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***Case No COMP/M.6627 - ARLA FOODS/ MILCH-UNION
HOCHEIFEL***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 28/09/2012

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EUROPEAN COMMISSION

Brussels, 28.9.2012
C(2012)6969

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.6627 - Arla FOODS/ MILCH-UNION HOCHEIFEL
Commission decision pursuant to Article 6(1)(b) of Council Regulation
No 139/2004¹**

1. On 24 August 2012, the European Commission received a 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 Milch-Union Hocheifel ("MUH", Germany) by way of a merger between Arla's subsidiary Hansa-Milch AG and MUH. In the following, Arla and MUH are referred to jointly as "the Parties".

(1) THE PARTIES

2. Arla is a dairy cooperative owned by Danish, Swedish and German dairy farmers. It is active on a range of dairy product markets with its products being sold in more than 100 countries. Its 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.

3. MUH is a German farmers' co-operative with its headquarters and sole production facility located at Pronsfeld close to the borders with Belgium and Luxembourg. It is mainly active on a range of long-life milk products. MUH has no milk processing facilities outside Germany although it generates revenues from exports (including exports to all EU Member States except Spain, Latvia, Lithuania and Estonia). It has subsidiaries in France (sales), Luxemburg (procurement) and Belgium (procurement).

(2) THE OPERATION AND CONCENTRATION

4. On 15 May 2012, Arla and MUH signed an agreement according to which Arla will acquire via its subsidiary Hansa-Milch AG (to be renamed and transformed into Arla Foods Germany GmbH), MUH's entire business with all assets and liabilities. In return, MUH will receive one newly issued share in Arla Foods Germany GmbH in the nominal amount of EUR [...] plus a receivable in the amount of EUR [...].
5. In a second step, MUH will contribute the share and the receivable to Arla in exchange for (i) Arla accepting MUH as a new member of Arla, granting MUH substantially the same membership rights as any other member of Arla, and (ii) Arla granting certain equity participations and democratic rights in Arla and (iii) Arla buying all the future milk delivered to MUH by MUH's members. Under this arrangement, MUH will remain a German cooperative owned by its members and will become a corporate member of Arla with the right to appoint nine members of Arla's board of representatives (out of a total of 174) as well as two members of the board of directors out of a total of 16.
6. The proposed transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.
7. Prior to the notification of this transaction, the European Commission received on 9 August 2012 notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Arla 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")². The Commission's conditional clearance decision in this case was adopted on 27 September 2012. This decision and the associated commitments are taken into account for the competitive assessment of this case.

(3) EU DIMENSION

8. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million³ (Arla: EUR 7 365 million, MUH: EUR 680 million). Each of them has an EU-wide turnover in excess of EUR 250 million (Arla: EUR [...], MUH: EUR [...]), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has an EU dimension within the meaning of Article 1(2) of the Merger Regulation.

² Case COMP/M.6611 – Arla Foods/ Milk Link.

³ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.4.2008, p. 1).

(4) COMPETITIVE ASSESSMENT

9. The proposed transaction concerns the dairy products sector. It leads to a number of horizontal overlaps between Arla and MUH in (i) the procurement of raw milk, (ii) fresh milk products, (iii) long-life dairy products (milk, liquid dairy cream and flavoured dairy drinks), (iv) butter, (v) milk powder and (vi) dessert sauce.
10. The overlaps give rise to a number of affected markets in relation to fresh milk, long-life milk, long-life dairy cream, *kondensmilch*, long-life coffee cream and long-life flavoured dairy drinks. The Commission received extensive information from the Parties, as well as their competitors and customers, in relation to these markets at national and EU level.
11. Consumption patterns tend to differ between countries. For instance, fresh milk account for the bulk of the total drinking milk consumed in certain Member States, whereas the majority of sales is accounted by long-life milk in others. Similarly, the relative share of branded products in retail sales (compared to private labels) varies widely. For that reason substitution patterns may differ and market delineations may vary from one geographic area to the other. Reference is thus made to the results of the market investigation in the various areas where overlaps arise.

4.1 Relevant product markets

12. In past decisions, the Commission has defined or envisaged a number of various narrower markets within the dairy sector⁴.
13. In Friesland Foods/Campina⁵, the Commission made a distinction between fresh products, on the one hand, and long-life dairy products, on the other. The Commission also considered a distinction between organic and conventional products.
14. The Commission has moreover considered distinguishing the market for the supply of dairy products to the out-of-home distribution channel from the market for the supply of dairy products to the retail distribution channel, though it ultimately left the question open⁶.

4 Commission decision COMP/M.5046 of 17 December 2008 – Friesland Foods/Campina; Commission decision COMP/M.6242 of 14 June 2011 – Lactalis/Parmalat; Commission decision COMP/M.5875 of 23 August 2010 – Lactalis/Puleva; Commission decision COMP/M.6119 of 1 April 2011 – Arla/Hansa; Commission decision COMP/M.6348 of 7 November 2011 – Arla/Allgäuland.

