

***Case No COMP/M.6439 - AGRANA/ RWA/ JV***

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 04/04/2012

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## EUROPEAN COMMISSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Brussels, 4.4.2012

C(2012) 2405 final

PUBLIC VERSION

MERGER PROCEDURE

### **To the notifying parties:**

Dear Sir/Madam,

**Subject: Case No COMP/M.6439 - AGRANA/ RWA/ JV  
Commission decision pursuant to Article 6(1)(b) of Council Regulation  
No 139/2004<sup>1</sup>**

1. On 29 February 2012, the European Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertakings AGRANA Beteiligungs-Aktiengesellschaft ("AGRANA", Austria) and RWA Raiffeisen Ware Austria Aktiengesellschaft ("RWA", Austria) acquire within the meaning of Article 3(1)(b) of the Merger Regulation joint control of a newly created company constituting a joint venture ("the JV", Austria). The JV is intended to combine AGRANA's and RWA's respective subsidiaries, AGRANA Juice and Ybbstaler, which are primarily active in the production and wholesale of fruit juice.<sup>2</sup> AGRANA and RWA are designated hereinafter as the "Parties".

### **I. THE PARTIES**

2. AGRANA is an Austrian company, ultimately jointly controlled by Südzucker AG (Germany) and Raiffeisen-Holding Niederösterreich-Wien ("RHNW", Austria).
3. AGRANA is structured in three operational divisions: sugar, starch and fruit. In turn, AGRANA's fruit division comprises two independent business units: AGRANA Juice Holding GmbH ("AGRANA Juice") and AGRANA Fruit S.A.S. ("AGRANA Fruit").

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1 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.

2 Publication in the Official Journal of the European Union No C 70, 8.3.2012, p. 24. The transaction was first notified to the Commission on 30 September 2011 (OJ C 295, 7.10.2011, p. 11). This first notification was subsequently withdrawn on 27 October 2011 (OJ C 321, 4.11.2011, p. 19).

4. AGRANA Juice is the holding company of all subsidiaries in the fruit juice division. It produces and markets fruit juice concentrates ("FJC"), not from concentrate fruit juices ("NFCJ"), fruit purées and fruit aromas mostly for the fruit juice industry.
5. AGRANA Juice mainly markets FJC and NFCJ with some [...] % of the basic concentrate coming from its own production while approximately [...] % is sourced from third party producers. AGRANA Juice currently operates ten processing plants in the major European growing areas for apples and berries (Austria, Denmark, Hungary, Poland, Romania and Ukraine), and one blending station in Germany. In addition, AGRANA Juice operates a processing plant in Xianyang, China.
6. AGRANA Juice sources the majority of the fruit it processes from third parties and is vertically integrated into the fruit growing business only indirectly and to a limited extent. With respect to apples, AGRANA Juice has entered into contractual growing arrangements with a number of farmers in Eastern Hungary. This project covers an area of approximately [...] hectares and yielded approximately [...] tons of apples in 2010. AGRANA Juice also pursues similar projects in Poland, Romania and Ukraine, albeit on a much smaller scale.<sup>3</sup>
7. AGRANA Fruit mainly sells customized fruit preparations to the dairy, ice-cream and baking industries. These fruit preparations activities are not part of the transaction as the notified operation relates to AGRANA Juice only.
8. RWA is an Austrian company mainly active in the purchase and sale of agricultural products (especially cereals, oilseeds, wood), farm inputs (seeds, crop protection products, fertilizers, feeding stuffs) and consumer products (especially building materials and home and gardening equipment). RWA is jointly controlled by BayWa AG ("BayWa", Germany) and RWA Raiffeisen Ware Austria Handel- und Vermögensverwaltungs eGen ("RWAHV", Austria).
9. The notified operation concerns RWA's juice division, Ybbstaler Fruit Austria GmbH ("Ybbstaler"), which produces and markets FJC, fruit aromas, fruit sweetness, juice compounds and related products. Ybbstaler is not active in NFCJ.
10. Ybbstaler operates one processing plant in Austria (which also has blending facilities) and two plants in Poland. In contrast to AGRANA Juice, only some [...] % of the FJC sold by Ybbstaler comes from its own production as the company predominantly sources and refines FJC from third parties. Ybbstaler is not vertically integrated into the fruit growing business.
11. The main products of the Parties in terms of volume and revenues are FJC (and in the case of AGRANA Juice also NFCJ) accounting for approximately [90-100] % of AGRANA Juice's turnover and [70-80] % of Ybbstaler's sales. The Parties are mainly active in the production of AJC (and in the case of AGRANA Juice, not from concentrate apple juice) with only some [10-20] % of AGRANA Juice's turnover and approximately [10-20] % of Ybbstaler's turnover achieved from sales of FJC / NFCJ derived from other fruits.
12. There are a number of indirect cross-shareholdings between AGRANA and RWA. RWA holds a minority share in the cooperative RHNW which is one of the jointly

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<sup>3</sup> These arrangements currently cover less than [...] hectares in each country. [...].

controlling shareholders of AGRANA. In turn, RHNW indirectly holds minority stakes in RWA's co-controlling 50% shareholder BayWa and RWAHV. RHNW and RWAHV also have certain members in common. Membership of these two cooperatives is however fragmented and no member controls either of these cooperatives. Thus, while there are some structural links, RHNW/AGRANA and RWA/Ybbstaler constitute distinct groups from a competition perspective.

## **II. THE OPERATION**

### **II.1. Joint control**

13. The proposed transaction will be effected by bringing AGRANA Juice (and its subsidiaries) and Ybbstaler (and its subsidiaries) under the joint ownership of a new joint holding company named YBBSTALER AGRANA JUICE GMBH. Under a Joint Venture agreement signed on 6 May 2011, AGRANA will hold 50.01% and RWA 49.99% of the shares in the JV. [...]
14. Even before exercising the call option, however, RWA will have the ability (along with AGRANA Juice) to exercise decisive influence over the JV due to a number of factors. First, the business plan for the initial five years will be adopted by mutual consent of both Parties. The business plan will include, among other things: (i) [...]; (ii) [...]; (iii) [...]; and (iv) [...].
15. Furthermore, a number of other rights in respect of the strategic decisions of the JV have been granted to RWA as long as it remains a minority shareholder. This includes RWA's right to appoint two of the JV's five members of the shareholder's committee which will deliberate and decide on all matters falling within the remit of the shareholders' meeting as well as any other matters deemed by the directors to be of material importance to the JV. RWA will also have the right to appoint the fifth member of the committee from a list of three persons proposed by AGRANA. [...]
16. Finally, RWA has been granted veto rights by way of a 75% majority requirement in relation to certain decisions of the shareholders' committee. These include the approval of (i) the five-year business plan in case of important deviations from the last approved business plan; (ii) the annual budget; and (iii) additional investments exceeding EUR [...] million individually or EUR [...] million per business year.
17. Thus, despite the lack of equality of shares and voting rights before RWA's exercise of the call option, the proposed transaction will result in joint control of RWA and AGRANA over the JV.

