question 72.

(823) It can therefore be concluded that the concentration is not likely to lead to a significant impediment of effective competition as regards the markets for male and non-male deodorants in Cyprus.

IV.2.3.2.9. The Netherlands

IV.2.3.2.9.1. Non-male deodorant market

(824) A number of factors indicative of significant non-coordinated effects are present in the non-male deodorant market in the Netherlands.

Merging firms have high market shares

(825) According to the Parties, the non-male deodorant market had a total value of EUR 102 million in the Netherlands in 2009. Unilever is mainly active through its brands Dove, Rexona and to a very limited extent Vaseline while Sara Lee mainly serves the market with its brands Sanex and Neutral.

Table 44: Market shares in the non-male deodorant market in value, 2009, the Netherlands[533] – Source: Form CO.

	2009	
	,000€	%
UNILEVER	[...]*	[30-40]*%
- DOVE	[...]*	[10-20]*%
- IMPULSE	[...]*	[0-5]*%
- REXONA	[...]*	[10-20]*%
- VASELINE	[...]*	[0-5]*%
SARA LEE	[...]*	[10-20]*%
- NEUTRAL	[...]*	[0-5]*%
- SANEX	[...]*	[10-20]*%
COMBINED	**[...]***	**[40-50]*%**
BEIERSDORF	[...]*	[10-20]*%
BOEHRINGER	[...]*	[0-5]*%
COTY	[...]*	[0-5]*%
REM	[...]*	[5-10]*%
HENKEL	[...]*	[5-10]*%
PRIVATE LABEL	[...]*	[0-5]*%
OTHERS	[...]*	[10-20]*%
TOTAL	**102 411**	**100.0**

533 In the figures provided by the Parties, there are some minor discrepancies between the data for the total deodorant market and the data splitting the market by gender. For example, the Parties submitted that Dove's sales in the overall market for deodorants amounted in 2009 to EUR [...]*, whilst their sales for the same year in the non-male deodorant market amounted to EUR [...]*. These discrepancies are however unlikely to materially affect the assessment.

(826) The Parties achieve a combined market share of [40-50]*% which has increased by roughly [0-5] percentage points between 2007 and 2009. It will exceed by more than two times the share of its nearest competitor Beiersdorf with its brand Nivea ([10-20]*%). Other competitors with a more limited share of the market are Henkel ([5-10]*%) and REM ([5-10]*%). Private label products have a limited market presence, approximately [0-5]*%.

(827) The non-male deodorant market has increased in value terms by [5-10]*% between 2007 and 2009. The most successful supplier was Sara Lee, whose sales have increased by [10-20]*% between 2007 and 2009, with Sanex increasing its sales by [10-20]*% and Neutral by [20-30]*%. Unilever' sales increased by [5-10]*%, mainly Dove which shares with Sanex a similar skin care positioning. At brand level, Dove's sales increased by [20-30]*% and Rexona's by only [0-5]*%. REM (+[5-10]*%) and Henkel (+[5-10]*%) have experienced a similar increase in their sales. Beiersdorf sales' (mainly Nivea) increased by [0-5]*% which is comparable to Rexona.

(828) While past growth rates do not necessarily translate into prospects of future growth, they show that Neutral, Dove and Sanex were within the most successful suppliers in terms of market expansion in the recent period in the Netherlands. Neutral, however, remains relatively small.

(829) Private label products' market share also grew between 2007 and 2009 ([0-5]*% in 2007; [0-5]*% in 2008; [0-5]*% in 2009) but the market presence of private label products is still limited.

(830) Such high market shares suggest that the merged entity is likely to enjoy significant market power in the absence of any mitigating factors. The overlap between the Parties in the Netherlands is significant with Unilever holding a [30-40]*% market share pre-merger (with [10-20]*% for Dove, and [10-20]*% for Rexona) and Sara Lee a [10-20]*% share. This is indicative of strong non-coordinated effects in the form of higher prices and/or reduced quality and choice. Following the acquisition of Sara Lee, Unilever will control three out of the four biggest brands in the Netherlands.

The transaction will also eliminate a close competitor of Unilever's brands.

(831) An important aspect for assessing the unilateral effects arising from the transaction is the degree of substitutability between the Parties' non-male brands. The higher the degree of substitutability between their products, the more likely it is that the Parties will significantly raise prices to retailers.

(832) In their replies to the market investigation, retailers view Sanex and Unilever's brands as close competitors, although some other brands are also mentioned. Several retailers indicated that Dove and Sanex brands for example share a similar skin care proposition.[534] Competitors also explained that the Parties' brands exert strong competitive constraints on one another, although other brands seem to constraint them as well.[535] Nivea is mentioned by both retailers and competitors as closely competing with

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[534] See replies to Questionnaire to customers on deodorants sent on 23 April 2010, questions 27 and 30.

[535] Questionnaire to competitors on deodorants sent on 24 April 2010, question 56 (or question 55 due to a numbering error).

Dove and Sanex. Given that these brands share the same skin care proposition, such a conclusion is to be expected. Odorex, a local brand supplier, also interact with the Parties' brands as it shares the skin care and no white marks propositions.

(833) Other brands, such as Fa (Henkel), "8x4" (Beiersdorf) and Vogue (REM) are marketed under a fragrance based/feminine proposition (or also efficacy as it is the case for “8x4”) and do not share the same skin care proposition as Dove and Sanex.

(834) It the reply to the Statement of Objections, Unilever does not contest that Dove and Sanex are competing against each other, but rather indicates that other brands such as Nivea, Fa and Odorex would constrain them as well, although some of these brands *"may not be the most direct competitors in terms of their variant proposition, such as Fa and Sanex"*.[536] Odorex and Fa would also share, according to Unilever, a comparable price positioning as Sanex.

(835) Unilever's claim that the Statement of Objections failed to take into account the constraints imposed by competing brands such as Nivea, Fa and Odorex is not founded. First, the competitive pressure exerted by other competitors was fully taken into consideration. A detailed analysis of the Dutch market taking into account several factors, brands' proposition, prices, formats was conducted, as will be further demonstrated in the parts related to interaction indices and product attributes.[537] Regarding the price positioning of Fa, Odorex and Dove, the price charts provided by Unilever in the reply to the Statement of Objections show that price positioning of Dove and Sanex are comparable as regards the spray segment, whereas it is true that Sanex has a lower price position in the roll-on segment.

(836) Moreover, it is not argued that Sanex is the closest competitor of Unilever's brands, but rather that the Parties' brands are close competitors and that therefore a potential price increase is more likely to be sustainable if those brands merge.

(837) Unilever provided in the Form CO an interaction analysis conducted by GFK/Europanel using the data on households/individual purchases from the consumer panels that it operates in each country.

(838) Europanel calculates an interaction index for each pair of brands covered by this analysis. The index is the ratio of actual switching between the two brands to the expected level of switching if buyers switched in proportion to market shares. Therefore if the index is higher than 100, the actual switching is greater than expected, which indicates that these brands are close substitutes. Conversely, if the index is less than 100, then it indicates that these brands are not close substitutes

Figure 40: Interaction index for Sanex for Women the Netherlands[538]

[...]*

[536] See Unilever's Reply to the Statement of Objections, paragraph 9.6.

[537] See recitals (837) - (853).

[538] *"M.5658 Unilever/Sara Lee Body Care : Supplementary submission regarding interaction indices"* submitted on 26 July 2010.

(839) The data show that Sanex for women has higher than expected interaction with Odorex ([120-140]) and Fa for Men ([110-130]). Interaction with all other brands is less than expected, including in particular Dove, Rexona, Fa for Women and Nivea for Women. There is also interaction between Sanex for Women and Vaseline, the third Unilever brand. However, given Vaseline's extremely low market presence, a high interaction index alone rather indicates the tiny market share of Vaseline.

(840) After having examined the data, these results should be interpreted cautiously. Since an individual customer may purchase deodorants also for other family members, the switching patterns observed cannot be directly interpreted as a sign of actual substitutability. A female customer who is tracked as switching from, say Sanex for women to Sanex for Men, or another male brand, may in reality have simply been purchasing a deodorant for her son or her new partner without having changed her actual usage pattern.[539]

(841) Although contaminated by such factors, the switching data may however contain information about actual substitutability and hence closeness of competition. Each brand may in a given period lose customers to (all) other brands and simultaneously win customers from all other brands. The sum of lost and won customers between two brands, the total gross switching, is thus an indicator of how closely the two brands are competing. Unilever submitted on 26 July 2010 the switching data underpinning the interaction indices. Figure 41 shows in descending order for each brand their share of total gross switching to and from Sanex for Women in 2009. The gross switching is compared with the market share of each of competitors.

Figure 41: Gross switching for Sanex for Women in the Netherlands[540]

[...]*

(842) The data show more consistent results for the interaction with Sanex for Women. While Dove has the highest share of gross switching with Sanex for Women ([10-20]*%), Rexona for Women ([5-10]*%) and Nivea ([5-10]*%) also interact significantly with Sanex, while Fa ([5-10]*%) and Odorex ([5-10]*%) interact less.

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539 The market shares are calculated on the basis of the brands' sales within the panel. This may to some extent vary from the market shares based on Nielsen data, but in general provides a rather consistent picture with those.

540 These numbers slightly differ from the ones initially provided in the Statement of Objection, due to the new data provided by Unilever on 30 September 2010. Indeed, in the reply to the Statement of Objection, Unilever argued that the Commission misinterpreted the evidence of close and strong competition , notably from Odorex, a brand which was not included in the gross switching figures initially provided by Unilever and referred to as Figure 13 of the Statement of Objections.

(843) The gross switching data show that of all the Sanex users that switched to a non-Sanex non-male brand, [30-40]*% switched to a Unilever brand.[541] Of all the Sanex users that switched to a non-Sanex brand, [40-50]*% switched to a Unilever brand. These figures confirm that the risk of losing sales to Unilever appear to be an important constraint on Sanex prior to the merger. Such switches would not constrain Sanex after the transaction since the switches would no longer be considered lost to the merged entity. This means that the incentive to increase the price of Sanex is significant post-transaction.

Assessment on the basis of format and product attributes

(844) Also, more refined data at brand level based on scanner data covering the Netherlands in 2007-2009 have been assessed. Unilever has complemented the data with product attributes, in particular gender (male, non-male), format (crème, roll-on, spray, wipes, vapo) and further characteristics (skin care, fragrance, anti-perspirant, efficacy, no white mark, girl or others) for each SKU.

(845) This refinement can in general allow identifying in more detail in which sub-segments Sanex is positioned and where a significant overlap with Unilever's brands exists and complement the qualitative analysis of closeness of competition between Unilever's brands and Sanex.

Table 45: Netherlands: Deodorants: 2009: sub-segment shares value – non-male deodorant market.

Non-Male deodorant market 2009 [...]*	**Skin care**	**Fragrance**	**Anti-Perspirant**	**Efficacy**	**No White Marks**	**Girl**
Rexona	[0-5]*%		[10-20]*%	[30-40]*%	[0-5]*%	[0-5]*%
Dove	[20-30]*%		[20-30]*%		[50-60]*%	
Sanex	[20-30]*%		[10-20]*%	[5-10]*%	[10-20]*%	
Vaseline	[0-5]*%		[0-5]*%	[0-5]*%		
Combined	**[50-60]*%**		**[50-60]*%**	**[40-50]*%**	**[60-70]*%**	**[0-5]*%**
Nivea	[20-30]*%		[10-20]*%	[10-20]*%	[10-20]*%	
8x4		[10-20]*%				[30-40]*%
Odorex	[5-10]*%		[5-10]*%	[10-20]*%	[5-10]*%	
Fa		[20-30]*%				[10-20]*%

[541] This figure is calculated taking into accounts only non-male brands. When certain brands were not clearly defined as male and non-male (for example private label products, or the category of 'others'), the non-male value was calculated according to the proportions of male and non-male turnovers which this particular supplier(s) or brands achieve in the respective Member State (turnover split taken from market share tables provided by Parties – Annex 7.1 of the Form CO).

Vogue		[10-20]*%				[40-50]*%
Therme[542]	[5-10]*%			[5-10]*%		
Deoleen[543]	[0-5]*%	[5-10]*%		[0-5]*%		
Hugo Boss		[0-5]*%				
Bourjois					[5-10]*%	
Others	[5-10]*%	[30-40]*%	[20-30]*%	[20-30]*%	[0-5]*%	[0-5]*%
Share of non-male deodorant market[544]	[50-60]*%	[20-30]*%	70-80]*%	[40-50]*%	[5-10]*%	[10-20]*%
Turnover of segment in million EUR	**53.9**	**25.1**	**77.4**	**41.4**	**6.7**	**10.3**

(846) As shown in Table 45, Sanex shares the same attributes as Dove (skin-care, AP and no white marks), suggesting a high degree of substitutability between these two brands. In addition, Sanex is also present in the efficacy segment. Nivea is also seen as sharing the skin-care, nowhite marks and AP attributes.[545] Rexona is present in all the same segments as Sanex, but in addition also addresses the girl segment. Odorex is present in the skin care, AP and no white marks segments and hence occupies part of the same segments as Sanex.

(847) The other significant brands, Fa, 8x4 and Vogue are all in the fragrance and girl segments exclusively, hence appear to be distant from Sanex.

(848) In all the three segments where Sanex is present, a significant share of the deodorants will belong to Unilever post-merger ([50-60]*% in the skin care segment, [50-60]*% in the AP segment and [60-70]*% in the no white marks segment). The only sizable competitor to Unilever post-transaction will be Nivea.

Sub-segmentation by format

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542 Therme (REM) does not appear in the skin care and efficacy sub-segments of spray and roll-on deodorants (Tables 46 and 47) since these variants are exclusively sold in sticks, vapo and cremes formats.

543 Deoleen does not appear in the fragrance sub-segments of spray and roll-on deodorants (Tables 46 and 47) since its fragranced variant is exclusively sold in the vapo format.

544 The sum of percentage of each segment is above 100% because one given SKU can have several characteristics (AP, skin care, no white marks, etc).

545 Unilever also refers to other competitors' brands active within the no white mark segment, namely Narta, Adidas which supplies "proClear" and Bourjois. However, and with the exception of Bourjois these brands' position within this segment is so small, that Nielsen data does not even capture them.

(849) The analysis of closeness of competition between the brands can be completed by looking at a segmentation of the non-male market by format, focusing on two specific formats, namely sprays and roll-ons, which account respectively for [60-70]*% and [20-30]*% of all non-male deodorants.

(850) Further segmenting the non-male market according to format does not alter the analysis regarding the overall non-male market. Market presence and market shares of Unilever and Sara Lee brands in the spray segment are however particularly high compared to all the sub-segments where their activities overlap. The only sizeable competitor in the spray segment is Nivea.

Table 46: Netherlands: Deodorants: 2009: sub-segment shares value – non-male deodorants, spray segment.

Non-Male deodorants, spray segment 2009 [...]*	Skin care	Fra-grance	Anti-Perspirant	Efficacy	No White Marks	Girl
Rexona	[0-5]*%		[30-40]*%	[60-70]*%		[0-5]*%
Dove	[40-50]*%		[20-30]*%		[50-60]*%	
Sanex	[20-30]*%		[10-20]*%	[10-20]*%	[10-20]*%	
Vaseline	[0-5]*%		[0-5]*%	[0-5]*%		
Combined	**[70-80]*%**		**[70-80]*%**	**[70-80]*%**	**[70-80]*%**	**[0-5]*%**
Nivea	[20-30]*%		[10-20]*%	[5-10]*%	[10-20]*%	
8x4		[20-30]*%				[30-40]*%
Fa		[30-40]*%				[10-20]*%
Vogue		[20-30]*%				[40-50]*%
Bourjois					[10-20]*%	
Others	[5-10]*%	[20-30]*%	[5-10]*%	[10-20]*%	[0-5]*%	[0-5]*%
Share of non-male deodorants spray segment[546]	[40-50]*%	[30-40]*%	[60-70]*%	[30-40]*%	[5-10]*%	[10-20]*%
Turnover of segment in million EUR	**27.7**	**18.5**	**42.6**	**19.1**	**4.7**	**10.1**

[546] The sum of percentage of each segment is above 100% because one given SKU can have several characteristics (AP, skin care, no white marks, etc).

(851) In the roll-on segment, the competitive landscape appears to be less concentrated than in the other sub-segments where Unilever and Sara Lee brands operate. Apart from Nivea, Odorex and Deoleen are also present.

Table 47: Netherlands: Deodorants: 2009: sub-segment shares value – non-male deodorants, roll-on segment.

Non-Male deodorants, roll-on segment 2009 [...]*	Skin care	Fragrance	Anti-Perspirant	Efficacy	No White Marks	Girl
Rexona	[0-5]*%		[5-10]*%	[5-10]*%	[10-20]*%	
Dove	[10-20]*%		[10-20]*%		[20-30]*%	
Sanex	[20-30]*%		[20-30]*%	[10-20]*%	[10-20]*%	
Vaseline	[0-5]*%					
Combined	**[40-50]*%**		**[40-50]*%**	**[20-30]*%**	**[50-60]*%**	
Nivea	[20-30]*%		[10-20]*%	[10-20]*%	[20-30]*%	
Odorex	[10-20]*%		[10-20]*%	[10-20]*%	[10-20]*%	
Fa				[5-10]*%		
8x4						[70-80]*%
Vogue						[10-20]*%
Deoleen	[5-10]*%		[5-10]*%	[10-20]*%		
Cerique		[40-50]*%				
Vichy		[10-20]*%				
Collistar		[5-10]*%				
H. Rubinstein		[10-20]*%				
L. Biagiotti		[5-10]*%				
Lacoste		[5-10]*%				
4_Kids						[10-20]*%
Others	[10-20]*%	[0-5]*%	[20-30]*%	[20-30]*%	[0-5]*%	[0-5]*%
Share of non-male deodorants	[70-80]*%	[0-5]*%	[90-100]*%	[50-60]*%	[5-10]*%	[0-5]*%

roll-on segment[547]						
Turnover of segment in million EUR	**19.6**	**0.1**	**24.5**	**13.7**	**1.9**	**0.07**

(852) In addition, product characteristics were combined with average prices for the last three years. Figure 42 to Figure 46 show the price positioning of the main brands in the skin care segment and the no white marks segment for spray and roll-on deodorants respectively, as well as the AP segment for spray deodorants only. In all segments, Sanex and Dove are positioned relatively close in terms of prices. Nivea, in the segments where it is present, seems to operate at slightly higher price points than Sanex and Dove (the only exception is in the skin-care segment for roll-on deodorants, where Dove seems to have moved up towards Nivea). Odorex operates at prices somewhat below Sanex and Dove, while the "other" category in the skin care segment seems to be dominated by higher priced deodorants.

Figure 42 Average price points for Dutch non-male deodorants, skin care segment (spray deodorants) for 2007, 2008 and 2009

[...]*

Figure 43 Average price points for Dutch non-male deodorants, no white marks segment (spray deodorants) for 2007, 2008 and 2009

[...]*

Figure 44 Average price points for Dutch non-male deodorants, skin care segment (roll-on deodorants) for 2007, 2008 and 2009

[...]*

Figure 45 Average price points for Dutch non-male deodorants, nowhite marks segment (roll-on deodorants) for 2007, 2008 and 2009

[...]*

Figure 46 Average price points for Dutch non-male deodorants, antiperspirant segment (spray deodorants) for 2007, 2008 and 2009

[...]*

547 The sum of percentage of each segment is above 100% because one given SKU can have several characteristics (AP, skin, white, etc).

(853) It is therefore concluded that Dove and Sanex are particularly close competitors. Rexona, Nivea and to a certain extent Odorex, also have some interaction with Sanex.[548]

Demand estimation and merger simulation

(854) In order to complement the other elements in its investigation of the Dutch market, an economic model has been used to predict the likely outcome of the transaction.[549] .

(855) Table 48 summarises the results of the merger simulations in terms of percent price increase relative to the pre-merger price level. The figures are averages over the sample periods of estimation. The overall figures include the price changes of all competitors in the sample. The table also shows the predicted price increases for Unilever's and Sara Lee's main individual brands.

Table 48: Estimated price increases in the Netherlands

		gender segments		brands				
	overall	male	non-male	AXE	DOVE	REXONA	SANEX	VASELINE
one-level n.logit	3.8	1.2	5.6	1	6.9	4.7	21.3	6.1
two-level n.logit	3.8	1.1	5.7	0.7	10.7	2.8	20.6	10.9

Note: see the Technical Annex for the confidence intervals and more technical details.

(856) In the non-male market, the simulated price increase would be approximately 5%-6%.[550] The main drivers of this increase are price increases from Sanex and Dove. The effects are much smaller in the male market because Sanex here is rather weak. Because Sanex is a smaller brand, its strong figures do not translate to equally strong overall price increments. This latter effect is also influenced by the relatively weak reactions of competitors.[551]

The merger will eliminate an important competitive force

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548 This finding of closeness of competition between the Parties' brands is also supported by an econometric submission of LECG on behalf of a competitor, where it is found that "in the spray segment, which accounts for [70-80]*% of total sales of female deodorant products in Netherlands, Rexona and Dove compete closely with Sanex. We find that Rexona and Dove are the two closest substitutes to Sanex. In the roll-on segment, Sanex is the closest substitute to both Rexona and Dove. Our estimates also indicate that Dove is the closest substitute to Sanex". See "Closeness of competition between Unilever and Sara Lee deodorant products in the Netherlands", document submitted on 9 August 2010.

549 See the Technical Annex for a detailed description of the model.

550 With a 90% confidence interval of [1.1, 9.8]*%.

551 As explained in recital (181) and in more detail in the Technical Annex, the assessment of the merger simulation and in particular the predicted price increases must be put into context with other qualitative and quantitative analysis of each specific market.

(857) The proposed transaction will not only eliminate a close competitor to two of Unilever's core brands – Dove and Rexona – but in addition a strong competitive force in the Dutch deodorant market.

(858) Sanex has been growing in the non-male market, where it has seen its sales increased by [10-20]*% between 2007 and 2009 in value, compared to a growth rate of [5-10]*% in the non-male deodorant market.

(859) In the reply to the Statement of Objections, Unilever tries to undermine the significance of Sanex' growth in sales by referring to recent data showing a market share decrease of Sanex. As such, Unilever refers to YTD 2010 Nielsen data (week 28) in order to show that Sanex holds in the overall deodorant market a value share of [5-10]*% compared to a value share of [5-10]*% in 2009.[552] Following a request for information, Unilever provided YTD 2009 and 2010 data for the non-male deodorant market. This data show a market share decrease of Sanex from [10-20]*% YTD 2009 to [10-20]*% YTD 2010.[553] No firm conclusion can be drawn from the 2010 data submitted by Unilever. Unilever has retained a reference period which goes from July 2009 to July 2010 and not a full calendar year. The data are hence more vulnerable to be affected by short term seasonality issues and may not fully capture long term trends. Nevertheless, even if the trend of growing faster than the competitors does not extend to the newest data provided by the Parties regarding the first half of 2010, this does not remove the fact that Sanex over several years have proven to be a robust competitor ([10-20]*% market share in 2007, [10-20]*% in 2008 and [10-20]*% in 2009).

(860) Sanex is also considered as an innovative competitive force[554], although not the only one. In this sense, in the reply to the Statement of Objections Unilever points to several innovations launched by Unilever, Henkel, L'Oreal and Beiersdorf. It is unclear what Unilever means by "innovations", since it also includes in "innovations" the introduction by Henkel of a body spray with a pink colouring targeting girls, Fa Pink Paradise, as well as new products introduced by L’Oreal in the male market. In any event, it is not argued that Sanex is the only source of innovation in the market, but, as also confirmed by the market investigation, one of the most "innovative" deodorants suppliers.[555]

(861) It is therefore concluded that the merger would not only remove a close competitor to Unilever's brands, but also a dynamic competitor which has spurred competitive rivalry in the Dutch non-male deodorant market.[556]

Lack of countervailing buyer power

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552 See Unilever's Reply to the Statement of Objection, paragraph 9.10 (i).

553 See Unilever's Reply to the Commission's requests for information sent on 13 and 14 October 2010.

554 According to one competitor, the most important innovations during the last years relate to the composition of deodorants (such as Pierre d'Alun, launched by Sanex or the anti-trace deodorant first introduced in the market by Rexona) or the packaging of the deodorant (such as the roll-on upside down deodorant of Sanex). See non-confidential memorandum of L'Oreal "Complementary contribution on innovation", dated 21 July 2010.

555 See replies to Questionnaire to customers on deodorants send on 23 April 2010, question 29.

556 [...]*

(862) The arguments of the Parties and the reasons why it is unlikely that buyers of the Parties' deodorants are in a position to resist a price increase are discussed in Section IV.2.3.1.3. Those reasons apply to the Dutch non-male deodorant market. The analysis focuses on features of the Dutch market.

(863) In the Netherlands, the size of retailers varies significantly. According to the Form CO, the four largest retailers account for [60-70]*% of the total national deodorants sales.[557] However, while the leading retailer represents [30-40]*%, the fourth largest only accounts for [5-10]*% of the sales. Thus, even if countervailing buyer power were to exist for the largest retailers, it is unlikely to sufficiently off-set potential adverse effects of a merger since it would only ensure that one particular segment of customers, with particular bargaining strength, is shielded from significantly higher prices or deteriorated conditions after the merger.[558]

(864) In the reply to the Statement of Objections, Unilever argues that the retail customer base is even more concentrated than the Nielsen data provided with the Form CO may show, if retail buyer groups are to be taken into account. This argument was already dealt with in Section IV.2.3.1.3.

(865) Moreover, private label products have a limited presence in this market and only represent [0-5]*% of the market, although their market presence has been growing since 2007 ([0-5]*% in 2007, [0-5]*% in 2008 and [0-5]*% in 2009).

(866) One retailer stated that *"customers are emotionally involved in the deodorant category"*.[559]As a consequence, *"the market is aimed to brands, we don't think customers will buy more private labels in time of recessions"*.[560] [reference to parties' internal documents][561]

(867) While Unilever acknowledged that most of the respondents to the market investigation considered the private label products presence to be currently quite limited, it also tries to demonstrate that the market investigation shows that private label products will develop further in the coming years. No such conclusion could, however, be drawn when carefully considering the information gathered. For example, Unilever refers to one competitor which, indeed, considered that private label products could increase. However, this competitor's position is more nuanced than put forward by Unilever, as it does not consider itself being price constrained by private labels.[562]

557 See Table 6.21 Form CO.

558 See paragraph 67 of the Horizontal Merger Guidelines.

559 See reply from [retailer] to Questionnaire to customers on deodorants sent on 25 June 2010, question 23.

560 See reply from [retailer] to Questionnaire to customers on deodorants sent on 25 June 2010, question 23.

561 [reference to parties' internal documents]

562 At the question "Has the strength of private label affected your pricing?", this competitor answer is negative, as "We look at A brands, or brands with similar propositions." See reply from Boehringer to Questionnaire to competitors on deodorants sent on 24 April 2010, question 51.

(868) Unilever also refers to the reply of a customer indicating that there was a strong focus on private label products which could lead to an increase in market share. Once again, that answer has to be placed in a context. That customer indeed considers that *"there is a strong focus on private label in general, which shall also lead to increase of the deodorant share"*, but it also explains that private label products presence is quite limited and that is it difficult for them to grow, given that *"deodorant is* an *'emotionally involved' product, which makes it difficult for private label in deodorant to grow"*.[563] As another retailer explains, *"trust is within deodorant segment very important for customers, which still needs to be build for personal care private label"*.[564] Unilever also cites another retailer which confirmed during the market investigation that it intends to introduce new own products or launched new own brands. However, that customer also indicates that it does not expect to increase its private label products sales compared to branded products. Moreover, this customer explains in a very clear way that *"the market is dominated by brands and the market share of private label is relative small*".[565]

(869) Furthermore, the combination of the strong brands of the Parties in the hands of a single supplier would shift bargaining power (if any) from the retailer to the supplier. Post transaction the Parties would own three out of the four major brands (Dove, Rexona, Sanex and Nivea) which have a relatively sizeable market position (above [10-20]*% market share). Therefore, the transaction reduces the set of credible alternatives that the retailer can choose from to replace Unilever's products should the retailer seek to avoid Unilever.

(870) This is also supported by the market investigation, although Unilever does not agree to this conclusion. Unilever mentions that *"at least two retailers indicated that if Unilever sought to increase net-net price post-merger, they would either increase the shelf space for other suppliers or potentially delist Sanex products"*. The retailers' position is more nuanced than put forward by Unilever. The retailers were asked to answer to the following question: *"Assume that post transaction Unilever* ***were to request*** *a higher net-net price for Sanex deodorants. How would you react on this claim?"*. This question therefore has to be understood as referring to negotiations between suppliers and retailers. The fact that a retailer may react by threatening to delist the Sanex products it is just a normal negotiation tool. Moreover, this retailer explains that *"retailers do have power but suppliers also do. As a retailer there are specific brands you have to offer to your customers no matter what, that makes the bargaining position of that supplier better"*.[566] Furthermore, all retailers indicated that their customers would either switch their deodorant purchases or their entire purchases to another retailer in case one of the core brands of the Parties would not be available in their stores.[567]

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[563] See reply from [retailer] to Questionnaire to customers on deodorants sent on 25 June 2010, question 23.

[564] See reply from [retailer] to Questionnaire to customers on deodorants sent on 25 June 2010, question 23.

[565] See reply from [retailer] to Questionnaire to customers on deodorants sent on 25 June 2010, question 23.

[566] See reply from [retailer] to Questionnaire to customers on deodorants sent on 25 June 2010, question 16.

[567] See replies to Questionnaire to customers on deodorants sent on 25 June 2010, question 17.

(871) Unilever also refers to two competitors answers in order to conclude that *"competitors also agreed that retailers have a degree of buyer power in the Netherlands"*. Once again, Unilever overestimates the results of the market investigation. Indeed, one of the competitors indicated that *"suppliers are dependent on retailers for distribution. The bigger the retailer, the bigger its power and his negotiation-position"*. However, it also explained that *"The more products of a (big) supplier are on a shelve, the more power it gets. Unilever will have a big negotiation power, since many consumers will come to the retailers POS specifically for their products"*. Moreover, Unilever is already able to do this, *"but can do it even better and stronger with the (very big and famous) Sanex brand"*.[568]

(872) Regarding the second competitor referred to by Unilever, its position, once again, has to be nuanced. Indeed, it is noted by this competitor that *"retailers become stronger and stronger which gives them more bargaining power"*.[569] However, this is only a general statement which does not contradict the finding that the combination of the strong brands of the Parties in the hands of a single supplier would shift bargaining power (if any) from the retailer to the supplier. On the contrary, when asked precisely to comment about the consequences of the transaction, this competitor submitted that the acquisition of Sara Lee will reinforce Unilever's position notably *"on commercial deals with retailers"*: *"being very strong/dominant gives benefit/power"*.[570] Moreover, *"if a supplier is dominant within a certain category like Unilever in the Netherlands, the 'bargaining-power' is more at the supplier's side: the retailers simply cannot ignore the brands of that particular 'big' supplier of deodorants"*.[571]

(873) Given the structure of the Dutch market, it seems therefore unrealistic for the retailer to construct a deodorant shelf without Unilever's products and Unilever would thus become an unavoidable trading partner in deodorants in relation to prices setting, promotions, new listings and placement on shelves. And if the retailer is not willing to entirely eliminate Unilever's products from the shelves, even a partial delisting of important Unilever brands such as Axe, Dove or Rexona would clearly endanger the retailer's turnover in the deodorant category.

(874) The very strong position of Unilever is also reflected by the weighted distribution in retail stores of the different suppliers of deodorants. Weighted distribution represents the share of sales accounted for by all the stores in which the brand is stocked. It is therefore a measure of the retail exposure given to a brand. Table 49 shows that Unilever managed to secure widespread distribution compared to its competitors[572]:

Table 49: weighted distribution in the Netherlands

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[568] See reply from Boehringer to Questionnaire to competitors on deodorants sent on 25 June 2010, question 5 and 7.

[569] See reply from L'Oreal to Questionnaire to competitors on deodorants sent on 25 June 2010, question 46.

[570] See reply from L'Oreal to Questionnaire to competitors on deodorants sent on 25 June 2010, question 64.

[571] See reply from L'Oreal to Questionnaire to competitors on deodorants sent on 25 June 2010, question 5.

[572] See weighted distribution data submitted by the Parties on 29 April 2010 under the name BD100d_One pager plus – updated in April10.

	MAT	YTD 2010
Axe total	[...]*	[...]*
Rexona total	[...]*	[...]*
Dove total	[...]*	[...]*
Nivea total	[...]*	[...]*
8x4 Total	[...]*	[...]*
Fa total	[...]*	[...]*
Sanex total	[...]*	[...]*
Adidas total	[...]*	[...]*
Vanderbilt Total	[...]*	[...]*
Deoleen Total	[...]*	[...]*
Vogue Total	[...]*	[...]*
Odorex	[...]*	[...]*

(875) Axe[573], Dove, Rexona, Sanex, Nivea, 8x4 and Fa all have very high weighted distribution. Odorex, while doing better than many of the smaller brands, still lack behind the main brands in terms of distribution. Post-transaction Unilever would control four out of the seven brands which almost all retailers currently have chosen to

573 Axe has a very strong position on the male deodorant market, accounting for [30-40]*% of the sales.

carry. The transaction would therefore reinforce Unilever's position as unavoidable trading partner for the retailers.

(876) Therefore, it can be concluded that countervailing buyer power post-merger would not be sufficient to off-set potential adverse effects of the merger.

Sufficient entry unlikely to occur

(877) The market investigation generally showed that entering the deodorant market – either from a neighbouring personal care market or as a new entrant - is difficult. Even if the technology required and the investment to manufacture deodorants could be considered as "accessible", high barriers to entry exist in the form of significant advertisement and promotion (A&P) expenditure to create brand awareness and get access to shelf space from retailers. As one retailer explains, in order for a supplier to be able to successfully enter the deodorant market, it requires *"patience and willingness to continuously invest during a longer period to build the new brand in the deodorant market"*.[574]

(878) In addition to the barrier to entry resulting from the creation of brand awareness and access to shelf space, a potential entrant would have to take into account the likely reaction of a powerful incumbent like Unilever. [...]*

(879) Moreover, the combination of three out of the four main brands in the non-male market in the hands of a single supplier increases the possibility for Unilever to adjust its products offering, preventing the competitor's product from having a unique product proposition. Unilever's ability to slightly reposition its products to squeeze the new entrant would also be improved. Consequently, the addition of a new brand to Unilever's already broad portfolio is likely to increase barriers to entry.

(880) L'Oreal's brand "Garnier Mineral" was only launched in small outlets in the Netherlands. Although it is too early to conclude on the outcome of that entry into the market, it is striking that Garnier Minerals' market share in at least the large stores in May 2010 was [0-5]*%.[575] Unilever acknowledges that "*the brand has no presence in the market*".[576] This is also reflected by the weighted distribution rate of Garnier Mineral, which is [...]*.[577] [...]* Unilever reacted immediately by launching Rexona Mineral in the Netherlands in May 2010.

(881) In the reply to the Statement of Objections, Unilever argues that the result of the market investigation does not support the finding that entering the market is difficult. It refers to one competitor answer indicating that *"deodorants is a very dynamic FMCG market, there will always be new entry"*.[578] Another competitor is also

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574 See reply from [retailer] to Questionnaire to customers on deodorants sent on 23 April 2010, question 64.

575 See Unilever's Reply to the request for information sent on 25 June 2010, question 19.

576 See Unilever's Reply to the request for information sent on 1 September 2010, question 1. According to Unilever, latest data reports sales of EUR [...]*.

577 See Unilever's Reply to the request for information of 25 June 2010, question 19.

578 See reply from Behringer to Questionnaire to competitors on deodorants sent on 24 April 2010, question 57.

mentioned, as it submitted that retailers have the tendency of supporting new entries in order to stimulate competition, provided that *"the commercial framework/ conditions and related support/ launch plan should meet the standards of the retailers"*.[579] Unilever also submitted that retailers responding to the market investigation reported in general that they would support new entry, assuming a good business for the new product.[580]

(882) The market investigation indeed shows that retailers may support new entries, but it also reveals that retailers carefully select new products. The competitor that Unilever quotes as submitting that there will always be new entries does not estimate itself being able to overcome the barriers to entry the deodorant market: *"we did not (and will not ever) overcome these barriers"*. [581] Moreover, retailers "conditioned" this alleged willingness of the prospect of losing/gaining customers. For example, the *"support of a big media campaign"* is a mandatory condition to expect large sales.[582]

(883) Unilever also mentions the recent entries of Gillette which has *"just entered the market"*[583] and reached a market share of [0-5]*% in the male market (four weeks sales to week 31 2010), and L'Oreal Men Expert which has reached a market share of [0-5]*% in the male market (week 28 2010). The very dissimilar competitive landscapes between the male market and the non-male market have already been described and it is established that the factors favouring or hindering entry do not have the same impact in the male and in the non male markets. It is therefore impossible to draw any conclusion for the non-male deodorant market of an introduction of a new brand, successful or not, in the male deodorant market. It is even more difficult to drawn such a conclusion since the male market in the Netherlands is growing faster than the non-male market and it is therefore likely to be more favourable to new entries.

(884) It is therefore concluded that it is unlikely that new entry will occur in the Dutch non-male deodorant market so as to counteract the adverse effects of the merger.

Overall conclusion

(885) The notified concentration is therefore likely to significantly impede effective competition on the market for non-male deodorants in the Netherlands.

IV.2.3.2.9.2. Male deodorant market

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579 See reply from L'Oreal to Questionnaire to competitors on deodorants sent on 25 June 2010, question 23.

580 See Unilever's reply to the Statement of Objections, paragraph 9.18.

581 See reply from Boehringer to Questionnaire to competitors on deodorants sent on 24 April 2010, question 59.

582 See replies to Questionnaire to customers on deodorants sent on 23 April 2010, question 10.

583 See Unilever's Reply to the Statement of Objections, paragraph 9.20.

(886) The Dutch male deodorant market had a total value of EUR 65 million in 2009. Unilever is active in the male deodorant market with its brands Axe, Rexona for Men, and Dove for Men. Sara Lee serves the Dutch male deodorant market with its brand Sanex for Men.

Table 50: Netherlands: Deodorants: 2009: market shares male deodorant market by value – Source: Form CO

	000 EUR	%
UNILEVER	[...]*	[40-50]*%
- AXE	[...]*	[30-40]*%
- DOVE	[...]*	[0-5]*%
- REXONA	[...]*	[10-20]*%
SARA LEE	[...]*	[0-5]*%
- SANEX	[...]*	[0-5]*%
COMBINED	**[...]***	**[50-60]*%**
BDF	[...]*	[20-30]*%
COTY	[...]*	[0-5]*%
REM	[...]*	[0-5]*%
SH	[...]*	[0-5]*%
PRIVATE LABEL	[...]*	[0-5]*%
OTHERS	[...]*	[10-20]*%
TOTAL	**64 995**	**100.0**

(887) Post-merger, the Parties would achieve a combined market share of [50-60]*% (Unilever [40-50]*%, Sara Lee [0-5]*%). The other main competitors active in the Dutch male market are Beiersdorf ([20-30]*%) Coty ([0-5]*%) and Henkel ([0-5]*%).

(888) In spite of the combined market share of [50-60]*%, there are several elements in the Dutch male deodorant market, which allow the conclusion that competition will not be negatively affected by the proposed transaction.

(889) First, the overlap of [0-5]*% is rather limited and unlikely to change the market structure, in particular because retailers indicated that Sanex for Men could be replaced on the shelves without losing sales.[584]

(890) Second, retailers did not consider Sanex for Men to be close substitute for Unilever's Axe or Rexona for Men brands. Instead they referred to Coty's Adidas, Henkel's Right Guard or Beiersdorf's Nivea for Men[585] as potential alternatives.

(891) Finally, respondents to the market investigation did not expect a price increase as the result of the merger in the Dutch male deodorant market.

584 See replies to Questionnaire to customers on deodorants sent on 23 April 2010, question 54.

585 See replies to Questionnaire to customers on deodorants sent on 23 April 2010, question 30.

(892) It is therefore concluded that the proposed transaction would not result in a significant impediment of effective competition in the market for male deodorants in the Netherlands.

IV.2.3.2.10. Portugal

IV.2.3.2.10.1. Non-male deodorant market

(893) A number of factors indicative of significant non-coordinated effects are present in the non-male deodorant market in Portugal.

Merging firms have high market shares

(894) According to the Parties, the non-male deodorant market in Portugal had a total value of EUR 31.6 million in 2009, [90-100]*% of which consist of supplier brands and the remaining [5-10]*% by private labels. The market has experienced an increase in value of [0-5]*% between 2008 and 2009. Unilever is active through its brands Dove, Rexona and Vasenol while Sara Lee serves the Portuguese non-male deodorant market with its brand Sanex.

Table 51: Market shares in the non-male segment for deodorants, in value, 2009, Portugal

	,000 €	%
UNILEVER	[...]*	[40-50]*%
- DOVE	[...]*	[10-20]*%
- REXONA	[...]*	[10-20]*%
- VASENOL	[...]*	[10-20]*%
SARA LEE	[...]*	[5-10]*%
- SANEX	[...]*	[5-10]*%
COMBINED	**[...]***	**[40-50]*%**
ANGELINI	[...]*	[0-5]*%
BDF	[...]*	[20-30]*%
COLGATE	[...]*	[0-5]*%
COTY	[...]*	[0-5]*%
FARSANA	[...]*	[0-5]*%
FOZ.COSM	[...]*	[0-5]*%
L'OREAL	[...]*	[10-20]*%
HENKEL	[...]*	[0-5]*%
PRIVATE LABEL	[...]*	[5-10]*%
OTHERS	[...]*	[0-5]*%
TOTAL	**31 562**	**100.0**

(895) The Parties achieve a combined market share of [40-50]*%. It will exceed by 2.5 times the share of its nearest competitors Beiersdorf with its brand Nivea ([20-30]*%) and will be more than 4 times bigger than the next competitor L'Oreal ([10-20]*%) with its brand Narta. Apart from the Parties, Beiersdorf and L'Oreal are the only two competitors with a market share in excess of [0-5]*%. Other competitors that have a more limited share of the market are Colgate with its brand Palmolive ([0-5]*%) and Henkel with its brand Fa ([0-5]*%). Private labels represent [5-10] % of the market.

(896) Unilever, with Dove ([10-20]*%), Rexona ([10-20]*%) and Vasenol ([10-20]*%) holds the second, third and fifth[586] largest non-male deodorant brands in the Portuguese market. The acquisition of Sanex would add the sixth main brand to their portfolio ([5-10]*%), offering to Unilever a fourth strong brand. All the other suppliers hold only one important non-male brand.

(897) The market has increased in value terms by [0-5]*% between 2008 and 2009. Among the major suppliers, L'Oreal has experienced the strongest growth ([10-20]*%), followed by Unilever ([5-10]*%, mainly Dove) and Sara Lee ([0-5]*%). The largest brand, Nivea, only grew by [0-5]*%.

(898) The [40-50]*% combined market shares of the merged entity (which have been growing) suggests that it is likely to enjoy significant market power post merger in the absence of mitigating factors and indicates likely non-coordinated effects of the merger.

Merging firms are close competitors

(899) As in most Member States, the Sanex brand in Portugal has a strong focus on the promise of healthy skin and emphasises natural ingredients, hypoallergenic qualities and less additives in terms of fragrances, preservatives, colour and silicon.[587] Unilever has a similar product with its Vasenol brand. It is marketed on the basis of a "unique skin caring ingredient" and in common with Sanex has a focus on skin health.[588]

(900) In their responses to the market investigation, Portuguese retailers view Sanex and Vasenol as close competitors. These brands are considered to be the closest competitors because they target the same consumer, they have the same kind of functionalities and the same price level and are therefore directly competing in the market[589]. According to another retailer, Sanex is close to all the brands but also admits the closeness between Vasenol and Sanex on core characteristics. [590]

(901) [reference to parties' internal documents][591] In its reply to the Statement of Objections, Unilever confirmed that "*Vasenol and Sanex are close competitors*" but argue that they are both mid-sized brand[592].

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586 Vasenol being almost equal to Narta, the fourth main brand, in terms of market shares.

587 See Form CO, paragraph 6.49.

588 See Form CO, paragraph 6.54.

589 Questionnaire to customers on deodorants sent on 23 April 2010, question 30.

590 According to this retailer, in terms of product range and brand recognition, Vasenol is one of the closest brand to Sanex (with Dove and Narta) whereas Vasenol is considered as the closest brand to Sanex with regards to innovation, and advertising. Questionnaire to customers on deodorants sent on 23 April 2010, questions 27.

591 [reference to parties' internal documents]

592 Unilever's Reply to the Statement of Objections, page 118, para. 11.10

(902) With regards to the size of Vasenol, it is currently the fifth main brand in non-male-specific deodorants with market shares slightly lower than Narta ([10-20]*%). The only other non-Unilever brand with higher market shares than Vasenol is Nivea.

(903) While the market investigation was clear about the closeness between Sanex and Vasenol, there were also indications that Dove is close to Sanex[593]. Dove is described by Unilever in the Form CO as "*directed towards moisturising skin care*".[594] In addition, in its reply to the Statement of Objections, Unilever confirms that "*Sanex is a competitor to Dove due to their skin caring proposition and price point"*[595]. Sanex has a high level of interaction with Dove as will be described in more detail in recital (909).

(904) Unilever also considers Nivea, Narta, Fa or Palmolive to be equally close competitors. Although this claim has not been confirmed by the market investigation, for the sake of completeness, these brands are discussed in recitals (905)-(908).

(905) Narta (the main brand of L'Oreal) is described by the Parties as *"a mid-priced antiperspirant deodorant which is focused on women, but sold in both male and female variants, in all cases marketed on a broad freshness proposition"*[596]. This proposition is different from the skin-care characteristics of Dove, Sanex or Vasenol[597]. It is therefore likely that Narta is less of a constraint on these brands. While Narta has been a growing brand between 2008 and 2009, the last figures provided by the Parties[598] show that Narta's market shares declined during 2010 (from [10-20]*% to [5-10]*%). With regards to the investments made by L'Oreal for promoting Narta, another competitor explained they were not sure L'Oreal could go on investing that much in promoting Narta without sustainability issues[599]. Finally, although the market investigation tends to show a closeness of competition between Rexona and Narta[600], no strong evidence is available to support the same kind of closeness between Narta and Dove/Sanex/Vasenol[601].

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593 None of the retailers considered Sanex as the closest competitor to Dove. However, a retailer confirmed the closeness between these two brands on major characteristics. Another retailer considered Dove as one the closest brand to Sanex in terms of brand recognition See Questionnaire to customers on deodorants sent on 23 April 2010, questions 27.

594 See Form CO, paragraph 6.323.

595 Unilever's Reply to the Statement of Objections, page 118, para 11.12

596 See Form CO, paragraph 6.65

597 However, one out of two retailers considered Narta as the closest competitor to Dove, Questionnaire to customers on deodorants sent on 23 April 2010, question 30.

598 "Brand share trend" provided by the Parties on 16 September 2010.

599 Minutes from Beiersdorf call from 22 September 2010.

600 The closeness of competition between Narta and Rexona has been confirmed by two ([retailer] and [retailer]) out of three retailers contacted on 17 September 2010.

601 Only one out of the three Portuguese retailers contacted on 17 September claimed that the closest brand to Narta was Dove.

(906) Palmolive (Colgate-Palmolive) – described by Unilever as a brand with a skin friendly/natural proposition[602] - is a brand with low market shares which even lost sales of [5-10]*% between 2008 and 2009. During the market investigation, none of the retailers mentioned Palmolive as close of any of the Parties brands[603]. Finally, Figure 48 shows an interaction of less than [0-5]*% between Sanex and Palmolive.

(907) Fa (Henkel) has, according to the Parties, "*a large number of trendy and inspiring fragrances with colourful and feminine packaging and a tagline of "feel-good freshness*". The core appeal of this product is different to the skin-care proposition of Sanex, Dove or Vasenol. In addition, Fa is a weak brand in Portugal that no retailers mentioned as close to the Parties' brands. Finally, the interaction between Sanex and Fa is less than [0-5]*%.

(908) With regards to Nivea, the leading brand in the non-male deodorant market, no Portuguese retailer mentioned Nivea as the closest competitor of Sanex in the first phase questionnaire. However, it is acknowledged that Nivea has the highest level of interaction (according the gross switching data) with Sanex, followed by Dove. Finally, Nivea is also a skin care product such as Sanex, Dove and Vasenol.

Gross switching analysis

(909) Unilever has provided interaction indices for Sanex for women for the year 2009 – see Figure 47. The Parties explain that Sanex for women has a very high interaction with Sanex for Men (reflecting the brand's relatively gender neutral proposition) and has a modest interaction with Dove ([100-120]* with Dove for women). A higher degree of interaction is evident with Rexona ([150-170]* with Rexona for women). Whereas interaction with Vasenol is relatively low ([80-100]* with Vasenol for women and [100-120]* for Vasenol for Men). Sanex also interacts to the same extent or more strongly with third party brands, notably Nivea ([100-120]*), Fa ([250-270]*) and Narta ([100-120]).

Figure 47: Interaction index for non-male Sanex in Portugal

[...]*

(910) The interaction indices presented by the Parties are a comparison of the actual gross consumer switching of the brand (in this case, Sanex for Woman) with the "expected" switching based on the proportions of the competing brands' market shares in the total deodorant category (combining male and non-male)[604]. A high interaction index alone does not necessarily mean that there is a high overall level of switching from and to small brands.

(911) The notifying party explains that the indices show no clear cut picture of the interaction. To explain inconsistent levels of interaction (much too high) between

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602 See Form CO, paragraph 6.326.

603 Replies of Portuguese retailers to questionnaire to customers on deodorants sent on 23 April 2010, question 30.

604 The market shares are calculated on the basis of the brands' sales within the panel. This may to some extent vary from the market shares based on Nielsen data, but in general provides a rather consistent picture with those.

L'Oreal Men expert and Sanex for women the notifying party argues that the very high level of interaction is likely to stem from L'Oreal's recent entry into the market and buyers switching to it from other brands, causing a particular spike in interaction in that year. As gross switching to and from Men Expert is measured against a very small share base, this results in a very high degree of interaction.

(912) The Parties have submitted the underlying data used by GFK/Europanel containing the actual switching figures. Based on the same data as used for the interaction index, Figure 48 shows in descending order for each brand their share of total gross switching to and from Sanex for Women in 2009. Consistent with the method used by GFK/Europanel, the total gross switching is compared with the proportions of the competing brands' market shares in the total deodorant category ("value of competitors").

Figure 48: Gross switching for non-male Sanex in Portugal

[...]*

(913) The results are more consistent for the interaction with Sanex for women. Apart from Sanex Men, the other brands with which Sanex for Women interacts are the major female brands. Nivea Women ([10-20]*%) has the highest level of gross switching with Sanex for Women, followed by the Unilever brands: Dove for Women ([10-20]*%) Rexona for Women ([5-10]*%) and Vasenol for Women ([5-10]*%).

(914) Of all the Sanex for Women consumers that changed to another non-male brand, [40-50]*% interacted with a Unilever brand.[605] Of all the Sanex for Women consumers that switched to another brand, [40-50]*% moved to a Unilever brand. These numbers indicate that the risk of losing sales to Unilever is an important constraint on Sanex prior to the merger. These switches would not constrain Sanex after the transaction since the switches would no longer be lost to the merged entity.

(915) Even if the other half of switching is to other brands, the merger instantly removes half of the total competitive constraint previously exercised on Sanex. This means that the incentive to increase the price of Sanex would be significant post-merger.

Conclusion on closeness of competition

(916) It can be concluded that Sanex is a close competitor to Vasenol and Dove. Nivea is also among the closest competitors with a skin caring proposition in Portugal. However, due to the complexity of the assessment, it may not be appropriate in this particular case to label any one of these particular brand as "the closest" competitor for the purpose of drawing conclusions about the competitive constraints exercised by these individual brands.

[605] This figure is calculated taking into accounts only non-male brands. When certain brands were not clearly defined as male and non-male (for example private label, or the category of 'others'), the non-male value was calculated according to the proportions of male and non-male turnovers which this particular supplier(s) or brands achieve in the respective country (turnover split taken from market share tables provided by Parties – Annex 7.1 of the Form CO).

(917) However, the level of switching from the panel data is in line with Unilever's market share. In fact, it confirms that the Parties' very high market shares overall are a good proxy for assessing the effects of the transaction.

Stable position of Sanex in the Portuguese market

(918) In its reply to the Statement of Objections, Unilever points out the modest position of Sanex in the non-male deodorant market in terms of market share ([5-10]*%) and weighed distribution ([...]*). Unilever also provides a graph showing the decline trend of Sanex value share between 2003 and 2010. They argue that other brands, on the contrary, are growing (L'Oreal, Beiersdorf, Henkel) which would show that there will be active competition in the non-male segment post-merger.

Figure 49: Sanex value share, non male deodorants (2003-2010)

[...]*

(919) Unilever argues that there is "*no one event or particular course of action by Sara Lee which can explain the decline in Sanex's share*".[606] Instead, they point to a number of factors such as "*new entry and strong competition from a range of dynamic third party brands with a similar market position to Sanex; pressure on sales from retailer delisting; [...]*.*"

(920) First, it is true that Sanex has lost significant market shares between 2003 and 2007. However, the brand managed to clearly stabilise its market shares since 2007 and even increased its sales between 2008 and 2009 above overall growth rate of the Portuguese non-male market.

(921) Secondly, it seems unlikely that pressure from retailers should have been particularly targeted at the Sanex brand. Sanex is sold on the Portuguese market via an exclusive retailer. As such, it falls to Sara Lee to undertake the necessary investment in A&P. Two out of three retailers[607] explained the decline of Sanex by the absence of an important marketing or advertising campaign by Sara Lee, one of them explaining that:" '*decline appears to result from the absence of investment in the brand through marketing and promotional campaigns*"[608] . Finally, the two main Parties' competitors on the Portuguese market also pointed out the absence of significant A&P support from Sara Lee to promote Sanex[609].

[606] Submission from Unilever – 24 September 2010.

[607] See Questionnaire sent to [retailer] and [retailer] on 17 September 2010.

[608] See Questionnaire sent to [retailer] on 17 September 2010.

[609] See Minutes from the conference call with Beiersdorf on 22 September 2010 and minutes from conference call with L'Oreal on 30 September 2010.

(922) Thirdly, as mentioned by the exclusive distributor of Sara Lee in Portugal[610], "*Sara Lee currently invests in the brand and wishes to develop the business"[611]*. Even if retailers generally recognize the decline of Sanex over the last few years, one of them still considers Sanex as a dynamic brand and another one, which represents more than [30-40]*% of the deodorant sales in Portugal, argues that Sanex's *"market share has been relatively stable for the last 5 years*"[612]. While this last opinion does not exactly reflect the declining trend in 2006 and 2007, it means that the retailer, which accounts for half of the overall Sara Lee deodorants sales in Portugal, no longer perceives Sanex as a declining brand.

(923) Fourthly, Sara Lee seems to have recently invested in the promotion of their Sanex innovations. The investment in Sanex in the last years is [...]*. It shows that Sara Lee is still active in the Portuguese market and is willing to develop its deodorant business.[613] Such investments have resulted in an increase in market share in the non-male market between 2008 and 2009.

Table 52: Sanex A&P spend 2003 to 2009 (on the basis of a total deodorants market)

[...]*

(924) It can therefore be concluded that despite loss of market shares between 2003 and 2007, Sanex remains a competitive force in Portugal based on its rather stable market share and sales.

Lack of countervailing buyer power

(925) Section IV.2.3.1.3.analyses, at a general level, why the buyers of the Parties' deodorants do not have countervailing buyer power. These elements equally apply to the Portuguese non-male deodorant market.

(926) Unilever argues that the degree of concentration at the retail level is supportive for buyer power. According to the Form CO, the four largest retailers account in Portugal for [70-80]*% of the total national deodorants sales.[614] However, the leading one is, with [30-40]*% national sales, 2.5 times larger than the second one ([10-20]*%) and almost 4 times bigger than the third and fourth ones ([10-20]*% and [5-10]*%) which indicates that, even amongst the four main retailers, not all of them have the same

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610 Two retailers mentioned that distribution through a third party distributor might have contributed to the decline of Sanex. See Questionnaire to [retailer] sent on 07 September 2010 and Minutes of conference call with [retailer] on 22 September 2010.

611 See Questionnaire sent to Vileda on 21 September 2010.

612 See Questionnaire sent to [retailer] on 17 September 2010.

613 These latest numbers contradict Unilever's submission in the Reply to the Statement of Objections where they claim that Sara Lee doe not put any marketing support behind its Sanex brand.

614 See Table 6.17 Form CO.

importance for Unilever to get access to the market[615]. In addition, there are a number of even smaller retail formats in Portugal.

Table 53: Percentage of deodorant sales accounted for by major retailers, Portugal (2008)

	[retailer1]	[retailer2]	[retailer3]	[retailer4]	Total
National	[30-40]*%	[10-20]*%	[10-20]*%	[5-10]*%	[70-80]*%
Unilever	[20-30]*%	[10-20]*%	[5-10]*%	[5-10]*%	[70-80]*%
Sara Lee	[50-60]*%	[20-30]*%	[5-10]*%	[5-10]*%	[80-90]*%

(927) Even if a large retailer were to derive some degree of bargaining power from its large size or a sophisticated purchasing strategy, there is no convincing reason why other retailers should also be affected positively. Thus, even if countervailing buyer power were to exist for the largest retailers, it is unlikely to sufficiently off-set potential adverse effects of a merger since it would only ensure that a particular segment of customers, with particular bargaining strength, is shielded from significantly higher prices or deteriorated conditions after the merger.[616]

(928) Unilever also argues that there is no evidence that small retailers get a worse deal than larger ones as they can achieve good terms with Unilever due to availability of sufficient alternatives.

(929) When comparing smaller and larger retailers, it is not argued that large buyers do have bargaining power. Instead, the analysis addresses the question of whether smaller retailers would benefit from a hypothetical situation in which large buyer had some bargaining power. In this context, even if large retailers had buyer power, Unilever's arguments that the same degree of buyer power lies with small retailers cannot be sustained.

(930) Furthermore, in Portugal, Unilever holds a specific position with retailers. As mentioned by the Parties in the Form CO[617], Unilever acts as category captain for [...]*. [...]*[618]. As explained in detail in the Section IV.2.3.1.3, the smaller the buyer, the easier it would be for a supplier to sell the delisted products to other buyers. Moreover, Unilever's explanation as to how small retailers might benefit from discounts given to larger retailers has been dismissed in Section IV.2.3.1.3.

(931) Unilever is currently the main - [...]* - category manager active in Portugal in relation to deodorants[619], and although it is true that most Portuguese retailers do not think category

[615] The leading retailer [retailer] accounts for more Unilever deodorant sales than the next two [retailer] and [retailer] combined.

[616] See paragraph 67 Horizontal Merger Guidelines.

[617] Form CO, paragraph 6.338.

[618] Questionnaire to customers on deodorants sent on 25 June 2010, question 2.

[619] [retailer] mentioned they were about to start a "partnership" with L'Oreal regarding planograms. This partnership should not take place before 2011.

management actually leads to favouring own products as retailers verify the recommendations given by the category manager, this just demonstrates the importance of Unilever on the market and puts the company in a unique position vis-à-vis all its competitors, reinforcing its general degree of influence on the retailers.

(932) This unique position is supported by the strong position of Unilever compared to its competitors in the weighted distribution in retail stores of the different suppliers in Portugal. Weighted distribution represents the share of sales accounted for by all the stores in which the brand is stocked. It is therefore a measure of the retail exposure given to a brand. Table 54 shows that Unilever managed to secure widespread distribution compared to its competitors[620].

Table 54: Weighed distribution in Portugal

Portugal

	Same Period YAGO	Previous Period
Axe total	[...]*	[...]*
Rexona total	[...]*	[...]*
Dove total	[...]*	[...]*
Vasenol total	[...]*	[...]*
Nivea total	[...]*	[...]*
Fa total	[...]*	[...]*
Sanex total	[...]*	[...]*
Adidas total	[...]*	[...]*
Playboy Total	[...]*	[...]*
Narta total	[...]*	[...]*

620 [...]*

Garnier Total	[...]*	[...]*
Old Spice	[...]*	[...]*
Palmolive total	[...]*	[...]*

(933) Only Nivea is able to obtain the same degree of distribution as each of Unilever brands ([...]*). In addition, Axe, Dove, Rexona, Vasenol, Nivea, Narta and Sanex are the brands with the highest weighted distribution in Portugal. Suppliers or smaller brands such as Palmolive, Fa or Old Spice are not able to obtain full distribution and hence have less access to the consumers. Post-transaction, Unilever will control five out of the seven brands with the highest weighted distribution rate, and reinforce its position as unavoidable trading partner for the retailers.

(934) Unilever ability to obtain such a strong distribution also indicates that it appears to be less vulnerable to the threat of non regular delisting (which is not linked to removal of underperforming products).

(935) This is further illustrated by the fact the majority of retailers also indicated that a substantial amount of customers would switch to other retailers if they were not to stock one or more of the Unilever/Sara Lee brands which finally would have a negative commercial impact on them.[621]

(936) In its reply to the Statement of Objections, Unilever argues that two out of three retailers intend to increase the share of their private labels (one of them considering that private labels has relevance in Portugal and constrain branded deodorants).[622]

(937) The penetration of private labels is limited ([5-10]*%). Two out of three Portuguese retailers submitted during the market investigation that the impact of private labels was limited in Portugal[623].

(938) One of the main retailers explained that "*There is not a relevant presence of private labels products in this category*"[624] and another stated that despite the deteriorated economic situation, it did not introduce more private labels because "*it was difficult to find suppliers with all the needed conditions: environmental and health diplomas and of course, price conditions*"[625].

[621] Questionnaire to customers on deodorants sent on 25 June 2010, question 17.

[622] Questionnaire to customers on deodorants sent on 25 June 2010, question 23.

[623] Questionnaire to customers on deodorants sent on 25 June 2010, question 23a).

[624] Questionnaire to customers on deodorants sent on 25 June 2010, question 23 a).

[625] Questionnaire to customers on deodorants sent on 25 June 2010, question 23 b).

(939) Unilever also argues that two out of three retailers would increase the presence of other suppliers if Unilever sought a net-net price increase post merger which shows that they would have alternative suppliers post merger.[626]

(940) However, Sanex has a particular strong position in deodorants with a skin care proposition, a segment in which Unilever's brands Dove and Vasenol are active as well as Nivea. Thus, while it is true that retailers could switch to Nivea, the set of alternatives is reduced by 50% compared to the pre-merger situation, shifting bargaining power from the retailer to Unilever and ultimately to Beiersdorf as well, as it is the only credible alternative to the Parties' brands post-transaction.

(941) Even though Unilever argues that Sanex has a modest market share and it is not seen as a "must have" brand by Portuguese retailers, the merger will enhance Unilever's position as a single supplier of an unrivalled strength even further and would further shift bargaining power (if any) from the retailer to the supplier.

(942) Out of the six brands which have a relatively sizeable market position (above [5-10]*% market share) in the non-male deodorant market in Portugal (Nivea, Dove, Rexona, Vasenol, Sanex and Narta), the Parties would own four of them post transaction (Dove, Rexona, Vasenol and Sanex).

(943) The combination of the Parties strong brands in the hands of a single supplier would consequently shift bargaining power (if any) from the retailer to the supplier.

(944) Unilever also argues that, in terms of balance of bargaining position with retailers all Unilever products only account for [0-5]*%-[5-10]*% of individual retailers FMCG (Fast Moving Consumer Goods) sales in Portugal whilst individual customers for up to [20-30]*% of Unilever's sales across all categories. It would show that ultimately, each individual retailer is significantly more important to Unilever than Unilever is to them.

(945) The fact that Unilever's share of the overall turnover of a given retailer is smaller than retailer's share of Unilever's Portuguese sales in all categories is not evidence that the retailer is more important to Unilever than vice versa. As illustrated in the analysis of the conflict between [...]* and Unilever in [...]* in recitals (276)-(294), an important issue for the relative power of the two sides is the threat that the retailer may lose customers if it does not stock Unilever’s products[627]. The retailer is vulnerable to this effect exactly because it has a lot of turnover outside the deodorant category in question. Unilever, in its reply to the Statement of Objections argues that "*the position in negotiations with retailers is derivative of the levels of consumer loyalty its individual brands can engender*"[628].

(946) To illustrate the retailers’ bargaining power, the Parties argue that, [...]*, [...]* decided to increase the fees for listing new innovations. Unilever explains ([...]*) shelves.

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[626] Questionnaire to customers on deodorants sent on 25 June 2010, question 11.

[627] [...]*.

[628] Unilever's Reply to the Statement of Objections, page 123, paragraph 6.35.

The overall context in which this alleged delisting took place has not been explained by Unilever.

