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***Case No COMP/M.6611 - ARLA
FOODS/ MILK LINK***

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

Article 6(1)(b) in conjunction with Art 6(2)

Date: 27/09/2012

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C(2012) 6948

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE

To the notifying party:

Dear Sir/Madam,

**Subject: Case No COMP/M.6611 – Arla Foods/ Milk Link
Commission decision pursuant to Article 6(1)(b) in conjunction with
Article 6(2) of Council Regulation No 139/2004¹**

1. On 9 August 2012, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertaking Arla Foods a.m.b.a ("Arla", Denmark) acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of the undertaking Milk Link Limited ("Milk Link", the UK) by way of purchase of shares.² Arla and Milk Link are designated hereinafter as "the parties" and Arla as "the notifying party".

I. THE PARTIES

2. Arla is a dairy co-operative owned by Swedish, Danish and German dairy farmers. It is active in the production and sale of a variety of dairy products. Arla's main markets in terms of turnover are the UK, Sweden, Denmark and Germany though it also has substantial activities in Finland and the Netherlands.

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 247 of 17.8.2012, p. 5.

3. Milk Link is a British farmers' co-operative. Its activities focus primarily on the production and marketing of cheese, standard long-life milk, extended shelf life ("ESL") flavoured dairy drinks and packet butter. Milk Link has no processing facilities or sales offices outside the UK.

II. THE OPERATION

4. On 18 May 2012, Arla and Milk Link signed an agreement by which Arla will acquire Milk Link's entire business and all assets, liabilities and activities (save for the business of buying raw milk from its members and associated activities). Post completion, Milk Link will remain a cooperative owned by its members but will become a corporate member of Arla and will be able to appoint two directors to Arla's board of directors with the right to exercise one vote between them.

III. CONCENTRATION

5. In view of the above, the proposed transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

IV. EU DIMENSION

6. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million³ (Arla: EUR 7 365 million, Milk Link: EUR 690 million). Each of them has an EU-wide turnover in excess of EUR 250 million (Arla: [...] million, Milk Link: [...] million). Only Milk Link achieves more than two-thirds of its turnover in one Member state.
7. The notified operation therefore has an EU dimension within the meaning of Article 1(2) of the EU Merger Regulation.

V. COMPETITIVE ASSESSMENT

8. The proposed transaction leads to a number of horizontally affected markets, notably in (i) the procurement of raw milk, (ii) non-health fresh flavoured dairy drinks, (iii) long-life milk, (iv) packet butter, (v) blue cheese, (vi) whey and (vii) permeate powder. Furthermore, it leads to vertically affected markets regarding (i) fresh milk, and (ii) fresh cream, which are downstream to the market for the procurement of raw milk, as well as (iii) permeate powder and other whey protein concentrate ("WPC") products, which are downstream of whey.

A. Relevant market definition

A.1. Relevant product markets

(i) Procurement of raw milk

9. Raw milk is collected from farms and delivered to the dairies for further processing. It has a perishable nature, since it has not undergone any treatment other than cooling. Furthermore, according to the notifying party, it is transported to a local processing

³ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C 95, 16.4.2008, p. 1).

dairy immediately after collection or, when the farm is not close to a processing dairy or the local processing dairy does not have a use for the raw milk, it is collected from the farm and delivered to a milk haulage depot where it is transhipped for onward delivery to a processing dairy with a production requirement for the milk. In addition, raw milk from certain milk fields may be swapped between processors on the basis of either ad-hoc or longer term (e.g. 3-12 months) arrangements. These arrangements occur when milk purchasers identify supply chain efficiencies that can be generated.

10. While in *Arla Foods/Express Dairies* the Commission considered that there was a single market for the procurement of raw milk,⁴ in the more recent case *Friesland Foods/Campina* the Commission concluded that the procurement of raw milk should be split in two separate markets: (i) the procurement of conventional milk; and (ii) the procurement of organic milk.⁵ In particular, it was considered that these two types of raw milk are not substitutable from both the demand- and supply-side perspectives, since organic dairy producers require organic raw milk and dairy farmers face a number of significant hurdles to switch from the production of conventional raw milk to the production of organic raw milk⁶.
11. The notifying party submits that there is no need to reach a conclusion as to whether the market for the procurement of raw milk should be further segmented given that the transaction would not result in any significant impediment to effective competition on either basis.
12. The market investigation indicates that organic and conventional raw milk do not belong to the same relevant product market, since the vast majority of dairy processors indicated that consumers do not view conventional raw milk and organic raw milk as substitutable, there are significant price differences between organic and conventional raw milk, and switching from the production of conventional raw milk to organic raw milk requires significant investments and changes in farming practices.⁷
13. As the transaction does not raise serious doubts as to its compatibility with the internal market under any alternative definition, however, the question whether the market for the procurement of raw milk should be further segmented can be left open.

⁴ Case COMP/M.3130 – *Arla Foods/Express Dairies*, recital 15.

⁵ Case COMP/M.5046 – *Friesland Foods/Campina*, recital 52. The UK Office of Fair Trading ("OFT") also considered that there is a distinct product market for the procurement of raw milk, but it did not distinguish between the procurement of raw conventional and organic milk – e.g. *Claymore/Allarburn Farm*, OFT decision of 3 May 2006.

⁶ In *Friesland Foods/Campina*, it was stated "conventional raw milk" is all milk produced under general legal conditions whereas organic raw milk is produced under additional legal conditions, as defined: Council Regulation (EC) No 2092/91 of 24 June 1991 on organic production of agricultural products and indications referring thereto on agricultural products and foodstuffs. Qualitative requirements for the production of organic raw milk are laid down in this Regulation and include, inter alia, the following prescriptions: no use of fertilizers, pesticides or GMO (genetically modified organisms); animal welfare requirements; and compulsory grazing of cows in spring, summer and fall. This Regulation has since been replaced by Council Regulation (EC) No 834/2007 of 28 June 2007.

⁷ Replies to questions 11, 12 and 13 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Milk and Dairy Products Competitors (Q. 1), dated 14 August 2012.

(ii) Fresh milk

14. Fresh milk is milk with a standardised fat content, which is pasteurised at 72° Celsius for 15 seconds.
15. In *Friesland Foods/Campina*, the Commission concluded that conventional and organic fresh milk constitute separate product markets, branded and private label products belong to the same product market and left open the question whether the market should be further segmented according to the distribution channel.⁸ In *Lactalis/Parmalat*, the Commission also left open the question whether there could be a health segment within the market for fresh milk.⁹
16. The notifying party submits that it is not necessary to reach a view on the precise scope of the product market since the transaction would not result in a significant impediment to effective competition as regards the supply of fresh milk.
17. During the market investigation, while some fresh milk competitors stated that, at least in the UK, the prices, packaging and competitive pressure were similar in both the out of home ("OOH") and retail channels for the supply of fresh milk, some customers pointed to significant differences in volume requirements and purchasing power.¹⁰
18. As the transaction does not raise serious doubts as to its compatibility with the internal market under any alternative definition, however, the question whether the market for fresh milk should be further segmented can be left open.

(iii) Fresh cream

19. Fresh cream is raw milk which has been standardised to a fat content of 8% or more (often up to 38%). Cream is essentially a commodity produced as a by-product of milk processing and the production of various fresh dairy products, in particular from the production of skimmed and semi-skimmed fresh liquid milk.
20. In *Friesland Foods/Campina*, the Commission distinguished between liquid and spray cream,¹¹ as well as dairy and non-dairy cream.¹² The Commission has also left open the question whether fresh cream and long-life cream belong to the same relevant product market.¹³ Finally, the Commission concluded that the retail, OOH and industry

⁸ Case COMP/M.5046 – *Friesland Foods/Campina*, recitals 207 and 460. The OFT has also analysed the fresh milk market and a further distinction between customer types (large supermarkets, middle-ground customers and doorstep customers) – e.g. *Arla Foods/Express Dairies*, OFT Report of 3 July 2003.

⁹ Case COMP/M.6242 – *Lactalis/Parmalat*, recital 31.

¹⁰ Replies to question 18 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Milk and Dairy Products Competitors (Q. 1), dated 14 August 2012; and replies to question 7 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Milk and Dairy Products Customers (Q. 2), dated 14 August 2012.

¹¹ Case COMP/M.5046 – *Friesland Foods/Campina*, recital 1338.

¹² Case COMP/M.5046 – *Friesland Foods/Campina*, recital 1351. The OFT has also analysed the cream market and further distinctions between bulk and non-bulk cream, and between customer types – e.g. *Arla Foods/Express Dairies*, OFT Report of 3 July 2003.

¹³ Case COMP/M.5046 – *Friesland Foods/Campina*, recital 1364. See also Case COMP/M.6119 – *Arla/Hansa*, recital 17.

channels constitute separate product markets and left open the question whether the market should be further segmented into branded and private labels.¹⁴ The notifying party submits that it is not necessary to reach a view on the precise scope of the product market since Milk Link does not supply fresh or long-life potted cream.¹⁵

21. In line with the Commission's definition of the relevant product market in *Friesland Foods/Campina*, competitors' and customers' replies to the Commission's requests for information in the present case indicated that the market for fresh cream should be segmented into liquid and spray cream, as well as according to the distribution channel.¹⁶
22. As the transaction does not raise serious doubts as to its compatibility with the internal market under any alternative definition, however, the question whether the market for fresh cream should be further segmented can be left open.

(iv) Fresh flavoured dairy drinks

23. Flavoured dairy drinks are a product consisting of a mix of milk and another beverage, for example fruit juice. In *Friesland Foods/Campina*, the Commission concluded that fresh flavoured dairy drinks and long-life flavoured dairy drinks constitute separate markets.¹⁷ Within fresh flavoured dairy drinks, the Commission has also distinguished between (i) the health and non-health segments and (ii) branded and private label products.¹⁸ Furthermore, it finds a distinction between the retail and OOH segments for branded non-health fresh flavoured dairy drinks to be relevant.
24. The market investigation has provided strong indications that these further segmentations are relevant in this market.¹⁹
25. However, as the transaction does not raise serious doubts as to its compatibility with the internal market under any alternative definition, however, the market can be left open for the purposes of this Decision.

¹⁴ Case COMP/M.5046 – *Friesland Foods/Campina*, recitals 1374 and 1378.

¹⁵ Arla (but not Milk Link) supplies fresh potted cream in the UK (according to the Arla Foods/Express Dairies OFT Report, in the UK non-bulk cream is usually supplied in small pots for retail sale). Milk Link supplies long-life cream in cartons to the OOH channel in the UK.

¹⁶ Replies to question 8 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Milk and Dairy Products Customers (Q. 2), dated 14 August 2012; and replies to question 19 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Milk and Dairy Products Competitors (Q. 1), dated 14 August 2012.

¹⁷ Case COMP/M.5046 - *Friesland Foods/Campina* (para. 978). See also Case COMP/M.3130 – Arla Foods/Express Dairies (para. 22).

¹⁸ Case COMP/M.5046 – *Friesland Foods/Campina* (para. 994 and 1013).

¹⁹ Replies to questions 20, 24 and 25 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Dairy Products Competitors (Q. 1), dated 14 August 2012 and Replies to questions 9 and 12.4 Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Dairy Products Customers (Q. 2), dated 14 August 2012.

(v) Long-life milk²⁰

26. Long-life 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 and it can be kept for approximately six months at room temperature.²¹
27. The Commission has previously defined a separate product market for long-life milk,²² concluding that branded and private label products belong to the same product market and leaving open the question whether the market should be further segmented according to the distribution channel. In addition, the Commission left open the questions whether long-life milk should be further divided into health and indulgence segments, and whether the health segment could be further divided into calcium enriched milk, omega 3-enriched milk, growth milk and lactose-free milk.²³
28. The notifying party submits that the transaction should be assessed on the basis of a single product market for the supply of standard long-life milk for a number of reasons. Firstly, the parties do not overlap in organic long-life milk²⁴, which is only supplied by Milk Link, and health related long-life milk, which is only supplied by Arla. Secondly, the parties submit that private label long-life milk represents over 80% of the UK retail long-life milk market, that private label prices are similar to branded products and the products and packs for brands and private labels in both the retail and OOH segment are the same.²⁵
29. The market investigation has confirmed the relevance of the distinction between fresh milk and long-life milk, though respondents' views on the issue of branded versus private label products and the distribution channel were not conclusive.²⁶
30. However, the question whether the long-life milk market should be further segmented can be left open as it will not change the outcome of the competitive assessment of the proposed concentration.

²⁰ Milk Link supplies long-life cream to the OOH channel in the UK. While Arla also produces long-life cream, it does not supply this product in the UK. Therefore, long-life cream is not addressed further.

²¹ Case COMP/M.6348 – *Arla Foods/Allgäuland*, recital 23.

²² Case COMP/M.5046 – *Friesland Foods/Campina*, recital 415.

²³ Case COMP/M.5875 – *Lactalis/Puleva Dairy*, recital 129; Case COMP/M.6242 – *Lactalis/Parmalat*, recitals 39-41.

²⁴ Organic long life milk has not been defined as a separate product market in the previous Commission's decisions.

²⁵ Form CO, page 49.

²⁶ See (i) replies to question 6, 13, 15-17 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Milk and Dairy Products Customers – (Q. 2), dated 14 August 2012; and (ii) replies to questions 17, 23, 26, 27, 29-31 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Milk and Dairy Products Competitors – (Q. 1), dated 14 August 2012.

(vi) Packet butter

31. Butter is what is left of milk when all other non-fat components have been removed. The butter is typically packed in 25 kilogram cartons (bulk butter) or in 250 gram wrappers (packet butter). According to the Commission precedents, the butter market can be split into bulk and packet butter segments.²⁷ As regards packet butter, in Friesland Foods/Campina the Commission considered that , namely vegetable fats, namely margarine and packet butter are not part of the same product market, concluding that for packet butter the retail and OOH channels constitute separate product markets and left open the question whether the market should be further segmented into branded and private labels.²⁸ In the same case, the Commission considered that packet butter is packaged in wraps, rolls, cups, and tubs. Wraps are the common 250 gram brick-shaped paper wrapped packages. Rolls are the traditional (now almost out-dated) round-shaped 500 gram paper wrapped packages. Cups are the small 10 or 15 gram plastic packages which are used in restaurants and canteens. Tubs are mostly 250 gram plastic oval tubs. Wraps, rolls, cups and tubs are all offered to retailers and rolls and cups are offered to the OOH sector. Also 2.5, 5 and 10 kg (and some 25 kg) packages are sold as packet butter to the small industrial bakeries via the OOH segment.
32. The notifying party agrees with the segmentation between the retail and the OOH channels. While the notifying party believes there may be a market including butter, spreads and margarine, it submits that the exact product market definition can be left open given the lack of material overlaps between the parties' activities.²⁹
33. The replies to the market investigation demonstrated that the retail and OOH channels constitute separate markets within packet butter considering that there are different customers for each channel, the OOH channel is more brand driven, whilst the retail channel is essentially price sensitive.³⁰
34. The investigation has also provided strong indication that branded and private labels compete in the same market. It has been stated that: "*Branded and private label products compete head to head as the majority of consumers perceive little or no difference between them*"³¹

²⁷ Case COMP/M.5046 – *Friesland Foods/Campina*, recital 816.