### **II.2. Full-functionality**

18. The Parties will contribute to the JV their respective fruit juice subsidiaries which are already acting autonomously on the market of fruit juice concentrates and related products. Moreover, according to the draft business plan, the JV will have sufficient resources to operate on the market independently from its parents including, *inter alia*, a management dedicated to its day-to-day operations. In addition, the JV will not make significant sales or purchases to or from its parents' group companies in upstream or downstream markets. The JV therefore fulfils the full-functionality criterion of Article 3(4) of the Merger Regulation.

19. In view of the above, the notified operation is a concentration within the meaning of Article 3(1)(b) and 3(4) of the Merger Regulation.

### **III. EU DIMENSION**

20. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (AGRANA: EUR 12 413 million; RWA: EUR 7 918 million).<sup>4</sup> Each of them has an EU-wide turnover in excess of EUR 250 million (for AGRANA: EUR [...] million; for RWA: EUR [...] million). Although RWA achieves more than two-thirds of its aggregate EU-wide turnover within one Member State ([...]), AGRANA does not. Therefore, the notified transaction has an EU dimension pursuant to Article 1(2) of the Merger Regulation.

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<sup>4</sup> Turnover calculated in accordance with Article 5 of the Merger Regulation.

## IV. MARKET DEFINITION

### IV.1. Production process and supply of apple juice concentrate

21. The Parties' activities in AJC include the sourcing and processing of apples into AJC as well as the refining of AJC and its subsequent marketing to bottlers and other customers.

#### *IV.1.1. Procurement of apples for processing*

22. Apple processing plants are usually located in the main apple growing regions due to the significant transport costs for unprocessed fruit. The apples procured by the Parties consist of lower quality and price fruit, which is usually destined for processing.<sup>5</sup>
23. The share of apples used for processing varies significantly from one Member State to another; ranging from 2 % in France to well over 60 % in Hungary. The processing share also varies from year to year.<sup>6</sup>
24. The main procurement areas for apples within the EEA are Austria, Germany, Italy, Hungary, Poland and Romania, where apples are generally grown in small to medium scale orchards owned by apple farmers. Outside the EEA, significant growing areas include Ukraine, Moldova, Turkey, China and South America.
25. An important specification of apples is their level of acidity which depends on the climatic conditions, region of production, apple variety and time of harvest. As a general rule, apples harvested at the beginning of the season are sourer than apples harvested at the end of the season. Moreover, the apples grown in the central and eastern part of the EEA are sourer due to the local climate conditions and the apple varieties grown in these areas. By contrast, apples grown in warm areas such as Turkey or South America tend to be sweeter.
26. According to the Parties' estimates, approximately 27% of the overall apple production in the EU-15 and around 55% of the overall apple production in the rest of Europe is used in the processing industry.<sup>7</sup> These data are in line with USDA report according to which the EU-27 average share of apples going into processing amounts to about 23 % of total supply in season 2010/11.<sup>8</sup>
27. There is a significant difference between the price of apples for the fresh fruit market and apples for processing.<sup>9</sup> Farmers therefore grow apples with a view to selling them

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<sup>5</sup> Processing uses for apples include, among others apple juice, concentrated apple juice (AJC), cider, wine/brandy, apple sauce, preserves, canning, apple chips, and peeled apples for bakeries (source: USDA - Fresh Deciduous Fruit Annual – EU 27 (2011)).

<sup>6</sup> Source: USDA - Fresh Deciduous Fruit Annual – EU 27 (2011).

<sup>7</sup> Source: Form CO, table 65 based on the World Apple Review 2010, p. 123.

<sup>8</sup> Source: USDA - Fresh Deciduous Fruit Annual – EU 27 (2011).

<sup>9</sup> According to a study of Professor Eberhard Makosz, a leading Polish professor of horticulture, the average purchase price of apples for the fresh market can be 2-5 times higher than the price of apples for the processing industry. The results of the study are available at:

[http://ksow.pl/fileadmin/user\\_upload/ksow.pl/pliki/2011.03.xx-Limanowa-prezentacje/E\\_Makosz\\_-\\_Wielko%C5%9Bc\\_zbior%C3%B3w\\_potrzeby\\_i\\_op%C5%82acalno%C5%9B%C4%87\\_produkc.pdf](http://ksow.pl/fileadmin/user_upload/ksow.pl/pliki/2011.03.xx-Limanowa-prezentacje/E_Makosz_-_Wielko%C5%9Bc_zbior%C3%B3w_potrzeby_i_op%C5%82acalno%C5%9B%C4%87_produkc.pdf)  
(retrieved on 26 March 2012).

to the fresh fruit market. Typically only "second choice" apples and left overs are sold to processors.

28. AJC processors generally do not enter into long-term apple supply agreements with apple producers or traders. Within the European Union, the manner in which AJC processors procure their apple requirements differs according to the Member State concerned. For instance, farmers in Poland will normally sell their crop to local operators of collection points. Once a sufficient volume of apples is gathered, operators of collection points sell their stock to the processor offering the best price. According to the Parties, the situation in Austria is similar as AJC producers procure their raw material requirements mainly via intermediaries. In contrast, AJC producers in Hungary tend to buy directly from farmers rather than via intermediaries.

#### *IV.1.2. Processing of apples*

29. The processing of apples into AJC includes several steps. After passing the reception line, the apples are washed and sorted to remove impurities before the juice extraction process starts. In a first step, the apples are delivered to a grinding mill / crusher in which the fruits are mechanically mashed in order to extract the juice. In a second step the mash is further processed in hydraulic or belt presses. The final mash, from which no further juice can be extracted, can be dried and marketed as pomace or landfilled. Commercialised apple pomace can be used as animal feed or in the pectin producing industry.
30. The extracted juice is subsequently clarified by evaporation to 20 Brix,<sup>10</sup> by enzyme treatment and filtration. During this first evaporation as well as during following evaporation steps, fruit aromas can be recovered in a separate aroma column by condensation and distillation. The aromas are subsequently stored as aroma concentrates to be added back to the juice product or marketed as a distinct product.
31. From this point, the juice can undergo one of two possible additional processing steps:
  - (1) Evaporation which removes excess water from the juice and results in AJC, whose volume is 5 to 12 times less the volume of the original juice; or
  - (2) Pasteurization, which involves heating and cooling the juice to produce apple juice not from concentrate ("NFC-AJ").
32. The specifications of AJC are given in terms of Brix, colour, stability of clarity and acidity. While all other parameters can be influenced by the producers, the acidity level is determined by the acidity of the apples, as explained above. As customers typically require a consistent acidity level across seasons, market participants blend AJC of different acidity levels to obtain the specified end product.
33. In addition to blending, producers can further refine AJC to meet particular customer specifications. An important example is AJC used in the production of ready-to-drink "Apfelschorle" drinks ("AJC-Schorle").<sup>11</sup>

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<sup>10</sup> Brix is a measure of the total soluble solids in the juice. It is reported as "degrees Brix" and denotes the percentage of sucrose in the juice by weight.

