

***Case No COMP/M.6119 -  
ARLA/ HANSA***

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 01/04/2011

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EUROPEAN COMMISSION

Brussels, 01/04/2011

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PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

**To the notifying party:**

Dear Sir/Madam,

**Subject: Case No COMP/M.6119 – ARLA/ HANSA  
Notification of 25.02.2011 pursuant to Article 4 of Council Regulation  
No 139/2004<sup>1</sup>**

1. On 25 February 2011, the European Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 ("Merger Regulation") by which the undertaking Arla Food a.m.b.a ("Arla", Denmark) acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of the undertaking Hansa-Milch Mecklenburg-Holstein eG and its subsidiaries ("Hansa", Germany) by way of purchase of shares. Arla and Hansa are jointly referred to as "the Parties".
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the internal market and the EEA Agreement.

## **I. THE PARTIES AND THE OPERATION**

3. Arla is a dairy cooperative owned by Swedish and Danish dairy farmers and active in the production and sale of a variety of dairy products.

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

4. Hansa is a cooperative owned by German dairy farmers. It produces and sells dairy products, in particular fresh dairy products, longlife milk, butter and milk powder.
5. On 14 December 2010 Arla and Hansa signed an agreement according to which Hansa will transfer all assets and activities to Arla in exchange for Hansa (i) becoming a new member of Arla with the same membership rights as granted to the current members of Arla, (ii) Arla granting financial and democratic rights and making a cash payment to Hansa, and (iii) Arla buying all milk delivered to Hansa by Hansa's members.
6. While Hansa will remain a German cooperative owned by its members and will become a corporate member of Arla with the right to appoint five members of Arla's board of representatives (out of a total of 155) as well as one member of the board of directors out of a total of 16, Arla will own and fully control Hansa's former subsidiaries, which run the operational business of Hansa. The proposed transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

## **II. EU DIMENSION**

7. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million<sup>2</sup> (Arla: EUR [...] million, Hansa: EUR [...] million). Each of them has an EU-wide turnover in excess of EUR 250 million (Arla: EUR [...] million; Hansa: EUR [...] million), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has an EU dimension pursuant to Article 1(2) of the Merger Regulation.

## **III. COMPETITIVE ASSESSMENT**

8. The activities of Arla and Hansa give rise to horizontal overlaps in the procurement of raw milk, production and distribution of fresh dairy products (milk, cream, yoghurt, quark and flavoured drinks), longlife dairy products, butter and milk powder.

### **I. Relevant product markets**

#### *I.1. Procurement of raw milk*

9. Raw milk is collected from the farms and delivered to the dairies for further processing. It has a perishable nature, since it has not undergone any treatment other than cooling.
10. The Parties propose to follow the recent Commission practice, where it has been found that the procurement of raw milk should be split in two separate markets: 1) the procurement of conventional milk, and 2) the procurement of organic milk.<sup>3</sup> For the German market the Bundeskartellamt has so far left open whether the raw milk market

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<sup>2</sup> Turnover calculated in accordance with Article 5 of the Merger Regulation.

<sup>3</sup> M.5046 Friesland/Campina, para. 52.

should be split in a conventional and an organic raw milk market, it however indicated that there might be reasons for such a separation.<sup>4</sup>

11. The precise definition of the relevant product market can be left open in the present case because, regardless of the definition used, the transaction would not raise any competition concerns.