²⁸ Case COMP/M.5046 – *Friesland Foods/Campina*, recitals 855 and 870.

²⁹ Arla does not supply margarine in the UK and Milk Link only supplies *de minimis* quantities of spreadables in the UK, notably [...] tonnes to the retail channel and [...] tonnes to OOH customers in 2011.

³⁰ Replies to question 25.1 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Dairy Products Competitors (Q. 1), dated 14 August 2012 and Replies to question 13 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Dairy Products Customers (Q. 2), dated 14 August 2012.

³¹ Reply to question 13 by a customer of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Dairy Products Customers (Q. 2), dated 14 August 2012.

35. However, for the purpose of assessing the competitive effects of the notified merger, the issue of whether (i) branded and private label packet butter and (ii) the retail and OOH segments for packet butter belong to the same product market can be left open.³²

(vii) Cheese

36. In previous decisions,³³ the Commission considered segmenting the cheese market according to cheese categories – (i) spreadable cheese; (ii) fresh cheese; (iii) soft cheese; (iv) semi-hard cheese; and (v) hard cheese –, but also according to even narrower cheese types (e.g. mozzarella), the type of presentation (slice, fixed weight, variable weight), type of milk used (e.g. mozzarella using different milks) and protected geographical status (e.g. “*appellations d’origine contrôlée*”).³⁴ Furthermore, in *Friesland Foods/Campina* the Commission considered that branded and private label products were part of the same product market whereas it distinguished sales to the retail channel from those to the OOH channel and industry.³⁵ In the present case, however, many of these considerations are not relevant as the parties' activities only overlap in blue cheese.
37. In *Long Clawson/Millway*,³⁶ the UK Competition Commission rejected the parties' claim that there was a single market for all blue cheese and found that blue stilton was in a separate product market from other blue cheese, on the basis of evidence that there was little substitution by retailers and consumers. Moreover, the OFT suggested that the Protected Designation of Origin status of blue stilton prevents supply side substitution by importers.
38. The notifying party argues that it is not necessary for the Commission to reach a definitive conclusion on market definition as, even if stilton is included within a broader blue cheese market, the parties' market shares are low and do not give rise to competition concerns under any market definition.
39. In the market investigation, the Commission explored the possibility of further sub-segmenting the blue cheese market, according to private and branded label as well as retail and OOH channels. It has been evidenced that there are several specialities of blue cheese, some with Protected Designation of Origin and that have different characteristics and production processes. However, the market investigation was inconclusive as to whether these constitute a separate market.³⁷

³² Case COMP/M.5046 - *Friesland Foods/Campina* (para. 862).

³³ Case COMP/M.4135 – *Lactalis/Galbani*, recitals 8-15; Case COMP/M.5046 – *Friesland Foods/Campina*, recital 559; and Case COMP/M.6242 – *Lactalis/Parmalat*, recitals 51-53.

³⁴ The OFT has also considered narrow product markets for cheese, such as cheddar (including the two hard territorial cheeses Red Leicester and Double Gloucester) – *First Milk/Milk Link*, OFT decision of 12 December 2007. The OFT left open a potential distinction between retail, foodservice and ingredient customers, while it rejected a segmentation into branded and private label cheddar.

³⁵ Case COMP/M.5046 – *Friesland Foods/Campina*, recitals 529 and 549.

³⁶ Competition Commission report of 14 January 2009, para. 4.4 -4.10.

³⁷ Replies to question 25.2 of the Commission’s request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Dairy Products Competitors (Q. 1), dated 14 August 2012 and Replies to question 16.2 of the Commission’s request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Dairy Products Customers (Q. 2), dated 14 August 2012.

40. Nevertheless, the precise market definition for blue cheese can be left open in this case as the transaction does not raise serious doubts under any possible market definition.

(viii) Whey

41. Whey is a liquid by-product derived from the production of primarily cheese. In a previous decision,³⁸ the Commission considered that there is a separate product market for the supply of raw whey. Until recently, whey was discarded or used only as animal feed, but a range of new processing technologies have allowed the isolation and purification of whey components (e.g. proteins, lactose and permeate). Liquid whey can be supplied in its raw form ("raw liquid whey") or as a concentrate ("liquid whey concentrate")³⁹.
42. The notifying party considers that the supply of raw whey is a separate product market but did not express any views on potential sub-segmentation between raw liquid whey and liquid whey concentrate.
43. The results of the market investigation showed a general agreement with the definition provided by the notifying party although it did not provide clear indications that raw liquid whey on one hand and liquid whey concentrate on the other hand would be two separate product markets⁴⁰.
44. However, as the operation does not raise serious doubts on any plausible product market⁴¹, the market definition for whey can be left open.

(ix) Whey protein concentrate ("WPC")

45. WPC is obtained from whey, which is itself a liquid by-product of cheese. It is obtained by ultrafiltration of whey, a process which separates the proteins from lactose, minerals and other constituents. WPC is usually characterised on the basis of its content of protein in solids (WPC 80 for example has 80% protein in solids). The protein content generally ranges from 35 up to 80%. Additionally, it is possible to obtain protein content around 90% by adding different processes to ultrafiltration, such as microfiltration and ion exchange. This WPC product is named whey protein isolate ("WPI").
46. In *Arla Foods/Allgäu*⁴², the Commission considered that it was appropriate to distinguish between WPC 35-50, WPC 60-80 and WPI.

³⁸ Case COMP/M.6348 – *Arla Foods/Allgäu*, recital 33.

³⁹ According to the notifying party, whey-based products are now supplied for various uses, such as in the pharmaceutical industry (lactose powder), dairy and bakery applications (whey powder, permeate powder), infant nutrition (lactose powder and whey protein concentrate powder) or sports and clinical nutrition (whey protein concentrate powder).

⁴⁰ Replies to question 44 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to milk and dairy products competitors (Q. 1), dated 14 August 2012; Replies to question 5 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to permeate powder competitors (Q. 3), dated 9 August 2012.

⁴¹ [...].

⁴² Case COMP/M.6348 - *Arla Foods/Allgäu*, paragraph 64.

47. The notifying party considers there is a chain of demand and supply-side substitution between the range of whey based products resulting in a broad overall product market.
48. For the purposes of the present Decision, however, it is not necessary to reach a definitive view on this point as the proposed transaction does not raise serious doubts under any market definition.

(x) Permeate powder

49. Permeate is a by-product generated from the processing of whey into whey protein concentrate. The production of permeate powder follows from a process where first whey proteins are concentrated from the whey using ultrafiltration. The remaining intermediate permeate product is then evaporated, crystallised and dried.
50. In *Arla Foods/Allgäu*⁴³, the Commission left open the question whether permeate constitutes a separate product market or forms part of a wider ingredients market including starch-based products such as maltodextrins or dextrose.⁴⁴
51. The notifying party submits that a market delineation covering only the supply of permeate powder is too narrow, as a customer will usually have several alternatives, and permeate powder would form part of a wider ingredients market. In particular, whey permeate powder is sold as a cheaper substitute of whey powder or lactose or milk powder, and will often compete against a range of simple starch-based products (maltodextrins, dextrose etc.), in various dairy and bakery applications. According to the notifying party, permeate powder has a shelf life of 18 months.
52. The market investigation has broadly supported the definition proposed by the notifying party with most permeate powder suppliers agreeing that the product is sold as a cheaper substitute of whey powder, lactose or milk powder⁴⁵. Third party responses regarding the product's shelf life were more varied however with figures ranging from 12 to 36 months.
53. However, it is not necessary to reach a definitive view as the proposed transaction does not raise serious doubts even on the narrowest basis of a market for permeate powder only.

A.2. Relevant geographic markets

(i) Procurement of raw milk

54. The Commission has concluded in past decisions that the relevant geographic market for the procurement of raw milk is not wider than national in scope.⁴⁶ Furthermore, in

⁴³ Case COMP/M.6348 - *Arla Foods/Allgäu*, paragraph 69.

⁴⁴ Case COMP/M.6348 – *Arla Foods/Allgäu*, recital 70.

⁴⁵ Replies to question 6 to 9 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to permeate powder competitors (Q. 3), dated 9 August 2012; Replies to question 5 to 8 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to permeate powder customers (Q. 4), dated 9 August 2012.

⁴⁶ Case COMP/M.5046 – *Friesland Foods/Campina*, recital 80; Case COMP/M.5875 – *Lactalis/Puleva Dairy*, recital 46; Case COMP/M.6119 – *Arla/Hansa*, recital 35.

previous cases the UK Office of Fair Trading ("OFT") assessed the procurement of raw milk on the basis of Great Britain (i.e. the UK excluding Northern Ireland) as the relevant geographic frame of reference, considering that a 100 mile radius (around 160 km) was a viable range for delivery of raw milk to processors.⁴⁷ However, in *First Milk/Milk Link*, the OFT stated that in the future it would not preclude the existence of narrower markets.⁴⁸

55. The notifying party submits that the geographic market for the procurement of raw milk should be assessed on the basis of a single market comprising the whole of Great Britain. This is because raw milk travels between Scotland and the rest of Great Britain and [...]. Also, improvements in road infrastructure and in the treatment, storage and transport facilities would mean that the distances across which it is viable to transport raw milk have increased in recent years, such that raw milk is now often transported over 100 miles from the point of production. Finally, the market should be considered as national because many processors enter into swap arrangements with competitors as regards the delivery of raw milk, which also facilitates the supply of raw milk across Great Britain.
56. However, the notifying party claims that irrespective of how the geographic market is defined, the proposed transaction will not result in any significant impediment to effective competition for the procurement of raw milk from dairy farmers.⁴⁹
57. The market investigation indicates that there is a tendency on the part of some major competitors to source milk from specific regions of the United Kingdom.⁵⁰ However, a majority of the competitors do not pay different prices according to the region.⁵¹ Given the absence of serious doubts as to the compatibility of the transaction with the internal market under any alternative market definition, the question whether the relevant geographic scope of the raw milk procurement market covers the whole of Great Britain or should be segmented into narrower regions can be left open in the present case.

(ii) Fresh milk

58. The Commission concluded in previous decisions that, as regards the fresh milk market and its possible segments, the geographical scope should be defined as national.⁵²

⁴⁷ *First Milk/Wiseman*, OFT decision of 7 April 2005, recitals 13-14; *Claymore/Allarburn Farm*, OFT decision of 3 May 2006, recital 7 ("100 mile radius was considered, on average, to be a viable range for delivery of raw milk to processors and, as there are no clear geographic breaks, a chain of substitution was likely to operate across England, Scotland and Wales"); *First Milk/Milk Link*, OFT decision of 12 December 2007, recital 12.

⁴⁸ *First Milk/Milk Link*, OFT decision of 12 December 2007, recital 10.

⁴⁹ Form CO, page 39.

⁵⁰ Replies to question 16.6 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Milk and Dairy Products Competitors (Q. 1), dated 14 August 2012.

⁵¹ Replies to question 16.4 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Milk and Dairy Products Competitors (Q. 1), dated 14 August 2012.

⁵² Case COMP/M.5046 – *Friesland Foods/Campina*, recital 230, Case COMP/M.6119 – *Arla/Hansa*, recital 36. The OFT has assessed the fresh milk market at national and regional level for large supermarkets and middleground customers, and at local level for doorstep customers – *Arla Foods/Express Dairies*, OFT Report of 3 July 2003.

However, in *Lactalis/Parmalat*, the Commission left open the question whether the geographic scope of the market for fresh milk in Italy was national or narrower (regional), as the market investigation suggested that fresh milk could be transported up to a maximum of 650 km, and consumer preferences, brands and prices varied substantially according to regions.⁵³

59. The notifying party submits that it is not necessary to reach a view on the precise scope of the geographic market since the transaction would not result in a significant impediment to effective competition as regards the supply of fresh milk in Great Britain.
60. As the transaction does not raise serious doubts as to its compatibility with the internal market under any alternative definition, the question whether the geographic scope of the market for the supply of fresh milk is national or narrower can be left open.

(iii) Fresh cream

61. With respect to fresh cream and its possible segments, the Commission concluded in *Friesland Foods/Campina* that the market was wider than national, including at least Belgium, Germany and the Netherlands.⁵⁴ The question whether the relevant geographic markets are national or wider was subsequently left open in *Arla/Hansa*.⁵⁵
62. The notifying party submits that it is not necessary to reach a precise view since the transaction would not result in a significant impediment to effective competition as regards the supply of fresh cream in Great Britain.
63. The market investigation in the present case has indicated that the geographic market for fresh cream might not be wider than national in scope as far as the UK is concerned since imports and exports are limited.⁵⁶ The difficulties of transporting fresh dairy products over a greater distance play a role when defining the geographic market since the carrying distances are relatively short.⁵⁷
64. However, as the transaction does not raise serious doubts as to its compatibility with the internal market under any alternative definition, the question whether the geographic scope of the market for the supply of fresh cream is national or wider than national can be left open.

⁵³ Case COMP/M.6242 – *Lactalis/Parmalat*, recital 33.

⁵⁴ Case COMP/M.5046 – *Friesland Foods/Campina*, recital 1393. The OFT has stated that the geographic scope of the market was at least UK-wide – *Arla Foods/Express Dairies*, OFT Report of 3 July 2003.

⁵⁵ Case COMP/M.6119 – *Arla/Hansa*, recital 37.

⁵⁶ Replies to question 22 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Milk and Dairy Products Customers (Q. 2), dated 14 August 2012, and replies to question 38 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Milk and Dairy Products Competitors (Q. 1), dated 14 August 2012.

⁵⁷ Replies to question 18 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Milk and Dairy Products Customers (Q. 2), dated 14 August 2012.

(iv) Fresh flavoured dairy drinks

65. With regards to fresh flavoured dairy drinks, the Commission has previously considered the relevant geographic market for non-health related fresh flavoured dairy drinks to be national.⁵⁸ The market investigation provided some indication that the market for fresh products, such as non-health flavoured drinks, is national because these cannot be submitted to long transport times.⁵⁹ However, considering the absence of competition concerns under any market definition, the precise geographic market can be left open for the purposes of this Decision.

(v) Long-life milk

66. Long-life products can be transported over longer distances than fresh products which may result in broader geographical markets. With regard to the supply of long-life milk, the Commission has concluded in *Friesland Foods/Campina* that the geographical dimension is wider than national.⁶⁰ However, in the latest precedents the Commission has analysed the effects of the transaction in this market at the national level.⁶¹
67. The notifying party submits that the geographical market for long-life milk is wider than national and potentially covers the entire EEA due to the significant import of long-life milk into the UK (above [...]%) of all sales during the last 10 years), the imperishable nature of the product, its homogeneity throughout the EU and the relatively insignificant transport costs.⁶²
68. In contrast to the decision in *Friesland Foods/Campina*,⁶³ where the Commission found the geographic scope of the long-life milk market to be wider than national for the reasons mentioned in footnote 61, the market investigation in the present case has clearly indicated that the UK constitutes a distinct geographic market.

⁵⁸ Case COMP/M.5046 – *Friesland Foods/Campina*, recital 1028.