<sup>11</sup> Apfelschorle is the German term for a mix of apple juice and sparkling water.

#### *IV.1.3. Transport, storage and marketing of the final product*

34. Following production, the AJC can be stored in tanks at a temperature of approximately 15°C for a period of usually less than a year. The AJC is subsequently shipped mostly in bulk from the production site to the customers' processing facilities. AJC producers primarily sell their AJC directly to the customers without the use of intermediaries.
35. AJC processors' customers are predominantly bottling companies from the beverage industry who transform AJC into juice by adding water ("reconstitution") and place the product in the requisite packaging. A second group of customers consists of blending companies specialized in refining and blending AJC of different qualities, or AJC with other types of FJC. A final group of customers includes the food industry, the chemical industry and the pharmaceutical industry.
36. Bottlers and blenders usually purchase AJC on the basis of one year contracts. As a rule, customers in the central and eastern parts of the EEA, including most notably Germany, Austria and Poland, demand AJC of a higher acidity of approximately 2.5% and above for the production of pure apple juice products. However, demand is more flexible for the production of multi-fruit juice blends, nectars and for customers in other parts of the EEA.
37. In preparing the final product directed to final consumers, bottlers need to comply with European labelling requirements. Accordingly, bottlers need to clearly indicate on the label when the juice has been obtained from FJC, when it has been sweetened or when citric acid, lemon juice or other acidifying agents have been used in its production.<sup>12</sup>
38. Once reconstituted and packaged by the bottler, fruit juices are distributed to the final consumer. The predominant distribution channel is via food retailers which constitute the bottling industry's most important customers.

#### **IV.2. Relevant product markets**

##### *IV.2.1. The procurement of apples for processing*

39. The Parties submit that apples used for processing purposes are different from those destined for the fresh fruit market. Apples for processing usually consist of those fruits which for quality reasons cannot be sold to the fresh market. For this reason, apples for processing have generally significantly (even up to five times) lower price than apples for the fresh fruit market.<sup>13</sup>
40. Consequently, when growing apples, farmers target the fresh fruit market rather than the processing industry to the extent possible. Only those parts of the production which cannot be sold to fresh market (and would otherwise perish) are directed to the processing industry. The market of apples for processing constitutes therefore a residual part of the fresh fruit market.

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<sup>12</sup> See Council Directive 2001/112/EC of 20 December 2001.

<sup>13</sup> Sources: Form CO based on BGŻ study of apple market in Poland and Prof. Makosz' presentation (fn 9).



41. The evidence gathered in the market investigation supports the Parties' position and leads to the conclusion that apples for the fresh fruit market cannot be considered as substitutes for apples for processing, in particular because of the significant difference in price between the two types of apples.
42. The Commission therefore concludes that there is a separate relevant market for the procurement of apples for processing.

#### IV.2.2. *Apple juice concentrate*

43. The Parties are of the opinion that there exists a single product market for all FJC and NFCJ fruit variants with the exception of citrus FJC and NFCJ. However, should the Commission decide that the relevant product market is narrower, the Parties argue that it should encompass not only AJC of different acidity levels (including refined AJC such as AJC-Schorle) but also NFC-AJ.
44. The market investigation did not support the broad market definition suggested by the Parties. In the sections below, different possible relevant product market definitions for AJC will be discussed.

##### IV.2.2.1. AJC as part of a wider market of FJCs

45. According to the Parties, AJC should be included in the same market as other FJCs due to significant demand-side substitutability between different FJCs, particularly in the production of multi-juice drinks where AJC can be substituted by other FJCs without affecting the taste of the end product. On the supply side, the Parties submit that AJC processors often offer also other FJCs, and use the same production lines for different fruits in order to maximize utilization rates.
46. In *Votorantim/Fischer/JV*,<sup>14</sup> the Commission concluded that orange juice concentrate did not form part of the same market as other FJCs. This was because of the existence of limited demand and supply side substitutability between orange juice concentrate on the one hand, and other FJCs on the other, including AJC.
47. In line with the findings in *Votorantim/Fischer/JV*, the Commission's market investigation in the present case pointed to the conclusion that AJC does not belong to the same relevant market as other FJCs. Firstly, the evidence gathered shows very limited demand-side substitutability between AJC and other types of FJCs as the majority of customers cannot easily switch their purchases between AJC and other FJCs. This is supported by the fact that in the periods when the price of AJC increased, the majority of the Parties' customers did not divert their purchase of AJC to other FJCs. Supply-side substitutability between different types of FJCs is also not significant as the majority of AJC producers cannot switch easily their production from AJC to other types of FJCs. Lastly, prices of AJC differ from other types of FJCs and there seems to be no correlation between these prices.
48. On the basis of the above, the Commission concludes that AJC does not form part of the same relevant product market as other FJCs.

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<sup>14</sup> Case No Comp/M.5907 *Votorantim/Fischer/JV*, recitals 65-104.

IV.2.2.2.                      AJC as part of a wider market of apple  
juice (AJC and NFC-AJ)

49. The Parties argue that NFCJ should be considered part of the same product market as FJC. As a result, even if the Commission were to conclude that AJC forms part of a distinct market from other FJCs, the market for AJC should also include NFC-AJ. On the demand side, the Parties submit that end customers have frequently switched from AJC to NFC-AJ and vice-versa over the past years. The Parties however acknowledge differences on the supply side in terms of the temperature required for the transport and storage of AJC and NFC-AJ.<sup>15</sup> The Parties also admit that the handling of AJC and NFC-AJ differs since the latter must be stored in aseptic tanks, whose chemical and physical stability must be monitored.
50. In *Votorantim/Fischer/JV*, the Commission left open the question as to whether not from concentrate orange juice forms part of the same market as orange juice concentrate as the competitive assessment would not have been significantly affected under either alternative.<sup>16</sup> At the same time, the Commission stressed that the market investigation in that case tended to confirm the existence of separate product markets for orange juice concentrate and not from concentrate orange juice because of differences in pricing, storage, transport methods and the end products in which they were used.
51. The market investigation in this case suggests that NFC-AJ does not belong to the same market as AJC. Firstly, from the demand side, the vast majority of customers cannot switch easily between AJC and NFC-AJ. In fact, in periods when price of AJC increased, customers did not switch their purchase of AJC to NFC-AJ. The apparent correlation between AJC and NFC-AJ prices may thus depend on the impact of raw materials prices on both products rather than on a competitive relationship between the two products. Similarly, there seems to be limited supply side substitutability between the two products as AJC producers cannot generally switch their production to NFC-AJ in order to promptly react to an increase in demand for NFC-AJ.
52. In any event, the question as to whether NFC-AJ forms part of the same relevant market as AJC can be left open for the purposes of this Decision as the Parties' activities overlap only in relation to AJC.