### *1.2. Fresh dairy products*

12. The Parties submit, in line with a Commission precedent<sup>5</sup>, that within fresh dairy products separate product markets should be defined: fresh milk, fresh buttermilk, plain yoghurt, value added yoghurt, fresh cream, quark and fresh flavoured dairy drinks.
13. Fresh milk is milk with a standardised fat content, which is pasteurised at 72° Celsius for 15 seconds.
14. Fresh buttermilk is a specific kind of milk which is thicker and sourer than ordinary milk. The Commission found fresh buttermilk to constitute a separate product market, because there was only limited demand side substitution with fresh milk.<sup>6</sup>
15. Fresh plain yoghurt is a fermented product also produced from raw milk, which has been partially skimmed and pasteurised and fermented by adding special yoghurt cultures.
16. Value added yoghurt is made from basic plain yoghurt which has been added with flavours, colouring, sugar, fruits and additives.<sup>7</sup> It is normally sold in packs varying from 100 ml to 1 litre. In the Friesland/Campina case, the Commission concluded that plain yoghurt and flavoured yoghurt were distinct product markets due to different consumption habits and significant price differences.<sup>8</sup>
17. Fresh cream is raw milk which has been standardised to a fat content of 8 % or more (often up to 38 %). The Parties argue that because of different logistics and lack of demand-side substitutability, fresh cream should form a separate product market from long-life cream. In a previous case<sup>9</sup>, the Commission left open whether fresh cream and long-life cream belong to the same relevant product market. In the absence of competition concerns, this can also be done in the present case.
18. Quark is made from skimmed milk. The milk is heated to a maximum of 30°Celsius, and subsequently the milk is stored and starter cultures are added. After this process, the quark and the leftover is separated, and finally cream, ingredients and flavouring such as

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<sup>4</sup> Bundeskartellamt, Case B2-29/09, Humana/Nordmilch, p. 37.

<sup>5</sup> M.5046 Friesland/Campina.

<sup>6</sup> M.5046 Friesland/Campina, para. 156.

<sup>7</sup> M.5046 Friesland/Campina, para. 891.

<sup>8</sup> M.5046 Friesland/Campina, para. 154.

<sup>9</sup> M.5046 Friesland/Campina, para. 1364.

fresh fruit, herbs and/or spices are added. The Parties submit that flavoured quark and non-flavoured quark belong to the same product market. For the purposes of the present case it can be left open if these are separate markets as no competition concerns would arise under any alternative definition.

19. The Parties produce flavoured dairy drinks with coffee and chocolate flavours. The Parties submit that both products should be considered as being part of the same market, and that one market exists for all fresh flavoured dairy drinks. The Commission previously defined separate markets for health related fresh flavoured dairy drinks and non-health related fresh flavoured dairy drinks<sup>10</sup>. Again, the precise definition can be left open in the present case because, regardless of the definition used, there is no danger of the transaction giving rise to anti-competitive effects.
20. The investigation basically confirmed that a distinction should be made between fresh and longlife dairy products. Moreover, a further separation within fresh dairy into the fresh milk, fresh buttermilk, plain yoghurt, value added yoghurt, fresh cream, quark and fresh flavoured dairy drinks has largely been confirmed. In any case, the product market definition can be left open since the transaction will not raise competition concerns under any potential market definition.
21. Finally, for all fresh dairy products, the Commission in a previous case considered a possible further distinction according to distribution channel, i.e. retail and out-of home, as well as between branded and private label products. However, given the absence of any competition concerns under any alternative market definition, these questions can be left open in the present case.

### *1.3. Longlife dairy products*

22. The Parties activities in longlife dairy products overlap in milk, flavoured dairy drinks and cream.
23. Longlife milk is liquid milk produced from raw milk. It is either produced through sterilisation or ultra high temperatures (UHT). However, the production methods have the same effect on the milk: it can be kept for months at room temperature. The Commission has previously defined a separate product market for longlife milk<sup>11</sup>, and the Parties agree with this definition of the product market.
24. Longlife dairy cream is, according to the Parties, a distinct market from fresh cream since market conditions such as demand and logistics differ. For the purpose of this notification, the Parties find that longlife dairy cream is in the same market as other liquid coffee whiteners and condensed milk. As mentioned before, the Commission has left open the issue whether the fresh dairy cream and longlife dairy cream belong to the same market. In addition, the Commission distinguished liquid coffee whiteners from longlife dairy cream.<sup>12</sup> Given the absence of any competition concerns under any alternative market definition, these questions can be left open in the present case.