⁵⁹ Replies to question 32-38 of the Commission’s request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Dairy Products Competitors (Q. 1), dated 14 August 2012 and Replies to question 18-22 of the Commission’s request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Dairy Products Customers (Q. 2), dated 14 August 2012.

⁶⁰ Case COMP/M.5046 – *Friesland Foods/Campina*, recital 422. This conclusion was based on various reasons, notably: (i) there were several Belgian and German producers already supplying Dutch retailers and OOH wholesalers with long-life milk (even Campina and Friesland Foods supplied their Dutch customers from their production facilities in Belgium or Germany); (ii) customers considered long-life milk an homogeneous product in terms of taste, quality and packaging; (iii) the perishable nature of long-life milk facilitates trade between Member States and almost all Dutch customers sourced from Belgian and German companies; (v) the wide majority of retailers who responded to the market investigation explained that the origin of the raw milk would not be important in the case of long-life milk.

⁶¹ Case COMP/M.5875 – *Lactalis/Puleva Dairy*, recital 86; case COMP/M.6242 – *Lactalis/Parmalat*, recital 42.

⁶² Form CO, page 50.

⁶³ Case COMP/M.5046 – *Friesland Foods/Campina*, recital 422. There was no domestic production in the Netherlands and prices in the Netherlands, Belgium and Germany were similar.

69. Even though transport costs may not constitute an obstacle to imports of long-life milk from Europe,⁶⁴ the vast majority of major retailers in the UK have a UK only sourcing policy for long-life milk to support British farmers. Imports account for only 10-15% of the long-life milk consumption in the UK but are not seen as an alternative to long-life milk produced in the UK given the UK consumers' strong preference for UK long-life milk.⁶⁵ The importance of UK-produced long-life milk and the sourcing policy of the retailers has also been confirmed by some of the competitors.⁶⁶
70. Therefore, for the purpose of this decision the Commission concludes that the relevant geographic scope of the long-life milk market comprises the UK.

(vi) *Packet butter*

71. With regard to the market for packet butter, the Commission has previously defined the geographical scope as at least regional.⁶⁷ The market investigation confirmed that the geographic market is at least wider than the UK considering that the imports are a significant percentage of the market (3 out of the 4 top consumer brands are imports⁶⁸) and, thus consumer preferences for domestically produced butter are not very relevant.⁶⁹

(vii) *Cheese*

72. With regards to cheese, both the Commission and the OFT⁷⁰ have tended to consider the relevant geographic scope for the cheese market and its segments to be national. The notifying party considers that the relevant geographic scope is EEA-wide given the low transport costs, absence of trade barriers, significant cross-border trade and product long-shelf life. The market investigation has given indications that the market for blue cheese may be wider than national, considering that the large of majority of

⁶⁴ See, for example, non-confidential minutes of call with [...], 29 August 2012; (ii) non-confidential minutes of call with [...], 28 August 2012.

⁶⁵ See (i) replies to questions 19, 22, 35 and 36 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Milk and Dairy Products Customers – (Q. 2), dated 14 August 2012; (ii) and non-confidential minutes of call with [...], 30 August 2012, and (iii) non-confidential minutes of call with [...], 5 September 2012.

⁶⁶ See (i) non-confidential minutes of call with [...], 29 August 2012; (ii) non-confidential minutes of call with [...], 28 August 2012 and (iii) non-confidential minutes of call with [...], 27 August 2012.

⁶⁷ M.5046 – *Friesland Foods/Campina*, recital. 874 The Commission considered a market including Belgium, Germany and the Netherlands. This is supported by the OFT position in, for example, *Dairy Farmers of Britain/Associated Co-operative Creameries*, OFT decision of 3 December 2004.

⁶⁸ In addition, while Arla currently imports Anchor branded packet butter sold in the UK from New Zealand but will switch production of its Anchor branded packet butter from New Zealand to the UK in the summer of 2012.

⁶⁹ Replies to question 32-38 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Dairy Products Competitors (Q. 1), dated 14 August 2012 and Replies to question 18, 19 and 22 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Dairy Products Customers (Q. 2), dated 14 August 2012.

⁷⁰ Case COMP/M.4135 – *Lactalis/Galbani*, recital 18; Case COMP/M.6242 – *Lactalis/Parmalat*, recital 55; *First Milk/Milk Link* - OFT decision of 12 December 2007. However, in *Friesland Foods/Campina* the Commission recognised that some Dutch-type cheese markets included the Netherlands and Germany.

customers source from outside of the UK because the cheeses from different regions have different characteristics⁷¹. However, considering that the investigation was not entirely conclusive and given the absence of competition concerns under any market definition, this point can be left open for the purposes of this Decision.

(viii) Whey

73. With regards to whey, the Commission has previously left open the question whether the relevant geographic market is national or EEA-wide.⁷²
74. The notifying party submits that whilst raw liquid whey is a relatively low value, high volume product in its natural liquid form, as it consists of significant amounts of water, it is easy to process the whey at relatively low cost at the cheese facility (in particular through the application of dehydration treatment) to reduce the water content (i.e. to produce concentrated raw whey). Therefore, it would be economically viable to transport concentrated raw whey over relatively long distances (up to 1,500 km according to the notifying party). However, the notifying party has not been able to provide examples of whey concentrate supplied to UK processors by Continental European dairies.
75. The respondents to the Commission's market investigation and producing liquid whey (i.e. mostly as a by-product from their cheese production) have indicated that they normally supply their liquid whey customers at national level and in average in a radius of 100 to 300 km from their production plant (with longer distance for whey concentrate, i.e. up to 800 km)⁷³.
76. However, the precise scope of this market can be left open since it does not affect the competitive assessment of the case.

(ix) Whey protein concentrate

77. In *Arla Foods/Allgäu*⁷⁴, although the precise geographic market definition was left open, the Commission considered the effects of that transaction on the basis of EEA-wide market shares for WPC 60-80.
78. The notifying party considers that the markets for WPC are at least EEA-wide, as WPC products are traded globally, pricing is global and transport costs are low.
79. However, it is not necessary for the Commission to reach a definitive view as the proposed transaction does not raise serious doubts whether the geographic market is considered to be EEA-wide or worldwide in scope.

⁷¹ Replies to question 22 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Dairy Products Customers (Q. 2), dated 14 August 2012.

⁷² Case COMP/M.6348 – *Arla Foods/Allgäu*, recital 40.

⁷³ Replies to question 45 to 48 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to milk and dairy products competitors (Q. 1), dated 14 August 2012; Replies to question 10-13 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to permeate powder competitors (Q. 3), dated 9 August 2012.

⁷⁴ Case COMP/M.6348 - *Arla Foods/Allgäu*, paragraph 71-73.

(x) Permeate powder

80. Regarding permeate powder, in a recent decision the Commission left open the question whether the relevant geographic market is EEA-wide or worldwide.⁷⁵
81. The notifying party submits that the market for ingredients (or any narrower market for permeate powder) is at least EEA-wide and probably worldwide in scope as when sold as a powder, permeate can be transported over significant distances and has a shelf life of 18 months. The notifying party further submits that there is significant cross border trade of permeate powder and that around 20-25% of total world permeate powder production is sold into China and South East Asia.
82. The producers of permeate powder contacted during the market investigation confirmed that they supply permeate powder at EEA and worldwide level. Customers broadly confirmed they source at EEA level with transport costs representing between 5 and 10% of the total price.⁷⁶
83. However, it is not necessary for the Commission to reach a definitive view as the proposed transaction does not raise serious doubts whether the geographic market is considered to be EEA-wide or worldwide in scope.

B. Competitive assessment

84. The proposed transaction leads to a number of horizontally affected markets, notably in (i) the procurement of raw milk, (ii) non-health fresh flavoured dairy drinks, (iii) long-life milk, (iv) packet butter, (v) blue cheese, (vi) whey and (vii) permeate powder. Furthermore, it leads to vertically affected markets regarding (i) fresh milk, and (ii) fresh cream, which are downstream to the market for the procurement of raw milk, as well as (iii) permeate powder and other WPC products, which are downstream of whey.

B.1. Horizontally affected markets

(i) Procurement of raw milk

85. Both parties are active in the procurement of raw milk in Great Britain (i.e. England, Wales and Scotland) and have no raw milk processing facilities or procurement activities in Northern Ireland.
86. The total procurement of raw milk in Great Britain during the 2010/2011 milk year was 11,428 million litres,⁷⁷ of which 436 million litres were organic.⁷⁸ The parties' combined market share on the overall market for the procurement of raw milk in Great Britain would

⁷⁵ Case COMP/M.6348 – *Arla Foods/Allgäu*land, recital 77.

⁷⁶ Replies to question 14 to 16 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to permeate powder competitors (Q. 3), dated 9 August 2012; Replies to question 9 to 12 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to permeate powder customers (Q. 4), dated 9 August 2012.

⁷⁷ Statistics from the UK Department for Environment, Food and Rural Affairs ("DEFRA").

⁷⁸ Estimates from the Organic Milk Suppliers Cooperative ("OMSCO") and the notifying party.

be [20-30]% (Arla: [10-20]%, Milk Link: [10-20]%),⁷⁹ while their combined market shares for the procurement of conventional and organic raw milk would be [20-30]% (Arla: [10-20]%, Milk Link: [10-20]%) and [10-20]% (Arla: [5-10]%, Milk Link: [10-20]%) respectively.⁸⁰

87. In addition to the volumes of milk procured from farmers referred to above, the parties also procure raw milk from third parties such as traders, co-operatives and processors which have excess milk surplus. Furthermore, the parties also supply raw milk to third parties. The notifying party estimates that the raw milk traded in Great Britain in 2011 amounted to [...] million litres. Milk Link purchased [...] million litres and sold [...] million litres, while Arla purchased [...] million litres and sold [...] million litres. Milk Link is therefore currently a net supplier of raw milk ([...] million litres) to other processors.⁸¹
88. According to the notifying party, the competitive situation in the procurement of raw milk would remain unchanged post transaction. The notifying party claims that there is no risk that the merger would allow the merged entity to exercise buyer power regarding farmers since competitors such as First Milk ([10-20]% on the overall market for the procurement of raw milk), Dairy Crest ([10-20]%), Müller/Wiseman ([10-20]%) and Meadow Foods ([0-5%])⁸² would continue to source milk on competitive terms.
89. Indeed, the parties' combined market share of [20-30]% on the buyer side is unlikely to raise any concerns of single dominance and any attempt to change the procurement conditions would likely result in farmers switching their supply to other processors, co-operatives and traders. Furthermore, it is unlikely that the merger would increase the likelihood of coordinated behaviour between major processors regarding the procurement of raw milk given the fragmented nature of the market and the heterogeneity of purchasers.⁸³
90. The notifying party also argues that, post-transaction, the merged entity's rival processors could continue to source milk from their existing dairy farm suppliers and, if any additional raw milk were required, processors could incentivise those suppliers to

⁷⁹ Form CO, page 40. Arla is currently constructing a fresh milk dairy at Aylesbury, which is expected to be operational in October 2013. It will produce fresh liquid milk (including [...]). If Arla were successful in winning additional contracts and were to process an additional [...] mtpa of raw milk by 2015, then the parties' procurement of raw milk would increase to [...] mtpa and their share of raw milk procurement in Great Britain would increase by [0-5]% to [30-40].

⁸⁰ Form CO, page 41. Although the OFT precedents have concluded that the geographic scope of the market for the procurement of raw milk is national, the notifying party has also provided the parties' combined market shares on an infra-national basis: North East ([...]), North West ([...]), Yorkshire and the Humber ([...]), East Midlands ([...]), West Midlands ([...]), South West ([...]), East of England ([...]), South East ([...]), Wales ([...]) and Scotland ([...]).

⁸¹ According to the notifying party's estimates, other net suppliers are First Milk ([...] million litres), OMSCO ([...] million litres), QMP ([...] million litres), Fayrefield ([...] million litres), Sorn Milk ([...] million litres), Selkley Vale ([...] million litres), Stewartry ([...] million litres), Paynes ([...] million litres) Torridge Vale ([...] million litres) and Calon Wen ([...] million litres).

⁸² There are other smaller competitors, such as Lactalis with a market share of [0-5] %, Paynes with a market share of [0-5] %, Heler with a market share of [0-5] % or Wyke with a market share of [0-5] %. Form CO, page 40. As regards organic raw milk, OMSCO accounts for [40-50]% of all purchases.

⁸³ See COMP/M.3130 - Arla Foods/Express Dairies, recitals 47 and 48.

increase production or persuade other farmers to switch supply to them. Additionally, processors would still be able to source milk from other processors or milk traders.

91. During the market investigation, none of the raw milk procurement competitors showed substantiated concerns regarding access to raw milk. Most competitors have stated that if they would need to increase their raw milk procurement, they would be able to find alternative suppliers.⁸⁴ In addition, the majority of the milk processors which source milk from the parties stated that they would be able to find alternative suppliers if the parties stopped supplying raw milk to them.⁸⁵ While one competitor expressed concerns regarding the supply of raw milk by Milk Link, this competitor also acknowledged that it would be possible to increase the level of alternative raw milk direct supply. In addition, the notice period for Milk Link farmers to switch to another processor is [...] months, dairy farmers on "direct supply" contracts with Milk Link are generally free to terminate the supply agreement on either[...] or [...] notice, and Arla UK's standard form contract requires [...] notice. Furthermore, according to the data provided by the notifying party, UK milk production is currently below quota and the quota system is due to end in 2015. Therefore, there is room for the increase of milk production in the UK. This is consistent with the replies from the vast majority of the parties' competitors, who do not believe that the proposed transaction will result in a price increase for raw milk nor have anti-competitive effects on the market for raw milk.⁸⁶

92. In light of the above, it can be concluded that the proposed transaction does not raise serious doubts concerning its compatibility with the internal market as regards the market for the procurement of raw milk.

(ii) Long-life milk

93. The notifying party has provided two sets of data regarding the size of the long-life milk market in the UK, based on AC Nielsen⁸⁷ and Kantar⁸⁸ data. Both sets of data do not cover Northern Ireland, which accounts for 3% of the population in the UK, and

⁸⁴ Replies to question 55 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Milk and Dairy Products Competitors (Q. 1), dated 14 August 2012.

⁸⁵ Replies to question 74 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Milk and Dairy Products Competitors (Q. 1), dated 14 August 2012.

⁸⁶ Replies to question 85 and 86 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Milk and Dairy Products Competitors (Q. 1), dated 14 August 2012.

⁸⁷ AC Nielsen provides electronic point of sales ("EPOS") data (i.e. it is based on actual sales in retail outlets, but only of those retailers that choose to provide such data to it). This provides a total market figure for the sale of retail long-life milk in Great Britain of [...] mlpa.