IV.2.2.3.                      Different acidity levels within AJC

53. The Parties submit that there is no need to further segment a possible market for AJC according to different acidity levels. Firstly, the Parties argue that there are no costs for customers to switch from a particular acidity level of AJC to another. Customers actually adapt their recipes and switch frequently to react to pricing trends of different acidity levels of AJC. Secondly, the acidity level of AJC is predetermined by the acidity of apples in a given region and blending AJC of different acidity is always required in order to meet customers' specifications.

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<sup>15</sup> AJC is normally stored at 15 degrees Celsius whereas AJC-NFC is normally refrigerated at 2 degrees Celsius.

<sup>16</sup> Case No COMP/M.5907 *Votorantim/Fischer/JV*.

54. The Commission has so far not distinguished different product markets depending on the acidity levels of fruit products. In *Votorantim/Fischer/JV*, differences in acidity levels of oranges were not considered relevant because 91% of the oranges processed into juice were sourced from the same region in Brazil and had the same acidity level. Oranges with a more bitter taste were blended with sweeter oranges or other juices without affecting the taste of the final product.
55. Unlike in *Votorantim/Fischer/JV*, the market investigation in this case showed that acidity is a very important parameter for AJC customers. Customers and producers generally tend to refer to at least two different types of AJC: sweet AJC and sour AJC. The borders between these two categories are however blurred as no industry-wide specifications exist. It is however normally acknowledged that sweet AJC is mostly extracted from apples harvested in China, Turkey and South America, whilst sour AJC is mainly produced in Poland, Ukraine and Hungary (depending on the season). A number of market players also refer to a third category of AJC, medium AJC, which comes mainly from apples grown in Italy.
56. The market investigation has not been conclusive with regard to the question as to whether sweet, medium and sour AJC constitute distinct product markets. On the one hand, AJC suppliers in the EEA are often not active across the whole range of acidity since the AJC acidity portfolio of a company depends on the location of its processing plants. The acidity level also constitutes a decisive criterion for customers' procurement strategies. According to the majority of respondents to the Commission's request for information in the present case, the price of AJC depends on its acidity level.
57. On the other hand, although many customers cannot freely switch between AJC acidity levels, they appear to be able to react to a price increase in a given range of acidity by adapting the recipe or formulation of their end-products or by blending different varieties of AJC. Moreover, the Parties' transaction data for the last five years confirmed that trends in average prices per acidity group (sweet, medium and sour AJC) are strongly correlated and exhibit very small differences among them.
58. In any event, for the purpose of this Decision the exact product market definition can be left open as the transaction does not raise serious doubts under any alternative market definition.

#### IV.2.2.4. AJC-Schorle

59. AJC-Schorle is used in the production of ready-to-drink Apfelschorle drinks. AJC-Schorle has a higher aroma component than other AJC variants and receives special treatment by means of specific equipment in order to eliminate the so-called "gushing effect", or foaming that can occur when a carbonated beverage is opened.
60. According to the Parties, AJC-Schorle is only a variant of AJC since its production merely entails the additional use of an adsorber, which is an easy to use, standardized unit that is already available in the plants of various AJC manufacturers. Therefore, in the Parties' view, AJC suppliers can switch easily to the production of AJC-Schorle.

Furthermore, the Parties provide evidence showing that prices between apple juice concentrate and AJC-Schorle are correlated.<sup>17</sup>

61. The Commission has not considered AJC-Schorle in previous decisions. According to the market investigation in the present case, it appears that there is little demand side substitutability between AJC and AJC-Schorle. In fact the vast majority of customers could not switch from AJC-Schorle to AJC as a reaction to an increase in price. The Parties' transaction data however shows that average AJC-Schorle prices are not only strongly correlated with the average AJC prices (which might be influenced by the price of raw materials) but also very similar in absolute levels.
62. On the supply side, the market investigation partially confirmed the Parties' position. A number of respondents however stressed that specific know-how is required because of the specific characteristics of AJC-Schorle in terms of quality and stability.
63. In any event, for the purpose of this Decision the exact product market definition can be left open as the transaction does not raise serious doubts under any alternative market definition.

#### IV.2.2.5. Apple water phase essence

64. Apple water phase essence is the aroma obtained as a by-product of the processing of AJC. Aromas simulate the flavour, maintain its character and enhance the flavour impression and its acceptability.
65. The aromas recovered during processing the concentrate are usually added back at a later stage to the concentrates in order to re-aromatize the product. However some aromas are retained and marketed separately for a wide range of products, such as processed foods, drinks, chewing gums, pharmaceutical products, tobacco and fodder.<sup>18</sup>
66. The Parties submit that apple water phase essence is part of a market which encompasses at least all aromas that can be extracted in the FJC production process, with the exception of citrus/orange aromas. This is because of the significant degree of supply side substitutability between all fruit aromas,<sup>19</sup> which can be obtained in the same processing line as a by-product in the FJC-production.
67. In *Votorantim/Fischer/JV*, the Commission concluded that it was appropriate to assess the effects of the transaction on a possible market encompassing orange essential oil, orange water phase essence and orange oil phase essence. In this respect, the Commission gathered evidence confirming that orange oils and essences were not substitutable with other natural by-products and artificial or synthetic products in particular for customers reconstituting orange juice from orange juice concentrate.<sup>20</sup>

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<sup>17</sup> Source: Form CO and Annex 37, showing analysis of Ybbstaler's price correlation between AJC and AJC Schorle.

<sup>18</sup> Source: Form CO.

<sup>19</sup> With the exception of citrus/orange aromas.

<sup>20</sup> Case No COMP/M.5907 *Votorantim/Fischer/JV*, recitals 236-246.