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<sup>10</sup> M.5046 Friesland/Campina.

<sup>11</sup> M.5046 Friesland/Campina, para. 406-415.

<sup>12</sup> M.5046 Friesland/Campina, para. 1364.

25. Longlife flavoured dairy drinks are produced from longlife milk to which flavours and other ingredients like sugar are added. The Parties mainly supply these drinks with coffee or chocolate flavour. The Commission has previously defined a separate product market for chocolate flavoured longlife dairy drinks,<sup>13</sup> the Parties are of the view that market segmentation according to flavour is too narrow. They nevertheless submitted data on such a basis.
26. The market investigation has largely confirmed further segmentation of longlife dairy products into longlife milk, longlife dairy cream and longlife flavoured dairy drinks. However, in the present case the precise product market definition can be left open as no competition concerns arise under any potential market definition.
27. Finally, for all longlife dairy products, the Commission in a previous case considered a possible distinction according to distribution channel, i.e. retail and out-of-home, as well as between branded and private label products<sup>14</sup>. Given the absence of any competition concerns under any alternative market definition, these questions can be left open in the present case.

#### *I.4. Butter*

28. Butter is roughly what is left of milk when all other non-fat components have been removed; economically, it is a by-product. The butter is packed in 25 kilogram cartons (bulk butter) or in 250 gram wrappers (packet butter).
29. According to the Parties, bulk butter can either be considered as a separate product market or part of a total market of bulk yellow fats including margarine and liquid vegetable oil. The Commission in a previous decision has defined a separate market for bulk butter.<sup>15</sup>
30. According to the Commission case practice packet butter does not form part of the same product market as bulk butter.<sup>16</sup> As regards packet butter it could be considered if this forms part of the same market as margarine, however, in Friesland/Campina the Commission considered margarine and packet butter not to be part of the same product market. The market investigation has widely confirmed such view.
31. As regards packet butter, the Parties submit market data showing the split between retail and out of home ('OOH') as well as private label and branded packet butter, while submitting that these form part of the same product market. For the purposes of the present case, it can be left open if such further distinctions are necessary since no competition concerns would arise under any alternative market definition.

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<sup>13</sup> M.5046 Friesland/Campina, para. 1085.

<sup>14</sup> M.5046 Friesland/Campina.

<sup>15</sup> M.5046 Friesland/Campina, para. 824-825.

<sup>16</sup> M.5046 Friesland/Campina, para. 870.

### *I.5. Milk powder*

32. Milk powder is made from milk which has been pasteurised, condensed and processed through a spray drier, the function of which is to circulate hot air through an atomised mist of fluid, thereby dehydrating the milk until it attains a powder form. Milk powder is made with different fat contents ranging from around 1.5 % fat to 26 % fat. It has a very long shelf life and may be stored at temperatures from below 0°C to 40-50°C which makes it easy to store.
33. Milk powder may be delivered to customers as fluid milk concentrate which is basically the same product with higher moisture content. The Parties submit that milk powder and fluid milk concentrate belong to the same market since the only material difference is the moisture level. Adding and reducing moisture is uncomplicated, and accordingly there is full substitutability both from a supply and from a demand perspective.
34. Given the absence of any competition concerns under any alternative market definition, these questions can be left open in the present case.

## **II. Relevant geographic markets**

35. The Parties submit that the market for procurement of raw milk should not be considered narrower than national (i.e. local). The Commission has concluded in past decisions that the relevant geographic markets for procurement of raw milk are not wider than national in scope.<sup>17</sup> For the purposes of the present case, the question whether the geographic market is national or local can be left open since no competition concerns would arise under both alternatives.
36. In a previous decision, the Commission concluded that with regard to the production and supply of fresh milk, fresh buttermilk, fresh plain yoghurt and fresh flavoured dairy drinks and their possible sub-segments, the geographical scope should be defined as national.<sup>18</sup> For the purpose of this notification the Parties suggest to define the market as national in scope. The national scope of markets has also been confirmed by a majority of respondents in the market investigation. As the proposed transaction would not raise concerns even on the basis of a narrow definition (that is to say national), the precise scope of the geographic market can be left open for the purposes of the present decision.
37. With respect to value added yoghurt, quark, cream and their possible sub-segments the Commission concluded in a previous case that the market is wider than national.<sup>19</sup> However, for the purpose of the present case, the question can be left open as no concerns would arise even on a national level.
38. Longlife products can be transported over longer distances than fresh products which results in broader geographical markets. With regard to longlife milk and longlife dairy cream, the Commission has previously concluded that the geographical dimension is