⁸⁸ Kantar is an independent third party sales data agency, which the notifying party understands bases its information on a detailed survey of a group of 30,000 households, who are selected to provide a representative sample of the population by age, social class, size of household, presence of children and location within Great Britain. These households are provided with portable equipment to scan the barcodes of all products they purchase for domestic consumption, with this data being retrieved by Kantar every four weeks. Accordingly, the data includes sales by all retailers. This indicates total retail sales in 2011 of [...] mlpa, based on scaling up information on this large, representative sample of households to the UK as a whole. However, Kantar data excludes the OOH distribution channel.

the OOH segment. Based on these sets of data, the notifying party estimated the total market size to range between [...] million of litres* per year ("mlpa") (Nielsen) and [...] mlpa (Kantar). According to the estimates provided by the notifying party, private label accounts for the vast majority (in the region of 80%) of the long-life milk supplied in the UK. The notifying party considers that the correct market size for long life milk in the UK is likely to be closer to the Kantar figure than the Nielsen figure. In particular, a concern with the Nielsen data is that it only covers the main grocery retailers in Great Britain, and does not cover sales from the many middleground⁸⁹ and local retailers, or from the major grocery discounters such as Aldi and Lidl.

94. In addition to the data provided by the notifying party, the Commission collected sales data for long-life milk sales in the UK from the parties' main competitors. Together with the sales of the parties, the data gathered during the market investigation points to a market size in the region of 300 mlpa.⁹⁰
95. The differences between the market shares reported by the notifying party and those based on the data gathered during the market investigation are not of a magnitude that would significantly alter the competitive assessment. Furthermore, the volumes provided by competitors relate to the overall long-life milk market, which may include health-related long-life milk, so the parties' market shares in a segment for standard long-life milk may be understated.
96. Irrespective of the data taken into account, post transaction the merged entity will have a very high market share in the overall standard long-life milk market in the UK, ranging from [60-70]% (Arla: [30-40]%, Milk Link: [20-30]%), based on Kantar data, to [60-70]% (Arla: [30-40]%, Milk Link: [30-40]%), based on the market reconstruction data.
97. Arla is in the process of acquiring Milch-Union Hocheifel ("MUH"), a German dairy producer which is also active in long-life milk in the UK. The transaction was notified to the Commission (Case COMP/M.6627 – *Arla/Milch-Union Hocheifel*) on 24 August 2012. The assessment of the acquisition of Milk Link by Arla does not take into account the potential acquisition of MUH.
98. Based on the Nielsen data, at the retail and OOH levels the combined market shares would be [70-80]% (Arla: [40-50]%, Milk Link: [20-30]%) and [60-70]% (Arla: [5-10]%, Milk Link: [50-60]%) respectively. If the retail channel is split into private labels and branded products, the combined market shares would be [70-80]% (Arla: [40-50]%, Milk Link: [20-30]%) and [30-40]% (Arla: [0-5]%, Milk Link: [30-40]%) respectively.⁹¹

* Should read "million litres".

⁸⁹ Middleground retailers comprise retail outlets except the largest supermarkets (Tesco, Asda, Sainsburys, Morrisons, Co-op, Waitrose and Marks & Spencer).

⁹⁰ The market reconstruction took into account all the suppliers indicated by the Parties except Lactalis. Furthermore, it assumed an additional extra volume of 10% attributed to "others".

⁹¹ Both Kantar and Nielsen data do not provide market share data for the OOH segment and the notifying party was unable to provide OOH market data split between the branded and private label products.

99. Based on the Kantar data, the parties' combined market shares at the retail and OOH levels would be [60-70]% (Arla: [30-40]%, Milk Link: [20-30]%) and [60-70]% (Arla: [5-10]%, Milk Link: [50-60]%) respectively. If the retail channel is split into private labels and branded products, the combined market shares would be [60-70]% (Arla: [40-50]%, Milk Link: [20-30]%) and [30-40]% (Arla: [0-5]%, Milk Link: [20-30]%) respectively.
100. As regards the parties' competitors, in the overall market Lakeland Dairy would be a distant second supplier in the overall long-life milk market ([5-10] to [5-10]%, depending on the relevant data), while the market shares of other suppliers such as Sodiaal, Delamere Dairy, MUH and Inex would be below 5%. In the private label segment Lakeland and MUH would be the second and third suppliers, in particular in the retail channel where the notifying party estimated Lakeland to have a market share between [5-10]% and [5-10]% (based on Kantar and Nielsen data respectively) and MUH to have a market share between [0-5]% and [5-10]% (based on Kantar and Nielsen data).⁹² On the overall retail channel (i.e. including both branded and private label), Lakeland and MUH's presence would be weaker since the notifying party estimated Lakeland to have a market share between [5-10]% and [5-10]% (based on Kantar and Nielsen data) and MUH to have a market share between [0-5]% and [0-5]% (based on Kantar and Nielsen data).
101. The parties' combined market shares in the long-life milk market and the market power that they may derive from such position is reflected in the feedback from competitors and customers obtained during the market investigation. The majority of customers and competitors have expressed strong concerns with respect to the production and supply of long-life milk in the UK. Customers considered that it is difficult to find alternative suppliers to the parties that have the capacity to produce the volume that is required and stressed the importance of having long-life milk that originates from the UK.⁹³ The parties' competitors also expressed concerns and confirmed the importance of the long-life milk originating from the UK.⁹⁴
102. The notifying party submits that no competition concerns will arise on the market for the following reasons: (i) the parties are capacity constrained; (ii) the parties face strong competition from existing and potential UK suppliers; (iii) imports from Continental European producers constrain UK suppliers; (iv) the parties are not close competitors; and (v) there is considerable buyer power.⁹⁵

⁹² While the notifying party was not able to provide precise estimates for competitors' market shares in the branded segment, the market investigation indicates that the competitors such as Lakeland and Sodiaal would have higher market shares than their respective market shares in the overall market and in the private label segment, notably above 10% each.

⁹³ See (i) replies to questions 27, 28, 35, 36, 37, 45 and 46 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Milk and Dairy Products Customers – (Q. 2), dated 14 August 2012; (ii) and non-confidential minutes of call with [...], 30 August 2012; and (iii) non-confidential minutes of call with [...], 5 September 2012.

⁹⁴ See (i) replies to questions 79 and 81 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Milk and Dairy Products Competitors – (Q. 1), dated 14 August 2012; (ii) non-confidential minutes of call with [...], 28 August 2012; and (iii) non-confidential minutes of call with [...], 29 August 2012.

⁹⁵ Form CO, pages 56-68; notifying party's submission of 12 September 2012, "The competitive effects of the proposed concentration in the supply of UHT milk in the UK".

The parties' capacity

103. The notifying party argues that the parties are capacity-constrained and unable to bid for additional volumes. However, both Arla and Milk Link have lost various contracts for the supply of long-life milk during the past three years.⁹⁶ This clearly indicates that, at least from time to time, the parties have available capacity and there is thus room for competition. In addition, it is questionable to what extent the parties really are constrained as according to information submitted by Milk Link to the Commission, [...].
104. Furthermore, the parties are seen by the retailers as the two main suppliers in the UK and removing Milk Link from the market would entail the elimination of the main competitive constraint on Arla in the long-life milk market.⁹⁷

Competition from UK-based suppliers

105. The notifying party also argues that the parties will continue to face strong competition from different players on the market. On the one hand, competition would come from other UK suppliers of long-life milk which could increase production (e.g. Delamere Dairy). In addition, the largest UK fresh liquid milk processors (e.g. Müller/Wiseman), could easily invest in UHT equipment to produce long-life milk.
106. The market investigation has however indicated that [...] is not seen as a competitor to Arla or Milk Link, especially not in the private label segment which represents more than 80% of the UK long-life milk market.⁹⁸ Furthermore, the market investigation confirmed that there are significant costs and time involved in establishing a new production facility or switching from fresh milk production to long-life milk production.⁹⁹ In addition, there has not been any new entry in the last five years.¹⁰⁰
107. As regards the potential entry from the largest UK fresh liquid milk processors, the market investigation showed that this is very unlikely. There are very few incentives

⁹⁶ Form CO, pages 69-73; notifying party's submission of 12 September 2012, "The competitive effects of the proposed concentration in the supply of UHT milk in the UK", Annex 1.

⁹⁷ See replies to questions 28, 45 and 46 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Milk and Dairy Products Customers – (Q. 2), dated 14 August 2012.

⁹⁸ A switch by [...] from branded to private label is also very unlikely. As explained by [...] "Arla and Milk Link are the main suppliers to the UK long life milk category, as the other competitors in the market either don't have the capacity ... to supply, do not wish to supply private label products, the profit margin compared to the risk is very low or a mixture of all of the above". See (i) replies to questions 26 and 28 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Milk and Dairy Products Customers – (Q. 2), dated 14 August 2012; and (ii) non-confidential minutes of call with [...], 28 August 2012.

⁹⁹ See (i) replies to questions 23 and 67 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Milk and Dairy Products Competitors – (Q. 1), dated 14 August 2012; and (ii) non-confidential minutes of call with [...], 29 August 2012.

¹⁰⁰ See (i) replies to question 42 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Milk and Dairy Products Customers – (Q. 2), dated 14 August 2012; and (ii) replies to questions 64-65 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Milk and Dairy Products Competitors – (Q. 1), dated 14 August 2012.

for such market entry given the declining trend of the market. For that same reason, the major fresh milk processors have stated that they have no interest in entering the market as anticipated returns would not match the cost of investment.¹⁰¹

Competition from imports

108. According to the notifying party, imports from non-UK producers would provide a competitive constraint on the parties. There are several large producers of long-life milk located in neighbouring Member States and the main importers of long-life milk into the UK are Lakeland Dairy Supplies ([5-10]% on the overall market; Ireland and Northern Ireland), Sodiaal ([0-5]%; France) and Milch-Union ([0-5]%; Germany).
109. While it has been confirmed that the long-life milk market also consists of some imports from non-UK suppliers (imports account for only 10-15% of the long-life milk consumption in the UK) , the main retailers in the UK do not regard long-life milk from other countries as an alternative to long-life milk of UK origin. Most retailers indicated that their consumers have a strong preference for UK long-life milk.¹⁰² Two of the main retailers also explained that they had to stop supplying from France and Germany due to customers complaints.¹⁰³

Closeness of competition

110. The notifying party argues that the parties are not particularly close competitors [...]. According* the notifying party, [...].¹⁰⁴ The competitive constraint imposed by the parties on each other has therefore been limited and not significant in the notifying party's view.
111. [...]¹⁰⁵ This indicates that the parties are able to participate in tenders which involve significant volumes.
112. Furthermore, the responses to the market investigation provided by customers clearly indicate that customers perceive Arla and Milk Link to be each other's closest competitor due to the scale of production and location in the UK. One of the tenders in

¹⁰¹ See replies to question 67 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Milk and Dairy Products Competitors – (Q. 1), dated 14 August 2012. For example, [...] stated that "The costs of entry and the potential market do not make an investment currently attractive." while [...] claimed that they are unlikely to enter this market as they "don't expect that the required investment would be justified by the expected returns from supplying UHT milk."

¹⁰² See (i) replies to questions 33 and 36 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Milk and Dairy Products Customers – (Q. 2), dated 14 August 2012; (ii) non-confidential minutes of call with [...], 30 August 2012; and (iii) non-confidential minutes of call with [...], 5 September 2012.

¹⁰³ See (i) reply to questions 28 and 35 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Milk and Dairy Products Customers – (Q. 2), dated 14 August 2012.

* Should read "According to".

¹⁰⁴ Notifying party's submission of 12 September 2012, "The competitive effects of the proposed concentration in the supply of UHT milk in the UK".

¹⁰⁵ [...].

which both Arla and Milk Link competed concerned the supply of [...] mlpa to [...], which confirms that both parties are competing for the large volumes for the same customers.

113. The proposed merger would thus eliminate the only remaining competitive constraint on Arla.¹⁰⁶ The major retailers fear that the combination of the UK's two leading suppliers with more than 70% of the market will lead to increased prices that will have to be passed on to the end consumer¹⁰⁷.

Countervailing buyer power

114. The notifying party also argues that [...]. OOH customers are also able to switch suppliers.
115. The notifying party therefore argues that retailers have buyer power [...]. The notifying party further argues that since the market consists of 80% private label products there is no must-have brand and it is therefore easy for the retailers to switch between suppliers.
116. Countervailing buyer power cannot be found to sufficiently offset potential adverse effect of a merger if it only ensures that a particular customer segment, with particular bargaining strength, is shielded from significantly higher prices or deteriorated conditions after the merger. It is furthermore not sufficient that buyer power exists prior to the merger, as it must also exist and remain effective following the merger. This is because a merger between two suppliers may reduce buyer power if it thereby removes a credible alternative.¹⁰⁸ In the Commission's view, a significant supply alternative will be removed and choice will be limited as the parties would have more than two thirds of the current sales in the long-life milk market and no other supplier would have a facility of a similar scale in the UK.
117. Furthermore, it is easy to price discriminate between different customers as long-life milk products are delivered according to customers' specifications and thus are customized products. Hence, even if the largest customers would be able to exercise some countervailing buyer power this would not protect smaller customers and the parties would still be able to raise prices above the pre-merger level.
118. In the Commission's view, such buyer power would, therefore, not prevent the creation of a lasting dominant position as a result of the merger.

Conclusion

119. Given the very strong position of the merged entity in the market for the production and supply of long-life milk the UK, the high concentration level of the market, as well

¹⁰⁶ See (i) replies to questions 28, 45 and 46 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Milk and Dairy Products Customers – (Q. 2), dated 14 August 2012.

¹⁰⁷ See (i) replies to question 46 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Milk and Dairy Products Customers – (Q. 2), dated 14 August 2012.

¹⁰⁸ Commission Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings, OJ C 31, 5.2.2004, p. 5, para. 67.

as the substantiated customer concerns, it is concluded that the transaction raises serious doubts as to its compatibility with the internal market in relation to the production and supply of long-life milk in the UK in the overall market (including both the branded and the private label segments) as well as in the private label segment.

(iii) Packet butter

120. On a hypothetical EU-wide market for packet butter the parties' combined market shares would be [5-10]% (Arla: [5-10]%, Milk Link: [0-5]%)¹⁰⁹. On a hypothetical market for the OOH channel, the parties' combined share would amount to [5-10] % (Arla: [0-5]%, Milk Link: [0-5]%). On a hypothetical market for private label packet butter, the parties' combined market shares would be [10-20]% (Arla: [10-20]%, Milk Link: [0-5]%).¹¹⁰
121. According to the notifying party, the proposed transaction does not result in any significant impediment to effective competition at the retail level based on the small increment brought by Milk Link. Moreover, the notifying party submits that the packet butter market is subject to competitive constraints from non-dairy spreads and margarine, even if these products are not considered to form part of the same market, given the consumers' tendency to switch between them.¹¹¹
122. In the OOH channel, the merged entity would face strong competition from UK manufactures and importers of packet butter into the UK. The main competitors in the packet butter OOH channel are Irish Dairy Board ([10-20]%), Dale Farm ([10-20]%), Castle Dairies ([5-10]%) and Lactalis ([0-5]%). Moreover, the notifying party considers that the proposed transaction would not result in anticompetitive effects in the OOH channel due to the spare capacity of butter producers, the possibility of new entries from bulk butter producers into the packet butter market and the large and sophisticated customers who are able to exercise significant buyer power.
123. Moreover, Milk Link is not focused on the manufacture of packet butter, this being a by-product of its dairy activity and it only supplies private label for the UK market.
124. The market investigation has shown that a majority of respondents, both competitors and customers, consider that the transaction will not result in a potential price increase or anti-competitive effects on the overall market for butter in the UK.¹¹² Regarding the

¹⁰⁹ With regard to bulk butter, parties' combined market shares at EU level would be [0-5]%.