68. The market investigation in the present case showed little demand-side substitutability on the part of customers between different fruit aromas. The vast majority of customers explained that they could not switch their purchases of apple water phase essence to other natural aromas, especially for the purposes of reconstituting AJC. Contrary to the Parties' claims, respondents to the Commission's request for information submitted that it is not possible for apple water phase essence producers to easily switch their production to other natural fruit aromas following changes in demand.
69. In view of the above, the Commission concludes that apple water phase essence constitutes a separate product market.

### **IV.3. Relevant geographic markets**

#### *IV.3.1. The procurement of apples for processing*

70. According to the Parties, the typical area of procurement of apples is between 25 and 75 km from the processing factories because of the significant transport costs involved. This has been supported by the data provided with the Form CO, showing the main procurement areas of each of the Parties' plants.
71. At the same time these data indicate, that for some plants, the procurement radius would amount to 150- 200 km (in the case for example of [...]), and even further.<sup>21</sup> In this regard, the Parties explain that supplies over distances larger than regional could be possible, depending on the level of price of raw material in a given year. Therefore, according to the Parties, apples for processing could be sourced cross-regionally and across national borders.
72. The market investigation showed that prices of apples within different countries and even regions in Europe vary. In addition, respondents indicated that apples for processing are normally delivered over an average distance of 60 km but in some instances over much greater distances.
73. In any event, the question as to whether the market for the procurement of apples for processing is national or narrower in scope can be left open as no serious doubts arise under any possible alternative.

#### *IV.3.2. Apple juice concentrate*

74. The Parties submit that the overall market for FJC and NFCJ as well as the possible sub-markets for AJC are worldwide in scope. In their view, this is supported by considerable import volumes into the EEA exceeding 35% of European consumption since 2006. The Parties also argue that transport costs are very low and that existing tariffs do not constitute a significant barrier to trade.
75. In *Votorantim/Fischer/JV*, the Commission concluded that the relevant market for the wholesale supply of orange juice concentrate was EEA-wide in scope.<sup>22</sup> The Commission based its conclusion on the fact that bottlers and blenders sourced orange

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<sup>21</sup> See Annexes 101-107 to the Form CO.

<sup>22</sup> Case No COMP/M.5907 *Votorantim/Fischer/JV*, recitals 134-140.

juice concentrate from the same locations within the EEA, namely port terminals located in the Netherlands and Belgium. Moreover, prices, transport costs and tariffs differed between the EEA and the rest of the world.

76. In the present case, a narrow majority of respondents to the Commission market investigation stated that they did not import AJC from outside EEA. In this regard, some respondents to the Commission's requests for information noted that the prices of AJC differ between the EEA and the rest of the world. Furthermore, EEA AJC producers do not generally export AJC to countries outside the EEA. A system of custom duties for imports of AJC into EEA from certain countries such as China is also in place.
77. On the other hand, certain customers still appear to purchase their AJC requirements on a worldwide basis. Moreover, customers on average do not appear to be particularly demanding in terms of quality standards or other specifications that could discriminate between AJC produced in the EEA and AJC produced elsewhere.
78. With regard to possible segments of AJC according to acidity level, it appears that sweet AJC is widely commercialized all around the world whereas sourer varieties of AJC are rarely sold outside the EEA. The market investigation did not reveal any further distinction on transport costs or duties depending on the grade of acidity.
79. As far as AJC-Schorle is concerned, the market investigation confirmed that the product is almost exclusively traded within the EEA because Germany is the main market worldwide for the end product Apfelschorle.<sup>23</sup>
80. In any event, the question as to whether a possible market for AJC is worldwide or EEA-wide can be left open, as no serious doubts would arise under either alternative. Nevertheless, the scope of possible markets for "sour" AJC and AJC-Schorle would be EEA-wide in scope as these products are not traded to any appreciable extent outside the EEA.

#### IV.3.2.1. Apple water phase essence

81. The Parties submit that the relevant geographic market for all aroma derivatives extracted in the production of different kinds of FJC excluding citrus is worldwide in scope.
82. In *Votorantim/Fischer/JV*, the Commission concluded that the relevant geographic market for orange water phase essence and oils was worldwide in scope.<sup>24</sup> This was due to global procurement patterns and the absence of significant price differences between the various regions of the world.
83. The Commission's market investigation in the present case has also suggested that the market for apple water phase essence is global in scope. Firstly, the majority of respondents pointed out that there are no import duties with regards to imports of apple water phase essence into the EEA. Secondly, according to the majority of respondents, transport costs for apple water phase essence do not represent a significant portion of

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<sup>23</sup> Approximately [90-100]% of the Parties' AJC-Schorle sales are in Germany.

<sup>24</sup> Case No COMP/M.5907 *Votorantim/Fischer/JV*, recitals 236-246.

the final price. In addition, a number of apple water phase essence suppliers are active on a worldwide basis.

84. In view of the above, the Commission concludes that the scope of the geographic market for apple water phase essence is worldwide.

## V. COMPETITIVE ASSESSMENT

85. The proposed transaction gives rise to horizontal overlaps between the Parties' activities in the supply of various types of FJC, notably apple, aronia, blackcurrant, elderberry, pear, raspberry, red currant, sour cherry and strawberry. Furthermore, the Parties' activities overlap in relation to the supply of certain FJC by-products, namely fruit aromas and pomace.<sup>25</sup> The Parties' activities also overlap in the market for the procurement of different fruits, including apples, in certain Central and Eastern European Member States.
86. These horizontal overlaps however only give rise to affected markets in relation to apple juice concentrate (AJC) and the procurement of apples in certain areas of Central and Eastern Europe. In possible markets for pear concentrates and coloured fruits juice concentrates (aronia, blackcurrant, elderberry, raspberry, red currant, sour cherry and strawberry),<sup>26</sup> the combined market shares of the Parties based on volumes would not lead to affected markets. Similarly, the Parties' procurement activities in relation to fruit for pear and coloured FJC would not give rise to any affected market in the EEA. Finally, as regards the by-products of AJC production, the Parties' combined market shares would also not give rise to any affected market irrespective of the geographic market considered.
87. In addition, the proposed transaction gives rise to vertical relationships between the Parties' AJC activities and the production and marketing of fruit preparations, animal feed, convenience food and apple water phase essence. However, only the vertical relationships in relation to apple water phase essence give rise to vertically affected markets.<sup>27</sup>

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<sup>25</sup> Pomace is the pulpy residue remaining after fruit has been crushed in order to extract its juice.