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<sup>17</sup> M.5046 Friesland/Campina; M.5875 Lactalis / Puleva Dairy.

<sup>18</sup> M.5046 Friesland/Campina, para. 230.

<sup>19</sup> M.5046 Friesland/Campina, para. 935 and 1393.

wider than national.<sup>20</sup> For longlife dairy drinks the Commission defined the scope for private label products wider than national, whereas for branded longlife drinks national markets were defined.<sup>21</sup> The Parties submit that the geographical market for longlife products is wider than national and covers the entire EU. However, taking into account that no competition concerns arise in the present case as regards the branded longlife dairy drinks, the geographical scope of this market can remain open. The market for the private label longlife dairy drinks, as well as their possible sub-segments of coffee flavoured longlife dairy drinks and chocolate flavoured longlife dairy drinks is, for the purpose of the present decision, considered to be wider than national.

39. With respect to bulk butter and packet butter, the Parties submit that the market is at least EEA-wide. Indeed, the Commission has previously found that the market for bulk butter is EEA-wide.<sup>22</sup> With regard to the market for packet butter, the Commission has defined the geographical scope as at least regional and maybe EEA-wide.<sup>23</sup>
40. The results of the market investigation confirmed the Parties view that the geographic market for longlife products and for packet butter can be considered to be wider than national, but not necessarily EEA-wide in scope.<sup>24</sup> As the proposed transaction would not raise concerns even on the basis of a narrow definition (that is to say wider than national), the precise scope of the geographic market can be left open for the purposes of the present decision.
41. As to the market for milk powder or alternatively for fluid milk concentrate, the Parties submit it is at least EU wide, and presumably world wide, since milk powder is traded as a world market commodity at world market prices. In previous decision the Commission found that milk powder was a commodity product, and since it was "*...easily transported and sold all over Europe the geographical market appears to be EEA-wide in scope.*"<sup>25</sup> In any event, the question can be left open as no competition concerns would arise under any alternative definition of the geographic scope of the market.

### **III. Competitive assessment**

42. The proposed transaction leads to no overlap in the market for the procurement of raw milk since the activities of Arla and Hansa are mostly active in the procurement of raw milk in different geographic markets, i.e. Arla in Denmark and Sweden and Hansa in Germany.

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<sup>20</sup> M.5046 Friesland/Campina, para. 422 and 1393.

<sup>21</sup> M.5046 Friesland/Campina, para. 1130.

<sup>22</sup> M.5046 Friesland/Campina, para. 834.

<sup>23</sup> M.5046 Friesland/Campina, para. 874.

<sup>24</sup> Several customers in Germany and Denmark indicated they can or could source longlife dairy products and packet butter on a wider than national basis. Equally, some competitors in Germany and Denmark indicated that they can sell both longlife products and packet butter on an a wider than national basis.

<sup>25</sup> M.3535 Van Drie/Schils, para. 20.



43. As regards the potential relevant markets for most of the fresh dairy products (fresh milk, fresh buttermilk, yoghurt and quark), longlife milk, longlife dairy cream as well as milk powder, the proposed transaction leads to either no increments or to combined market shares below 15%<sup>26</sup>. Consequently, these markets will not be discussed further in the competitive assessment.
44. The proposed transaction would only lead to affected markets in relation to the following potentially relevant markets:
- (i) Fresh dairy cream in Sweden.
  - (ii) Longlife coffee flavoured dairy drinks in Germany.
  - (iii) Longlife chocolate flavoured dairy drinks in Denmark.
  - (iv) Butter in Denmark and Sweden.