(947) In its reply to the market investigation, [the retailer concerned] rejected any kind of retailer buying power and stated that "*It must be recognized that the processes of market concentration have to be more frequent on the side of the producers than on the side of the distributors. As a result, bargaining power is more likely to be transferred from retailers to producers. On the other hand, in Portugal, the retail sector is a very competitive sector, and neither of the main operators will be interested in (or have the possibility) to forfeit purchasing products from market leaders, such as Unilever brands*" [629]

(948) In any case, [...]* did not lose market shares in Portugal, but rather increased its sales by [0-10]*% between 2008 and 2009.

(949) Therefore, it is concluded that countervailing buyer power post-merger would not be sufficient to off-set potential adverse effects of the merger.

Sufficient entry unlikely to occur

(950) The market investigation has generally shown that entering the deodorant market – either from a neighbouring personal care market or as a new entrant - is difficult. Even if the technology required and the investment to manufacture deodorants could be considered as "accessible", high barriers to entry exist in the form of significant A&P expenditure to create brand awareness and gain access to shelf space.

(951) [...]* In Portugal, the combination of Unilever's broad portfolio of brands and its already leading position with market shares around [35-45]*% seems to indicate that Unilever has not only the incentive, but also the ability to prevent entry of new brands or expansion of existing ones as it would be through its leading position the one suffering most from such activities.

(952) In addition to the barrier to entry resulting from the creation of brand awareness and access to shelf space, a potential entrant would have to take into account the likely reaction of a powerful incumbent like Unilever. [...]* Unilever's increased market share, the addition of another brand like Sanex rather strengthens its ability and incentive to fight entry.

(953) The elements gathered during the market investigation showed that there has been no significant entry of a supplier in the Portuguese non-male deodorant market since 2007. One retailer argued it did not expect any new entry in the next 2-3 years and mentioned that, in order for a newcomer to successfully enter the market for deodorants in Portugal, the minimum requirements were not less than: "*Existence of a strong brand, innovation and a strong marketing campaign*"[630].

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[629] Questionnaire to customers on deodorants sent on 25 June 2010, question 16.

[630] "*Existência de uma marca forte, inovação e uma forte campanha de marketing*" - See reply from [retailer] to Questionnaire to customers on deodorants sent on 23 April 2010, question 61.

(954) At the level of new brands, only one retailer highlighted the successful entry of a brand: Narta in mid-2006. Whereas Narta is also mentioned as the only example of a recent successful entry of a brand, Unilever expects that L'Oreal will build upon the success of Narta with its recent launch of Garnier Mineral brand.

(955) Narta cannot be used as a relevant example to illustrate the current ease/ difficulty to enter the deodorant market in Portugal. Indeed the Narta entry occurred in mid-2006 and so cannot be considered as a recent entry. In the meantime, the market structure, the level of investments required or the retail sector might have changed and the condition of an entry in 2006 is unlikely to be similar to an entry which would occur nowadays.

(956) With respect to the recent entry of Garnier Mineral at the beginning of 2010, it is worth noting that, Unilever reacted immediately and launched Rexona Natural Mineral a deodorant with natural extracts and minerals. [...]* [631]

(957) In its reply to the Statement of Objections, Unilever emphasises Garnier's success in achieving, in week 28 (July 2010), a high weighted distribution ([...]*) and a relatively high proportion of value space ([0-5]*%)[632], arguing that this demonstrates how new entrants can penetrate the market. At a request of the Commission, it also supplied monthly market shares that Garnier Mineral achieved since its introduction in February until August 2010. The figures are presented in Figure 50:

Figure 50: Garnier Women – Weekly market shares in non male deodorant market (January-August 2010)

[...]*

(958) If only 5 weeks after its launch Garnier Mineral has achieved a market share [0-5]*% in the non-male deodorant segment, irregular results have followed (from [0-5]*% to [5-10]*% market shares. Indeed, in the last week of market share available (end August 2010), the Garnier shares ([0-5]*%) are below the first peak achieved in March. Despite significant investments and a sizeable presence across retailers, L'Oreal is not capable to stabilise the market shares of Garnier which are now generally declining since the main peak at the end of June ([5-10]*%).

(959) This difficult entry is further illustrated by the L'Oreal comments on the Statement of Objections which argue about the launch of Garnier in Portugal: "*L'Oreal had to increase media spending in order to achieve a competitive share of voice. This culminated with a negative result on the financial of this launch including 12 months delay to the predicted break even point*". [L'Oreal] *is currently achieving -32% less*

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631 [...]*

632 Unilever compares Garnier figures with the weighed distribution ([...]*) and the value share ([0-5]*%) of Rexona Mineral. Rexona Mineral is only one of the SKUs of Rexona whereas Garnier is a full brand including various sku's. The fact that Garnier has market shares of [0-5]*% superior to Rexona Mineral is not a sign of success but rather the evidence that with one sku, Unilever is able to reach market shares close to a new entrant for whom the launch has required years of development and a significant investment. It should be also noted that Unilever has not provided the recent market shares of Dove GoFresh where in May 2010, this brand already reached value share of [0-5]*%.

units than initial forecast of the launch."[633] To illustrate this argument, L'Oreal also refers to the increase of media spend that Unilever would have employed in Portugal in 2010 (+[80-100]*% - *estimated from Zenith Optimedia figures*) across a portfolio of deodorants brands which would have significantly increased the media spend required for a competitor to enter the market.

(960) The main supplier, Beiersdorf, has confirmed a statement from L'Oreal in considering that L'Oreal overinvests for A&P in Portugal and "*wonders if their deodorant business will be sustainable if they continue with the same level of investment*".[634]

(961) Moreover, out of three retailers contacted in September 2010, two of them did not expect that a similar success for Garnier than for Narta[635] (the last entrant before Garnier). One of them notably mentioned "*Due to its niche position, [the retailer] does not expect a similar success for Garnier than for Narta; In addition, the level of investment provided for Narta was higher than for Garnier"*[636]. This opinion is confirmed by another retailer because Garnier "*is not responding to the high patterns of quality that were presented* [for Narta]"[637]. Finally Beiersdorf also expressed doubts on the future success of Garnier Mineral[638].

(962) It is therefore concluded that it is unlikely that new entry will occur in the Portuguese non-male market so as to counteract the adverse effects of the merger.

Overall conclusion

(963) It is consequently concluded that the notified concentration is likely to significantly impede effective competition on the market for non-male deodorants in Portugal.

IV.2.3.2.10.2. Male deodorant market

(964) The male deodorant market in Portugal had a total value of EUR 23.1 million in 2009, growing by [10-20]*% compared to 2008. Unilever is serving the Portuguese market mainly with its brands Axe and Rexona for Men, while Brut and Vasenol play only a minor role. Sara Lee is active with Sanex for Men and has insignificant sales with Jovan.

Table 55: Portugal: Deodorants: 2009: market shares male market in value – Source: Form CO.

	000 EUR	%
UNILEVER	[...]*	[40-50]*%

633 L'Oreal subsidiaries comments on the Statement of Objections- 14 September 2010.

634 Minutes of the conference call with Beiersdorf Portugal - 22 September 2010.

635 Questionnaire sent to Portuguese retailers on 17 September 2010.

636 Minutes of the conference call with [retailer], 22 September 2010.

637 See Questionnaire sent to [retailer] on 17 September 2010.

638 Minutes of the conference call with Beiersdorf Portugal - 22 September 2010.

- AXE	[...]*	[20-30]*%
- BRUT+BRUT33	[...]*	[0-5]*%
- DENIM	[...]*	[0-5]*%
- REXONA	[...]*	[10-20]*%
- VASENOL	[...]*	[0-5]*%
SARA LEE	[...]*	[0-5]*%
- JOVAN	[...]*	[0-5]*%
- SANEX	[...]*	[0-5]*%
COMBINED	**[...]***	**[40-50]*%**
BDF	[...]*	[30-40]*%
COLGATE	[...]*	[0-5]*%
CONTER	[...]*	[0-5]*%
COTY	[...]*	[0-5]*%
L'Oreal	[...]*	[0-5]*%
HENKEL	[...]*	[0-5]*%
P&G	[...]*	[0-5]*%
PRIVATE LABEL	[...]*	[0-5]*%
OTHERS	[...]*	[0-5]*%
TOTAL	**23 052**	**100.0**

(965) After the proposed transaction the combined market share of the Parties on the Portuguese male deodorant market would be [40-50]*%, with Unilever contributing [40-50]*% and Sara Lee [0-5]*%. Other competitors on the market are Beiersdorf ([30-40]*% market share), L'Oreal ([0-5]*%), Conter ([0-5]*%) and Procter & Gamble ([0-5]*%). Henkel, Colgate and Coty have a presence of around [0-5]*% each.

(966) In addition to the presence of a number of sizeable competitors, the market investigation confirmed that Sara Lee's Sanex for Men brand is not perceived as a close competitor to Unilever's main brands Axe and Rexona for Men, accounting for [30-40]*% of the male market (Axe [20-30]*%, Rexona for Men [10-20]*%).[639] Responding retailers either argued that Axe and Rexona have no real alternatives or considered Conter's Denim or Coty's Adidas brand as the close competitor to Axe and Rexona. Finally, almost all retailers did not expect any anti-competitive effects resulting from the proposed transaction as sufficient alternatives would be available.[640]

(967) It can therefore be concluded that the concentration is not likely to lead to a significant impediment of effective competition as regards the male market for deodorants in Portugal.

IV.2.3.2.11. United Kingdom

[639] Questionnaire to customers on deodorants sent on 23 April 2010, question 30.

[640] Questionnaire to customers on deodorants sent on 23 April 2010, question 63.

IV.2.3.2.11.1. Non-male deodorant market

(968) During the market investigation, several market participants expressed concerns about the effects of the merger in the United Kingdom. Indeed, a number of factors are indicative of significant non-coordinated effects in the non-male deodorant market in the United Kingdom.

Merging firms have high market shares

(969) According to the figures provided by the Parties, the non-male deodorant market in the United Kingdom had a total value of EUR 324 million in 2009[641], [90-100]*% of which is covered by supplier brands and the remaining [5-10]*% by private labels. The market has experienced an increase in value of [0-5]*% between 2008 and 2009. Unilever is active with four main brands, three of them being the leaders on the market: Sure (equivalent to Rexona in continental Europe) with [20-30]*%, Dove with [10-20]*%, Impulse ([10-20]*%) and Vaseline with [0-5]*%. Sara Lee's main brain in the United Kingdom is Sanex which achieves [5-10]*% market share.

Table 56: Market shares in the non-male deodorant market for deodorants, in value, 2009, United Kingdom. Source: Form CO.

	,000 €	**%**
UNILEVER	**[...]***	**[50-60]*%**
- Dove	[...]*	[10-20]*%
- Impulse	[...]*	[10-20]*%
- Sure	[...]*	[20-30]*%
- Vaseline	[...]*	[0-5]*%
SARA LEE	**[...]***	**[5-10]*%**
- Radox Elements	[...]*	[0-5]*%
- Sanex	[...]*	[5-10]*%
COMBINED	**[...]***	**[60-70]*%**
Beiersdorf United Kingdom Ltd	[...]*	[5-10]*%
Colgate-Palmolive	[...]*	[5-10]*%
Coty (United Kingdom) Ltd	[...]*	[0-5]*%
Procter & Gamble	[...]*	[0-5]*%
Revlon Inc	[...]*	[5-10]*%
Schwarzkopf Henkel L	[...]*	[0-5]*%
Private Label	[...]*	[5-10]*%
Others	[...]*	[0-5]*%
Total	**324 551**	**100.0**

[641] The total market value figures provided by the Parties for the overall deodorant market do not equal the sum of the male and non-male markets. The Parties explain that the difference is due to masking of sales by certain retailers in the Nielsen data. The overall market is said to be higher by about [...]* than the sum of gender segments, and consists of brands which have not been attributed to a particular gender, meaning that about [5-10]*% of overall deodorant sales have not been attributed to a gender. Consequently, the total market size of the non-male market (and the male market) is slightly underestimated by a total of around [5-10]*%, meaning that the market share of the parties and of their competitors is slightly overstated. The difference in market shares would however not be significant, and the general picture would remain unchanged.

(970) The Parties achieve a combined market share of [60-70]*% ([50-60]*% for Unilever and [5-10]*% for Sara Lee). Whereas all other competitors' shares declined or stagnated, Unilever was the only supplier who managed to materially increase its shares, despite the very high share it already had. Unilever managed to grow its market share by [0-5] percentage points in 2009 (from [50-60]*%) which translates into an increase of sales of [5-10]*% in 2009. Unilever also grew its market share the year before (2008) by [0-5] percentage points in (from [50-60]*% in 2007). This significant growth was driven by the success of the leading brands Dove and Sure.

(971) The market share of Sara Lee as a supplier remained relatively stable in the last two years ([5-10]*% in 2007, [5-10]*% in 2008 and [5-10]*% in 2009), however it was able to steadily grow its most important Sanex brand.[642] Sanex grew sales by [10-20]*% in 2009 and gained [0-5] percentage points market share (from [5-10]*% to [5-10]*% in 2009). Sanex was also growing share in the previous year by [0-5] percentage points from [0-5]*% in 2007. The total share of Sara Lee does not reflect this growth as its sales were decreasing for its secondary brand Radox in the same period.

(972) Apart from the Parties, there are only three competitors with a market share in excess of [0-5]*%. Neither of these companies managed to secure a growth in their market share. In the last year, the shares of Beiersdof (offering Nivea) declined slightly from [5-10]*% to [5-10]*% (in 2007 it had the same share as in 2008). Revlon (with brands like Mitchum, Charlie) declined slightly in 2008 from [5-10]*% to [5-10]*% and kept this share also in 2009. Colgate-Palmolive (primarily Soft&Gentle) had the strongest declining share – from [10-20]*% in 2007 to [10-20]*% in 2008 and finally to [5-10]*% in 2009.

(973) The remaining small competitors on the non-male market did not manage to sensibly grow their share. Henkel (offering mostly RightGuard) declined its share slightly from [0-5]*% (2007) to [0-5]*% (2008) to [0-5]*% in 2009. Procter & Gamble (Secret, Mum) remained around [0-5]*%-[0-5]*% market share since 2007. Coty (offering mostly Adidas, recently also with female versions) has decreased its share to [0-5]*% in 2009 (from [0-5]*% in 2007 and [0-5]*% in 2008). L'Oreal's introduction of Garnier Minerals only occurred in 2010 so no market share was achieved in 2009. Garnier Mineral will be discussed in detail in the section on entry.

(974) Such high and growing market shares of the merged entity suggest that it is likely to enjoy significant market power in the absence of any mitigating factors. Already pre-merger, the next competitor had a share six times smaller than Unilever. The strengthening of such already very strong position of Unilever by the Sanex brand indicates that the merger would significantly impede effective competition.

Merging firms are close competitors

(975) Another important aspect for assessing unilateral effects arising from the proposed merger is the degree of substitutability between the Parties' non-male deodorants. The

[642] While past growth rates do not automatically translate into prospects of future growth, they show that Sanex was one of the most successful brands in terms of market expansion in the recent years in the United Kingdom.

higher the degree of substitutability between their products, the more likely it is that the Parties will be able to significantly raise prices of non-male deodorants.

(976) In addition to pointing to high market shares, retailers active in the United Kingdom indicated that the Parties are close competitors. They explain that in particular the skin care/skin friendly proposition would make a particular cluster of brands - Sanex, Dove, Vaseline and Nivea - closely competing with each other.[643] Sure was generally perceived more as an efficacy oriented brand, and therefore the skin friendly brands did not score as the closest within retailers (as opposed to RightGuard which did so), but one retailer took the view that Sanex is amongst the closest competitors to Sure on the basis of price positioning.[644] These answers confirm that the Parties' brands closely compete with each other.

(977) Unilever, in its reply to the Statement of Objections, argues that the retailers' answers do not "wholly support" the analysis, citing some elements of the individual retailer's answers (such as one who considers Nivea to be closest to Dove and another one considering Vaseline to be closest to Sanex; or another retailer considering Soft&Gentle to be close to Dove, or suggesting that Unilever currently does not offer a "skinkind" brand). Unilever's reply over-emphasises some individual elements of the retailers' answers, but does not put into question the overall result of the investigation, namely that retailers mostly see close competitors within a cluster of skin friendly brands of Sanex, Dove, Vaseline and Nivea. Indeed, this is clearly demonstrated by a detailed analysis of the retailers' answers.[645]

(978) Unilever, in its reply to the Statement of Objections, puts forward research which suggests a closer substitution between Dove and Nivea than between Dove and Sanex based on brand positioning characteristics.[646] Beiersdorf's Nivea is indeed in a cluster of close competitors with other brands with a skin friendly proposition in the United Kingdom - Dove, Sanex and Vaseline. However, due to the complexity of the assessment, it is not appropriate to label one of these particular brands as "the closest" competitor for the purpose of drawing conclusions about the competitive constraints exercised by these individual brands. While Nivea may score closer to Dove in some brand positioning characteristic presented by Unilever, other elements suggest that it may be Sanex which is more closely competing with Dove in some market segments based on format. As is shown in recitals (994) and (1000), Sanex has a significantly

643 Questionnaire to customers on deodorants sent on 23 April 2010, question 30.

644 See reply of Superdrug on Questionnaire to customers on deodorants sent on 23 April 2010, question 29.

645 Out of five responding retailers, Dove was mentioned as closest (or amongst the closest) competitors to Sanex by three retailers, whereas two retailers said that Vaseline and Nivea were the closest to Sanex, and one mentioned Right Guard. Of these retailers, four out of five mentioned skin friendly properties as the reason for closeness (price was mentioned twice). As the closest competitor of Dove, three retailers mention Nivea and two mention Sanex and Vaseline, whereas Garnier and Soft&Gentle were mentioned once. Again, four out of five mention skin friendly proposition of reason to consider brands close to Dove (price mentioned by two, heritage by one, and efficacy also by one). Taking Vaseline as a point of reference, four retailers mention Sanex as the closest, Dove was mentioned by two, and Nivea and Garnier once (all five making reference to skin friendly proposition, two also to price). See replies of United Kingdom retailers to questionnaire to customers on deodorants sent on 23 April 2010, question 30.

646 Paragraph 12.20 and Figure 12.2. [...]*

higher share in the roll-on segment than Nivea, and thus seems to compete with Dove more closely then Nivea in this segment. The different price positing of Sanex and Dove did not prevent Sanex to compete intensely with Unilever's brands, as will be discussed in recitals (1001)-(1003).

(979) Unilever also points to certain competitors' answers who mention further brands as close competitors to the Parties' brands.[647] These answers enumerate more brands as close competitors to Parties' brand (Soft&Gentle, Natrel and Garnier Mineral), however they also mention the skin friendly brands Dove, Sanex, Nivea and Vaseline. Also, the two quotes have to take account of other replies from the market investigation.[648] In particular, the majority of retailers’ view the Parties' brands in close competition with each other (especially within a 'skin friendly' cluster). This is not disputed by Unilever, who only implicitly points to additional brands which may also be close substitutes. For the sake of completeness, these brands are discussed in more detail.

(980) Soft&Gentle (the main brand of Colgate-Palmolive) is described by the Parties as follows: "*Soft & Gentle has a focus on fragrances, although the product range includes variants targeted at efficacy and skin care. All the products in the Soft & Gentle range contain an element of fragrances or exotic oils, alongside the antiperspirant effect and functionality of the product. Advertising is directed at the female market with an emphasis on mood enhancing, confidence, feel good-factor and escapism.*"[649] The brand was described similarly by two United Kingdom retailers: one described the brand as having an efficacy and fragrance combined focus[650], the other described it as fragrance led, noting that the brand has been "*year on year on decline*".[651] Indeed, Colgate-Palmolive’s Soft&Gentle brand experienced the sharpest decline in market share (losing [0-5] percentage points between 2007 and 2009). According to the Parties' latest figures (for the first half of 2010), this continues to be (by far) the brand on the market most in decline, further eroding its market share.[652] Only one out of five United Kingdom retailers considered Soft&Gentle to be a close competitor to Dove, and none of the United Kingdom retailers mentioned the brand as

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[647] Unilever also quotes a third competitor merely saying that "*in our view a number of substitutes are possible*" without specifying the brands which it considers as closest competitors to the ones of the Parties. However, the quote cited by Unilever does not reproduce the full statement of the competitor, which goes on saying that "*beyond that we have not analysed this issue for the EEA countries*". This competitors' statement thus cannot invalidate the finding that the parties' brands compete closely.

[648] Unilever points to two individual replies out of a number of competitors. Most of other competitors did not provide a specific reply with respect to the United Kingdom market, so it is difficult to analyze the competitors' answers in the United Kingdom specifically.

[649] Form CO, para 6.64.

[650] Reply of a United Kingdom retailer to the questionnaire to customers on deodorants sent on 23 April 2010, question 27.

[651] Answer of another United Kingdom retailer to the questionnaire to customers on deodorants sent on 23 April 2010, question 27.

[652] Unilever's reply to the Statement of Objections, page 135, table 12.1.

among the closest competitors to Sanex, Vaseline or Sure/Rexona.[653] The nature and strength of the competitive constraint exercised by Soft&Gentle thus has to take into account the different positioning to Parties' brands, the retailers' predominant view that the brand is not a close competitor to these brands, and the steadily declining share.

(981) Revlon is present in the United Kingdom non-male market with its Mitchum and Charlie brands. In its reply to the Statement of Objections, Unilever does not argue that these brands are close competitors to the parties' brands, nor does it substantiate why it considers Revlon to be an effective constraint on the Parties. In the Form CO, Mitchum is described as follows: "*The Mitchum brand owned by Revlon is widely known for its slogans "so effective you can skip a day" and "powerful protection all day long". It is therefore an efficacy orientated brand and is marketed as a functional, highly effective antiperspirant.*"[654] In the market investigation, only one out of five United Kingdom retailers mentioned Mitchum as a close competitor to Sure/Rexona, and none of the retailers considered Mitchum as a close competitor to Dove, Sanex or Vaseline.[655] Mitchum had a [0-5]*% market share in the non-male United Kingdom deodorant market in 2009. Charlie had [0-5]*% market share in 2009 and it was not mentioned by any of the retailers as being among the closest competing brands to Dove, Rexona, Vaseline or Sanex.[656] The Parties do not offer any other elements with respect to Charlie. In fact, the Charlie brand offers mostly fragrance-oriented body-sprays, and the brand has a strong teenager-focus and is considered a close competitor to Unilever's Impulse.[657]

(982) Henkel's main brand in the United Kingdom non-male market is Right Guard. While Right Guard is considered to be a close competitor to Sure/Rexona by United Kingdom retailers, it is generally not considered as such in relation to Sanex and not at all to Dove or Vaseline.[658] The brand is primarily offered and marketed as a male deodorant, with strong focus on efficacy, with an emphasis on effectiveness in sport and exertion.[659] In any event, the female variant of Right Guard is not very successful. Henkel achieved only a [0-5]*% market share in the United Kingdom non-male deodorant market in 2009 (and has been in decline ever since). Supposing that Natrel takes some part of Henkel's market share, Right Guard's share would be even lower.

[653] Replies of United Kingdom retailers to questionnaire to customers on deodorants sent on 23 April 2010, question 30.

[654] Form CO, paragraph 6.71.

[655] Replies of United Kingdom retailers to questionnaire to customers on deodorants sent on 23 April 2010, question 30.

[656] Replies of United Kingdom retailers to questionnaire to customers on deodorants sent on 23 April 2010, question 30.

[657] Replies of United Kingdom retailers to questionnaire to customers on deodorants sent on 23 April 2010, questions 27 and 30.

[658] Three out of five retailers consider Right Guard to be among the closet brands to Sure/Rexona; only one considers it to be among the closest to Sanex, and none to Vaseline and Dove (replies of United Kingdom retailers to questionnaire to customers on deodorants sent on 23 April 2010, question 30).

[659] Form CO, paragraph 6.63.

Natrel (Henkel's second brand after RightGuard) was not mentioned by any of United Kingdom retailers as a close competitor to any of the Parties' brand. The brand has negligible position - market share which is below or around [0-5]*% in the non-male market. The Parties themselves do not argue that Natrel is a close competitor or an important constraint to the parties.

Gross Switching analysis

(983) The closeness of competition between Parties' brands is also reflected in a switching analysis submitted with the Form CO[660], conducted by GFK/Worldpanel.[661] The interaction indices presented in the Form CO show a relatively high interaction of Unilever's brands with the non-male version Sanex. The Parties explain that there is a "high degree of interaction" between Sanex with Vaseline and a "reasonable degree of interaction" of Dove and Rexona (Sure) with Sanex, but they point out other brands with a comparable interaction index value.[662] Unilever provided on 26 July 2010[663] an update with more recent figures on interaction indices (the results of which are broadly consistent with the one provided in the Form CO) – see Figure 51.

Figure 51 Interaction index for non-male Sanex in the United Kingdom

[...]*

(984) The interaction indices presented by the Parties are a comparison of the actual gross consumer switching of the brand (here, Sanex for Woman) with the "expected" switching based on the proportions of the competing brands' market shares in the total deodorant category (combining male and non-male).[664] A high interaction index alone therefore overemphasises the actual switching from and to small brands. In Figure 51, Rightguard for Woman (Henkel) has a high interaction index, but its market share is quite small (Henkel has a [0-5]*% share in the non-male market, and this share of Rightguard for Woman is even more diluted in the total deodorant category). When the market share is taken into account, the actual consumer switching as observed in the panels is significantly lower than the interaction index alone would suggest.

(985) Therefore, while interaction indices provide some insights about the closeness of brands, the gross switching figure from and to a brand provides a more illustrative picture about the actual switching patterns of consumers. The Parties have submitted the underlying data used by GFK/Europanel containing the actual switching figures. Based on the same

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660 See Figure 6.14 Form CO.

661 The methodology, limitations and the interpretative value of the panel data leading to gain/loss analyses was described in relation to the Belgian market, see Section IV.2.3.2.1.1.

662 Form CO, paragraph 6.249.

663 "*M.5658 Unilever/Sara Lee Body Care: Supplementary submission regarding interaction indices*" submitted on 26 July 2010.

664 The market shares are calculated on the basis of the brands' sales within the panel. This may to some extent vary from the market shares based on Nielsen data, but in general provides a rather consistent picture with those.

data as used for the interaction index, Figure 52 shows in descending order for each brand their share of total gross switching to and from Sanex for Women in 2009. Consistent with the method used by GFK/Europanel, the total gross switching is compared with the proportions of the competing brands' market shares in the total deodorant category ("value of competitors").

Figure 52 Gross switching for non-male Sanex in the UNITED KINGDOM

[...]*

(986) The four individual brands which mostly interact by switching from or to Sanex for Woman all belong to Unilever. Apart from Axe/Lynx (which may to some extent be misinterpreted as an indication of closeness[665]), the most strongly interacting brands are Rexona(Sure) for Woman with [10-20]*% of the total switching, Dove with [10-20]*%, followed by Rexona for Men[666] ([5-10]*%). Other brands only follow thereafter: Private labels (DOB) with [5-10]*%, Soft&Gentle (Colgate-Palmolive) with [5-10]*%, Nivea for Woman ([0-5]*%), and other brands, amongst them two more Unilever's brands (Impulse and Vaseline).

(987) Based on these figures, in total around half of all Sanex for Women purchasers which are switching brands are making a switch to/from Unilever brands. Of all the Sanex for Women switchers that switched from/to another brand, [40-50]*% switched from/to a Unilever brand. That proportion of Unilever brands would be roughly similar if one considers only the non-male brands of Unilever and of all other competitors.[667] These numbers indicate that the risk of losing sales to Unilever is an important constraint on Sanex prior to the merger. These switches would not constrain Sanex after the transaction since the switches would no longer be lost to the merged entity.

(988) In the reply to the Statement of Objections, Unilever puts forward that the pattern of switching from Sanex to Unilever brands would be expected given Unilever's market share. Also, Unilever argues that while about one half of Sanex switchers switch to/from Unilever brands, the other half switch among other competitors brands which present an equally important competitive constraint on Sanex then Unilever brands.

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665 As the closeness of Sanex for Women with Axe was not confirmed by the investigation, nor is it supported by the Parties' view, the level of "switching" may possibly be caused by the imperfection of the data being a collection of purchasing patterns instead of actual usage patterns. The purchaser of Sanex for Woman may have, in many occasions, simply bought an Axe/Lynx for their teenage son or other member of the family. In any event, this "switching" to and from Axe is low in comparison to the very high overall market share of Axe.

666 Possibly with the same bias as explained in the previous footnote for Axe/Lynx.

667 [40-50]*%. This figure is calculated taking into account only non-male brands. When certain brands were not clearly defined as male- and non-male (that is, private label products, or the category of 'others'), the non-male value was calculated according to the proportions of male and non-male- turnovers which this particular supplier(s) or brands achieve in the respective Member State (turnover split taken from market share tables provided by Parties – Annex 7.1 of the Form CO).

(989) It is acknowledged that the level of switching from the panel data is in line with Unilever's market share.[668] In fact, this confirms that the Parties' very high market shares in the United Kingdom are a good proxy for analysing the effects of the transaction. In some areas of the market (like the teenage-focused fragrance deodorants/body sprays of Impluse) Sanex does not interact strongly with Unilever brands. Conversely, the competitive interaction between Sanex and Unilever's brands is particularly strong with respect to some key brands and/or market segments (with Dove and Vaseline and the skin-friendly segment, and also with Sure/Rexona; and within the roll-on segment as is shown in recitals (992)-(995)).

(990) The indication from the consumer panel data that around [50-60]*% of all Sanex switching within the non-male market in the United Kingdom occurs with Unilever's brands means that Unilever is indeed a very significant constraint on Sanex. Even if the other half of switching is with other brands, the merger instantly removes half of the total competitive constraint previously exercised on Sanex. This means that the incentives for price increase of Sanex are significant post-merger.

(991) Unilever's comment made in the reply to the Statement of Objections[669] implying that some competitors' brands have relatively higher interaction indices and therefore exercise an important competitive constraint on Sanex has to be dismissed. In particular, Unilever points to a relatively high interaction indices of Right Guard, Nivea and Soft&Gentle, which are higher than Unilever's brands Rexona, Dove and Vaseline. The interaction index itself is not indicative of competitive constraint, in particular without considering the market position of the respective brands. This is best demonstrated by Right Guard. When taking into account the very weak market position of the brand, the actual gross switching from and to Right Guard is in the range of [0-5]*%-[0-5]*% of total Sanex switching, compared to [10-20]*%-[10-20]*% of switching attributable to each of Rexona and Dove. This alone shows that Right Guard cannot be considered a significant competitive constraint on Sanex. As regards Soft&Gentle and Nivea, the gross switching data (Figure 52) indicate almost twice as high switching for both Dove and Rexona compared to these brands.

Assessment on the basis of format

(992) The non-male market has also been analysed on the basis of format segmentation, focusing on two specific formats, namely sprays and roll-ons which account respectively for [70-80]*% and [20-30]*% of all non-male deodorants sold in the United Kingdom.

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[668] Unilever argues that the actual gross switching to other non-male brands is lower than expected on the basis of Unilever's market share. This is not correct, as the gross switching data from consumer panels should be compared to the shares of brands recorded within those panels (so as to correspond to the population of consumers which is recording switching). These shares do not exactly correspond to market shares based on Nielsen data, as the coverage of the panel is significantly lower. Nielsen data are thus reliable to describe the market shares on the overall market, however for the purpose of comparing the gross switching of brands to 'expected' switching based on the proportion o the brands, the panel shares are more appropriate. When taking those 'market shares' of Unilever's brands within all the non-male brands recorded within the panel to which Sanex users could switch (that means without Sanex), this figure is [40-50]*%. This perfectly corresponds to the level of actual gross switching between Sanex and non-male Unilever brands recorded with the panel, which is [40-50]*%.

[669] Unilever's reply to the Statement of Objections, paragraphs 12.22.

(993) When looking at the strengths of Unilever's and Sara Lee's non-male brands in terms of format, a particularly strong closeness is observed in the roll-on format, where Sanex is relatively strong (the third best-selling brand after Dove and Sure). The market shares in the non-male market split according to format are presented in Table 57.

Table 57: Market shares in the non-male market for deodorants split by format, in value, 2009, UNITED KINGDOM. Source: Form CO[670]

	STICK		ROLL-ON		OTHER		AEROSOL	
	'000 €	%	'000 €	%	'000 €	%	'000 €	%
UNILEVER	[...]*	**[80-90]*%**	[...]*	**[40-50]*%**	[...]*	**[60-70]*%**	[...]*	**[60-70]*%**
'- Dove	[...]*	[40-50]*%	[...]*	[20-30]*%	[...]*	[20-30]*%	[...]*	[10-20]*%
'- Impulse	[...]*	[0-5]*%	[...]*	[0-5]*%	[...]*	[0-5]*%	[...]*	[10-20]*%
'- Sure 24hr Intensive	[...]*	[30-40]*%	[...]*	[10-20]*%	[...]*	[0-5]*%	[...]*	[20-30]*%
'- Sure Girl	[...]*	[0-5]*%	[...]*	[0-5]*%	[...]*	[0-5]*%	[...]*	[0-5]*%
'- Vaseline	[...]*	[0-5]*%	[...]*	[5-10]*%	[...]*	[30-40]*%	[...]*	[0-5]*%
SARA LEE	[...]*	**[0-5]*%**	[...]*	**[10-20]*%**	[...]*	**[0-5]*%**	[...]*	**[5-10]*%**
'- Radox Elements	[...]*	[0-5]*%	[...]*	[0-5]*%	[...]*	[0-5]*%	[...]*	[0-5]*%
'- Sanex	[...]*	[0-5]*%	[...]*	[10-20]*%	[...]*	[0-5]*%	[...]*	[5-10]*%
COMBINED	[...]*	**[80-90]*%**	[...]*	**[60-70]*%**	[...]*	**[60-70]*%**	[...]*	**[60-70]*%**
Beiersdorf United Kingdom Ltd	[...]*	[0-5]*%	[...]*	[5-10]*%	[...]*	[0-5]*%	[...]*	[5-10]*%
Colgate-Palmolive	[...]*	[0-5]*%	[...]*	[5-10]*%	[...]*	[0-5]*%	[...]*	[10-20]*%
Coty (United Kingdom) Ltd	[...]*	[0-5]*%	[...]*	[0-5]*%	[...]*	[0-5]*%	[...]*	[0-5]*%
Incos Ltd	[...]*	[0-5]*%	[...]*	[0-5]*%	[...]*	[0-5]*%	[...]*	[0-5]*%
Procter & Gamble	[...]*	[0-5]*%	[...]*	[5-10]*%	[...]*	[0-5]*%	[...]*	[0-5]*%
Revlon Inc	[...]*	[10-20]*%	[...]*	[5-10]*%	[...]*	[0-5]*%	[...]*	[5-10]*%
Schwarzkopf Henkel L	[...]*	[0-5]*%	[...]*	[0-5]*%	[...]*	[0-5]*%	[...]*	[0-5]*%
PRIVATE LABEL	[...]*	[0-5]*%	[...]*	[0-5]*%	[...]*	[0-5]*%	[...]*	[0-5]*%
OTHERS	[...]*	[0-5]*%	[...]*	[5-10]*%	[...]*	[40-50]*%	[...]*	[0-5]*%

670 The Parties explain that in their figures the total deodorant market combining all format segments does not equal the sum of individual format sales, due to masking of sales by certain retailers in the Nielsen data. Consequently, the total market size of the individual format segments is underestimated

TOTAL	18,996	**100.0**	63,337	**100.0**	2,759	**100.0**	221,023	**100.0**

(994) The highest overlap between Sanex and Unilever's brands is in the roll-on segment, where Sanex is quite strong (it has a [10-20]*% share of this segment, which is more than double the overall non-male market). Dove has [20-30]*% (more than its overall market share of [10-20]*%) and Sure [10-20]*% share (which is less than the overall share of [20-30]*%), and Vaseline [5-10]*% (again more than the overall, share of [0-5]*%), Impulse does not offer a roll-on deodorant. It seems that the strength of the brands positioned more as skin-friendly is particularly pronounced in the roll-on segment, which could be explained by the fact that roll-on deodorants have direct contact with the skin and thus the skin-sensitive attributes are more important in this format than aerosols. The combined share of the Parties' brands in roll-on is [60-70]*%. It is notable that Beiersdorf (Nivea) achieves [5-10]*% in the roll-on segment which is higher than its overall share ([5-10]*%), but significantly lower than the one of Sanex in roll-on ([10-20]*%). Revlon achieves [5-10]*% and Colgate-Palmolive [5-10]*%.

(995) In aerosol, the shares of the Parties is not fundamentally different from the overall market, Sanex achieving [5-10]*% and Unilever [60-70]*% (albeit with different strengths of the individual brands – leading with Sure ([20-30]*%), and followed by Dove and Impulse ([10-20]*% and [10-20]*%) and Vaseline ([0-5]*%).

Assessment on the basis of product attributes

(996) A further analysis has been undertaken on the basis of product attributes. Unilever has complemented the available scanner data with product attributes. In addition to gender and format attribute, Unilever added further characteristics to each SKU (skin friendly, fragrance, anti-perspirant, efficacy, no-white-mark, and girl), whereas one SKU may have more of these characteristics. This refinement can help identify in more detail in which sub-segments the Parties' brands are positioned and where a significant overlap between them exists, refining the analysis on closeness of competition. The data for the non-male segment in the United Kingdom are presented in Table 58.

Table 58: United Kingdom : Deodorants: 2009: sub-segment shares value – non-male

Non-Male 2009 [...]*	**Skin**	**Fragrance**	**AP**	**Efficacy**	**White**	**Girl**
Rexona/Sure	[0-5]*%	[0-5]*%	[20-30]*%	[70-80]*%	[40-50]*%	[5-10]*%
Dove	[40-50]*%	[0-5]*%	[20-30]*%	[0-5]*%	[20-30]*%	--
Impulse	--	[60-70]*%	--	--	--	[60-70]*%
Sanex	[10-20]*%	--	[5-10]*%	[0-5]*%	[10-20]*%	--
Vaseline	[5-10]*%	--	[0-5]*%	--	--	--
COMBINED	**[70-80]*%**	**[60-70]*%**	**[60-70]*%**	**[70-80]*%**	**[80-90]*%**	**[70-80]*%**
Nivea	[10-20]*%	--	[5-10]*%	--	[5-10]*%	--
Charlie	--	[10-20]*%	--	--	--	[10-20]*%

Soft&Gentle	--	--	[10-20]*%	--	--	--
Mitchum	--	--	--	[10-20]*%	--	--
Private Label	--	[5-10]*%	--	--	--	--
Others	[5-10]*%	[0-5]*%	[10-20]*%	[10-20]*%	[10-20]*%	[0-5]*%
SO	--	[5-10]*%	--	--	--	[5-10]*%
Share of non-male segment[671]	[40-50]*%	[10-20]*%	[80-90]*%	[30-40]*%	[20-30]*%	[10-20]*%
Turnover of segment in million GBP	**115.6**	**46.6**	**230.5**	**96.4**	**58.1**	**45.1**

(997) Sanex has a strong relative position in the skin care segment, achieving [10-20]*%, which is almost three times its share on the total non-male market. In the same segment, Dove has [40-50]*% share and Vaseline further [5-10]*%, both again between two and three times more than the total market share. Rexona has also some sale in this segment ([0-5]*% share) but it is significantly less than its total market share. The only competitor which is more significantly present in the skin segment is Nivea, with a share slightly less than Sanex – [10-20]*% (other smaller brands account for a combined [5-10]*%). If one combines Unilever's brands with Sanex, the combined market share in the skin friendly segment would be [70-80]*%. This is consistent with the results of the market investigation, that these Parties' brands compete very closely in a skin caring cluster, and that Sanex is a significant constraint on Unilever, in particular Dove, and Vaseline. The refined figures also enable to quantify the skin caring segment – the SKUs classified as skin caring by Unilever represent a significant proportion of [40-50]*% of the total non-male market in the United Kingdom.

(998) Another area where a significant overlap exists is the "no white marks" segment, where the Parties' brands account for a combined market share of [80-90]*%, with quite a sizeable overlap of [10-20]*% coming from Sanex. Only Nivea (with a significantly smaller share than Sanex) remains as a significant single competitor.

(999) The spray segment presents a similar picture but is most pronounced in the roll-on segment as can be seen in Table 59 and Table 60.

[671] Share of non-male segment represents the proportion of the sales of all products in a given segment (for example all products label as having a skin attribute) out of the total non-male market. Since one particular product can have more attributes at the same time, the segments are overlapping and thus the sum of all segments is more than the total market.

Table 59: United Kingdom: Deodorants: 2009: sub-segment shares value – non-male spray.

Non-Male spray 2009 [...]*	Skin	Fragrance	AP	Efficacy	White	Girl
REXONA	[0-5]*%	-	[30-40]*%	[70-80]*%	[50-60]*%	[5-10]*%
DOVE	[40-50]*%		[20-30]*%		[10-20]*%	-
VASELINE	[5-10]*%	-	[0-5]*%		-	-
IMPULSE	-	[60-70]*%		-	-	[60-70]*%
SANEX	[10-20]*%	-	[5-10]*%	[0-5]*%	[5-10]*%	-
COMBINED	**[70-80]*%**	**[60-70]*%**	**[60-70]*%**	**[70-80]*%**	**[80-90]*%**	**[70-80]*%**
NIVEA	[10-20]*%	-	[5-10]*%	-		-
SOFTGENTLE	-	-	[10-20]*%	[0-5]*%	-	-
CHARLIE	-	[10-20]*%		-	-	[10-20]*%
SO	-	[5-10]*%		-	-	[5-10]*%
PRIVATE_LABEL	-	[5-10]*%		-	-	-
MITCHUM	-	-	-	[5-10]*%	-	-
Rightguard				[5-10]*%		
Adidas					[5-10]*%	
OTHER	[5-10]*%	[0-5]*%	[10-20]*%	[0-5]*%	[10-20]*%	[0-5]*%
Share of non-male spray segment[672]	[30-40]*%	[20-30]*%	[70-80]*%	[30-40]*%	[20-30]*%	[20-30]*%
Turnover of segment in million GBP	70.5	46.5	153.3	67.7	44.1	45.1

Table 60: United Kingdom: Deodorants: 2009: sub-segment shares value – non-male roll-on.

Non-Male roll-on 2009 [...]*	Skin	AP	Efficacy	White	Girl
REXONA	[0-5]*%	[10-20]*%	[50-60]*%	[10-20]*%	-
DOVE	[40-50]*%	[20-30]*%		[30-40]*%	-

[672] Share of non-male segment represents the proportion of the sales of all products in a given segment (for example all products label as having a skin attribute) out of the total non-male spray market. Since one particular product can have more attributes at the same time, the segments are overlapping and thus the sum of all segments is more than the total market.

VASELINE	[5-10]*%	[5-10]*%	-	-	-
IMPULSE	-	-	-	-	[90-100]*%
SANEX	[20-30]	[10-20]*%	[5-10]*%	[20-30]*%	-
COMBINED	**[70-80]*%**	**[60-70]*%**	**[50-60]*%**	**[70-80]*%**	**[90-100]*%**
NIVEA	[10-20]*%	[5-10]*%	-	[10-20]*%	-
SOFTGENTLE	-	[5-10]*%		-	-
PRIVATE_LABEL	-	[5-10]*%		-	-
MITCHUM	-	[5-10]*%	[20-30]*%	-	-
OTHER	[5-10]*%	[10-20]*%	[5-10]*%	[5-10]*%	-
Driclorsolution	-	-	[5-10]*%	-	-
Share of non-male roll-on segment[673]	[60-70]*%	[90-100]*%	[20-30]*%	[10-20]*%	[0-5]*%
Turnover of segment in million GBP	35.4	56.8	16.8	9.1	0

(1000) As Table 60 shows, the skin care segment is particularly important in relation to roll-on deodorants where [60-70]*% of all roll-on deodorants in the United Kingdom are considered to be skin care. The closeness of competition is most notable between Dove (with [40-50]*% of the segment) and Sanex ([20-30]*%). Together with Vaseline (and Rexona), the Parties would reach a [70-80]*% share of this segment, Nivea being second to Sanex with [10-20]*%. A very significant overlap also emerges in the roll-on "no white marks" segment, where Sanex reaches [20-30]*%, again more than Nivea, and combines with the very strong position of Dove ([30-40]*%) and Rexona ([10-20]*%) to a total combined share of [70-80]*%.

Price comparison

(1001) The average prices of the brands on the non-male market for the last two years were also compared separately for spray deodorants and roll-on deodorants.

Figure 53: Average price point of UNITED KINGDOM non-male deodorants (sprays) for 2008 and 2009

[...]*

673 Share of non-male segment represents the proportion of the sales of all products in a given segment (for example all products label as having a skin attribute) out of the total non-male roll-on market. Since one particular product can have several attributes at the same time, the segments overlap and thus the sum of all segments is more than the total market.

(1002) Within the spray format segment, Sanex was positioned in the lower range of the price spectrum, having similar average prices to Vaseline and Rexona (Sure). Dove was positioned higher, as was Nivea. This is broadly consistent with the overall replies of retailers, who mostly indicated that Sanex, Sure and Vaseline are in the mid-price range and Dove in the higher range.[674]

Figure 54 Average price point of UNITED KINGDOM non-male deodorants (roll-on) for 2008 and 2009

[...]*

(1003) Within the roll-on format, Sanex offered significantly lower prices than Dove and Rexona (Sure). It was also positioned below Vaseline. However, such a difference in price positioning did not prevent Sanex from competing strongly with Unilever's brands [reference to parties' internal documents].[675]

Demand estimation and merger simulation

(1004) In order to complement the other elements in the investigation, an economic model has been used to predict the likely outcome of the transaction in the United Kingdom.[676] The various parameters of the model, as well as its potential limitations, are described in the Annex.

(1005) Table 61 summarises the results of the merger simulations in terms of percent price increase relative to the pre-merger price level. The figures are averages over the sample periods of estimation. The overall figures include the price changes of all manufacturers in the sample. They can be further broken down in male and non-male markets. Finally, the table also shows the predicted price increases for Unilever's and Sara Lee's main individual brands.

Table 61: Estimated price increases in the UNITED KINGDOM

		gender segments		brands					
	overall	male	non-male	AXE	DOVE	REXONA	SANEX	IMPULSE	VASELINE
one-level n.logit	2.5	1	4.1	0.6	2.7	2.6	31.7	2	2.9
two-level n.logit	2.5	1	4	0.7	2.8	2.5	30.7	1.9	2.7

Note: see the Technical Annex for the confidence intervals and more technical details.

674 Questionnaire to customers deodorants sent on 23 April 2010, question 27.

675 [reference to parties' internal documents].

676 See the Technical Annex for a detailed description of the model, the results, the Parties' response and the Commission's assessment.

(1006) In the United Kingdom, the simulated price increase in the total deodorants category would be in the region of 2%-3%. The overall price increases are driven by the non-male market (around 4%[677]). The reason for this is that in this segment the overlap is stronger between the merging brands, while Sanex is rather weak in the male segment.[678]

(1007) On the brand level, the predicted price increases show a significant degree of dispersion. While Unilever's own brands react relatively weakly, Sanex is predicted to have quite sharp price increases (around 30%). Since Sanex is a smaller brand, the significant predicted price increases do not translate to more than a price increase in the region of 4% in the total non-male market. This is also due to relatively weak competition.

(1008) The high level of market shares, the elements showing that the transaction will eliminate a close competitor of Unilever's brands, the expected price increases, either at the overall level or the brand level, are all strong indications of non-coordinated effects in the absence of any mitigating factors.

The merger will eliminate an important competitive force

(1009) A number of market participants pointed to Sanex as a growing force in the market. One retailer described Sanex as the "*fastest growing brand*"[679], another commented that "[Unilever] *has 2 of the biggest brands in Sure/Dove and Sanex is the biggest growth brand. If you combine those together this would give Unilever dominance and could reduce the strength of the opposing brands*"[680] Indeed, Sanex has grown steadily in recent years, growing in value by [10-20]*% in 2009, significantly outgrowing the total non-male market in the United Kingdom which grew by [0-5]*%. The proposed transaction would eliminate not only a close competitor to Unilever's brands, but also an important independent competitive force in the market. Even if it is accepted that Sanex's [5-10]*% market share is relatively modest, the addition of this brand to Unilever's portfolio has to be considered in the context of Unilever's existing very strong position ([50-60]*% pre-merger). Sanex is all the more important given the limited number of strong competitors and the fact that their market shares were recently mostly in decline (or stagnating). In this context, the competition from the Sanex brand which would be lost by the merger is indeed significant

677 With a 90% confidence interval of [2.5, 6.0]*%.

678 As explained in recital (181) and in more detail in the Technical Annex, the assessment of the merger simulation and in particular the predicted price increases must be put into context with other qualitative and quantitative analysis of each specific market.

679 See reply of [retailer] on question 27 in the questionnaire to customers on deodorants sent on 23 April 2010.

680 See reply of [retailer] on question 63 in the questionnaire to customers on deodorants sent on 23 April 2010 (this question re-formatted as no. 2 in the reply of [retailer]).

(1010) [reference to parties' internal documents][681],[682],[683]

(1011) In its response to the Statement of Objections, Unilever argues that the Sanex's market growth was not exceptionally high and merely reflects a common market share fluctuation. Unilever also submits market share data from the first six months of 2010 showing that Sanex, is losing market share along with all Unilever brands and all other competitors (Colgate-Palmolive, Revlon, Henkel, Procter & Gamble, Coty), including private label products. Beiersdorf, and the "other" tertiary brands are the only brands with a market share increase over that period.[684] Unilever singles out L'Oreal's Garnier Mineral as one of the "other" tertiary brands with a market share increase.

(1012) The recent data do not undermine the general observation that Sanex was specifically referred to as the fastest growing brand by United Kingdom retailers[685] [reference to parties' internal documents]. As regards the growing presence of Garnier Mineral, this is assessed in detail when analysing entry, in recitals (1045)- (1058) .

(1013) [reference to parties' internal documents][686]

Figure 55

[...]*

(1014) [reference to parties' internal documents][687]

(1015) [reference to parties' internal documents][688]

(1016) In its reply to the Statement of Objections, Unilever disputes that Sanex' high level of promotional activity was the reason for Sanex's success or that it constrained Unilever brands to a larger extent than other brands. Unilever explains that it chooses to invest more in marketing and advertising rather than opt more for in-store promotions like

681 [...]*

682 [reference to parties' internal documents]

683 [reference to parties' internal documents]

684 Figures presented by Unilever in Table 12.1 at page 135 of its response to the Statement of Objections: changes in percentage points: Sanex –[0-5]*%, Dove –[0-5]*%, Impulse –[0-5]*%, Sure –[0-5]*%, Vaseline –[0-5]*%, Colgate-Palmolive –[0-5]*%, Revlon –[0-5]*%, Beiersdorf +[0-5]*%, Henkel –[0-5]*%, PROCTER & GAMBLE –[0-5]*%, Coty –[0-5]*%, Private label –[0-5]*%, others +[5-10]*%.

685 Unilever points to one particular retailer who described Sanex as a niche specialist product. However, this is a view of one retailer only, but not a prevalent view on the market and not a view internally shared by Unilever, as demonstrated elsewhere in this decision.

686 [reference to parties' internal documents]

687 [reference to parties' internal documents]

688 [reference to parties' internal documents]

other suppliers. It also submits that Sanex is not promoted more then other brands, presenting figures ending in July 2010 showing that in the aerosol segment, other brands had higher volumes of sales on promotion than Sanex, and that Sanex did not increase volumes in promotion in line with the total market trend.

(1017) Unilever's arguments are not persuasive. Unilever does not dispute the facts and qualifications presented in its own internal documents [...]*. Instead Unilever presents an isolated picture of the most recent data [...]*. Upon request, Unilever submitted additional data[689] which confirmed that Sanex [...]*.[690] This is wholly inconsistent with Unilever's contention that Sanex is a not particularly active competitor with regard to promotions.

(1018) Unilever also argues that the market investigation did not fully support the proposition that the merger would have an effect on the level of promotions on the market, citing two retailers who do not expect the total level of promotions to change. Out of the four retailers who responded to that question, two do not expect the level of promotions to change, but two others expect that Unilever's/Sara Lee's promotional activity will be reduced. As one of them puts it, the Parties would "*have less competitive pressure to bring good deals on the market*"[691] Even if not all United Kingdom retailers unanimously predict such outcome, the fact remains that Sara Lee's Sanex was very active in promotions and was putting significant competitive pressure on the market leader, Unilever.

(1019) It is therefore concluded that the merger would eliminate an important and growing competitive force on the market, which significantly contributes to constrain Unilever in its very strong position on the non-male deodorant market in the United Kingdom.

Lack of countervailing buyer power

(1020) Section IV.2.3.1.3 considers why buyers of the Parties' deodorants are not in a position to resist a price increase to the point where it would not materialize. These reasons equally apply to non-male deodorant market in the United Kingdom.

(1021) In the United Kingdom, private labels represent only [5-10]*% of the non-male deodorant market and recently, their market presence has slightly decreased (from [5-10]*% in 2007 to [5-10]*% in 2008). As one retailer stated, *"own label is limited as deodorants is a very brand dominated category"*.[692] Most retailers in the United Kingdom generally do not expect the share of private label products to increase significantly in the near future.[693]

689 Unilever's answer of 10 September to Commission's Article 11 request of 7 September 2010, question 3.

690 [...]*

691 Reply of a United Kingdom retailer to questionnaire to customers on deodorants sent on 25 June 2010, question 5.

692 See reply from [retailer] to questionnaire to customers on deodorants sent on 25 June 2010, question 23.

693 Questionnaire to customers on deodorants sent on 25 June 2010, question 23.

(1022) Therefore, customers would not be in a position to switch to private labels after the merger to counterbalance the increasing market power obtained by the new entity.

(1023) Regarding private label deodorants, Unilever argues in its reply to the Statement of Objections that retailers use cost information derived from private label production during negotiations with branded suppliers. Unilever also states that according to the replies from the market investigation "*retailers are generally positive about private label growth in the UK*", citing some retailers' answers.

(1024) It is true that retailers have greater insight into the costs of their private label deodorants. However, Unilever's conclusion that retailers are "generally positive" about the private label growth in the United Kingdom is incorrect and misleading. Indeed, three out of four responding retailers replied negatively to the question as to whether they think that they will increase their share of private label deodorants in the next 1-2 years.[694] The retailer's replies used by Unilever to evidence the allegedly positive outlook for private label growth have been misinterpreted, and interpreted in context, confirm the same general picture.[695]

(1025) Unilever already owns the two leading brands (Dove and Sure) and when including Impulse (with a sizeable position of [10-20]*%), owns all top three brands on the non-male deodorant market in the United Kingdom. Colgate-Palmolive with Soft&Gentle is its closest competitor with a market share of [5-10]*%. When considering the entire deodorant category, Unilever also owns Lynx (with an approximate market share of half of the male market) and Sure for Men (with a sizeable position). In both male and

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694 Questionnaire to customers on deodorants sent on 25 June 2010, question 23.

695 Unilever refers to four retailers. With regard to one retailer Unilever quotes a statement that the retailer is planning to re-launch its private label products, in order to demonstrate a "positive" approach about future growth of private label products. Unilever however ignores that the same retailer indicates in the same question that it is <u>not</u> intending to introduce new products (the retailer answers: "*No*" with the qualifier "*current range to be relaunched*", clearly indicating that the re-launch is not to be seen as introduction of new products - question 32f). Furthermore, the same retailer also expressly confirms in the same questionnaire that it is <u>not</u> intending to increase its private label sales compared to branded deodorants (question 32e.). (Questionnaire to customers on deodorants sent on 23 April 2010).
Another retailer is quoted by Unilever as increasing distribution of its private label deodorants on certain SKUs. This is part of the retailer's answer on the question whether they have introduced more private labels recently: "*No additional lines added, but distribution on selected OL skus have been increased*" (question 23b.) More importantly, the retailer states expressly in the very next question (23 c) that it does <u>not</u> think that private label deodorants will significantly increase their market share in the next 1-2 years, and also specified (23a) that "*Own label is limited as Deodorants is a very brand dominated category*". (Questionnaire to customers on deodorants sent on 25 June 2010).
Next retailer is quoted by Unilever as intending to increase their private label sales and to launch new products (question 32 e and f of the questionnaire to customers on deodorants sent on 23 April 2010). It is true that the retailer stated its intention to increase sales in the answer quoted, however in a second questionnaire that same retailer added an important qualification to its view on private label growth: "*We do not believe that there will be a significant increase in the share of our private label deodorants in the next 1-2 years*" (question 23 of Second phase Questionnaire to customers deodorants sent on 25 June 2010).
Only one of the four retailers referred to by Unilever indicates in his answer its expectation that its private label deodorants will increase share in the near future. However, this retailer represents only about [5-10]*% of United Kingdom's national deodorant sales and is therefore too small to be able to influence the whole market.

non-male markets, Unilever's brands constitute more than half of all deodorants' sales in the United Kingdom.

(1026) As one retailer explains to with regard the balance of power vis-à-vis Unilever "*retailers do have good negotiation powers but on deodorants this isn't weighted in our favour as Unilever has key brands that customers want and this therefore strengthens their position*".[696] Another retailer explains that "*Customers expect certain products to be stocked by retailers (including most obviously the Unilever brands), and for there to be a wide variety of choice. Therefore retailers are required to ensure these brands are listed or face the prospect of losing sales to competitors."*[697]

(1027) Unilever disputes these statements by pointing to other replies which, in its view, support buyer power. However, the one competitor quoted by Unilever should be seen in conjunction with the poor performance of the competitors' brand facing delisting prospects.[698] Also, retailers comments presented by Unilever have to be placed in their proper context (for example Unilever cites only a part of a sentence or comment allegedly proving buyer power, but omits to cite the remainder of the very same sentence that has an important qualifier pointing towards a lack of buyer power).[699]

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[696] Reply of [retailer] to question 16 of the questionnaire to customers on deodorants sent on 25 June 2010.

[697] Reply of an anonymous United Kingdom retailer to question 16 of the questionnaire to customers on deodorants sent on 25 June 2010.

[698] Unilever quotes Colgate-Palmolive which stated that retailers hold bargaining power in listing decisions and that several retailers have threatened to delist the brand unless additional investment was provided. (Reply of Colgate-Palmolive to question 46 of questionnaire to competitors on deodorants sent on 24 April 2010). As demonstrated earlier, Colgate-Palmolive's Soft&Gentle brand is currently experiencing its most severe year-on-year decline on the United Kingdom market, constantly losing sales. In that context, it is thus not surprising that retailers reconsider keeping a sharply declining brand on their valuable shelves if no additional investments are promised to help sales recover. As was shown in the previous recital, retailers would find it much more difficult to follow the same approach with Unilever who has "*key brands that customers want*".

[699] Unilever quotes a part of the sentence from a United Kingdom retailer's answer (question 16 of questionnaire to customers on deodorants sent on 25 June 2010) stating *"retailers do have good negotiation powers"* whereas the whole sentence says "*retailers do have good negotiation powers but on deodorants this isn't weighted in our favour as Unilever has key brands that customers want and this therefore strengthens their position"*. The statement is self-explanatory.
Unilever also quotes one smaller retailer (question 16 of the questionnaire to customers on deodorants sent on 25 June 2010) who explains that purchasing power may be potentially present at larger retailers. The small retailers says on buyer power that "*This is potentially true with the larger retailers*" however saying that they do not consider to have the same level of bargaining power as the large retailers. This statement only confirms that the small retailer does not consider having sufficient bargaining power himself, noting that perhaps other larger ones face a different situation. It is not in no way confirming buyer power.
The third quote of another United Kingdom retailer (question 11 of the questionnaire to customers on deodorants sent on 25 June 2010) is presented by Unilever as "the retailer explains that it would be able to resist any attempted price increase by Unilever that was not fully justified". This is not correct. This interpretation is most likely derived from the retailer' rather general statement that "*we expect suppliers to provide justification for any cost price increase and explain factors such as increase in costs of raw materials, or production costs. If a product is too expensive and does not create a reasonable proposal for our customers, we would not buy it*". The same retailer however explains elsewhere in the same questionnaire (question 16) that end-customers expect certain products to be stocked by retailers (including most obviously the Unilever brands), and retailers are required to ensure these brands are listed or face the prospect of losing sales to competitors.

(1028) Unilever also argues that deodorants represent a small proportion of the overall shopping basket and therefore customers are unlikely to switch stores if their favourite brand was not on the shelf, and hence retailers can readily threaten to delist those brands. This statement is not only contradicted by the retailer quoted two recitals above, but by all responding retailers which confirm that a substantial number of customers would switch to other retailers if they did not stock one or more of the Parties' key brands, and that this would have a negative commercial impact on the retailer.[700]

(1029) Unilever rebuts the retailers' conclusion by pointing to other responses which do not mention past examples of such switching. Unilever also refers to the isolated statements of one retailer that no brand is significant enough to be delisted and a further retailer's statements that alternative suppliers' presence could be increased. Unilever uses these statements to confirm its argument that retailers have alternative sources of supply and that consumers would rather switch brand than switch store. To substantiate this position, Unilever points to figures which show that loyalty to major retailers is generally significantly higher ([30-40]*%-[50-60]*%) than to Unilever and Sara Lee brands ([10-20]*%-[30-40]*%).

(1030) The investigation does not support Unilever's arguments. Indeed, all the retailers responded that significant store switching would likely occur in the absence of stocking certain key brands. The fact that the retailers' responses do not mention past examples of such switching in relation to deodorants cannot invalidate this unanimous statement. Absence of past occurrences may simply reflect the fact that retailers always try to keep these key brands on the shelves to prevent such anticipated customer loss. Equally, the two retailers' quotes put forward by Unilever do not disprove the findings, in particular when understood in their wider context.[701]

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[700] Questionnaire to customers on deodorants sent on 25 June 2010, question 17.

[701] First, Unilever is quoting an answer from one retailer who answers "no" to the question whether there are brands/SKUs that are so significant that he cannot credibly threaten to delist them (Questionnaire to customers on deodorants sent on 23 April 2010, question 53). However, the same retailer also states that he could not easily find alternative products to the parties' brands (question 54). He also considers a number of Unilever's brands to be must-have brands (question 28) and also states that there would be a negative commercial impact on him as a substantial amount of customers would switch to other retailers if not stocking parties' brands (question 17 of the questionnaire to customers on deodorants sent on 25 June 2010).
Second, Unilever points to another retailer who ticks the option of "increase the presence of other suppliers" if higher prices were requested for Sanex products. (Question 11 of the questionnaire to customers on deodorants sent on 25 June 2010). However, Unilever omits to quote an important qualifier of this statement which continues with "*we would try and manage the situation without diminishing the customer offer*". The same retailer also mentions that in terms of negotiation powers in case of deodorants this "*is not weighted in our favour as Unilever has key brands that customer want and this therefore strengthen their position*" (question 16). The retailer equally confirms that there would be a negative commercial impact on him as a substantial amount of customers would switch to other retailers if not stocking parties' brands (question 17).

(1031) The loyalty figures do not – as claimed by Unilever – confirm that customers would rather stick to their retailer than switch when their preferred deodorant brand is not available.[702]

(1032) Unilever submits that retailers' buyer power is demonstrated and exercised by delisting of products (or threats of doing so). However, in discussing the key elements of countervailing buyer power, "non-regular" delistings (which are not linked to removal of underperforming products) are exceptional given that retailers fear that such behaviour would have negative impact on their turnover and profitability in the light of the significance of the top brands in their assortment. Even if one accepts that retailers may deploy such negotiation tactics against some suppliers and brands, applying them against the key Unilever brands in the United Kingdom deodorant category would be extremely difficult. [...]*[703]

(1033) In its response to the Statement of Objections, Unilever mentions one example of delisting some SKUs [...]* of [...]*. Unilever itself explains that the retailer was citing [...]* as a reason for delisting these SKUs. This delisting example demonstrates, in Unilever’s view, the power of United Kingdom retailers exercised vis-à-vis Unilever in the deodorants category.

(1034) Delisting of SKUs which perform poorly is normal business practice – it is part of regular range reviews and reflects the retailers’ shelf optimisation. Unilever does not argue that the particular [...]* delisting example is related to negotiations (such as for example a situation when delisting would be a direct reaction of the retailer on an attempt of Unilever to increase the price of the product). Instead, Unilever itself identifies [...]* as the cause for delisting by the retailer. Thus, the delisting example cited by Unilever fails to demonstrate that it is in any way linked to the exercise of the retailers’ buyer power. In fact, it does not prove anything beyond the mere fact that regular, performance-related delistings indeed occur.