<sup>26</sup> The Parties' combined markets shares in the different coloured FJC varieties based on volumes in the EEA are: aronia [10-20]%, blackcurrant [10-20]%, elderberry [10-20]%, raspberry [5-10]%, redcurrant [5-10]%, sour cherry [5-10]% and strawberry [0-5]%. Although the market for elderberry would be affected as the Parties' combined share exceeds 15%, the Parties submit that this figure is likely to overestimate their position as it based on their estimates of production data only for Austria, Hungary, Poland and Ukraine. According to the Parties, there is also elderberry production in countries like Denmark, Germany and Italy which is not accounted for in the estimate. Moreover, the Parties do not consider that it would be appropriate to define separate product markets for each fruit as this would not in their opinion reflect the competitive environment of the market. Given the Parties' relatively limited position on a possible market for elderberry and the absence of specific concerns relating to this fruit during the market investigation, the Parties' position on this and other non-apple FJC markets is not considered further in this Decision.

<sup>27</sup> There is also a minor indirect vertical relationship between the JV's AJC activities and AGRANA Fruit's fruit preparation business. As AGRANA Fruit only buys approximately [...] tons of AJC per year, however, equivalent to a market share for the purchase of AJC in the EEA far below [0-5]%, this vertical relationship does not raise any concerns regarding possible foreclosure.

## V.1. Procurement of apples for processing

88. The processing facilities of AJC producers are generally located in the important apple growing regions in order to minimize transport costs for apples. In the EEA, AGRANA Juice operates processing plants in Austria, Denmark, Hungary, Poland and Romania. Ybbstaler in turn operates processing plants only in Austria and Poland as the company's business model mainly consists of purchasing AJC on the market by means of toll manufacturing and supply agreements.
89. The Parties' activities in the market for procurement overlap in a number of Member States. Post-transaction, the JV's procurement market shares would amount to [40-50]% in Hungary (with an increment of [0-5]% due to Ybbstaler), [20-30]% in Austria (with an increment of [5-10]% due to Ybbstaler), [20-30]% in Poland (with an increment of [5-10]% due to Ybbstaler), [10-20]% in Slovenia (with an increment of [5-10]% due to Ybbstaler) and [0-5]% in Italy (with an increment of [0-5]% due to Ybbstaler).<sup>28</sup>
90. These market shares however appear to largely overstate the combined position of the Parties. AJC processors typically source apples within a close area from the production plant because of the high costs required for transportation. Whilst it is possible to source apples as far as 400 km from the processing plant, the majority of the Parties' plants source more than 70% of their apple requirements within a radius of 50 km.
91. With the exception of Austria and Poland, the plants of AGRANA Juice and Ybbstaler are not located sufficiently close to each other to compete for the same raw materials. In Hungary, for instance, the Parties' shares do not reflect the fact that AGRANA's purchases are concentrated in the east of the country, whereas Ybbstaler mainly procures apples in the western part to satisfy the requirements of its plant in Austria.
92. With regard to Austria, there is a minor overlap between the Parties' procurement activities in the region of Eastern Styria due to AGRANA's plant in Gleisdorf and Ybbstaler's plant in Krollendorf. The procurement strategies of the Parties however appear to be different. Whilst AGRANA Juice sources more than [...] % of its requirements from this region, less than [...] % of Ybbstalers' purchases are made in Austria. Ybbstaler's purchases rather tend to focus on other regions, including western Hungary and Northern Italy.
93. As for Poland, some respondents to the Commission's investigation raised concerns that the JV would have a very significant position in the procurement market and would therefore be able to control the level of prices of apples or to foreclose its rivals' access to apples for processing.
94. The only significant overlap between the Parties' sourcing activities is in the surroundings of Grójec, an area known as the "biggest orchard in Europe" for apples harvesting.<sup>29</sup> In this region, the Parties' combined market share estimated on the basis

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<sup>28</sup> Even by adding the capacity of toll manufacturers to Ybbstaler's processing capacity, the estimated combined shares of purchasing would not be significantly different.

<sup>29</sup> By means of Commission Implementing Regulation (EU) No 981/2011 of 30 September 2011 (OJ L 260, 5.10.2011), Jabłka grójeckie was entered into the register of protected designations of origin and protected geographical indications pursuant to Council Regulation (EC) No 510/2006 of 20 March 2006



of the processing capacity for AJC would amount to approximately [10-20]% (with an increment of [0-5]% due to Ybbstaler).<sup>30</sup>

95. In the Grójec area, the Parties procure their apple requirements typically on the spot market via collection points.<sup>31</sup> The market investigation indicated that collection point operators and farmers may in certain instances prefer to deal with large companies because of their financial reliability. It also appears that larger companies may have an advantage in their procurement strategy because of the possibility to enter into toll manufacturing contracts with AJC processors in such a way to expand their purchasing area.
96. In general, however, the market investigation confirmed that the procurement of apples in Poland is highly contestable and that apples are sold to the customer who pays the highest price. The Parties' combined market shares therefore make it unlikely that the JV would be able to unilaterally influence the level of prices for apples in the region.
97. Furthermore, the risk that the transaction would enable the JV to foreclose access to raw materials to its competitors in the downstream market for AJC appears remote because of the lack of any significant vertical integration of the Parties in the upstream market. The Parties procure the vast majority of their apple requirements on the market and are not directly active in the upstream business of apple growing.<sup>32</sup> AGRANA Juice is indirectly vertically integrated upstream to an appreciable extent only in Hungary (and Ukraine) by means of long term agreements with farmers. Ybbstaler has no long-term contracts or growing agreements in either of these countries or indeed elsewhere in the EEA.
98. In view of the above, the Commission concludes that the proposed transaction does not raise serious doubts with regard to any possible market for the procurement of processing apples in the EEA.

## **V.2. Overall market for AJC**

99. In the overall worldwide market for production and wholesale supply of AJC, the Parties' combined market share based on production capacity would amount to [5-

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on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (OJ L 93, 31.3.2006).

<sup>30</sup> See Parties' response to question 6 of the Commission's request for information of 16 March 2012. As these estimates do not reflect the apples processed by third parties for the Parties under toll-manufacturing agreements in this region, the Parties also estimated what their position on a hypothetical procurement market in this region would be were such tolling arrangements taken into account. If such volumes were attributed to the Parties, their combined share would increase by approximately [10-20]% (with an increment of [5-10]% due to Ybbstaler). The Parties argue however that it would be mistaken to add apples sourced by tolling partners to the volumes directly sourced given that tolling agreements are typically concluded for only one season. Moreover, given the cross-regional sourcing patterns between the various apple growing regions in Poland, the Parties submit that it would be artificial to consider one region as forming a separate market.

<sup>31</sup> AGRANA also purchases apples directly from farmers, albeit for a limited part of its total requirements ([...] % in the season 2010/2011).