### *III.i. Fresh dairy cream*

45. The combined market share at the retail level on a potential market for fresh dairy cream (including branded and private label) in Sweden would be [40-50]% in 2009 with Arla holding [30-40]% and Hansa [0-5]% market share.<sup>27</sup> On a hypothetical overall market combining retail and out-of home for fresh dairy cream in Sweden, the combined market share in Sweden would be [40-50]% in 2009 with Arla holding [40-50]% and Hansa [0-5]% market share.
46. Given the small increment on the overall fresh dairy cream market resulting from the proposed transaction<sup>28</sup>, the change in the market structure is insignificant. Moreover, Hansa is supplying fresh cream only under private label<sup>29</sup>, while Arla has its focus on branded fresh cream, which represents roughly 90% of the sales of fresh dairy cream in Sweden. These figures suggest that Hansa is not a close competitor to Arla. In any event, other competitors in Sweden with significant market presence would be able to constrain the merged entity post-merger. These include Skanemejerier ([10-20]%), Milko ([5-10]%), Lindahls ([5-10]%), Unilever ([5-10]%) and Norrmejerier ([5-10]%).
47. On a hypothetical private label market the combined markets share would be according to the Parties' estimate [50-60]% (Hansa [20-30]%, Arla [30-40]%), however, it should

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<sup>26</sup> The proposed transaction does not lead to any overlaps in Denmark or Germany for fresh milk, fresh buttermilk, fresh plain yoghurt, value added yoghurt, fresh cream, fresh flavoured dairy drinks, longlife dairy cream. For quark (flavoured as well as non-flavoured), longlife milk, the increment in Germany is below [0-5]%, while in Denmark there is no overlap. For milk powder (EEA-wide) the increment is [0-5]% and the combined market share [10-20]%. The Parties estimate that the conditions of competition are similar on hypothetical national markets. Also in the markets for cheese and the markets for desserts no serious doubts are raised since only Arla is present in these markets.

<sup>27</sup> There is no overlap in out of home. Moreover, since longlife dairy cream is not consumed in Sweden, the market shares would be identical on a hypothetical product market combining fresh and longlife dairy cream.

<sup>28</sup> The overlap in Sweden results only from one customer which sources at an EEA-wide level.

<sup>29</sup> Therefore, there is no overlap in the branded products on the Swedish market.

also be noted that the Commission has defined the relevant geographic market for cream wider than national. Taking into account a wider geographic market including Denmark as well as Germany – the Member States where the Parties have their base – the combined market share would only be [20-30]%.<sup>30</sup> On such a wider market, as confirmed by the market investigation, several other competitors in addition to those already active in Sweden are able to constrain the Parties post-transaction.<sup>31</sup>

48. In view of the above, the proposed transaction would not give rise to any serious doubts in the market for fresh dairy cream.

*III.ii. Longlife coffee flavoured dairy drinks*

49. Arla and Hansa only supply retailers in Germany<sup>32</sup> with longlife coffee flavoured dairy drinks under private label.<sup>33</sup> Their combined market share in 2009 was [10-20]% (Arla [10-20]%, Hansa [0-5]%) at the retail level<sup>34</sup>. Other competitors at the retail level are Milchunion Hocheifel ([20-30]% market share), Schwälbchen ([20-30]% market share), Hochwald ([10-20]% market share) as well as Immergut and Molkerei Gropper with roughly [10-20]% market share each. On a hypothetical overall market for longlife coffee flavoured drinks, the combined market share of the Parties would be [10-20]% (Arla [10-20]% Hansa [0-5]%).
50. In the market investigation, no German customers expressed competition concerns in relation to longlife coffee flavoured dairy drinks. Respondents indicated that a sufficient number of alternative suppliers exist in this market.
51. Based on the relatively low combined market share, the small increment and the number of sizeable competitors, the proposed transaction would not give rise to any serious doubts in the market for longlife coffee flavoured dairy drinks.