(1035) Unilever also argues that while retailers may continue to stock Unilever’s core SKUs, they could reduce listings of non-core variants and new products. Unilever explains that about half of Parties’ SKUs are considered core – and those core products contribute to [80-90]*% of sales, while the remaining half (the non-core SKUs) only generate [20-30]*% of sales. Unilever argues that by delisting the half of

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702 First, these figures try to answer two isolated questions – loyalty to a deodorant brand, and loyalty to a shop – but do not allow a conclusion on the question how many consumers would switch their retailer in case their deodorant brand were not available. Second, even if customers were on average more loyal to their retailer than to the brand, behind the aggregated figures there is a significant share of customers for which the loyalty for a brand is important. As switching customers would probably re-direct their entire shopping basket to another retailer the losses for the retailer could be significant even if a relatively smaller percentage of consumers would switch shops. Finally, if customers were to stay with the same retailer in case their deodorant brand would not be available, one could expect that retailers were to exploit such behaviour and sell only those items on which they can earn the highest margins. The market reality is different. As one retailer notes "*Unilever already take a bigger share of profit margin than other suppliers. In our view this is likely to be exacerbated by the proposed transaction as Unilever will increase their bargaining power*" (Answer of a United Kingdom retailer on question 7 of the questionnaire to customers on deodorants sent on 25 June 2010).

703 Form CO, Annex DEO 6.7

SKUs which are more peripheral, retailers could cause significant harm to Unilever by reducing their sales by [20-30]*%.

(1036) First, Unilever does not substantiate this argument with any evidence related to the United Kingdom. Second, the argument reveals some contradictions with regard to Unilever's denial of the importance played by its key brands in the relationship with retailers. Implicitly, Unilever admits that it is not in retailers' interest to delist more-than-average-performing core products which generate important sales and are popular with their end-customers. Third, even if one assumes that retailers deploy such tactics in negotiations, Unilever explains that delisting of smaller brands and/or SKUs is a lower grade of a step-by-step escalation where a complete delisting of Unilever is the most extreme step (as demonstrated by the case of [...]* in [...]*). Unilever's submissions ignore that such a step-by-step escalation also applies to Unilever which admits that it can use threats in negotiation.[704] This is confirmed by a retailer who explains that "*there are a number of instruments they use including the reduction in or refusal to fund sales driving activity, refusal to supply stock, threat of prioritising competitors*."[705] As negotiations take place at the category (deodorants) level and are not isolated for each SKU, account has to be taken of Unilever's overall position of strength and negotiation tools at its disposal.

(1037) Unilever's brands are very well represented in retail shops in the United Kingdom, which is shown by the weighted distribution in retail stores. Weighted distribution represents the share of sales accounted for by all the stores in which the brand is stocked, and it is therefore a measure of the retail exposure given to a brand.

Figure 56 Weighted distribution figures for the UNITED KINGDOM [706]

	YTD JUN 2009	YTD JUN 2010
Deodorants	100.0	100.0
Unilever United Kingdom Deodorants	100.0	100.0
Dove Deodorants	[...]*	[...]*
Dove Anti-perspirant Female Deodorants	[...]*	[...]*
Impulse Deodorants	[...]*	[...]*
Impulse Non Anti-perspirant Female Deodorants	[...]*	[...]*
Sure	[...]*	[...]*

[704] See Unilever's Response to the Statement of Objections which states in §6.42 "*the [...]*dispute illustrates very well the fact that within the supplier-retailer relationship each party has threats*".

[705] Reply of a United Kingdom retailer to the questionnaire to customers on deodorants sent on 25 June 2010, question 16 and 19.

[706] Source: Parties' submission of 26 July 2007. To simplify the table, male brands and brand-variants, and brands with a weighted distribution figures of below 1% are not depicted.

Sure 24hr Intensive Anti-perspirant Female Deodorants	[…]*	[…]*
Vaseline Deodorants	[…]*	[…]*
Vaseline Anti-perspirant Female Deodorants	[…]*	[…]*
Nivea Deodorant Deodorants	[…]*	[…]*
Nivea Deodorant Anti-perspirant Female Deodorants	[…]*	[…]*
ROB - TD	[…]*	[…]*
Other Private Label Anti-perspirant Female Deodorants	[…]*	[…]*
Other Private Label Non Anti-perspirant Female Deodorants	[…]*	[…]*
Right Guard	[…]*	[…]*
Right Guard For Women Anti-perspirant Female Deodorants	[…]*	[…]*
Sanex	[…]*	[…]*
Sanex Anti-perspirant Female Deodorants	[…]*	[…]*
Sanex For Men Anti-perspirant Male Deodorants	[…]*	[…]*
Adidas	[…]*	[…]*
Adidas Non Anti-perspirant Female Deodorants	[…]*	[…]*
Adidas Action 3 Anti-perspirant Female Deodorants	[…]*	[…]*
Adidas Action 3 Dry Max Anti-perspirant Female Deodorants	[…]*	[…]*
Mitchum	[…]*	[…]*
Mitchum Anti-perspirant Female Deodorants	[…]*	[…]*
Soft & Gentle	[…]*	[…]*
Soft & Gentle Anti-perspirant Female Deodorants	[…]*	[…]*
Soft & Gentle Aromatherapy Anti-perspirant Female Deodorants	[…]*	[…]*
Soft & Gentle Eden Anti-perspirant Female Deodorants	[…]*	[…]*
Charlie	[…]*	[…]*
Charlie Non Anti-perspirant Female Deodorants	[…]*	[…]*
Garnier Mineral Deodorants	[…]*	[…]*
Garnier Mineral Anti-perspirant Female Deodorants	[…]*	[…]*

(1038) Retail exposure of Unilever's brands and most of the other brands is very high in the United Kingdom (except Adidas for woman, and Right Guard for women). This suggests that retailers generally tend to offer a relatively wide selection of brands on their shelves. Unilever argues that this is to promote new entrants like L'Oreal's Garnier Mineral which managed to achieve a high level of distribution in the United Kingdom. Despite this apparent success in distribution, the Garnier Mineral entry has been relatively unsuccessful thus far, as will be further discussed.

(1039) In addition, the very high distribution rates for Unilever's brands show that basically all retailers (up to [...]*%) stock Unilever's brands, meaning that delisting of these brands from their shelves is not observable.

(1040) Unilever acts as category captain or advisor for [...]* in the United Kingdom.[707] Although it is true that most retailers do not think category management actually leads to favouring own products as retailers verify the recommendations given by the category manager, this demonstrates the importance of Unilever on the market and puts the company in a unique position with regard to all its competitors, reinforcing its general degree of influence on the retailers.

(1041) According to the Form CO, the four largest grocery retailers in the United Kingdom together with two largest pharmacies account for [80-90]*% of total national deodorants sales.[708] However, the leading retailer – [retailer] – accounts for [20-30]*% of national deodorants sales while all the others' shares are below [10-20]*%. Section IV.2.3.1.3 explains why even if a large retailer were to derive some degree of bargaining power from its large size or a sophisticated purchasing strategy, there is no generally convincing reason why other retailers should also be positively affected. Thus, even if countervailing buyer power were to exist for the larger retailer, it is unlikely to sufficiently off-set potential adverse effects of a merger since it would only ensure that a particular segment of customers, with particular bargaining strength, is shielded from significantly higher prices or deteriorated conditions after the merger.[709]

(1042) In its reply to the Statement of Objections, Unilever reiterates that a concentrated retailer base is indicative of buyer power and argues that even small retailers within the top six retailers would benefit from it.[710] As explained in Section IV.2.3.1.3, these arguments cannot be sustained.[711]

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[707] Form CO 6.338

[708] See Table 6.23 Form CO.

[709] See paragraph 67 Horizontal Merger Guidelines.

[710] Unilever argues that the combined share of top 6 retailers being over [80-90]*% makes the customer structure particularly concentrated in the United Kingdom, inferring buyer power. It also puts forward that even the smallest of the top six accounts for about [5-10]*% of national deodorant sales, which is comparable to the total sales of Sara Lee deodorants in the United Kingdom and even greater than Sara Lee's sales in other countries like Denmark or Ireland. It is further argued that for Unilever, loosing sales even of this relatively smaller distributor would mean not being able to compensate with significant business elsewhere. Unilever also argues that there is no evidence that small retailers get a worse deal than larger ones as they can achieve good terms with Unilever due to availability of sufficient alternatives.

[711] First, the concentration of customers on which Unilever bases its argument cannot itself be indicative of buyer power that retailers could exercise vis-à-vis the merged entity. As is demonstrated elsewhere, Unilever controls more than half of the total market and possesses most successful brands with high notoriety and customer base. Also, as retailers indicate, end-consumers expect to find the strong and

(1043) Even though Unilever argues that Sanex has a modest market share in the United Kingdom and it is not seen as a "must have" brand by retailers (contrary to what retailers indicated for Unilever's brands), the merger will enhance Unilever's position as a single supplier of unrivalled strength and further shift bargaining power from the retailer to the supplier. First, it simply reduces the set of credible alternatives that the retailer can choose from to replace Unilever's products. The merger will remove one of the significant independent competitive forces on the market and will even strengthen Unilever's pre-merger position. In a market where all other suppliers hold only brands of significantly smaller consumer popularity, it is clear that a shelf without Unilever's deodorants would not be complete in terms of set of brands that the customer expects to find in the stores and product attributes. In such a market structure, it would be impossible for the retailer to construct a deodorant shelf without Unilever's products and Unilever would thus be an unavoidable trading partner in deodorants in the United Kingdom in relation to prices setting, promotions, new listings and placement on shelves.

(1044) Therefore, it can be concluded that countervailing buyer power post-merger would not be sufficient to off-set potential adverse effects of the merger.

Sufficient entry unlikely to occur

(1045) The market investigation has generally shown that entering the deodorant market – either from a neighbouring personal care market or as a new entrant would be difficult. Even if the technology required and the investment to manufacture deodorants could be considered as "accessible", high barriers to entry exist in the form of significant advertisement and promotion (A&P) expenditure to create brand awareness and get access to shelf space from retailers.

(1046) In addition, a potential entrant would have to take into account the likely reaction of a powerful incumbent like Unilever. Unilever's increased market share with the addition of Sanex rather strengthens its ability and incentive to fight entry. [...]*. In the United Kingdom, the combination of Unilever's broad portfolio of brands and its existing leading position with market shares well above [50-60]*% indicates that Unilever has not only the incentive, but also the ability to prevent sufficient entry of new brands or expansion of existing ones. Moreover, through its leading position it would be the one suffering most from such activities.

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popular brands on the shelf, and retailers cannot ignore this. The fact that top six retailers have a high proportion of the total market does not therefore give these retailers high buyer power as such, as could potentially be the case with perfectly substitutable homogeneous goods where customers could switch all their demand to other readily available alternatives. This is simply not the case here.

Second, when comparing smaller and larger retailers, it is not argued that large buyers do have sufficient countervailing bargaining power. The analysis rather answers the question whether smaller retailers would benefit from a hypothetical situation in which large buyer had some bargaining power. In this context, even if large retailers would have buyer power, Unilever's arguments that the same degree of buyer power lies with small retailers cannot be sustained. While a [5-10]*% loss in the United Kingdom might as Unilever argued be similar to sales of Sara Lee in the United Kingdom or in other countries, this comparison is irrelevant as Unilever's degree of economic dependency on an individual retailer is determined by its size in proportion to the national market in which it is active in and not by the absolute value compared to another company, or even to another market.

(1047) In addition, the combination of an unrivalled number of main brands in the hands of a single supplier increases room for Unilever to adjust its products accordingly, preventing the competitor's product from having a unique product proposition. With one additional brand, Unilever's ability to slightly reposition its products to squeeze the new entrant from different directions will also be improved. Consequently, the addition of a new brand to Unilever's already broad portfolio is likely to increase barriers to entry.

(1048) The elements gathered during the market investigation showed that there has been no significant and successful entry in the United Kingdom non-male deodorant market recently. Unilever points to the entry of Original Source by PZ Cussons in 2008, but this entry does not seem to have been very successful. No retailer mentions this brand as a new entrant in the replies to the questionnaires [reference to parties' internal documents] In fact, apart from Unilever's brand extensions (Sure Naturals, Sure Teens) and introduction of Dove for Men and in the male market, the retailers only mention L'Oreal's Garnier as a recent entrant (and Men Expert in the male market).

(1049) Despite the fact that the non-male deodorant market is growing in the United Kingdom, the market investigation indicates that retailers carefully select new products to be listed. One competitor bring forward that "*Generally retailers do not favour new suppliers to stimulate competition. Space is limited, so any new supplier has to take the place of another product. Listing of new products only take place if the chances of adding value to the overall category value are very high or if huge investments are granted to the retailers to buy distribution.*"[712] A second competitor stated that new suppliers can be favoured in only two cases: in case of a niche product; or if the supplier demonstrates that the retailer will significantly increase its margin.[713] One retailer says that it does support new entries in case where it is anticipated that they will have good sales, and notes that "*introduction of new products exposes us to a large amount of risk should these products be unsuccessful in the market and take valuable sales space and investment from other products*".[714]

(1050) Indeed, apart from re-launches of existing products and brand extensions (such as adding new variants to a brand), the only significant new entry in the recent years in non-male deodorant market in the United Kingdom has been Garnier Mineral. In its submissions, Unilever put a lot of emphasis on Garnier's entry, as it was backed-up by a major international supplier L'Oreal with a high level of investment supporting the launch. Indeed, Garnier is the most significant example of entry of a new competitor in the recent years in the non-male market.

(1051) [reference to parties' internal documents][715],[716]

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712 See reply from Beiersdorf on the questionnaire to competitors on deodorants sent on 25 June 2010, question 23.

713 See reply from Henkel on the questionnaire to competitors on deodorants sent on 25 June 2010, question 23.

714 Reply of a United Kingdom retailer to question 10 of the questionnaire to customers on deodorants sent on 25 June 2010.

715 [reference to parties' internal documents]

(1052) [reference to parties’ internal documents]

Figure 57: [...]*[717]

[...]*

Figure 58: [...]*[718]

[...]*

(1053) [reference to parties’ internal documents][719]

(1054) Indeed, Unilever has been making all efforts to turn the Garnier entry into a failure. As L’Oreal observes, “*Unilever has massively invested to prevent Garnier entering the UK deodorants markets by deepening their promotions, launching a similar range two months earlier and increasing their media spend by 300% in just two months in 2010. Unilever has also made it much more expensive to enter this market by making it more costly to obtain shelf space thereby making the entry on the market unprofitable for several years. If Sanex joins their brand portfolio, it will be even more difficult to see other players staying/ entering the market*.”

(1055) Unilever, in its reply to the Statement of Objections, emphasises Garnier's success in achieving a very high weighted distribution ([...]* in just four months), and a relatively high proportion of shelf space ([...]*), arguing that this demonstrates how new entrants can penetrate the market. Upon request, it also supplied monthly market shares that Garnier Mineral achieved since its introduction in January until August. In the first 7-8 months, the brand has achieved a cumulative [0-5]*% market share in the non-male market – peaking in April and then with a lower peak again in July.

Figure 59: Actual monthly market shares of Garnier Mineral in non-male market in the UNITED KINGDOM

[...]*

(1056) [...]*

Figure 60: [...]*

[...]*

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[716] [reference to parties’ internal documents]

[717] [...]*

[718] [...]*

[719] [reference to parties’ internal documents]

(1057) [...]*. Although it is still too early to reach a conclusion as to the effect of Garner's entry, the developments thus far strongly suggest that it will not be a success in the United Kingdom market, despite the significant efforts by L'Oreal, one of the very few companies potentially able to make such a relatively large-scale entry into the market. This view was also shared by a competitor who commented that Garnier Mineral had a "*Limited success to date [...]* despite what appears to be strong levels of investment* ", and when asked about expected new entries in the United Kingdom in the next 2-3 years answered that "*based on the recent Garnier experience this is unlikely*".[720]

(1058) Indeed, in light of the high entry barriers, Unilever's very strong incumbent position and the apparent struggle of a supplier of the size of L'Oreal to successfully enter so far make it very unlikely that a successful entry into the United Kingdom non-male market will occur in the near future so as to counteract the adverse effects of the merger.

Overall conclusion

(1059) Therefore, it is concluded that the notified concentration is likely to significantly impede effective competition on the market for non-male deodorants in the United Kingdom.

IV.2.3.2.11.2. Male deodorant market

(1060) The male deodorant market in the United Kingdom had a total value of EUR 320.5 million in 2009. Unilever is active in the male market with its main brands Lynx and Sure for Men. In addition, Brut and Vaseline are sold on the market. Sara Lee serves the male market with its brand Sanex for Men.

Table 62: United Kingdom: Deodorants: 2009: market shares male market in value – Source: Form CO.

	000 €	%
UNILEVER	[...]*	[60-70]*%
- Brut Green	[...]*	[0-5]*%
- Lynx	[...]*	[40-50]*%
- Sure	[...]*	[10-20]*%
- Vaseline	[...]*	[0-5]*%
SARA LEE	[...]*	[0-5]*%
- Radox Elements	[...]*	[0-5]*%
- Sanex	[...]*	[0-5]*%
Combined	[...]*	**[60-70]*%**
Beiersdorf Uk Ltd	[...]*	[0-5]*%
Coty (uk) Ltd	[...]*	[5-10]*%
Procter & Gamble	[...]*	[5-10]*%
Revlon Inc	[...]*	[0-5]*%

[720] Reply of Colgate-Palmolive to questions 44 and 45 of questionnaire to competitors on deodorants sent on 24 April 2010.

Schwarzkopf Henkel L	[...]*	[5-10]*%
Private Label	[...]*	[0-5]*%
Others	[...]*	[0-5]*%
Total	320 507	**100.0**

(1061) The Parties would post-merger achieve a combined market share of [60-70]*% (Unilever [60-70]*%, Sara Lee [0-5]*%). Other competitors active in the male market are Henkel [5-10]*%, Coty [5-10]*%, Procter & Gamble [5-10]*%, Beiersdorf [0-5]*% and Revlon [0-5]*%. In spite of the high market share, the proposed transaction will not result in a significant impediment of effective competition for several reasons.

(1062) First, the increment resulting from the transaction is limited as Sara Lee had a market share of [0-5]*% in the male market. Thus, the competitive landscape would not change significantly due to the merger.

(1063) Second, the wide majority of retailers does not consider Sanex for Men to be a close competitor to either Lynx or Sure for Men[721], the two most important Unilever brands with a market share of [40-50]*% (Lynx) and [10-20]*% (Sure for Men). In their response to the market investigation, they considered Coty's Adidas, Henkel's Right Guard or Procter & Gamble's Gillette deodorant as alternatives to Unilever's male brands, which are more oriented towards efficacy and fragrance compared to Sanex for Men's health proposition.[722] In addition, more than [40-50]*% of Sanex for Men deodorants are sold as roll-ons, while roughly [90-100]*% of Lynx and [80-90]*% of Sure for Men deodorants are sold as aerosols.[723]

(1064) Finally, several competitors of similar or larger size compared to Sara Lee remain in the market with male brands like Gillette, Right Guard, Nivea for Men (Beiersdorf), Adidas or Mitchum for Men (Revlon). Indeed, retailers active in the United Kingdom indicated that sufficient alternatives would be available to replace Sara Lee in the male deodorant market.[724]

(1065) It is therefore concluded that the proposed transaction would not result in a significant impediment of effective competition in the market for male deodorants in the United Kingdom.

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721 See replies of United Kingdom retailers to questionnaire to customers on deodorants sent on 23 April 2010, question 30.

722 See replies of United Kingdom retailers to questionnaire to customers on deodorants sent on 23 April 2010, question 27.

723 See Annex 7.1 to Form CO.

724 See replies of United Kingdom retailers to questionnaire to customers on deodorants sent on 23 April 2010, question 54.

IV.2.3.3. Overall conclusion on deodorants

(1066) It is thus concluded that the proposed transaction would significantly impede effective competition in the markets for (i) non-male deodorants in Belgium, (ii) non-male deodorants in Denmark, (iii) non-male deodorants in Ireland, (iv) non-male deodorants in the Netherlands (v) non-male deodorants in Portugal, (vi) non-male and male deodorants in Spain and (vii) non-male deodorants in the United Kingdom.

IV.3. Bath & Shower

IV.3.1. Relevant Product Market Definition

(1067) The Parties consider in their notification that bath & shower products (namely, both shower gels as well as bath products commonly named as bath foams/bath creams/bath gels) constitute a single product market.

(1068) In a previous Commission's decision[725] "bath & shower" products were considered to form part of a separate market from other personal care products, although no final conclusion was reached. In the same decision, men's care products in the bath & shower category were also considered as a possible separate market.

(1069) The investigation in this case revealed that bath & shower products can be segmented into bath products and shower gels in some Member States, and that shower gels are being increasingly differentiated according to gender.

Bath vs. shower products

(1070) The Parties argue that there is a significant degree of supply-side substitutability between bath and shower products. Both product lines would have very similar core compositions; be filled on the same filling lines and essentially only differ in the product concentration (bath products are more diluted) and packaging format (bath products are supplied in larger bottles than shower gels). In addition, the Parties submit that suppliers generally organise advertising across the bath & shower category that some products are even labelled as "bath & shower" products and that customers often do not distinguish between the two groups.

(1071) Although the Parties submit that a further distinction into bath products and shower products would not be appropriate from a product market definition viewpoint, they admit that on the demand side there is a difference between Member States. In Southern European Member States (such as Greece) consumers hardly distinguish between bath and shower products, while in more northern Member States (including the United Kingdom, the Netherlands, Belgium or Germany) a meaningful bath segment may still be identified. In these Member States bath products are typically sold on a distinct location within retailers' shelves, have different promotional cycles and are labelled and developed specifically for bathing.

[725] Commission Decision of 20 April 2006, case COMP/M.4193 L'Oreal/The Body Shop.

(1072) In an earlier Commission case[726] - it was submitted by the notifying parties in that case that bath & shower products constitute one single market, but it was doubted that shower gels and bath foams would belong to the same market, without reaching a definite conclusion on that point.

(1073) The investigation in this case has revealed that there is a distinction between bath products and shower gels from a consumer perspective in most of the national markets investigated. In the United Kingdom, Ireland, Belgium, the Netherlands, France, and Germany retailers point out that bath products and shower products are not regarded as substitutes but are considered to be distinct products used for different needs (bathing vs. taking a shower), although the picture in France is more nuanced as regard some brands.[727] Bath products are generally more focused on relaxation, while shower gels focus more on cleansing and refreshment. Retailers in those Member States also tend to separate the two product groups on their shelves and mostly run promotions separately. Although a general trend in these Member States exists to gradually substitute bath products (which are declining) by shower products, this substitution pattern seems to work only one-way and not the other way round. Market participants have pointed out that this is due to changing body-washing habits, where an increasing numbers of consumers tend to more take showers instead of having baths.

(1074) The picture differs significantly in the Southern European Member States concerned such as Greece, Spain and Portugal, where washing habits seem to be different from Member States in central-northern Europe (less bath usage). In these national markets, the two product groups are less distinct, and most retailers in those Member States explain that consumers would see them as realistic substitutes. In particular, bath products - which are sold in larger bottles - are often being used as economic alternative for shower gels and are perceived to offer same performance. The distinction is also less clear in Denmark, where bathing is not common and the bath segment constitutes a very minor part of the market (about [0-5]*%) – there some retailers also indicate that consumers would not distinguish the two product groups and perceive them as substitutes.

(1075) From a supply side perspective, competitors have confirmed that the production process is indeed very similar (using same production lines, the main difference being larger packaging). Expansion from one segment to the other seems technically possible but it presupposes that the particular brands are appealing to customers for both bathing and shower. Main brands are often present in both bath and shower segments, albeit with different strengths and market share. Brand proposition would also usually be similar for a bath or shower products of a particular brand, and both would be offered under one range. However, exceptions exist, as some brands are so distinctly targeted at the shower segment (such as strongly male-oriented brand Axe,

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726 Commission Decision of 18 October 1995, IV/M.630 – Henkel/Schwarzkopf.

727 The finding from the investigation that retailers point out that bath products and shower products are not regarded as substitutes but are considered to be distinct products used for different needs is equally valid for the French market, where all retailers participating in the investigation expressed the same view. However, in France the products of some brands (including *Sanex*) are labelled as "shower&bath gels" and marketed as being for dual use in the bath and in shower, so it would be very imprecise to analyse the present transaction involving notably Sanex on a basis of two separate segments for shower and for bath products, as Sanex dual use products would have to be artificially split between shower and bath products.

or Adidas with a strong sporty appeal), that they are completely absent from the bath segment.

(1076) Based on these consideration, it cannot be excluded that the bath & shower market should be subdivided into shower products and bath products in Member States where this distinction would be relevant according to the investigation (in particular in the United Kingdom, Ireland, Belgium, the Netherlands, France and Germany). For Member States such as Spain, Portugal and Greece, but also for Denmark, such distinction is not as relevant. However, for the purposes of this Decision, it is not necessary to conclude on the exact delineation, as the transaction does not lead to significant impediment of effective competition even under the segmentation between bath and shower products.

Gender distinction in shower products

(1077) In bath products, a gender distinction is not relevant as no specific gender-oriented bath products typically exist (such as bath foam for men). There is a specific segment of bath & shower products for kids and babies, but as the Parties do not overlap in this segment, it will not be discussed specifically further in this Decision.[728] However, there is an increasing differentiation within the shower gels category, which are often marketed with specific variants "for men", or with variants appealing specifically to female consumers.

(1078) According to the Parties, a gender distinction of shower products would not be appropriate for competition purposes, as they argue that there is a strong supply-side substitutability between gender variants and that family/unisex variants are still prevalent. Unilever submits that for six Member States where it has relevant data, family/unisex shower gels represent on average about [50-60]*%, while specific male [20-30]*% and specific female products the remaining [20-30]*% of the market.

(1079) In a previous Commission decision[729] men's care products in the bath & shower category were considered as a possible separate market.

(1080) The investigation in this case also revealed that gender differentiation is an increasing trend. Male-specific products constitute a growing segment, they are often presented in a different location on retailers' shelves (such as in a special men's fixture or corner, also possibly featuring other male personal care products). Marketing campaigns are usually different for male and for female or family brands/variants as they are directed to different types of consumers. At the same time, there is still a lot of common usage of shower gels within families, which is reflected in the importance of the family/unisex shower gels.

(1081) The investigation also reveals that expansion from male to female segments -albeit not difficult from a production point of view may involve significant marketing costs

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728 As the size of this segment is generally very small in value, the inclusion of the baby-care brands to the rest of the market will generally make no significant difference in the market shares. Whenever one of the Parties offers significant volume of a baby-care brand (for example Sara Lee in the Netherlands or in Hungary), this will be taken into account in the assessment in the Member States concerned.

729 Commission Decision of 20 April 2006, case COMP/M.4193 L'Oreal/The Body Shop.

as many brands are positioned towards one or the other gender. A prime example is the very recent launch of *Dove men+care*, a male variant of the traditionally female-oriented Dove brand, which involved significant time and investment. It is true that many brands have both female and male variants, but the strength and market share of these brands often varies significantly. Some brands - like *Axe* - are only present in the male segment.

(1082) Based on these considerations, it cannot be excluded that the potential shower market should be subdivided into products according to gender, distinguishing male-specific shower gels (hereinafter "male shower gels" or "male shower") from other non-male-specific shower gels (hereinafter "non-male shower gels" or "non-male shower").[730] However, for the purpose of this Decision it is not necessary to conclude on this point, as the transaction does not lead to significant impediment of effective competition under either potential market definitions.

Conclusion on relevant product market

(1083) It is concluded that bath & shower products constitute a separate product market, whereas a further distinction between bath products and shower products, and a distinction based on gender for shower products can be left open for the purpose of this Decision as the transaction does not lead to significant impediment of effective competition under neither of the potential market definitions.

IV.3.2. Relevant Geographic Market

(1084) The Parties submit that the geographic markets for bath & shower products should be defined as national.

(1085) In previous Decisions, the geographic market definition was left open but the geographic markets for these types of products were assessed on a national basis. It noted that, whilst many companies had started using brands on a European basis, and there were international buying organisations, market shares and consumers' preferences diverged among Member States, and there were significant retail price differences across Member States.[731]

(1086) The Parties agree with this analysis and argue that procurement and price negotiation on a national basis continues to be the prevailing model, even for those customers that operate on a wider-than-national basis.

(1087) The market investigation in this case has confirmed that the geographic market for bath & shower products is national in scope. Customers and competitors across all Member States argued that prices and consumer preferences differ between Member States. Moreover local brands still play an important role in several Member States.

[730] Non-male comprising family/unisex and female, whereas the distinction between these two groups is not clear cut. There is another group of baby/children's bath & shower products, however given that there is no overlap in this segment, it will not be further considered.

[731] Commission decision of 30 July 2010 in Case COMP/M.3149 Procter & Gamble/Wella ; Commission decision of 15 July 2005 in Case COMP/M.3732 Procter & Gamble/Gillette; Commission decision of 30 July 2008 in Case COMP/M.5230 Capman/Litorina/Cederroth ; Commission decision of 3 September 1999 in Case COMP/M.1632, Reckitt & Colman/Benckiser .

Finally, almost all market participants confirmed that price negotiations as well as procurement are conducted at national level.

(1088) It is this concluded that for the purpose of this Decision, the geographic scope of the market for bath & shower products is national. The same conclusion would be valid for potential narrower markets segmented into bath products and shower products, as well as for a gender segmentation.

IV.3.3. Compatibility with the Internal market

IV.3.3.1. *General considerations on bath and shower markets*

(1089) Before analysing the bath & shower markets specifically per Member States, some general features of these markets will be presented, distinguishing these from the deodorants markets.

(1090) Bath & shower products are less sophisticated products than deodorants. The latter have the functionality to protect consumers from odour and sweat, and they stay in contact with the skin and offer a lasting protection. Consumers are more sensitive about the usage of deodorants, and they put more emphasis on trust in the products and in the brands they use. Conversely, bath & shower products are more commoditized, as their purpose is to clean the body and they are washed away after usage. Development and production of bath & shower products is relatively easier than deodorants and consumers are less sensitive about the usage of the products.

(1091) These features translate into two relevant factors i for competitive assessment. First, brand loyalty is less strong for bath & shower products, meaning that consumers would generally more readily switch between brands then in the case of deodorants. This means that competition generally focuses more on price, and consumers would generally substitute brands to find a better deal.

(1092) Second, private label bath & shower products are much more important factor than in the deodorant segment. While private label products do not generally account for significantly more than [5-10]*% of the deodorants markets in most Member States (except of Spain, for specific reasons), the penetration of private label in bath & shower products is more pronounced, accounting generally between 10%-20%. Private label bath & shower products thus present a generally higher competitive constraint than in the deodorant segment.

(1093) The bath & shower market structure also generally differs from the deodorant market structure. The Parties´ market shares are generally lower, as Unilever tends to be less strong than in deodorants. Unilever primarily offers the Axe and Dove brands (there is no Rexona in bath & shower). Sara Lee’s sales are more distributed between several brands which are present in different geographies.

(1094) The brand composition also affects closeness of competition between the Parties. In a number of markets Sara Lee’s largest brand is not Sanex, but rather other (local) brands which are not very close to Unilever’s two key brands Axe and Dove – for example Sara Lee offers Radox in the United Kingdom and Ireland, Badedas in Greece, Zwitsal in the Netherlands. None of these brands are particularly close to

Unilever's. In Member States where both Sanex and Dove are more important, the market shares tend to be lower.

IV.3.3.2. *Country-specific assessment*

(1095) The transaction results in a number of affected bath & shower markets within the EEA, namely Austria, Belgium, Cyprus, Czech Republic, Denmark, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, the Netherlands, Portugal, Slovakia, Spain, Sweden and the United Kingdom.

(1096) As illustrated in Table 63, for Italy, Slovakia and Sweden, the overlap is either insignificant (below 2%) or the combined market share of the Parties as well as the concentration levels are within the ranges identified in the Horizontal Merger Guidelines for which it is unlikely that competition concerns would arise.[732] This applies to the broader bath & shower market as well as the possible segmentation into bath products and shower products and into gender.

Table 63: Market shares for selective Member States –bath & shower markets, including segmentation into bath products and shower products and into male and non-male shower products– 2009 – Source: Parties.

Country	Market	Unilever (%)	Sara Lee (%)	Com-bined (%)	Post-merger Herfindahl-Hirschmann Index (HHI)	Change in HHI
Italy	Overall	[5-10]*%	[5-10]*%	[10-20]*%	[...]*	[...]*
	Bath	[5-10]*%	[5-10]*%	[10-20]*%	[...]*	[...]*
	Shower	[5-10]*%	[10-20]*%	[10-20]*%	[...]*	[...]*
	Shower male	[0-5]*%	[20-30]*%	[20-30]*%	[...]*	[...]*
	Shower non-male	[5-10]*%	[5-10]*%	[10-20]*%	[...]*	[...]*
Slovakia	Overall	[10-20]*%	[0-5]*%	[10-20]*%	[...]*	[...]*
	Bath	[0-5]*%	[10-20]*%	[10-20]*%	[...]*	[...]*
	Shower	[10-20]*%	[0-5]*%	[10-20]*%	[...]*	[...]*
	Shower male	[10-20]*%	[0-5]*%	[10-20]*%	[...]*	[...]*
	Shower non-male	[10-20]*%	[0-5]*%	[10-20]*%	[...]*	[...]*
Sweden	Overall	[10-20]*%	[0-5]*%	[20-30]*%	[...]*	[...]*
	Bath	[0-5]*%	[0-5]*%	[0-5]*%	[...]*	[...]*
	Shower	[20-30]*%	[0-5]*%	[20-30]*%	[...]*	[...]*
	Shower	[10-20]*%	[0-5]*%	[30-40]*%	[...]*	[...]*

[732] See paragraphs 18-20 Horizontal Merger Guidelines.

	male					
	Shower non-male	**[10-20]*%**	**[0-5]*%**	**[10-20]*%**	**[...]***	**[...]***

(1097) For Iceland, market shares are only available for the overall bath & shower market and not for the potential smaller markets. The combined market share of the Parties post-transaction would be [20-30]*% with an increment coming from Unilever of [0-5]*%.

(1098) In addition, sizeable competitors are present in all these Member States. Therefore, it can be concluded that the concentration is not likely to lead to a significant impediment of effective competition as regards the bath & shower markets (overall or in the sub-segments) in Austria, Italy, Slovakia, Sweden and Malta. The remaining Member States are analysed in more detail in the following sections.

IV.3.3.2.1. Austria

(1099) In Austria, the proposed transaction would give rise to a combined market share of below 20% on the overall bath & shower market as well as on all segments except of the male shower segment. In the overall market as well as in all segments, a number of strong competitors are present.

Table 64: Austria – bath & shower market shares in value – 2009 – Source: Parties

	Unilever	Sara Lee	Combined	Competitors
Overall	[10-20]*%	[0-5]*%	[10-20]*%	Beiersdorf [20-30]*% Henkel [10-20]*% Private label [10-20]*%
Bath	[0-5]*%	[10-20]*%	[10-20]*%	Private label [30-40]*% Mertz [10-20]*% Henkel [10-20]*%
Shower	[10-20]*%	[0-5]*%	[10-20]*%	Beiersdorf [20-30]*% Henkel [10-20]*% Colgate-Palmolive [10-20]*%
Shower male	[30-40]*%	[0-5]*%	[30-40]*%	Henkel [10-20]*% Beiersdorf [10-20]*% Coty [5-10]*%

Shower non-male	[5-10]*%	[0-5]*%	[10-20]*%	Beiersdorf [10-20]*% Colgate-Palmolive [10-20]*% Henkel [10-20]*%

(1100) In the male shower segment, Unilever has a market share of [30-40]*% derived primarily from its brand Axe. The combined market share would be [30-40]*%, however with a very minor overlap of only [0-5]*%. There are a number of sizeable competitors to the parties, notably Henkel with almost [20-30]*%, Beiersdorf with [10-20]*% or Coty with [5-10]*% market share. In addition, the Parties' brands (mainly Duschdas for Sara Lee and Axe for Unilever) are not close competitors as Axe is a premium brand oriented towards young males and Duschass is a basic mainstream brand. In any event, Sara Lee only achieved a very minor market share in the male shower segment in Austria.

(1101) Based on these elements, it can therefore be concluded that the concentration is not likely to lead to a significant impediment of effective competition in Austria as regards the bath & shower market, regardless of the precise market definition.

IV.3.3.2.2. Germany

(1102) In Germany, the proposed transaction will give rise to a combined market share of below [20-30]*% on the overall bath & shower market as well as both the shower and the bath segment. Only in the male shower segment they will exceed this threshold.

Table 65: Germany– bath & shower market shares in value – 2009 – Source: Unilever.

	Unilever	Sara Lee	Combined	Competitors
Overall	[10-20]*%	[10-20]*%	[20-30]*%	Private label [10-20]*% Beiersdorf [10-20]*% Henkel [5-10]*%
Bath	[0-5]*%	[0-5]*%	[5-10]*%	Private label [30-40]*% Beiersdorf [10-20]*% Restl [5-10]*%
Shower	[10-20]*%	[10-20]*%	[20-30]*%	Beiersdorf [10-20]*% Private label [10-20]*% Henkel [5-10]*%
Shower male	[10-20]*%	[10-20]*%	[30-40]*%	Coty [10-20]*% Beiersdorf [10-20]*%

				Henkel [10-20]*%
Shower non-male	[5-10]*%	[10-20]*%	[10-20]*%	Private label [10-20]*% Beiersdorf [10-20]*% Henkel [5-10]*%

(1103) In the male shower segment, Unilever has a market share of [10-20]*% derived primarily from its brand Axe. Sara Lee mainly sells Duschdas with a share of [10-20]*% in this segment. The combined share would be [30-40]*%. There are a number of important competitors to the parties, notably Coty ([10-20]*%), Beiersdorf ([10-20]*%) or Henkel with [10-20]*%, but also Colgate-Palmolive or Private label brands. Moreover, the Parties' brands (mainly Duschdas for Sara Lee and Axe for Unilever) are not close competitors as Axe is a premium brand oriented towards young males and Duschass is a basic mainstream brand [733]

(1104) Based on these elements, it can therefore be concluded that the concentration is not likely to lead to a significant impediment of effective competition in Germany as regards the bath & shower market, regardless of the precise market definition.

IV.3.3.2.3. Czech Republic

(1105) In the Czech Republic, the combined market shares are below 25% on the overall bath & shower market, as well as on the shower segment and both male and no-male shower, with several other competitors present.

Table 66: Czech Republic– Bath&shower market shares in value – 2009 – Source: Form CO.

	Unilever	Sara Lee	Combined
Overall	[10-20]*%	[10-20]*%	[20-30]*%
Bath	[0-5]*%	[20-30]*%	[20-30]*%
Shower	[10-20]*%	[5-10]*%	[20-30]*%
Shower male	[5-10]*%	[5-10]*%	[10-20]*%
Shower non-male	[10-20]*%	[5-10]*%	[20-30]*%

(1106) The only potential market with market shares exceeding 25% is bath, where the Parties achieve [20-30]*%. Bath is a relatively small segment accounting for about [10-20]*% of the overall market. More importantly, the overlap in bath segment is relatively limited with only [0-5]*% (Unilever) and there are several larger competitors than Unilever in the bath segment, notably private label [10-20]*%, Mediabox [5-10]*%, Johnson&Johnson [5-10]*%, Henkel [0-5]*% and a number

733 See replies of German retailers to questionnaire to customers on bath &shower products sent on 24 April 2010, question 30.

several other competitors. In addition, in bath products Unilever offers more premium Dove emphasising skin care benefits and Sara Lee offers Radox which is rather fragrance oriented and more basic brand. Competition problems are thus unlikely.

(1107) Based on these elements, it can therefore be concluded that the concentration is not likely to lead to a significant impediment of effective competition in the Czech Republic as regards the bath & shower market, regardless of the precise market definition.

IV.3.3.2.4. Hungary

(1108) In Hungary, the combined share in the overall bath & shower market is [30-40]*%, with a limited increment of [0-5]*% coming from Sara Lee. Other more important competitors are present, notably Colgate-Palmolive with [10-20]*%, private label with [10-20]*%, Beiersdorf with [5-10]*% and Henkel with [5-10]*%.

Table 67: Hungary– Bath&shower market shares in value – 2009 – Source: Form CO.

	Unilever	Sara Lee	Combined	Competitors
Overall	[30-40]*%	[0-5]*%	[30-40]*%	Colgate-Palmolive [10-20]*% Private label [10-20]*% Beiersdorf [5-10]*% Henkel [5-10]*%
Bath	[30-40]*%	[5-10]*%	[30-40]*%	Private label [10-20]*% Colgate-Palmolive [10-20]*% Johnson [5-10]*%
Shower	[30-40]*%	[0-5]*%	[30-40]*%	Colgate-Palmolive [10-20]*% Private label [10-20]*% Beiersdorf [10-20]*%
Shower male	[30-40]*%	[0-5]*%	[30-40]*%	Coty [10-20]*% Beiersdorf [10-20]*% Henkel [10-20]*%
Shower non-male	[30-40]*%	[0-5]*%	[30-40]*%	Colgate-Palmolive [10-20]*% Private label [10-20]*% Beiersdorf [5-10]*%

(1109) In the potential market for bath products, the combined market shares are [30-40]*% with an increment of [5-10]*%. Private label account for [10-20]*%, and several other important competitors are present, notably Colgate-Palmolive with [10-20]*%, and Johnson&Johnson ([5-10]*%). In addition, almost all of Sara Lee's EUR [...]* in sales in bath products in Hungary consists of its specialized baby-care brand, Gabi, which competes closely with Johnson&Johnson but not with Unilever's more mainstream brands. The competitive interaction between the Parties is thus very limited in the potential bath market.

(1110) In the potential shower market (accounting for almost [80-90]*% of the total) the market shares of the parties are similar to the overall market, with even a more limited overlap of below [0-5]*%, the same being valid for both the male and non-male shower segments. Again, several other competitors are present.

(1111) Based on these elements, it can therefore be concluded that the concentration is not likely to lead to a significant impediment of effective competition in Hungary as regards the bath & shower market, regardless of the precise market definition.

IV.3.3.2.5. Belgium

(1112) In Belgium, the combined share in both the overall bath & shower market and in all of the sub-segments is either below [30-40]*%, or the overlap is insignificant. On the overall market, the Parties would have a combined share of [30-40]*% ([20-30]*% Unilever and [5-10]*% Sara Lee). Strong competitors would remain post-merger, notably Colgate-Palmolive with almost [20-30]*%, private labels with [10-20]*%, Beiersdorf with [10-20]*%, and Henkel with [5-10]*%.

Table 68: Belgium– Bath&shower market shares in value – 2009 – Source: Form CO.

	Unilever	Sara Lee	**Combined**	Competitors
Overall	[20-30]*%	[5-10]*%	**[30-40]*%**	Colgate: [10-20]*% Private label: [10-20]*% Beiersdorf: [10-20]*%
Bath	[20-30]*%	[10-20]*%	**[30-40]*%**	Private label [20-30]*% Beiersdorf [10-20]*% Colgate-Palmolive [5-10]*%
Shower	[20-30]*%	[5-10]*%	**[30-40]*%**	Colgate-Palmolive [20-30]*% Private label [10-20]*% Beiersdorf [10-20]*%
Shower male	[40-50]*%	[0-5]*%	**[40-50]*%**	Beiersdorf [10-20]*% Colgate-Palmolive [10-20]*% Private label [0-5]*%
Shower non-male	[10-20]*%	[10-20]*%	**[20-30]*%**	Colgate-Palmolive [20-30]*% Private label [10-20]*%

				Beiersdorf [10-20]*%

(1113) In the bath segment (accounting for about [20-30]*% of the overall market), the Parties' shares are similar with a [30-40]*% combined share ([20-30]*% Unilever and [10-20]*% Sara Lee). Private labels are particularly strong with [20-30]*%, and other competitors are present, notably Beiersdorf with [10-20]*%, and Colgate-Palmolive and Henkel both with [5-10]*%.

(1114) In shower products (about [80-90]*% of the market), the picture is very similar to the overall bath & shower market – combined share of [30-40]*% ([20-30]*% Unilever and [5-10]*% Sara Lee), with strong competitors, notably Colgate-Palmolive with [20-30]*%, private labels with [10-20]*%, Beiersdorf with [10-20]*%, and Henkel with [5-10]*%. In the male segment the combined share would be higher at [40-50]*% (due to Unilever's position with Axe), however the increment brought by Sara Lee would be minimal, at [0-5]*% coming from Sanex for Men. In non-male shower gels (representing over [80-90]*% of shower products) the Parties would have a combined share of [20-30]*% ([10-20]*% Unilever and [10-20]*% Sara Lee), very close to the strong number two Colgate-Palmolive with [20-30]*%, and followed by private labels with [10-20]*%, Beiersdorf ([10-20]*%) and Henkel ([5-10]*%).

(1115) Most of Sara Lee's sales in the Belgian bath & shower market derive from its Sanex brand, while a small part comes from Zwitsal oriented at baby-care. Unilever offers mainly Dove, Axe and Sunlight (a basic family brand). Despite that some Parties' brands are considered to be competing relatively closely (mainly Sanex with Dove due to skin-caring proposition, however Nivea is also seen as an equally close competitor; Sanex is to a lesser extent competing with Sunlight, alongside Colgate-Palmolive's Tahiti and private label[734]), the combined share still remains relatively modest, even in the non-male segment of shower where these brands are most important. Axe is a very distant competitor to Sara Lee's brands.

(1116) Based on these elements, it can therefore be concluded that the concentration is not likely to lead to a significant impediment of effective competition in Belgium as regards the bath & shower market, regardless of the precise market definition.

IV.3.3.2.6. The Netherlands

(1117) In the Netherlands, the combined share on the overall bath & shower market and in all of the sub-segments would remain slightly above [30-40]*%. On the overall market, the Parties would have a combined share of [30-40]*% ([10-20]*% Unilever and [10-20]*% Sara Lee). There are a large number of competitors, notably private labels ([10-20]*%), Beiersdorf ([5-10]*%), Colgate-Palmolive ([5-10]*%) and a number of others, such as local competitors Kneipp ([0-5]*%) or Remark ([0-5]*%). Similar shares arise in the bath segment ([30-40]*%, where Unilever is weaker with [0-5]*% and Sara Lee has [20-30]*%) and in the shower gel segment ([30-40]*% with

[734] Replies of Belgian retailers to questionnaire to customers on bath &shower products sent on 24 April 2010, question 30.

the reverse situation – Unilever being stronger with [20-30]*% and Sara Lee weaker with [5-10]*%). In the male shower gel segment, the Parties would have a combined share of [30-40]*% (with an overlap of [0-5]*% coming from Sara Lee) and in non-male shower gel segment a combined share of [30-40]*% (with an overlap of [5-10]*%). In all segments, a large number of competitors remain. The market shares of all potential markets are presented in the Table 69.

Table 69: The Netherlands– Bath&shower market shares in value – 2009 – Source: Form CO.

	Unilever	Sara Lee	**Combined**	Competitors
Overall	[10-20]*%	[10-20]*%	**[30-40]*%**	Private label: [10-20]*% Beiersdorf: [5-10]*% Colgate: [5-10]*%
Bath	[5-10]*%	[20-30]*%	**[30-40]*%**	Private label [10-20]*% Colgate-Palmolive [5-10]*% Henkel [0-5]*%
Shower	[20-30]*%	[5-10]*%	**[30-40]*%**	Beiersdorf [10-20]*% Private label [10-20]*% Henkel [5-10]*%
Shower male	[20-30]*%	[0-5]*%	**[30-40]*%**	Beiersdorf [10-20]*% Coty [5-10]*% Private label [0-5]*%
Shower non-male	[20-30]*%	[5-10]*%	**[30-40]*%**	Private label [10-20]*% Beiersdorf [5-10]*% Henkel [5-10]*%

(1118) Sara Lee mostly competes with two brands in the Netherlands which are equally strong in terms of sales – Sanex and Zwitsal (a baby-care brand). Unilever mostly offers Dove, and to a lesser extent Axe. Although Dove and Sanex compete more closely, Zwitsal is not a close competitor to Unilever's brands. Sanex is viewed in the Netherlands as a neutral brand and more retailers see it as most closely competing with a similarly positioned brand Sanicur; Nivea is larger than Sanex and is considered by Dutch retailers as the main competitor to Dove.[735] Axe is a very distant competitor to Sara Lee's brands.

[735] See replies of Dutch retailers to questionnaire to customers on bath &shower products sent on 24 April 2010, question 30.

(1119) Given the relatively modest market shares and presence of closer competitors, the concentration is thus not likely to lead to a significant impediment of effective competition in the Netherlands as regards the bath & shower market, regardless of the precise market definition.

IV.3.3.2.7. France

(1120) In France, the parties' combined share would be [20-30]*% on the overall bath & shower market (Unilever [10-20]*%, Sara Lee [5-10]*%). Private labels account for [10-20]*% and other strong competitors are present, notably Colgate-Palmolive with [10-20]*%, Johnson&Johnson with [10-20]*%, and a local competitor Lascad has [10-20]*%, Henkel has [0-5]*%, Cadum [0-5]*%.

Table 70: France – Bath&shower market shares in value – 2009 – Source: Unilever.

	Unilever	Sara Lee	Combined	Competitors
Overall	[10-20]*%	[5-10]*%	[20-30]*%	Private label: [10-20]*% Colgate-Palmolive: [10-20]*% Johnson: [10-20]*%
Bath	[5-10]*%	[30-40]*%	[40-50]*%	Private label: [20-30]*% Colgate-Palmolive [5-10]*% Cadum [5-10]*%
Shower	[10-20]*%	0	[10-20]*%	Private label [10-20]*% Colgate-Palmolive [10-20]*% Johnson [10-20]*%
Shower male	[40-50]*%	[0-5]*%	[40-50]*%	
Shower non-male	[0-5]*%	[5-10]*%	[10-20]*%	

(1121) Although retailers in France indicated that they separate bath products from shower products on their shelves and that this distinction is generally reasonable from an end-consumer's point of view[736], such distinction is very difficult to make in relation to Sara Lee's products. Sara Lee in France offers mostly Sanex ([5-10]*% market share), which is labelled either as a "shower gel" or as a "shower and bath gel" sold in larger bottles and suitable to be used for both shower and bath occasions. Retailers in France have also referred to "dual use" products as a possible third category alongside bath products and shower products, and mentioned notably Sanex as the main brand offering such products (and referring also to Le petit marseillais). Such "dual" products are not offered by Unilever, so if one would consider the three categories,

[736] See explanations in the market definition section IV.3.1.

there would be no overlap between the parties in the dual, nor in the separate bath category.

(1122) In France, separate Nielsen market share data for the bath and shower products exist (as presented in Table 70), but the sales are attributed according to the bottle size, with all larger bottles being put into the bath segment. This does not correspond to market reality notably in relation to Sanex, as all sales in the "bath" segment consist of Sanex dual products. These split figures (according to bottle size) indicate a Parties' combined share of [10-20]*% in shower (with [0-5]*% coming from Sanex) and [40-50]*% in bath segment (with [30-40]*% attributable to Sanex in the larger bottles). The Sanex share in the "bath" segment is clearly overstated. As one French retailer explains, the dual products like the one offered by Sanex "*are offered in larger bottles of 400-50 ml, and the price per ml is interesting for the consumers in comparison to shower gels. The primary utilisation of dual usage produces by the consumers is in the shower, and they use these products as an economic version of shower gels.*"[737] Similarly to Sanex, also the second Sara Lee's brand Monsavon has no dedicated bath products and they are al labelled as either shower gels or as a "dual" bath and shower product (the market share of Monsavon on the "bath" segment would be [0-5]*% based on Nielsen's classification according to the bottle size).

(1123) Given the specific nature of Sanex bath & shower products in France, it thus seems most reasonable to analyse the transaction on the overall bath & shower market where reliable data exist. In this market the combined share is about [20-30]*%.

(1124) If one would look at the hypothetical bath market, Sara Lee's significant market share of [30-40]*% would have to be taken with care as it is likely to be significantly overstated given that it entirely derives from Sanex and Monsavon "dual" products, whereas Sanex is actually more used as shower gels by end-consumers as explained in recital (1122). If one assumes that half of these Sara Lee's "dual" products are bought by consumers as bath products (and the other half would be excluded from the bath segment), the market share of Sara Lee on the potential bath market would be only [20-30]*% and the combined market share around [30-40]*%. On such a potential market, private label products would hold a significant share (about [20-30]*%) and there would be a number of other competitors including Cadum and Colgate (each around [5-10]*%), Johnson&Johnson (around [5-10]*%), Vendome (also around [5-10]*%) and Beiersdorf (around [5-10]*%).

(1125) In any event, retailers in France indicated that there are a number of alternative competitors to the Parties', and the only area some retailers saw a strong position are the "dual use" products where Sanex is the leader. However, that there is no overlap in this area as Unilever is not offering such products, so the merger would not change the current situation.

(1126) If one would look separately at the male and non-male shower segments, there would be no overlap in the male (Unilever is strong with Axe, but Sara Lee does not offer any male shower predicts in France). In the non-male shower, the combined share would be just over [10-20]*%.

[737] See minutes of a conference call of 2 July 2010 with a French retailer. Own translation from French.

(1127) Based on these elements, it can therefore be concluded that the concentration is not likely to lead to a significant impediment of effective competition in France as regards the bath & shower market, regardless of the precise market definition.

IV.3.3.2.8. Denmark

(1128) In Denmark, the Parties' combined share would be [30-40]*% in the overall bath & shower market. Sara Lee was pre-merger the largest supplier ([30-40]*% market share) and Unilever had a [5-10]*% share. Colgate Palmolive will continue to be a strong number two with [10-20]*%, and Beiersdorf has [5-10]*%. Private labels are strong in Denmark and account for [10-20]*%. There are a number of other competitors with smaller shares.

Table 71: Denmark– Bath&shower market shares in value – 2009 – Source: Form CO[738]

	Unilever	Sara Lee	**Combined**	Competitors
Overall	[5-10]*%	[30-40]*%	**[30-40]*%**	Private label: [10-20]*% Colgate: [10-20]*% Beiersdorf: [5-10]*%
Bath	[0-5]*%	[0-5]*%	**[0-5]*%**	
Shower	[5-10]*%	[30-40]*%	**[30-40]*%**	Private label [10-20]*% Colgate-Palmolive [10-20]*% Beiersdorf [5-10]*%
Shower male	[10-20]*%	[10-20]*%	**[20-30]*%**	Beiersdorf [20-30]*% Private label [10-20]*% Unicare [10-20]*%
Shower non-male	[5-10]*%	[30-40]*%	**[40-50]*%**	Private label [10-20]*% Colgate-Palmolive [10-20]*% Beiersdorf [5-10]*%

(1129) Sara Lee's main brand Sanex is the most sold product on the market (market share [30-40]*%) while its second brand Neutral holds [5-10]*%. Unilever mainly offers Dove

738 Market share are based on Nielsen data. For the gender segments of shower, the available Nielsen data did not contain private label sales as these were not split into gender. Accordingly, the total sales of private labels in shower were added into the gender segments according to the general split between male and non-male branded shower products, assuming that this split would be the same for private label ([5-10]*% of branded shower products were male in Denmark). The actual market shares in male and non-male can therefore be different, but as regards the non-male segment this difference is unlikely to be significant (as non-male make about [90-100]*% of the total shower market, and the share of private label on this total shower market is [10-20]*%).

([0-5]*%), while its other brands are quite minor in Denmark (Axe and Lux with less than [0-5]*% each). The market investigation did not indicate any particular closeness of the Parties' brands, and in fact Danish retailers mentioned other brands than Dove to be closest to Sanex (Nivea – which is almost twice as large as Dove, private label, and also the second Sara Lee's brand Neutral).[739]

(1130) Private label products currently represent [10-20]*% market share in value of bath & shower products. On the Danish market, private label products seem to interact more with major brands than in some other Member States, offering similar benefits and even enjoying a higher average price than some brands. Some private labels were mentioned among the closest competitors to the leading Sanex brand, offering neutral fragrance and claiming health and care benefits, a proposition which apparently is very popular in Denmark in bath & shower products.

(1131) In Denmark, a separation between bath products and shower products is not pronounced as these products are considered as alternatives by most retailers (see market definition, recitals (1074) and (1076)). Bathing is rare in Denmark, and bath products account only for about [0-5]*% of the market, the [90-100]*% being shower gels. The Parties do not offer any bath products in Denmark. The market shares on the shower segment are thus largely similar to the overall market for the Parties as well as their main competitors.

(1132) If the shower gels were to be split according to gender, the non-male segment would account for over [90-100]*%, as male shower gels are a very small segment in Denmark. The Parties would have a [20-30]*% combined share in this male segment (Sanex for Men having a [10-20]*% share but with sales of [...]*). In non-male shower, the Parties would have a share of [40-50]*% ([30-40]*% Sara Lee, [5-10]*% Unilever), again with very similar market structure as in the total market, and with same conclusions about the closeness of competition and alternative suppliers to the Parties' brands. Danish retailers did not expect any anti-competitive effects arising from the merger as regards bath & shower market or any of its potential segments.

(1133) Based on these elements, it can therefore be concluded that the concentration is not likely to lead to a significant impediment of effective competition in Denmark as regards the bath & shower market, regardless of the precise market definition.

IV.3.3.2.9. Spain

(1134) In Spain, the transaction would lead to a combined market share of [20-30]*% in the overall bath & shower market, with an increment of [5-10]*% coming from Unilever (Sara Lee had [10-20]*% pre-merger). Private label is very strong with [20-30]*% and several competitors are present, notably Henkel ([5-10]*%), Colgate-Palmolive ([5-10]*%) or Puig ([5-10]*%).

(1135) As was explained in the part on market definition in recitals (1070)- (1076) it is not pertinent to distinguish bath products from shower gels in Spain, and separate market share shares are not available. Consequently, it is not possible to split the shower

[739] See replies of Danish retailers to questionnaire to customers on bath &shower products sent on 24 April 2010, question 30.

segment further according to gender. In order to analyse gender segmentation, the Parties provided a gender split of the total bath & shower market. In the non-male segment (accounting to more than [90-100]*%) the market shares are broadly similar, the Parties' combined share being slightly lower, at [20-30]*% (Unilever [0-5]*%, Sara Lee [10-20]*%).

(1136) In the male segment featuring specific bath & shower products for men, Unilever has [40-50]*% market share derived from the sales of its Axe brand. Sara Lee only account for [0-5]*% of this segment with Sanex for Men (given the very small size of the segment, Sara Lee's sales accounted for [...]*). The combined share post-merger would be [40-50]*%, but the increment is limited and other more sizeable competitors are present, notably Puig with [20-30]*%, Coty with [10-20]*% and private label with [5-10]*%. In addition, Axe with its proposition towards young males is a distant competitor from Sanex for Men oriented at skin care. No specific competition concerns were expressed by any of the Spanish retailers.[740]

(1137) Based on these elements, it can therefore be concluded that the concentration is not likely to lead to a significant impediment of effective competition in Spain as regards the bath & shower market, regardless of the precise market definition.

IV.3.3.2.10. Portugal

(1138) In Portugal, the transaction would lead to a combined market share of [30-40]*% in the overall bath & shower market, with a relatively modest increment of [0-5]*% coming from Sara Lee (Unilever had [20-30]*% pre-merger). Several sizeable competitors are present, private label accounts for [10-20]*%, Johnson&Johnson has [10-20]*%, Colgate-Palmolive [10-20]*% and Beiersdorf [10-20]*%, alongside smaller suppliers.

(1139) As explained in the part on market definition in recitals (1070)- (1076), it is not pertinent to distinguish bath products from shower gels in Portugal, and these data are not available. Consequently, it is not possible to split any shower segment further into genders. In order to analyse gender segmentation, the Parties have provided a gender split of the total bath & shower market. In the non-male segment (accounting to almost [90-100]*%) the market shares of the Parties and their main competitors are broadly similar to the overall market.

(1140) In the male segment featuring specific bath & shower products for men, Unilever has [50-60]*% market share derived from the sales of its Axe brand. Sara Lee only account for [0-5]*% of this segment with Sanex for Men (given the extremely small size of the segment, Sara Lee's sales accounted for [...]*). The combined share post-merger would be [50-60]*%, but the increment is limited and other more sizeable competitors are present, notably Coty with [10-20]*%, Beiersdorf with [5-10]*% and J.Martins with [5-10]*%. In addition, Axe with its proposition towards young males is

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[740] See reply of Spanish retailers to questionnaire to customers on bath &shower products sent on 24 April 2010, question 61.

a distant competitor from Sanex for Men oriented at skin care. No specific competition concerns were expressed by any of the Portuguese retailers.[741]

(1141) Based on these elements, it can therefore be concluded that the concentration is not likely to lead to a significant impediment of effective competition in Portugal as regards the bath & shower market, regardless of the precise market definition.

IV.3.3.2.11. Greece

(1142) In Greece, the Parties would on the overall bath & shower market have a combined share of [30-40]*% (Unilever [20-30]*%, Sara Lee [10-20]*%). There will be a number of competitors, notably Colgate-Palmolive ([10-20]*%), Johnson&Johnson ([10-20]*%), Henkel ([5-10]*%), private labels ([5-10]*%), Procter &Gamble ([0-5]*%) and Beiersdorf ([0-5]*%).

Table 72: Greece – Bath&shower market shares in value – 2009 – Source: Form CO.

	Unilever	Sara Lee	**Combined**	Competitors
Overall	[20-30]*%	[10-20]*%	**[30-40]*%**	Colgate-Palmolive [10-20]*% Johnson [10-20]*% Henkel [5-10]*%
Bath	[10-20]*%	[10-20]*%	**[30-40]*%**	Colgate-Palmolive [10-20]*% Johnson [10-20]*% Henkel [5-10]*%
Shower	[30-40]*%	[5-10]*%	**[40-50]*%**	Colgate-Palmolive [10-20]*% Henkel [5-10]*% Beiersdorf [5-10]*%

(1143) Unilever’s main brands are Dove ([10-20]*% market share), Lux (a basic family brand with [5-10]*%) and Axe ([0-5]*%), whereas Sara Lee mainly sells Badedas ([5-10]*%) and Sanex ([0-5]*%).

(1144) The investigation shows that overall the Parties are not particularly close competitors.

(1145) Although Sanex and Dove in general compete more closely in other markets, most retailers stated that the closest brand to Dove in Greece is Palmolive (which is the largest brand on the market), some mentioned Nivea and Bodyfarm, but Sanex (with a

741 See reply of Portuguese retailers to questionnaire to customers on bath &shower products sent on 24 April 2010, question 61.

[0-5]*% share) was not perceived as amongst the closest competitors of Dove by Greek retailers.[742]

(1146) Lux is perceived to be mostly competing with Fa (which has a similar price positioning), but some retailers also mention Nivea, Camey or Sanex.[743]

(1147) As regards Axe, it is a premium-positioned brand oriented at young men (one retailer explaining that it has an "*image only for young*") and in fact more Greek retailers stated that there is no closely competing brand to Axe, some others were mentioning the male versions of Badedas, Nivea and Str8 – a distinct male brand of the local competitor Sarantis – as brands which were also oriented at men.[744] However, even if Sara Lee's Badedas is perceived as an important brand on the male segment, it is considered to be a very distant competitor to Axe. Badedas for men is a more traditional, mainstream brand with a lower price positioning, oriented at more mature men and it is generally a more family-oriented brand.

(1148) In the Greek market, most retailers did not find it appropriate to distinguish bath products from shower gels as they considered those products as realistic substitutes, but the opinion was not unanimous. In a potential bath segment, the parties would have slightly lower combined shares ([30-40]*%) but with a higher overlap of [10-20]*% (as Sanex is mostly classified as bath product and has a lower share in shower). Key competitors are similarly strong as in the total market, notably Colgate-Palmolive ([10-20]*%), Johnson&Johnson ([10-20]*%) and Henkel ([5-10]*%).

(1149) In the shower segment, the combined share would be higher ([40-50]*%), but with a lower overlap of [5-10]*% (coming mostly from Sara Lee's Badedas). A number of other competitors are present, notably Colgate-Palmolive ([10-20]*%), Henkel ([5-10]*%), Beiersdorf ([5-10]*%), Johnson&Johnson ([0-5]*%) and Sarantis with [0-5]*% (the latter offering the male brand Str8 but also Coty's Adidas). The considerations about closeness of competition apply equally to both potential shower and bath segments, with the same conclusion that the Parties are not particularly close competitors. Nielsen market shares data for gender segmentation are not available in Greece.

(1150) Based on these elements, it can therefore be concluded that the concentration is not likely to lead to a significant impediment of effective competition in Greece as regards the bath & shower market, regardless of the precise market definition.

IV.3.3.2.12. Cyprus

[742] See replies of Greek retailers to questionnaire to customers on bath &shower products sent on 24 April 2010, question 30.

[743] See replies of Greek retailers to questionnaire to customers on bath &shower products sent on 24 April 2010, question 30.

[744] See replies of Greek retailers to questionnaire to customers on bath &shower products sent on 24 April 2010, question 30.

(1151) In Cyprus, Nielsen market shares data is only available for the shower segment, where the transaction would lead to a combined market share of [20-30]*%, with a relatively modest overlap of [0-5]*% (Sara Lee). The market would continue to be led by Colgate-Palmolive with [30-40]*%. In addition, several competitors are present, notably PZ Cussons with [5-10]*% and Henkel with [5-10]*%.