<sup>32</sup> AGRANA Fruit is active in the growing of apples and other fruits for processing and fresh fruit consumption in Ukraine. In 2010, AGRANA Juice sourced only [...] tons of apples from AGRANA Fruit.

10]%) (with an increment of [0-5]%) due to Ybbstaler).<sup>33</sup> The main competitors of the combined entity would be Chinese apple processors such as Tongda/Hengxing (market share of [10-20]%), Haisheng ([5-10]%), Yantai North Andre ([5-10]%) and certain European processors such as Döhler ([5-10]%) and the Ukraine-based company TB Fruit ([0-5]%).

100. At EEA-level, the Parties' market shares based on production capacity would amount to [20-30]%) (with an increment of [5-10]%) due to Ybbstaler). The largest competitors of the merged entity would be Döhler (market share of [10-20]%), VOG ([5-10]%), Grünewald ([5-10]%) and Zipperle ([5-10]%), followed by a large number of smaller suppliers. Approximately 40% of the market would be accounted for by imports from third countries such as China, Turkey and Ukraine.
101. In view of the presence of a significant number of important competitors which will remain active on the market and the limited contribution brought to Ybbstaler to the JV's position, the transaction does not raise serious doubts under any alternative geographic market definition.

#### *V.2.1. "Sour" AJC*

102. During the course of the market investigation in the present case some concerns have been raised by respondents in relation to the sour segment of the AJC market where the proposed transaction would combine two important suppliers. In particular, certain respondents pointed to the fact that the JV would become, together with Döhler the leader in the market for sour AJC and that the number of significant suppliers in the market would be reduced from 3 to 2.
103. There is no common standard in the industry for the definition of "sour" AJC. In general, it can be said that the term "sour AJC" refers to AJC with an acidity content of 2.5-3.0% and above.<sup>34</sup> In order to reflect the uncertainty in identifying the border of a possible market for sour AJC, the Commission requested the Parties to provide market share data for possible markets of AJC with acidity above 2.5% and above 3.0%. As the EEA is the only market where sour AJC is commercialized to an appreciable extent, the Commission restricted its analysis to the effects of the JV in the EEA.
104. According to the Parties' estimates based on production capacity, the JV will have EEA market shares between [10-20]%) and [10-20]%), depending on the different assumptions used for the calculation. The JV would continue to face competition from a number of competitors such as Döhler (market shares of [5-10]-[10-20]%), Grünewald ([5-10]%), Appol ([5-10]%) and TB Fruit ([0-5]%).
105. The Commission's investigation however showed that market shares based on production capacity are not an adequate proxy to reflect the competitive strength of a given player in a possible market for sour AJC. This is mainly because of the very low capacity utilisation of many AJC processing plants in the EEA. Furthermore, some AJC producers, including

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<sup>33</sup> In the overall market for AJC, the Parties' market shares based on actual sales would not be significantly different.

<sup>34</sup> This practice is not however shared by all market players. Ybbstaler for instance considers all AJC with more than 2% acidity as sour.

the Parties, appear to source AJC by means of toll manufacturing or supply agreements from smaller players.

106. In order to reconstruct the EEA market for sour AJC, the Commission therefore added up the actual sales of AJC in 2010, received from the Parties and from competitors who responded to the Commission's request for information. In addition, the sales between AJC producers were eliminated in order to provide an accurate picture of the merchant market and avoid double counting. The Commission moreover took into account that its data gathering exercise was missing input from a significant number of small players active on the market and detailed information on imports. The Commission therefore considered different scenarios, by attributing to the category labelled as "Others" different ranges of market shares. Table 1 below presents the most unfavourable result for the Parties, namely the case where the market share attributed to "Others" is relatively low and the market for sour AJC includes all AJC with acidity above 2.5%. In all other cases the market shares of the Parties would have been lower.

**Table 1 – Market shares in the EEA market for sour AJC, 2010**

Company	Market shares
AGRANA	[20-30]%
Ybbstaler	[10-20]%
Combined	[30-40]%
Döhler	[30-40]%
Grünwald	[0-5]%
VOG	[0-5]%
Hortex	[0-5]%
Binder	[0-5]%
Pfanner	[0-5]%
Others	[20-30]%

107. It appears from table 1 above that post-transaction the JV will continue to face competition from a very large player like Döhler as well as a sizeable fringe of relatively smaller players which will also continue to exercise competitive pressure on the Parties.
108. On the demand side, overall AJC consumption appears to be influenced to a certain extent by competition of the downstream product with different types of soft drinks such as ready-to-drink teas, functional drinks and energy drinks.<sup>35</sup> As a result, demand for AJC as a whole shows at least a certain level of elasticity.
109. With specific regard to sour AJC, demand appears to be relatively more elastic as customers can be flexible in their purchasing strategies. Bottlers regularly switch between

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<sup>35</sup> Source: USDA - Fresh Deciduous Fruit Annual – EU 27 (2011).

suppliers and multi-source to ensure security of supply and obtain more bargaining power. Whilst certain respondents highlighted the fact that only large players such as the Parties and Döhler are able to supply all year round significant volumes of AJC, evidence found in the course of the market investigation confirmed that large customers source regularly from relatively smaller suppliers like Grünewald, Hortex, Binder, Appol, Steinhauser and Dreher.<sup>36</sup> Although some large customers appear to concentrate their orders on the big suppliers like AGRANA Juice or Döhler, the majority of them buy a significant part (up to 70%) of their sour AJC requirements from a number of fringe suppliers.

110. AJC customers are also flexible with regard to their specific acidity requirements. In particular, it is important to note that:
- a) Customers typically order AJC within a certain range of acidity (for instance, 2.8-3.2%). As there is no precise border between "sour" and "medium" AJC, customers' orders can be distributed all over the range of acidity.
  - b) A number of customers would be able to adapt their recipes to the market conditions making the final product more sweet or sour depending on the price of the raw materials.
  - c) Certain customers also operate blending facilities which allow them to counter price increases in specific acidity ranges, for instance by blending sweet AJC from China or Turkey with sourer AJC from the early harvest season in Poland.
  - d) A few customers would also be able to react to a price increase in sour AJC by blending sweet AJC with souring substances such as citric acid.
111. All these factors, taken as a whole, lead to the conclusion that it would be artificial and misleading to take into account the Parties' important role in the sour range of acidity without considering the fact that the Parties' position in other segments would be less significant. As such, EEA and third-countries suppliers of "sweet" and "medium" AJC will continue to exercise a certain degree of competitive pressure on the JV, even when a possible market for sour AJC exclusively is considered.
112. In view of the above, it is unlikely that the JV would obtain a sufficient degree of market power to be able to unilaterally increase price for AJC. In any event, a reduction in output by the JV post-transaction, either by reducing its purchases of apples on the procurement market or by withholding part of the processed AJC in storage facilities, does not appear to be profitable.
113. Firstly, if the JV were to reduce purchases of apples for processing, its competitors would have access to an equivalent amount of raw materials. The market investigation has consistently confirmed that competitors have significant spare processing capacity and thus they would be able to expand their purchases of apples and increase their output of AJC. The market investigation also confirmed that customers already multisource to a large extent and therefore would be able to increase their purchases from suppliers other than the Parties with relatively limited switching costs. Any potential output reduction from the JV would be therefore rapidly offset.