¹¹⁰ Considering an hypothetical regional market comprising the UK and Ireland, the parties combined would be [40-50]% (Arla [40-50]% and Milk Link [0-5]%) for the retail channel and [20-30]% (Arla [10-20]% and Milk Link [10-20]%) for the OOH channel. Therefore, even on this hypothetical market there would be no competitive concerns since the increment in the retail channel is very low and that for the OOH channel the combined market shares are not significantly high and finally, no market participants expressed any concerns.

¹¹¹ Form CO, para. 6,8.33.

¹¹² Replies to question 85 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Dairy Products Competitors (Q. 1), dated 14 August 2012 and questions 46 and 49 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Dairy Products Costumers (Q. 2), dated 14 August 2012 and Replies to question 18, 19 and 22 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Dairy Products Customers (Q. 2), dated 14 August 2012.

hypothetical market for branded butter, where Arla (but not Milk Link) is active, the majority of customers replied that there were several alternative suppliers in the market.

125. As for the hypothetical market for private label, some of the large retailers have a policy to buy only from the UK and for those finding suitable alternative suppliers for the required quantities is more difficult. Nevertheless, there are still some companies that can provide alternatives and which also have capacity to increase production. Furthermore, Milk Link is an insignificant supplier of private label packet butter with only two customers and an increment of [0-5]%.
126. Therefore, considering the replies to the market investigation, the low combined market shares for the EU market and the small increment that will derive from the merger both at EU and UK level, it is concluded that the proposed transaction does not raise serious doubts as to its compatibility with the internal market in relation to the supply of packet butter.

(iv) Non-health fresh flavoured dairy drinks

127. The parties overlap only in the supply of non-health fresh flavoured dairy drinks for the retail distribution channel. The combined market shares on the overall retail market in the UK would be [20-30]% (Arla: [5-10]%, Milk Link: [10-20]%). On the private label segment for this market, the combined market share would be [50-60]% (Arla: [10-20]%, Milk Link: [30-40]%), while there is no overlap in branded products.
128. The merged entity would face strong competition from Dairy Crest, the leading manufacturer in the UK with a market share of [40-50]% in the supply of private label non-health fresh flavoured dairy drinks and [60-70]% in the overall retail channel. Moreover, there are a number of other market participants, such as Müller/Wiseman.¹¹³ The market investigation has also shown that the few concerns expressed by either competitors or customers were connected to the procurement of raw milk by the merged entity and its repercussions on the dairy sector in general and not specifically to this segment.¹¹⁴
129. Also in the UK, Arla has [...] customer for fresh flavoured dairy drinks, which it supplies in the UK with private label banana, strawberry, chocolate, and vanilla fresh flavoured dairy drinks, and this customer did not express any concern during the market investigation.¹¹⁵
130. With regard to the spare capacities, Arla argues that its production facility at Stourton is [...]. Finally, the market investigation did not provide any indication that other competitors are capacity constrained.

¹¹³ Annex 7.1A(17) of Form CO.

¹¹⁴ Replies to question 85 and 86 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Dairy Products Competitors (Q. 1), dated 14 August 2012. Replies to questions 49 and 50 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Dairy Products Costumers (Q. 2), dated 14 August 2012.

¹¹⁵ Arla also explains on recital 6.4.16 of the Form CO that [...].

131. Therefore, taking into account (i) the market leading presence of Dairy Crest and the existence of other market players which do not appear to be capacity constrained and which can be expected to exert a sufficient competitive constraint on the merged entity, (ii) the results of the market investigation where no concerns have been expressed relating to fresh flavoured dairy drinks and (iii) the fact that no increment will arise as a result of the proposed transaction as Milk Link proposes to divest its only facility in the UK producing dairy drinks (see section VI below), it is concluded that the proposed transaction does not raise serious doubts as to its compatibility with the internal market in relation to the supply of non-health flavoured dairy drinks.

(v) *Blue cheese*

132. The combined market share for the blue cheese sold to retailers in the UK is [20-30]% (Arla: [10-20]%, Milk Link: [10-20]%). On hypothetical markets for branded and private label products, the parties' combined market shares would reach [30-40]% (Arla: [30-40]%, Milk Link: [0-5]%) and [10-20]% (Arla: [10-20]%, Milk Link: [0-5]%) respectively. There is no overlap in the OOH segment.

133. According to the notifying party, the proposed transaction does not result in any significant impediment to effective competition based on the small increment and the presence of competitors which are able to constrain the parties post transaction, such as Long Clawson Dairy ([20-30]% in the retail market), ULN ([5-10]%), Butlers Farmhouse ([5-10]%) and Lactalis ([0-5]%). The notifying party argues that they would also be constrained by buyer power from retailers and significant imports.

134. The parties' combined market shares and the increment in the UK market are relatively low and would be even lower if an EU-wide market were to be considered defined (less than 10%). Furthermore, customers have alternative suppliers and the large majority currently purchases from outside the UK, having thus a very significant share of imports in their total purchases.¹¹⁶

135. The only type of blue cheese which is exclusively sourced within the UK is the Stilton blue cheese, a variety produced only in the counties of Derbyshire, Leicestershire, and Nottinghamshire and under specific requirements. Only Milk Link is active in the production of Stilton blue cheese.

136. The market investigation demonstrated that the majority of competitors and customers do not expect anticompetitive effects on this market as a result of the transaction.¹¹⁷

¹¹⁶ Replies to question 85 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Dairy Products Competitors (Q. 1), dated 14 August 2012. Replies questions 22, 46 and 49 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Dairy Products Costumers (Q. 2), dated 14 August 2012.

¹¹⁷ Replies to question 85 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Dairy Products Competitors (Q. 1), dated 14 August 2012. Replies to questions 46 and 49 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Dairy Products Costumers (Q. 2), dated 14 August 2012.

137. In view of the above, it is concluded that the proposed transaction does not raise serious doubts as to its compatibility with the internal market in relation to the supply of blue cheese in the UK.

(vi) Whey

138. On a national level, the parties' combined market share in the UK on an overall market for the production of liquid whey would reach [10-20]% (Arla: [0-5]%, Milk Link: [10-20]%)¹¹⁸. Given the low increment and the limited combined market shares, the transaction would not give rise to competition concerns.¹¹⁹

139. In addition, as a significant part of the liquid whey raw market is captive, meaning that cheese producers themselves process their own raw whey into whey-based products (e.g. WPC, permeate, lactose and whey powders), the notifying party also provided market share data for the merchant market for raw whey consisting of all raw whey sold by cheese producers to third parties (either as animal feed or for processing into whey-based products).

140. On this merchant market for raw whey in the UK, the parties' market shares would even be lower than on the overall production market. Indeed, according to the notifying party's estimates Milk Link's and Arla's market shares would be respectively [10-20]% and [0-5]%¹²⁰ meaning that the transaction would not even give rise to an affected market on this basis. In any event, the parties would face credible competitors of similar size such as First Milk (market share of [10-20]%), Wyke Farms ([10-20]%), Joseph Heller ([10-20]%), Glanbia Cheese ([10-20]%) but also other competitors like Singleton ([0-5]%) or Saputo Cheese ([0-5]%).

141. In view of the moderate market shares under all potential market definitions, the fact that several competitors are active and the absence of substantiated concerns, the Commission considers that the proposed transaction does not raise serious doubts as to its compatibility with the internal market as regards the market for the liquid raw whey.

(vii) Permeate Powder

142. Arla is active in the production and supply of permeate powder as a result of its production of WPC at the various plants in Continental Europe. Milk Link does not itself produce permeate powder, although permeate powder is produced as a by-product of the ultrafiltration process [...]. Therefore the notifying party submits there is no direct competition between Milk Link and Arla in the supply of permeate powder.

143. However, given that Milk Link exercises joint control (within the meaning of the Merger Regulation) over the joint venture¹²¹, its permeate sales and market shares have been attributed to Milk Link.

¹¹⁸ At EU level, the Parties' combined market share would be [0-5]%.

¹¹⁹ [...].

¹²⁰ Arla's only cheese production in the UK is of cottage cheese at its Stourton plant, which only started in 2011, and which is expected to generate around [...] tonnes of raw liquid whey per annum, [...].

¹²¹ The joint venture produces permeate as a by-product of the whey protein concentrate ("WPC"-60) production, [...].

144. Consequently, the parties' combined market share would amount to [20-30]% (Arla: [10-20]%, Milk Link: [10-20]%) at the EEA level¹²². Other competitors in this market at EEA level are Volac ([20-30]%), Milei ([10-20]%), International Dairy Ingredients ([10-20]%), DMK ([5-10]%) and Lactalis ([5-10]%).
145. Furthermore, a majority of respondents to the Commission's requests for information do not consider that the operation will create competition problems or that the parties will be able to increase prices as a result of the merger¹²³.
146. In view of the moderate market shares and of the fact that several competitors are active and the absence of substantiated concerns, the Commission considers that the proposed transaction does not raise serious doubts as to its compatibility with the internal market as regards the market for permeate powder.

B.2. Vertically affected markets

(i) *Raw milk and fresh milk*

147. The notifying party estimates that the fresh milk market in the UK amounts to [...] mlpa. While Milk Link is not active in this market, Arla has a [20-30]% market share and its main competitors are Dairy Crest ([30-40]%), Müller/Wiseman ([20-30]%) and Medina ([5-10]%). On the OOH segment, which is estimated to account for around [...] mlpa, Arla has a [0-5]% market share. In the retail segment, with a total volume of [...] mlpa, Arla has a [20-30]% market share, while Müller Wiseman leads with [30-40]%, followed by Dairy Crest ([20-30]%) and Medina ([0-5]%).
148. Although Milk Link is not active in this market, Milk Link supplies raw milk which may be potentially used for the fresh milk production to both [...] ([...] million litres in 2011) and [...] ([...] million litres). In fact, while Arla currently purchases around [...] million litres of raw milk per annum from other processors, co-operatives and milk traders, Milk Link is currently a net supplier of raw milk, supplying around [...] million litres to other processors.
149. The notifying party submits that there are no grounds to conclude that the merged entity would have the ability to foreclose competitors in fresh milk. For example, according to the notifying party, Milk Link supplied only [...]% of [...] raw milk requirements. The supply ratio for [...] is even smaller ([...]%).
150. The market investigation indicated that the merged entity would have no ability to successfully implement a raw milk foreclosure strategy regarding its rival fresh milk producers. Milk Link represents a very small share of the total raw milk sourced by each of [...] and [...]. Furthermore, as discussed, these competitors have additional alternative sources of raw milk should Milk Link stop supplying them.

¹²² At worldwide level, Parties' combined market shares would amount to [5-10]% on the permeate powder market while on a wider market including permeate and permeate substitutes ("ingredients"), Parties' shares would be of [0-5]% at EEA level and [0-5]% at worldwide level.

¹²³ Replies to question 28 to 33 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to permeate powder competitors (Q. 3), dated 9 August 2012; Replies to question 22 to 27 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to permeate powder customers (Q. 4), dated 9 August 2012.

151. Therefore, it is concluded that the proposed transaction does not raise serious doubts as to its compatibility with the internal market as regards the market for fresh milk.

(ii) Raw milk and fresh cream

152. Arla has a market share of [30-40]% in the market for fresh cream in the UK in a market estimated to amount to [...] mlpa. Milk link is not active in the supply of fresh cream. Arla's competitors are [...] ([10-20]%) and [...] ([10-20]%). The remaining market share of [20-30]% consists of smaller producers of fresh cream. Although Milk Link is not active in this market, as discussed above Milk Link supplies raw milk to both [...] and [...].

153. The parties submit that there are no grounds to conclude that the merged entity would have the ability to foreclose competitors in fresh milk. In addition to the smaller supply share represented by Milk Link as indicated above, the majority of the supply to [...] which does not produce fresh potted cream.

154. Furthermore, fresh cream is a by-product of milk processing raw milk and, in particular, from the production of skimmed and semi-skimmed fresh liquid milk. Accordingly, all milk processors are already producing cream and it would be relatively inexpensive and easy for them to buy additional, or convert or expand existing, packaging equipment to use this cream in the supply of fresh potted cream to retailers. Lastly, as regards the supply of fresh potted cream to retailers (in relation to which Milk Link is not active), the leading UK retailers exercise significant buyer power when sourcing fresh potted cream according to the notifying party.¹²⁴

155. The market investigation indicated that a majority of competitors consider that the proposed transaction will not lead to a potential increase in price of raw milk, which in turn could have an influence on the market for fresh cream.¹²⁵ Also, the market investigation showed that competitors do not expect that there will be anti-competitive effects specifically in the market for fresh cream as a result of the proposed transaction.¹²⁶ Further, a majority of the customers do not see a potential for a price increase nor do they expect any anti-competitive effect as a result of the proposed transaction in the market for raw milk.¹²⁷

156. It is therefore concluded that the proposed transaction does not raise serious doubts as to its compatibility with the internal market in relation to the supply of fresh cream in the UK.

¹²⁴ Form CO, page 149.

¹²⁵ Replies questions 85 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Milk and Dairy Products Competitors (Q. 1), dated 14 August 2012.

¹²⁶ Replies questions 86 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Milk and Dairy Products Competitors (Q. 1), dated 14 August 2012.

¹²⁷ Replies questions 49 and 50 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Milk and Dairy Products Customers (Q. 2), dated 14 August 2012.

(iii) Absence of vertical foreclosure between raw whey (upstream) and permeate powder and other WPC products (downstream)

157. The parties have a combined market share in the UK of [10-20]% in the merchant market for liquid raw whey and [10-20]% in the overall production market for raw whey. Regarding permeate powder, the parties' market shares would amount to [20-30]% at EEA level and [5-10]% at worldwide level. Therefore, the parties' market shares remain below the threshold of 25% at which markets in a vertical relationship are deemed to be affected.
158. On the market for whey protein concentrate (WPC) powder¹²⁸, which uses raw whey as input product and which can be used for a range of functional and nutritional purposes, only Arla is active and hold shares of [10-20]% at EEA level. On the hypothetical narrower markets for WPC 60-80 and WPI¹²⁹¹³⁰, Arla would hold shares respectively of [10-20]% and [30-40]% at EEA level.
159. Therefore, given (i) the low level of market shares and (ii) the respective relevant geographic markets (UK-national for whey and EU, if not worldwide for permeate powder and WPC powder, the proposed transaction does not raise serious doubts as regards the vertical link between the activities of the parties in the market for the supply of liquid raw whey in the UK and their downstream activities in permeate powder and WPC products in the EEA.