(1152) The concentration is thus not likely to lead to a significant impediment of effective competition in Cyprus as regards the bath & shower market, regardless of the precise market definition.

IV.3.3.2.13. United Kingdom

(1153) In the United Kingdom, the combined market shares of the Parties on the overall bath & shower market would be [30-40]*%. Sara Lee currently has the highest share with [10-20]*%, achieving most of its sales with its local traditional brand Radox ([10-20]*%), and a number of small brands including Sanex (which only has [0-5]*% in the United Kingdom). Unilever has a pre-merger share of [10-20]*% and sells essentially two main brands – Dove ([5-10]*%) and Lynx the equivalent of Axe ([5-10]*%).

(1154) The market shares of the Parties and their main competitors for the overall bath & shower market as well as the segments are presented in Table 73.

Table 73: United Kingdom– Bath&shower market shares in value – 2009 – Source: Form CO.

	Unilever	Sara Lee	**Combined**	Competitors
Overall	[10-20]*%	[10-20]*%	**[30-40]*%**	PZ Cussons [10-20]*% Private label [10-20]*% Colgate-Palmolive [5-10]*%
Bath	[5-10]*%	[20-30]*%	**[30-40]*%**	Private label [20-30]*% Johnson [10-20]*% PZ Cussons [5-10]*%
Shower	[10-20]*%	[10-20]*%	**[30-40]*%**	PZ Cussons [10-20]*% Private label [10-20]*% Colgate-Palmolive: [5-10]*%
Shower male	[50-60]*%	[10-20]*%	**[60-70]*%**	Coty [5-10]*% PZ Cussons [5-10]*% Private label [5-10]*%
Shower non-male	[10-20]*%	[20-30]*%	**[30-40]*%**	PZ Cussons [20-30]*% Private label [10-20]*% Colgate-Palmolive: [5-10]*%

(1155) In the overall market, the combined entity would continue to face strong competition notably from PZ Cussons ([10-20]*%), a traditional United Kingdom competitor offering brands Imperial Leather and Original Source; other competitors are Colgate-Palmolive ([5-10]*%), Johnson&Johnson ([5-10]*%), and further suppliers like Beiersdorf, Coty or Procter&Gamble.

(1156) In addition, private labels play a relatively active role on the market, and they account for [10-20]*%. There is a degree of interaction of private label brands notably with Radox, which is positioned in the lower price range.

(1157) The investigation confirmed that, overall, the Parties' brands are not particularly close competitors.

(1158) Radox is the most important brand of Sara Lee in the United Kingdom, and in fact the most sold brand on the market. It is a traditional, mainstream family-oriented brand, positioned in the mid-range price segment. The retailers'' answers from the investigation suggests that the brands which compete most closely with Radox are Imperial Leather and Palmolive.[745] PZ Cussons' brand Imperial Leather is – like Radox - a traditional family-oriented brand with similar marketing positioning and pricing. Palmolive is also considered as a strong family-brand occupying a similar price range.

(1159) Radox, although being the most-sold brand, seems to suffer from its mainstream focus and the strong competition it faces from similar brands. In [...]*, core shower products of Radox were delisted from one major UK retailer […] in the context of [...]*.[746] Radox has been delisted for over [...]*, [reference to parties' internal documents].[747]

(1160) When asked what would happen if Radox were to increase its price or decrease promotions, most retailers replied that Radox would simply lose customers to other similar brands (mentioning mostly Imperial Leather and Palmolive, and also Original Source (another brand of PZ Cussons), but no Unilever's brands as they are differently positioned).[748] [the retailer deslisting Radox] itself observes that for the Radox core shower range, "*the majority of sales will simply switch to whichever other brand is on promotion. The brand most similar to Radox in terms of proposition and customer is Imperial Leather and Radox sales would mainly flow into this brand. Palmolive would*

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[745] See replies of United Kingdom retailers to questionnaire to customers on bath &shower products sent on 24 April 2010, question 30, and replies of United Kingdom retailers to questionnaire to customers on bath &shower products sent on 28 June 2010, question 8.

[746] See recital 2.15 of the Parties' response to the Commission's 6(1)(c) decision, page 6.

[747] [...]*

[748] Replies of United Kingdom retailers to questionnaire to customers on bath &shower products sent on 28 June 2010, question 8.

also benefit however as a more cream-based range then gels-based its proposition is not so similar so switching would be less"[749]

(1161) As a mainstream family brand, Radox also offers specific variants, two of which seem to compete more with Unilever. The first is the Radox wellbeing range, which emphasises skin care benefits and thus competes more closely with Dove, among a number of other competitors' brands, notably Johnson&Johnson, Palmolive, Nivea and Olay, as demonstrated in recital (1163). However, the Radox wellbeing range only accounts for less than [10-20]*% of Radox' sales overall, as well as in all potential segments. The market share of this variant would be thus around [0-5]*% for the bath & shower market, and below [0-5]*% in all potential segments.

(1162) Radox also offers a shower variant for men, however the brand is a distant competitor to Axe, as will be discussed in recital (1169) when analysing the male shower gel segment.

(1163) Finally as regards the second Sara Lee brand in the United Kingdom, Sanex, both Sanex and Dove only represent a small fraction of the bath&shower market ([0-5]*% for Sanex and [5-10]*% for Dove). Even if those two brands compete more closely, retailers consider a number of other competitors' brands to be close to Dove, notably Johnson&Johnson, but also Nivea and Imperial Leather and Radox wellbeing.[750] [reference to parties' internal documents][751] The investigation suggests that Sanex is considered particularly close to another local bath & shower brand in the United Kingdom called Simple, which has very similar skin care proposition to Sanex.[752] Lastly, Sanex is a very distant competitor to Axe.

(1164) The Parties' brands are thus not close competitors in the bath & shower market in the United Kingdom. The same applies to all segments of the market, to the extent that the Parties' brands are present in those segments.

(1165) In the potential bath market, the combined market share would be [30-40]*%, with a relatively limited overlap of [5-10]*% coming mostly from Unilever's Dove. Sara Lee pre-merger had [20-30]*%, mostly deriving its share from the sales of Radox which is the largest bath brands. Private labels are particularly strong in bath, accounting for [20-30]*% of the market. Other significant competitors are present, notably Johnson&Johnson ([10-20]*%), PZ Cussons ([5-10]*%) and Colgate Palmolive ([0-5]*%), and there is large number of others with smaller shares.

(1166) The shower segment (accounting for over [70-80]*% of the bath & shower market) has a very similar market structure to the overall market. The parties' combined share

749 Reply of [retailer] to questionnaire to customers on bath &shower products sent on 28 June 2010, question 8.

750 See replies of United Kingdom retailers to questionnaire to customers on bath &shower products sent on 24 April 2010, question 30.

751 [reference to parties' internal documents]

752 See replies of United Kingdom retailers to questionnaire to customers on bath &shower products sent on 24 April 2010, question 30.

would be [30-40]*%, Unilever accounting for [10-20]*% and Sara Lee [10-20]*%. PZ Cussons would remain a strong number two competitor with [10-20]*%, and private label products account for over [10-20]*%. Other competitors are Colgate-Palmolive ([5-10]*%), Johnson&Johnson ([0-5]*%), and further suppliers like Beiersdorf, Coty and Procter&Gamble.

(1167) In the non-male shower gel segment (representing [70-80]*% of the shower segment) the Parties would have a [30-40]*% share ([10-20]*% Unilever, [20-30]*% Sara Lee, most notably with Radox). The Parties would continue to face strong competition from PZ Cussons ([20-30]*%) and a number of competitors including Colgate-Palmolive ([5-10]*%) and Johnson&Johnson ([5-10]*%). Private label products account for [10-20]*%.

(1168) In the male shower segment (accounting for [20-30]*% of shower, and [10-20]*% of bath & shower) the Parties would have the highest market shares, Unilever 50-60]*% (essentially with Axe) and Sara Lee [10-20]*% with Radox, to a combined share of [60-70]*%. These market shares are likely overstated due to underestimation of the total market size of gender segments.[753]

(1169) Despite of the high market shares, Axe and Radox are not close competitors, as each has a different proposition, is targeting different group consumers and has a different price positioning. The proposition of Radox is very different from Unilever's brand Lynx/Axe), which is a very distinct premium brand positioned towards a focus on teenagers and young men in the quest to attract the opposite sex. Radox is rather a mid-priced mainstream brand which attracts higher age groups. [reference to parties' internal documents][754] [reference to parties' internal documents][755] Indeed, more retailers in the investigation stated that Lynx appeals only to younger men.[756]

(1170) There are several male brands in addition to Radox (some of which more distinctively male and closer competitors to Axe than Radox), notably Adidas (with [5-10]*%), or Gillette ([0-5]*%) which are part of the male grooming range. Beiersdorf's Nivea ([0-5]*%) also offers a distinct male shower gel (a new range introduced about 2 years ago doubled the share of Nivea since 2007). Another competitor is PZ Cussons ([5-10]*%) with mainly its Imperial Leather for Men, sharing similar attributes as Radox. Private label products account for [5-10]*% of the market.

(1171) Given that the parties' brands are distant competitors in the male shower segment, and several other, more closely competing brands are present, the merger is unlikely to

[753] About 15% of the overall shower sales were not attributed to gender segments due to masking of the data. The sum of total market figures of all gender segments is lower by about 15% to the shower segment.

[754] [reference to parties' internal documents]

[755] [reference to parties' internal documents]

[756] See question answers of two United Kingdom retailers to questionnaire to customers on bath &shower products sent on 24 April 2010, question 27.

lead to anticompetitive effects on this segment. No concerns were raised during the investigation specifically to the male shower segment.

(1172) In the market investigation, some retailers expressed the view that Radox offers good promotions on the market, and they feared a reduction in promotional activity when taken over by Unilever. However, a further investigation confirmed that Radox is quite dependent on promotions and if the brand would promote less, it would likely be substituted by other brands. As demonstrated in recitals (1159)- (1160), Radox competes closely with Imperial Leather and Palmolive [reference to parties' internal documents] As one retailer active in the United Kingdom observes: "*in a largely promotionally driven category we believe that customers would trade out of Radox into other brands on promotion – key competitor brands would be Imperial Leather, Palmolive and Original Source (brands where we see same/similar discount to Radox)*".[757] The large majority of retailers share similar views about Radox.[758] Unilever's brands (Dove and Axe) are not close competitors to Radox, and therefore Unilever would not be able to recoup the lost sales with its other brands. Furthermore, the investigation also confirmed that Radox was not the only brand offering good promotions[759], [reference to parties' internal documents].[760] The concerns of those retailers are thus not substantiated.

(1173) One competitor pointed out that post-merger, Unilever as a new market leader would be elected as a category captain/advisor in the bath & shower category by more retailers and thus be able to exercise greater influence on the retailers, to the detriment of its competitors.[761] This view was not shared by other competitors[762], and it was also clearly rejected by retailers, who always verify the recommendations of category captains and do not see scope for discrimination of other brands.[763]

(1174) Based on these elements, it can therefore be concluded that the concentration is not likely to lead to a significant impediment of effective competition in the United Kingdom as regards the bath & shower market, regardless of the precise market definition.

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[757] Reply of a United Kingdom retailer on questionnaire to customers on bath &shower products sent on 28 June 2010, question 8.

[758] See replies of United Kingdom retailers on questionnaire to customers on bath &shower products sent on 28 June 2010, question 8.

[759] See for example minutes also figures on promotional activity provided by Unilever in answer to question 23 of its reply to commission's information request of 25 June 2010.

[760] [reference to parties' internal documents]

[761] Notably by influencing retailers to limit available promotional slots to competitors, and to reduce the overall level/depth of promotions on the market. See minutes with an (anonymous) competitor 19 May 2010.

[762] See replies of competitors to questionnaire to competitors on bath &shower products sent on 24 April 2010, questions 65 and 66.

[763] See replies of United Kingdom retailers on questionnaire to customers on bath &shower products sent on 24 April 2010, question 46.

IV.3.3.2.14. Ireland

(1175) In Ireland, the structure of Parties' brands and the main competitors are similar as in the United Kingdom. While the Irish market has its specificities, it is in many aspects derivative from this large neighbouring market, also due to the fact that two major retailers ([retailer] and [retailer]) operate in the two markets.

(1176) The combined market shares of the Parties on the overall bath & shower market in Ireland would be [40-50]*%. Sara Lee is the leading supplier with [20-30]*%, its share mostly derived from selling Radox which is the largest brand on the market with [20-30]*%, and it is also selling smaller brands, notably Sanex ([5-10]*% share). Unilever has [10-20]*%, essentially with Lynx/Axe ([5-10]*%) and Dove ([5-10]*%). The structure of the Parties' sales is very similar to the United Kingdom. There would be a number of competitors in Ireland, notably Johnson&Johson ([10-20]*%), followed by Colgate-Palmolive ([10-20]*%), Cussons ([5-10]*%) and Beiersdorf ([5-10]*%). Private labels have almost [10-20]*% market share.

Table 74: Ireland – Bath&shower market shares in value – 2009 – Source: Form CO.

	Unilever	Sara Lee	**Combined**	Competitors
Overall	[10-20]*%	[20-30]*%	**[40-50]*%**	Johnson: [10-20]*% Colgate-Palmolive: [10-20]*% Private label: [5-10]*%
Bath	[0-5]*%	[30-40]*%	**[30-40]*%**	Johnson [20-30]*% Private label [10-20]*% Colgate-Palmolive [5-10]*%
Shower	[20-30]*%	[20-30]*%	**[40-50]*%**	Colgate-Palmolive [10-20]*% Johnson [5-10]*% Cussons [5-10]*%
Shower male	[50-60]*%	[10-20]*%	**[70-80]*%**	Beiersdorf [10-20]*% Coty [5-10]*% Cussons [0-5]*%
Shower non-male	[10-20]*%	[20-30]*%	**[40-50]*%**	Colgate-Palmolive [10-20]*% Johnson [10-20]*% Cussons [5-10]*%

(1177) Recently, Ireland has been a very vibrant market for bath & shower products. In the context of a difficult economic situation, the market in Ireland shrunk by around [20-30]*% in value, from approximately EUR 20 million in 2008 to EUR 16 million in

2009.While the contraction was not so drastic in terms of volume, this is largely due to a radical decrease in average prices. In the last year, private labels grew their market share by more than [50-60]*%, reaching a [5-10]*% share in 2009 (up from [5-10]*% in 2008). Some branded suppliers also saw an increase in shares – most notably PZ Cussons' (offering mostly Imperial Leather) who grew its sales in Ireland and increased its market share by more than a third from [5-10]*% in 2008 to [5-10]*%, Beiersdorf managed to increase its sales slightly and consequently grew its share by around a quarter from [5-10]*% to [5-10]*%. Sara Lee was losing sales but to a lesser extent than the rate of decline of the total market, so it grew its market share slightly from [20-30]*% to [20-30]*%. Other suppliers' market shares (including Unilever) have decreased.[764]

(1178) The investigation confirmed that, overall, the Parties' brands are not particularly close competitors in Ireland.

(1179) Radox is Sara Lee's most important brand in Ireland and the most sold brand on the market. It is a traditional, mainstream family-oriented brand, positioned in the mid-range price segment. The responses of retailers' active in Ireland suggest that Radox mostly competes with Palmolive; PZ Cussons' Imperial Leather and Dove were also mentioned.[765] Palmolive has a larger market share than Dove in all sub-segments, and PZ Cussons was the most growing supplier on the market with a share similar to Dove. PZ Cussons' brand Imperial Leather is – like Radox - a traditional family-oriented brand with similar marketing positioning and pricing. [...]*

(1180) Radox as a mainstream family brand also offers more specific variants, two of which seem to compete more with Unilever. The first is Radox wellbeing range, which is emphasising skin benefits and thus competes more closely with Dove, among a number of other competitors' brands as demonstrated in recital (1182) below. However, the Radox wellbeing range only accounts for about [5-10]*% of Radox' sales overall, and not significantly more in all potential segments.[766] The market share of this variant would be thus be abound [0-5]*% for the bath & shower market, and below [0-5]*% in all potential segments.[767]

(1181) Radox also offers a shower variant for men, however the brand is a distant competitor to Axe, as will be discussed in recitals (1188) - (1190) below when analysing the male shower segment.

(1182) The second Sara Lee brand in Ireland is Sanex. Although Sanex and Dove generally compete more closely in other markets, retailers active in Ireland considered other brands than Sanex to be close competitors to Dove - mostly Nivea and

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764 Between 2008 and 2009, Unilever's share decreased from [10-20]*% to [10-20]*%, Colgate-Palmolive's from [10-20]*% to [10-20]*%, Johnson&Johnson from [10-20]*% to [10-20]*%, and Procter & Gamble's from [0-5]*% to [0-5]*%.

765 See replies of Irish retailers to questionnaire to customers on bath &shower products sent on 24 April 2010, question 30.

766 About [5-10]*% in shower and about [5-10]*% in non-male shower, and [10-20]*% in bath.

767 In bath around [0-5]*%, in shower around [0-5]*% and non-male shower around [0-5]*%.

Johnson&Johnson, but Imperial Leather and Radox wellbeing was also mentioned.[768] The investigation suggests that Sanex is considered close to a number of brands - Simple and Aveeno (having both very similar positioning), and also to Palmolive and Dove. [769] In addition to all other brands considered close or closer, Sanex and Dove would in any event not represent a major part of the total market or any of the segments in Ireland.[770] Sanex is a very distant competitor to Axe.

(1183) The Parties' brands are thus not close competitors in the Irish bath & shower market. The same explanations about closeness apply to all segments of the market, to the extent that the Parties' brands are present in them.

(1184) In the potential bath market, the combined market share would be [30-40]*%, with a relatively limited overlap of [0-5]*% coming mostly from Unilever's Dove. Sara Lee pre-merger had [30-40]*%, mostly deriving its share from the sales of Radox which is the largest bath brand. Private labels have been growing to a particularly strong position of [10-20]*% in the bath segment. Other significant competitors are present, notably Johnson&Johnson with [20-30]*%, Colgate Palmolive ([5-10]*%), and PZ Cussons ([0-5]*%) and there is large number of others with smaller shares.

(1185) The shower segment (accounting for about [80-90]*% of the bath & shower market in Ireland) has a similar market structure to the overall market. The parties' combined share would be [40-50]*%, Unilever accounting for [20-30]*% and Sara Lee [20-30]*%. There are a high number of other relatively sizeable competitors, notably Colgate Palmolive ([10-20]*%), Johnson&Johnson ([5-10]*%), PZ Cussons ([5-10]*%), Beiersdorf ([5-10]*%) and private labels with [5-10]*% market share.

(1186) In the non-male shower gel segment (representing almost [80-90]*% of the shower segment in general) the Parties would have a [40-50]*% share - Unilever [10-20]*% essentially with Dove, and Sara Lee [20-30]*% Sara Lee (primarily with Radox [20-30]*%, and also Sanex [5-10]*%). As already explained, the Parties' brands are not particularly close competitors and there would be a number of other, more closely competing brands from alternative supplies. The Parties would face strong competition notably from Colgate-Palmolive ([10-20]*%), Johnson&Johnson ([10-20]*%), PZ Cussons ([5-10]*%), Beiersdorf ([5-10]*%) and private labels with [5-10]*% market share.

(1187) The Irish male shower segment is relatively small in size, accounting only EUR 2.7 million (representing [20-30]*% of shower, and about [10-20]*% of bath & shower). The Parties would have the highest market shares in this segment - Unilever with its Lynx brand is the market leader with [50-60]*%. Sara Lee achieved [10-20]*% on this segment (the vast majority with male Radox – [10-20]*% and [0-5]*% with male

[768] See replies of Irish retailers to questionnaire to customers on bath &shower products sent on 24 April 2010, question 30.

[769] See replies of Irish retailers to questionnaire to customers on bath &shower products sent on 24 April 2010, question 30.

[770] Sanex is not the main brand of Sara Lee in Ireland and it has a share of [5-10]*% overall, and not more than [5-10]*% in any of the sub-segments. Dove has an overall share of [5-10]*%, and below [10-20]*% on any of the sub-segments.

Sanex). Although this increment is sizeable in terms of market shares, it is only amounting to a total of EUR [...]*, and in a small market can change very quickly.

(1188) Indeed, in the last year, Radox lost around two fifths of its entire market share in male shower gels segment, shrinking by [5-10]*% from [20-30]*% in 2008 to [10-20]*% in 2009 (losing more than half of its sales in value). Such a drastic drop indicates that Radox is not a strong male shower gel brand and its demand is not very stable. Indeed, Radox is a basic mainstream brand offering value for money, and its male variants seem to lack a distinctive male positioning such as the one occupied by Axe. The important drop also indicates that customers are ready to replace Radox with another brand, if that is more economic.

(1189) In the same year as male Radox saw its shares eroding, other competitors saw their shares increasing, notably Nivea (from [5-10]*% to [10-20]*%), Coty with Adidas (from [0-5]*% to [5-10]*%), PZ Cusson's (from [0-5]*% to [0-5]*%, launching a new range of men's Original Source products in Ireland) and private label (from [0-5]*% to [0-5]*%). Unilever's share remained relatively stable, with a slight decrease from [50-60]*% to [50-60]*% (Gillette also dropped slightly from [0-5]*% to [0-5]*%). This also underlines that Radox is competing more with other brands on the market, which managed to significantly grow shares on its expense.

(1190) The absence of a particular closeness of competition between male Radox and Unilever's Lynx (Axe) is also evident from the investigation. The proposition of Radox is very different from Lynx, which is a very distinct premium brand positioned towards a focus on teenagers and young men in the quest to attract the opposite sex. Radox is rather a mid-priced mainstream brand which attracts higher age groups. [reference to parties’ internal documents][771] [reference to parties’ internal documents][772] Indeed, the investigation suggests that retailers active in Ireland consider that Lynx appeals only to younger men.[773] There are several male brands in addition to Radox (some of which more distinctively male) such as Adidas, Gillette, Nivea for Men, or PZ'Cusson's Original Source, most of them having seen a significant growth of market shares recently.

(1191) Given that in the male shower gel segment Radox is a more distant competitor to Axe, and a brand dramatically shrinking its market share at the expense of other competitors, the relatively large overlap in terms of market share is not indicative of a significant loss of competition. If post-merger Unilever would adopt a strategy of increasing its prices of Radox in male shower gel segment, the recent developments strongly suggest that customers would continue to switch away from Radox to other brands. Absence of likely anticompetitive effects is all the more pronounced given the relatively small male shower gel segment in Ireland, which seems to be very vibrant and more easily challengeable than other markets, as the significant shifts of market

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[771] [reference to parties’ internal documents]

[772] [reference to parties’ internal documents]

[773] See replies of Irish retailers on questionnaire to customers on bath &shower products sent on 24 April 2010, question 27.

shares suggest. Moreover, additional male shower gel brands sold in the United Kingdom but not yet present in Ireland (such as Palmolive for Men, or Henkel's RightGuard) could possibly expand to Ireland via retailers active in both Member States, and could reach relatively significant shares even with small sales (Sara Lee's sales only account to EUR [...]* in the male shower gel segment).

(1192) Given all the above, the merger is this unlikely to lead to anticompetitive effects on the male shower segment in Ireland. Indeed, during the market investigation, no particular competition concerns were raised specifically to the male shower segment in Ireland by any of the market participants.

(1193) It can therefore be concluded that the concentration is not likely to lead to a significant impediment of effective competition in Ireland as regards the bath & shower market, regardless of the precise market definition.

IV.4. Soaps

(1194) Both Unilever and Sara Lee produce and supply soaps. However, their activities mainly overlap with respect to bar soaps in the following countries: Belgium, Denmark, France, Greece, the Netherlands and Iceland.

IV.4.1. Relevant Product Market

(1195) Soaps exist in two forms: bar soaps and liquid soaps. In a previous case[774], the Commission defined a separate market for liquid hand soap.

(1196) According to the notifying Party, a number of differences exist between bar soaps and liquid soaps. Bar soaps are the traditional all-purpose products for general personal washing. Liquid soaps are sold with a significant price premium relative to bar soaps, justified by perceived added benefits such as greater convenience and better hygiene. The supply of liquid soaps has been growing strongly in recent years, while the supply of bar soaps has remained relatively stable over time. From a supply-side point of view, the composition of bar soaps and liquid soaps and their manufacturing process are quite different and not all brands are present in both bar soaps and liquid soaps. Finally, [...]*

(1197) However, the notifying Party submits that it is not necessary to reach a definitive conclusion on the product market definition for soaps as, in its view, no competition concerns arise under any plausible alternative market definition.

(1198) The market investigation shows that soaps are a separate market from bath and shower products. With regard to a potential distinction between bar soaps and liquid soaps, the results of the market investigation were not conclusive, although show some

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774 Commission Decision of 30 July 2008, M.5230 – CapMan/Litorina/Cederroth.

indications that bar soaps and liquid soaps should be distinguished from each other. For example, competitors explained that composition, packaging and production process are different for bar and liquid soaps, which cannot be produced on the same lines. Also, although providing basically the same functionality, bar and liquid soaps are usually not promoted and advertised together.

(1199) For the purpose of this Decision, however, it is not necessary to conclude on the exact scope of the product market definition, since no competition concerns arise, under any potential market delineation.

IV.4.2. Relevant Geographic Market

(1200) The Parties submit that the relevant geographic market for soaps is national.

(1201) In previous decisions[775], the geographic markets for personal care products have been analysed on a national basis. The Parties agree with this analysis.

(1202) The market investigation has confirmed that the geographic market for soaps is national in scope.

IV.4.3. Compatibility with the Internal Market

(1203) The transaction results in a number of affected soaps markets within the EEA, namely Belgium, Cyprus, Denmark, France, Greece, Iceland, Ireland, Italy, Netherlands, Slovakia, and the United Kingdom. The market shares of the Parties are shown in Table 75.

Table 75: Market shares – bar soaps, liquid soaps and overall soaps – 2009 – Source: Form CO.

Country	Market	Unilever	Sara Lee	Combined
Belgium	Overall	[30-40]*%	[0-5]*%	[30-40]*%
	Bar	[40-50]*%	[0-5]*%	[40-50]*%
	Liquid	[10-20]*%	[0-5]*%	[20-30]*%
Cyprus	Overall	[40-50]*%	[0-5]*%	[40-50]*%
	Bar	[50-60]*%	[0-5]*%	[50-60]*%
	Liquid	[20-30]*%	[0-5]*%	[20-30]*%
Denmark	Overall	[10-20]*%	[10-20]*%	[20-30]*%
	Bar	[30-40]*%	[10-20]*%	[50-60]*%
	Liquid	[0-5]*%	[10-	[10-20]*%

775 Commission Decision of 30 July 2003, M.3149 - Procter & Gamble/Wella; Commission Decision of 15 July 2005, M.3732 - Procter & Gamble/Gillette; Commission Decision of 30 July 2008, M.5230 Capman/Litorina/Cederroth.

			20]*%	
France	Overall	[10-20]*%	[0-5]*%	[10-20]*%
	Bar	[10-20]*%	[5-10]*%	[20-30]*%
	Liquid	[0-5]*%	[0-5]*%	[0-5]*%
Greece	Overall	[10-20]*%	[0-5]*%	[10-20]*%
	Bar	[20-30]*%	[0-5]*%	[30-40]*%
	Liquid	[5-10]*%	[0-5]*%	[10-20]*%
Iceland	Overall	[5-10]*%	[10-20]*%	[10-20]*%
	Bar	[20-30]*%	[20-30]*%	[40-50]*%
	Liquid	[0-5]*%	[5-10]*%	[5-10]
Ireland	Overall	[...]*	[...]*	[...]*
	Bar	[...]*	[...]*	[...]*
	Liquid	[0-5]*%	[10-20]*%	[10-20]*%
Italy	Overall	[10-20]*%	[0-5]*%	[10-20]*%
	Bar	[20-30]*%	[0-5]*%	[20-30]*%
	Liquid	[5-10]*%	[0-5]*%	[10-20]*%
Netherlands	Overall	[5-10]*%	[0-5]*%	[10-20]*%
	Bar	[20-30]*%	[5-10]*%	[20-30]*%
	Liquid	[0-5]*%	[0-5]*%	[0-5]*%
Slovakia	Overall	[10-20]*%	[0-5]*%	[10-20]*%
	Bar	[20-30]*%	[0-5]*%	[20-30]*%
	Liquid	[5-10]*%	[0-5]*%	[5-10]*%
United Kingdom	Overall	[10-20]*%	[5-10]*%	[20-30]*%
	Bar	[30-40]*%	[0-5]*%	[30-40]*%
	Liquid	[5-10]*%	[10-20]*%	[10-20]*%

(1204) As illustrated in Table 75, for Cyprus, Ireland, Italy and Slovakia the overlap is either insignificant (below [0-5]*%) or the combined market share of the Parties as well as the concentration levels are within the ranges identified in the Horizontal Merger Guidelines for which it is unlikely that competition concerns would arise.[776]

(1205) In the United Kingdom, the Parties achieve a combined position of more then 25% only under the broader market definition (that is, the overall soap market). In view of the modest combined market share of the parties and the limited increment to Unilever's position, serious doubts with regard to the compatibility of the merger with the internal market can be excluded even on the basis of the narrowest product or geographical market definitions.

(1206) In addition, in all these Member States sizeable competitors are present. Therefore, it can be concluded that the concentration is not likely to lead to a significant impediment of effective competition as regards the soap market even under the narrowest product market definition in Cyprus, Ireland, Italy, Slovakia and the United Kingdom.

(1207) The remaining countries are analysed in more detail in sections IV.4.3.1 - IV.4.3.6. It should be noted that the competitive assessment only focuses on the bar soap and/or the overall soap markets, as the combined market shares in the liquid soap market are below 20% and the increment is not significant (between [0-5]*%).

IV.4.3.1. Belgium

(1208) According to the Parties, the total value of the Belgium soap market was EUR 23 million in 2009 (EUR [...]* for bar soaps and EUR [...]* for liquid soaps).

Table 76: Belgium: Soaps, 2009: market shares by value (Source Form CO).

	Soap (overall)		**Bar**	
	000 €	**%**	**000 €**	**%**
UNILEVER	[...]*	[30-40]*%	[...]*	[40-50]*%
- DOVE	[...]*	[10-20]*%	[...]*	[20-30]*%
- LUX	[...]*	[0-5]*%	[...]*	[0-5]*%
- SUNLIGHT	[...]*	[10-20]*%	[...]*	[10-20]*%
SARA LEE	[...]*	[0-5]*%	[...]*	[0-5]*%
- MONSAVON	[...]*	[0-5]*%	[...]*	[0-5]*%
- SANEX	[...]*	[0-5]*%	[...]*	[0-5]*%
- ZWITSAL	[...]*	[0-5]*%	[...]*	[0-5]*%
COMBINED	[...]*	**[30-40]*%**	[...]*	**[40-50]*%**
BEIERSDORF	[...]*	[0-5]*%	[...]*	[5-10]*%
COLGATE_PALMOLIVE	[...]*	[10-20]*%	[...]*	[5-10]*%
HENKEL	[...]*	[5-10]*%	[...]*	[10-20]*%
LORNAMED	[...]*	[0-5]*%	[...]*	[0-5]*%
PRIVATE LABEL	[...]*	[20-30]*%	[...]*	[10-20]*%
OTHERS	[...]*	[10-20]*%	[...]*	[5-10]*%
TOTAL	23 004	**100.0**	**11 101**	**100.0**

776 Horizontal Merger Guidelines, paragraphs 18-20.

(1209) In the overall market for soaps, the new entity would hold a market share of [30-40]*%, followed by Colgate-Palmolive ([10-20]*%), Henkel ([5-10]*%) and Beiersdorf ([0-5]*%).

(1210) In the potential market for bar soaps, the merged entity would hold a market share of [40-50]*%, followed by Henkel ([10-20]*%), Colgate-Palmolive ([5-10]*%) and Beiersdorf ([5-10]*%). I

(1211) On both potential markets, the overlap of the Parties is modest ([0-5]*% in the potential market for soaps, [0-5]*% in the potential market for bar soaps). Furthermore, the small share accounted for by Sara Lee comprises small brands and there are a number of other competing brands of similar size or larger. The Parties argue that Sara Lee's largest brand in the bar soap segment, Monsavon, is present with only one SKU in Belgium and that its market share has been declining.

(1212) Moreover, Unilever and Sara Lee's brands are differentiated: Dove products focus on moisturising, caring and pampering, and do not offer similar qualities to that of Sara Lee brands, except Sanex. However, as shown in the above table, Sanex has a very limited market presence in Belgium. Unilever's other brand, Sunlight, is seen as a straightforward brand promising purity and simplicity for the family, positioned as low price product. On the contrary, Monsavon is viewed as a mid-priced and functional product according to the Parties.

(1213) With regard to closeness of substitution, the majority of customers do not perceive the Parties' brands as the closest competitor, although some of them indicated that Dove and Sanex are close substitute in the potential market for liquid soap. While Monsavon is considered by one customer as the closest competitor to Sunlight in bar soaps, this view is not shared by other customers. Zwitsal is targeted at babies and therefore is not viewed as a close competitor to Unilever's brands.

(1214) Based on these elements, it can therefore be concluded that the concentration is not likely to lead to a significant impediment of effective competition even under the narrowest product market definition for soaps in Belgium.

IV.4.3.2. Denmark

(1215) According to the Parties, the total value of the Danish soap market was EUR 23 million in 2009 (EUR [...]* for bar soaps and EUR [...]* for liquid soaps).

Table 77: Denmark: Soaps, 2009: market shares by value (Source Form CO/AC Nielson)[777].

	SOAP (overall)		BAR SOAP	
	,000 €	**%**	**,000 €**	**%**
UNILEVER	[...]*	[10-20]*%	[...]*	[30-40]*%
- DOVE	[...]*	[5-10]*%	[...]*	[10-20]*%
- LUX	[...]*	[5-10]*%	[...]*	[20-30]*%

[777] Private Label includes Nielsen’s private label products category as well as any products manufactured by Aldi, Lidl, Rema 1000, Super Best and Supergros.

- REXONA	[...]*	[0-5]*%	[...]*	[0-5]*%
SARA LEE	[...]*	[10-20]*%	[...]*	[10-20]*%
- DE'NY	[...]*	[0-5]*%	[...]*	[5-10]*%
- NEUTRAL	[...]*	[10-20]*%	[...]*	[5-10]*%
- SANEX	[...]*	[0-5]*%	[...]*	[0-5]*%
COMBINED	[...]*	**[20-30]*%**	[...]*	**[50-60]*%**
ALLISON	[...]*	[0-5]*%	[...]*	[0-5]*%
BEIERSDORF A/S	[...]*	[0-5]*%	[...]*	[5-10]*%
COLGATE-PALMOLIVE A/S	[...]*	[20-30]*%	[...]*	[10-20]*%
DERMA PHARM	[...]*	[0-5]*%	[...]*	[0-5]*%
DKS	[...]*	[0-5]*%	[...]*	[0-5]*%
E.TJELLESEN A/S	[...]*	[0-5]*%	[...]*	[0-5]*%
F.SCHUR & CO A/S	[...]*	[0-5]*%	[...]*	[0-5]*%
HN TRADING A/S	[...]*	[0-5]*%	[...]*	[0-5]*%
MARINELLO COSMETICS A/S	[...]*	[0-5]*%	[...]*	[0-5]*%
MONTANUS DANMARK APS	[...]*	[0-5]*%	[...]*	[0-5]*%
NOPA	[...]*	[0-5]*%	[...]*	[0-5]*%
UNICARE	[...]*	[0-5]*%	[...]*	[0-5]*%
URTEKRAM A/S	[...]*	[0-5]*%	[...]*	[0-5]*%
VALORA TRADE DENMARK A/S	[...]*	[0-5]*%	[...]*	[10-20]*%
PRIVATE LABEL	[...]*	[20-30]*%	[...]*	[5-10]*%
OTHERS	[...]*	[0-5]*%	[...]*	[0-5]*%
TOTAL	23 198	**100.0**	**5 055**	**100.0**

(1216) In the overall market for soaps, the new entity would hold a market share of [20-30]*%, followed by Colgate-Palmolive ([20-30]*%). Private label hold a significant market presence, accounting for [20-30]*% of the market.

(1217) In the potential market for bar soaps, the merged entity would hold a market share of [50-60]*%, followed by Colgate-Palmolive ([10-20]*%), Valora ([10-20]*%) and Beiersdorf ([5-10]*%). Private label account for [5-10]*% of sales of bar soaps.

(1218) Although the increment to Unilever's position in the potential market for bar soaps is not negligible (Sara Lee holds a share of supply of [10-20]*%), the demand for bar soaps in Denmark is very small (for example, Sara Lee's sales amount to EUR [...]*) and is rapidly declining. This was also confirmed by the market investigation.

(1219) Moreover, the majority of the customers do not perceive the parties brands as close substitute. The customers consider Lux (the main Unilever's brand in bar soaps) as close to Nivea, Imperial or Palmolive. Similarly, they consider Nivea as the closest competitor of Dove in bar soaps. With regards to Neutral (the strongest Sara Lee's brand in bar soaps), one customer argues that Anglamark is its closest competitor whereas another competitor considers that Nivea is the closest competitor to Nivea when we cumulate the price, innovation, product range and brand recognition. Only one retailer considered that DeNy (a Sara Lee's brand which retail price is significantly higher than nearly all other bar soap brands in the market, almost twice the price of

Dove soap products)[778] and Dove are close substitute. The retailers also indicated that private label products play an important role on the market. No customer raised concerns during the market investigation, arguing notably that the brands which compete with the Parties and the private label on the soap market are significant and well settled.

(1220) It can therefore be concluded that the concentration is not likely to lead to a significant impediment of effective competition under any potential product market definition with respect to the supply of soaps in Denmark.

IV.4.3.3. France

(1221) According to the Parties, the total value of the French soap market was EUR 182 million in 2009 (EUR 96 million for bar soaps and EUR 86 million for liquid soaps).

Table 78: France: Overall and Bar Soap 2009: market shares by value (source Form CO).

	Soaps (overall)		**Bar Soap**	
	,000 €	**%**	**,000 €**	**%**
UNILEVER	[...]*	[10-20]*%	[...]*	[10-20]*%
'- DOVE	[...]*	[10-20]*%	[...]*	[10-20]*%
SARA LEE	[...]*	[0-5]*%	[...]*	[5-10]*%
'- MONSAVON	[...]*	[0-5]*%	[...]*	[5-10]*%
'- SANEX	[...]*	[0-5]*%	[...]*	[0-5]*%
COMBINED	[...]*	**[10-20]*%**	[...]*	**[20-30]*%**
BEIERSDORF	[...]*	[0-5]*%	[...]*	[0-5]*%
COLGATE	[...]*	[5-10]*%	[...]*	[5-10]*%
HENKEL	[...]*	[5-10]*%	[...]*	[10-20]*%
JOHNSON	[...]*	[20-30]*%	[...]*	[10-20]*%
LAB EUGENE	[...]*	[0-5]*%	[...]*	[5-10]*%
LASCAD	[...]*	[0-5]*%	[...]*	[0-5]*%
PHOCEENNE	[...]*	[0-5]*%	[...]*	[5-10]*%
VENDOME	[...]*	[0-5]*%	[...]*	[5-10]*%
PRIVATE LABEL	[...]*	[20-30]*%	[...]*	[10-20]*%
OTHERS	[...]*	[5-10]*%	[...]*	[5-10]*%
TOTAL	182 846	**100**	**96 568**	**100.0**

(1222) In the overall soap market, the merged entity would hold a market share of [10-20]*%. The overall to Unilever's current position is rather small ([0-5]*%). Post transaction, several well established international suppliers will continue to be active on the market, namely Johnson&Johnson ([20-30]*%), Henkel ([5-10]*%) and Colgate-Palmolive ([5-10]*%). A number of smaller suppliers are also active, such as Laboratoire Eugène ([0-5]*%), Vendôme ([0-5]*%) and Phocéenne ([0-5]*%). Private label account for [20-30]*% of the market.

[778] Average prices for bar soap brands in 2009.

(1223) In the potential market for bar soaps, the merged entity would hold a market share of [20-30]*%, followed by Johnson & Johnson ([10-20]*%), Henkel ([10-20]*%), Vendome ([5-10]*%) and Eugene Pharma ([5-10]*%). A number of other smaller competitors will also continue to be active in the market, such as Colgate-Palmolive ([5-10]*%) and La Phocéenne de Cosmetique ([5-10]*%).

(1224) Sara Lee is present in the French bar soap market with mainly one brand, Monsavon, which accounts for [5-10]*% of the market.

(1225) With regard to closeness of substitution of the Parties' brands, the market investigation has shown that Sanex is considered by some retailers to be a close competitor to Dove. However, as shown in the above table, Sanex has an extremely limited market presence in the potential market for the supply of bar soaps, [0-5]*%, and sales of EUR [...]*. While Monsavon is considered by one customer as the closest competitor to Dove in bar soaps, this view is not shared by other customers which generally consider Nivea, Cadum or Palmolive as closer to Monsavon.

(1226) As in Denmark, there is a declining trend in the segment, as bar soap sales decline in volume but remain relatively stable in value.

(1227) No substantiated concerns were expressed during the market investigation although several competitors put forward that the reinforced position of Unilever will lead to price increases. In the view of some customers, the transaction will lead to higher prices as the new entity will try to pay off the acquisition and will be able to do so thanks to its large portfolio of leading brands.

(1228) It can therefore be concluded that the concentration is not likely to lead to a significant impediment of effective competition under any potential product market definition with respect to the supply of soaps in France.

IV.4.3.4. Greece

(1229) According to the Parties, the total value of the Greek soap market was EUR 34 million in 2009 (EUR 12 million for bar soaps and EUR 21 million for liquid soaps).

Table 79 Greece: Bar Soap, 2009: market shares by value (source Form CO).

	Bar Soap	
	,000 €	**%**
UNILEVER	[...]*	[20-30]*
'- DOVE	[...]*	[20-30]*
'- LUX	[...]*	[5-10]*
SARA LEE	[...]*	[0-5]*
'- FISSAN	[...]*	[0-5]*
'- PRODERM	[...]*	[0-5]*
'- SANEX	[...]*	[0-5]*
'- SENTEX	[...]*	[0-5]*
COMBINED	[...]*	**[30-40]***
BDF	[...]*	[0-5]*
BOLTON	[...]*	[0-5]*
COLGATE	[...]*	[10-20]*

HENKEL	[...]*	[0-5]*
JOHNSON&JOHNSON	[...]*	[0-5]*
MINERVA	[...]*	[0-5]*
PAPOUTSANHS	[...]*	[10-20]*
PROCTER&GAMBLE	[...]*	[0-5]*
PRIVATE LABEL	[...]*	[0-5]*
OTHERS	[...]*	[10-20]*
TOTAL	12 769	100.0

(1230) In the potential market for bar soaps, the merged entity would hold a market share of [30-40]*%, followed by Colgate-Palmolive ([10-20]*%) and Papoutsanhs ([10-20]*%). A number of well established international, competitors will also continue to be active in the market, although their market presence is rather small in Greece, such as Henkel ([0-5]*%), Procter&Gamble ([0-5]*%), and Johnson&Johnson ([0-5]*%).

(1231) The overlap of the Parties is modest, as Sara Lee hold a market share of [0-5]*% and its sales in 2009 amounted to EUR [...]*. Moreover, Sara Lee's most important brands are Fisan ([0-5]*%) and Proderm ([0-5]*%), both targeted at babies and therefore not a close substitute to Unilever's brands. This was also confirmed by the market investigation where all the retailers considered that Proderm is the closest competitor to Proderm.

(1232) It can therefore be concluded that the concentration is not likely to lead to a significant impediment of effective competition under any potential product market definition with respect to the supply of soaps in Greece.

IV.4.3.5. The Netherlands

(1233) According to the Parties, the total value of the Dutch soap market was EUR 49 million in 2009 (EUR 15 million for bar soaps and EUR 33 million for liquid soaps).

Table 80: Netherlands: Bar Soaps, 2009: market shares by value (source Form CO).

Bar Soap

	,000 €	**%**
UNILEVER	[...]*	[20-30]*
'- DOVE	[...]*	[20-30]*
'- LIFEBUOY	[...]*	[0-5]*
'- LUX	[...]*	[0-5]*
SARA LEE	[...]*	[5-10]*
'- SANEX	[...]*	[0-5]*
'- ZWITSAL	[...]*	[5-10]*
COMBINED	[...]*	[20-30]*
BDF	[...]*	[0-5]*
CP	[...]*	[10-20]*
KNP	[...]*	[0-5]*
SH	[...]*	[0-5]*
PRIVATE LABEL	[...]*	10.7

OTHERS	[...]*	[30-40]*
TOTAL	15 435	**100.0**

(1234) In the potential market for bar soaps, the merged entity would hold a market share of [20-30]*%. The main competitor of the Parties would be Colgate-Palmolive ([10-20]*%). Private label account for [10-20]*% of the market. Well established international suppliers such as Beiersdorf ([0-5]*%) and Henkel ([0-5]*%) would continue to be present on the market, although their position is rather small.

(1235) Although the overlap of the Parties is not negligible ([5-10]*%), the most important Sara Lee brand is Zwitsal ([5-10]*%), targeted at babies and therefore not a close substitute to Unilever's brands. Moreover, the market investigation confirms that Parties' brands are not perceived as close substitutes.

(1236) It can therefore be concluded that the concentration is not likely to lead to a significant impediment of effective competition under any potential product market definition with respect to the supply of soaps in the Netherlands.

IV.4.3.6. Iceland

(1237) According to the Parties, the total value of the Icelandic soap market was EUR 1.12 million in 2009 (EUR 306 108 for bar soaps and EUR 815 061 for liquid soaps).

Table 81: Iceland: Bar Soaps, 2009: market shares by value (source Form CO).

	Bar Soap	
	,000 €	**%**
UNILEVER	[...]*	[20-30]*
'- DOVE	[...]*	[10-20]*
'- LUX	[...]*	[10-20]*
SARA LEE	[...]*	[20-30]*
'- NEUTRAL	[...]*	[20-30]*
COMBINED	[...]*	**[40-50]***
DELTA BRAND (DB)	[...]*	[10-20]*
COLGATE-PALMOLIVE	[...]*	[10-20]*
BEIERSDORF	[...]*	[0-5]*
OTHERS	[...]*	[10-20]*
TOTAL	306	**100**

(1238) In the potential market for bar soaps, the merged entity would hold a market share of [40-50]*% (Unilever [20-30]*% and Sara Lee [20-30]*%). A number of competitors will still continue to constrain the Parties post-transaction, such as Delta Brand, a USA supplier, ([10-20]*%) and Colgate-Palmolive ([10-20]*%). Beiersdorf's brand Nivea has a [0-5]*% of value share on this potential market.

(1239) The market investigation confirmed that bar soaps is a declining segment, with more and more customers switching to liquid soaps. With regard to the liquid soaps market, the Parties have a very limited market presence and Colgate-Palmolive is the clear market leader with a more than [50-60]*% share of supply of those products. Moreover, the liquid soaps are significantly less expensive than the bar soaps, notably because of the imports[779].

(1240) Moreover, the parties brands within are differentiated. Dove is marked under a "skin-care" proposition, such as Nivea, but does not share the same characteristics as Neutral, which hold a very specific position, being marketed as an "allergy free" brand.

(1241) It can therefore be concluded that the concentration is not likely to lead to a significant impediment of effective competition under any potential product market definition

IV.5. Skin Care

(1242) Skin care products are designed to moisturize and nourish skin on the face, hands and body.[780] Products are offered in the form of lotions and creams, with varying levels of viscosity, supplied in a number of different sizes and formats, most typically tubes, bottles, tins and jars.

(1243) The activities of the Parties overlap significantly only in respect to hand care products in Italy.

IV.5.1. Relevant Product Market

(1244) The Parties submit that face care products form a market distinct from hand and body care products for a number of reasons: the face is viewed as requiring a specific level of care; face care products have different formulations; a key characteristic, specific to face care products, is the ability to counteract the effect of ageing; face care products are sold at a significant premium; consumers of face care products are more brand-sensitive than consumers of hand & body care products; supply-side substitution is limited by the sophistication required to develop face care products.

(1245) Therefore, the Parties submit that the relevant product market should be the market for the supply of hand and body care products as a whole, although they recognize a trend towards more specialised products that are increasingly targeted to the different areas of the body (for example hand, nails, feet), to specific skin problems (for example anti-cellulite and firming lotions), to gender (for example specific fragrances and packaging for men) or to specific value-added benefits (for example gradual tanning).

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[779] Retailers which replied to market investigation, confirmed they import in important quantity liquid soaps from China, Denmark or the United Kingdom

[780] For the purpose of the present case, the following categories of products are not included within the relevant product market: (i) sun care products; (ii) baby care products. With regard to sun care products, an overlap between the parties only arises in Bulgaria where Unilever supplies adult suncare products and Sara Lee supplies baby suncare products (combined market share of [0-5]*%). With regard to baby care products, no overlap arise from the transaction as Unilever does not currently supply products targeted at babies.

(1246) The Parties emphasize that while demand-side evidence is not conclusive, there is strong supply-side substitutability between various hand and body products: processes for production are broadly the same; advertising support is not a prerequisite to a launch as mainstream brands offer a complete range of hand & body care products; retailers are receptive to listing credible new products; and, while packaging/fragrances are distinctly different and different packaging lines are required for different formats, this requirements may be fulfilled by third party co-packers in a short period of time with no significant investments.

(1247) In a previous case[781], the Commission defined a separate market for body lotion. In another previous case[782], the Commission distinguished between facial care, hand care and body care products.

(1248) In this case, customers as well as competitors estimate that there are significant differences between hand care and body care products in characteristics, packaging, consumption patterns (for example different seasonality peaks) and prices. Hand and body care products are not considered as substitutes by the customers and are sometimes not presented on the same shelf.

(1249) However, for the purposes of the present case it is not necessary to decide on the exact scope of the relevant product market as the concentration does not raise any competition concerns under any alternative market definition.

IV.5.2. Relevant Geographic Market

(1250) The Parties submit that the relevant geographic market for skin care products should be defined as national.

(1251) The market investigation has confirmed the Parties' submission.

IV.5.3. Compatibility with the Internal Market

(1252) In an overall market for skin care (including face care, hand care and body care), no affected markets would arise. This is due to the Parties' minimal presence in the face care market, where their combined market shares is in the order of [0-5]*% or less, with the exception of Ireland where the combined share is less than [0-5]*%.

(1253) However, affected markets arise in a potential market for hand and body care products. The market shares for the Member States where the Parties overlap are presented below in Table 82[783].

Table 82: Market shares for selective Member States – hand care, body care and overall hand&body care products – 2009 – Source: Form CO

	Market	Unilever	Sara Lee	Combined

781 Commission Decision of 30 July 2008, M.5230 – CapMan/Litorina/Cederroth

782 Commission Decision of 20 April 2006, M.4193 – L'Oreal/The Body Shop.

783 [...]*

Belgium	Overall	[20-30]*	[0-5]*	[20-30]*
	Hand	[20-30]*	[0-5]*	[20-30]*
	Body	[20-30]*	[0-5]*	[20-30]*
Cyprus[784]	Overall	[10-20]*	[0-5]*	[10-20]*
	Hand	[10-20]*	[0-5]*	[10-20]*
	Body	[5-10]*	[0-5]*	[10-20]*
Czech Republic	Overall	[10-20]*	[0-5]*	[10-20]*
	Hand	[5-10]*	[0-5]*	[5-10]*
	Body	[20-30]*	[0-5]*	[20-30]*
Denmark	Overall	[10-20]*	[0-5]*	[20-30]*
	Hand	[20-30]*	[0-5]*	[20-30]*
	Body	[10-20]*	[5-10]*	[20-30]*
Greece	Overall	[10-20]*	[5-10]*	[20-30]*
	Hand	[10-20]*	[5-10]*	[10-20]*
	Body	[10-20]*	[5-10]*	[20-30]*
Hungary	Overall	[20-30]*	[0-5]*	[20-30]*
	Hand	[20-30]*	[0-5]*	[20-30]*
	Body	[5-10]*	[0-5]*	[5-10]*
Ireland	Overall	[20-30]*	[0-5]*	[20-30]*
	Hand	[30-40]*	[0-5]*	[30-40]*
	Body	[20-30]*	[0-5]*	[20-30]*
Italy	Overall	[5-10]*	[10-20]*	[20-30]*
	Hand	[5-10]*	[30-40]*	[40-50]*
	Body	[5-10]*	[5-10]*	[10-20]*
Netherlands	Overall	[10-20]*	[5-10]*	[20-30]*
	Hand	[10-20]*	[0-5]*	[10-20]*
	Body	[10-20]*	[5-10]*	[20-30]*

784 Unilever's best estimates.

Sweden	Overall	[20-30]*	[5-10]*	[20-30]*
	Hand	[10-20]*	[5-10]*	[10-20]*
	Body	[20-30]*	[5-10]*	[20-30]*

(1254) In all the Member States mentioned in Table 81with the exception of Italy, the overlap is either insignificant (below [0-5]*%) or the combined market share of the Parties as well as the concentration levels are within the ranges identified in the Horizontal Merger Guidelines for which it is unlikely that competition concerns would arise.[785] In addition, in all those Member States, sizeable competitors are present. Therefore, it can be concluded that the concentration is not likely to lead to a significant impediment of effective competition as regards the hand and body care market even under the narrowest product market definition.

(1255) The competitive assessment will therefore focus on the competitive situation in Italy in the potential market for hand care products.

IV.5.3.1. Italy

(1256) According to the Parties, the total value of the Italian hand and body care market was EUR 158 million in 2009 (EUR 128 million for body care and EUR 29 million for hand care). The market shares of the parties and their main competitors in the potential market for hand care products are shown in Table 83:

Table 83: Market shares hand care Italy, 2009 – Source: Form CO.

	Hand care	
	,000 €	**%**
UNILEVER	[...]*	[5-10]*
'- Dove	[...]*	[5-10]*
SARA LEE	[...]*	[30-40]*
'- Fissan	[...]*	[5-10]*
'- Glysolid	[...]*	[20-30]*
'- Pura E Semplice	[...]*	[0-5]*
COMBINED	[...]*	**[40-50]***
Beiersdorf	[...]*	[20-30]*
Cadey	[...]*	[0-5]*
Ciccarelli	[...]*	[0-5]*
Colgate Palmolive	[...]*	[5-10]*
Conter	[...]*	[0-5]*

785 See paragraphs 18-20 of the Horizontal Merger Guidelines. The only exception is Greece (body care) where the combined market share is slightly above [20-30]*% ([20-30]*%) and the concentration measured by the Herfindahl-Hirschman Index ("HHI") is above the thresholds defined in the Horizontal Merger Guidelines, paragraph 20. However, several sizeable competitors like Johnson&Johnson ([20-30]*%), Beiersdorf ([20-30]*%) and L'Oreal ([10-20]*%) will be able to constrain the Parties post-transaction.

Johnson & Johnson	[...]*	[10-20]*
Kelemata	[...]*	[0-5]*
Mirato	[...]*	[0-5]*
Saipo Oreal	[...]*	[0-5]*
PRIVATE LABEL	[...]*	[0-5]*
OTHERS	[...]*	[10-20]*
TOTAL	29 529	**100.0**

(1257) Following the transaction, the merged entity will hold a [40-50]*% market share, as Sara Lee hold a significant market presence of [30-40]*%. However, Sara Lee position derives in large part from the sales attributable to one brand, Glysolid, only marketed in Italy. Unilever accounts for [5-10]*% of the market, with one only one brand supplied in Italy, Dove.

(1258) A number of well established international suppliers would continue to be active on the market, such as Beiersdorf ([20-30]*%), Johnson&Johnson ([10-20]*%) and Colgate-Palmolive ([5-10]*%).

(1259) Moreover, the Parties brands are not close competitors. Sara Lee's Glysolid is a brand which proposition is based on functionality and efficacy, reflecting the fact that Glysolid products are based on glycerine, an ingredient which acts to moisturise and protect chapped skin. Fissan, the second Sara Lee brand, is strongly associated with baby care as the brand was first applied to creams that protect babies from nappy rash. The brand has been extended in order to include skin care products for adults, including hand cream. The products sold under this brand leverage its heritage, the strong medical and pharmacist credentials based on specific product claims around dermatological testing, paediatric recommendations and hypoallergenic qualities. Dove, Unilever's brand, offers superior moisturising for more beautiful skin. Dove is strongly oriented towards women. This was fully confirmed by the market investigation.

(1260) Based on these elements, it is concluded that the concentration is not likely to lead to a significant impediment of effective competition on the potential market for hand care products in Italy.

IV.6. Fabric Care

(1261) Both Unilever and Sara Lee produce and supply fabric care products (detergents, conditioners and laundry aids). Fabric care products are used to wash clothing and other textiles and specifically to remove stains and/or to condition fabrics prior to use. The Parties' activities primarily overlap in Denmark (where Sara Lee has a substantial fabric care business) and to a lesser extent in Sweden and the Netherlands.

(1262) Within the broad sector of fabric care, the notifying party submits that there are three recognised main product categories: detergents which are used for washing/cleaning clothing and other textiles; conditioners which are used to condition, scent and enhance the softness of laundry and laundry aids which are intended to supplement detergents and conditioners by improving the laundry results (including stain removers).

(1263) In a previous Decision[786], the Commission analysed fabric care products on the basis of a segmentation closely in line with the one put forward by Unilever , which agrees with this approach. Accordingly, the competitive assessment is conducted for the two product groups where the activities of the Parties overlap significantly, namely detergents and conditioners.

IV.6.1. Relevant Product Market

IV.6.1.1. Detergents

(1264) While all detergents have all the same basic functions – to clean fabrics – they are also marketed in a number of different formats, variants, and levels of concentration.

(1265) With respect to formats, detergents are supplied in three main formats: powder, liquid and unit dose (tablets and liquid capsules)[787]. Regarding variants, the most significant detergents variants have historically been "standard/white" and "colour" but more recently other variants have emerged such as aloe vera, non-perfumed, allergy-free and biological/non biological. Finally, detergents further exist in "standard" and "concentrated" formats. Concentrated detergents offer similar cleaning functionalities as standard ones, but have a lower proportion of "bulking agents" (the chemicals used to give detergents volume and to provide a platform for the active ingredients) and hence are offered in smaller unit sizes.

View of the notifying party

(1266) The notifying party submits that although detergents are available in various formats and variants, distinctions along these lines are not substantial enough to justify the identification of different relevant product markets. In general, there would be a significant degree of demand-side substitutability across variants and formats. On the supply-side, major producers typically offer all or the majority of variants and formats under the umbrella of a single brand. Where a producer has an established brand selling one variant, there would be no significant technical or financial barriers to prevent it from offering swiftly another variant.

(1267) More specifically, with respect to variants such as "white", "colour" or "black", the notifying party submits that all these alternatives can be and are used for all types of wash load, either the main coloured laundry washed at 30-60 °C or some special wash[788]. On the supply side, the formulation differences between variants for the main wash are relatively minor and each of the most important manufacturers tend to offer a broad range of variants under their own brands[789].

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786 Commission Decision of 3 September 1999, Case No. COMP/M.1632 Reckitt & Colman/Benckiser.

787 Unit doses are hardly sold in Denmark, Sweden and the Netherlands.

788 Unilever submits that the same holds true in relation to specialty detergents which fulfil a specific washing requirement, such as detergents for washing fine fabrics/wool or hand-washing detergents. In any event, there is no overlap between Unilever and Sara Lee in relation to these products.

789 Form CO, paragraphs 6-809 to 6-810 and 6-815.

(1268) In relation to formats, Unilever puts forward that all formats contain broadly the same chemicals constituents and therefore provide similar levels of wash performance. Past differences between bleached powder (better suited to clean more heavily soiled clothing) and liquid (which did not contain bleach and were therefore less powerful in stain removals but also less liable to damage the items being washed) are not relevant anymore as most of the powder detergents nowadays do not contain bleach. Moreover, there is a general trend in Europe of liquid replacing powder despite lower prices for powder. As for variants, main suppliers' ranges include liquid and powder and no specific barriers would prevent them from supplying a format in which they would not be active[790].

(1269) Finally, with respect to level of concentration, Unilever submits that the level of washing performance is similar and that only the dosage per wash and unit size differs. Consequently, end-consumers use alternatively concentrated and non-concentrated detergents for the same type of laundry load.

Assessment

(1270) The market investigation did not completely support the parties' submission regarding the full substitutability of detergents.

(1271) With respect to the variants ("white', "colour" and "black) competitors tend to agree that all these alternatives are used for all types of wash load. Customers, on the other hand, are less positive on this point. According to the majority of customers, only colour detergents are used for the average type of wash, whereas "white or "black" (or even "jeans" and "delicate clothing") detergents are purchased by end-consumers because of their specific credentials and performances. For those customers, it is unlikely that consumers would switch to other type of detergents to achieve the specific kind of performance they seek for particular washing[791]. The different approach between competitors and consumers probably reflect that if these products might not be fully substitutable from a demand-side perspective, the market investigation did not reveal any technical or financial barriers to prevent manufacturers to swiftly switch to another variant.

(1272) Regarding formats, customers mentioned that although they see a general move from powder towards liquid as described by Unilever, powder detergents are still selling well to price-conscious consumers[792]. From the supply-side, competitors confirm that they sell both powder and liquid detergents and are able to increase to production if needed through contracts with outsourced providers.

(1273) Finally, the market investigation showed that the level of concentration does not play a significant role in the choice of detergents by consumers and that both types roughly serve the same purpose. Some customers indicated that consumers benefit from the smaller size of the bottle (for concentrated) and the environmental benefits associated with concentrated detergents (smaller bottle, less water used, less detergents and less

790 Form CO, paragraphs 6-817 to 6-821.

791 See replies to questionnaire to customers fabric care sent on 23 April 2010, questions 11 and 12.

792 See replies to questionnaire to customers fabric care sent on 23 April 2010, questions 6 and 7.

pollution). However they also acknowledged that both variants offer the same level of performance[793]. Competitors selling both variants generally position it similarly, although they also try to move end-users to concentrated detergents, which are relatively new in the market.

(1274) In any event, it is not necessary to conclude on the exact product market definition of detergents, since it does not affect the competitive assessment.

IV.6.1.2. Conditioners

(1275) Conditioners are also marketed in a number of variants focusing mainly on level of concentration and fragrances, as well as in two different formats (liquid and sheets). The Parties are of the view that there is a single market for all kinds of conditioners, irrespective of the variants or the formats.

(1276) Respondents in the market investigation broadly confirmed in their replies that no further segmentation of the conditioner market according to variants or formats was necessary, given that all conditioners perform the same function irrespective of the variants and there is very little consumer awareness on differences between concentrated and non-concentrated detergents. In any even, [90-100]*% of conditioners sold in Denmark, where the activities of the Parties mainly overlap, belong to the concentrated sub segment. Hence the assessment will focus on this segment. In terms of format, there is no overlap between the Parties in the sheets format.

(1277) In any event, it is not necessary to conclude on the exact product market definition of conditioners, since it does not affect the competitive assessment.

IV.6.2. Relevant Geographic Market

(1278) The Parties submit that the geographic markets for fabric care products should be defined as national.

(1279) In a previous Decision[794], the Commission left the market definition open but considered the geographic markets for these types of products on a national basis. It noted that, whilst many companies had started using brands on a European basis, and there were international buying organisations, market shares and consumers' preferences diverged among Member States, and there were significant retail price differences across Member States.

(1280) The Parties agree with this analysis and notably argue that negotiations of prices and conditions still take place at national level, even for those customers that operate on a wider-than-national basis. Furthermore, they put forward that rules and standards still differ between Member States, in particular as regards environmental requirements of fabric care products upon which consumers in the Nordic countries rely when making purchasing decisions.

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[793] See replies to questionnaire to customers fabric care sent on 23 April 2010, questions 6 and 7.

[794] Decision of 3 September 1999, Case No. COMP/M.1632 Reckitt & Colman/Benckiser.

(1281) The market investigation carried out by the Commission has confirmed that the geographic markets for detergents and conditioners are national in scope. Customers and competitors across all Member States argued that prices, consumer preferences (for example between powder and liquid) or habits (number of washes per week) significantly vary between countries. Moreover local brands still play an important role in several Member States. Finally, almost all market participants confirmed that price negotiations as well as procurement are conducted at national level.

(1282) For the purpose of this Decision, the detergents and conditioners markets are analysed on a national level.

IV.6.3. Compatibility with the Internal Market

(1283) As a result of the transaction, there are affected markets in the fabric care sector (detergents and conditioners) in Sweden, the Netherlands and Denmark.

IV.6.3.1. Sweden: Detergents

(1284) The detergent market in Sweden has a total value of EUR 99.5 million and has remained stable over the last three years. Unilever is active through its brand Via while Sara Lee serves the market with its brands Neutral and Y3.