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<sup>36</sup> A number of respondents to the Commission's requests for information confirmed that these players are normally able to supply AJC all year round.

114. The other possible strategy to reduce output by withholding processed AJC does not seem to be profitable either. The Parties' storage capacity normally does not allow storing AJC for more than one year. As a consequence, the JV would be forced to sell most of the AJC accumulated before the start of the next processing season. That would have an impact on prices and would be likely to compensate for the initial price increase. Furthermore, an AJC withholding strategy would be risky because of the rapid and unexpected fluctuations in the price of AJC which may lead to very significant losses. For instance, AGRANA in 2008 had to write down the value of its stocks of the stored AJC by EUR 32.4 million.<sup>37</sup> As a result of this occurrence, AGRANA put in place a risk management system which [...].<sup>38</sup> A similar system has always been used by Ybbstaler.
115. The presence of bottlers such as Rauch, Stute and Pfanner that are vertically integrated upstream in the processing of AJC also provides for a competitive constraint on the JV. On the one hand, these integrated suppliers may divert part of their significant volumes of AJC currently used for captive production to the free market. On the other hand, competition downstream between integrated and non-integrated bottlers constitutes an indirect competition constraint for AJC processors. This is because the sales of AJC processors are negatively influenced by the sales of vertically integrated bottlers to large retailers such as Aldi and Lidl. AJC processors have therefore an incentive to offer cheap prices to non-integrated bottlers in order to allow them to win competition from integrated bottlers.
116. In view of the above, the Commission concludes that the proposed transaction does not raise serious doubts in a possible EEA market for sour AJC.

#### *V.2.2.AJC-Schorle*

117. The Parties argue that the JV's market share in a possible EEA market for AJC-Schorle would amount to approximately [20-30]%. The Parties were not able to provide market shares for their competitors. The Commission therefore undertook a market reconstruction on the basis of the information submitted by market players in the course of the market investigation. The results of the Commission's market reconstruction are presented below.

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<sup>37</sup> See AGRANA's Annual Report for 2008/2009.

<sup>38</sup> See Replies to the Commission's Requests for Information of 16 March and 20 March 2012.

**Table 2 – Market shares in the EEA market for AJC-Schorle, 2010**

Company	Market shares
AGRANA	[10-20]%
Ybbstaler	[20-30]%
Combined	[30-40]%
Döhler	[30-40]%
Grünewald	[0-5]%
Widemann	[0-5]%
Others	[20-30]%

118. Some respondents to the Commission's market investigation pointed to the existence of possible concerns in relation to AJC-Schorle. This would be the case in particular because of the prominent position of Ybbstaler as one of the main suppliers of AJC-Schorle in the EEA. Moreover, the Commission noted that in an internal document provided by the Parties [...] (the "Report of 2009"), [...].<sup>39</sup> This would suggest that the merger could result in a reduction from 3 to 2 competitors in a possible market for AJC-Schorle.
119. Post-transaction, the JV will become one of the leading suppliers of AJC-Schorle together with Döhler. Other companies active in the market will be Grünewald, Widemann, Zipperle, Pfanner and Appol. The Parties claim that these and other players active in the market for AJC-Schorle will exercise effective competitive pressure on the JV. Moreover, the Parties claim that the statement contained in the Report of 2009 [...] referred to that particular moment in time and that in recent years the market has evolved towards a more competitive scenario.
120. The Parties' sales of AJC-Schorle have been declining in recent years whilst the total size of the market has been growing. That would imply that both Parties have lost market shares in the past three years. In the Report of 2009, moreover, Ybbstaller also appeared to consider the market for AJC-Schorle as a very competitive one. In recent years, the AJC-Schorle market appears to have become even more competitive, as the price levels with respect to normal AJC have been decreasing to a significant extent until the point where the difference between the two varieties of AJC is not any longer meaningful.
121. Vertically integrated players like Stute and Rauch are also very active in the production and bottling of AJC-Schorle. These market players appear to exercise important competitive constraints on AJC-Schorle processors in a similar manner to that which has been described for sour AJC. According to internal documents provided by the Parties, for instance, the AJC-Schorle produced by Stute appears to be considered the benchmark in terms of quality by a large German retailer.<sup>40</sup>

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<sup>39</sup> See internal document no. RWA282.

<sup>40</sup> See Annex 64 to the Form CO.

122. In addition, the barriers to entry in the market of AJC-Schorle for companies active in the AJC business do not appear to be particularly high. Although the market investigation suggested that a certain know-how would be required as would additional investments in machinery<sup>41</sup> it appears likely that an increase in the price for AJC-Schorle would cause entry in the market. Potential competition from AJC producers is therefore an important element to be taken into account.
123. In view of the above, the Commission concludes that the proposed transaction does not raise serious doubts in a possible EEA market for AJC-Schorle.

### *V.2.3. Apple water phase essence / AJC*

124. Apple water phase essence can be added back to AJC in order to improve its flavour. Since the Parties are both active in apple water phase essence production and on the market for AJC, the transaction gives rise to a vertical relationship.
125. This vertical relationship has generally not raised concerns in the course of the market investigation. The Parties' presence in the market for apple water phase essence is relatively limited as the JV's market share on a worldwide basis would amount roughly to [10-20]% (with an increment of [0-5]% due to Ybbstaler). Moreover, also the Parties' market shares on the overall AJC market in the EEA would be limited at [20-30]% on the basis of production capacity and still below 40% on a potential market for sour AJC in the EEA reconstructed using the methodology described in paragraph 106 above.
126. In view of the Parties' market shares for both apple water phase essence and AJC, the Commission concludes that the proposed transaction does not raise serious doubts with regard to the vertical relationship between apple water phase essence and AJC.

## **VI. CONCLUSION**

127. 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)*

*Joaquín ALMUNIA*

*Vice-President*

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<sup>41</sup> The Parties estimate the costs for the additional equipment required to produce AJC-Schorle between EUR 300 000 and EUR 400 000.