The UK joint venture between Milk Link and Volac

160. Milk Link currently supplies some of the raw liquid whey resulting from its cheese production to Volac's Felinfach WPC processing plant in South Wales having either removed water from the raw whey to reduce transport costs at its Llandyrnog dairy (which also processes raw liquid whey from Milk Link's Malpas dairy), or having processed the whey into an intermediate WPC 60 liquid product, again primarily to reduce transport costs (through its joint venture with Volac, called MV Ingredients Limited, at Milk Link's Taw Valley dairy).
161. By way of summary, Milk Link currently uses the raw whey produced by its cheese processing plants for three purposes: (i) supplying completely raw whey (i.e. raw whey that has undergone no processing at all) from its Melton Mowbray and Trevarrian creameries as animal feed; (ii) drying the raw whey at its Lockerbie plant for sale as

¹²⁸ Whey protein concentrate (WPC) powder, which can be used for a range of functional and nutritional purposes. It comes in a range of concentrates depending on the percentage of proteins in solids (e.g. WPC 60 has 60% protein in solids). WPC 35 powder is in composition similar to skimmed milk powder and is a cost efficient source of dairy solid. WPC 60-80 powders are higher value added products used for protein fortification in sports, infant and clinical nutrition, as well as certain processed meat and fish products, and in the dairy industry for certain types of processed cheeses, yogurts and desserts. Even higher concentrations, such as WPI, are primarily used in fitness products.

¹²⁹ It is possible to obtain protein content around 90% by adding different processes to ultrafiltration, such as microfiltration and ion exchange. This WPC product is named whey protein isolate ("WPI").

¹³⁰ Even if it left open the market definition, the Commission's market investigation in *Arla/Allgauland* seemed to indicate that the WPC market could be sub-divided into different segments according to the protein content, including WPC 60-80 and WPC above 80 (i.e. WPI). As regards relevant geographic markets, the Commission considered EEA-wide market shares of WPC 60-80 in *Arla/Allgauland*

whey powder;¹³¹ and (iii) supplying the raw whey to Volac's Felinfach WPC processing plant having either processed the raw whey into a liquid whey concentrate to reduce transport costs at Llandyrnog (with the raw liquid whey from Malpas being transported to Llandyrnog for such processing), or, through its JV with Volac at Taw Valley having processed the whey into an intermediate WPC 60 liquid product, again primarily to reduce transport costs, with the production by the JV of some permeate powder as by-product, as explained further below.

162. The joint venture produces a relatively small quantity of permeate powder as a by-product of its activities, which Volac sells on behalf of the joint venture.

163. However it is unlikely that the transaction would give rise to coordination or input foreclosure between the merged entity and Volac, which would have anti-competitive effects.

a. No risk of coordination between the activities of the merged entity and Volac post-transaction

164. According to the notifying party, there is no risk of anti-competitive coordination between the activities of the merged entity and Volac's sales outside of the JV post-transaction for a number of reasons.

165. First, the parties would have no incentive to engage in such coordination. [...] ¹³².

166. Secondly, the commercial arrangements underpinning the Taw Valley JV do not provide any basis for the merged entity and Volac to exchange any information about their individual activities in permeate or other dairy products outside the joint venture. It is implausible that access to information as regards the Taw Valley JV could facilitate coordination between Arla and Volac outside the JV given that: (i) [...] ; and (ii) permeate powder is a by-product in the production of WPC powder and its price is strongly linked to the price of whey powder, which is a commodity product whose prices are already transparent.

167. Finally, any such hypothetical coordination would be constrained by rivalry from other permeate suppliers and suppliers of substitute products namely Milei (EU share of [10-20]%), International Dairy Ingredients (EU share of [10-20]%), DMK (WheyCo) (EU share of [5-10]%) and Lactalis (EU share of [5-10]%)¹³³. There are a number of major producers outside the EU, and in particular in America, such as Saputo (Canada), Davisco, Foremost Farms and Land O Lakes, which could supply into Europe.

¹³¹ Arla does not process any of the raw whey produced at any of its cheese processing plants into whey powder. However, [...]. In *Van Drie/Schills* (M.3535, paragraph 20) the Commission found that the geographic market for the supply of whey powder was likely to be at least EEA-wide as whey powder is a commodity product that is easily transported and sold all over Europe. In this connection, the parties' combined share of this product is well below 5% of the total supply in Europe.

¹³² Moreover, outside of the Taw Valley JV, self-evidently neither Arla nor Volac have any incentives to lose permeate sales to one another – this would only reduce their profits.

¹³³ The joint venture produces a relatively small quantity of permeate powder as a by-product of its activities, which Volac sells on behalf of the joint venture. However, regarding WPC 60, [...].

168. Accordingly, the proposed transaction does not give rise to serious doubts as regards the supply of permeate powder within the EU.

b. Absence of anti-competitive effects on the access to raw whey for Volac plants

169. [...] ¹³⁴. [...].

170. [...] ¹³⁵, the notifying party argues that Volac would still be able to find alternative sources of raw whey for the following reasons.

171. First, Milk Link's share of total supply of raw whey in the UK is only around [10-20]% on the merchant market in the UK, [...]. Moreover, whey can be potentially be transported* considerable distances across Europe and could also be imported [...] from Ireland (which according to the notifying party can be expected to increase cheese production in the next few years ¹³⁶).

172. Even if, post transaction, Volac were unable to replace the volume of raw whey currently supplied to it by Milk Link, it should be noted that this raw whey accounts for only around [...] % of its total raw whey input for its Felinfach plants. Therefore [...] % of the raw whey sourced by Volac already comes from suppliers other than Milk Link or the JV.

c. Absence of anti-competitive effects on the Taw Valley JV if it continues

173. [...].

174. [...]. Volac then processes this liquid into WPC powder products, such as WPC 80 and WPI at its Felinfach plant. Milk Link has no understanding of the prices charged by Volac for these downstream products or indeed where or to whom the products are sold. ¹³⁷

d. Absence of anti-competitive effects on the downstream market for WPC products

175. [...], this will not have any negative impact on competition in relation to the supply of WPC products. In particular, Volac will continue to be able to process the same range and quality of WPC products from its Felinfach plant, using its existing alternative supplies of concentrated raw whey.

¹³⁴ [...].

¹³⁵ [...].

* Should read "whey can potentially be transported".

¹³⁶ Milk production in Ireland is expected to increase following the abolition of the quota system in 2015 which in turn may lead to increased cheese production. This will result in greater quantities of raw whey being available in Ireland.

¹³⁷ [...].

176. Even though Arla is the leading supplier in the EEA of WPC 60-80 and WPI with a market share of [10-20]% and [30-40]% respectively¹³⁸, the end of the JV is not likely to have any negative impact on competition in relation to the supply of WPC product as [...¹³⁹].
177. There are a number of other significant competitors in the supply of WPC products many of which are vertically integrated in the EU (i.e. have their own cheese production facilities) such as Glanbia, Lactalis and Friesland/Campina and other important players on some specific types of WPC such as Sachsenmilch (shares of [10-20]% in WPC-60-80) or Carbery and Armor Proteines (respectively [10-20]% and [10-20]% in WPI). They will continue to exert a significant competitive constraint on the merged entity as regards the supply of WPC and other whey based products post transaction.
178. Therefore, the Commission considers that the proposed transaction does not raise serious doubts as to its compatibility with the internal market as regards the supply of raw whey in the UK and the supply of permeate powder, WPC and WPI in the EEA.

VI. PROPOSED REMEDIES

179. In order to render the concentration compatible with the internal market, the undertakings concerned have modified the notified concentration by entering into the following commitments, which are annexed to this decision and form an integral part thereof. These commitments were submitted on 7 September 2012 and were subsequently market tested by the Commission.
180. The commitments consist of the divestiture of the entirety of Milk Link's milk drinks business, including Milk Link's long-life milk business in the UK.
181. In summary, Milk Link's milk drinks business includes: (i) Milk Link's dairy at Crediton (UK), which is its only plant which manufactures long-life milk, as well as long-life cream, extended-shelf life dairy drinks and fresh bulk cream, which is a by-product of the production of skimmed milk (together, "the Products"); (ii) all machinery at the plant used to manufacture the Products, including that which is leased from third parties; (iii) all Milk Link employees who are involved with the manufacture, distribution or sale of the Products; (iv) the benefit of all contracts associated with this business, including distribution and warehousing contracts with third party providers and all customer contracts, relationships and records; (v) all intellectual property rights owned by Milk Link that are associated with the supply of the Products by Milk Link, which will be assigned to the purchaser, including those relating to long-life milk (namely *Dairy Pride*, *Moo* and *Trimilk*) and long-life cream (namely *Dairy Pride*); and (vi) on a transitional basis, certain services currently provided to it by Milk Link at a group level.
182. In addition, the divestiture also includes, to the extent required by the purchaser, a raw milk supply contract and a fresh bulk cream purchase agreement for up to two years.

¹³⁸ Arla has shares of [10-20]% in the wider market WPC powder.

¹³⁹ [...].

183. Arla will also use all reasonable efforts to transfer the benefit of Milk Link's private label business for long-life milk in the UK.

VII. ASSESSMENT OF THE PROPOSED REMEDIES

184. Under the Merger Regulation, the Commission has the power to accept commitments that are deemed capable of rendering the concentration compatible with the common market so that they will prevent a significant impediment of effective competition. As indicated in point 9 of the Commission notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 ("the Remedies Notice"),¹⁴⁰ the commitments have to eliminate the competition concerns entirely and have to be comprehensive and effective from all points of view. In particular in the case of a divestiture, it is important that the divested activities consist of a viable business which, if operated by a suitable purchaser, can compete effectively with the merged entity on a lasting basis.

185. In the present case, the divestiture offered addresses all the concerns identified regarding long-life milk. The commitments would remove the entire overlap arising from the proposed transaction in the production and supply of long-life milk in the UK. Thus the commitments will restore the market structure which existed pre-merger. Therefore the Commission considers that the divestiture of Milk Link's milk drinks business will be sufficiently effective to remedy the competition concerns in the long-life milk markets.

186. The wide majority of the respondents to the market test were positive with respect to the suitability of the commitments to remove the competition concerns with regard to long-life milk.

187. The respondents to the market test were of the view that the proposed commitments would attract suitable purchasers,¹⁴¹ would be viable, and that a suitable purchaser can effectively compete for the supply of long-life milk in the UK on a lasting basis.¹⁴² Moreover, the respondents viewed the commitments to be sufficiently clear.¹⁴³

188. The commitments include, to the extent required by the purchaser, a raw milk supply contract under conditions equivalent to those offered at the present, as well as a fresh bulk cream purchase agreement. Both contracts will be valid for a period up to two years. The respondents deemed the duration and terms of the supply agreement of raw

¹⁴⁰ OJ C 267, 22.10.2008, p. 1.

¹⁴¹ See (i) replies to market test question 8 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Long-life Customers and Competitors, dated 10 September 2012.

¹⁴² See (i) replies to market test question 3 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Long-life Customers and Competitors, dated 10 September 2012.

¹⁴³ See (i) replies to market test question 1 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Long-life Customers and Competitors, dated 10 September 2012.

milk to be sufficient.¹⁴⁴ Finally, a number of respondents indicated that they would be interested in buying the divestment business.¹⁴⁵ Therefore, on the basis of commitments and of the replies received, the Commission considers that suitable purchaser will be able to operate the business to be divested as an independent, viable and competitive force.

189. Based on the information gathered during the market test, the Commission considers that it will be possible to implement the commitments entered into by the notifying party within a short period of time. Furthermore, the Commission considers that the commitments are comprehensive and effective, as well as sufficient to eliminate the serious doubts as to the compatibility of the transaction with the internal market. Overall, the Commission concludes that the commitment package includes all the elements to create an independent, viable and competitive entity.
190. The commitments in section B of the Annex constitute conditions attached to this decision, as only through full compliance therewith can the structural changes in the relevant markets be achieved. The other commitments set out in the Annex constitute obligations, as they concern the implementing steps which are necessary to achieve the modifications sought in a manner compatible with the internal market.

VIII. CONCLUSION

191. For the above reasons, the Commission has decided not to oppose the notified operation as modified by the commitments and to declare it compatible with the internal market and with the functioning of the EEA Agreement, subject to full compliance with the conditions in section B of the commitments annexed to the present decision and with the obligations contained in the other sections of the said commitments. This decision is adopted in application of Article 6(1)(b) in conjunction with Article 6(2) of the Merger Regulation.

For the Commission

(signed)

Maria DAMANAKI
Member of the Commission

¹⁴⁴ See (i) replies to market test question 2 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Long-life Customers and Competitors, dated 10 September 2012.

¹⁴⁵ See (i) replies to market test question 13 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Long-life Customers and Competitors, dated 10 September 2012.

ANNEX

By hand
by fax: 00 32 2 296 4301
by email: comp-merger-registry@ec.europa.eu

European Commission
Directorate General for Competition
Merger Registry
rue Joseph II 70 Jozef-II straat
B-1000 BRUSSELS

Case M. 6611– Arla Foods amba/Milk Link Limited

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2) of Council Regulation (EC) No. 139/2004 (the "**Merger Regulation**"), Arla Foods amba ("**Arla**") hereby provide the following Commitments (the "**Commitments**") in order to enable the European Commission (the "**Commission**") to declare the acquisition of control by Arla of the business and certain assets of Milk Link Limited ("**Milk Link**") compatible with the common market and the EEA Agreement by adopting a decision pursuant to Article 6(1)(b) of the Merger Regulation (the "**Decision**").

The Commitments shall take effect upon the date of adoption of the Decision.

This text shall be interpreted in the light of the Decision to the extent that the Commitments are attached as conditions and obligations, in the general framework of Community law, in particular in the light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EEC) No 4064/89 and under Commission Regulation (EC) No 447/98.

Section A. Definitions

For the purpose of the Commitments, the following terms shall have the following meaning:

Affiliated Undertakings: undertakings controlled by Arla or Milk Link, whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in the light of the Commission Consolidated Jurisdictional Notice.

Arla: Arla Foods amba, a cooperative with limited liability incorporated in Denmark with Central Business Register (CVR) no. 25313763 and its registered office at Sønderhøj 14. DK-8260 Viby J, Denmark.

Closing: the transfer of the legal title of the Divestment Business to the Purchaser.

Divestment Business: the milk drinks business presently carried on by Milk Link, as more particularly described in the Schedule, that Arla commits to divest.

Divestiture Trustee: one or more natural or legal person(s), independent from the Parties, who is approved by the Commission and appointed by Arla and who has received from Arla the exclusive Trustee Mandate to sell the Divestment Business to a Purchaser at no minimum price.

Effective Date: the date of adoption of the Decision.

First Divestiture Period: the period of [...] from the Effective Date, subject to any extension thereto granted by the Commission pursuant to paragraph 33 of these commitments.

Hold Separate Manager: the person appointed by Arla to manage the day-to-day business of the Divestment Business under the supervision of the Monitoring Trustee.

Key Personnel: all personnel necessary to maintain the viability and competitiveness of the Divestment Business, as listed in the Schedule.

Milk Link: an industrial and provident society incorporated under the laws of England and Wales with registered number IPS29003R and its registered office at 3120 Great Western Court, Hunts Ground Road, Stoke Gifford, Bristol BS34 8HP, United Kingdom.

Monitoring Trustee: one or more natural or legal person(s), independent from the Parties, who is approved by the Commission and appointed by Arla, and who has the duty to monitor Arla's compliance with the conditions and obligations attached to the Decision.

Parties: Arla and Milk Link.

Personnel: all personnel currently employed by a Milk Link company with the Milk Link group in relation to the Divestment Business, including Key Personnel, staff seconded to the Divestment Business, shared personnel and the additional personnel listed in the Schedule.