(1285) In Sweden, the new entity would hold a market share of [40-50]*% in detergents with a limited increment (Unilever: [30-40]*%, Sara Lee: [0-5]*%). Competitors are Procter&Gamble through its brand Ariel and Ajax ([10-20]*%), Cederroth with its brand Grumme ([5-10]*%) and private labels ([30-40]*%).

(1286) If a distinction was made according to formats, the combined market share would be lower in liquid detergents ([30-40]*% with an increment of [5-10]*%) and of the same magnitude in powder ([40-50]*% with an increment of [0-5]*%). If one were to segment the detergent market according to the level of concentration, these shares would be higher in non-concentrated detergents ([60-70]*% with an overlap of [0-5]*%, mainly Y3, a niche product which offers gentle cleaning and is not available in all Swedish stores) and slightly lower in concentrated ones ([30-40]*% with an increment of [0-5]*%). No data are available in Sweden regarding colour, black or white detergents.

(1287) Unilever will therefore remain the market leader but the transaction does not dramatically change the market structure due to the limited presence of Sara Lee. Further, a majority of customers having responded to the market investigation identified P&G's brand Ariel as the closest competitor of Via[795] due to a similar positioning as a mainstream/premium brand providing effective level of washing performance with no specific additional benefits. Sara Lee's main brand Neutral, on the other hand, has a premium price positioning and focuses mainly on addressing consumer demand for allergy-sensitive products (it is free of perfumes of additives).

(1288) Moreover retailers active in Sweden either do not list some of Sara Lee brands (like Y3) or indicated that sufficient alternatives would be available to replace it in the detergent market[796]. This is also documented by the significant presence of private label

795 See replies to questionnaire to customers fabric care sent on 23 April 2010, questions 25.

796 See replies to questionnaire to customers fabric care sent on 23 April 2010, question 50.

products ([30-40]*%) which took sales from the main brands (mainly Via and Ariel). Respondents to the market investigation did not anticipate any anti-competitive impact on competition as a result of the transaction[797].

(1289) It is therefore concluded that the proposed transaction would not result in a significant impediment of effective competition in the market for detergents in Sweden.

IV.6.3.2. Sweden: Conditioners

(1290) The conditioner market in Sweden has a total value of EUR 37.4 million and has increased by [10-20]*% since 2007. Unilever is active through its brand Comfort while Sara Lee serves the market with its brand Neutral.

(1291) The new entity would hold a market share of [40-50]*% in detergents with a limited increment (Unilever: [30-40]*%, Sara Lee: [0-5]*%). Competitors are Colgate-Palmolive through its brand Softlan ([30-40]*%) and private labels ([20-30]*%).

(1292) The small size of the Sara Lee brand and the limited overlap show that the transaction will have limited material effect upon rivalry in the market and Unilever's incentives to compete effectively against Colgate-Palmolive and private labels. Moreover, Neutral did not play a particular role in the market due to its very particular positioning as allergy-sensitive products. On the other hand, Softlan and Comfort are positioned as mainstream conditioners offering both softening and fragrances.

(1293) Moreover Swedish retailers confirmed that the elimination of Sara Lee as an independent supplier has no material impact on the intensity of competition post-transaction. Respondents to the market investigation did not anticipate any anti-competitive impact on competition as a result of the transaction.

(1294) It is therefore concluded that the proposed transaction would not result in a significant impediment of effective competition in the market for conditioners in Sweden.

IV.6.3.3. The Netherlands: Detergents

(1295) The detergent market in the Netherlands has a total value of EUR 271 million and has increased by [10-20]*% over the last three years. Unilever is active through its brands Omo, Robijn and Sunil while Sara Lee serves the market with its brands Biotex, Dobbelman and Neutral.

(1296) In the Netherlands, the new entity would hold a market share of [20-30]*% in detergents with a limited increment (Unilever: [20-30]*%, Sara Lee: [0-5]*%). Competitors are Procter&Gamble ([30-40]*%, Ariel and Dash brand), SH ([10-20]*%) and private labels ([20-30]*%). If a distinction was made according to variants (colour, white, black), markets shares would be of the same magnitude. They would be higher regarding the liquid format ([30-40]*%) but with a smaller increment ([0-5]*%).

(1297) Procter&Gamble will therefore remain the market leader and the transaction does not dramatically change the market structure due to the very limited presence of Sara Lee. All Dutch retailers having responded to the market investigation confirmed that Omo

[797] See replies to questionnaire to customers on fabric care sent on 23 April 2010, question 57.

and Robijn compete primarily with Ariel and Dash in terms of performance, price and quality[798]. The small size of the Sara Lee brand and the limited overlap show that the transaction will have limited material effect upon rivalry in the market and Unilever's incentives to compete effectively against P&G and private labels. This is also the opinion of Dutch retailers, a majority of which does not anticipate any anti-competitive effects arising from the transaction[799].

(1298) It is therefore concluded that the proposed transaction would not result in a significant impediment of effective competition in the market for detergents in the Netherlands.

IV.6.3.4. The Netherlands: Conditioners

(1299) The conditioner market in the Netherlands has a total value of EUR 63.6 million and has increased by [20-30]*% over the last three years. Unilever is active through its brands Robijn and Kuschelweich while Sara Lee serves the market with its brands Neutral and Zwitsal.

(1300) In the Netherlands, the new entity would hold a market share of [40-50]*% in conditioners with a limited increment (Unilever: [40-50]*%, Sara Lee: [0-5]*%). Competitors are Henkel through its brand Silan ([10-20]*%), Procter&Gamble through its brand Lenor ([10-20]*%) and private labels ([20-30]*%).

(1301) The small size of the Sara Lee brand and the limited overlap show that the transaction will have limited material effect upon rivalry in the market and Unilever's incentives to compete effectively against Henkel, P&G and private label products. Moreover, Moreover, Neutral did not play a particular role in the market due to, its very particular positioning as allergy-sensitive products. On the other hand, Robijn, Silan and Lenor are positioned as mainstream conditioners offering both softening and fragrances.

(1302) This is also the opinion of Dutch retailers, a majority of which do not anticipate any anti-competitive effects arising from the transaction.

(1303) It is therefore concluded that the proposed transaction would not result in a significant impediment of effective competition in the market for conditioners in the Netherlands.

IV.6.3.5. Denmark: Detergents

(1304) The detergent market in Denmark has a total value of EUR 82.7 million and has remained stable over the last years. Unilever is active through its brand Omo, while Sara Lee serves the market with its core brands Neutral and Biotex as well as Persil (under licence from Henkel until [...]*) and de!ny. Turnovers and market shares of the Parties and their main competitors for 2009 are shown in Table 84:

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798 See replies to questionnaire to customers fabric care (NL) sent on 23 April 2010, questions 25.

799 See replies to questionnaire to customers fabric care (NL) sent on 23 April 2010, questions 57.

Table 84: Turnover and market shares for detergents in Denmark - Source: Form CO

Sales in Denmark, 2009	Total detergents		Liquid deter-gents	Powder detergents	Concen trated detergents	Non-concentrated detergents	Colour detergents [800]	White detergents
	K€	%	%	%	%	%	%	%
Unilever	[...]*	[5-10]*	[5-10]*	[5-10]*	[5-10]*	[10-20]*	[10-20]*	[10-20]*
Sara Lee	[...]*	[40-50]*	[50-60]*	[40-50]*	[40-50]*	[50-60]*	[40-50]*	[40-50]*
Combined	[...]*	**[50-60]***	**[60-70]***	**[40-50]***	**[50-60]***	**[60-70]***	**[50-60]***	**[50-60]***
Procter & Gamble	[...]*	[20-30]*	[20-30]*	[10-20]*	[20-30]*	[10-20]*	[20-30]*	[10-20]*
Danlind	[...]*	[0-5]*	[0-5]*	[0-5]*	[0-5]*	[5-10]*	[0-5]*	[0-5]*
Own label	[...]*	[10-20]*	[5-10]*	[20-30]*	[20-30]*	[10-20]*	[20-30]*	[10-20]*
Others	[...]*	[0-5]*	[0-5]*	[0-5]*	[0-5]*	[5-10]*	[0-5]*	[0-5]*
TOTAL (k€)	**82 720**		**36 102**	**46 406**	**56 584**	**26 146**	**44 422**	**38 952**

(1305) The Danish detergent market is already very concentrated with basically three branded suppliers and private labels[801]. The proposed merger will lead to a reduction in the number of competitors in the detergent market, from three to two major suppliers and further strengthens the leading position of Sara Lee with a market share exceeding more than twice the one of its next competitor Procter & Gamble.

(1306) If a distinction was made according to formats, the combined market share would be higher in liquid detergents ([60-70]*% with an overlap of [10-20]*%) and slightly lower in powder ([40-50]*%). If one were to segment the detergent market according to variants, these shares would be higher in non-concentrated detergents ([60-70]*% with an overlap of [10-20]*%) and slightly lower in concentrated ([50-60]*%). Market shares in colour and white detergents are of the same magnitude as in the overall market (respectively [50-60]*% and [50-60]*%). If any of these sub-segments, market shares of the nearest competitor Procter & Gamble never exceeds [20-30]*%, save in one occasion ([20-30]*% in concentrated).

(1307) Despite these high market shares, the market investigation revealed the relatively distant nature of the competition between Unilever's Omo and Sara Lee's most important brand, Neutral (which accounts for [20-30]*% of the market)[802]. Neutral has a premium price positioning and focuses mainly on addressing consumer demand for allergy-sensitive products (it is free of perfumes of additives) whereas Omo is positioned as a mainstream/premium brand providing effective level of washing performance with no specific additional benefits. This is also the case for Ariel, which has been identified by most of the retailers as the closest brand to Omo in terms of quality and performance.

800 For colour/white detergents, figures are only available for the period August 2008-August 2009 thus they are slightly different from figures for the whole of 2009.

801 Danlind is mainly a supplier of private label products, particularly to [retailer] under its own label Care.

802 See replies to questionnaire to customers on fabric care sent on 23 April 2010, questions 25.

(1308) Whilst the market investigation confirmed the Parties' view that Neutral is a more distant competitor to Omo, some customers and competitors also viewed Sara Lee's brand Biotex, whose market share ([10-20]*%) is comparable to Neutral's, as a mainstream/premium brand directly competing with Omo and Procter & Gamble's brand Ariel.

(1309) Regarding the intensity of competition between Omo, Ariel and Biotex, Omo's market share has considerably declined from [10-20]*% in 2007 to [5-10]*% in 2009. [...]*[803]. At the same time, Ariel's sales in [retailer]increased by the same amount and Sara Lee's sales saw a more steady growth ([...]* DKK)[804]. The fact that Ariels' sales increased much more than its market share would suggest (Ariel has a market share which is half of Sara Lee's brands taken together) demonstrates that Ariel is a closer competitor to Omo than Neutral or even Biotex are.

(1310) Private label products represent a relatively significant share of the detergent market in Denmark ([10-20]*%). Danish retailers use some lines of private label products to fill in profitable premium niches (for example Anglamark which is a direct competitor of Neutral in the allergy-sensitive segment) and others to match the cheapest branded product on display. The role of private label products in the mainstream/premium segment where Omo and Biotex compete is consequently less important in these retailers' stores. However, this is not the case for all retailers. [retailer][805], which accounts for [20-30]*% of Unilever and Sara Lee sales in detergents, has a wider private label range, covering not only niche and everyday low price products, but also mainstream detergents in direct competition with Omo and Biotex. [retailer] sales of private label products represent [30-40]*% of its overall sales of detergents.

(1311) Moreover Danish retailers confirmed that the elimination of Unilever as an independent supplier has no material impact on the intensity of competition post-transaction as they consider that there are other alternatives available[806]. Respondents to the market investigation did not anticipate any anti-competitive impact on competition in the Danish detergent market as a result of the transaction[807].

(1312) In light of the above, it is therefore concluded that despite these high market shares the proposed transaction would not result in a significant impediment of effective competition in the market for detergents in Denmark.

IV.6.3.6. Denmark: Conditioners

(1313) The conditioner market in Denmark has a total value of EUR 17.9 million and has been shrinking by [5-10]*% in the last three years. Unilever is active through its brand

803 [...]*

804 FormCO, paragraph 6-885 and Table 6-108.

805 See reply from [retailer]to questions 26a) and b) to questionnaire to customers on fabric care sent on 23 April 2010.

806 See replies to questionnaire to customers fabric care sent on 23 April 2010, questions 50.

807 See replies to questionnaire to customers on fabric care sent on 23 April 2010, questions 57.

Snuggle while Sara Lee serves the market with its brands Neutral ([5-10]*%) and Finitex ([0-5]*%). Turnovers and market shares of the Parties and their main competitors for 2009 are as follows:

Table 85: Turnover and market shares for conditioners in Denmark - Source: Form CO

	Turnover (000')	**Share %**
Unilever	[...]*	[10-20]*
Sara Lee	[...]*	[10-20]*
Combined	[...]*	**[30-40]***
Colgate-Palmolive	[...]*	[40-50]*
Ecover	[...]*	[0-5]*
Nopa	[...]*	[0-5]*
Own label	[...]*	[10-20]*
Others	[...]*	[0-5]*
Total market	**17 887**	**100%**

(1314) The combined market share of the new entity is [30-40]*% (Unilever: [10-20]*%, Sara Lee [10-20]*%). The market leader remains Colgate-Palmolive with its brand Dunlet ([40-50]*%). Private label products are also present ([10-20]*%) as well as two small brands Ecover and Nopa.

(1315) With respect to closeness of competition, the Parties submit that the conditioner brand Neutral is positioned very similarly to the Neutral detergent product (that is, as a premium, allergy-sensitive, skin-friendly conditioner that is free of perfumes and additive) and therefore is a distant competitor of Unilever's Snuggle which is positioned as a mainstream/premium brand that offers effective softening and pleasant fragrances. This has been confirmed by the market investigation which also indicated that Dunlet and Snuggle are close competitors.

(1316) The conditioner market is shrinking in Denmark (as a result of campaigns by consumer groups arguing that fabric conditioners are not necessary and not environmental-friendly) and Unilever's brand Snuggle has been the main victim of this decline. Not only have its sales halved between 2007 and 2009 but it also lost market share, passing from [30-40]*% to [10-20]*% (as a result also as a delisting from Snuggle in Dansk). Simultaneously Dunlet increased its market share from [30-40]*% in 2007 to [40-50]*% in 2009 whilst Sara Lee remained stable (from [10-20]*% to [10-20]*%). This further illustrates the closeness of competition between Dunlet and Snuggle.

(1317) Moreover a majority of Danish retailers confirmed that the elimination of Sara Lee as an independent supplier has no material impact on the intensity of competition post-transaction as they consider that there are other alternatives available[808]. Respondents to

[808] See replies to questionnaire to customers fabric care (DK) sent on 23 April 2010, questions 50.

the market investigation did not anticipate any anti-competitive impact on competition in the Danish conditioner market as a result of the transaction[809].

(1318) It is therefore concluded that the proposed transaction would not result in a significant impediment of effective competition in the market for conditioners in Denmark.

IV.7. Shaving products

IV.7.1. Relevant Product Market

(1319) The men's shaving category covers products intended to treat the skin either before or after shaving.

(1320) The Parties submit that product intended to treat the skin before shaving form a market distinct from products intended to treat the skin after shaving. Within the after shaving products (where the Parties' activities overlap), the Parties submit that after shaving applications into fragrances (for example colognes, eau de toilette and others) form a separate market from aftershave treatments (like lotions/balms). The Parties are only present on the potential segment of aftershave treatments

(1321) In a previous decision[810], the men's care category was segmented into products used after shaving, products used before shaving and other grooming products, and three product markets were identified: (i) perfumes and aftershaves, (ii) shaving foams[811] and (iii) grooming products.

(1322) In a previous case[812], it was suggested that there may be a separate "men's care" notably split into shaving and toiletries. However, there was no need to reach a definitive conclusion in that case. Separate markets were also suggested for fragrances for men in a mass category, and fragrances for men in a prestige category. No firm conclusion has been reached on the market definition for fragrances but the sector has been analysed on the basis of separate markets for "prestige" and "mass market" products and, within these segments, on the basis of separate markets for male and female products

(1323) It is therefore considered that the narrowest possible product market definition would be the supply of mass market male aftershave treatments.

(1324) However, for the purposes of this case, it is not necessary to determine the exact scope of the relevant product market as the concentration does not raise any competition concerns under any alternative market definition.

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809 See replies to questionnaire to customers fabric care (DK) sent on 23 April 2010, questions 57.

810 Commission Decision of 18 October 1995, Case No. COMP/M.630 Henkel/Schwarzkopf.

811 In Commission Decision of 15 July 2005, Case No. COMP/M.3732 P&G/Gillette considered a specific market for pre-shave treatment. Within this market, potential distinct markets for shaving foams and gels have been suggested. However, the Commission left open the exact scope of the product market.

812 Commission Decision of 31 may 2006, Case No. COMP/M.4193L'Oreal/The Body Shop.

IV.7.2. Relevant Geographic Market

(1325) The Parties argue that negotiations of prices and terms and conditions with retailers primarily occur at the national level but they also submit that that there is an important European dimension to the men's care markets. In particular, large international buyers and buying groups conduct their purchasing on a broader geographic basis than by Member State.

(1326) In L'Oreal/The Body Shop[813], the men's care sector has been assessed on the basis of national markets. In Procter Gamble/ Gillette[814] , while suggesting potential national or European-wide geographic market, the exact geographic scope for shaving formulations has been left open.

(1327) As discussed in Section IV.2.2 in relation to deodorants and other personal care products, it is considered that the geographic markets for shaving products should be defined as national.

IV.7.3. Compatibility with the Internal Market

(1328) In the potential market for aftershave treatment, the Parties activities overlap and have combined market shares superior to 15% in three Member State namely, Austria, Denmark and France. The competitive assessment will therefore focus on the competitive situation in these three Member States.

Table 86: Market shares for selective Member States – aftershave treatment – 2009 – Source: Form CO

Country	Unilever	Sara Lee	Combined
Austria	[10-20]*	[5-10]*	[20-30]*
Czech Republic	[5-10]*	[10-20]*	[20-30]*
Denmark	[10-20]*	[5-10]*	[20-30]*

IV.7.3.1. Austria

(1329) According to the Parties, the total value of the Austrian aftershave treatment market was EUR 15 million in 2009. The market shares of the Parties and their main competitors in the potential market for aftershave treatment are shown in Table 87.

Table 87: Market shares aftershave treatment in Austria, 2009 – Source:Form CO.

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813 Commission Decision of 31 may 2006, Case No. COMP/M.4193 L'Oreal/The Body Shop

814 Commission Decision of 15 July 2005, Case No. COMP/M.3732 P&G/Gillette.

	Aftershave treatment	
	€,000	%
UNILEVER	[...]*	[10-20]*
'- Axe	[...]*	[10-20]*
SARA LEE	[...]*	[5-10]*
'- Pitralon	[...]*	[5-10]*
COMBINED	[...]*	**[20-30]***
Beiersdorf	[...]*	[20-30]*
P&G	[...]*	[10-20]*
Maeuerer	[...]*	[5-10]*
Conter	[...]*	[5-10]*
Coty	[...]*	[5-10]*
Lancaster	[...]*	[5-10]*
OTHERS	[...]*	[0-5]*
TOTAL	**15 085**	**100**

(1330) Following the transaction, the merged entity will hold a [20-30]*% market share. Unilever, with its unique brand Axe, is currently the second supplier on the market, behind Beiersdorf. Sara Lee, with its brand Pitralon, is only the seventh largest supplier.

(1331) Sara Lee's market share was in constant decline from 2007 to 2009 ([5-10]*% in 2007, [5-10]*% in 2008 and [5-10]*% in 2009) whereas smaller competitors increased their market presence in 2007 and now have bigger market shares than Sara Lee. For instance, Coty had value shares of [5-10]*% in 2007 and represents [5-10]*% of the market in 2009. Similarly, Lancaster had a market share of [5-10]*% in 2007 and [5-10]*% in 2009.

(1332) Post transaction, the new entity will continue to face competition from Beiersdorf ([20-30]*%), Procter and Gamble ([10-20]*%) ,Coty ([5-10]*%), Lancaster ([5-10]*%) or Conter ([5-10]*%).

(1333) As a consequence, it can be concluded that effective competition is not likely to be significantly impeded in the market for aftershave treatment in Austria.

IV.7.3.2. Denmark

(1334) According to the Parties, the total value of the Danish aftershave treatment market was EUR 3.1 million in 2009. The market shares of the parties and their main competitors in the potential market for aftershave treatment are shown in Table 88.

Table 88: Market shares aftershave treatment in Denmark, 2009 – Source: Form CO.

	Aftershave treatment	
	€,000	%
UNILEVER	[...]*	[5-10]*
'- Axe	[...]*	[5-10]*
SARA LEE	[...]*	[10-20]*

'- Williams	[...]*	[10-20]*
Sanex	[...]*	[0-5]*
COMBINED	[...]*	**[20-30]***
Beiersdorf	[...]*	[10-20]*
P&G (Gillette)	[...]*	[10-20]*
S'ether A/S	[...]*	[10-20]*
Unicare	[...]*	[10-20]*
L'Oreal	[...]*	[5-10]*
Private Label	[...]*	[5-10]*
OTHERS	[...]*	[10-20]*
TOTAL	**3 100**	**100**

(1335) Following the transaction, the merged entity will hold a [20-30]*% market share. Sara Lee, with its brands Williams and Sanex, is the main supplier. Unilever, with its unique brand Axe, is currently the sixth supplier on the market (seventh if private labels products are taken into account).

(1336) Post transaction, the new entity will continue to face competition Procter and Gamble ([10-20]*%), S'ther A/S ([10-20]*%), Unicare ([10-20]*%) and Beiersdorf ([10-20]*%). In addition, most of these competitors grew their market shares over the last 3 years such as Procter and Gamble (from [10-20]*% in 2007 to [10-20]*% in 2009), S'ther A/S (from [10-20]*% in 2007 to [10-20]*% in 2009) or Unicare (from [10-20]*% in 2007 to [10-20]*% in 2009)

(1337) In consequence, it is concluded that effective competition is not likely to be significantly impeded in the market for aftershave treatment in Denmark

IV.7.3.3. France

(1338) According to the Parties, the total value of the French aftershave treatment market was EUR 44 million in 2009. The market shares of the parties and their main competitors in the potential market for aftershave treatment are shown in Table 89.

Table 89: Market shares aftershave treatment in France, 2009 – Source: Form CO.

	Aftershave treatment	
	€,000	**%**
UNILEVER	[...]*	[10-20]*
'-Brut	[...]*	[10-20]*
'- Axe	[...]*	[0-5]*
SARA LEE	[...]*	[5-10]*
'- Williams	[...]*	[5-10]*
'-Sanex	[...]*	[0-5]*
COMBINED	[...]*	**[20-30]***
L'Oreal	[...]*	[30-40]*
Beiersdorf	[...]*	[10-20]*
P&G (Gillette)	[...]*	[0-5]*
Henkel/Schwarzkopf	[...]*	[5-10]*

Sarbec	[...]*	[0-5]*
Coty	[...]*	[0-5]*
Private label	[...]*	[0-5]*
OTHERS	[...]*	[0-5]*
TOTAL	**44 778**	**100**

(1339) Following the transaction, the merged entity will hold a [20-30]*% market share. Unilever, with brands Axe and Brut, is currently the second supplier on the market behind L'Oreal. Sara Lee, with its brands Williams and Sanex, is the fifth supplier.

(1340) Post transaction, the new entity will continue to face competition from a very significant competitor (L'Oreal, [30-40]*%) and other sizeable branded suppliers namely Beiersdorf ([10-20]*%) and Henkel ([5-10]*%). In addition, the two main competitors grew their market shares over the last 3 years[815].

(1341) In consequence, it is concluded that effective competition is not likely to be significantly impeded in the market for aftershave treatment in France

IV.8. Oral care

(1342) The oral care category includes products used for cleanliness and care of the mouth, teeth and gum, including toothbrushes, toothpastes, mouthwash, dental floss, denture care and whitening kits. Such products may be supplied through retail grocery outlets/drugstores or through pharmacies. A significant overlap between Unilever and Sara Lee exist in relation to toothpaste only.

IV.8.1. Relevant Product Market

(1343) Toothpaste is applied to teeth by brushing in order to reduce plaque and to prevent gum disease. Most suppliers offer a range of toothpaste products that combine basic cleaning with added benefits whether in terms of freshening breath, strengthening teeth, whitening teeth, dealing with sensitive teeth and/or stain removal. In addition, most toothpaste suppliers offer products for adults and separately for children.

(1344) In a previous case[816], a single relevant product market for toothpaste has been identified. Unilever submits that the demand and supply-side substitutability factors leading to that conclusion continue to characterise the market today. In a more recent case[817], a segmentation between children toothpaste, whitening toothpaste and sensitive toothpaste was envisaged but the question was left open.

(1345) In this case, no elements have been submitted which could lead to a segmentation of the toothpaste market. Accordingly, the assessment is carried out on the basis of an overall toothpaste market.

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815 L'Oreal increased its market shares from [30-40]*% in 2007 to [30-40]*% in 2009 whereas Beiersdorf increased its market shares from [10-20]*% in 2007 to [10-20]*% in 2009

816 See Commission Decision of 11 January 2001, Case No. COMP/M.2192 SmithKline Beecham/BlockDrug

817 See Commission Decision of 15 July 2005, Case No. COMP/M.3732 P&G/Gillette.

IV.8.2. Relevant Geographic Market

(1346) As discussed in the Section IV.2.2 concerning the relevant geographic market for deodorants, the Parties submit that the geographic markets for toothpaste should be defined as national. The same conclusion was reached in previous decisions involving toothpaste as a result of, inter alia, variations in market shares across member states, the widespread presence of national brands and variations in oral care habits.

(1347) Accordingly, the competitive assessment is carried out on the basis of national markets for toothpaste.

IV.8.3. Compatibility with the Internal Market

(1348) The Parties' market positions in the affected markets are summarised in Table 90.

Table 90: Market shares in affected markets – toothpaste by value – 2009 – Source: Form CO

Country	Unilever	Sara Lee	Combined
Czech	[10-20]*%	[0-5]*%	[10-20]*%
Hungary	[20-30]*%	[0-5]*%	[20-30]*%
Slovakia	[10-20]*%	[0-5]*%	[10-20]*%
Sweden	[20-30]*%	[5-10]*%	[20-30]*%

Source: Nielsen

(1349) As illustrated in Table 90, combined market share for Czech Republic, Hungary, and Slovakia the is below [20-30]*% and the overlap is insignificant (below [0-5]*%). In addition, sizeable competitors are present in all these Member States. Therefore, it is concluded that the transaction would not result in a significant impediment of effective competition in the markets for toothpaste in Czech Republic, Hungary, and Slovakia.

(1350) In Sweden, where Unilever is present with its brand Pepsodent and Sara Lee serves the market with its brand Zendium, the combined market share is [20-30]*% with an overlap slightly above [5-10]*%. The new entity will continue to face competition from sizeable suppliers namely Colgate-Palmolive ([30-40]*%) and Glaxo-Smithkline ([20-30]*%). It is therefore concluded that the proposed transaction would not result in a significant impediment of effective competition in the market for toothpaste in Sweden.

IV.9. Hair Care

IV.9.1. Relevant Product Market

(1351) Both Unilever and Sara Lee produce and supply hair care products. Hair care products include all products which are designed to clean, condition, repair or style hair through use of liquid substances such as gel, foam or cream. The Parties' activities primarily overlap in Denmark, Greece, the Netherlands and Ireland.

(1352) Within the broad sector of hair care, the notifying party submits that the proposed transaction should be analysed on the basis of three distinct product markets: shampoos which are used primarily for the removal of dirt and oil; conditioners and treatments which are liquids designed to protect or improve the condition of the hair and scalp and styling products which are used to shape the hair and lend it a specific appearance. As the activities of the Parties do not overlap in colorants, there is no need to analyse this potential market.

(1353) In previous decisions[818], it has been considered that there may be separate product markets for shampoos, conditioners and treatments, styling products and colorants based on their difference in price, use, characteristics and functionality.

(1354) Within the shampoos segment, a wide variety of products exist such as those with basic cleansing properties, treatment properties,, protection properties, or specific effects. Styling products are also available in different formats as among others hairsprays, gels, waxes, creams or liquids. In the case Procter & Gamble/Wella no clear evidence was found that the market should be further segmented and the question has been left open. Furthermore, no clear indications were found whether separate markets for conditioners (rinse-through products that are applied to the hair for a short period, usually after every washing) and treatments (products that are left on the hair for slightly longer) exist and the product market definition was ultimately left open.

(1355) In this case and for the purpose of this Decision, the precise relevant product market definition can be left open for hair care products since under any alternative no competition concerns would arise.

IV.9.2. Relevant Geographic Market

(1356) In a previous decision[819], it was concluded that there were strong indications that the markets for supply of hair care products were national in scope.

(1357) Although Unilever considers that there is an increasingly European dimension to the hair care markets, it also acknowledges that negotiations of prices and conditions still take place at national level. The notifying party submits that the geographic markets for hair care products should be analysed on a national basis.

(1358) For the purpose of this Decision, the relevant geographic market definition can be left open since even on the narrowest alternative, national market, no competition concerns would arise.

IV.9.3. Compatibility with the Internal Market

(1359) As a result of the transaction, there are affected markets in the hair care sector in Denmark, Greece and the Netherlands[820].

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818 Commission Decision of 30 July 2003, Case No. COMP/M.3149 P&G/Gillette, . Commission Decision of 31 May 2006, Case No. COMP/M.4193L'Oreal/The Body Shop. Commission Decision of 11 December 2006, Case No. COMP/M.4314 Johnson & Johnson/Pfizer Consumer Healthcare.

819 Commission Decision of 30 July 2003, Case No. COMP/M.3149 P&G/Gillette..

IV.9.3.1. Denmark: Shampoo

(1360) The shampoo market in Denmark had a total value of EUR 56.2 million in 2009 and is slowly growing. Unilever is present with its brands Elida, Sunsilk and Dove while Sara Lee serves the market with its brands Sanex and Neutral.

(1361) The merged entity holds a market share a market share of [10-20]*% (Unilever: [5-10]*% and Sara Lee: [10-20]*%). It will continue to face competition from significant suppliers such as L'Oreal ([20-30]*%), Procter&Gamble ([10-20]*%) and private labels ([10-20]*%). In the sub-segments of the shampoo market where the combined share of the merged entity are higher, namely dry hair ([20-30]*%) and normal hair ([10-20]*%), L'Oreal (respectively [30-40]*% for dry hair and [20-30]*% for normal hair) and Procter & Gamble (respectively [10-20]*% and [5-10]*%) also have a sizeable market presence.

(1362) It is therefore concluded that the proposed transaction would not result in a significant impediment of effective competition in the market for shampoos in Denmark.

IV.9.3.2. Denmark: Conditioners and treatment

(1363) The conditioners and treatment market in Denmark is only affected if a separate market for conditioners is identified. In this market, the merged entity holds a market share of [10-20]*% (Unilever: [10-20]*%, Sara Lee: [5-10]*%) and faces competition from L'Oreal ([20-30]*%), Procter&Gamble ([5-10]*%), Unicare ([5-10]*%) and Schwarzkopf&Henkel ([5-10]*%)

(1364) It is therefore concluded that the proposed transaction would not result in a significant impediment of effective competition in the market for conditioners and treatments in Denmark.

IV.9.3.3. Greece: Shampoos

(1365) The shampoo market in Greece has a total value of EUR 76 million in 2009 and is in decline. Unilever is present with its brands Dove, Organics, Timotei and Ultrex while Sara Lee brand serves the market with its brands Sanex, Fissan, Inco and Proderm.

(1366) The merged entity holds a market share a market share of [20-30]*% (Unilever: [20-30]*% and Sara Lee: [5-10]*%). Procter & Gamble is the market leader with [30-40]*%. L'Oreal ([10-20]*%) and Johnson&Johnson ([5-10]*%) are also multinational competitors with a significant market presence.

(1367) Taking into account possible segmentations of the shampoo market, the activities of the parties overlap only in anti-dandruff shampoos and baby/kids shampoos. In anti-dandruff shampoos, the combined market share is [50-60]*% with an insignificant increment of [0-5]*%. In baby/kids shampoos, the combined share is [30-40]*% with a small increment of [0-5]*%.

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820 An affected market also arises in the supply of styling products in Ireland. The combined market share is [20-30]*% and the increment is below [0-5]*%. Accordingly, the proposed transaction would not result in a significant impediment of effective competition in the market for hair styling products in Ireland.

(1368) It is therefore concluded that the proposed transaction would not result in a significant impediment of effective competition in the market for shampoos in Greece.

IV.9.3.4. The Netherlands: Shampoo

(1369) The shampoo market in the Netherlands had a total value of EUR 116 million in 2009 and is increasing. Unilever is present with its brands Andrelon and Dove while Sara Lee brand serves the market with its brands Neutral, Sanex and Zwitsal.

(1370) The merged entity holds a market share a market share of [30-40]*% (Unilever: [20-30]*% and Sara Lee: [0-5]*%). A range of sizeable competitors are also present, including L'Oreal ([10-20]*%), Procter&Gamble ([10-20]*%), KAO ([10-20]*%) and Schwarzkopf&Henkel ([5-10]*%).

(1371) Taking into account possible segmentations of the shampoo market, the activities of the parties overlap only in relation to "normal" shampoos where the combined market share is [40-50]*% (Unilever: [30-40]*%, Sara Lee: [5-10]*%). Several other major suppliers are also active in this market such as Procter&Gamble ([10-20]*%), L'Oreal ([5-10]*%) Schwarzkopf&Henkel ([5-10]*%) as well as private labels ([5-10]*%). Moreover, [70-80]*% of the increment between the parties is actually comprised of sales of Sara Lee's Zwitsal brand, which as outlined in recital 1098, is primarily targeted at babies and is not considered as a close competitor of Unilever's brands.

(1372) It is therefore concluded that the proposed transaction would not result in a significant impediment of effective competition in the market for shampoos in the Netherlands.

IV.9.3.5. The Netherlands: Conditioners and treatments

(1373) In a general market for conditioners and treatments is considered, the combined market share is [20-30]*% with a very limited increment ([0-5]*%) of Sara Lee. The increment consists of sales of the infant-targeted brand Zwitsal, which is a distant competitor to Unilever's brand Andrelon. The combined market share and the increment would be of the same magnitude of separate markets for conditioners and treatments were considered].

(1374) It is therefore concluded that the proposed transaction would not result in a significant impediment of effective competition in the market for conditioners and treatments in the Netherlands.

IV.10. Household cleaner

IV.10.1. Relevant Product Market

(1375) Both Unilever and Sara Lee produce and supply household cleaners. The activities of the parties overlap in the Netherlands, Portugal and Sweden.

(1376) In a previous Decision[821], four distinct products markets were identified in the household cleaner sector: (i) multi-purpose cleaners including preparations used to clean non-permeable surfaces and suitable for general household use; (ii) lavatory cleaners

[821] Decision of 3 September 1999, Case No. COMP/M.1632 Reckitt & Colman/Benckiser..

used for effective cleaning and removal of bad odour in lavatories; (iii) polishes and waxes used to clean, shine and protect furniture and wooden or tiled floors; (iv) metal polishes which are used to clean and shine metals. Unilever agrees with this approach.

(1377) As the Parties' activities do not overlap in the markets for lavatory cleaners, polishes and waxes and metal polishes, the competitive assessment is carried out in relation to multi-purpose cleaners only.

IV.10.2. Relevant Geographic Market

(1378) In a previous Decision[822], it was left open whether the market for multi-purpose cleaners has an EEA or a national scope.

(1379) Although Unilever considers that there is an increasingly European dimension to the multi-purpose cleaner markets, it also acknowledges that negotiations of prices and conditions still take place at national level. The notifying party submits that the geographic markets for multi-purpose cleaners should be national.

(1380) For the purpose of this Decision, the relevant geographic market definition can be left open since even the narrowest market, that is the national market, no competition concerns would arise.

IV.10.3. Compatibility with the Internal Market

(1381) As a result of the transaction, there are affected markets regarding multi-purpose cleaners in the Netherlands, Portugal and Sweden.

(1382) In the Netherlands, Unilever is present with its brands Cif, Andy and Glorix while Sara Lee serves the market with its brand Driehoek. The merged entity holds a market share of [20-30]*% (Unilever: [10-20]*%, Sara lee: [0-5]*%). Sizeable competitors are also present, including Colgate-Palmolive ([10-20]*%), Reckitt-Benckiser ([5-10]*%), Procter&Gamble ([0-5]*%), SC Johnson ([0-5]*%) as well as private labels ([10-20]*%). It is therefore concluded that the proposed transaction would not result in a significant impediment of effective competition in the market for multi-purpose cleaners in the Netherlands.

(1383) In Portugal, the merged entity has a combined market share of [10-20]*% with a very small increment. . Accordingly, it is concluded that the proposed transaction would not result in a significant impediment of effective competition in the market for multi-purpose cleaners in the Portugal.

(1384) In Sweden, the merged entity has a combined market share of [10-20]*% with an increment of [0-5]*%. Colgate-Palmolive ([40-50]*%), Reckitt-Benckiser ([10-20]*%), Cederroth ([10-20]*%) as well as private labels ([10-20]*%) are all present in the market and will continue constraining Unilever. It is therefore concluded that the proposed transaction would not result in a significant impediment of effective competition in the market for multi-purpose cleaners in Sweden.

822 Decision of 3 September 1999, Case No. COMP/M.1632 Reckitt & Colman/Benckiser.

V. COMMITMENTS PROPOSED BY THE NOTIFYING PARTIES

(1385) The proposed merger would significantly impede effective competition in the markets for (i) non-male deodorants in Belgium, (ii) non-male deodorants in Denmark, (iii) non-male deodorants in Ireland, (iv) non-male deodorants in the Netherlands (v) non-male deodorants in Portugal, (vi) non-male and male deodorants in Spain and (vii) non-male deodorants in the United Kingdom.

V.1. The first remedy package

(1386) In order to remove the competition concerns identified which arise from the concentration, Unilever and Sara Lee have proposed commitments under Article 8(2) of the Merger Regulation. The first set of commitments was submitted on 21 September 2010 with a view to obtaining clearance of the operation from the Commission.

Description of the first remedy package

(1387) The first remedy package ("the first commitment proposal") consists of a 5-year licence for the purposes of re-naming of the:

Sanex trade mark in the United Kingdom, Ireland, Belgium, the Netherlands and Denmark in relation to products sold under this brand in the respective Member States (deodorants, but also bath&shower, men's grooming, hair care and skin care), and

[...]* trade mark in Spain and Portugal in relation to deodorants.

(1388) The licence would be followed by an indefinite black-out period in which Unilever would not have been not be able to enter the respective markets with the Sanex or [...]* brand.

(1389) The remedy package also includes: (i) a licence on all sub-brands, trade-dress and taglines of Sanex and [...]* in the respective Member States for a period of 10 years; (ii) a transfer or a non-exclusive perpetual licence on all relevant information and know-how (such as formulae, specifications, moulds, business plans) and all associated IP rights used in or relating to the Sanex and [...]*products, except the formulae for [...]*; (iii) know-how and IP rights related to Sanex and [...]* innovations that are “market ready” at the date of signing of the Sanex and [...]*Licences, so can be launched within 3 to 4 months; (iv) at the request of the purchaser, certain transitory services, notably production arrangements (assignment of current co-packing contracts with third parties, and 2 year transitional production agreement for products manufactured in-house); (v) at the option of the purchaser, transfer certain personnel; and (vi) a commitment of Unilever not to use its trade-mark rights to undermine the re-naming process to the Purchasers' new brand(s), except where the new brand would be identical or too similar to the ones licensed for re-naming.

(1390) These commitments were market tested ("The first market test"). The results of the first market test showed that the remedy package as submitted by Unilever was not viewed as suitable to solve the identified competition concerns in the seven Member States. Respondents to the market test identified two main categories of issues which jeopardized the viability of the remedy package, namely (i) the process of re-branding which would have to be borne by the Purchaser in the seven Member States for the two brands was considered cumbersome and risky, and (ii) the package provided by Unilever was insufficient in several key aspects, notably as regards the absence of the [...]* formulae and of the innovation pipeline for Sanex and [...]*, which would be necessary for sustaining the viability of the business.

The re-branding process to be borne by the Purchaser in seven Member states for the two brands was considered as risky and with limited chances of success.

(1391) A majority of competitors pointed out significant risks as the result of the r-rebranding process and mentioned the complexity of the re-branding exercise covering seven Member States. Several competitors highlighted that the proposed re-branding remedy would not bring significant benefits to a licensee, but entail the risk of significant sunk investments without realistic potential to recoup such investments. Keeping the respective image of a deodorant product requires ongoing marketing and innovations as investments into the brand image, as well as significant promotion expenses. Some competitors also mentioned the difficulties to move the strong Sanex brand equity to a new platform which shares the same values as Sanex. These competitors thought that it is unlikely that the proposed remedy is viable in this context[823]. Customers were also critical. Several customers were of the view that the re-branding process of Sanex and [...]* would endanger the equity of both brands to be re-branded (particularly Sanex), given the considerable uncertainties and risks as to whether customers will migrate from Sanex across to the rebranded products[824]. Some of these retailers expressed the concern that the market position of (re-branded) Sanex product would decline because of loss of consumer preference and its market position will be taken over by a market leader[825].

(1392) Moreover, several competitors believed that the re-branding of two brands in different Member States by the same purchaser would be significantly less commercially viable than re-branding only one brand across the Union or at least a significant part of it, given that each brand has a different image and different characteristics ([...]*, Sanex more with skin-friendliness)[826]. The implementation of the re-branding of two different brands obviously entails separate investments in consumer research and advertisement. Several competitors indicated there are no particular benefits or economies of scale in re-branding two trade marks rather than one and that this feature of the package could discourage potential purchasers. Several customers[827] also agreed that the rebranding of two brands in different Member States will be more risky and difficult than just rebranding one brand, due to the duplication of efforts and costs. This is particularly relevant as regards [...]* and Sanex given that

823 See replies to Question 2 of the first questionnaire competitors on remedies sent on 27 September 2010.

824 See replies to Question 2 of the first questionnaire customers on remedies sent on 27 September 2010.

825 See reply from [retailer] and [retailer] to first questionnaire to customers on remedies sent on 27 September 2010, question 5. See reply from [retailer] to first questionnaire to customers on remedies sent on 27 September 2010 , question 6

826 See replies to Question 4 of the first questionnaire competitors on remedies sent on 27 September 2010.

827 See inter alia replies from [retailer], [retailer], [retailer] and [RETAILER] to first questionnaire to customers on remedies sent on 27 September 2010, question 4.

two brands have very different connotations, and there are major differences in terms of market structure and brand awareness in the relevant markets of the respective Member States.

(1393) Respondents to the market test also argued that it is doubtful that a potential buyer would invest sufficiently in the products, advertisement and brand awareness, if he acquires the right of use for a limited period only and needs to invest in a new brand[828]. To alleviate these concerns, some customers put forward that in this context a more appropriate remedy would be a divestiture of the Sanex brand.

Several features of the package and notably the absence of product formulae and of the innovation pipeline were considered insufficient to create a viable business and restore effective competition

(1394) Respondents who considered re-branding as an in principle possible solution explained nevertheless that the package provided by Unilever lacked several elements which were considered necessary to represent a viable business and to restore competition in the markets at stake.

(1395) First, almost all competitors and customers active in Spain and Portugal considered as essential that the [...]* formulae should be part of the IP rights transferred with the remedy package as otherwise the viability would not be ensured. Competitors submitted that the management of two simultaneous transitions such as the brand migration and the change towards a new formulation would confuse consumers that would not recognize their brand anymore, resulting in a certain loss of consumer base. A majority of customers shared this view[829].

(1396) Second, respondents to the market test highlighted that access to the innovation pipeline for Sanex and [...]* products was far too restrictive, in the sense that it was only secured for innovations that were in the process of being launched in the next 3-4 months. According to several competitors and customers[830], access to all pipeline innovations, including those not yet deemed as being marketable, should be warranted. This issue was mentioned as particularly relevant for a deodorant business considering the time necessary for the suitable purchaser to have its own innovation pipeline and the fact that success in these markets is widely driven by innovation in marketing and packaging.

(1397) The first market test also brought forward some additional elements which would need to be strengthened to ensure viability, such key personnel or details related to the restrictions in designing the new brand name by the Purchaser.

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[828] See reply from [retailer] to first questionnaire to customers on remedies sent on 27 September 2010, question 5. See reply from [retailer] to first questionnaire to customers on remedies sent on 27 September 2010, question 2.

[829] See replies to question 10 of the first questionnaire customers on remedies sent on 27 September 2010 and to Question 12 of the first questionnaire competitors on remedies sent on 27 September 2010.

[830] See replies to question 12 of the market questionnaire customers on remedies sent on 27 September 2010 and to Question 14 of the first questionnaire competitors on remedies sent on 27 September 2010

Purchaser criteria should be strictly defined so as to ensure that the Purchaser will exert a real competitive constraint on Unilever.

(1398) In the context of a re-branding remedy, the identity of the potential licensee as well as its ability and its incentives to carry out the re-branding exercise is a key factor for the success of the commitments[831]. Customers in general submitted that the purchaser should be active in personnel care and have experience in re-branding. Given that re-branding is a process that requires experience and know-how, presence in the affected markets would help in the achievement of the goal[832]. Some respondents also considered it of importance that the purchaser has sufficient access to financial resources to support the re-branding exercise in terms of advertisement and promotions and to keep up the investment level of Unilever and Sara Lee pre-merger.

(1399) Competitors shared this opinion. They particularly insisted on the necessity that the Purchaser already possesses its own existing distribution network and marketing organization in personal care in the Member States concerned. Furthermore, the new purchaser should have the resources required to invest behind these new brands for an extended period of time in order for the re-branding to succeed. Experience with rebranding could also be a useful add-on, according to these competitors[833].

(1400) The market test did not bring forward any particular interest for the offered remedy package from the key market participants. The complexity of the rebranding process, the potentially sunk investments necessary to sustain brand awareness and the brand split across several Member States were considered deterrent.

V.2. The second remedy package

(1401) The concerns expressed in the first market test were communicated to Unilever. Subsequently, Unilever[834] submitted a second commitment proposal on 8 October 2010 ("the second commitment proposal") based on permanent divestiture of the Sanex deodorants business in the Member States where competition concerns were identified, with Unilever keeping the rest of Sanex business and re-branding it to a new brand name. This second commitment proposal was market tested ("The second market test").

Description of the second remedy package

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[831] Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004OJ L 24 29.1.2004, p1, hereinafter referred to as the "Remedies Notice", paragraph 42.

[832] See replies to Question 14 of the first questionnaire customers on remedies sent on 27 September 2010.

[833] See replies to Question 14 of the first market questionnaire competitors on remedies sent on 27 September 2010.

[834] When the parties are informed that the Commission intends to maintain in its final decision that the transaction raises competition concerns for a specific market, it is for the parties to propose commitments (Remedies Notice, paragraph 85).

(1402) The second commitments proposal consisted of a divestiture of the Sanex deodorants business in the United Kingdom, Ireland, Belgium, the Netherlands, Denmark, Spain and Portugal, including (i) an assignment of all Sanex trade marks rights (including logo, sub-brands, trade-dress and taglines); (ii) a transfer of all relevant information and know-how (such as formulae, specifications, moulds, business plans, customers lists) and all associated IP rights which are used in relation to the Sanex deodorant business; (iii) all raw materials, stocks, work in progress and semi-finished goods related to the Sanex deodorant business; (iv) co-packing contracts relating exclusively to the Sanex deodorant business (subject to third party consents) and access to all production equipment and production lines; (v) at the option of the purchaser, transfer of certain personnel.

(1403) While the Sanex deodorants business would be divested in the seven Member states where competition problems were identified, Unilever would retain all remaining Sanex business and would be obliged to re-name the retained Sanex products under a new name within a temporary period of 3 or 5 years (as specified in the next recital). The retained businesses would in particular comprise Sanex bath&shower products which are sold in a number of Member States including in the seven Member States where the Sanex deodorants would be divested. In these Member States, Sanex would during the transitional period be offered both by the Purchaser (for deodorants) and by Unilever (for all other products), while Unilever would be engaging in a re-naming exercise aiming to transition Sanex to a new name for all products except deodorants.

(1404) In legal terms, the Purchaser would become the owner of all Sanex trade marks for all product categories and on an EEA-wide basis, and would licence back to Unilever for the purpose of re-naming the Sanex trademarks for the business retained by Unilever. The principal licence which the Purchaser (as a new owner of the brand) would grant to Unilever for the Sanex trade mark would be (a) for 3 years for all product categories currently using the Sanex brand *excluding deodorants* in the seven Member states where competition problems on deodorant markets were identified and (b) for 5 years for all product categories currently using the Sanex brand (including deodorants) in all other Member States. In addition to the principal licence on the Sanex trademark, the Purchaser would grant Unilever a licence for the use of Sanex sub-brands, the Sanex tag-lines and the get-up (trade dress) of the licensed Sanex goods for a further period of 5 years.

(1405) In order to enable Unilever to re-brand the retained business from the Sanex brand to a new one the Purchaser would commit to a black-out period of five years at the expiry of the principal license (that is, after 3 years for the seven Member States, and after 5 years for the rest of the Union) during which the Purchaser would not enter, with a product marketed under the Sanex Trade Mark, any category in any Member State apart from the deodorants in the seven Member states. Under the proposed commitments, the divested business would thus not be able to expand beyond the deodorants in the seven Member states for 8 or 10 years (according to the Member State, as applicable).

(1406) Unilever also committed to rename the Sanex products in the retained businesses as a new brand which is distinctly different from Sanex.[835] Unilever would also be

[835] "Distinctly different" for that purpose means a brand which is not so similar to Sanex as to be likely, having regard to the identical or similar nature of the products concerned to cause consumer confusion.

prevented from launching the new brand in the deodorant sector in the seven Member States for the duration of licence, except if it chose to change the name of the Sanex products into an existing brand already present in the deodorants markets present in the seven Member States concerned. If it did choose to change the name of Sanex into such an existing deodorant brand (for example Vaseline, Dove or Rexona), Unilever could continue to compete with that new brand in the deodorants markets in the seven Member Sates.

Respondents expressed viability concerns for the divested business associated with splitting of the Sanex brand and Unilever's re-branding of Sanex for the retained business

(1407) The second market test showed that a number of market participants acknowledged that the divestiture of Sanex deodorants is a step forward from the first remedy proposal based on licensing and re-branding. The divesture would be a more clear-cut solution and preferable to the first remedy package.

(1408) However, a large number of market participants also put forward that the divestiture solution based on a split of the Sanex brand may not be feasible and would involve substantial risks for the viability of the business. These viability considerations were linked to the fact that the Sanex brand would be split into two parts, and one part of the Sanex products would be re-named, with possible negative consequences on the divested Sanex deodorant business.

(1409) First, some market participants expressed scepticism that a Sanex brand split may not be feasible and will damage the entire Sanex brand. Several respondents explain that Sanex is a homogeneous brand stretching across categories and that the value of the brand will be diminished in case of a split. It was submitted that much of Sanex's brand equity is in the brand itself and in its range of products and that the combination of the re-branding process and the black-out period will damage the equity of the entire Sanex brand. It was also argued by some retailers that for them as customers the Sanex deodorants alone would be less attractive given that they often promote the whole Sanex range to the end consumers.[836]

(1410) Second, several market participants considered that the brand split would also imply that the divested Sanex business limited to deodorants in the seven Member States may be too small to warrant a significant incentive of the Purchaser to invest into the brand, in particular if it has no possibilities to expand the brand beyond that area before the expiration of the black-out periods, meaning only after of 8 or 10 years. Substantial marketing investments in the brand are needed to sustain it, particularly as Unilever will be investing in re-branding Sanex for other product categories. In that context, the attractiveness of the business and incentives to invest in it may be impeded if substantial investments into preserving the brand are necessary, but there are no possibilities to expand the brand into other areas.[837]

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[836] See replies of customers and competitors to question 2, 3 and 4 of the second questionnaire on remedies sent on 8 October 2010.

[837] See replies of competitors and customers on questions 2 and 3 and 4 of the second questionnaire on remedies sent on 8 October 2010.

(1411) Third, many market participants considered the economic brand co-ownership by two suppliers in the intermediary period as problematic, with potentially inconsistent messages to the consumers (one underscoring the old Sanex values, and other speaking of change, novelty and likely highlighting the reasons why the change is beneficial to the consumer), and with a significant scope for harming the activities to be divested. During the re-branding exercise, it is understood that Unilever would make significant marketing/advertising efforts in re-naming Sanex for all categories except deodorants. Such a re-naming exercise would involve the transfer of the Sanex equity into the new brand, so that consumers could associate the new brand with Sanex credentials and values, and the new brand would thus inherit as much of the Sanex brand equity as possible. Several market participants argued that if Unilever's re-naming were to be successful, this could create customer confusion and harm the remaining Sanex deodorant business.[838]

(1412) In addition, the fact that Unilever is free to choose an existing brand on the deodorant markets in the seven Member States concerned as a new brand name for Sanex, could create further customer confusion and risks endangering viability of the divested business. If Unilever were to choose to an existing deodorant brand name as a new brand name for Sanex customers would find both the brand absorbing the brand equity of Sanex in neighbouring personal care markets, and the "old" Sanex products next to each other. If two very similar deodorants products were available, the ability of Sanex to maintain the competitive pressure on Unilever in the respective deodorants markets to the same degree as prior to the merger may decrease. Also, the ability and incentives of Unilever to undermine the success of Sanex deodorants would substantially increase, as Unilever would possess a deodorant brand which consumers may perceive as the new brand for Sanex. Indeed, several respondents in the market test saw the possibility of Unilever to be present on the deodorants shelves with the new name chosen for Sanex as not appropriate, and some explained that this represents a further danger for viability of the business to be divested.[839]

(1413) Many respondents in the market also highlighted the importance of a strong buyer, and agreed that a suitable purchaser should have an existing presence in the markets in question.[840] Given the substantial amount of risks involved with splitting the Sanex brand and re-naming the retained business by Unilever, a strong and experienced company was seen as one of the elements which may decrease this risk. Other issues were also put forward such as possible parallel trade (where Unilever would be able to sell Sanex deodorants in some Member States during 5 years, and these could be imported into the seven Member States in question by some internationally active retailers)[841], or details about the use of Sanex licence by Unilever.[842]

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838 See replies of competitors and customers to question 6 of the second questionnaire on remedies sent on 8 October 2010.

839 See replies of competitors and customers to question 8 of the second questionnaire on remedies sent on 8 October 2010.

840 See in particular replies of competitors to question 13 and 15 and replies of customers to question 12 and 13 of the second questionnaire on remedies sent on 8 October 2010.

841 See replies of competitors to question 12 of the second questionnaire on remedies sent on 8 October 2010.

V.3. The final remedy package

(1414) The concerns expressed in the second market test were communicated to Unilever. Subsequently, Unilever[843] offered a final commitment proposal on 12 November 2010 ("the final commitment proposal"). This final package is a clear solution based on the full divestment of the entire Sanex range across the EEA.

Description of the final remedy package

(1415) The final commitment proposal consists of a full divestiture of the Sanex business across all product categories in the EEA ("The Divestment Business") and includes:

all trade mark rights owned by Unilever in Europe (i) the word "Sanex"; (ii) the Sanex logo; (iii) the Sanex sub-brands (including "NaturProtect"); (iv) the Sanex taglines (for example "*keeps skin healthy*"); and (v) the get-up (trade dress) of Sanex goods; which together comprise the "**Sanex Trade Marks**";

other intellectual property rights ("**IPRs**") owned by Unilever in the Union which are used in or relate to the Sanex Business including such IPRs in any pipeline innovations of the Sanex Business, excluding IPRs relating to computer hardware, software, networks, servers, peripherals and other communications technologies (to the extent that these comprise Unilever proprietary IPRs).

the right to use information and know-how in the Union including any pipeline innovations of the Sanex Business (including, without limitation, all (i) formulae, specifications, drawings, manuals and instructions; (ii) customer lists (see Annex 3), sales, marketing and promotional information; (iii) business plans and forecasts; and (iv) technical or other expertise) owned by Unilever a Closing ("**Know-how**") that is used in or which relates to the Divestment Business.

all raw materials, stocks, work in progress and semi-finished and finished goods of Unilever relating exclusively to the Divestment Business;

all licences, permits and authorisations issued by any governmental organisation to the extent that these are for the benefit of the Divestment Business;

subject to third party consents: (i) all contracts, leases, commitments and customer orders, including all co-packing contracts ("**Contracts**") relating exclusively to the Divestment Business; and (ii) all Contracts (other than Contracts relating to the use of information technology) that relate (but not exclusively) to the Divestment Business to the extent they so relate;

access to all production equipment and production lines used in the Divestment Business;

copies of the specifications for the Sanex packaging moulds used in the Divestment Business;

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842 See replies of competitors and retailers to questions 9 and 10 of the second questionnaire on remedies sent on 8 October 2010.

843 Remedies Notice, paragraph 85.

key personnel.

(1416) In the short-term, where required by the Purchaser, the Divestment Business could include a full sales and distribution transitional services agreement to allow the Purchaser time to prepare for full integration.

(1417) Technology, trademarks and other IPRs and Contracts related exclusively to that part of Sara Lee Body Care's business which operates under the Sanex brand outside the Union will be retained by Unilever and will not form part of the Divestment Business. Unilever will also retain the right o use Know-how outside the Union (to the exclusion of the Purchaser).

The full divestiture of Sanex represents a viable business capable to compete effectively on the market and to remove all competition concerns

(1418) The full divestiture of Sanex across all categories and for the whole of EEA constitutes a clean, workable and effective remedy capable to create a viable and effective competitor. This solution addresses all viability concerns expressed during the second market test concerning the brand-split proposed in the second commitment proposal. First, the integrity and coherence of the Sanex brand will be preserved in all markets, with no scope for customer confusion or possible harm to the Sanex brand equity. Second, the purchaser will be able to fully invest into the brand and to continue the success of Sanex without being constraint by a parallel re-branding exercise of Unilever relating to a significant part of the Sanex portfolio. Equally, no issues of parallel trade arise from a split ownership. Indeed, when market participants were asked during the second market test about how the second remedy package could be improved in order to be sufficient to solve the competition concerns, many stated that a full divesture of Sanex without a brand-split would be the most desirable solution.[844]

(1419) The final remedy package removes competition concerns identified in a clear way as it provides for a permanent divesture of Sanex including deodorants in all seven Member States where competition concerns were identified, without raising any viability issues. Apart from the permanent and unique ownership of the Sanex brand (including all related IP rights and know-how), it also comprises all ingredients necessary to compete in the long term, including all relevant product formulae, the entire innovation pipeline of Sanex deodorants, all necessary production arrangements, and key personnel.

(1420) Sanex is Sara Lee's most important deodorant brand of, and it is a successful and growing business. The divestiture of Sanex would crate an effective competitor to Unilever and would remove either all or a significant part of the overlap in all markets where competition concerns were identified.

[844] See replies of competitors and customers to question 4 of the second questionnaire on remedies sent on 8 October 2010.

(1421) In the Belgian non-male deodorants market, Sanex (with a market share of [10-20]*%) removes the entire overlap brought about by Sara Lee, thus restoring the pre-merger situation.

(1422) In the non-male deodorants market in Denmark, Sanex has a market share of [10-20]*% and is the largest brand on the market and represents almost [70-80]*% of Sara Lee's deodorants sales. The divestiture thus reduces the overlap to [5-10]*% represented by Neutral, and the combined market share without Sanex would be [20-30]*%

(1423) In the non-male deodorants market in Ireland, Sanex (with a [5-10]*% market share) represents almost all of Sara Lee's sales (the second brand Radox only had a [0-5]*% market share), and it therefore reduces the overlap to a negligible scale.

(1424) In the Spanish non-male deodorants market Sanex is the largest brand on the market with a market share of [20-30]*%, representing more than [90-100]*% of Sara Lee's turnover. The overlap will therefore be reduced to [0-5]*% coming from other Sara Lee's other brands.

(1425) In the Spanish male deodorants market, Sanex (with a market share of [0-5]*%) is one of the two most important brands of Sara Lee, together with Williams ([5-10]*%). The divesture of Sanex reduces the overlap to [5-10]*%, and the combined market share without Sanex would be [50-60]*%. Sanex was a growing brand on the market and the divestiture will create an independent competitor capable to compete on the market with Unilever.

(1426) In the non-male deodorants market in the Netherlands, Sanex holds a market share of [10-20]*% and constitutes the vast majority of Sara Lee's sales – the remaining brand Neutral only has a market share of [0-5]*%. The overlap will therefore be reduced to a minimum and the combined market shares without Sanex would be [30-40]*%.

(1427) In the non-male deodorants market in Portugal, Sanex (with a market share of [5-10]*%) removes the entire overlap brought about by Sara Lee.

(1428) Finally, in the non-male deodorants market in United Kingdom, the divesture of Sanex (with [5-10]*% market share) removes almost all overlap and reduces it to a negligible [0-5]*% market share constituted by other Sara Lee brands.

(1429) The final commitments package thus removes the competition concerns in relation to all markets in which the transaction would have led to a significant impediment of effective competition.

V.4. Conclusion on commitments

(1430) In light of the above, it is considered that the final commitments as submitted on 12 November 2010 would remove the significant impediment to effective competition in the markets for (i) non-male deodorants in Belgium, (ii) non-male deodorants in Denmark, (iii) non-male deodorants in Ireland, (iv) non-male deodorants in the Netherlands (v) non-male deodorants in Portugal, (vi) non-male and male deodorants in Spain and (vii) non-male deodorants in the United Kingdom.

VI. CONDITIONS AND OBLIGATIONS

(1431) Pursuant to the second subparagraph of Article 8(2) of the Merger Regulation, the Commission may attach conditions and obligations to its Decision intended to ensure that the undertakings concerned comply with the commitments they have entered into vis-à-vis the Commission with a view to rendering the concentration compatible with the internal market.

(1432) The fulfilment of the measure that gives rise to the structural change of the market is a condition whereas the implementing steps which are necessary to achieve this result are generally obligations on the parties. Where a condition is not fulfilled, the Commission's Decision declaring the concentration compatible with the internal market is no longer applicable. Where the undertakings concerned commit a breach of an obligation, the Commission may revoke the clearance Decision in accordance with Article 8(6) of the Merger Regulation. The undertakings concerned may also be subject to fines and periodic penalty payments under Articles 14(2) and 15(1) of the Merger Regulation.

(1433) In accordance with the basic distinction described in Recital (1431) as regards conditions and obligations, this Decision should be made conditional on the full compliance by the notifying party with the Section B (including Annexes 1 to 5) of the commitments submitted by the notifying party on 12 November 2010 and all other Sections should be obligations within the meaning of Article 8(2) of the Merger Regulation. The full text of the commitments is attached as an Annex to this Decision and forms an integral part thereof.

VII. OVERALL CONCLUSION

(1434) For the reasons outlined above the notified operation, as modified, should be declared compatible with the internal market and with the EEA Agreement pursuant to Article 8(2) of the Merger Regulation, subject to compliance with the Commitments in the Annex to this Decision.

HAS ADOPTED THIS DECISION:

Article 1

The notified operation whereby Unilever acquires sole control of Sara Lee Body Care within the meaning of Article 3(1)(b) of the Merger Regulation is hereby declared compatible with the internal market and the EEA Agreement.

Article 2

Article 1 is subject to compliance with the conditions set out in Section B including Annexes 1-5 to the commitments.

Article 3

Unilever shall comply with the obligations set out in the sections of the commitments not referred to in Article 2.

Article 4

This decision is addressed to:

UNILEVER Plc
Unilever House
100 Victoria Embankment
London EC4Y 0DY
United Kingdom

Done at Brussels, 17.11.2010

For the Commission

signed

Joaquín ALMUNIA
Vice-President of the Commission

NON-CONFIDENTIAL VERSION

Case M.5658: Unilever PLC / Sara Lee Body Care

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 8(2) of Council Regulation (EC) No. 139/2004 as amended (the "**Merger Regulation**"), Unilever PLC (the "**Notifying Party**") hereby provides the following Commitments (the "**Commitments**") in order to enable the European Commission (the "**Commission**") to declare the acquisition of Sara Lee Body Care by the Notifying Party (the "**Notified Concentration**") compatible with the common market and the EEA Agreement by its decision pursuant to Article 8(2) of the Merger Regulation (the "**Decision**").

The Commitments shall take effect upon the date of adoption of the Decision.

This text shall be interpreted in the light of the Decision to the extent that the Commitments are attached as conditions and obligations, in the general framework of EU law, in particular in the light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EEC) No 4064/89 and under Commission Regulation (EC) No 447/98 and its Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004.

SECTION A. DEFINITIONS

For the purpose of the Commitments, the following terms shall have the following meanings:

Affiliated Undertakings: undertakings controlled by the Parties and/or by the ultimate parents of the Parties, whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in the light of the Commission's Consolidated Jurisdictional Notice.

Closing: the transfer of the legal title of the Divestment Business to the Purchaser.