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<sup>30</sup> It should be noted that Hansa has sales of fresh cream in Sweden, although it has no processing facilities in Sweden, and Arla has sales of fresh cream in Germany despite not having a German processing facility.

<sup>31</sup> This is in particular valid for private label fresh cream. Nordkontor, Hochwald, Sachsenmilch in Germany, Unilever, Thise, Naturmaelk in Denmark.

<sup>32</sup> None of the Parties supplies long life coffee flavoured dairy drinks in Denmark and Sweden, and generally only minimal amounts of long life coffee flavoured dairy drinks are consumed in those two Member States.

<sup>33</sup> As to a hypothetical further segmentation into branded and private label, it should be noted that none of the Parties makes any supplies of branded long life coffee flavoured dairy drinks in Germany. On the hypothetical market for private-label in Germany the Parties would achieve a combined market share of around [40-50]% (Hansa [5-10]%, Arla [30-40]%). However, for private long life dairy drinks the Commission has previously defined the geographical scope of the market to be wider than national. Such a broader market would most likely encompass the Netherlands and Belgium, where other alternative suppliers of long- life coffee flavoured dairy drinks are operating such as notably Friesland Campina. Moreover, no customer raised any concerns in the market investigation regarding the German market for long-life coffee flavoured dairy drinks.

<sup>34</sup> There is no overlap in out of home.

### *III.iii. Longlife chocolate flavoured dairy drinks*

52. On a hypothetical market for longlife chocolate flavoured dairy drinks to retailers in Denmark, the proposed transaction would result in a slight increase of Arla's significantly high market shares. The combined market share at the retail level would increase from [90-100]% to [90-100]% with Hansa adding [0-5]%.<sup>35</sup> On a hypothetical overall market combining retail and out-of home for longlife chocolate drinks in Denmark, the combined market share of the Parties would be [90-100]% (Arla [90-100]%, Hansa [0-5]%).
53. Not only the increment is small, but while Arla has its main focus on branded products<sup>36</sup>, the increment in longlife chocolate flavoured dairy drinks solely results from Hansa's supply of private label to retailers in Denmark.<sup>37</sup> Hansa thus seems not to be a close competitor on Arla's branded products. Entry into this market could also occur from competitors with presence in other longlife flavoured dairy drinks such as coffee since the only difference is the flavour and therefore supply – at least of private label products, which do not require any brand investments could be done in a short period of time.<sup>38</sup> In addition, none of the Danish customers expressed specific competition concerns in relation to longlife chocolate flavoured dairy drinks. In particular, they did not perceive Hansa as a competitive constraint on Arla and also they did not indicate that Hansa would be a potential entrant on the branded longlife chocolate flavoured dairy drinks market.
54. Moreover, several replies to the market investigation indicated that the geographic scope of the market for the chocolate flavoured dairy drinks is wider than Denmark and that sourcing from Germany would be possible. On such wider geographical market, several competitors would be able to constrain the merged entity. In particular, Hansa supplies private label products for which the Commission has defined the geographic scope wider than national. Indeed, a wider geographic market including Germany and Denmark would lower the combined market share to around [30-40]%, and result in modest increment in the Parties combined market shares of [0-5]%.<sup>39</sup>
55. In view of the above, the proposed transaction will not lead to any serious doubts in the market for longlife chocolate flavoured drinks.

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<sup>35</sup> There is no overlap in out of home.

<sup>36</sup> According to the Parties, Arla represents roughly [90-100]% of the branded longlife chocolate flavoured dairy drinks to retail in Denmark in 2009. Hansa does not supply any branded longlife chocolate flavoured dairy drinks in Denmark.

<sup>37</sup> As regards the private label longlife chocolate flavoured dairy drinks, Parties would achieve a combined market share of around [90-100]%, (where Arla represents [90-100]% and Hansa [5-10]%).