Purchaser: the entity approved by the Commission as acquirer of the Divestment Business in accordance with the criteria set out in Section D.

Trustee(s): the Monitoring Trustee and the Divestiture Trustee.

Trustee Divestiture Period: the period of [...] from the end of the First Divestiture Period, subject to any extension thereto granted by the Commission pursuant to paragraph 33 of these commitments.

Section B. The Divestment Business

Commitment to divest

1. In order to restore effective competition, Arla commits to divest, or procure the divestiture of the Divestment Business by the end of the Trustee Divestiture Period as a going concern to a purchaser and on terms of sale approved by the Commission in accordance with the procedure described in paragraph 15. To carry out the divestiture, Arla commits to find a purchaser and to enter into a final binding sale and purchase agreement for the sale of the Divestment Business within the First Divestiture Period. If Arla has not entered into such an agreement at the end of the First Divestiture Period, Arla shall grant the Divestiture Trustee an exclusive mandate to sell the Divestment Business in accordance with the procedure described in paragraph 24 in the Trustee Divestiture Period.
2. Arla shall be deemed to have complied with this commitment if, by the end of the Trustee Divestiture Period, Arla has entered into a final binding sale and purchase agreement, if the Commission approves the Purchaser and the terms in accordance with the procedure described in paragraph 15 and if the closing of the sale of the Divestment Business takes place within a period not exceeding 3 months after the approval of the purchaser and the terms of sale by the Commission.

3. In order to maintain the structural effect of the Commitments, Arla shall not, for a period of 10 years after the Effective Date, acquire direct or indirect influence over the whole or part of the Divestment Business, unless the Commission has previously found that the structure of the market has changed to such an extent that the absence of influence over the Divestment Business is no longer necessary to render the proposed concentration compatible with the common market.

Structure and definition of the Divestment Business

4. The Divestment Business consists of the milk drinks business presently carried on by Milk Link and comprises the dairy processing site and facilities at Crediton, Devon, United Kingdom used for the production of long-life milk and certain other products and by-products. The present legal and functional structure of the Divestment Business as operated to date is described in the Schedule. The Divestment Business, described in more detail in the Schedule, includes
 - (a) all tangible and intangible assets (including intellectual property rights), which contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business;
 - (b) all licences, permits and authorisations issued by any governmental organisation for the benefit of the Divestment Business;
 - (c) all contracts, leases, commitments and customer orders of the Divestment Business; all customer, credit and other records of the Divestment Business (items referred to under (a)-(c) hereinafter collectively referred to as "**Assets**");
 - (d) the Personnel;
 - (e) at the Purchaser's request, the benefit, for a transitional period of up to two years after Closing, of contracts for the supply of raw milk by Arla to the Divestment Business on terms and conditions equivalent to those at present afforded to the Divestment Business, and for the purchase by Arla from the Divestment Business of fresh bulk cream, as more particularly described in the Schedule; and
 - (f) the benefit, for a transitional period of up to twelve months after Closing and on terms and conditions equivalent to those at present afforded to the Divestment Business, of all current arrangements under which Milk Link or Affiliated Undertakings supply services to the Divestment Business, as detailed in the Schedule, unless otherwise agreed with the Purchaser.

Section C. Related commitments

Preservation of Viability, Marketability and Competitiveness

5. From the Effective Date until Closing, Arla shall preserve the economic viability, marketability and competitiveness of the Divestment Business, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the Divestment Business. In particular Arla undertakes:
 - (a) not to carry out any act upon its own authority that might have a significant adverse impact on the value, management or competitiveness of the Divestment Business or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the Divestment Business;
 - (b) to make available sufficient resources for the development of the Divestment Business, on the basis and continuation of the existing business plans; and

- (c) to take all reasonable steps, including appropriate incentive schemes (based on industry practice), to encourage all Key Personnel to remain with the Divestment Business.

Hold-separate obligations of Arla

- 6. Arla commits, from the Effective Date until Closing, to keep the Divestment Business separate from its own business and the other businesses of Milk Link that it is retaining and to ensure that Key Personnel of the Divestment Business and the Hold Separate Manager have no involvement in any business retained and vice versa. Arla shall also ensure that the Personnel do not report to any individual outside the Divestment Business.
- 7. Until Closing, Arla shall assist the Monitoring Trustee in ensuring that the Divestment Business is managed as a distinct and saleable entity separate from Arla and the businesses of Milk Link that will be retained by it. Arla shall appoint a Hold Separate Manager who shall be responsible for the management of the Divestment Business, under the supervision of the Monitoring Trustee. The Hold Separate Manager shall manage the Divestment Business independently and in the best interest of the business with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from Arla and the businesses of Milk Link that will be retained by Arla.

Ring-fencing

- 8. Arla shall implement all necessary measures to ensure that it does not after the Effective Date obtain any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to the Divestment Business. In particular, the participation of the Divestment Business in any central information technology network of the Milk Link group shall be severed to the extent possible, without compromising the viability of the Divestment Business. Arla may obtain information relating to the Divestment Business which is reasonably necessary for the divestiture of the Divestment Business or the disclosure of which to Arla is required in order for Arla to comply with any statutory, tax, legal, regulatory or similar obligation.

Non-solicitation clause

- 9. Arla undertakes, subject to customary limitations, not to solicit, and to procure that its Affiliated Undertakings do not solicit, the Key Personnel transferred with the Divestment Business for a period of thirty-six (36) months after Closing.

Due Diligence

- 10. In order to enable potential purchasers to carry out a reasonable due diligence of the Divestment Business, Arla shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process:
 - (a) provide to potential purchasers sufficient information as regards the Divestment Business;
 - (b) provide to potential purchasers sufficient information relating to the Personnel and allow them reasonable access to the Personnel.

Reporting

- 11. Arla shall submit written reports in English on potential purchasers of the Divestment Business and developments in the negotiations with such potential purchasers to the Commission and the Monitoring Trustee no later than 10 days after the end of every month following the Effective Date (or otherwise at the Commission's request).

12. Arla shall inform the Commission and the Monitoring Trustee on the preparation of the data room documentation and the due diligence procedure and shall submit a copy of an information memorandum to the Commission and the Monitoring Trustee before sending the memorandum out to potential purchasers.

Section D. The Purchaser

13. In order to ensure the immediate restoration of effective competition, the Purchaser, in order to be approved by the Commission, must:
 - (a) be independent of and unconnected to Arla;
 - (b) have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with Arla and other competitors;
 - (c) neither be likely to create, in the light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed, and must, in particular, reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business (the before-mentioned criteria for the purchaser hereafter the "**Purchaser Requirements**").
14. The final binding sale and purchase agreement shall be conditional on the Commission's approval. When Arla has reached an agreement with a purchaser, it shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), to the Commission and the Monitoring Trustee. Arla must be able to demonstrate to the Commission that the purchaser meets the Purchaser Requirements and that the Divestment Business is being sold in a manner consistent with the Commitments. For the approval, the Commission shall verify that the Purchaser fulfils the Purchaser Requirements and that the Divestment Business is being sold in a manner consistent with the Commitments. The Commission may approve the sale of the Divestment Business without one or more Assets or parts of the Personnel, if this does not affect the viability and competitiveness of the Divestment Business after the sale, taking account of the proposed Purchaser.

Section E. Trustees

I. Appointment Procedure

15. Arla shall appoint a Monitoring Trustee to carry out the functions specified in the Commitments for a Monitoring Trustee. If Arla has not entered into a binding sale and purchase agreement one month before the end of the First Divestiture Period or if the Commission has rejected a purchaser proposed by Arla at that time or thereafter, Arla shall appoint a Divestiture Trustee to carry out the functions specified in the Commitments for a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Trustee Divestiture Period.
16. The Trustee shall be independent of the Parties, possess the necessary qualifications to carry out its (or their) mandate(s), for example as an investment bank or consultant or auditor, and shall neither have nor become exposed to a conflict of interest. The Trustees shall be remunerated by Arla in a way that does not impede the independent and effective fulfilment of its (or their) mandate(s). In particular, where the remuneration package of a Divestiture Trustee includes a success premium linked to the final sale value of the Divestment Business, the fee shall also be linked to a divestiture within the Trustee Divestiture Period.

Proposal by Arla

17. No later than one week after the Effective Date, Arla shall submit a list of one or more persons whom Arla proposes to appoint as the Monitoring Trustee to the Commission for approval. Should the circumstances in paragraph 15 be applicable, no later than one month before the end of the First Divestiture Period, Arla shall submit a list of one or more persons whom Arla proposes to appoint as Divestiture Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the proposed Trustee fulfils the requirements set out in paragraph 16 and shall include:
- (a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments;
 - (b) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks;
 - (c) an indication whether the proposed Trustee is to act as both Monitoring Trustee and Divestiture Trustee or whether different trustees are proposed for the two functions.

Approval or rejection by the Commission

18. The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one individual or institution is approved, Arla shall appoint or cause to be appointed, the individual or institution concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one individual or institution is approved, Arla shall be free to choose the Trustee to be appointed from among the individuals or institutions approved. The Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

New proposal by Arla

19. If all the proposed Trustees are rejected by the Commission, Arla shall submit the names of at least two more individuals or institutions within one week of being informed of the rejection, in accordance with the requirements and the procedure set out in paragraphs 15 and 18.

Trustee nominated by the Commission

20. If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom Arla shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

II. Functions of the Trustee

21. The Trustee shall assume its specified duties in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or Arla, give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

Duties and obligations of the Monitoring Trustee

22. The Monitoring Trustee shall:
- (a) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision.
 - (b) oversee the on-going management of the Divestment Business with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by Arla with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:
 - (i) monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Business, and the keeping separate of the Divestment Business from Arla and the businesses of Milk Link that will be retained by it, in accordance with paragraphs 5 and 6 of the Commitments;
 - (ii) supervise the management of the Divestment Business as a distinct and saleable entity, in accordance with paragraph 7 of the Commitments;
 - (iii) in consultation with Arla, determine all necessary measures to ensure that Arla does not after the effective date obtain any business secrets, knowhow, commercial information, or any other information of a confidential or proprietary nature relating to the Divestment Business, in particular strive for the severing of the Divestment Business' participation in any central information technology network to the extent possible, without compromising the viability of the Divestment Business, and (ii) decide whether such information may be disclosed to Arla as the disclosure is reasonably necessary to allow Arla to carry out the divestiture or as the disclosure is required in order for Arla to comply with any statutory, tax, legal, regulatory or similar obligation;
 - (iv) monitor the splitting of assets and the allocation of Personnel between the Divestment Business and Arla or Affiliated Undertakings;
 - (c) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision;
 - (d) propose to Arla such measures as the Monitoring Trustee considers necessary to ensure Arla's compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the Divestment Business, the holding separate of the Divestment Business and the non-disclosure of competitively sensitive information;
 - (e) review and assess potential purchasers as well as the progress of the divestiture process and verify that, dependent on the stage of the divestiture process, (i) potential purchasers receive sufficient information relating to the Divestment Business and the Personnel in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process, and (ii) potential purchasers are granted reasonable access to the Key Personnel;
 - (f) provide to the Commission, sending Arla a non-confidential copy at the same time, a written report within 15 days after the end of every month. The report shall cover the operation and management of the Divestment Business so that the Commission can assess whether the business is held in a manner consistent with the Commitments and the progress of the divestiture process as well as potential purchasers. In addition to these reports, the Monitoring Trustee shall promptly report in writing to the Commission, sending Arla a non-confidential copy at the

same time, if it concludes on reasonable grounds that Arla is failing to comply with these Commitments;

- (g) within one week after receipt of the documented proposal referred to in paragraph 14, submit to the Commission a reasoned opinion as to the suitability and independence of the proposed purchaser and the viability of the Divestment Business after the sale and as to whether the Divestment Business is sold in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the sale of the Divestment Business without one or more Assets or not all of the Personnel affects the viability of the Divestment Business after the sale, taking account of the proposed purchaser.

Duties and obligations of the Divestiture Trustee

- 23. Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at no minimum price the Divestment Business to a purchaser, provided that the Commission has approved both the purchaser and the final binding sale and purchase agreement in accordance with the procedure laid down in paragraph 14. The Divestiture Trustee shall include in the sale and purchase agreement such terms and conditions as it considers appropriate for an expedient sale in the Trustee Divestiture Period. In particular, the Divestiture Trustee may include in the sale and purchase agreement such customary representations and warranties and indemnities as are reasonably required to effect the sale. The Divestiture Trustee shall protect the legitimate financial interests of Arla, subject to the Arla's unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.
- 24. In the Trustee Divestiture Period (or otherwise at the Commission's request), the Divestiture Trustee shall provide the Commission with a comprehensive monthly report written in English on the progress of the divestiture process. Such reports shall be submitted within 15 days after the end of every month with a simultaneous copy to the Monitoring Trustee and a non-confidential copy to Arla.

III. Duties and obligations of Arla

- 25. Arla shall provide and shall cause its advisors to provide the Trustee(s) with all such cooperation, assistance and information as the Trustee(s) may reasonably require to perform its (or their) tasks. The Trustee(s) shall have full and complete access to any of Arla's or the Divestment Business' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments and Arla and the Divestment Business shall provide the Trustee(s) upon request with copies of any document. Arla and the Divestment Business shall make available to the Trustee(s) one or more offices on their premises or other suitable premises and shall be available for meetings in order to provide the Trustee(s) with all information necessary for the performance of its (or their) tasks.
- 26. Arla shall provide, or shall cause the Divestment Business to provide, the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Divestment Business. This shall include all administrative support functions relating to the Divestment Business which are currently carried out at headquarters level by Milk Link. Arla shall provide and shall cause its advisors to provide the Monitoring Trustee, on request, with the information submitted to potential purchasers, in particular give the Monitoring Trustee access to the data room documentation and all other information granted to potential purchasers in the due diligence procedure. Arla shall inform the Monitoring Trustee on possible purchasers, submit a list of potential purchasers, and keep the Monitoring Trustee informed of all developments in the divestiture process.
- 27. Arla shall grant or procure Affiliated Undertakings to grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to effect the sale, the Closing and all

actions and declarations which the Divestiture Trustee considers necessary or appropriate to achieve the sale and the Closing, including the appointment of advisors to assist with the sale process. Upon request of the Divestiture Trustee, Arla shall cause the documents required for effecting the sale and the Closing to be duly executed.

28. Arla shall indemnify the Trustee(s) and its (or their) employees and agents (each an "**Indemnified Party**") and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to Arla for any liabilities arising out of the performance of the Trustee's (or Trustees') duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Trustee (or Trustees), its (or their) employees, agents or advisors.
29. At the expense of Arla, the Trustee(s) may appoint advisors (in particular for corporate finance or legal advice), subject to Arla's approval (this approval not to be unreasonably withheld or delayed) if the Trustee(s) consider(s) the appointment of such advisors necessary or appropriate for the performance of its (or their) duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee(s) are reasonable. Should Arla refuse to approve the advisors proposed by the Trustee(s), the Commission may approve the appointment of such advisors instead, after having heard Arla. Only the Trustee(s) shall be entitled to issue instructions to the advisors. Paragraph 28 shall apply mutatis mutandis. In the Trustee Divestiture Period, the Divestiture Trustee may (subject to any legal or professional duties owed by them) use advisors who served Arla during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.