Divestment Business: the Sanex Business.

Divestiture Trustee: one or more natural or legal person(s), independent from the Parties, who is/are approved by the Commission and appointed by the Notifying Party and who has/have received from the Notifying Party the exclusive Trustee Mandate to sell the Divestment Business to a Purchaser at no minimum price.

Effective Date: the date of adoption of the Decision.

Europe: the Member States of the European Union and Iceland, Liechtenstein, Norway and Jersey.

First Divestiture Period: the period of six months from the Effective Date.

Hold Separate Manager: the person(s) appointed by the Notifying Party in accordance with paragraph 10 to manage the day-to-day business of the Divestment Business under the supervision of the Monitoring Trustee.

Key Personnel: all personnel necessary to maintain the viability and competitiveness of the Divestment Business, or dedicated to the Divestment Business, including [...]* as described further in Annex 5, as well as any other personnel required by the Purchaser (any transfer being subject to the consent of the relevant employees).

Monitoring Trustee: one or more natural or legal person(s), independent from the Parties, who is/are approved by the Commission and appointed by the Notifying Party, and who has/have the duty to monitor the Notifying Party's compliance with the conditions and obligations attached to the Decision.

Parties: the Notifying Party and Sara Lee (each a **Party**).

Purchaser: the entity approved by the Commission as acquirer of the Divestment Business in accordance with the criteria set out in Section D.

Sanex Business: the business defined in Section B and Annex 1 that the Notifying Party commits to divest.

Sanex Trade Marks: The trade marks relating to the Sanex brand in Europe, as described in paragraph 4(i) and Annex 3 of these Commitments.

Sara Lee: Sara Lee Corporation, the seller of Sara Lee Body Care.

Sara Lee Body Care: Sara Lee Corporation's worldwide body care and European laundry care businesses.

Trustee(s): the Monitoring Trustee and the Divestiture Trustee.

Trustee Divestiture Period: the period of three months from the end of the First Divestiture Period.

SECTION B. THE DIVESTMENT BUSINESS

Commitment to divest

1. In order to restore effective competition, the Notifying Party commits to divest, or procure the divestment of, the Divestment Business by the end of the Trustee Divestiture Period as a going concern to a Purchaser and on terms of sale approved by the Commission in accordance with the procedure described in paragraph 17. To carry out the divestiture, the Notifying Party commits to find a Purchaser and to enter into final binding sale and purchase agreement for the sale of the Divestment Business within the First Divestiture Period. If the Notifying Party has not entered into such an agreement at the end of the First Divestiture Period, the Notifying Party shall grant the Divestiture Trustee an exclusive mandate to sell the Divestment Business before the end of the Trustee Divestiture Period in accordance with the procedure described in paragraph 27.

2. The Notifying Party shall be deemed to have complied with this commitment if, by the end of the Trustee Divestiture Period, the Notifying Party has entered into a final binding sale and purchase agreement for the sale of the Divestment Business, if the Commission approves the Purchaser and the terms in accordance with the procedure described in paragraph 17, and if the closing of the sale of the Divestment Business takes place within a period not exceeding 3 months after the approval of the Purchaser and the terms of sale by the Commission.

3. In order to maintain the structural effect of the Commitments, the Notifying Party shall, for a period of 10 years after the Effective Date, not acquire direct or indirect influence over the whole or part of the Divestment Business, unless the Commission has previously found that the structure of the market has changed to such an extent that the absence of influence over the Divestment Business is no longer necessary to render the proposed concentration compatible with the common market.

Structure and definition of the Divestment Business

4. The Divestment Business comprises the part of Sara Lee Body Care business currently operated in Europe under the brand name Sanex in all product categories (the "**Sanex Business**"). The Divestment Business is described generally in Annex 1 and includes all tangible and intangible assets (including intellectual property rights), which contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business. In particular the Divestment Business includes the transfer of;

   (i) All trade mark rights owned by Unilever in Europe in:

      (I) the word "Sanex";

      (II) the Sanex logo;

      (III) the Sanex sub-brands (including "NaturProtect");

      (IV) the Sanex taglines (for example "*keeps skin healthy*"); and

(V) the get-up (trade dress) of Sanex goods;

which together comprise the "**Sanex Trade Marks**" (see further Annex 3);

(ii) Other intellectual property rights ("**IPRs**") owned by Unilever in Europe at Closing which are used in or relate to the Sanex Business including such IPRs in Knowhow (as defined in paragraph 4(iii) below), excluding IPRs relating to computer hardware, software, networks, servers, peripherals and other communications technologies (to the extent that these comprise Unilever proprietary IPRs).

(iii) Information and know-how including any pipeline innovations of the Sanex Business (including, without limitation, all (i) relevant product formulae, recipes, specifications, drawings, manuals and instructions; (ii) manufacturing knowhow, customer lists (see Annex 4), sales, marketing and promotional information and materials; (iii) business plans and forecasts, studies and research; and (iv) technical or other expertise) owned by Unilever in Europe at Closing ("**Know-how**") which is used in or relates to the Sanex Business (see further paragraphs 4-6 of Annex 2).

(iv) All raw materials, stocks, work in progress and semi-finished and finished goods of Unilever relating exclusively to the Sanex Business;

(v) All licences, permits and authorisations issued by any governmental organisation to the extent that these are for the benefit of the Divestment Business;

(vi) Unilever will use its best efforts to transfer (as described further in paragraph 7 of Annex 2):

(a) all contracts, leases, commitments and customer orders, including all co-packing contracts ("**Contracts**") relating exclusively to the Divestment Business; and

(b) all contracts, leases, commitments and customer orders, including all co-packing contracts (other than contracts relating to the use of information technology) that relate (but not exclusively) to the Divestment Business to the extent they so relate;

If no consent is given, Unilever will use its best efforts to procure the necessary arrangements for providing co-packing services or any other necessary services to the Divestment Business.

(vii) Access to all production equipment and production lines used in the Sanex Business, as described further at paragraphs 1 to 3 of Annex 2;

(viii) Copies of the specifications for the Sanex packaging moulds used in the Sanex Business;

(ix) The Key Personnel.

5. In the short-term, where required by the Purchaser, the Divestment Business could include a full sales and distribution transitional services agreement to allow the Purchaser time to prepare for full integration.

6. Technology, trademarks and other IPRs and Contracts related exclusively to that part of Sara Lee Body Care's business which operates under the Sanex brand outside Europe will be retained by Unilever and will not form part of the Divestment Business (the "**Retained Business**").

7. Unilever will retain the right to use Sanex-related know-how and information outside Europe (to the exclusion of the Purchaser). Any know-how and information that relates exclusively to the Retained Business will be retained by Unilever. In respect of any Know-how that is used (but not exclusively) in or which relates (but not exclusively) to the Retained Business ("**Shared Know-how**"), the Divestment Business will be subject to the grant by the Purchaser to Unilever of a perpetual licence to use the Shared Know-how in connection with the Retained Business and an undertaking by the Purchaser not to use that Shared Know-how outside Europe. For the avoidance of doubt, Unilever will retain the right to use any Sanex related IPR and Know-how within Europe in respect of brands other than Sanex in which such IPR and Know-how is used at the Effective Date.

SECTION C. RELATED COMMITMENTS

<u>Preservation of Viability, Marketability and Competitiveness</u>

8. From the Effective Date until Closing, the Parties shall preserve the economic viability, marketability and competitiveness of the Divestment Business, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the Divestment Business. In particular, each Party undertakes:

(a) not to carry out any act upon its own authority that might have a significant adverse impact on the value, management or competitiveness of the Divestment Business or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the Divestment Business;

(b) to make available sufficient resources for the development of the Divestment Business, on the basis and continuation of the existing business plans;

(c) to take all reasonable steps, including appropriate incentive schemes (based on industry practice), to encourage all Key Personnel to remain with the Divestment Business.

<u>Hold-separate obligations</u>

9. The Parties commit from the Effective Date until Closing, to keep the Divestment Business separate from the businesses that the Notifying Party is retaining and to ensure that Key Personnel of the Divestment Business – including the Hold Separate Manager – have no involvement in any business retained by the Notifying Party and

vice versa. The Parties shall also ensure that the Key Personnel do not report to any individual outside the Divestment Business.

10. Until Closing, the Parties shall assist the Monitoring Trustee in ensuring that the Divestment Business is managed as a distinct and saleable entity separate from the businesses retained by the Notifying Party. The Parties shall appoint a Hold Separate Manager who shall be responsible for the management of the Divestment Business under the supervision of the Monitoring Trustee. The Hold Separate Manager shall manage the Divestment Business independently and in the best interest of the business with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from the business retained by the Notifying Party.

Ring-fencing

11. The Parties shall implement all necessary measures to ensure that the Notifying Party does not, after the Effective Date, obtain any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to the Divestment Business. In particular, the participation of the Divestment Business in a central information technology network shall be severed to the extent possible, without compromising the viability of the Divestment Business. The Notifying Party may obtain information relating to the Divestment Business which is reasonably necessary for the divestiture of the Divestment Business or whose disclosure is required by law.

Non-solicitation clause

12. The Notifying Party undertakes, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, the Key Personnel transferred with the Divestment Business for a period of two years after Closing.

Due diligence

13. In order to enable potential Purchasers to carry out a reasonable due diligence of the Divestment Business, the Parties shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process:

(a) provide to potential Purchasers sufficient information as regards the Divestment Business;

(b) provide to potential Purchasers sufficient information relating to the Key Personnel and allow them reasonable access to the Key Personnel.

Reporting

14. The Notifying Party shall submit written reports in English on potential Purchasers of the Divestment Business and developments in the negotiations with such potential Purchasers to the Commission and the Monitoring Trustee no later than 10 days after the end of every month following the Effective Date (or otherwise at the Commission's request).

15. The Notifying Party shall inform the Commission and the Monitoring Trustee on the preparation of the data room documentation and the due diligence procedure and shall submit a copy of an information memorandum to the Commission and the Monitoring Trustee before sending the memorandum out to potential Purchasers.

SECTION D. THE PURCHASER

16. In order to ensure the immediate restoration of effective competition, the Purchaser, in order to be approved by the Commission, must:

(a) be independent of and unconnected to the Parties;

(b) have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors;

(c) neither be likely to create, in the light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed, and must, in particular, reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business;

(the before-mentioned criteria for the Purchaser hereafter the "**Purchaser Requirements**")

17. The final binding sale and purchase agreement for the sale of the Divestment Business shall be conditional on the Commission's approval. When the Notifying Party has reached an agreement with a Purchaser, it shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), to the Commission and the Monitoring Trustee. The Notifying Party must be able to demonstrate to the Commission that the Purchaser meets the Purchaser Requirements and that the Divestment Business is being sold in a manner consistent with the Commitments. For the approval, the Commission shall verify that the Purchaser fulfils the Purchaser Requirements and that the Divestment Business is being sold in a manner consistent with the Commitments. The Commission may approve the sale of the Divestment Business without one or more of the Key Personnel, if this does not affect the viability and competitiveness of the Divestment Business after the sale, taking into account the proposed Purchaser.

18. For the avoidance of doubt, the Commission may approve one or more Purchasers of the Divestment Business, provided that the Divestment Business is sold to only one of those Purchasers.

SECTION E. THE TRUSTEE

I. <u>Appointment Procedure</u>

19. The Notifying Party shall appoint a Monitoring Trustee to carry out the functions specified in the Commitments for a Monitoring Trustee. If the Notifying Party has not entered into a binding sale and purchase agreement for the sale of the Divestment

Business one month before the end of the First Divestiture Period or if the Commission has rejected a Purchaser proposed by the Notifying Party at that time or thereafter, the Notifying Party shall appoint a Divestiture Trustee to carry out the functions specified in the Commitments for a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Trustee Divestiture Period.

20. The Trustee shall be independent of the Parties, possess the necessary qualifications to carry out its mandate, for example as an investment bank or consultant or auditor, and shall neither have nor become exposed to a conflict of interest. The Trustee shall be remunerated by the Notifying Party in a way that does not impede the independent and effective fulfilment of its mandate. In particular, where the remuneration package of a Divestiture Trustee includes a success premium linked to the final sale value of the Divestment Business, the fee shall also be linked to a divestiture within the Trustee Divestiture Period.

Proposal by the Notifying Party

21. No later than one week after the Effective Date, the Notifying Party shall submit a list of one or more persons whom the Notifying Party proposes to appoint as the Monitoring Trustee to the Commission for approval. No later than one month before the end of the First Divestiture Period, the Notifying Party shall submit a list of one or more persons whom the Notifying Party proposes to appoint as Divestiture Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the proposed Trustee fulfils the requirements set out in paragraph 20 and shall include:

(a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments;

(b) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks;

(c) an indication whether the proposed Trustee is to act as both Monitoring Trustee and Divestiture Trustee or whether different trustees are proposed for the two functions.

Approval or rejection by the Commission

22. The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one name is approved, the Notifying Party shall appoint or cause to be appointed, the individual or institution concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, the Notifying Party shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

New proposal by the Parties

23. If all the proposed Trustees are rejected, the Notifying Party shall submit the names of at least two more individuals or institutions within one week of being informed of the rejection, in accordance with the requirements and the procedure set out in paragraph 21.

Trustee nominated by the Commission

24. If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom the Notifying Party shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

II. <u>Functions of the Trustee</u>

25. The Trustee shall assume its specified duties in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or the Notifying Party, give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

Duties and obligations of the Monitoring Trustee

26. The Monitoring Trustee shall:

(a) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision;

(b) oversee the on-going management of the Divestment Business with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by the Parties with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:

(i) monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Business, and the keeping separate of the Divestment Business from the business retained by the Notifying Party, in accordance with paragraphs 8 and 9 of the Commitments;

(ii) supervise the management of the Divestment Business as distinct and saleable entity, in accordance with paragraph 10 of the Commitments;

(iii) (a) in consultation with the Parties, determine all necessary measures to ensure that the Notifying Party does not after the Effective Date obtain any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to the Divestment Business, in particular strive for the severing of the Divestment Business's participation in a central information technology network to the extent possible, without compromising the viability of the Divestment Business, and (b) decide whether such information may be disclosed to the Notifying Party as the disclosure is reasonably necessary to allow the Notifying Party to carry out the divestiture or as the disclosure is required by law;

(iv) monitor the splitting of assets and the allocation of Key Personnel between the Divestment Business and the Notifying Party or Affiliated Undertakings;

(c) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision;

(d) propose to the Parties such measures as the Monitoring Trustee considers necessary to ensure the Parties' compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the Divestment Business, the holding separate of the Divestment Business and the non-disclosure of competitively sensitive information;

(e) review and assess potential Purchasers as well as the progress of the divestiture process and verify that, dependent on the stage of the divestiture process:

(i) potential Purchasers receive sufficient information relating to the Divestment Business and the Key Personnel in particular by reviewing, if available, the data room documentation, information memorandum and due diligence process; and

(ii) potential Purchasers are granted reasonable access to the relevant Key Personnel;

(f) provide to the Commission, sending each Party a non-confidential copy at the same time, a written report within 15 days after the end of every month. The report shall cover the operation and management of the Divestment Business so that the Commission can assess whether the Divestment Business is held in a manner consistent with the Commitments and the progress of the divestiture process as well as potential Purchasers. In addition to these reports, the Monitoring Trustee shall promptly report in writing to the Commission, sending the relevant Party a non-confidential copy at the same time, if it concludes on reasonable grounds that either Party is failing to comply with these Commitments;

(g) within one week after receipt of the documented proposal referred to in paragraph 17, submit to the Commission a reasoned opinion as to:

(i) the suitability and independence of the proposed Purchaser and the viability of the Divestment Business after the sale; and

(ii) whether the Divestment Business is sold in a manner consistent with the conditions and obligations attached to the Decision, in particular (if relevant) whether the sale of the Divestment Business without one or more Assets or not all of the Key Personnel affects the viability of the Divestment Business after the sale, taking account of the proposed Purchaser.

Duties and obligations of the Divestiture Trustee

27. Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at no minimum price the Divestment Business to a Purchaser, provided that the Commission has approved both the Purchaser and the final binding sale and purchase agreement for the sale of the Divestment Business in accordance with the procedure laid down in paragraph 17. The Divestiture Trustee shall include in the sale and purchase agreement for the sale of the Divestment Business such terms and conditions as it considers appropriate for an expedient sale in the Trustee Divestiture Period. In particular, the Divestiture Trustee may include in the sale and purchase agreement for the sale of the Divestment Business such customary representations and warranties and indemnities as are reasonably required to effect the sale. The Divestiture Trustee shall protect the legitimate financial interests of the Notifying Party, subject to the Notifying Party's unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.

28. In the Trustee Divestiture Period (or otherwise at the Commission's request), the Divestiture Trustee shall provide the Commission with a comprehensive monthly report written in English on the progress of the divestiture process. Such reports shall be submitted within 15 days after the end of every month with a simultaneous copy to the Monitoring Trustee and a non-confidential copy to the Notifying Party.

III. <u>Duties and obligations of the Parties</u>

29. Each Party shall provide and shall cause its advisors to provide the Trustee with all such cooperation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of the Notifying Party's or the Divestment Business's books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments and the Notifying Party and Sara Lee (to the extent these are in its sole control or possession) shall provide the Trustee upon request with copies of any such document. The Notifying Party shall make available to the Trustee one or more offices on their premises (or at the premises of the Divestment Business) and the Notifying Party and Sara Lee shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.

30. The Parties shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Divestment Business. This shall include all administrative support functions relating to the Divestment Business which are currently carried out at headquarters level. The Notifying Party shall provide and shall cause its advisors to provide the Monitoring Trustee, on request, with the information submitted to potential Purchasers, in particular giving the Monitoring Trustee access to the data room documentation and all other information granted to potential Purchasers in the due diligence procedure. The Notifying Party shall inform the Monitoring Trustee on possible Purchasers, submit a list of potential Purchasers, and keep the Monitoring Trustee informed of all developments in the divestiture process.

31. The Notifying Party shall grant or procure Affiliated Undertakings to grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to effect the sale, the Closing and all actions and declarations which the Divestiture Trustee

considers necessary or appropriate to achieve the sale and the Closing, including the appointment of advisors to assist with the sale process. Upon request of the Divestiture Trustee, the Notifying Party shall cause the documents required for effecting the sale and the Closing to be duly executed.

32. The Notifying Party shall indemnify the Trustee and its employees and agents (each an "**Indemnified Party**") and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to the Notifying Party for any liabilities arising out of the performance of the Trustee's duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, negligence or bad faith of the Trustee, its employees, agents or advisors.

33. At the expense of the Notifying Party, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to the Notifying Party's approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should the Notifying Party refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard the Notifying Party. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 32 shall apply mutatis mutandis. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served the Notifying Party during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.

IV. Replacement, discharge and reappointment of the Trustee

34. If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a conflict of interest:

    (a) the Commission may, after hearing the Trustee, require the Notifying Party to replace the Trustee; or

    (b) the Notifying Party, with the prior approval of the Commission, may replace the Trustee.

35. If the Trustee is removed according to paragraph 34, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 19 to 24.

36. Beside the removal according to paragraph 34, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

SECTION F. THE REVIEW CLAUSE

37. The Commission may, where appropriate, in response to a request from the Notifying Party showing good cause and accompanied by a report from the Monitoring Trustee:

(a) grant an extension of the time periods foreseen in the Commitments, or

(b) waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments.

38. Where the Notifying Party seeks an extension of a time period, it shall submit a request to the Commission no later than one month before the expiry of that period, showing good cause. Only in exceptional circumstances shall the Notifying Party be entitled to request an extension within the last month of any period.

London, 2010	Downers Grove, Illinois, USA, 2010
……………………………………	……………………………………
duly authorised for and on behalf of Unilever	duly authorised for and on behalf of Sara Lee Corporation

EC102630058

ANNEX 1

The Divestment Business

The Divestment Business comprises the Sanex Business in Europe. Sanex is a strong, European-wide personal care brand focused on the promise of healthy skin, with a product range emphasising natural ingredients, hypoallergenic qualities and fewer additives ("Sanex: keeps skin healthy"). Sanex began as a shower gel brand in 1987, and was subsequently extended to bath foams, liquid soaps and bar soaps, deodorants, skin care, hair care and men's grooming. Consumers are understood to value Sanex for its efficacy and skin-friendly credentials.

ANNEX 2

Production

1. The table below shows the production arrangements for the Divestment Business. See paragraph 7.7 and Annex 7.6 of the Form CO for additional information on the parties' sourcing arrangements. [...]*.

Sanex sourcing arrangements – All categories

Brand	Product	Current Sourcing	Approx volume (units)	Capacity utilisation
[...]*	[...]*	[...]*	[...]*	[...]*
[...]*	[...]*	[...]*	[...]*	[...]*
[...]*	[...]*	[...]*	[...]*	[...]*
[...]*	[...]*	[...]*	[...]*	[...]*
[...]*	[...]*	[...]*	[...]*	[...]*
[...]*	[...]*	[...]*	[...]*	[...]*
[...]*	[...]*	[...]*	[...]*	[...]*
[...]*	[...]*	[...]*	[...]*	[...]*

2. Unilever is prepared to offer to the purchaser the following transitional arrangements as regards production:

   (i) [...]*;

   (ii) [...]*;

   (iii) [...]*.

3. In addition, Unilever will provide a copy of the specifications for the Sanex packaging moulds to the Purchaser (e.g. the mould for the Sanex upside down roll-on).

Advertising and communication

4. The Divestment Business will include existing Sanex advertising and communication materials in the EEA including existing advertising and communications currently in production for use in the EEA in relation to pipeline innovations.

5. The Purchaser can roll the Divestment Business into its own media arrangements, or negotiate a new contract with one of the many available media agencies. Unilever considers that [...]*.

6. As regards marketing of Sanex products via the internet in the EEA, ownership of the website and relevant domain names will transfer to the Purchaser.

Listings and customer relations

7. Customers, even those that form part of larger international groups, generally procure nationally.[1] Unilever will [...]*. Unilever will also [...]*. This process would be intended to [...]*.

[1] […] of Sara Lee Body Care's customers in the UK, […], purchase for the UK and Ireland together.

ANNEX 3

Sanex Trade Marks

[...]*

ANNEX 4

Sanex Business customers in Europe

[...]*

ANNEX 5

Key Personnel

1. Unilever will transfer to the Purchaser all personnel necessary to maintain the viability and competitiveness of the Divestment Business and with the aim to replicate, insofar as possible, the current operations of the Divestment Business. Any transfer is subject to the consent of the relevant employees.

2. This will include: (i) all personnel dedicated to the Divestment Business; and (ii) in relation to the local "go-to-market" businesses where personnel relate to, but are not dedicated to, the Divestment Business (i.e. are shared with the Retained Business), a proportion of such personnel. The proportion of personnel to be transferred with the Divestment Business will be determined based on the proportion of turnover the Divestment Business represents of the whole business to which the relevant personnel are dedicated. Central support functions (procurement, distribution, manufacturing etc) will not be transferred.

3. Personnel to be transferred with the Divestment Business are described in more detail below:

   - [...]*.
   - [...]*.
   - [...]*.
   - [...]*.
   - [...]*.
   - [...]*.

4. The Divestment Business will be managed by a General Manager (the Hold Separate Manager) reporting to the Monitoring Trustee. The national organisation in each country will have a commercial director (the most senior key account manager) who will report into a central team which supports the General Manager in key functions.

5. The precise number of personnel the above would comprise, would need to be discussed and agreed with the Monitoring Trustee and the proposed Purchaser in light of all the relevant information. However, Unilever estimates that Key Personnel would comprise [...]*.

Technical Annex: Demand estimation and merger simulation

1 Non-technical summary

1) The Annex provides the details and results of the merger simulation model the Commission implemented and reported on in the Statement of Objections in the assessment of the Unilever/Sara Lee transaction. CRA, on behalf of Unilever, responded to the Statement of Objections' model by putting forward a range of critiques. The Annex summarises both these critiques and the further robustness checks that that have been carried out in order to address the issues raised by CRA.

2) The Statement of Objections presented an economic model, developed by the Commission's team, to predict the likely impact of the Unilever/Sara Lee transaction on the deodorant markets. The model has two components. The demand side describes how consumers chose a deodorant product. The supply side describes how producers chose their prices. The two sides are interlinked and define a static market equilibrium.

3) For the demand side, the so called one-level and two-level nested logit models were used. The one-level model postulates that consumers view the products with male proposition as more similar to each other than to non-male products, and non-male products are perceived to be more similar to each other than to male products. The two-level model is a refinement of the one-level structure. In this latter model, consumers perceive products with the skin friendly proposition as closer substitutes than others within the male or non-male markets.

4) The strength of demand substitution within and across these segments and subsegments can be estimated using standard econometric techniques. For this purpose, the Commission used detailed product level scanner data by Nielsen for four countries, Belgium, the Netherlands, Spain, and the UK. For each country, separate estimations have been made, both with the one-level and two-level nested logit models.

5) On the supply side, the model assumes that producers compete by setting their products' prices while viewing demand as described by the estimated model. This defines a standard, static Bertrand-Nash market equilibrium.

6) The model can be used to simulate post-merger prices by assuming that after the merger the merging brands are priced by the same firm, while they were competing with each other pre-merger. The elimination of competition between them creates an incentive to increase prices. The predicted price increase is obtained by comparing the model's post-merger market equilibrium to the prevailing pre-merger equilibrium.

7) The model's predicted price increase should be interpreted as a permanent shift in the price level. As a result of normal competitive interaction in the market, the observed prices can fluctuate around this price level. Even in the absence of mergers, the data might show significant price changes from period to period. These "regular" changes might continue to occur after the merger but around an elevated mean price level. The model's predictions attempt to quantify how much higher the average price level would be as a result of the merger.

8) **According to the main results reported in the Statement of Objections**, the predicted overall price effects for the non-male market price increases around 6% in Belgium,[1] 5-6% in the Netherlands,[2] 2% in Spain,[3] and about 4% in the UK.[4,5] The main source of these average price increases arise from the incentives to increase Sanex prices, which are predicted to go up substantially (over 10%). In Spain, however, the Sanex price increase is expected to be smaller (5%). Unilever's brands show a more moderate but still significant price increase. The results were also subjected to several robustness checks in the Statement of Objections.[6]

9) The model was also used to calculate the compensating marginal cost efficiencies. These are the percent drops in the merging brands post-merger marginal costs with which the merging parties would not raise their prices. The implied average required efficiencies are 15-22%, 20-22%, 6-7%, and 8% for Belgium, the Netherlands, Spain, and the UK, respectively.

10) The Statement of Objections also emphasised that the model had several limitations due to the necessary restrictions in its assumed structure. Though these restrictions are standard in the economic literature of merger simulation, they constrain the results' possible scope of interpretation. In particular, the simulation results are best thought of as static, short run price effects, which do not take into account some possible other factors (entry, product repositioning, or retailer buyer power). Many of these other factors are dynamic and only exert their full effect on the long run. Given the time frame of the investigation, it would have been prohibitively complex to introduce them into such a model. Their assessment must be carried out by using the other qualitative and quantitative evidence on file.

11) Nevertheless, according to the Statement of Objections' conclusion the modelling exercise does significantly increase the overall reliability of the Commission's assessment. The models' predictions are based on the processing of, and extrapolation from, tens of thousands of case relevant observations, which themselves represent aggregations of millions of consumer transactions. The value of the econometric estimations and merger simulations lies in the attempt to take on board the information content of this massive set of consumer data.

12) The model's results can also be used to help the market definition stage of the investigation. In particular, SSNIP tests of the gender segments (male/non-male) were run to see whether they can be separated in an anti-trust sense. These simulations show that the profits of a hypothetical monopolist of the male (non-male) segment would increase if the prices of all male (non-male) deodorants increased by 5%. Hence, the separate anti-trust market result of the market investigation is supported.

---

[1] With a 90% confidence interval of [2.6, 13.5]%.

[2] With a 90% confidence interval of [1.1, 9.8]%.

[3] With a 90% confidence interval of [0.2, 5.9]%.

[4] With a 90% confidence interval of [2.5, 6.0]%.]%.

[5] The overall deodorant category (male and non-male combined) price increases were around 5% [1.9, 9.8], 4% [1.7, 6.1], 2% [0.4, 6.2], and 2.5% [1.4, 3.8] for Belgium, the Netherlands, Spain, and the UK, respectively.

[6] See Technical Annex for more details.

13) It should be noted, however, that these model based SSNIP tests alone are insufficient to define anti-trust markets. Market delineation can only be carried out by carefully examining and taking into account the other pieces of available evidence. In particular, the results of the market investigation (among others questionnaires, interviews, descriptive statistics) must play a crucial role in the market definition exercise.

14) **CRA's response to Statement of Objections** (as part of Unilever's reply to Statement of Objections) criticises the Commission's model on several counts. First, CRA emphasises that the restrictions the nested logit model put on the data make it unsuitable for evaluating the transaction's likely effects. Second, CRA argues that the chosen estimation methodology (instrumental variables estimation) is not appropriate as the available instrumental variables are weak. Third, according to CRA the model's limitations in describing the vertical relationship between retailers and producers reduces its capability of predicting the price effects of the merger.

15) **The Commission's assessment of CRA's critique** has involved carrying out further robustness checks, as well as reemphasising the Statement of Objections' stand on the proper, cautious interpretation of the results. The robustness checks have included modelling refinements (along the lines suggested by CRA) and re-estimations, implementation of weak instrument robust parameter tests, and cost calibration exercises. The results have shown that (i) the estimation/identification methodology, within the framework of the models used, is reliable; and (ii) if the results change due to the modelling refinements the direction of change is upwards: the predicted price increases are higher than those of the Statement of Objection.

16) **Overall**, the final assessment of the modelling is that the estimated price effects of the Statement of Objections are robust and most likely conservative in the sense that they do not over predict the likely price effects of the transaction. Still, because of the statistical and modelling uncertainty, which is inevitable in such exercises, the interpretation has to be cautious, and the results should be nested into the collection of other qualitative and quantitative evidences that is available.

2 Data

17) Three sources of data have been available for modelling purposes. First, Unilever has provided retail scanner data, produced by Nielsen, for several countries. Scanner data is gathered in supermarkets by the cashier's scanner device when a consumer pays for the purchased products. The detailed, store and transaction level data is typically aggregated into either supermarket chain, region, or country level by Nielsen. The Commission has used country level datasets for the models of this Annex. Data for four countries, Belgium, the Netherlands, Spain, and the UK, have been used in the estimations.

18) The data are on the individual product (stock keeping unit, SKU) level, and cover 2006-2009 on a weekly basis.[7] An SKU represents a specific variant of a given deodorant brand (e.g., with a given sub-brand/variant, size, fragrance, format, etc,). Each brand can have dozens of SKUs, and in the typical dataset there are about a total of one thousand SKUs per country.

[7] Belgium, the Netherlands, and Spain: from end of 2006 to end of 2009; the UK: from early 2008 to early 2010.

For each SKU, the following variables are observed: the total value and volume of sales, the number of units sold, and also some product characteristics (size, gender proposition, format, and, in some cases: subbrand).[8] For the estimations, the data have been aggregated to quarterly level.[9] The price variable has been constructed as sales per quantity (euro per litre).[10]

19) Second, Unilever has also provided its classification of the scanner data SKUs along further dimensions of product differentiation. These additional data have been used to construct indicator variables of fragrance, anti-perspirant, and efficacy products, also indicators of products with the skin friendly, no-white-mark, or hair minimising propositions, as well as products targeted to teenage girls.

20) Third, Unilever and Sara Lee have also submitted their own (separate) internal transaction data. These data track the companies' sales to their customers, mostly retailers. The data cover 2007-2009 on a monthly basis on a detailed product level (brand, subbrand, gender, format, size). The observed variables include the value of sales, volume of sales, gross profits, and gross profit margins.

3 Demand estimation

3.1 One-level nested logit model

21) To estimate the demand side of the model, the Commission has used the so called nested logit model. The nested logit model belongs to the family of discrete choice models.[11] Discrete choice models assume that consumer decisions to purchase products depend on both the price and the characteristics of the products. In this way, they capture the key feature of product heterogeneity in consumer goods markets, namely that products are differentiated not only by price but also along other qualitative or quantitative attributes. For example, deodorants can be differentiated by their size, format, gender proposition, degree of skin friendliness, etc. In these models, the consumer evaluates the different products as different "portfolios" of characteristics and chooses that one which yields the highest utility (the highest subjective value).

22) The nested logit model takes into account the fact that certain products are more similar than others, and hence are more likely substitutes than others. For example, deodorants with the male proposition are more likely to be closer substitutes with each other than with female deodorant products.

23) The products are grouped into a few sets or "nests". The nests represent the gender proposition of deodorants: These two nests are the groups of male and non-male products.[12]

[8] The data also includes the value and/or volume and/or units of sales on promotion.

[9] Incomplete quarters have been dropped.

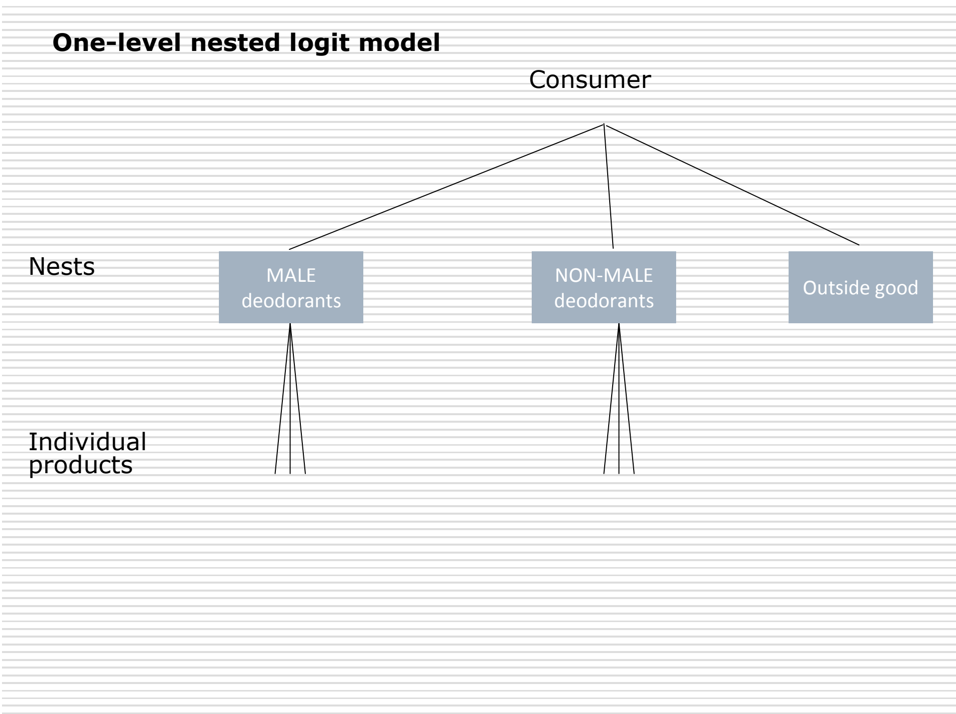
[10] For Belgium, the scanner data on the value of sales do not include the reductions due to coupons.

[11] See, e. g., McFadden (1981).

[12] A given product can only belong to one nest.

This allows the degree of substitutability between products belonging to the same gender category, or nest, to be stronger than the substitutability between products with different gender proposition. This means that a particular consumer who chooses a particular product (e.g., a Rexona for men deodorant) is more likely to choose from products with the same gender proposition (male, in the example) if there is a rise in the first choice product's price. The model also allows the consumer not to purchase a deodorant at all, and this is represented by the presence of the outside good. The consumer decision tree is shown in Figure 1.

Figure 1 One-level nested logit structure of consumer preferences (nests by genders)



3.1.1 Utility specification

24) More formally, the model assumes a specific form for the utility of the consumer. Product j belongs to group (nest) g. In this one-level nested logit model there are three groups: male, non-male, and the outside good. The utility of consumer i from purchasing product j is

$$u_{ij} = \delta_j + \varepsilon_{ig} + (1-\sigma)\varepsilon_{ij}, \qquad \textbf{(1)}$$

where the first term, δ_j, is the mean valuation of product j, which is common to all consumers. It is a function of the product's retail price, p_j, a vector of observed characteristics (size, gender, format, etc.), x_j, and an error term reflecting unobserved product characteristics, ξ_j:[13]

$$\delta_j = -\alpha p_j + \beta x_j + \xi_j .$$

[13] The unobserved characteristic is something not observed in the data. However, the consumer can observe it.

25) The second and third terms in the utility formula, ε_{ig} and ε_{ij}, are random variables which represent consumer *i*'s deviation from the mean valuation of product *j*. ε_{ig} is the component of consumer *i*'s utility that is common across all products belonging to group *g*, and ε_{ij} is the component that is specific to product *j*.[14] The σ parameter, whose value is between 0 and 1, measures the correlation between the consumers' utilities across products belonging to the same nest. As the parameter approaches 1, the utilities of the consumers for the same nest products become nearly perfectly correlated, which implies that these products are viewed as very close substitutes. If $\sigma = 0$, there is no correlation between preferences in the same nest, and consumers are equally likely to switch to products in a different nest as to products in the same nest in the case of price increase. Hence, σ is a very important parameter governing the strength of substitution between different products. (The other important parameter is α which governs the overall price sensitivity of demand.)

26) It should be noted that this degree of substitutability is estimated from the data, by estimating the magnitude of σ. This means that the estimation allows the data to reject the assumption of different degrees of substitution across nests. For example, if the gender distinction is not a relevant one in the actual consumer decisions the estimation might reveal this if the estimated σ is zero, and the estimated substitution patterns will not be systematically different along the gender variable. Also, the fact whether the estimated α has the expected, positive sign can be thought of as a specification test of the model. Below the impact of the parameters on the predicted substitution patterns is discussed in more detail.

3.1.2 Elasticities

27) The model's description of the substitution patterns can be described by the implied price elasticities. The *own price elasticity* of a particular product gives the percent change in the sales quantity of the product as a response to a 1 percent increase in its price. The *cross-price elasticity* of the product with respect to another product, gives the percent change in the sales quantity of the product as a response to a 1 percent increase in the other product's price. In the case of the one-level nested logit there are two types of cross-price elasticities of interest, depending on whether the other product, whose price is changing by 1 percent, belongs to the same nest or not. In the former case, the cross-price elasticity is a *within nest cross-price elasticity*, while in the latter it is a *cross-nest cross-price elasticity*. Formally:

Own price elasticity:
$$\varepsilon_{jj} = \alpha p_j \left[-\frac{1}{1-\sigma} + \frac{\sigma}{1-\sigma} s_{j|\mathrm{g}} + s_j \right],$$

Within-nest cross-price elasticity:
$$\underset{\substack{j,k \in g \\ j \neq k}}{\varepsilon_{jk}} = \alpha p_k \left[\frac{\sigma}{1-\sigma} s_{k|\mathrm{g}} + s_k \right],$$

Cross-nest cross-price elasticity:
$$\underset{\substack{j \in g \\ k \in g' \\ g \neq g'}}{\varepsilon_{jk}} = \alpha p_k s_k ,$$

[14] The ε_{ig} and ε_{ij} terms are assumed to have a specific extreme value distribution, which gives rise to the elasticity formulas below. See, e.g., Cardell (1997).

where s_j is the share of product *j*'s quantity sold among all products ("market share"), and $s_{j|g}$ is the share of product *j*'s quantity sold among the products in its nest ("within nest share").

28) The elasticity formulas imply that the substitution patterns are governed by the two structural parameters α and σ. First, the higher is the overall price sensitivity of demand (the higher is α, which is supposed to be positive) the higher are the elasticities. Second, the closer is σ to 1 the higher are the within-nest cross elasticities relative to the cross-nest cross-price elasticities. This means that if preferences for products in the same nest are strongly correlated because these products are more similar to each other than to products from other nests, then consumers are more likely to respond to a price increase of a product by choosing another product from the same nest than from another nest. For example a high σ implies that a consumer of a Rexona for Women product, when faced with a strong enough price increase that convince her to switch to another product, will more likely choose another non-male deodorant, for example, Dove for Women, rather than a male proposition (Axe).

29) As the parameter σ is estimated from the data (along with the other parameters), the model is capable to detect whether there exists no (or only very weak) substitution between a mostly non-male oriented brand like Sanex and a distinctively male only brand like Axe.

3.2 Two-level nested logit model

30) The realism of the nested logit model can be further improved by introducing subnests within its nests. The underlying idea is essentially the same as that for the one-level nested logit model. If, within a given nest, the products can be further grouped into subgroups whose members are perceived by the consumers as more similar to each other than to other subgroups' products, this can be exploited to map more closely the substitution patterns of the consumers. These subgroups, or subnests, can be defined along some observed product characteristic. Models with this two-level, hierarchical nesting structure are called two-level nested logit models.

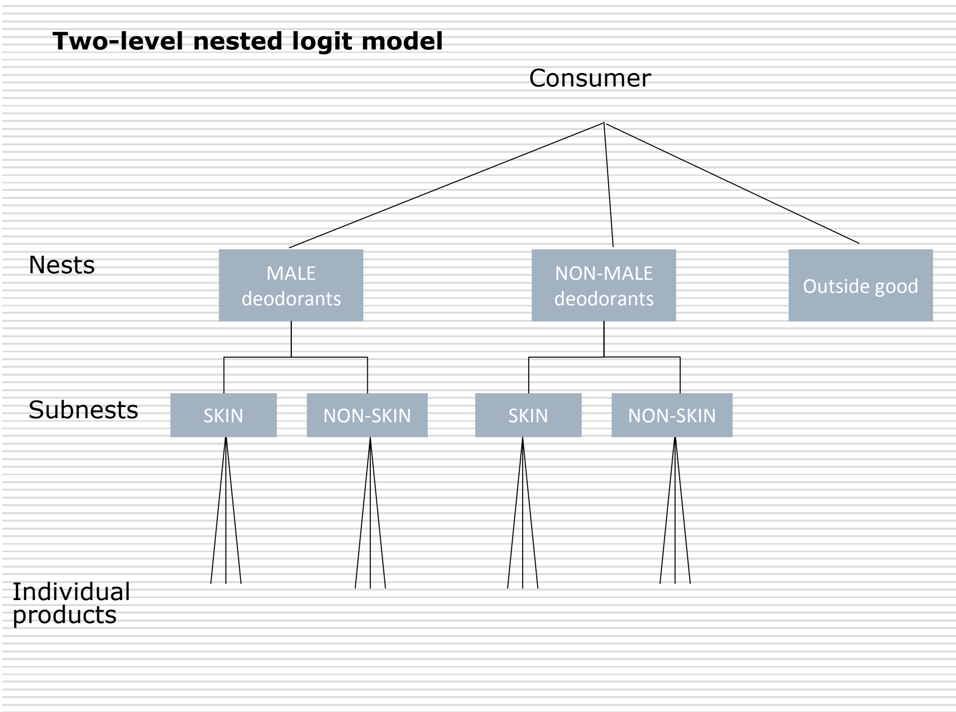
31) The two-level nested logit models of this Annex have used the skin friendly product characteristic to define the subnests. The skin friendly proposition of a product is a distinctive and important feature in the deodorant markets. Not all products have this proposition, and those possessing it (e.g., many Dove and Sanex products) target a specific group of consumers (typically people with more sensitive skin).[15] It is also important that skin friendliness of a deodorant emphasises the healthy nature of the product, as opposed to other products which rather emphasise efficacy (e.g., the typical Rexona product), or, even farther away from the skin subsegment, the strong and distinctive fragrance (e.g., Axe). Hence, it seems reasonable to give the model and the data the opportunity to identify whether skin friendly products are indeed closer substitutes to each other than to other products.

32) The introduction of subnests allows the degree of substitutability between products having the same gender and skin friendly proposition to be stronger than the substitutability between products with no specific proposition about skin friendliness or with different gender

[15] Note that, again, a given product can only belong to one subnest. That is, a product is either said to have a skin friendly proposition or to not have it specifically. The skin friendly variable observed in the data has this structure as it is a dummy variable whose value is 1 for skin friendly products and 0 otherwise.

proposition. So, for a consumer of a skin friendly deodorant the next best substitute, in case of a rise in the product's price, is more likely to be another skin friendly deodorant. The implied two-level consumer decision tree is shown in Figure 2.

Figure 2 Two-level nested logit structure of consumer preferences (nests by genders, subnests by skin proposition)



3.2.1 Utility specification

33) As before, the model assumes a form of the utility of consumer i from purchasing product j. Product j belongs to nest g and subnest h. The utility is given by

$$u_{ij} = \delta_j + \varepsilon_{ig} + (1-\sigma_g)\varepsilon_{ih} + (1-\sigma_h)\varepsilon_{ij}, \quad j \in h \subset g \qquad \textbf{(2)}$$

where the first term, δ_j, is again the mean valuation of product j common to all consumers, with the same composition as in the one-level case. The second, third and fourth terms are random variables which represent consumer i's deviation from the mean valuation of product j. ε_{ig} is the component of the consumer i's utility that is common across all products belonging to group g, ε_{ih} is the component common across products of subgroup h, and ε_{ij} is the component that is specific to product j.[16] The σ parameters have to satisfy the following inequality for the model to be consistent with utility maximisation: $0 \leq \sigma_g \leq \sigma_h \leq 1$. Similarly to the one-level case, these parameters are measures of the correlation between the consumers' utility across products belonging to the same nest (σ_g) and same subnest (σ_h). As the σ parameters approach 1, the utilities of the consumers for the same nest (subnest)

[16] The extreme value distributional assumptions can be found, again, in Cardell (1997).

products become nearly perfectly correlated, which implies that these products are viewed as very close substitutes. If $\sigma = 0$, there is no correlation between preferences in the same nest (subnest). If $\sigma_g = \sigma_h$ the two-level model collapses into a one-level nested logit model.

3.2.2 Elasticities

34) The interpretation of the own- and cross-price elasticities is mutatis mutandis the same as in the one-level nested logit model. Note that in the two-level model there are three types of cross-price elasticities of interest, depending on whether the other product, whose price is changing by 1 percent, belongs to the same nest and subnest, to the same nest but different subnest, or to a different nest. In the first case, the cross-price elasticity is a *within subnest cross-price elasticity*, in the second it is a *within-nest cross-price elasticity*, and in the third it is a *cross-nest cross-price elasticity*. Formally:

Own price elasticity:

$$\varepsilon_{jj} = \alpha p_j \left[-\frac{1}{1-\sigma_h} + \left(\frac{1}{1-\sigma_h} - \frac{1}{1-\sigma_g} \right) s_{j|\mathrm{h}} + \frac{\sigma_g}{1-\sigma_g} s_{j|\mathrm{g}} + s_j \right],$$

Within-subnest cross-price elasticity:

$$\varepsilon_{\substack{jk \\ j,k \in h \subset g \\ j \neq k}} = \alpha p_k \left[\left(\frac{1}{1-\sigma_h} - \frac{1}{1-\sigma_g} \right) s_{j|\mathrm{h}} + \frac{\sigma_g}{1-\sigma_g} s_{j|\mathrm{g}} + s_j \right],$$

Within-nest cross-price elasticity:

$$\varepsilon_{\substack{jk \\ j \in h, k \in h' \\ h,h' \subset g \\ h \neq h'}} = \alpha p_k \left[\frac{\sigma_g}{1-\sigma_g} s_{j|\mathrm{g}} + s_j \right],$$

Cross-nest cross-price elasticity:

$$\varepsilon_{\substack{jk \\ j \in g \\ k \in g' \\ g \neq g'}} = \alpha p_k s_k,$$

where s_j is the market share of product j, $s_{j|g}$ is the within-nest share of product j, and $s_{j|h}$ is the within nest share of product j.

35) The two-level nested logit model's elasticities show even more structure than in the one-level case. Products belonging to the same subnest are the closest substitutes, the next closest substitutes are the products in the same nest, and finally the least substitution is assumed among products from different nests. As before, the extent of these differences is governed by the preference correlation parameters (the two σs). These parameters, in turn, are estimated from the data. Hence, the model and the data are able to identify whether (i) the assumed structure is valid (whether α has positive sign and the σs satisfy the inequality restrictions set above), and, if so, (ii) how strong is the difference between the strength of substitution between the different types of products. The two-level model is encompassing the one-level model but offers more flexibility.[17]

[17] For empirical applications of the two-level nested logit model, see, e. g., Goldberg and Verboven (2001), Ivaldi and Foncel (2005), and Verboven (1996). These studies, similarly to the estimations in this Annex, use market level data. Goldberg (1995) estimates three-level nested logit models on household level data using maximum likelihood estimation.

3.3 *Flexibility choices and the logit family of discrete choice models*

36) As noted above, the nested logit model belongs to the wider family of discrete choice models. At one extreme of this range of models is the simple logit model. The other extreme is the full random coefficient logit model.[18] In the simple logit model, an individual consumer's valuation of any product has no systematic deviation from the mean valuation. In this case, the utility of consumer i for product j is the following:

$$u_{ij} = -\alpha p_j + \beta x_j + \xi_j + \varepsilon_{ij} = \delta_j + \varepsilon_{ij},$$

where ε_{ij} is an extreme value distributed random unobserved error term. In the full random coefficient logit model all parameters have an individual specific component (this is represented by the i subscripts of the parameters in the utility):

$$u_{ij} = -\alpha_i p_j + \beta_i x_j + \xi_j + \varepsilon_{ij} = \delta_j + \mu_{ij} + \varepsilon_{ij},$$

where μ_{ij} is a known function of the product characteristics x_j and p_j, and the consumers observed characteristics, as well as some parameters. To see the consequence of the difference between the two utility specifications, it is best to look at the implied elasticities. For the simple logit model these are:

Own price elasticity: $\varepsilon_{jj} = -\alpha p_j (1 - s_j),$

Cross-price elasticity: $\underset{j \neq k}{\varepsilon_{jk}} = \alpha p_k s_k.$

37) Note that the cross-price elasticity is proportional to the market share of product k. This implies that if there is an increase in the price of a given product, and consequently sales of the product are decreasing, the other product which will pick up the most from these lost sales is the one with the highest market share. This is regardless of the product characteristics of this target product. This feature of the model is called the IIA property in the literature.[19] So, the simple logit model implies for instance that if the price of Sanex for Women goes up, a lot of consumers will switch to Axe simply because this product has a large market share. This unrealistic prediction follows entirely from the assumptions of the simple logit model.

38) In contrast, the elasticities of the full random coefficient logit model are:

Own price elasticity: $\varepsilon_{jj} = -\frac{p_j}{s_j} \sum_i \alpha_i s_{ij} (1 - s_{ij}),$

Cross-price elasticity: $\underset{j \neq k}{\varepsilon_{jk}} = \frac{p_k}{p_j} \sum_i \alpha_i s_{ij} s_{ik},$

where s_{ij} is the probability that consumer i purchases product j. The cross-price elasticities are no longer proportional to the target product's market share. In particular, the model allows that if the price of a product goes up consumers are more likely to switch to brands with

[18] See more on this family of models in, e.g., Berry (1994).

[19] Independence of Irrelevant Alternatives. See, e.g., McFadden (1981).

similar characteristics rather than to the most popular (highest market share) product. In other words, the model does not have the IIA property.[20]

39) The fundamental trade-off between the simple logit model and the full random coefficients logit model is that while the former is very restrictive in its assumed substitution patterns but relatively easy to implement and estimate, the other provides a theoretically appealing flexible substitution structure but is very complex to estimate. The simple logit model can be estimated by simple linear estimation techniques, whereas estimation of the full random coefficients logit model requires the implementation of a simulation based, non-linear GMM estimator.[21]

40) This trade-off is crucial, and especially in the practice of competition policy analysis. Here, the available time for the preparation of econometric analyses is very limited, especially when compared to the more traditional academic type research work. Also, there is greater than usual emphasis on the robustness of the results – and the outcome of a more complicated model and estimation algorithm, especially if the latter involves non-linear optimisation, is more "fragile". This makes the flexibility/complexity choice particularly difficult.

41) The nested logit model lies in-between the simple logit and the full random coefficients logit models, both in terms of estimation complexity and the degree of flexibility allowed in the substitution patterns. In fact, the nested logit model can be shown to be a specific random coefficients logit model, which has consumer specific parameters on the group-specific dummy variables which define its nests.[22] The utility function can be written as

$$u_{ij} = -\alpha p_j + \beta x_j + \gamma_i z_j + \xi_j + \varepsilon_{ij} = \delta_j + \gamma_i z_j + \varepsilon_{ij},$$

where z denotes the set of dummy variables defining the nests. Using the distributional assumptions explained by Cardell (1997) and the derivations in Berry (1994), it can be shown that this specification, while resembling the full random coefficients logit utility function, leads to a standard linear instrumental variables estimation equation.

42) The nested logit model does not have the overall IIA property: Substitution is not driven purely by the overall market shares; rather, substitution is more likely between similar products. However, within a given nest the one-level nested logit model does assume that cross-substitution is proportional to the within-nest shares of products (there is IIA within the nest). The two-level nested logit model relaxes this assumption and postulates that substitution is proportional to relative shares only within the subnests.

43) The loss of flexibility is higher the larger is the set of products among which the share-proportional substitution (IIA) is assumed. This loss is the highest for the simple logit model, and the smallest (zero) for the full random coefficients logit model. In the nested logit model, the loss of flexibility is limited. Within a nest the IIA assumption is less restrictive than for all

[20] See more on the comparison of the different models in, e.g., Nevo (2000).

[21] On the estimation complexity of the full random coefficient logit model see Berry, Levinsohn, and Pakes (1995).

[22] See Berry (1994), and Cardell (1997).

products. For the two-level model the loss is further reduced, as the assumption of share-proportional substitution is only postulated within each subnest.

44) The question of closeness of substitution can be formulated as a ranking problem. The simple logit model ranks the products by their overall market shares, and postulates that for each product the closest substitute is the product with the highest market share, the second closest is that with the second highest share, etc. The one-level nested logit model takes two rankings: one is based on the overall market share as before, and the other is on the within-nest shares. The ranking of substitution for a product in a particular nest is given by the weighted average of the two rankings, and the higher the σ parameter the higher the weight on the within-nest share based ranking. The weighting formulas can be seen in the expressions of the cross-price elasticities. The resulting ranking might be different from the pure market share based one. The two-level nested logit model considers three rankings (based on the overall market shares, the within-nest-, and the within-subnest shares), and weights them using the two σ parameters. When the weight parameters are estimated, it is the data that determines which mix of the basic rankings has the best fit. Hence, the flexibility of the nested logit models is that they allow a choice from, and mixing of, several rankings; their restriction is that they allow this choice only from a limited number of rankings. But in the simple logit model there is no such choice at all.

45) Indeed, it is a very restrictive assumption that most switching consumers who formerly purchased a skin friendly Sanex for Women deodorant would most likely choose Axe simply because the latter has the highest market share among *all* deodorants (simple logit). Axe is targeted for an entirely different consumer group, young males, than the target group of skin friendly female deodorants. It is already less unreasonable to assume that the same switching consumers' most likely choice would rather be the most popular *female* product (one-level nested logit). The gender proposition of these products is the same, though it is true that the most popular female product might not necessarily have the important skin friendly proposition. Finally, it does not seem unreasonable at all to assume that the best alternative of these consumers would be the *skin friendly female* deodorant with the highest share (two-level nested logit).

46) If the nesting principles capture the most important dimensions of product differentiation the nested logit models yield a significant degree of flexibility. Especially the two-level specification can offer a reasonable compromise in the flexibility/complexity trade-off against the full random coefficients logit model.[23]

[23] A final remark is in order about the non-discrete choice models of demand for differentiated products. A popular alternative is the Almost Ideal Demand System model (AIDS), introduced by Deaton and Muellbauer (1980). The demand function in this case is derived from the expenditure minimisation problem of the consumer. Demand elasticities are in principle not restricted, the specification is flexible in terms of the permitted substitution patterns. The model contains, however, a large number of parameters to be estimated. In the pure, unrestricted form of the model the number of parameters increases more than proportionally with the number of products. Not independently from this, the parameter estimates are often very imprecise and the implied cross elasticities are often negative. To partially remedy this, the model in practice is typically estimated on the more aggregated brand level, and not on the SKU product level (like the nested logit models of this Annex). To capture the important differences of products *within* a brand, sometimes a multi-stage budgeting model is specified (Hausman et al., 1994, Hausman and Leonard, 1997). Here, one has to first define groups of products (similarly to the nests in the nested logit model) and than postulate a more restricted substitution pattern between the groups. Within-group demand is modelled using a simple AIDS. Hence, the AIDS model based demand estimations substitutes the estimation complexity with either a number of parameters problems and their consequences, or

3.4 *Econometric specification*

47) As described by Berry (1994), (1) and (2) can be turned into estimating equations. This equation for the one-level nested logit model is:

$$\ln s_{j,t} - \ln s_{0,t} = -\alpha p_{j,t} + \sigma \ln s_{j|g,t} + \beta x_{j,t} + c_j + c_t + \xi_{j,t}, \quad \textbf{(3)}$$

and for the two-level model:

$$\ln s_{j,t} - \ln s_{0,t} = -\alpha p_{j,t} + \sigma_h \ln s_{j|h,t} + \sigma_g \ln s_{h|g,t} + \beta x_{j,t} + c_j + c_t + \xi_{j,t}, \quad \textbf{(4)}$$

where s_0 is the share of the outside good, $s_{j|g}$ is the share of good j in nest g, $s_{j|h}$ is the share of good j in subnest h, and $s_{h|g}$ is the share of subnest h in nest g. The variables are indexed by t which denotes the time period (quarter) of the observations. Product and time fixed effects are added and are denoted by c_j and c_t, respectively. Finally, the unobserved product characteristic, ξ_j, is the econometric error term.

48) The set of characteristics includes the product size, dummies for the skin friendly, fragrance, anti-perspirant, no-white-mark, girl, and in some countries the hair minimising propositions of the product, as well as dummies defining the gender proposition (male, non-male) and format (spray, roll-on, stick, vaporiser, cream, and wipe) of the product.

49) The price and share variables on the right hand side of the equations might be correlated with the error term, resulting in an endogeneity problem. To control for this, instrumental variables estimation techniques have to be used. Berry, Levinsohn, and Pakes (1995, BLP) show that functions of the vector of the other products' characteristics, x', can be used as instruments for a given product's price and relative shares. The justification for this is that the characteristics, at least in the short run, can be assumed to be exogenous and still correlated with the endogenous variables. The reason for this correlation is that in an oligopoly structure the endogenous variables are determined by the competitive interactions with the products of the other firms. Thus, the characteristics of the rival products influence the price and share of the product. In particular, functions of the rival products' characteristics can be thought of as isolation indices of the given product, measuring the "thickness" or "density" of the product space and, hence, the competitive environment surrounding the product.

50) The BLP instrumenting principle generates a large set of candidate instruments. To choose the set of actual instruments, standard instrument specification tests have been used (set tests: first stage F-tests of relevancy, rank test, Hansen overidentification test; individual instrument tests: redundancy and difference-in-Hansen tests).

51) To determine the market share of the outside good, s_0, the approach outlined by Ivaldi and Verboven (2005) has been followed. This amounts to first specifying a "potential market factor", τ, and then the total size of the market is determined by multiplying the total sales of all the (inside) products in a given country/quarter pair by the potential market factor: $N = \tau * Q_{ct}$. The market shares are determined as $s_j = q_j / N$ *and* $s_0 = (N - Q_{ct})/N$. The results presented in this Annex have been generated with $\tau = 4$. Subsequently, the robustness of the results has been checked by specifying different values. It should be noted though that the

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with some aggregation, or with a combination of the two. All in all, these models, when properly specified and estimated, can offer a reasonable alternative to discrete choice models, though not an unambiguously superior one.

potential market factor should not be very high in the case of deodorant markets, as these can be characterised as rather mature, with high levels of overall penetration.

52) Summarising the estimation, to control for the endogeneity problem and to exploit the panel structure of the data the standard two-step generalised method of moments first difference (GMM-FD) estimator has been used. The standard errors are heteroscedasticity and cluster robust, where the clustering is on the cross-sectional units (SKUs-products) to control for the potential time wise correlation of the error terms. In addition, the correction described by Windmeijer (2005) has also been applied to the variance-covariance matrix of the estimates to control for the potential finite-sample bias of the two-step GMM estimator's standard errors. Finally, it should be noted that all the observed product characteristics, with the exception of the price and shares, are constant over time. This implies that the utility function's parameters associated with these characteristics (represented by the coefficient vector β) cannot be identified in a first difference estimation. Hence, these parameters are recovered by running an auxiliary OLS regression of the GMM residuals on the product characteristics. Note also that these parameters do not affect the main outcomes of the demand side estimation (elasticities and diversion ratios), nor the merger simulation results.

4 Supply side and equilibrium

4.1 The competition assumption

53) The supply side of the model is specified as a standard oligopolistic competition of manufacturers. Using this structure it is possible (i) to combine the supply side and the estimated demand function to uncover the premerger marginal costs, and (ii) to make a prediction of post-merger prices.

54) Each firm is assumed to have a portfolio of products, J^f.[24] The total variable profits of firm f are given by the sum of profits for each product in its portfolio:

$$\Pi_f(p) = \sum_{j \in J^f} (p_j - mc_j) q_j(p),$$

where p is the vector with the prices of *all* products in the given country/quarter pair, mc_j is the constant marginal cost of product j, and $q_j(p)$ is the estimated demand function of product j. The product level demand function gives the purchased volume of product j when the prevailing price vector in the given country/quarter pair is p. The demand function has also the product characteristics and the estimated demand parameters as its arguments. The function can be recovered from the estimating equations (3)-(4).

55) The profit-maximising price of each product must satisfy the following first-order condition:

$$q_j(p) + \sum_{j' \in J^f} (p_{j'} - mc_{j'}) \frac{\partial q_{j'}(p)}{\partial p_j} = 0.$$

[24] For some smaller brands in the data, the identity of the producer is not observed (the manufacturer variable shows "other"). In the estimation and simulation it has been assumed that each of these products are produced by a separate, independent producer.

56) According to this first-order condition, a price increase of product j has three effects on profits. First, it directly raises profits, proportional to current demand, $q_j(p)$. Second, it lowers the product's own demand which decreases profits proportional to the current mark-up, $(p_j - mc_j)$. Third, it raises the demand for the other products, which also include the firm's other products. This rise in the demand of the firm's other products in its portfolio partially compensates for the reduced demand of the firm's product j, and hence this has a positive effect on the firm's profits.

57) If each of the J products that are present in the given country/quarter pair satisfy its respective first-order condition then the price vector p defines the Nash-Bertrand equilibrium of the overall market. To write formally the equilibrium, first define the product ownership matrix, Θ, as a JxJ block diagonal matrix, whose element in its row i, column j is equal to 1 if product j and i are produced by the same firm pre-merger. Let $q(p)$ be the Jx1 demand vector, and $\nabla(p) \equiv \partial q(p)/\partial p'$ the corresponding JxJ Jacobian matrix of first derivatives, and finally mc the vector of marginal costs. Then the system of first-order conditions can be written as

$$q(p) + \left(\Theta \bullet \nabla(p)'\right)(p - mc) = 0,$$

where ● denotes the element-by-element multiplication of two matrices of the same size. Inverting this equation yields an expression of the Bertrand-Nash equilibrium price vector:

$$p = mc - \left(\Theta \bullet \nabla(p)'\right)^{-1} q(p). \qquad \textbf{(5)}$$

58) The first element is the marginal cost component of the equilibrium price, while the second is the markup. The markup depends on the own- and cross-price elasticities of demand. The lower the own-price elasticities and the greater the cross-price elasticities, the greater will be the mark-up over marginal cost.[25]

59) Given the observed pre-merger prices and the estimated demand elasticities, equation (5) can be rearranged to get the vector of pre-merger marginal costs, mc^{pre}. The model is able to recover these marginal costs because of the profit maximisation assumption and the assumption that demand can be described by the estimated demand model. If these assumptions hold, each firm has set the prices of all of its products to maximise its total variable profit. Any deviation from these equilibrium prices would decrease the profit of the firm. Hence, the implied optimal markup, which is a function of prices and the estimated demand function, can be used to back-calculate the marginal costs.

60) Note that in this supply model the retailers are passive. They have either zero markup, or a fixed markup which then is treated by the price setting manufacturers as a cost component. Hence, the implied marginal cost is composite, and includes both the wholesale and retail marginal costs. Thus the assumption of passive retailer behaviour is consistent with retailers having constant bargaining power to set a fixed markup.

[25] Note that it follows from the nested logit assumptions that the implied markups of a given firm are constant across products of the same nest in the one-level model, and across products of the same nest and subnest in the two-level model. See also Appendix A.

4.2 Merger simulation

61) Given these assumptions, the model can be used to predict the merger's price effects. It has to be taken into account that after the merger Unilever can treat the Sara Lee deodorant brands as members of its own product portfolio. Hence, in a profit maximising set up Unilever will take into account the effect on the profitability of *all* of its brands when contemplating to change the price of one of its products. If, for example, before the merger Unilever increases the price of one of its Dove products it would lose sales. Part of these lost sales would go to the Sara Lee brands. After the merger, when Unilever controls the Sara Lee brands, these sales would not be lost to Unilever. The more there is substitution between the Unilever and Sara Lee brands, the bigger price increase can be profitable.