<sup>38</sup> Other competitors with presence in longlife coffee flavoured dairy drinks in Denmark include Emmi, Harboe, Nestle and Unibrew.

<sup>39</sup> The competitors' market shares on such broader market for the chocolate flavoured dairy drinks are: Hocheifel ([10-20]%), Immergut ([10-20]%), Hochwald ([5-10]%), Campina ([5-10]%), Münsterland ([5-10]%). The market investigation has also identified the existence of other supplier under such broader market, such as Müllermilch, Campina, Nordkontor, Schwälbchen, Thise, Nestle and Falengreen.

### *III.iv. Butter*

56. On a hypothetical EEA-wide market for packet butter, the proposed transaction is unlikely to raise any competition concerns based on the combined market shares of [10-20]% (Arla: [10-20]%, Hansa: [0-5]%) in 2009. Based on national markets, the merged entity would have a share of [70-80]% in Denmark with an increment coming from Hansa of [5-10]%. In Sweden, Hansa had an insignificant market share of [0-5]% and Arla [70-80]%.
57. However, Hansa is active as a supplier in Denmark and Sweden with private label products, for which alternatives are widely available since the relevant geographic market is wider than national. Indeed, almost all retailers responding in the market investigation consider that the geographic market for packet butter is wider than national, some even indicated that it would be EEA-wide in scope. While their preferred sourcing would be close by, they all indicated that in case of a price increase of 5-10% they could find alternative suppliers within the EEA, in particular in Germany.
58. For a regional Danish and German market, the combined market share of the Parties in packet butter at the retail level in 2009 would be [10-20]% (Arla [5-10]%, Hansa [0-5]%)<sup>40</sup>. On a hypothetical overall market for packet butter combining retail and out-of-home market for packet butter, the combined market share of the Parties would be [10-20]% (Arla [5-10]% Hansa [0-5]%). The market investigation confirmed the existence of a significant number of competitors such as Dragsbaek, Falengreen, Naturmaelk and These in Denmark and Sachsenmilch, Deutsches Milch Kontor, Fude & Serrahn, Schütten & Lemmerholz, Molkerei Ammerland, Rucker's and Ostmilch in Germany.
59. During the investigation one competitor to the Parties raised a concern in relation to the supply of bulk butter as an input for packet butter and butter blends in Denmark. According to this competitor the Parties would post-transaction become the leading supplier of bulk butter and could therefore foreclose producers of packet butter and butter blends. Alternatives would be limited as only a few bulk butter suppliers would be able to meet specific required standards as regards quality, taste and packaging.
60. However, given the Parties combined market shares in Denmark in the supply of bulk butter of [20-30]% in 2009 and only limited volumes coming from Hansa amounting to [0-5]% in 2010<sup>41</sup>, and the fact that several suppliers in particular from Northern Germany like Nordmilch or Ammerland are available to supply bulk butter it is unlikely that the proposed transaction could lead to foreclosure. Moreover, the Commission has previously found that the market for bulk butter is EEA-wide<sup>42</sup>. On a potential EEA-wide market the merged entity would have a market share of [5-10]% in 2009 (Arla [5-10]% and Hansa [0-5]%).<sup>43</sup> International suppliers like Meggle, Hochwald,

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<sup>40</sup> There is no overlap in out of home.

<sup>41</sup> Hansa had no sales of bulk butter in Denmark in 2008 and 2009.

<sup>42</sup> M.5046 Friesland/Campina, para. 834.

<sup>43</sup> The same conclusion would be reached taking only Denmark and Germany as the relevant geographic market for bulk butter. On such a hypothetical market the combined market share would be [5-10]%.

FrieslandCampina, Lactalis, Glanbia, Wisemann Daires and Dairy Crest (UK) would be available.

61. In view of the above, the proposed transaction will not lead to any serious doubts in the market for packet butter and bulk butter.

#### **IV. CONCLUSION**

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

*For the Commission  
(signed)  
Maroš ŠEFČOVIČ  
Vice-President*