IV. Replacement, discharge and reappointment of the Trustee(s)

30. If a Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a conflict of interest:
 - (a) the Commission may, after hearing the Trustee, require Arla to replace the Trustee; or
 - (b) Arla, with the prior approval of the Commission, may replace the Trustee.
31. If a Trustee is removed according to paragraph 30, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 15 to 20.
32. Beside the removal according to paragraph 30, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant Commitments might not have been fully and properly implemented.

Section F. The Review Clause

33. The Commission may, where appropriate, in response to a request from Arla showing good cause and accompanied by a report from the Monitoring Trustee:
 - (a) grant an extension of the time periods foreseen in the Commitments, or
 - (b) waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments.

Where Arla seeks an extension of a time period, it shall submit a request to the Commission no later than one month before the expiry of that period, showing good cause. Only in exceptional circumstances shall Arla be entitled to request an extension within the last month of any period.

.....

duly authorised for and on behalf of

Arla Foods amba

SCHEDULE 1

1. **The Divestment Business as operated to date has the following legal and functional structure:**
- 1.1 The Divestment Business comprises Milk Link's milk drinks business, which includes the dairy located at Church Lane, Crediton, Devon EX17 2AH, United Kingdom, (the "**Crediton Dairy**"), which currently produces all of Milk Link's long-life UHT milk, long-life cream, extended shelf life dairy drinks ("**ESL dairy drinks**") and fresh bulk cream¹ (together, as more particularly described in paragraph 1.2 below, the "**Products**") and related marketing and customer support activities, which are carried out by a dedicated sales team based at Milk Link's offices in Bristol. The Divestment Business comprises all of Milk Link's production and sales of the Products.
- 1.2 The Divestment Business produces and sells the following Products:
 - (a) conventional long-life milk:
 - (i) private label long-life milk produced for [leading retailers]; and
 - (ii) Trimilk, Moo and Dairy Pride branded long-life milk;
 - (b) organic long-life milk:
 - (i) Moo branded organic long-life milk;
 - (c) flavoured ESL dairy drinks:
 - (i) Mars Family Refuel and Galaxy branded flavoured dairy drinks (manufactured under licence from Mars); and
 - (ii) private label flavoured ESL dairy drinks produced for [leading retailers];
 - (d) unflavoured functional ESL dairy drinks:
 - (i) cholesterol reducing dairy drinks under the Flora Pro-Activ brand (manufactured under licence from Unilever);
 - (ii) cholesterol reducing dairy drinks under the Flora Becel brand ([...]); and
 - (iii) private label vitamin enriched milk for [leading retailer];
 - (e) long-life cream (in tetra paks):
 - (i) Dairy Pride branded long-life cream; and
 - (ii) private label long-life cream produced for [food service customer]; and
 - (f) fresh bulk cream, which is a by-product from the production of skimmed milk.

¹ As a by-product of producing skimmed long-life milk, the Crediton Dairy produces fresh bulk cream, an internationally traded commodity product produced by all dairies which produce skimmed fresh milk, which is used in a variety of applications, including the manufacture of bulk butter, food ingredients, desserts and other products.

- 1.3 The Divestment Business will be divested in its entirety, including the Crediton Dairy, with all production and packaging equipment, personnel, property leases, IP rights and licences, contracts, business records, and permits and authorisations required for the Purchaser of the Divestment Business to assume Milk Link's current business activities of manufacturing and supplying the Products. The activities of warehousing and distribution are subcontracted to two third parties, and Arla will use all reasonable efforts to ensure the divestment will include the benefit of these contracts on terms and conditions equivalent to those at present afforded to the Divestment Business. It will also include all existing customer contracts and relationships.
- 1.4 At the Purchaser's option and discretion, Arla will enter into transitional arrangements with the Divestment Business for the supply of raw milk to the Divestment Business (on terms and conditions equivalent to those at present afforded to the Divestment Business) and for the purchase of fresh bulk cream from the Business, each for a period of up to two years.
- 1.5 Arla will enter into a transitional services agreement with the Purchaser (at its option and discretion) to provide the Divestment Business with group level services which are currently provided by Milk Link to the Divestment Business, for a period of up to twelve months, on the same basis as those provided to the retained business and on the basis that the costs to Arla incurred in providing such services will be recovered.
2. The Divestment Business includes the following Assets and Personnel:
- (a) tangible assets:
- 2.1 The Crediton Dairy site covers an area of around 9966 sq.m.
- 2.2 Milk Link's subsidiaries Milk Link (Crediton) Limited and Milk Link (Crediton No 2) Limited entered into a 999 year lease of the site on 30 June 2002, of which 989 years are remaining. The remainder of the lease will be assigned to the Purchaser.
- 2.3 Milk Link (Crediton) Limited and Milk Link (Crediton No 2) Limited also have the benefit of an underlease over neighbouring land dated 11 March 2003, which allowed them to lay a gas pipeline over neighbouring land to service the Crediton Dairy. The underlease will also be assigned to the Purchaser.
- 2.4 The site includes a storage silo for both raw milk and (on a temporary basis) the finished Products, with a total capacity of [...], which will be assigned to the Purchaser:

Storage Product	Capacity (kl)
Raw Milk silos	[...]
Skim silos	[...]
ESL dairy drinks	[...]
Cream storage	[...]
Total site storage	[...]

2.5 The following equipment for the processing, filling and packaging of UHT long-life milk and ESL dairy drinks is leased from Tetra Pak² and the leases will be assigned to the Purchaser:

Filling, packaging and related equipment	Serial Number	Owner	Function
Filling Machine Tetra Pak A3/Speed	21209/00017	Tetra Pak	Pack and wrap long-life milk
Accumulator Helix 30	75680/00022	Tetra Pak	Pack and wrap long-life milk
Meurer CBP	75696/00036	Tetra Pak	Pack and wrap long-life milk
CAP 30 Speed	75691/00034	Tetra Pak	Pack and wrap long-life milk
Line Controller TP LC30	75698/00020	Tetra Pak	Pack and wrap long-life milk
Tetra Pak A3 Speed	21205/00015	Tetra Pak	Pack and wrap long-life milk
Tetra Helix 22	75640/17815	Tetra Pak	Pack and wrap long-life milk
Tetra Cardboard Packer 22	75653/00009	Tetra Pak	Pack and wrap long-life milk
Tetra Tray Shrink 51	75631/17975	Tetra Pak	Pack and wrap long-life milk
Domino Printer	TP90457-48	Tetra Pak	Pack and wrap long-life milk
Tetra Rex Machine TR/22	65206/510022	Tetra Pak	Pack and wrap ESL
Cleaning System SCU-5	65200/10121	Tetra Pak	Pack and wrap ESL
TR/7 Reconditioned	65037/50243	Tetra Pak	Pack and wrap ESL
Cleaning System Unit SCU-5	65200/10078	Tetra Pak	Pack and wrap ESL

2.6 The Crediton Dairy has aseptic processing capacity in order to allow the Products and their packaging to be sterilised separately and then combined and sealed in a sterilised

² Where the original lease for equipment has expired, the relevant equipment is being rented on a rolling six month basis, with Milk Link having the right to terminate the contract on six months' notice.

atmosphere. The aseptic equipment is owned by Milk Link and has a maximum capacity of [...] l/hr, as set out below:

Aseptic Equipment	Capacity	Relevant Product
Tetra Flex	[...]	Long-life milk
Alfa Laval	[...]	Long-life milk
Plus 2	[...]	ESL
Steri 1	[...]	Long-life cream
Total	[...]	

2.7 The Crediton Dairy has the following filling machinery, some of which is leased from Tetra Pak (and the leases of which will be assigned to the Purchaser). The equipment has a total filling capacity of [...] l/hr, as set out below:

Filling machinery	Owned/Leased	Capacity	Relevant Product
A3 Speed Line	Leased from Tetra Pak	[...]	Long-life milk
A3 Speed	Leased from Tetra Pak	[...]	Long-life milk
TBA 8	Owned	[...]	Long-life milk and long-life cream
TR7	Owned	[...]	ESL
TR22	Leased from Tetra Pak	[...]	ESL
Palletisation	Owned	[...]	All
Total filling capacity		[...]³	

Equipment	Use
2 x Tetra Pak Applicator 21	Long-life milk
TBA8 PT Tetra Brik Aseptic FM	Long-life milk
PT8 Pulltab	Long-life milk

³ [...] at assumed level of standard operational efficiency.

(b) intangible assets:

2.8 The following registered trade marks, which are currently owned by Milk Link, will be assigned to the Purchaser of the Divestment Business:

Brand name	UK mark number	Owner	Description/Scope
Trimilk	1175461	Milk Link Limited	Class 29 - Milk and milk beverages consisting wholly or substantially wholly of milk.
Moo	2366460	Milk Link Limited	Class 29 - Milk and milk products, yogurt, flavoured yogurt, drinks flavoured with chocolate having a milk base, frozen milk and milk products, organic milk, organic milk products, organic yogurt and yogurt products, organic frozen milk and milk products. Class 39 - Transport of milk
Moo Milk	2367462	Milk Link Limited	Class 29 - Milk and milk products, yogurt, flavoured yogurt, drinks flavoured with chocolate having a milk base, frozen milk products, organic milk, organic milk products, organic yogurt and yogurt products, organic frozen milk products. Class 39 - Transport of milk.
Dairy Pride	2527073	Milk Link Processing Ltd	Class 29: Milk and milk products, cheese.

2.9 The benefit of the following manufacturing agreements with Mars and Unilever, will be assigned to the Purchaser of the Divestment Business:

- (a) the licence from Mars to manufacture flavoured ESL dairy drinks under the Mars Family Refuel and Galaxy brands;
- (b) the licence from Unilever to manufacture unflavoured functional ESL dairy drinks under the Flora Pro-Activ brand; and
- (c) the [...] agreement with Unilever to manufacture cholesterol reducing dairy drinks under the Flora Becel brand.

2.10 Arla will make all reasonable efforts to transfer the benefit of the relevant existing retailer brand contracts for the supply of long-life milk, ESL dairy drinks and long-life cream in the UK to the Purchaser.

(c) licences, permits and authorisations:

2.11 The existing regulatory and customer accreditations held by the Crediton Dairy will continue, as they are site-specific.

2.12 The relevant accreditations are as follows:

- British Retail Consortium - European Food Safety Inspection Service ("**EFSIS**") Grade A;
- International Organization for Standardisation ("**ISO**") 14001 Environmental Standard – being the most important amongst the environmental management standards developed and published by the ISO, and requiring a systemic approach to handling environmental issues within an organization;
- [...] green audit status;
- [...] green audit status;
- [...] green audit status;
- [...] approved supplier accreditation;
- [...] approved supplier accreditation;
- [...] approved supplier accreditation;
- [...] approved supplier accreditation;
- [...] approved supplier accreditation;
- Soil Association / Organic Accreditation; and
- Laboratories Chemical and Microbiological accreditation under the Campden Laboratory Accreditation Scheme ("**CLAS**") – providing an accreditation service for laboratories undertaking microbiological, chemical and physical testing activities in, inter alia, the food and drink sectors.

(d) contracts, agreements, leases, commitments and understandings:

- 2.13 Milk Link's subsidiaries Milk Link (Crediton) Limited and Milk Link (Crediton No 2) Limited entered into a 999 year lease of the Crediton Dairy site on 30 June 2002, of which 989 years are remaining.
- 2.14 Milk Link (Crediton) Limited and Milk Link (Crediton No 2) Limited also have the benefit of an underlease over neighbouring land dated 11 March 2003, which allowed them to lay a gas pipeline over neighbouring land to service the Crediton Dairy.
- 2.15 Milk Link has licence agreements with Mars for the production of Mars Family Refuel and Galaxy ESL flavoured dairy drinks. It also has a licence agreement with Unilever for the production of Flora Pro-Activ functional dairy drink, and a [...] for the production of the Flora Becel functional dairy drink.
- 2.16 Arla will make all reasonable efforts to transfer the benefit of the relevant existing retailer brand contracts for the supply of long-life milk, ESL dairy drinks and long-life cream in the UK to the Purchaser.
- 2.17 Milk Link has a number of leases from Tetra Pak for packaging equipment used at the Crediton Dairy.
- 2.18 Milk Link has the following warehousing and distribution contracts concerning the Crediton Dairy:
- (a) a contract with [...] in relation to the storage and transportation of long-life milk; and

- (b) a contract with [...] in relation to the storage and distribution of ESL dairy drinks and long-life cream.
- 2.19 Trading relationships with customers for the supply of products, built upon price negotiation and the issuing by customers of purchase orders.
- (e) customer, credit and other records:
- 2.20 All relevant customer, credit and other records relating to the Divestment Business will be transferred to the purchaser. All existing trading relationships with customers will remain with the Divestment Business and will continue in effect.
- (f) Personnel:
- 2.21 The Divestment Business has in total [...] full time employees, all of whom will be transferred with the Divestment Business.
- 2.22 [...] employees of the Divestment Business are involved in the manufacture of the Products and are based at the Crediton Dairy, while there are [...] sales and marketing personnel [...] and [...] finance employee who are based in Bristol.
- (g) Key Personnel:
- 2.23 The Key Personnel of the Divestment Business are the following current Milk Link employees: [...] (Factory Manager), [...] (Head of Sales & Marketing) and [...] (Finance Manager).
- (h) the arrangements for the supply with the following products or services by Arla or Affiliated Undertakings for a transitional period after Closing:

Raw Milk

- 2.24 For a transitional period of up to two years and if required by the Purchaser, Arla will enter into a supply contract to deliver to the Purchaser sufficient conventional and organic raw milk to meet its requirements for manufacturing the Products at the Crediton Dairy, on terms and conditions equivalent to those at present afforded to the Divestment Business. The price will be the average standard pence per litre price paid to Arla Foods Milk Partnership ("**AFMP**") Members as published to AFMP Members and the specialist UK farming press from time to time for organic and conventional raw milk respectively, plus the associated costs of transport and testing (which will be accounted for on an open book basis).

Fresh bulk cream

- 2.25 For a transitional period of up to two years and if required by the Purchaser, Arla will enter into a two year contract with the Purchaser to purchase from the Divestment Business fresh bulk fresh cream produced by the Divestment Business at the Crediton Dairy.
- 2.26 Organic fresh bulk cream is currently sold to [...]. This arrangement will be transferred to the Purchaser of the Divestment Business.

Shared services and IT systems

- 2.27 Transitional services will be made available to the Divestment Business for a period of up to 12 months pursuant to transitional services agreements, whilst head office functions currently provided by Milk Link are migrated to the Purchaser's own systems. This will include: use of Milk Link's existing IT systems, customer services (including order taking which is largely conducted electronically through EDI, forecasting and production planning

and finished goods stock management), the procurement of utilities, packaging and ingredients, and human resources.

2.28 To the extent required by the Purchaser, Arla will provide, for a transitional period of up to 12 months, office accommodation at Milk Link's premises in Bristol for those Personnel currently based at those premises.

3. **The Divestment Business shall not include:**

3.1 No exclusions.