62) Formally, given the implied pre-merger marginal costs, equation (5) can be used to calculate the post-merger price vector p^{post}. The only change that has to be made involves the product ownership matrix, Θ. For those elements of this matrix which refer to the Unilever and Sara Lee brands, the pre-merger 0 elements has to be changed to 1. This yields the matrix Θ^{post}, which thus includes the information that post-merger the Unilever and Sara Lee brands are controlled by one firm. With these notations, the post merger price vector must satisfy the following equation:[26]

$$p^{post} = mc^{pre} - \left(\Theta^{post} \bullet \nabla\left(p^{post}\right)' \right)^{-1} q(p^{post}).$$

63) Note that this simulation assumes that the merger does not bring any marginal cost efficiency. The equation can easily be modified to study the effect of a, for example, 5% reduction in the merging brands' marginal costs. Such an efficiency gain can partially, completely, or even more than compensate the merged entity's incentives to increase prices. Alternatively, it is possible to calculate the required level of marginal cost efficiencies, which ensure that there is no post-merger price increase.[27] This is equivalent to calculate the following marginal cost formula:

$$mc^{comp} = p^{pre} + \left(\Theta^{post} \bullet \nabla\left(p^{pre}\right)' \right)^{-1} q(p^{pre}).$$

where mc^{comp} is the level of compensating marginal costs. It is important that in this formula the prices are the observed, pre-merger ones, while the product ownership matrix is the post-merger version. Thus, the formula gives the levels of implied marginal costs which would be consistent with the current (observed) prices if the Unilever and Sara Lee brands were controlled by one firm.

4.3 SSNIP tests of the gender segments

64) The model can be used to complement the market definition stage of the investigation. In particular, SSNIP tests can be run.[28] For example in the test of the male segments, the

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26 On the method of solving the equation see Appendix A.

27 See also Werden (1996).

28 See EU Commission (1997).

objective is to find the effect of a 5% increase (SSNIP) in the prices of all male products on the total variable profit of the male segment. If such a price increase results in increasing profits the segment is predicted to be a separate anti-trust market from the other segment. Using the model's implied marginal costs, the implied margins can be calculated for any products and the pre- and post-SSNIP prices. The post SSNIP quantities can be found by solving the estimated demand equation at the increased price level. Finally, the margins and quantities can be used to calculate the implied total variable profits, pre- and post-SSNIP.

4.4 Limitations

65) Economic models tend to use strong assumptions. These involve restrictions both on the presumed behaviour of the modelled decision makers, consumers and firms, and on the mathematical functional forms used. These assumptions limit the models' ability to answer real world questions, and even those answers they provide must be taken with caution and interpreted in the context of the other qualitative and quantitative evidence available.

66) These other sources of evidence might be particularly useful in assessing those features of the markets which do not, or only in a very restricted way, play a role in the models. Especially in competition policy assessments, econometric and simulation models typically cannot be the only source of evidence. The results of the models have to be nested into the results of the more traditional market investigation (questionnaires, interviews, third party submissions, case studies, etc.).

67) A good first step in formulating the proper interpretation of the models' results is to list those possible extensions of the modelling framework which have not been implemented, either because of their complexity or the insufficient time available for investigation. Then, if possible, the direction of change in the results, which would have arisen if the more elaborated model had been used, has to be assessed. This assessment, however, is not always possible as the existing alternative models are not always comparable, or their results and specification might be too specific to the particular market or set-up where they had been applied. Finally, the likelihood and importance of the particular model limitation in the functioning of the investigated market has to be assessed.

68) The equilibrium model introduced in section 3 and 4 is a standard static oligopoly model of differentiated products. The extent of the restrictions on the demand substitution patterns have already been discussed above (see subsection 3.3), but there can be further elements on the demand side which might merit some consideration. For example, the storability of the products can have an effect on the estimated demand elasticities. Hendel and Nevo (2006) build a dynamic model of consumer choice which explicitly takes into account the storability feature. Consumers might rationally expect price promotions and postpone or bring forward purchase time, which then will not be aligned to consumption but rather to the best prices available on the market over time. The authors show, using scanner data on laundry detergents, that static models – which do not model this storability feature – tend to overestimate consumption elasticities and underestimate the price effects of mergers. In the case of deodorants, storability might be an issue as the product is not perishable and price (and non-price) promotions are very frequent.

69) To some extent, the problem of storability can be addressed without specifying a full structural dynamic model. As explained, the problem stems from the fact that the purchase

and consumption times might not coincide in high frequency (e.g., weekly) data. It follows that if the time period is defined more widely the two actions of the consumer might already happen in the same period. The purchase and consumption of a can of deodorant are more likely to happen in the same quarter than in the same week. Because of this reason, quarterly data seem more appropriate and thus this level of aggregation was used in the estimations.

70) On the supply side too, promotions can be further modelled. Though the proposed Bertrand pricing game captures price promotions, it does not describe non-price promotions like decisions about shelf display, end-of-aisle display, or features in distributed trade journals. Note that the main reason for the omission of these elements from the model in the present case is the lack of sufficient data on non-price promotions. For the case when such data is available, Tenn, Froeb, and Tschantz (2010) build a model with both price and promotion competition and show, on an estimation data from the super-premium ice cream market, that ignoring non-price promotions biases downward the model's prediction on the merger's price effect.

71) A further topic is entry/exit. In the Nielsen data, SKUs are often phased in and out and sometimes even brand level entry and exit events are observed. The estimation of the demand model of section 3 uses this data variation to identify the price sensitiveness of the consumers. According to a basic economic theory of normal goods, demand elasticities are increasing as the price increases.[29] At a higher price level of a given product the consumer is more price sensitive and is more likely to consider switching as a response to an additional price increase than at a lower price level. If entry is likely in a market and incumbent producers anticipate this, they will price in lower segments as compared to the case when entry events are rare and unexpected. This lower price level will affect the prevailing demand elasticities and, hence, the demand estimation results. Thus, on the demand side the estimation of the model is at least influenced, implicitly, by the effect of occurred entry events, as well as the effect of anticipated entries and the view of incumbents on the general likelihood of entry in the market.

72) The supply side model of section 4, however, does not take into account that a post-merger price increase might provoke entry. The introduction of entry and exit events into supply models is more data intensive, moreover entry models involve significantly larger computational complexity.[30] The explicit modelling of entry is most likely to result in lower implied price effects of a merger as the anticipation of credible and viable entry acts as a competitive constraint on the incumbent firm's pricing strategies. However, as explained in the Decision's general part on entry,[31] the likelihood of entry is limited by Unilever's deterrence strategies. Moreover, the merger is likely to increase Unilever's ability and incentive to deter entry.

[29] Note that this is a characteristic of the assumed demand function. The discrete choice models discussed in section 3, as well as the AIDS model, have this property. The log-linear demand specification, however, postulates that the elasticities are constant.

[30] For static entry models, good examples can be found in Bresnahan and Reiss (1991) and in Berry (1992). For dynamic approaches, see, e.g., Bajari, Benkard, and Levin (2007) and the references therein.

[31] Section IV.2.3.1.4.

73) The economic literature has made some attempts to model product repositioning, which can be thought of as a change in the existing products' perceived or objective quality. Gandhi, Froeb, Tschantz and Werden (2008) present a model which combines a simple logit demand with the Hotelling model of horizontal product differentiation where firms can choose their position on a line. The authors show that, with a specific pre-merger structure of positionings and with a limited number of firms, a merger might induce product repositioning which might reduce the incentives to raise price. It should be noted, however, that the results can hardly be considered as general, moreover there is a multiplicity of equilibria which might even render the model's predictions inconclusive. Other strategies are also possible. For example, having one more brand increases the efficiency with which third party brands can be attacked and/or potential entry can be deterred or "welcomed".[32] This might increase the merged entity's ability to increase price.

74) Finally, as explained in section 4 the pricing model assumes passive retailer behaviour which only allows retailers to set a fixed markup over the wholesale price, but they are assumed not to influence the price level in other ways. In a stream of papers, Villas-Boas and her co-authors (2005-2007) show that more elaborated models of the retailer-manufacturer relationship can be constructed. Villas-Boas (2007b) shows, for example, that using the more elaborated model results in higher estimated price effects of an upstream merger in the case of the coffee industry. The econometric identification of which side has the bargaining power, however, still seems a not fully resolved problem which warrants further research. In the specific case of the deodorant markets, the Decision's general part on countervailing buyer power explains[33] that there are several elements indicating a weak pre-merger buyer power, and that the merger is likely to increase further Unilever's bargaining position. The elements mentioned are the weak private label brands, Unilever's strong ("must have") brands, the customers' limited possibilities of switching supplier, and Unilever's stronger coverage of stores than those of competitors.

75) Overall, the model of section 3 and 4 provides a static equilibrium view of the markets, while the extensions tend to emphasise the possible dynamic factors. Hence, the model's result is best thought of as a prediction of the merger's static, short-run price effect. This short-run effect can emerge without the changes required for the dynamic factors (entry, repositioning etc.) to play their role. The necessary conditions – which enable the dynamic factors to show their full effect – need more time to build up. The assessment of the likelihood and strength of these factors is more involved and has to rely more on the qualitative evidence on file.

5 Results

5.1 Demand parameters, elasticities, and diversion ratios

76) Table 8 of Appendix B displays the one-level nested logit estimation results for the four countries. The two main structural parameters always have the expected sign and magnitude (the price coefficient, $-\alpha$, is negative, and σ is between 0 and 1), and are statistically

[32] On Unilever's "welcome package" see section IV.2.3.1.4 of the Decision.

[33] See section IV.2.3.1.4.

significant. The price coefficient in the case of Belgium is only statistically significant at the 10% significance level (p-value: 0.075). This might reflect the measurement error in the Belgian price data, which arises because the consumer coupons are not included in the sales value. The models provide a strong fit of the data and they pass the necessary instrument specification tests.

77) The two-level nested logit results, shown in Table 9 of Appendix B, are qualitatively similar. The additional restriction on the two σs (σ_h cannot be smaller than σ_g) is also satisfied. For Belgium and the UK, the estimates of σ_g are not statistically significant, even though the numerical values are well above 0. Note that for each country the two-level σs surround the one-level σ.

78) Table 10 of Appendix B presents the average own price elasticities for the main brands. The values for a given brand are in the same range across Belgium, the Netherlands, and the UK. Spain is an exception, here the own-price elasticities are significantly higher than in the other three countries. This might be a reflection of the stronger than usual presence and importance of private label deodorant products in Spain. The own price elasticities from the two-level model are similar to their corresponding one-level values. In the case of Belgium, the two-level nested logit elasticities are higher than the one-level estimates; for Spain the two-level elasticities are smaller than the one-level values; and for the Netherlands and the UK the discrepancy is quite small.

79) The pattern of substitution indicated by the own- and cross-price elasticities is best summarised by the diversion ratios. A diversion ratio between brand A and B measures the interaction between the two brands. If the price of brand A increases unilaterally, some of its consumers might stop buying it, resulting in a loss of sales for the brand. The higher is the own price elasticity the higher is the magnitude of the lost sales. The diversion ratio gives the percentage of brand A's lost sales that goes to brand B.

80) The diversion ratio can be thought of as a market share weighted version of the elasticities. There can be a strong cross-price elasticity between brand A and B, indicating that B's sales would go up if the price of A rose, but this is still not enough to conclude that B is exerting a strong competitive constraint on A. If B's market share is very small, B is less likely to be able to fill in sufficiently the hole in the market that result from A's sales loss. Hence, when assessing the elasticities the brands overall size must also be taken into account. This is captured by the concept of diversion ratios.

81) Table 1 and Table 2 show the diversion ratios of the one- and two-level models, respectively. A given column corresponds to a case when the price of the column's brand increases unilaterally. The brand's lost sales have been normalised to 100 lost consumers, this is represented by the value -100 in the diagonal position of each column. The other, non-diagonal, elements in the column are the percentages of the lost sales that go to the respective rows' brands.

82) Note that these figures are based on the full set of SKUs from each nest and subnest. For example, a given brand can have male and female versions. When in the table a price increase is considered for this brand, this means that all of its SKUs' prices are increased. The model can have different elasticity estimates on the product level and this is taken into account. Similarly, the brand which picks up some of the lost sales of the other brand can also have SKUs in different nests and subnests. These different SKUs might gain to a different extent

from the other brand's lost sale, and, again, this is properly taken into account in the calculations.

83) The implied[34] substitution patterns are consistent with the expectations. For example, in Belgium, according to the one-level model, if Axe loses 100 consumers due to a unilateral price increase, Nivea gains 31, Rexona 17, Dove and Sanex only 1 and 5 consumers, while the other, smaller brands still capture overall 21 consumers (first column). This postulates that Dove and Sanex are not very close substitutes of Axe. This is in line with expectations as Axe has a markedly different proposition than the other two brands.[35] The column of Dove implies that the brand has the strongest interaction with Fa and Rexona, Sanex being the third best substitute. Rexona's closest implied substitutes are Fa and Nivea, and Sanex is again the third. The column of Sanex indicates that Rexona and Fa are its closest substitutes, and Nivea and Dove are the third and fourth, respectively.[36]

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[34] As explained in subsection 3.3, the models' substitution patterns are partly estimated, partly assumed in a nested logit framework.

[35] Also, it is consistent with the Parties' view: *"The Sanex brand proposition does not compete closely with brands accounting for a significant proportion of Unilever's share of supply, most notably male orientated Axe,"* Form CO, p 31, para 6.40 (iii).

[36] *"Meaningful interaction is limited to just some of the Sara Lee and Unilever brands – Sara Lee's Sanex on the one hand and Unilever's Dove and Rexona on the other. However, even here there are points of differentiation. While Sanex shares a general skin caring proposition with Dove, Dove is focused more on active care in terms of moisturising for beautiful skin, whilst Sanex has a more "healthy skin" proposition aimed at avoiding skin irritation through natural ingredients."* Form CO, p 32, para 6.40 (iv).

Table 1 Diversion ratios (one-level nested logit model)

Belgium

	AXE	DOVE	REXONA	SANEX	FA	NIVEA	OTHER
AXE	-100	1	11	6	5	23	24
DOVE	1	-100	11	12	13	7	6
REXONA	17	22	-100	21	23	18	16
SANEX	5	16	14	-100	16	10	9
FA	6	21	18	19	-100	13	11
NIVEA	31	14	17	15	16	-100	19
OTHER	21	11	12	11	12	13	-100

The Netherlands

	AXE	DOVE	REXONA	SANEX	FA	NIVEA	OTHER	VASELINE
AXE	-100	1	13	4	10	18	8	0
DOVE	1	-100	13	17	14	10	16	15
REXONA	19	20	-100	18	17	17	19	18
SANEX	3	14	10	-100	10	8	12	11
FA	8	13	11	12	-100	10	12	11
NIVEA	26	13	15	13	14	-100	14	11
OTHER	18	20	18	18	17	17	-100	18
VASELINE	0	0	0	0	0	0	0	-100
8X4	12	8	8	8	8	9	8	7

Spain

	AXE	DOVE	REXONA	SANEX	NIVEA	OTHER	F_DISTRIB
AXE	-100	0	11	4	14	13	7
DOVE	0	-100	7	9	5	8	9
REXONA	20	15	-100	17	15	20	18
SANEX	6	17	14	-100	11	16	18
NIVEA	11	6	7	6	-100	8	7
OTHER	38	30	32	32	29	-100	35
F_DISTRIB	18	27	24	27	21	28	-100

The UK

	AXE	DOVE	REXONA	SANEX	NIVEA	OTHER	VASELINE	IMPULSE
AXE	-100	1	12	6	10	14	9	1
DOVE	1	-100	7	8	6	6	7	10
REXONA	18	20	-100	18	17	19	17	19
SANEX	2	5	4	-100	3	3	4	5
NIVEA	3	4	4	4	-100	4	3	4
OTHER	20	15	17	14	15	-100	14	14
VASELINE	2	3	3	3	2	3	-100	3
IMPULSE	0	6	4	4	3	3	4	-100
RIGHTGUARD	15	3	7	4	6	8	5	3
SOFTGENTLE	1	10	7	8	6	6	6	10

Notes: Based on the estimates of Table 8;
A given column shows the number of unit gains of the brands in the rows when the brand of the column loses 100 unit sales due to a price increase.

Table 2 Diversion ratios (two-level nested logit model)

Belgium

	AXE	DOVE	REXONA	SANEX	FA	NIVEA	OTHER
AXE	-100	1	14	2	6	14	29
DOVE	1	-100	8	21	8	14	3
REXONA	24	15	-100	15	33	14	21
SANEX	2	27	10	-100	10	21	5
FA	8	11	26	12	-100	9	16
NIVEA	16	25	11	29	9	-100	11
OTHER	28	6	17	7	18	10	-100

The Netherlands

	AXE	DOVE	REXONA	SANEX	FA	NIVEA	OTHER	VASELINE
AXE	-100	0	15	3	10	13	7	0
DOVE	0	-100	10	25	11	17	15	23
REXONA	22	15	-100	12	21	15	20	9
SANEX	2	21	7	-100	7	15	10	19
FA	9	10	14	7	-100	8	12	5
NIVEA	19	19	12	21	13	-100	12	17
OTHER	18	18	20	16	18	14	-100	14
VASELINE	0	1	0	1	0	0	0	-100
8X4	15	6	11	5	10	7	8	3

Spain

	AXE	DOVE	REXONA	SANEX	NIVEA	OTHER	F_DISTRIB
AXE	-100	0	11	4	13	13	7
DOVE	0	-100	6	10	5	7	9
REXONA	20	15	-100	16	16	20	18
SANEX	6	19	13	-100	11	16	18
NIVEA	11	5	7	6	-100	9	7
OTHER	38	28	33	30	30	-100	34
F_DISTRIB	19	27	24	28	20	28	-100

The UK

	AXE	DOVE	REXONA	SANEX	NIVEA	OTHER	VASELINE	IMPULSE
AXE	-100	2	12	6	4	15	4	1
DOVE	1	-100	4	8	17	4	18	4
REXONA	19	12	-100	19	13	21	12	25
SANEX	2	6	4	-100	3	4	3	5
NIVEA	1	11	3	3	-100	2	14	1
OTHER	22	11	19	15	10	-100	9	17
VASELINE	1	9	2	2	10	1	-100	1
IMPULSE	0	2	5	4	1	4	1	-100
RIGHTGUARD	16	3	8	5	4	8	3	3
SOFTGENTLE	1	8	8	8	4	7	4	12

Notes: Based on the estimates of Table 9;
A given column shows the number of unit gains of the brands in the rows when the brand of the column loses 100 unit sales due to a price increase.

84) The two-level model, similarly to the one-level, still implies that Dove and Sanex are not good substitutes of Axe. In fact, in all models and in all countries Dove and Sanex are shown to be among the weakest substitutes of Axe.

85) In all countries, the two-level model assumes more substitution between Sanex and Dove than the one-level model. This is because these brands have many skin friendly products (which feature defines the subnests of the two-level model) and, hence, are closer to each other in terms of product characteristics. The substitution between Dove and other brands like Rexona, Nivea, or some smaller products is also implied to be important. Rexona's closest substitutes are typically Nivea and the other smaller brands.

86) From the merger's point of view, it is interesting to look at the sum of Sanex's lost sales that goes to Unilever. For example, the one-level model implies that in Belgium Sanex loses 39 (=6+12+21) out of 100 units to Unilever in case of a Sanex price increase. The corresponding figures are 39, 30, and 32 for the Netherlands, Spain, and the UK. This is already an indication that the strongest overall model-based price effects are to be expected in the former two countries.

5.2 Merger simulation results

87) Table 3 summarises the results of the merger simulations in terms of percent price increase relative to the pre-merger price level. The figures are averages over the sample periods of estimation. The overall figures include the price changes of all manufacturers in the sample. They can be further broken down by the gender segments. Finally, the table also shows the predicted price increases for Unilever's and Sara Lee's main individual brands.

Table 3 Implied percent price increases (averages over the sample periods)

		gender segments		brands					
	overall	male	non-male	AXE	DOVE	REXONA	SANEX	IMPULSE	VASELINE
one-level n.logit									
Belgium	5.2	2.4	7.2	1.6	7.4	6.5	24.8		
Spain	2	2.2	1.9	1.5	3.1	3.3	5		
The Netherlands	3.8	1.2	5.6	1	6.9	4.7	21.3		6.1
The UK	2.5	1	4.1	0.6	2.7	2.6	31.7	2	2.9
two-level n.logit									
Belgium	4.2	1.2	6.2	0.5	10.3	3.5	18.2		
Spain	2.1	2.3	2	1.7	3.4	3.4	5.3		
The Netherlands	3.8	1.1	5.7	0.7	10.2	2.8	20.6		10.9
The UK	2.5	1	4	0.7	2.8	2.5	30.7	1.9	2.7

Note: Based on the estimates of Table 8 and Table 9.

88) The largest overall predicted price increases are those for Belgium around 4-5%. The figures for the Dutch market are somewhat lower (3.8%) followed by the UK and Spanish numbers (2-2.5%). The lowest overall number is of Spain, and this is consistent with the exceptionally

high elasticities found in this country. As said before, this might be a reflection of the stronger than average private label competition in that country.

89) The overall price increases are typically driven by the non-male market. The reason for this is that in this segment the overlap is stronger between the merging brands, while Sanex is rather weak in the male market. As discussed above, this is also reflected by the implied substitution patterns. In Spain, the predicted price increases do not differ substantially between the two segments and the male market's prediction is even slightly higher than in the non-male market.

90) On the brand level, the predicted price increases show a significant degree of dispersion. While Unilever's own brands react weakly (Axe) or moderately (Rexona, Dove), Sanex is predicted to have quite strong price increases. Since Sanex is typically a smaller brand, its strong figures do not translate to equally strong overall price increments. Moreover, this latter is also influenced by the relatively weak reactions of competitors.

91) Figure 3–Figure 4 shows the estimated distributions of the price effects. These distributions have been calculated by Monte Carlo simulations. For each model, a sample from the estimated distribution of the parameter estimates has been drawn.[37] The implied confidence intervals are shown at the bottom of Table 8 and Table 9. The estimates are the tightest in the case of the UK and the Netherlands. The distributions in the case of Belgium and Spain are skewed: Though most of the values are centred around the mode[38] of the distribution and this is close to the point estimate, there is a significant mass of probability to the right of the mode.

92) Note also that the negative αs have been excluded from these Monte Carlo samples.[39] Hence, negative predicted price effects have been excluded altogether. A negative α coefficient means that the consumers prefer higher prices for lower prices, everything else equal. Hence, models with such parameter values contradict basic economic theory and should not be taken into account. Nevertheless, as the estimated α coefficients are significant at only 10% level for Belgium and 5% level for Spain, negative draws are more likely in these cases, especially for Belgium. This warrants checking the robustness of the results, Figure 5 plots the estimated distributions of the price effects when the negative αs are included in the Monte Carlo sample. The results show that the distributions for Belgium and Spain are not continuous, and there is no significant probability mass to the left of zero. The confidence intervals also remain positive. Altogether, these patterns imply that the predicted price effects are statistically significant.

93) Table 4 reports the implied compensating marginal cost efficiencies. These figures give the percent decreases in the post-merger marginal costs which imply that the merged entity would

[37] The parameter vector is assumed to follow a normal distribution with mean equal to the point estimates and standard deviations equal to the parameter's estimated standard deviations. (In an alternative version, where the full estimated variance-covariance matrix of the parameters was used, the main qualitative conclusions on statistical significance stayed the same. However, the number of non-converging draws (σs outside the range (0,1)) was higher.) The typical number of Monte Carlo draws is 12000 for the one-level models and 1200 for the two-levels. In the case of the Netherlands, smaller samples have been used because of the higher per-draw computation time.

[38] The mode of the distribution is the point where the plotted graph has its peak (highest likelihood).

[39] Also, σs outside the range (0,1) have been excluded as for such values the simulations do not converge.

not raise price after the merger. The implied average required efficiencies are 15-22%, 20-22%, 6-7%, and 8% for Belgium, the Netherlands, Spain, and the UK, respectively. The brand level break-downs show that the majority of these efficiencies are required for the Sanex marginal costs. This is in line with the model's merger simulation results, which predict the highest price increases for Sanex.

Table 4 Implied compensating marginal cost efficiencies (%)

country	model	AXE	DOVE	REXONA	SANEX	IMPULSE	VASELINE	average
Belgium	one-level	-8.1	-21.5	-26.9	-38.9			-22.4
	two-level	-2.5	-22	-12.2	-29.3			-15
the Netherlands	one-level	-7.9	-23.4	-19.1	-33.5		-17.9	-21.8
	two-level	-4.8	-29.3	-12.5	-32.9		-31.8	-19.6
Spain	one-level	-4.5	-4.2	-7.1	-6			-6
	two-level	-5.1	-4.9	-7.5	-6.7			-6.6
the UK	one-level	-2.5	-7.3	-10.1	-37.7	-6.4	-8.1	-8
	two-level	-2.4	-7.5	-11.1	-38	-5.8	-6.6	-8.3

Note: Percent changes in post-merger marginal costs with which the merged entity would not raise price after the merge; based on the estimates of Table 8 and Table 9.

5.3 *SSNIP test results*

94) Table 5 displays the results of the SSNIP tests that have been conducted for each country separately for the male and non-male markets. The results show that in each case a 5% price increase in the given segment would lead to an increase in the segment's total variable profits. Hence, the separate anti-trust market result of the market investigation is supported.

95) It should be noted, however, that these model based SSNIP tests alone are insufficient to define anti-trust markets. Market delineation can only be carried out by carefully examining and taking into account the other pieces of available evidence. In particular, the results of the market investigation (among others questionnaires, interviews, descriptive statistics) must play a crucial role in the market definition exercise.

Table 5 Percent change in profits due to a 5% SSNIP, separately for the different nests (segments)

		Segment	
country	model	Male	Non-male
Belgium	one-level	8	9
	two-level	7.5	11.2
The Netherlands	one-level	7.5	10.7
	two-level	6.7	11.3
Spain	one-level	23	26
	two-level	22.2	24.6
The UK	one-level	3.4	4.2

	two-level	3.6	4.5

Note: Based on the estimates of Table 8 and Table 9.

6 Robustness checks

6.1 Alternative nesting and data choices

96) As described above, the nesting structure of the nested logit model is a choice that has to be made prior to estimation. Even though the estimation can reject a given specification by, for example, yielding a zero estimate for σ, this does not indicate an alternative nesting structure. The data provide only a limited choice in this respect but some alternatives have been tried. Though nesting based on formats (spray, roll-on, stick, vapo, cream, wipe) has yielded less stable performance on the statistical tests, the predicted price effects were similar to the main results. The substitution patterns were less consistent as they showed Sanex and Dove as moderately close substitute of Axe, and also Axe as a reasonable substitute of Dove or Sanex. This is because around 80% of the sales are in spray format, hence the model is not able to correctly capture characteristics-based differences of most of the products. Also, formats have been tried as subnests under gender nests in two-level models but these specifications also have shown stability problems.

97) Another alternative two-level nested logit model has proved better. Here, the brands of the product have been specified as subnests under the gender nests. Though these models often had problems with the rank- and first-stage tests, the predicted results were close to the main results.

98) The main models have been estimated with euro/litre as the price variable. When the alternative, euro/unit price has been tried the results generally have been similar though there have been more often problems with the statistical precision of the estimates, especially with the price coefficient. Because of this reason, the Annex reports the results of the models with the euro/litre price variable.

99) Monthly data has also been tried. In general, it proved to be difficult to find a stable instrument specification and, hence, the quarterly aggregation was used subsequently. As expected, the own-price elasticities in the monthly estimations were somewhat higher due to the possible estimation problem with storable goods.[40]

100) Finally, a data problem has been identified in the Dutch scanner data. For a portion of the data (brands categorised as "other", and covering about 15% of the sales) the variable indicating the gender specification of the product had a missing value. It was possible to classify some of these SKUs based on the description of the product in the SKU label. However, there was no other indication for the rest. Two data scenarios were constructed. In the first the unclassifiable SKUs were defined as non-male, and in the second as male products. The second scenario gave higher predicted price increases for the one-level nested logit model (above 6%) than the first scenario. However, the cost discrepancy measure, discussed in the next subsection, detected a significant under prediction of the marginal costs.

[40] See the discussion in section 4.4 and the referred Hendel and Nevo (2006) paper.

As a result, the first scenario has been selected for the main estimation results. It has to be noted that classifying these products as non-male makes more likely the merging brands to seem less strong substitutes. This is because Sanex has substantially stronger sales in the non-male market. Increasing this segment makes substitution between Sanex and Unilever's brands less strong in a one-level nested logit model.[41]

6.2 Calibration adjustment using observed costs

101) As described above, the equilibrium model is used to derive marginal costs. These implied marginal costs can be compared to the observed costs.[42] Table 11 of Appendix B displays the observed costs and the marginal costs implied by the estimated demand model, for all countries and both models. The discrepancy between the two cost measures is also reported.[43] The discrepancy is the highest in the case of Spain, where the model over predicts the cost of Sanex, Axe, and Dove and under predicts Rexona. The average discrepancy is the smallest in the case of the Netherlands and the UK.

102) To check the robustness of the results, a calibration exercise has been implemented. The structural parameters (α and the σs) have been changed slightly, around their point estimate, to see whether the model is capable of generating a closer fit of the observed costs while still fitting the demand side reasonably well. In spirit, this exercise resembles a system estimation, where the parameters are obtained by fitting both the demand and supply sides of the equilibrium model to the observed data. If the cost data were available at the SKU level for all products, the two sides could be estimated jointly. The calibration adjustment is an attempt to mimic or infer the likely outcome of such a system estimation. Using a grid search algorithm, several parameter values have been tried, and the table reports, for the best fitting adjusted parameter combinations, the implied marginal costs, discrepancy measures, and predicted price increases.

103) The results show that the calibration adjustment is able to improve the cost predictions. The best results are obtained in the case of the Netherlands, and, with the exception of Spain, in all countries the best calibration adjusted results give a cost discrepancy measure below [5-10]*%.

104) The adjusted predicted price effects do not change substantially and show the same qualitative picture as the pure estimation-based ones. In the case of Belgium, the adjusted price increases, 4.4-4.5%, are close to the estimated (unadjusted) two-level nested logit model's predictions. For the Netherlands, the results show a 3.5-3.8% price increase which is

[41] For the two-level nested logit model, the two data scenarios showed more similar results. The reason for this is precisely that the two-level model is better able to take into account product differentiation, and the within-segment shares play a relatively less important role in the identification of the substitution patterns.

[42] The observed cost is calculated as the sum of the wholesale cost and the retail margin. The wholesale cost is the difference between the value of sales to retailers and the wholesale margin. Retail margin represents the costs of retail distribution. Since it was not possible to match the retail and wholesale data on the SKU level, the observed and implied costs are expressed on the brand level as a percent of the retail price.

[43] The discrepancy is measured as the weighted average absolute difference between the observed and implied brand level costs. Volumes sold are used as weights.

very close to the unadjusted results. Finally, the adjusted numbers for Spain and the UK show a slight, 0.3-0.8 point, drop in the predicted price effects.[44]

7 CRA's comments on the Commission's models

105) As a response to the Commission's demand estimation and merger simulation, Unilever submitted a study prepared by CRA.[45] The document covers a wide range of issues which is summarised below.

106) The overall conclusion of CRA is that the demand estimation and merger simulation put forward by the statement of Objections should not be relied upon in the final assessment of the transaction.

7.1 Critique of the nested logit model

107) CRA argues that the nested logit model imposes *ex ante* a very restrictive pattern of substitution on the product space. While the nested logit model is more flexible than the simple logit model it still attempts to model elasticities between hundreds of products using only two or three parameters (the one- or two-level models, respectively). As a result the pattern of substitution between the products is largely determined by the market shares and the choice of segmentation.[46]

108) CRA further notes that the nested logit model of the Commission (with male and non-male products as segments) is not capable of generating a model where the demands for the two segments' products are independent.

109) The CRA submission also argues that the fixed effects estimation overstates the precision of the nested logit parameter estimates. This is because SKUs belonging to the same brand might have similar unobserved characteristics causing a correlation between these terms.

7.2 Critique of the instrumental variables estimation

7.2.1 Weakness of the instruments

110) CRA investigated the instruments that were used to estimate the Commission's models. As it is explained in their submission, even though the instruments pass the over identification and rank tests they are extremely weak, meaning that they are only weakly correlated with the endogenous variables. CRA argues that *although the instruments* may *be excludable from the second stage, they have little power to predict the values of the endogenous variables*;[47] and

[44] The R-squares measuring the fit of the demand model (when the latter is evaluated using the calibration adjusted parameters) do not differ significantly from the estimated models' R-squares.

[45] Case M.5658 Unilever/Sara Lee Body Care, Response to the Commission's Demand Estimation and Merger Simulation Analysis, 26 August 2010.

[46] The Commission's Statement of Objection also discusses lengthily the exact nature of the restrictions imposed by the nested logit model, see subsections 3.1, 3.2 and 3.3 of this Technical Annex.

[47] CRA, cf, p2.

further that *while showing that the instruments are jointly significant in a first-stage regression does tell us that the instruments have some explanatory power; it does not tell us whether these instruments are good and hence that the resulting IV estimates are likely to be unbiased.*[48]

111) CRA further notes that the product characteristics used to generate the instruments are not changing over time. This implies that the time variation in the instruments is driven by the entry and exit of individual SKUs. As the share of entering and exiting SKUs is small in the data, this might explain the weakness of the instruments. Finally, CRA also argues that the instruments used lack any economic intuition.

7.2.2 Sensitivity of the results to changes in the instruments set and units of measurement

112) As a sensitivity analysis of the results, CRA conducts further estimations by changing the instrument set. For each country, they consider three alternative estimations where they in each estimation drop one or two instruments from the original sets used by the Commission in the Statement of Objection. In the case of Spain CRA does not implement these alternative estimations but instead argues that the Commission's estimates are "very close" to the OLS estimates and takes this as a direct indication of the bias of the IV results.

113) CRA further argues that the Commission's results are not robust to changes in the units of measurement. According to the argument, the choice of per litre prices used in the models is arbitrary as the number of days' usage per litre varies substantially by format. CRA calculates an alternative price variable by taking into account the different efficacy or usage of the different formats. Using these alternative prices, CRA finds that there are substantial changes in the estimated coefficients and concludes based on this that the Commission's results are not robust.

7.2.3 Explanatory power of the regressions

114) In the Statement of Objection, the Commission reported R-squares to measure the fit of the estimated equations. CRA argues that these R-squares are misleadingly high as *the actual "within-segments share" variable has been used to calculate them, rather than a prediction of that variable*.[49] Then CRA generates "fitted" or "forecasted" values using the estimated model parameters and argue that the resulting "corrected R-squares" show little explanatory power of the model.

7.3 Predicted vs. observed margins

115) The CRA submission puts an emphasis on the feature of the nested logit model that, when it is coupled with a Bertrand competition assumption on the supply side, it predicts constant markups for a given period/firm/nest triple (for the one-level model and, in the case of the two-level model, for a given period/firm/nest/subnest).[50] When analysing the actual margins,

[48] CRA, cf, p11.

[49] CRA, cf, p26.

[50] This property of the model is also mentioned in the Statement of Objections, see footnote 25 and Appendix A of this Technical Annex.

CRA finds that this property does not hold and, hence, the model does not explain the pattern of observed margins.

7.4 The effects of two-stage competition

116) CRA argues[51] that the "*Commission's application of the resulting elasticities to estimate merger effects is likely to result in an overestimation of such effects. This is because the analysis does not take into account the two-stage nature of competition in this market, i.e. the fact that the proposed transaction concerns upstream brand manufacturers, but the products are sold to final consumers via retailers*". According to CRA, it follows that no weight should be assigned, for the purposes of the competitive assessment, to any inferences relying on such estimates - including the simulation analysis and the predicted magnitude of the price effects of the merger.

117) CRA points to three circumstances (or mechanisms) that would allegedly invalidate (i.e. bias) the cross price elasticities estimated by the Commission.

a) **Upstream versus downstream elasticity:** First, the proposed transaction concerns brand manufacturers. However, the Commission's analysis uses retail-level elasticities to estimate merger effects. According to the Parties this implies assuming that the transaction has the same effects as if the merging parties were to sell their products directly to the final consumer. In fact, the parties sell to retailers but when setting wholesale prices they will internalise the impact higher wholesale prices have on competition at the retail level.

b) **Commitment problem:** Second, suppliers of deodorants are hampered by the inability when negotiating with one retailer to commit to the terms that will be offered to a competing retailer. This makes it impossible for even a monopolist supplier to exert any market power vis-à-vis retailers and consequently if wholesale prices cannot be increased, retail prices faced by end-consumers cannot be affected. This argument implies that a monopolist faces competition with itself and hence cannot successfully increase prices so as to extract rents.

c) **Efficient bargaining:** Third, the Parties argue that "*if firms can achieve efficient bargaining then downstream prices will always be set to maximise the 'size of the pie'", and* as a result the effect of an upstream merger would be a shift in the bargaining strength towards the manufacturer *"but no impact on the price paid by final consumers*".

118) More generally the Parties argue that each of these mechanisms ensures that the market should not be modelled as if the manufacturers sold directly to final consumers, optimising against retail level elasticities. However, they do not conduct or even propose any extensions to the econometric model that would more accurately account for the interaction between upstream suppliers and downstream retailers in a manageable and informative way.

119) However, in a subsequent clarification note submitted by one economic expert on behalf of CRA, it is clarified that while not taking explicit account of the retail level in the simulation model is a source of imprecision, CRA is not addressing whether the

[51] See section 7 CRA's submission.

Commission's method will systematically bias the results on the retail prices in one direction or the other: *"in the absence of a precise specification of the retail stage, nobody knows whether a price increase of 1% at the wholesale level would lead to an increase of more or less than 1% at the retail level."*[52]

8 Assessment and further robustness checks

120) To assess the robustness of the results and to take on board the issues covered by the CRA analysis, further calculations have been made. This section provides details on these, and also introduces further qualitative arguments about the modelling framework.

121) The overall conclusion of these additional analyses is that the Commission's results presented in the Statement of Objections are sufficiently robust to be informative about the likely unilateral effects of the transaction; hence, a positive weight can be attached to the econometric evidence in the assessment of the case.

122) As a general comment, it has to be noted that econometric modelling can always be subjected to rigorous and formal scrutiny and in this sense it is a special tool for competition policy analysis. In fact, econometrics is not only a methodology to formulate and estimate models built on assumptions, but also a methodology to apply formal statistical tests to assess the performance, robustness and reliability of these models. This double sidedness of econometrics is an inherent feature of the discipline. The immediate opportunity to test the results distinguishes econometrics from most other tools used in competition policy analysis.

123) As a consequence of this more formal and more rigorous testing, it is more likely that the limitations of econometric evidence are revealed. In fact, all econometric models (and, for that matter, all economic models) are approximations, which use a number of assumptions. Moreover, the models deliberately focus only on a limited range of the observed economic phenomena, leaving many of the features of the modelled markets/industries/economies unexplained. Hence, it is always possible to find weaknesses and even flaws in an econometric analysis.

124) The inherently imperfect nature of econometric models, however, should not lead to the automatic rejection of this type of evidence in competition policy analysis. The results of robustness checks and formal tests should rather determine how much weight, relative to other tools in the analysis, is to be given to the econometric evidence in the assessment of the case at hand.[53]

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[52] *"[O]ur argument is that the Commission's analysis does not address this question, but the features of wholesale markets strongly suggest that the effects of a merger on wholesale prices would be more limited that what the Commission estimates based on elasticities of final demand. On the other hand we do not address the relationship between changes in wholesale prices and resulting changes in retail prices. As is well known, a given change in wholesale prices can be either magnified or dampened by the addition of a retail stage, depending on the rate of "pass through" that the retail market structure and precise demand and cost conditions imply. So, in the absence of a precise specification of the retail stage, nobody knows whether a price increase of 1% at the wholesale level would lead to an increase of more or less than 1% at the retail level."* Clarifications from Pierre Régibeau, 17 September 2010.

[53] This approach is also endorsed by CRA's economists elsewhere in their published work. Though CRA claims that the Commission's merger simulation models are unreliable, one of the authors of their Response, Ian Small, writes in one of his earlier published papers that *"[u]nlike most other evidence and analyses used in merger assessment it is possible to objectively assess the robustness and statistical reliability of econometric analyses, and this is a major issue in every merger case that involves such analyses. However, since any econometric analysis*

8.1 General assessment of the nested logit model

125) As a general assessment of the nested logit models, it is important to emphasise that the Commission itself explained detailed and thoroughly the nature and consequences of the restrictions imposed by the models (see section 3 and especially subsection 3.3 of this Annex; these sections are replications of the Statement of Objections' text). As explained, the nested logit model is a compromise between the very restrictive simple logit model and the more complicated but more flexible random coefficient model. The one-level model is closer to the simple logit model than the two-level specification. But these nested logit models are still restrictive and, accordingly, the interpretation of the results has to be cautious. Hence, CRA's critique on the models' limited ability of capturing substitution patterns is not totally unsubstantiated, nor does the Commission claim the opposite.

126) As also explained in the Statement of Objections, any economic modelling necessarily involves restrictions put on the data. There is a general trade-off between the strength of these restrictions and the computational difficulty of the model. Hence, it is inevitable that any modelling choice will be a compromise along this trade-off. Moreover, even the more flexible (but computationally more challenging) models use restrictions. Also, the more computationally demanding random coefficients model can be even more difficult to instrument for than the simpler but more robust nested logit models. In other words, there is no "perfect" model, and the suitability of any feasible model is a question of judgment of the modeller facing the data and the other qualitative evidence.

127) As noted in subsection 3.3, the nested logit model uses shares and relative (within-nest and within-subnest) shares as different rankings to establish the cross-substitution patterns. The actual substitution pattern predicted by the model is a weighted average of these different rankings. The weights, as functions of the estimated parameters, are indicated by the data. Each ranking represents a dimension of product differentiation. These dimensions are the gender proposition and the skin friendliness of the deodorants. Though this is not an exhaustive list of the product characteristics of deodorants but it certainly contains two of the most important dimensions of product differentiation.

128) Moreover the other characteristics, implicitly, also affect the implied substitution patterns. This is because the parameter estimates which determine the weighting of the different rankings are also affected by the other product characteristics (price and fixed effects). It is also important to emphasise that the smaller the subset of products on which the relative shares are calculated, the less unrealistic is the assumption that substitution is approximated by these relative shares. To put together these elements, the nested logit models, though not able to perfectly model all the details of product differentiation, are capable to tell more on the likely interaction between the products than simple market shares do.

involves dealing with a range of complex methodological issues, it is almost always possible to identify some limitations with the analysis. These limitations should not be used to dismiss the analysis in its entirety, but should determine how much weight is placed on the analysis in the merger assessment", see Small (2009), p1.

8.2 Assessment of the instrumental variables estimation

8.2.1 Bias due to endogeneity

129) The endogeneity problem is of central importance in the estimation of demand models. It arises because the error term of the estimation equation (which in the present case has a structural interpretation, namely, representing unobserved product characteristics) might be correlated with the endogenous right hand side covariates, the price and within-share variables. The OLS estimation assumes that this correlation is zero and, hence, if this assumption fails to hold the estimates are not consistent, they are biased.

130) The direction of bias is known in the case of nested logit type models. The price coefficient ($-\alpha$) is biased towards zero, while the within-share coefficients (the σs) are biased towards one. Indeed, when estimated by OLS all of the models presented above yield estimates of α which are very close to zero (with magnitudes several order smaller than the IV estimates), and σ estimates larger than 0.999.

131) The instrumental variables estimation can remove the endogeneity bias of the estimates. It does so by using variables, the instruments, which are not correlated with the error term (validity) and which are correlated with the endogenous right hand side variables (relevancy).

132) As the direction of bias of the OLS estimates is known, it is also known the direction towards which the IV estimation should "move" the estimates away from the OLS case. The magnitude of the α estimate should increase, and the σs should decrease relative to the OLS estimates. Seeing such a movement is a first, rough indication that the IV estimation procedure is capable, to some extent, of alleviating the endogeneity problem.

133) The IV estimates can also be tested more formally. The validity of the estimation is tested by the Hansen over identification test.[54] The relevancy of the instruments brings forward two issues. The first is whether the instruments are partially correlated with the endogenous variables. This question is tested by the reported first stage statistics (the F-tests of instruments separately for each endogenous variable, and the Kleibergen-Paap rk LM statistics for the overall rank test).

134) The second issue is whether this correlation is strong enough. The instruments are called weak if they are valid and correlated with the endogenous variables but this correlation is weak. Weak instruments, even if they are valid and correlated with the endogenous variables, might render the estimator inconsistent causing a bias in the resulting estimates.

135) The direction of bias in the parameter estimates due to the weak instrument problem is towards the OLS estimates.[55] Hence, the comparison with the OLS estimates gives a first, rough indication on the quality of the IV estimates. Whether the instruments are weak can be formally tested using the Kleibergen-Paap Wald rk F statistic coupled with the Stock-Yogo critical values, and also the Shea R-squares.

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[54] More precisely, the overidentification test is valid if at least one of the instruments is valid.

[55] See, e.g., Cameron and Trivedi (2005), p108-9 and the references therein. CRA makes the same argument, see p10, last paragraph in the Response.

136) All of the IV estimations presented in the Statement of Objections' Technical Annex produce estimates which display the movement away from the OLS estimates into the correct direction. The price coefficients' absolute values are several order of magnitude larger than the OLS estimates, and the within-segment coefficients drop substantially below 1.

137) Moreover, all of the IV models of the Statement of Objections pass the overidentification tests, and the instruments are jointly significant in the first stage regressions. That means that the instruments are valid and correlated with the endogenous variables. The first stage F-statistics, displayed in the tables, show that the instruments are jointly statistically significant in the first stage regressions, that is, they are correlated with the endogenous variables. This is further confirmed by the reported Kleibergen-Paap rk LM rank tests.

138) However, the correlation between the instruments and the endogenous variables is indeed weak. This is indicated by the low Shea R-square measures (though, importantly, these are always statistically significant) and the low values of the Kleibergen-Paap Wald rk F statistic relative to the Stock-Yogo critical values. Hence, though the IV estimations seem to alleviate the endogeneity bias to some extent (change in the estimates relative to the OLS case), a weak instrument bias potentially still arises.

8.2.2 Weak instrument robust tests of parameters

139) Even if the instruments are weak statistical inference on the validity of the estimated parameter vector is possible. There exist tests of for the parameter vector which are robust against the weakness of the instruments. The academic literature provides a stream of testing procedures.

140) For the linear IV model with homoskedastic errors, Anderson and Rubin (1949) introduced a statistic (AR) based on the LIML likelihood which is valid under weak identification. Stock and Wright (2000) proposed the S statistic which generalizes the AR statistic to the general GMM setting and allows for heteroskedasticity and autocorrelation.

141) The chief drawback of the AR and S statistics is that they may have low power when there are many more instruments than endogenous variables. To overcome this problem, Moreira (2003) proposed a likelihood ratio based statistic and Kleibergen (2002) proposed a Lagrange multiplier type statistic both of which are robust to weak instruments in the homoskedastic error case and tend to have more power in models with more instruments than endogenous regressors. Kleibergen (2004, 2005) generalizes Kleibergen's (2002) approach to the general GMM setting and allows for heteroskedasticity and autocorrelation. Similarly, Andrews, Moreira, and Stock (2004a, 2004b) generalize Moreira's (2003) conditional likelihood ratio statistic to allow for heteroskedasticity and autocorrelation and show that this statistic is optimal among a class of invariant similar tests.[56] Chernozhukov and Hansen (2008) derives regression based tests (henceforth CH) which are asymptotically equivalent to the LM approaches of Kleibergen, and they also illustrate in a simulation study that their tests have good size and power properties.

[56] For these, other results and a more detailed discussion of the weak instrument problem, see Stock, Wright, and Yogo (2002) and Andrews and Stock (2005).

142) With a weak instrument robust test, it is possible to test a given (estimated) parameter vector, where the Null hypothesis is that the parameters tested are consistent. A test with sufficient power is capable of rejecting a false Null. In the present case, for example, an endogeneity induced bias results in a false Null.

143) Table 6 shows the *p*-values of the CH tests. For all the four countries and two models (one-level, two-level), three parameter vectors are tested. First, the OLS-FD estimates; second, the GMM-FD estimates of the Statement of Objections; and third, the usage corrected models' GMM-FD estimates (see subsection 8.2.4 below). The test is made robust against arbitrary heteroscedasticity and autocorrelation within SKUs of the same brand.[57]

[57] Note that the Statement of Objections' GMM *estimates* were derived by assuming clustering of the error terms by SKUs, while for the usage corrected model the clustering was on brands. The *tests* are robust to clustering on brands for all estimates. The qualitative results do not change if the more restricted, SKU-based clustering is used in the tests.

Table 6 Weak instrument robust tests of parameters

			alpha	sigmag	sigmah	CH-test, *p*-value
Belgium	one-level					
		OLS	-0.001	1.000		0.000
		IV (SO)	0.748	0.841		0.443
		IV (usage)	0.428	0.914		0.288
Belgium	two-level					
		OLS	-0.001	0.971	1.000	0.000
		IV (SO)	0.938	0.643	0.854	0.369
		IV (usage)	0.253	0.135	0.956	0.114
Netherlands	one-level					
		OLS	0.004	0.999		0.000
		IV (SO)	2.180	0.884		0.922
		IV (usage)	0.964	0.881		0.191
Netherlands	two-level					
		OLS	0.004	1.040	0.999	0.000
		IV (SO)	2.138	0.762	0.894	0.978
		IV (usage)	1.030	0.636	0.912	0.656
Spain	one-level					
		OLS	-0.001	1.001		0.003
		IV (SO)	0.591	0.941		0.9998
		IV (usage)	0.160	0.967		0.654
Spain	two-level					
		OLS	-0.001	0.999	1.001	0.007
		IV (SO)	0.543	0.639	0.944	0.952
		IV (usage)	0.137	0.890	0.970	0.752
UK	one-level					
		OLS	0.007	0.999		0.000
		IV (SO)	1.453	0.630		0.188
		IV (usage)	1.893	0.604		0.442
UK	two-level					
		OLS	0.007	0.915	0.999	0.000
		IV (SO)	1.481	0.343	0.646	0.112
		IV (usage)	1.808	0.389	0.653	0.199

Note: p-values from the Chernozhukov-Hansen (2008) weak instrument robust test; H0: parameter vector tested is consistent; OLS: OLS_FD estimates, IV (SO): GMM-FD estimates from Table 8 and Table 9 of Appendix B, IV (usage): GMM-FD estimates on usage corrected data (from Table 12 and Table 13 of Appendix B).

144) The results firmly indicate the rejection of the OLS estimates. This shows that the CH test has power against false Nulls arising from endogeneity bias. Even more importantly, all IV estimates pass the test. This implies the conclusion that despite the weakness of the instruments used the estimates are consistent and, consequently, can be relied upon.

8.2.3 Instrument selection and specification testing

145) As described above, the set of instruments used in a given model can and should be subject to a number of statistical tests. The instruments must pass the overidentification and rank tests. Moreover, if the instruments are weak, the resulting parameter estimates must also pass the weak instrument robust tests.

146) Structural models, like the nested logit demand model, impose additional, economic restrictions on the specification. For example, as explained in Section 3, to be consistent with consumer theory the one-level nested logit model's price coefficient ($-\alpha$) must be negative and the within-segment correlation parameters (σ) must be within the unit interval, [0,1]. In the two-level model, in addition to these restrictions, the σ parameters also have to satisfy an inequality constraint (σ_h cannot be smaller than σ_g).[58]

147) These restrictions of the economic model motivate a further specification check in the instrument selection process. If there is no instrument set that generates economically consistent estimates then this should be considered as a strong signal that the data rejects the economic model. If, however, at least some of the potential sets satisfy the mentioned economic consistency requirements the selection must be made from these sets. The final sets used must, of course, pass the statistical tests described above.

148) If from two different instrument sets, which both pass the mentioned statistical tests, one generates parameter estimates which are not consistent with the underlying economic theory (negative α, and/or σs outside the unit interval, and/or σs not satisfying their inequality constraints) the other set should be preferred. The existence of these two sets is not an indication of the lack of robustness of the results. It rather implies that only a subset of the otherwise (statistically) admissible instruments is admissible economically.

149) Moreover, when assessing elements of a given instrument set their marginal contribution to the specification's performance on the statistical tests must also be considered. For example, CRA shows that dropping one of the instruments in the one-level model of the Netherlands results in a drop in the estimated α coefficient (from 2.18 to 0.22), and concludes that this is an evidence of the lack of robustness of the results. However, CRA fails to comment on the dramatic drop in the Hansen over identification test's *p*-value (from 0.94 to 0.23). This drop clearly shows that the instrument in question strongly contributed to the identification of the model and excluding it from the instrument list is not appropriate.[59]

8.2.4 Alternative units of measurement

150) As explained above, CRA argues that the Statement of Objections' results are not robust as the estimated parameters change when different units of measurement are used. In particular, CRA suggests replacing the litre based variables (volumes and prices) by their usage corrected version. This usage correction takes into account that products with different format have different efficiency per litre. Unilever's internal documents [...]*.[60,61] [...]*.

151) CRA argues that the estimates using the usage corrected data are different from the Statement of Objections' estimates and, hence, the whole estimation exercise is not robust. To

58 See McFadden (1981).

59 The change in a Hansen statistic is the difference-in-Hansen (or C) statistic, follows a χ^2 distribution, and if significant implies that dropping the tested instrument is inappropriate.

60 [...]*.

61 [...]*.

assess these results, three comments have to be made. First, controlling for the different intensity of usage of different formats is an improvement of the model specification. If usage differences across formats are important the change in the estimated parameters should also reflect this. This also implies that the change in the estimates is not an indication of the lack of robustness of the results, but rather a reflection of a potential improvement in the model's ability to capture reality. Second, as the volume and price variables are different than in the specifications relied on in the Statement of Objections, the parameters are not comparable since they refer to different economic quantities (e.g., sensitivity of the consumer's utility to price per litre or to price per dosage).

152) Third, when the usage corrected models' parameters are used in the merger simulations the predicted price increases become larger than those of the Commission's baseline models. Hence, the implication is that not controlling for the different usage intensity of different deodorant formats makes the merger simulations' results more conservative in the sense that these do not over predict the likely price effects of the merger.

153) Table 12 and Table 13 of Appendix B display the estimation results of the usage corrected models. These specifications have a number of improvements over the SO's model in order to address the issues raised by CRA. First, as noted above the models use the usage corrected version of the key variables. Second, the GMM estimation clusters the error terms based on brands as opposed to SKUs (this latter is the Statement of Objections' practice). CRA argues that the error terms of different SKUs belonging to the same brand might be correlated, and this might result in an underestimation of the standard errors in the Commission's specifications. Clustering on brands not only makes the standard errors robust to arbitrary heteroscedasticity and autocorrelation across the error terms of the same brand, but, as a result of GMM estimation, makes the estimates efficient under the specified heteroscedasticity and autocorrelation structure. Third, the reported merger simulation results take into account the effect of VAT on the firms' profits.[62]

154) For the usage corrected models the same instruments were used as for the specifications in the Statement of Objections, with the exception of the two models of Spain. When the original instruments were used for Spain's usage corrected models, the σ parameters became larger than one indicating a specification problem. The set of instrument was slightly altered to get structural parameters consistent with the underlying consumer theory.

155) The results indicate a 1-2%pt increase in the predicted price effects for Belgium, Spain, and the UK, relative to the Commission's baseline predictions in the Statement of Objections. In the case of the Netherlands the increase in the predicted price effects is more substantial. This indicates that the Commission's figures as reported in the Statement of Objections are conservative, meaning that they do not overestimate the likely price impact of the merger. However, further robustness checks can be made to assess whether these larger predicted effects are more consistent with the data than the more conservative results from the Statement of Objections. On this, see the calibration results discussed in section 8.2.6.

[62] Note that this affects the implied markups; Appendix A derives the VAT corrected formulas.

8.2.5 Fit vs. prediction

156) On CRA's argument that the estimated models lack explanatory power, several comments have to be made. In the case of the Berry (1994) type logit models, there is a difference between the statistical fit of the model and its predictions. The *statistical fit* of the model can be summarised by the strength of association between the estimation equation's estimated right hand side and the left hand side variable (see equations (3) and (4)). This is the standard R-square measure reported along the Statement of Objection's models. Here, the estimated parameters are multiplied by the corresponding right hand side variables which were *actually used* in estimation, and summing up these multiples gives the fitted right hand side of the equation which must then be correlated with the left hand side variable. For the assessment of the statistical relationship between the left and right hand side, there is no need to replace any of the right hand side variables in this exercise.

157) CRA suggests that even in the calculation of the fit of the model one has to substitute the (right hand side) within-share variables with their prediction. In the calculation of these predictions, however, CRA does not use the Commission's model specification but a model which does not contain the unobserved product characteristic, ξ_{jt}. This modified model is not consistent with the Commission's model. Hence, CRA bases its conclusion that the Commission's models lack explanatory power on a model that is not used by the Commission.

158) The key insight of the Berry (1994) method is that market shares in the nested logit models can be "inverted", and the mean utility term, δ_{jt}, can be expressed as a function of the σ parameters and the market shares.[63, 64] In fact, the estimation procedure of Berry, which is used by the Commission, is based on this expression, and Berry calls it "estimation from the mean utility levels". In this procedure, the mean utility is specified as a linear combination of the product characteristics (the coefficients of the combination are the parameters to be estimated, along with the σ parameters).[65] Crucially, one of the product characteristics, ξ_{jt}, is assumed to be unobserved by the econometrician (but observed by the consumer!), and this characteristic plays the role of the econometric error term. This assumption, coupled with the market share inversion, makes possible the use of IV estimation methods. These methods are necessary as one of the product characteristics is the price of the product, which is potentially endogenous.

159) In the more traditional, McFadden-type logit and nested logit models price is typically not among the product characteristics. These models specify that there is no unobserved product specific characteristic in the mean utility term, and they are estimated using Maximum Likelihood methods, usually on individual level data. The Berry type estimation procedure made possible the estimation of demand models from aggregate level data when some of the product characteristics are potentially endogenous by specifying an unobserved product specific component of the mean utility term.

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63 $\delta_{jt} = \ln s_j - \sigma \ln s_{j,g} - \ln s_0$, see formula (27) in Berry's paper.

64 Berry shows that analogous expressions can also be derived for the simple logit and full random coefficient logit models.

65 $\delta_{jt} = x_j \beta + \alpha p_j + \xi_j$, see formula (28) and the discussion preceding it in Berry's paper.

160) When a Berry-type model's prediction has to be calculated, the presence of the unobserved product specific characteristic cannot be ignored. Moreover, there is no necessity to ignore it as post-estimation an estimate of this characteristic is available for each product: this is the residual of the estimation equation. The intuition is that given the estimated parameters, the Berry-formula of market share inversion can be used to recover the estimated mean utility level, which can further be decomposed into components by using the observed characteristics and the estimated parameters, and the remainder is the estimate of the unobserved product characteristic.

161) When the Commission used the models to make *predictions*, i.e., evaluated the demand function at different price levels, (e.g., in the merger simulations or in the SSNIP tests) it included these residuals in the prediction formulas. Ignoring the residuals would have resulted in simulations which are inconsistent with the specified (and estimated) models. It should be noted that this feature of the model is specific to the Berry-type logit model, as in the McFadden-type models' case the formula used by CRA would have been correct.

8.2.6 Alternative instruments

162) When faced with weak instruments, an alternative approach to weak instrument robust inference is to choose different, more powerful instruments. Three approaches have been tried, although none of them has been successful in generating stronger instruments. First, lags of the Statement of Objection's instruments have been tried as additional instruments. The economic rationale is that the basic instruments are driven by entry and exit events of SKUs. These events, however, do not necessarily exert their effect immediately on product prices (and shares). Consequently, lagged values of the instruments might also be valid. The expanded instrument sets, however, are not significantly more powerful than the original sets. Hence, the approach does not directly solve the weak instrument issues.

163) Second, alternative instruments can be generated by using a revised data of SKU characteristics provided by Unilever after their Response to Statement of Objections.[66] The alternative data, though qualitatively giving similar results to the Statement of Objections' estimations, still generate weak instruments.

164) Third, alternative instruments can be generated by using the prices of the same product in different countries as instruments for the price of the product. This is the instrumentation strategy advocated by Hausman et al. (1994). The idea behind these instruments is that if demand shocks are local (country level) than, after controlling for product specific fixed effects, prices of the same product in other countries might be correlated with the price (and share) of the product (due to common cost components) but uncorrelated with the error term. In other words, under the local demand shocks assumption the suggested instruments might be valid and relevant.

165) A technical complication in the present case is that it is not possible to perfectly match the SKUs of the different country level datasets. This is because (i) some of the SKUs are only present in the given country, e.g., private labels and local brands; (ii) even brands present in several countries can have slightly different SKU specifications across countries; (iii) the

[66] In its Response to the Statement of Objections, [...]* ([...]*). Post-SO, [...]*.

different datasets use different naming conventions often making it difficult to identify otherwise identical SKUs. To overcome this matching problem, all observable product characteristics (gender, format, size, manufacturer, brand, subbrand etc.) have been used to link products in different countries. Private labels and local brands of the other countries have been aggregated to serve as instruments for the private label and local brand prices.

166) The resulting alternative instruments have not been able to form sets which are valid. This was indicated by the Hansen-tests on which these alternative models failed. Also, the correlation of the instruments with the instrumented variables is weak. The failure of the alternative instrument strategy indicates that the, necessarily limited, quality of data matching is less than sufficient, and/or the assumptions needed for this kind of instruments are inappropriate. Consequently, the alternative approach could not be used for further inference.

8.3 Predicted vs. observed margins

8.3.1 Calibration

167) The Statement of Objections' Technical Annex reported a calibration adjustment exercise where the estimated parameters were slightly altered (10-20%) in order to allow the model to better fit the observed wholesale costs (see section 6.2). The matching was at the brand aggregate level.

168) As a robustness check, a calibration exercise has also been carried out for the usage corrected models of subsection 8.2.4. Following CRA's comments, some changes have also been made. First, the VAT correction has to be made since (i) VAT is not included in the net variable profit of firms, (ii) the wholesale data do not include the VAT component.

169) Second, instead of matching the predicted and observed costs at the brand aggregate level the firm/nest aggregates have been fitted. This is to reflect the model's implicit assumption that margins are constant within firm/nest pairs (in the one-level nested logit model; in the two-level model margins are constant within firm/nest/subnest triplets).

170) Though this assumption is restrictive as the observed margins vary within the firm/nest(/subnest) aggregates, the model can be matched at the level of these aggregates meaning that the calibrated models' predictions will fit the average costs/margins at the firm/nest level. As there is substantial variation in the observed costs/margins at this level, the calibration improves the models' overall cost prediction. Also, it has to be mentioned that accounting data (like the cost/margin data used here) do not necessarily measure perfectly the marginal costs of production (i.e., the theoretical quantity the models' cost predictions aim at). Accounting rules can also be influenced by factors other than economic principles, potentially leading to a difference between the observed and "true" marginal costs. This potential difference, however, is likely to be smaller for more aggregated data. Hence, the average observed costs at the firm/nest(/subnest) level might be a better approximation of the marginal costs than the product level, disaggregated, accounting cost data.

171) The calibration is carried out by first defining cost discrepancy measures. For each firm/nest pair the cost discrepancy measures the difference between the predicted and observed costs (as a percentage of the retail price). A given model's overall cost discrepancy measure is the weighted average of the absolute value of the pair level cost discrepancies. The calibration parameters then are chosen to minimize the model's overall cost discrepancy.

Table 7 Observed and predicted costs for calibrated and estimated models (%)

country	cost	model	flexibility	male_SL	nonmale_SL	male_UL	nonmale_UL	cost disc (%).	Price eff. (%)
BE	observed			[...]*	[...]*	[...]*	[...]*		
BE	calibrated	1level	simple	72.8	56.8	74.4	68.0	[...]*	5.7
BE	calibrated	2level	simple	71.8	52.9	69.2	68.0	[...]*	6.8
BE	calibrated	1level	flexible	46.6	57.0	52.4	68.0	[...]*	6.1
BE	calibrated	2level	flexible	72.0	63.3	52.4	68.0	[...]*	6.1
BE	estimated	1level	simple	72.7	56.5	74.1	67.7	[...]*	5.9
BE	estimated	2level	simple	74.1	55.0	68.5	71.3	[...]*	6.6
BE	weight			3.1	26.2	31.2	39.6		
NL	observed			[...]*	[...]*	[...]*	[...]*		
NL	calibrated	1level	simple	75.1	60.2	75.8	71.6	[...]*	4.2
NL	calibrated	2level	simple	77.0	60.2	69.4	72.9	[...]*	3.6
NL	calibrated	1level	flexible	55.8	60.2	57.5	71.5	[...]*	4.6
NL	calibrated	2level	flexible	66.9	60.2	58.3	72.1	[...]*	3.8
NL	estimated	1level	simple	37.8	1.6	41.3	30.2	[...]*	9.8
NL	estimated	2level	simple	56.7	26.1	45.7	49.7	[...]*	6.5
NL	weight			1.9	27.7	28.5	41.9		
ES	observed			[...]*	[...]*	[...]*	[...]*		
ES	calibrated	1level	simple	57.9	69.1	87.3	79.9	[...]*	3.7
ES	calibrated	2level	simple	59.4	69.1	87.8	80.9	[...]*	3.9
ES	calibrated	1level	flexible	73.1	69.1	92.0	79.5	[...]*	2.2
ES	calibrated	2level	flexible	73.1	69.1	91.5	86.2	[...]*	3.4
ES	estimated	1level	simple	50.5	63.8	85.0	76.4	[...]*	4.5
ES	estimated	2level	simple	46.1	59.2	83.8	74.5	[...]*	5.0
ES	weight			15.1	37.7	18.2	28.9		
UK	observed			[...]*	[...]*	[...]*	[...]*		
UK	calibrated	1level	simple	79.9	76.0	82.0	79.3	[...]*	2.6
UK	calibrated	2level	simple	82.1	78.3	81.3	79.3	[...]*	2.9
UK	calibrated	1level	flexible	55.9	76.9	66.0	79.3	[...]*	2.9
UK	calibrated	2level	flexible	42.3	76.7	67.5	79.3	[...]*	2.6
UK	estimated	1level	simple	59.4	52.2	69.2	63.1	[...]*	3.7
UK	estimated	2level	simple	62.6	55.8	70.5	64.1	[...]*	3.7
UK	weight			2.1	9.8	40.8	47.3		

Note: all costs are expressed as percentage of retail price; SL: Sara Lee, UL: Unilever; estimated: estimates based on parameters form Table 12 and Table 13; cost discr.: weighted average absolute difference between observed and predicted wholesale costs as percent of retail price; price effect: predicted percent price change across all products; weight: sales volume based weights (%); flexible: flexible models (nest/subnest specific σ parameters), simple: non-flexible models.

172) Table 14 of Appendix B displays the calibrated parameter values along with the estimated ones. The calibrated parameters are typically in the vicinity of the estimates but in some cases (two-level models for Belgium and the UK, and the price parameters in the Dutch models) the difference is more substantial. By construction, the calibrated models perform better when measured by the overall cost discrepancy measure. The drop in the cost discrepancy, when moving from estimation to calibration, is particularly strong in the case of the Netherlands and the UK.

173) The calibrated usage corrected models predict smaller price increases than their estimated versions. Hence, the calibrated price increases are closer to the results reported in the Statement of Objections, but they are still somewhat larger.

174) Table 7 displays the observed and predicted costs (from both estimated and calibrated models) as a percent of the retail price for each firm/nest pairs. The weakest performers are the estimated models for [...]*. For example, the estimated two-level model predicts that [...]* have a cost which is [0-30]*% of the retail price, while the observed cost is [60-90]*%. The calibrated model predicts [60-90]*% and this also dramatically improves the overall cost discrepancy measure (from [0-30]*% to [0-5]*%).

8.3.2 Further robustness check: calibrated flexible nested logit models

175) The nested logit models can be made more flexible by specifying nest (and subnest) specific σ parameters. These flexible specifications can also be calibrated to the observed costs. Table 15 of Appendix B shows the calibrated flexible parameters, and Table 7 contains the firm/nest level costs for these models.

176) The results indicate that the flexible models, and especially the two-level specifications, are capable of very closely matching the observed cost aggregates. In the case of Belgium, for example, the calibrated flexible two-level model fits perfectly the observed, firm and nest specific cost aggregates. The fit of the best model is also very tight for the Netherlands and the UK ([...]* and [...]*%, respectively) and fairly close for Spain ([...]*%).

177) The predicted price increases are closer to the Commission's original predictions though they are still slightly higher. The results indicate an about 6% price increase for the Belgium, 3.8-4.6% for the Netherlands, 2-3.5% for Spain, and 2.6-3% for the UK. These figures are comparable to those reported in the Statement of Objections (4-5%, 3.5-4%, 1.6-2%, and 1.7-2.5%, respectively). Overall, the calibration results of the simple and flexible models imply that the Commission's estimated price effects are robust and most likely conservative in the sense that they do not over predict the likely price effect of the merger.

8.4 The effects of two-stage competition

178) It should be noted that CRA brings forward examples of effects which it claims may result in lower price increases at the wholesale level than what is suggested by using elasticities from the retail level. It does not invoke a general result from the literature showing that there would be a bias in one direction.

179) While the Commission agrees that not estimating the elasticities at the wholesale level introduces an imprecision, it does not agree that the simulation model in its totality should not be relied on. The vast empirical literature in this area follows the conventional practice of using retail level scanner data and a Bertrand manufacturer oligopoly model as a benchmark for predicting the consequences of a horizontal merger at the manufacturer level. This is exactly the approach taken by the Commission.

180) However, it is worth pointing out that there is a limited empirical literature that takes account of vertical interactions in simulating the effects of an upstream merger.[67] For example, Sofia Berto Villas-Boas (2007b) presents a first attempt to do so. Indeed, she finds that depending on whether or not retail behaviour is explicitly considered may lead to different estimates of the welfare effects of the merger. However, she finds in the specific market analysed that the bias is in the opposite direction of what is suggested by CRA. She finds that the merger reduces welfare regardless of whether retail competition is specifically taken into account. In fact ignoring vertical interactions would lead to negative but not significant welfare losses. However, contrary to the Parties assertion, including such interactions would increase the welfare losses to a significant level and result in a strong recommendation to challenge the merger.[68]

181) Beyond the arguments above the Commission acknowledges that most conventional approaches would find that wholesale elasticities would be smaller than retail elasticities – e.g., assuming a standard demand relationship (linear, nested logit, or AIDS) and constant marginal cost. Some products where brand loyalty is not particularly strong, retailers' threats to displace products will provide strong disciplining effects on manufacturer price increases. In such cases, retail-level elasticities may understate manufacturer-level elasticities. On the other hand, some strong brands would not be dropped by retailers without a large increase in the wholesale price. In these cases, retail-level elasticities may overstate manufacturer-level elasticities. In any case, the Commission acknowledges that one has to be very careful when drawing inferences about upstream manufacturing merger effects from downstream retail elasticities. In particular, retail demand elasticities may understate manufacture-level elasticities if retailers respond to a wholesale price increase by dropping the manufacturer's product.

182) More generally, the relationship between wholesale and retail elasticities depends on demand, costs, and the nature of the bargaining that occurs between retailers and manufacturers[69]. Consequently, the Commission does not argue that the estimated prices effects are an exact and unambiguous prediction of the actual price increases that would prevail post-merger. This is anyway not possible since the simulation analysis is any event static in that it does not incorporate a number of additional factors (see section 4.4). These other factors are assessed on the basis of available qualitative evidence, the simulation model being only a reasonable starting point that indicates whether, despite the inherent limitations which the Commission does not deny, the estimated effects are consistent with the rest of the available evidence and of a sufficient magnitude to be assigned a certain weight in the analysis.

183) It is true that a simple merger simulation analysis generally assumes that the estimated retail elasticities are the same as those facing manufacturers. However, this assumption is

[67] Note that this literature has already been mentioned in the Statement of Objections' Annex (see section 4.4 in this Annex).

[68] Moreover, counterfactual simulations show that, if retail behavior departs from Nash–Bertrand pricing, the resulting welfare estimates from upstream merger analysis ignoring retail behavior would further understate welfare effects.

[69] See Hosken et al (2004),

approximately valid when manufacturers can use their power to extract the whole retailer surplus via contractual terms, or if retailers apply a simple rule-of-thumb mark-up pricing[70].

184) Finally it should be noted that the demand of final consumers is fundamentally what drives wholesale pricing, and retail data may be a far richer source of information. Wholesale price data for competing manufacturers can have so little independent variation that they are worthless in estimating demand. Manufacturers rely on retail data to infer pricing and other marketing decisions. The Commission considers that merger investigations should be able to rely on the same data for similar purposes.

185) Furthermore, as explored below, none of the three lines of argument provided by the Parties to justify a general bias in the method applied by the Commission appear to be particularly relevant for the case at hand.

8.4.1 Upstream versus downstream elasticity

186) To support their claim that the Commissions analysis is likely to overstate the likely price increase from the merger, the Parties draw attention to the theoretical model by Horn and Wolinsky (1988). As the Parties explain this model considers *"a simple hypothetical set up in which two manufacturers merger to monopoly – but rather than selling to end consumers sell through competing retailers downstream"*. The Parties make no attempt to empirically test the mechanism that allegedly softens competition upstream in the Horn and Wolinsky model. Even more importantly the model is highly stylised and fails to capture important features of the oligopolistic markets affected by the merger.

187) Horn and Wolinsky propose a model with two quantity-setting firms whose products are either substitutes or complements. Each firm uses a single input and the price it pays for the input is determined in bargaining with its supplier. In the benchmark case each downstream firm buys from a separate supplier at a bargained price (thus there are two locked-in buyer-supplier pairs).[71] If a supplier were to increase its wholesale price, this would induce a retail

[70] See Werden et al. (2004).

[71] Events take place in two stages. In the first stage each buyer bargains with its supplier over the input price. In the second stage the input price agreements are known, and the two buyers interact in the product market deciding the quantities they will produce. Such two-stage structure is appropriate in markets where input prices are negotiated upon less frequently than final market competitive variables can be adjusted. Horn and Wolinsky apply the Nash Bargaining solution to predict the bargaining outcome between each buyer-supplier pair. The bargaining process is thus not modelled explicitly but appeal is made to the relationship between the NBS and the alternating offers model. The implicit assumption is that the supplier simultaneously proposes a transfer price to each retailer. If a retailer decides to reject a proposed price, it may make a counteroffer in the next period. The process of exchanging offers continues until an agreement is made between the supplier and each retailer or one or more parties in each bargain refuse to negotiate further, after which time the buyers independently set final prices downstream based on agreements at hand. As the interval between offers becomes very small relative to the length of the bargaining horizon, this bargaining process of alternating offers converges to the Nash Bargaining solution. However, the bargaining processes are interdependent in the sense that the input price agreed with one buyer affects the balance of bargaining power between the other buyer and its respective supplier. To account for this interdependency they assume each buyer-supplier pair reaches an agreement that is optimal in light of the agreement reached by the other pair. This approach corresponds formally to a *Nash equilibrium in Nash bargaining*.

price increase, not only by his own retailer, but also from the retailer selling the competitors product. This effect would dampen the loss from the price increase.

188) The assumption in the model, that each retailer only sells one product, is clearly not appropriate for the case at hand, since each supermarket carry many different deodorants. CRA argues that the identified effect is also relevant if both retailers sell both products[72]. When asked to elaborate on how the effect extends, the Parties' experts did not point to any scientific article in which this is shown. Instead an intuitive example is provided of how the effect would survive. However, this example is based on the hypothesis that Unilever would raise prices to one retailer and hence provoke a less aggressive response from another retailer. However, the starting point for an analysis of the likely effect of the merger should be one in which Unilever would contemplate to increase prices to all retailers. The effect in Horn and Wolinsky invoked by the Parties does not seem to exist in such a scenario (since there is no retailer whose response would be less aggressive).

189) Furthermore, Horn and Wolinsky show that when the downstream firms' products are substitutes, the upstream firms always have incentives to merge as the merger allows them to charge higher wholesale prices.

190) The incentive to merge can be inferred by from comparing supplier profitability in the benchmark case of two locked-in buyer-supplier pairs with the case where there is a single monopolist supplier. The Parties do not explain that whether suppliers gain from a merger to monopoly depends on whether downstream products are complements or substitutes. Assume downstream firms sell complementary products. A lower input price for one buyer allows for a lower output price. This in turn, increases demand for the other buyer's complementary product increasing also its input demand. A monopoly supplier recognises this cross-bargaining effect: a lower input price to one buyer is partly compensated by an increase in the input demand by the other buyer. But the monopolist can hardly benefit from internalising this bargaining cross-effect. It has less to loose from making a concession to either buyer and hence its bargaining power is weaker. As a result any one of the two independent suppliers is in a stronger bargaining position than if they were to monopolise upstream supply. These relations are reversed when the downstream products are substitutes.[73] This observation contrasts with standard oligopoly models where monopolization is always profitable. However, even within the stylised confines of this model it is clear that when downstream goods are substitutes, as is the case for competing deodorant brands, upstream monopolization increases the suppliers' bargaining power, which creates an incentive to merge, as in the standard case without bargaining.[74]

191) For the sake of completeness the Commission points out that Horn and Wolinsky obtain this result under the assumption that firms bargain only over linear wholesale price contracts, that is, they restrict attention to only one contract type. In a model in which firms trade using

[72] See footnote 32 of Annex 4 to the Reply to the Statement of Objection

[73] In general, however, these relations are also influenced by whether the products are "strategic substitutes" or "strategic complements" (in the sense defined by Bulow et al. (1985)).

[74] Interestingly, an upstream merger is unlikely to be anti-competitive if buyers produce complementary final goods. However, unless it induces efficiency gains, it is also not privately profitable and such mergers would not be observed.

only two-part tariff contracts, Ziss (1995) confirms the above mentioned result of Horn and Wolinsky and shows that an upstream horizontal merger is welfare detrimental[75]. Milliou et al (2007) instead explore the role of contract types for merger incentives by allowing for a more general contract space as well as by endogenizing the contract type. They allow for bargaining between the vertically related firms and for two different contractual arrangements, linear wholesale price contracts and non-linear two-part tariff contracts. They conclude that the desirability of upstream horizontal mergers from a social viewpoint also depends critically on the contract types used. While upstream horizontal mergers are welfare enhancing under two-part tariff contracts, they are welfare detrimental under wholesale price contracts. However, upstream firms have an incentive to merge only under wholesale price contracts. The immediate conclusion is that horizontal mergers should not be allowed unless they lead to significant cost savings or unless the antitrust authorities can impose the contract type that the merged firms will use.

8.4.2 Commitment problem

192) The Parties argue that even if market power exists upstream, they may not be able to achieve the desired outcome in terms of high wholesale prices because of the lack of ability to commit to offering the same conditions to all retailers. If the first retailer were to agree to buy a fixed volume at a given (high) price, he would know that the manufacturer, once this volume was already in the market, would have an incentive to offer lower prices to the next retailer in return for committing to taking additional units. The prospect of a competitor subsequently obtaining a better deal would make any retailer unwilling to accept to buy a fixed volume at a high price.

193) In reality, however, the annual negotiations with retailers do not involve any commitments for retailer to buy a certain volume. In such a setting the commitment problem as explained by CRA, does not seem to be relevant: If a manufacturer were to offer a lower price to the second retailer, this would likely lead to a fall in sales to the first retailers, which would be detrimental to the manufacturer.

194) For this reason the commitment problem as explained by the Parties does not seem to be of particular relevance in this case.

8.4.3 Efficient bargaining

195) The Parties also argue that if suppliers and retailers in the industry can achieve efficient bargaining through concerted action to approximate a bilateral monopoly situation where a single supplier sells to a single buyer and both set of firms realise that it is best to set monopoly prices vis-à-vis end consumers and share the monopoly rents.

196) The premise of this argument, which is that already before the merger, prices to end consumers are set so as to maximise *"the total profit available to the industry"*, cannot be admitted as relevant in for this case and in contradiction with the Parties general claim that they are subject to competitive pressure from both other manufacturers and from retailers.

[75] In contrast to Horn and Wolinsky, Ziss abstracts from the possibility of bargaining by assuming that the upstream firms unilaterally and irrevocably set the terms of contracts

The available evidence does indeed support that suppliers compete with each other and negotiate with retailers separately. Furthermore, the SSNIP test carried out in the context of the market definition indicated that a hypothetical monopolist would indeed profit from a general price increase.

197) It should be noted that the Parties do not bring any arguments to justify whether or not efficient bargaining is likely to be possible in the case at hand.[76] First, there may be significant difficulties in reaching a welfare improving agreement even if it benefits both sides. Contractual arrangements are not perfect and costless solutions. Real-world contracts can be relatively complex, inducing substantial transaction costs derived from uncertainty, imperfect information and limited foresight. Furthermore, bargainers do not always settle immediately, even though delay is costly. Also they sometimes fail to reach an agreement, even though there are bargains which would make both of them better off.[77]

[76] Note that the cooperative game approach often underlying the finding that efficient bargaining is possible seeks to predict the terms of the agreement by requiring them to satisfy certain reasonable axioms. Such models assume that the parties will always agree and so cannot be used to explain disagreement (e.g. why strikes occur, why international trade negotiations can take years or why some litigant fails to reach an out of court settlement to avoid the expense of a trial).

[77] If the parties have different or incomplete information they may fail to agree or do so only after costly delay (Fudenberg and Tirole, 1983). A prediction of the equilibrium in these situations is surprisingly complex because actions can convey information to the less well-informed party. As a consequence predictions of models with incomplete information are often strongly dependent on fine and apparently arbitrary details of the bargaining process. Details such as whether the parties make simultaneous or sequential moves, or whether one or both can make offers, or whether the number of periods is odd or even, matter because they affect the way in which actions transmit information. Unfortunately it is often essentially arbitrary to adopt one or other set of assumptions about the bargaining process.

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Appendix A: Computation of the equilibrium

A.1 Solving for the equilibrium

198) Given the estimated parameters of the demand side and the vector of implied marginal costs, *mc*, the vector of post-merger equilibrium prices of a given period is given by the equation:[78]

$$p = mc - \left(\Theta^{post} \bullet \nabla(p)' \right)^{-1} q(p).$$

199) Note that the demand parameters enter through the functions $\nabla(p)$ and $q(p)$. The equation is of the form:

$$p = f(p),$$

which is a fixed-point equation. It is solved through simple fixed-point iterations of the form:

$$p^{n+1} = f(p^n).$$

200) As a starting point of the iterations, p^0, the pre-merger price vector is used. The iterations are stopped when p^{n+1} is suitably close to p^n. As a metric of closeness, the percent difference is used. Hence, convergence is declared when $100*(p^{n+1}-p^n)/p^n \leq tol$, where *tol* is a tolerance level set to 10^{-2}.[79]

A.2 Markup formulas

[78] In all formulas of this Appendix, the subscript *t* is supressed for ease of disposition. So, all expressions relate to a given time period.

[79] An alternative solution algorithm is the Newton-method. In some cases it is more efficient than the simple fixed-point algorithm, and it can converge in fewer iterations. However, it can often be much slower in doing one iteration as it requires the calculation of the first derivatives of the function f(.). If the analytical formulas for these derivatives are not provided they have to be calculated numerically, which can be a substantial computational burden slowing down the iterations. Though analytical derivatives can make the Newton-method particularly fast in general, it is quite complicated to write these derivatives for the present model. Moreover, the Newton algorithm often fails to converge. In the Commission's calculations, the simple fixed-point iterations have always converged when the σ parameters have been within the range (0, 1).

201) The speed of the fixed-point calculations can be significantly increased if the implied markups are calculated based on analytical formulas. The specific goal is to express the implied markups as a function of the demand parameters and volumes only. In this way, there is no need to use numerical matrix inversion in the right hand side of the fixed-point equation.[80] The analytical formulas can be derived by exploiting the nested logit structure of the demand side, as well as the first order conditions of the firms' profit maximisation. These first order conditions for firm *f* are:[81]

$$q_j(p) + \sum_{j' \in J^f} \left(p_{j'} - mc_{j'}\right) \frac{\partial q_{j'}(p)}{\partial p_j} = 0 \qquad j = 1, \ldots, J^f.$$

A.2.1 One-level nested logit model

202) Define the following variables: $d_g \equiv \frac{\sigma}{1-\sigma} \frac{1}{Q_g}$, $d_0 \equiv \frac{1}{N}$, where Q_g is the total volume sold of products in nest *g*. The price derivatives of volumes are:

$$\frac{\partial q_j}{\partial p_j} = \alpha q_j \left[-\frac{1}{1-\sigma} + d_g q_j + d_0 q_j \right], \qquad j \in g$$

$$\frac{\partial q_j}{\partial p_i} = \alpha q_j \left[d_g q_i + d_0 q_i \right], \qquad i, j \in g, i \neq j$$

$$\frac{\partial q_j}{\partial p_i} = \alpha q_j d_0 q_i, \qquad j \in g, i \in g', g \neq g'.$$

203) Substituting these derivatives into the first order condition and rearranging yields the markup of product *i* which belongs to nest *g* and is produced by firm *f*:

$$\left(p_i - mc_i\right) = (1-\sigma)\left[\frac{1}{\alpha} + d_g \sum_{j \in J_g^f} q_j (p_j - mc_j) + d_0 \sum_{g' \subset G} \sum_{j \in J_{g'}^f} q_j (p_j - mc_j) \right],$$

where J_g^f is the set of products in nest *g* produced by firm *f*. Multiplying both sides by q_i and summing over J_g^f yields:

$$\sum_{j \in J_g^f} q_j (p_j - mc_j) = \frac{1}{\alpha} \frac{\Gamma_g}{1 - d_g \Gamma_g} + \frac{\Gamma_g}{1 - d_g \Gamma_g} d_0 \sum_{g' \subset G} \sum_{j \in J_{g'}^f} q_j (p_j - mc_j),$$

[80] The matrix to be inverted is $\left(\Theta^{post} \bullet \nabla(p)'\right)$ whose size is equal to the number of products (SKUs). In a typical case this is around 1000. Numerical inversion of a matrix of this size can be a huge computational burden, especially because it has to be carried out in each iteration.

[81] From here on, most of the *f* superscripts are also suppressed. So, each formula relates to firm *f* in period *t*.

where $\Gamma_g \equiv (1-\sigma)Q_g^f$ and Q_g^f is the volume sold of products in nest g produced by firm f. By defining $\Lambda_g \equiv \dfrac{\Gamma_g}{1-d_g\Gamma_g}$, the last equation can be rewritten as

$$\sum_{j\in J_g^f} q_j(p_j - mc_j) = \frac{1}{\alpha}\Lambda_g + \Lambda_g d_0 \sum_{g'\subset G}\sum_{j\in J_{g'}^f} q_j(p_j - mc_j).$$

204) Summing over $g \subset G$ and rearranging yields:

$$\sum_{g\subset G}\sum_{j\in J_{g'}^f} q_j(p_j - mc_j) = \frac{1}{\alpha}\frac{\Gamma_0}{1-d_0\Gamma_0} \equiv \Sigma_0,$$

where $\Gamma_0 \equiv \sum_{g\subset G}\Lambda_g$. Define $\Sigma_g \equiv \dfrac{1}{\alpha}\Lambda_g + \Lambda_g d_0\Sigma_0$, and it follows that the final expression of the markup is:

$$(p_i - mc_i) = (1-\sigma)\left[\frac{1}{\alpha} + d_g\Sigma_g + d_0\Sigma_0\right].$$

VAT correction

205) Denoting the VAT rate by *VAT* the first order condition is:

$$q_j(p)/(1+VAT) + \sum_{j'\in J^f}\left(p_{j'}/(1+VAT) - mc_{j'}\right)\frac{\partial q_{j'}(p)}{\partial p_j} = 0 \qquad j = 1,\dots,J^f.$$

206) Using the derivation above (*mutatis mutandis*) the net markup is:

$$(p_i/(1+VAT) - mc_i) = (1-\sigma)\left[\frac{1}{\alpha(1+VAT)} + d_g\Sigma_g + d_0\Sigma_0\right],$$

where $\Sigma_0 \equiv \dfrac{1}{\alpha(1+VAT)}\dfrac{\Gamma_0}{1-d_0\Gamma_0}$, $\Sigma_g \equiv \dfrac{1}{\alpha(1+VAT)}\Lambda_g + \Lambda_g d_0\Sigma_0$ and all the other terms are defined as above.

A.2.2 **Two-level nested logit model**

207) The case of the two-level nested logit model is analogous. Define the following variables: $d_{hg} \equiv (\frac{1}{1-\sigma_h} - \frac{1}{1-\sigma_g})\frac{1}{Q_{hg}}$, $d_g \equiv \frac{\sigma_g}{1-\sigma_g}\frac{1}{Q_g}$, $d_0 \equiv \frac{1}{N}$, where Q_{hg} is the total volume sold of products in subnest h of nest g. The price derivatives of volumes are:

$$\frac{\partial q_j}{\partial p_j} = \alpha q_j \left[-\frac{1}{1-\sigma_h} + d_{hg} q_j + d_g q_j + d_0 q_j \right], \qquad j \in h \subset g$$

$$\frac{\partial q_j}{\partial p_j} = \alpha q_j \left[d_{hg} q_i + d_g q_i + d_0 q_i \right], \qquad i, j \in h \subset g$$

$$\frac{\partial q_j}{\partial p_i} = \alpha q_j \left[d_g q_i + d_0 q_i \right], \qquad j \in h \subset g, i \in h' \subset g, h \neq h'$$

$$\frac{\partial q_j}{\partial p_i} = \alpha q_j d_0 q_i, \qquad j \in g, i \in g', g \neq g'.$$

208) Substituting these derivatives into the first order condition and rearranging yields the markup of product i which belongs to subnest h of nest g and is produced by firm f:

$$\left(p_i - mc_i\right) = (1-\sigma_h)\left[\frac{1}{\alpha} + d_{hg}\sum_{j \in S_{hg}^f} q_j(p_j - mc_j) + d_{hg}\sum_{h' \subset g}\sum_{j \in J_{h'g}^f} q_j(p_j - mc_j) + d_0 \sum_{g' \subset G}\sum_{h' \subset g}\sum_{j \in J_{h'g}^f} q_j(p_j - mc_j)\right],$$

where J_{hg}^f is the set of products in subnest h of nest g produced by firm f. Multiplying both sides by q_i and summing over J_{hg}^f yields:

$$\sum_{j \in J_{hg}^f} q_j(p_j - mc_j) = \frac{1}{\alpha}\frac{\Gamma_{hg}}{1-d_{hg}\Gamma_{hg}} + \frac{\Gamma_{hg}}{1-d_{hg}\Gamma_{hg}}\left[d_g \sum_{h' \subset g}\sum_{j \in J_{h'g}^f} q_j(p_j - mc_j) + d_0 \sum_{g' \subset G}\sum_{h' \subset g}\sum_{j \in J_{h'g}^f} q_j(p_j - mc_j)\right],$$

where $\Gamma_{hg} \equiv (1-\sigma_h)Q_{hg}^f$ and Q_{hg}^f is the volume sold of products in the subnest h of nest g and produced by firm f. By defining $\Lambda_{hg} \equiv \frac{\Gamma_{hg}}{1-d_{hg}\Gamma_{hg}}$, the last equation can be rewritten as

$$\sum_{j \in J_{hg}^f} q_j(p_j - mc_j) = \frac{1}{\alpha}\Lambda_{hg} + \Lambda_{hg}\left[d_g \sum_{h' \subset g}\sum_{j \in J_{h'g}^f} q_j(p_j - mc_j) + d_0 \sum_{g' \subset G}\sum_{h' \subset g}\sum_{j \in J_{h'g}^f} q_j(p_j - mc_j)\right].$$

209) Summing over $h \subset g$ and rearranging yields:

$$\sum_{h \subset G}\sum_{j \in J_{hg}^f} q_j(p_j - mc_j) = \frac{1}{\alpha}\frac{\Gamma_g}{1-d_g\Gamma_g} + \frac{\Gamma_g}{1-d_g\Gamma_g} d_0 \sum_{g' \subset G}\sum_{h' \subset g}\sum_{j \in J_{h'g}^f} q_j(p_j - mc_j),$$

where $\Gamma_g \equiv \sum_{h \subset g} \Lambda_{hg}$. By defining $\Lambda_g \equiv \frac{\Gamma_g}{1-d_g\Gamma_g}$, the last equation can be rewritten as

$$\sum_{h\subset G}\sum_{j\in J_{hg}^f} q_j(p_j - mc_j) = \frac{1}{\alpha}\Lambda_g + \Lambda_g d_0 \sum_{g'\subset G}\sum_{h'\subset g}\sum_{j\in J_{h'g}^f} q_j(p_j - mc_j),$$

210) Summing over $g \subset G$ and rearranging yields:

$$\sum_{g\subset G}\sum_{h\subset g}\sum_{j\in J_{g'}^f} q_j(p_j - mc_j) = \frac{1}{\alpha}\frac{\Gamma_0}{1-d_0\Gamma_0} \equiv \Sigma_0,$$

where $\Gamma_0 \equiv \sum_{g\subset G}\Lambda_g$. Define $\Sigma_{hg} \equiv \frac{1}{\alpha}\Lambda_{hg} + \Lambda_{hg} d_g \Sigma_g + \Lambda_{hg} d_0 \Sigma_0$ and $\Sigma_g \equiv \frac{1}{\alpha}\Lambda_g + \Lambda_g d_0 \Sigma_0$, and it follows that the final expression of the markup is:

$$(p_i - mc_i) = (1-\sigma)\left[\frac{1}{\alpha} + d_{hg}\Sigma_{hg} + d_g\Sigma_g + d_0\Sigma_0\right].$$

VAT correction

211) Using the derivation above (*mutatis mutandis*) the net markup is:

$$(p_i/(1+VAT) - mc_i) = (1-\sigma)\left[\frac{1}{\alpha(1+VAT)} + d_{hg}\Sigma_{hg} + d_g\Sigma_g + d_0\Sigma_0\right],$$

where $\Sigma_0 \equiv \frac{1}{\alpha(1+VAT)}\frac{\Gamma_0}{1-d_0\Gamma_0}$, $\Sigma_g \equiv \frac{1}{\alpha(1+VAT)}\Lambda_g + \Lambda_g d_0\Sigma_0$, $\Sigma_{hg} \equiv \frac{1}{\alpha(1+VAT)}\Lambda_{hg} + \Lambda_{hg} d_g \Sigma_g + \Lambda_{hg} d_0 \Sigma_0$ and all the other terms are defined as above.

Appendix B: Tables

Table 8 One-level nested logit estimates, nests: Male, Non-Male, GMM-FD estimation

country	**Belgium**		**The Netherlands**		**Spain**		**The UK**	
sample	Q1 2007 - Q4 2009		Q1 2007 - Q4 2009		Q1 2007 - Q4 2009		Q2 2008 - Q4 2009	
-ALPHA (price)	**-0.748***	(0.075)	**-2.180******	(0.000)	**-0.591****	(0.024)	**-1.453******	(0.004)
SIGMA (log share in group)	**0.841******	(0.000)	**0.884******	(0.000)	**0.941******	(0.000)	**0.630******	(0.000)
SIZE†	**-0.004******	(0.000)	**-0.012******	(0.000)	**-0.003******	(0.000)	**-0.004****	(0.047)
DEODORANT (fragrance)†	0.079	(0.551)	**1.377******	(0.000)	**-0.090****	(0.028)	0.228	(0.562)
ANTI PERSPIRANT†	-0.022	(0.858)	**0.634******	(0.000)			0.255	(0.530)
EFFICACY†	0.177	(0.176)	**-0.309****	(0.012)	-0.062	(0.132)	-0.305	(0.449)
NO WHITE MARK†	**0.214***	(0.058)	-0.111	(0.521)	**0.176******	(0.008)	**0.467****	(0.030)
GIRL†	**0.449******	(0.001)	**-0.345***	(0.081)			-0.244	(0.401)
SKIN CARE†	0.168	(0.195)	**-0.342******	(0.004)	**0.183******	(0.000)	0.360	(0.219)
NO CONTACT†	**-0.295******	(0.003)	**-0.801******	(0.000)	**-0.203******	(0.003)	**-0.911****	(0.010)
HAIR MINIMISING†	**0.850******	(0.000)			**0.409******	(0.000)	**-0.621******	(0.000)
UNISEX†			**-0.826******	(0.000)				
CONSTANT†	**-2.441******	(0.000)	**-0.411****	(0.015)	**-1.577******	(0.000)	**-2.777******	(0.000)
TIME EFFECTS	**yes**		**yes**		**yes**		**yes**	
Number of observations	6148		13826		8275		4351	
R-squared, overall	0.986		0.745		0.964		0.891	
Ramsey test (H0: no "omitted" nonlinearity), p-value	0.574		0.107		0.251		0.434	
Fisher test (H0: non-stationary residuals), p-value	0.000		0.000		0.000		0.000	
Rank condition's test (H0: rank cond. does not hold), p-value	0.012		0.000		0.013		0.003	
First stage regression of price, joint significance of instruments, p-value	0.007		0.000		0.021		0.000	
First stage regression of log share, joint significance of instruments, p-value	0.004		0.000		0.000		0.000	
Hansen test (H0: overidentifying restrictions hold), p-value	0.104		0.941		0.737		0.220	
Implied % price effect [90% confidence interval]	5.2	[1.9 … 9.3]	3.8	[1.7 … 6.1]	2	[0.4 … 6.2]	2.5	[1.4 … 3.8]
Implied % price effect [90% confidence interval] non-male	7.2	[2.6 … 13.5]	5.6	[1.1 … 9.8]	1.9	[0.2 … 5.9]	4.1	[2.5 … 6.0]

Notes: Based on panel robust variance-covariance matrix using the Windmeijer (2005) correction;
*p-values in parentheses: * p<0.1 ** p<0.05 *** p<0.01;*
† time constant variables: coefficients estimated from the residuals of the FD estimation.

Table 9 Two-level nested logit estimates, nests: Male, Non-Male, subnests: skin-nonskin, GMM-FD estimation

Country	Belgium		The Netherlands		Spain		The UK	
Sample	Q1 2007 - Q4 2009		Q1 2007 - Q4 2009		Q1 2007 - Q4 2009		Q2 2008 - Q4 2009	
-ALPHA (price)	**-0.938***	(0.091)	**-2.138*****	(0.000)	**-0.543****	(0.012)	**-1.481*****	(0.004)
SIGMA_H (log share in subgroup)	**0.854*****	(0.000)	**0.894*****	(0.000)	**0.944*****	(0.000)	**0.646*****	(0.000)
SIGMA_G (log share of subgroup in group)	0.643	(0.446)	**0.762*****	(0.006)	**0.639*****	(0.000)	0.343	(0.546)
SIZE†	**-0.006*****	(0.000)	**-0.011*****	(0.000)	**-0.002*****	(0.000)	**-0.004****	(0.037)
DEODORANT (fragrance)†	0.134	(0.407)	**1.344*****	(0.000)	**-0.062***	(0.086)	0.286	(0.475)
ANTI PERSPIRANT†	0.035	(0.808)	**0.611*****	(0.000)			0.283	(0.484)
EFFICACY†	0.206	(0.192)	**-0.319*****	(0.008)	-0.016	(0.655)	-0.300	(0.461)
NO WHITE MARK†	0.202	(0.120)	-0.135	(0.427)			**0.462****	(0.025)
GIRL†	**0.408*****	(0.005)	**-0.363***	(0.061)	**0.147****	(0.014)	-0.307	(0.290)
SKIN CARE†	0.048	(0.762)	**-0.416*****	(0.000)	**0.088****	(0.031)	-0.029	(0.922)
NO CONTACT†	**-0.408*****	(0.001)	**-0.783*****	(0.000)	**-0.165*****	(0.007)	**-0.956*****	(0.007)
HAIR MINIMISING†	**0.881*****	(0.000)			**0.319*****	(0.000)	**-0.576*****	(0.001)
UNISEX†			**-0.816*****	(0.000)				
CONSTANT†	**-1.956*****	(0.000)	**-0.400****	(0.016)	**-1.788*****	(0.000)	**-2.660*****	(0.000)
TIME EFFECTS	**yes**		**yes**		**yes**		**yes**	
Number of observations	6148		13826		8275		4351	
R-squared, overall	0.979		0.756		0.969		0.892	
Ramsey test (H0: no "omitted" nonlinearity), p-value	0.241		0.114		0.310		0.487	
Fisher test (H0: non-stationary residuals), p-value	0.000		0.000		0.000		0.000	
Rank condition's test (H0: rank cond. does not hold), p-value	0.063		0.000		0.027		0.008	
First stage regression of price, joint significance of instruments, p-value	0.041		0.000		0.041		0.000	
First stage regression of log subshare, joint significance of instruments, p-value	0.000		0.003		0.000		0.002	
First stage regression of log share, joint significance of instruments, p-value	0.000		0.000		0.000		0.000	
Hansen test (H0: overidentifying restrictions hold), p-value	0.216		0.892		0.873		0.123	
Implied % price effect [90% confidence interval]	4.2	[1.9 … 13.7]	3.8	[1.2 … 6.4]	2.1	[0.5 … 6.7]	2.5	[1.5 … 5]
Implied % price effect [90% confidence interval] non-male	6.2	[3.1 15.1]	5.8	[2.3 9.3]	3.1	[0.3 5.6]	4	[2.5 7.7]

Notes: Based on panel robust variance-covariance matrix using the Windmeijer (2005) correction;
*p-values in parentheses: * p<0.1 ** p<0.05 *** p<0.01;*
† time constant variables: coefficients estimated from the residuals of the FD estimation.

Table 10 Estimated average own price elasticities

one-level nested logit model

	AXE	DOVE	REXONA	VASELINE	IMPULSE	SANEX	NIVEA	FA	8X4	F_DIST.	SOFT&GEN.	RIGHTG.	OTHER
BE	-2.2	-2.9	-2.2			-2.6	-2.8	-2.2					-2.8
NL	-2.1	-2.5	-2.5	-3.1		-3	-3.1	-2.1	-2.1				-4.8
ES	-7.5	-9.1	-5.8			-8.5	-10			-3.4			-5.9
UK	-2.5	-3.1	-1.9	-2.2	-3.5	-2.3	-2.8				-1.7	-1.2	-1.8

two-level nested logit model

	AXE	DOVE	REXONA	VASELINE	IMPULSE	SANEX	NIVEA	FA					OTHER
BE	-2.6	-3.6	-2.9			-3.2	-3.1	-2.7					-3.8
NL	-2	-2.5	-2.6	-3.3		-3	-2.8	-2.2	-2.2				-5.1
ES	-7.1	-8.7	-5.5			-8	-9.6			-3.2			-5.6
UK	-2.6	-2.7	-2	-2.2	-3.6	-2.4	-2.7				-1.8	-1.2	-1.9

Note: Based on the estimates of Table 8 and Table 9.

Table 11 Observed and implied costs (as % of retail price), calibration adjustment

Belgium

		SANEX	AXE	DOVE	REXONA	discrepancy	price increase (%)
	observed	[...]*	[...]*	[...]*	[...]*		
one-level	implied (estimated)	60.9	45.6	54.7	41.2	[...]*	5.2
one-level	implied (calibration adjusted)	67.5	53.6	62	50.5	[...]*	4.5
two-level	implied (estimated)	68.8	49.7	66.7	53.3	[...]*	4.2
two-level	implied (calibration adjusted)	67	45.1	65.4	50.5	[...]*	4.4
	weight	19.9	31.2	15.5	33.3		

The Netherlands

		SANEX	AXE	DOVE	REXONA	VASELINE	discrepancy	price increase (%)
	observed	[...]*	[...]*	[...]*	[...]*	[...]*		
one-level	implied (estimated)	66.1	41.3	48.7	46.2	57.0	[...]*	3.8
one-level	implied (calibration adjusted)	66.6	42.1	49.4	47	57.6	[...]*	3.8
two-level	implied (estimated)	66	36.1	52.1	47.3	59.3	[...]*	3.8
two-level	implied (calibration adjusted)	68.8	42	55.5	51.5	62.3	[...]*	3.5
	weight	27.4	27.2	19.6	25.8	0.0		

Spain

		SANEX	AXE	DOVE	REXONA	discrepancy	price increase (%)
	observed	[...]*	[...]*	[...]*	[...]*		
one-level	implied (estimated)	87.9	83.2	86.9	78.4	[...]*	2
one-level	implied (calibration adjusted)	89.9	86	89.1	82	[...]*	1.6
two-level	implied (estimated)	87.3	82.4	86.3	77.5	[...]*	2.1
two-level	implied (calibration adjusted)	89.8	85.9	89.1	82	[...]*	1.8
	weight	28.1	24.5	13.2	34.2		

The UK

		SANEX	AXE	DOVE	IMPULSE	REXONA	VASELINE	discrepancy	price increase (%)
	observed	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*		
one-level	implied (estimated)	56.4	49.2	52.8	56.1	28.5	32.4	[...]*	2.5
one-level	implied (calibration adjusted)	75.8	69	71.6	73.6	56.7	59.3	[...]*	1.7
two-level	implied (estimated)	58.9	51.3	52	59.5	32.8	31.3	[...]*	2.5
two-level	implied (calibration adjusted)	75.1	68.7	70.1	73.9	56.7	57.1	[...]*	1.7
	weight	7.1	30.6	12.9	6.6	39.4	3.5		

Note: based on Unileve'sr and Sara Lee's transaction data, Nielsen, the estimates of Table 8 and Table 9, and the calibration adjustment results.

Table 12 One-level nested logit estimates, nests: Male, Non-Male, GMM-FD estimation on USAGE CORRECTED data

country	Belgium		The Netherlands		Spain		The UK	
sample	Q1 2007 - Q4 2009		Q1 2007 - Q4 2009		Q1 2007 - Q4 2009		Q2 2008 - Q4 2009	
-ALPHA (price)	**-0.428****	(0.049)	**-0.964*****	(0.001)	**-0.160*****	(0.004)	**-1.893****	(0.045)
SIGMA (log share in group)	**0.914*****	(0.000)	**0.881*****	(0.000)	**0.967*****	(0.000)	**0.604*****	(0.000)
SIZE†	**-0.005*****	(0.000)	**-0.009*****	(0.000)	**-0.001****	(0.022)	**-0.015*****	(0.000)
DEODORANT (fragrance)†	0.009	(0.883)	**0.316*****	(0.000)	**-0.101*****	(0.009)	-0.275	(0.638)
ANTI PERSPIRANT†	**-0.199*****	(0.001)	**-0.343*****	(0.000)	**-0.168*****	(0.000)	**0.752****	(0.025)
EFFICACY†	**0.161*****	(0.006)	0.011	(0.902)			-0.822	(0.158)
NO WHITE MARK†	**0.170*****	(0.004)	**0.258***	(0.058)	0.108	(0.134)	**0.509****	(0.039)
GIRL†	**0.322*****	(0.000)	**-0.575*****	(0.000)			-0.267	(0.534)
SKIN CARE†	0.067	(0.294)	0.079	(0.306)	**0.289*****	(0.000)	0.276	(0.223)
NO CONTACT†	**0.727*****	(0.000)	**1.447*****	(0.000)	**0.112***	(0.054)	**2.890*****	(0.000)
HAIR MINIMISING†	**0.538*****	(0.000)			**0.393*****	(0.000)		
UNISEX†			-0.122	(0.136)				
CONSTANT†	**-2.570*****	(0.000)	**-2.365*****	(0.000)	**-2.165*****	(0.000)	**-3.789*****	(0.000)
TIME EFFECTS	**yes**		**yes**		**yes**		**yes**	
Number of observations	6148		13826		8275		4351	
R-squared, overall	0.972		0.704		0.952		0.536	
Ramsey test (H0: no "omitted" nonlinearity), p-value	0.134		0.741		0.231		0.376	
Fisher test (H0: non-stationary residuals), p-value	0.000		0.000		0.000		0.000	
Rank condition's test (H0: rank cond. does not hold), p-value	0.104		0.000		0.017		0.122	
First stage regression of price, joint significance of instruments, p-value	0.073		0.000		0.011		0.104	
First stage regression of log share, joint significance of instruments, p-value	0.007		0.000		0.024		0.001	
Hansen test (H0: overidentifying restrictions hold), p-value	0.638		0.624		0.992		0.341	
Implied % price effect [90% confidence interval]	5.9	[3.1 … 13.8]	9.8	[0.8 … 12.7]	4.5	[1.7 … 10.1]	3.7	[1.8 … 6.6]
Implied % price effect [90% confidence interval] non-male	8.5	[3.0 … 20.0]	13.3	[1.1 … 16.7]	3.4	[1.3 … 7.7]	5.2	[2.5 … 9.3]

Notes: Based on robust variance-covariance matrix (clustering on brands) using the Windmeijer (2005) correction;
*p-values in parentheses: * p<0.1 ** p<0.05 *** p<0.01;*
† time constant variables: coefficients estimated from the residuals of the FD estimation.

Table 13 Two-level nested logit estimates, nests: Male, Non-Male, subnests: skin-nonskin, GMM-FD estimation on USAGE CORRECTED data

country	Belgium		The Netherlands		Spain		The UK	
sample	Q1 2007 - Q4 2009		Q1 2007 - Q4 2009		Q1 2007 - Q4 2009		Q2 2008 - Q4 2009	
-ALPHA (price)	-0.253	(0.420)	**-1.030*** **	(0.000)	**-0.137*** **	(0.005)	**-1.808* **	(0.059)
SIGMA_H (log share in subgroup)	**0.956*** **	(0.000)	**0.912*** **	(0.000)	**0.970*** **	(0.000)	**0.653*** **	(0.001)
SIGMA_G (log share of subgroup in group)	0.135	(0.945)	**0.636*** **	(0.000)	**0.890*** **	(0.000)	0.389	(0.620)
SIZE†	**-0.003*** **	(0.000)	**-0.010*** **	(0.000)	**-0.001** **	(0.035)	**-0.015*** **	(0.000)
DEODORANT (fragrance)†	-0.002	(0.976)	**0.325*** **	(0.000)	**-0.091** **	(0.012)	-0.232	(0.676)
ANTI PERSPIRANT†	**-0.136*** **	(0.008)	**-0.428*** **	(0.000)	**-0.154*** **	(0.000)	**0.729** **	(0.017)
EFFICACY†	0.079	(0.109)	-0.023	(0.795)			-0.780	(0.157)
NO WHITE MARK†	0.062	(0.227)	0.168	(0.200)	0.100	(0.149)	**0.453** **	(0.040)
GIRL†	**0.156*** **	(0.001)	**-0.721*** **	(0.000)			-0.306	(0.448)
SKIN CARE†	**-0.261*** **	(0.000)	0.111	(0.153)	**0.284*** **	(0.000)	-0.003	(0.989)
NO CONTACT†	**0.421*** **	(0.000)	**1.634*** **	(0.000)	0.078	(0.140)	**2.795*** **	(0.000)
HAIR MINIMISING†	**0.525*** **	(0.000)			**0.368*** **	(0.000)		
UNISEX†			**-0.199** **	(0.016)				
CONSTANT†	**-2.733*** **	(0.000)	**-2.181*** **	(0.000)	**-2.213*** **	(0.000)	**-3.538*** **	(0.000)
TIME EFFECTS	**yes**		**yes**		**yes**		**yes**	
Number of observations	6148		13826		8275		4351	
R-squared, overall	0.970		0.683		0.956		0.593	
Ramsey test (H0: no "omitted" nonlinearity), p-value	0.156		0.742		0.392		0.274	
Fisher test (H0: non-stationary residuals), p-value	0.000		0.000		0.000		0.000	
Rank condition's test (H0: rank cond. does not hold), p-value	0.083		0.000		0.023		0.099	
First stage regression of price, joint significance of instruments, p-value	0.103		0.000		0.012		0.104	
First stage regression of log subshare, joint significance of instruments, p-value	0.000		0.002		0.024		0.003	
First stage regression of log share, joint significance of instruments, p-value	0.000		0.000		0.000		0.000	
Hansen test (H0: overidentifying restrictions hold), p-value	0.127		0.684		0.995		0.386	
Implied % price effect [90% confidence interval]	6.6	[2.9 … 18.9]	6.5	[0.4 … 18.7]	5	[2.5 … 11.9]	3.7	[1.8 … 7.2]
Implied % price effect [90% confidence interval] non-male	10.4	[4.6 … 29.7]	8.8	[0.5 … 25.3]	3.9	[1.9 … 9.2]	5.3	[2.5 … 10.2]

Notes: Based on robust variance-covariance matrix (clustering on brands) using the Windmeijer (2005) correction;
*p-values in parentheses: * p<0.1 ** p<0.05 *** p<0.01;*
† time constant variables: coefficients estimated from the residuals of the FD estimation.

Table 14 Calibration parameters (non-flexible models)

country	estimation/calibration	model	alpha	sigmag	sigmah	cost discrepancy (%)	price increase (%)
Belgium	calibrated	one-level	0.524	0.895		[...]*	5.7
Belgium	calibrated	two-level	0.314	0.846	0.938	[...]*	6.8
Belgium	estimated	one-level	0.428	0.914		[...]*	5.9
Belgium	estimated	two-level	0.253	0.135	0.956	[...]*	6.6
Netherlands	calibrated	one-level	1.269	0.937		[...]*	4.2
Netherlands	calibrated	two-level	1.257	0.652	0.943	[...]*	3.6
Netherlands	estimated	one-level	0.964	0.881		[...]*	9.8
Netherlands	estimated	two-level	1.030	0.636	0.912	[...]*	6.5
Spain	calibrated	one-level	0.284	0.950		[...]*	3.7
Spain	calibrated	two-level	0.091	0.891	0.985	[...]*	3.9
Spain	estimated	one-level	0.160	0.967		[...]*	4.5
Spain	estimated	two-level	0.137	0.890	0.970	[...]*	5.0
UK	calibrated	one-level	1.936	0.801		[...]*	2.6
UK	calibrated	two-level	0.535	0.941	0.951	[...]*	2.9
UK	estimated	one-level	1.893	0.604		[...]*	3.7
UK	estimated	two-level	1.808	0.389	0.653	[...]*	3.7

Notes: calibrated: calibrated parameters, estimated: GMM-FDestimates from Table 12 and Table 13 (usage corrected model); cost discrepancy: weighted average absolute difference between predicted and observed wholesale costs (as percentage of retail price); price increase: implied percentage price increase across all products.

Table 15 Calibration parameters (flexible models)

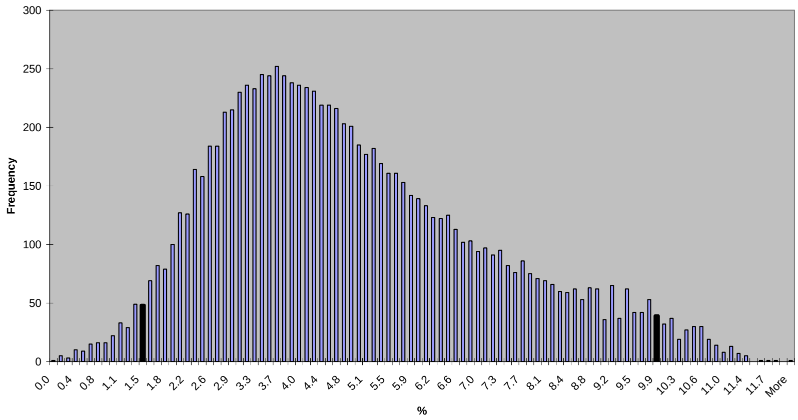
country	est/calib	model	type	alpha	sigmagm	sigmagnm	sigmahsm	sigmahnsm	sigmahsnm	sigmahn~m	cost discrepancy (%)	price increase (%)
BE	calibrated	1-level	flexible	0.505	0.802	0.900					[...]*	6.1
BE	calibrated	2-level	flexible	0.245	0.738	0.855	0.955	0.928	0.969	0.938	[...]*	6.1
NL	calibrated	1-level	flexible	0.985	0.913	0.951					[...]*	4.6
NL	calibrated	2-level	flexible	1.205	0.620	0.716	0.921	0.923	0.946	0.942	[...]*	3.8
ES	calibrated	1-level	flexible	2.066	0.758	0.611					[...]*	2.2
ES	calibrated	2-level	flexible	0.077	0.976	0.892	0.976	0.992	0.985	1.000	[...]*	3.4
UK	calibrated	1-level	flexible	1.582	0.640	0.844					[...]*	2.9
UK	calibrated	2-level	flexible	1.950	0.329	0.757	0.983	0.415	0.804	0.806	[...]*	2.6

Notes: calibrated: calibrated parameters, estimated: GMM-FDestimates from Table 12 and Table 13 (usage corrected model); cost discrepancy: weighted average absolute difference between predicted and observed wholesale costs (as percentage of retail price); price increase: implied percentage price increase across all products; nest/subnest specific parameters: sigmagm: within nest parameter male market, sigmagnm: w. n .param. non-male market, sigmahsm: within subnest parameter male market skin subsegment, sigmahnsm: w. sn. param male seg. non-skin subseg. sigmahsnm: w. sn. param non-male seg. skin subseg. sigmahnsnm: w. sn. param non-male seg. non-skin subseg.

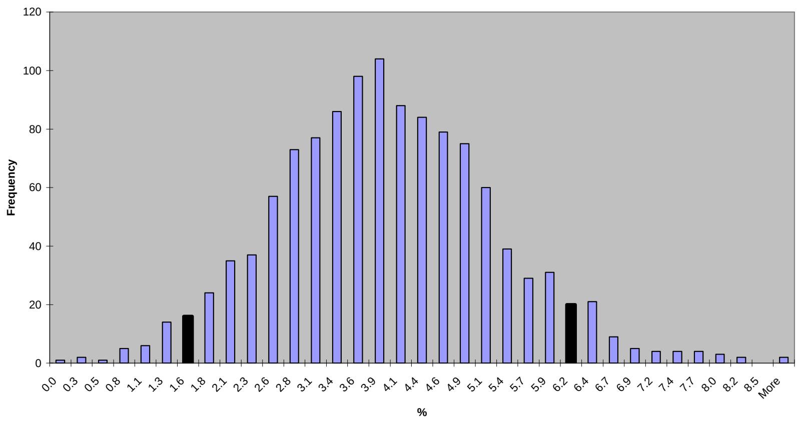
Appendix C: Figures

Figure 3 Distributions of the predicted price effects, one-level nested logit models

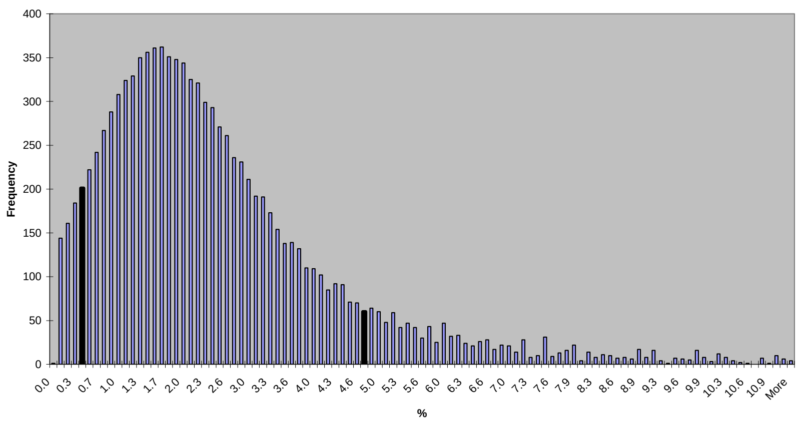
Histogram of price effects
Belgium, one-level nested logit model (gender), 12000 Monte Carlo replications



Histogram of price effects
Netherlands, one-level nested logit model (gender), 1200 Monte Carlo replications



Histogram of price effects
Spain, one-level nested logit model (gender), 12000 Monte Carlo replications



Histogram of price effects
UK, one-level nested logit model (gender), 12000 Monte Carlo replications

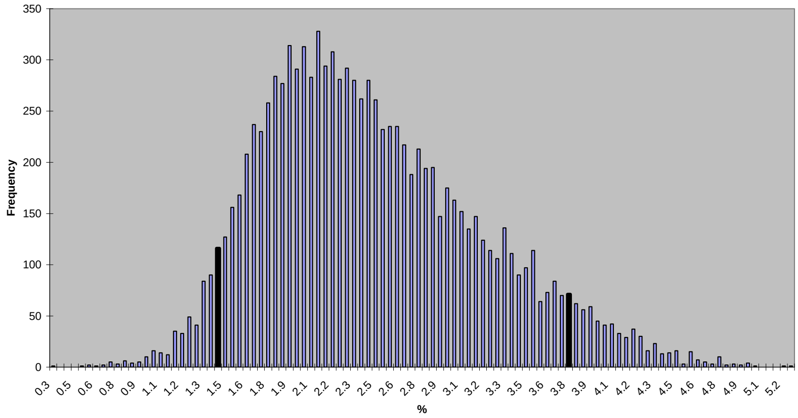
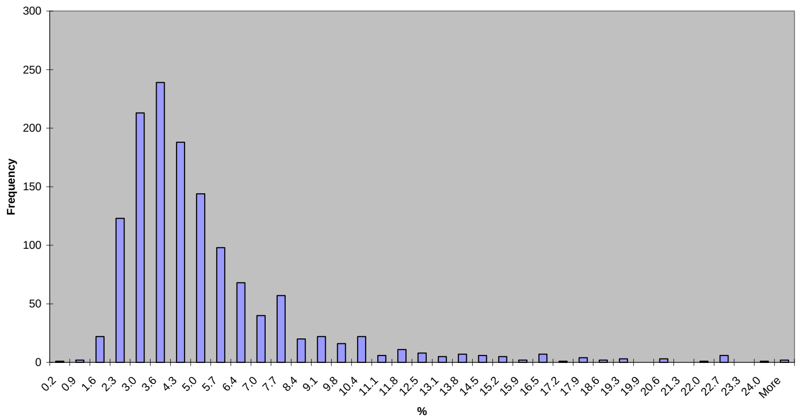
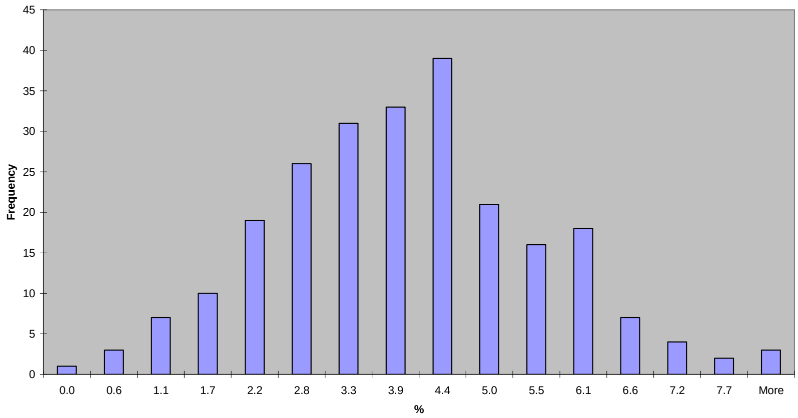


Figure 4 Distributions of the predicted price effects, two-level nested logit models

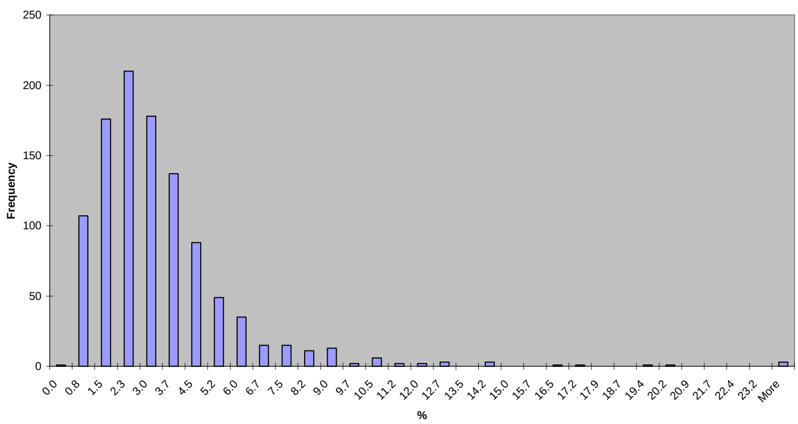
Histogram of price effects
Belgium, one-level nested logit model (gender), 3600 Monte Carlo replications



Histogram of price effects
Netherlands, one-level nested logit model (gender), 335 Monte Carlo replications



Histogram of price effects
Spain, one-level nested logit model (gender), 1200 Monte Carlo replications



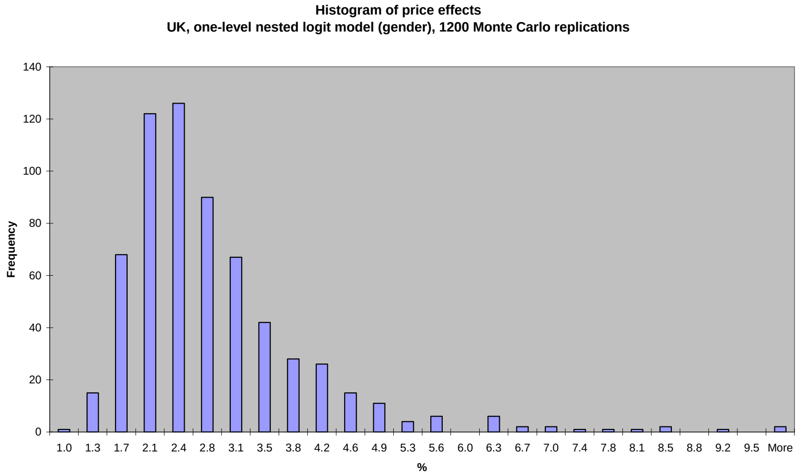
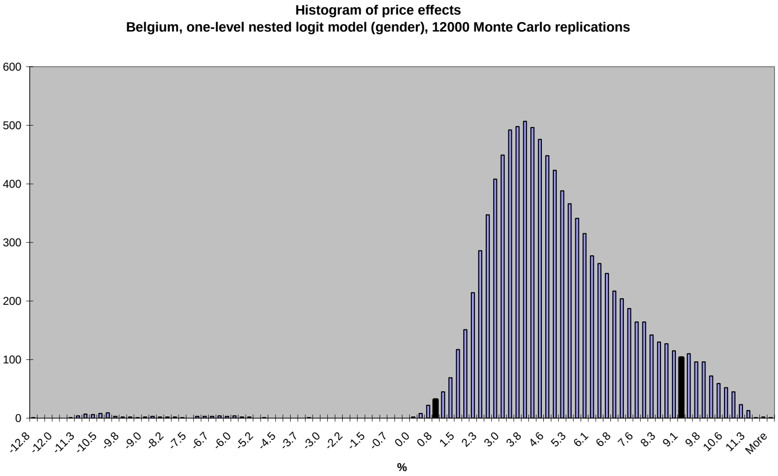
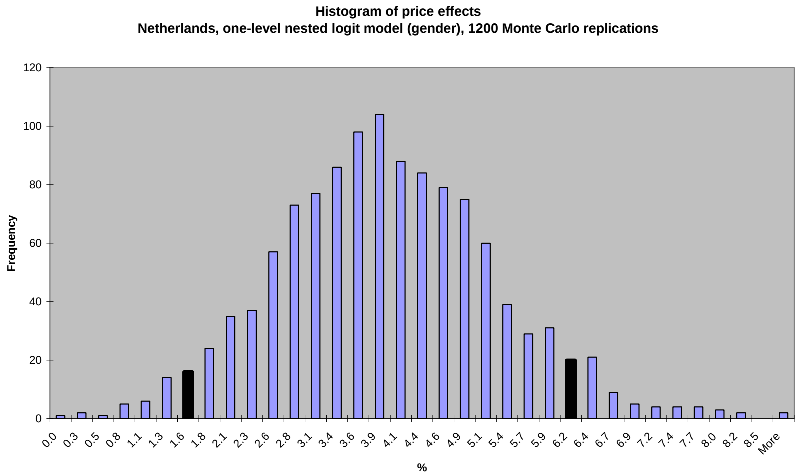
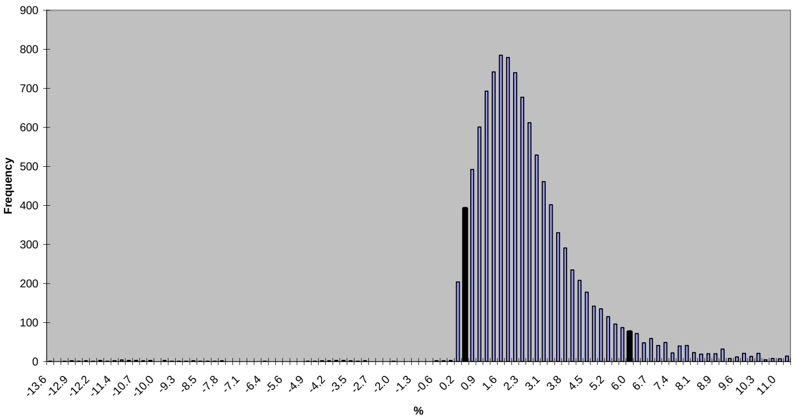


Figure 5 Distributions of the predicted price effects, one-level nested logit models (negative αs included in the Monte Carlo draws)





Histogram of price effects
Spain, one-level nested logit model (gender), 12000 Monte Carlo replications



Histogram of price effects
UK, one-level nested logit model (gender), 12000 Monte Carlo replications