5 Commission decision COMP/M.5046 of 17 December 2008 – Friesland Foods/Campina, recital 141.

6 Commission decision COMP/M.6242 of 14 June 2011 – Lactalis/Parmalat; recitals 22-23; Commission decision COMP/M.5046 of 17 December 2008 – Friesland Foods/Campina, recital 414 ; Commission decision COMP/M.5875 of 23 August 2010 – Lactalis/Puleva, recitals 77 and 151; Commission decision COMP/M.6119 of 1 April 2011 – Arla/Hansa, recital 21.

15. The Commission also envisaged a potential distinction between branded products and private labels, although in several instances it came to the conclusion that they belong to the same product markets⁷.

4.1.1 Procurement of raw milk

16. Raw milk is collected from farms and delivered to dairies for further processing. It has a perishable nature since it has not undergone any treatment other than cooling.
17. In *Friesland Foods/Campina*, which concerned the merger of two Dutch dairy cooperatives, the Commission concluded that the procurement of conventional raw milk and the procurement of organic raw milk constitute separate product markets⁸. As far as the German market is concerned, however, the Commission and the Federal Cartel Office have left open whether distinct markets should be found for the procurement of conventional raw milk and organic raw milk.
18. As the transaction does not raise serious doubts as to its compatibility with the internal market under any alternative definition, the question whether the market for the procurement of raw milk should be further segmented can be left open.

4.1.2 Fresh milk

19. The Parties' activities in fresh dairy products overlap in milk. Fresh milk is milk with a standardised fat content, which is pasteurised at 72° Celsius for 15 seconds.
20. 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.⁹ In *Lactalis/Parmalat*, the Commission also left open the question whether there could be a health segment within the market for fresh milk.¹⁰ The Commission moreover considered that fresh liquid milk comprises pasteurised milk as well as Extended Shelf Life (ESL) milk¹¹. ESL milk has a shelf life of 21 days and must be kept refrigerated at all times.

⁷ Commission decision COMP/M.5875 of 23 August 2010 – *Lactalis/Puleva*, recital 81; Commission decision COMP/M.6242 of 14 June 2011 – *Lactalis/Parmalat*, recital 26.

⁸ M.5046 *Friesland Foods /Campina*, recital 52.

⁹ 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.

¹⁰ Case COMP/M.6242 – *Lactalis/Parmalat*, recital 31.

¹¹ Case COMP/M.5046, *Friesland Foods/Campina*, recitals 143 et seq.

21. In Germany, a large majority of competitors and customers indicated in the market investigation that German consumers see different types of milk (organic and conventional, private and branded) as substitutable.¹²
22. As the transaction does not raise serious doubts as to its compatibility with the internal market under any alternative definition, the question whether the market for fresh milk should be further segmented can be left open.

4.1.3 Long-life milk

23. Long-life milk is liquid milk produced from raw milk. It is either produced through sterilisation or ultra-high temperature (UHT) treatment of raw milk and can be kept for six months at room temperature.
24. The Commission has previously defined a separate product market for long-life milk,¹³ concluding that branded and private label products belong to the same product market and leaving open the question of whether the market should be further segmented according to the distribution channel.¹⁴ It also considered (though ultimately left open) the question of whether the market should be segmented into conventional and organic¹⁵ long-life milk.¹⁶
25. The Notifying Party submits that long-life milk for retail and OOH constitute one combined market since prices are basically the same. It also emphasizes that supply-side substitutability is high: according to the Notifying Party, long-life milk manufacturers can switch their supply between branded and private label products to both retail and OOH customers since the underlying product and pack sizes are the same. As to the question of whether the market can be segmented into conventional and organic long-life milk, the Notifying Party considers that this can be left open.
26. At the EU level, the market investigation shows that a majority of around two-thirds of the responding customers would consider that there is only one overall market, without any further sub-segmentations. On the other hand, while competitors tend to consider as

¹² Replies to question 6 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Dairy Products Competitors in Germany (Q. 2), dated 27 August 2012 and Replies to question 6 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Dairy Products Customers in Germany (Q. 7), dated 27 August 2012.

¹³ Case COMP/M.5046 – *Friesland Foods/Campina*, recital 415.

¹⁴ Case COMP/M.6611 – *Arla/Milk Link*.

¹⁵ M.5046 *Friesland Foods/Campina*, recitals 406-415.

¹⁶ In addition, the Commission left open the questions of 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 – see Case COMP/M.5875 – *Lactalis/Puleva Dairy*, recital 129 and Case COMP/M.6242 – *Lactalis/Parmalat*, recitals 39-41.

relevant a split between organic and conventional milk, they admit that switching production between the two would be possible¹⁷.

27. In the UK, replies from third parties provided indications that further segmentations between organic and conventional long-life milk as well as by distribution channel would be relevant.
28. In Germany, the market investigation was not conclusive as to whether the market for long-life milk should be further segmented. Most competitors indicated that they could not easily switch production between different product segments and considered that a further distinction should be drawn between channels, basic and flavoured/health, as well as organic and conventional. On the other hand, the majority of the customers were of the opinion that different types of long life milk are substitutable and thus belong to the same market.
29. In Sweden, the market investigation provided indications from a demand and supply perspective that the market for long-life milk does not need to be further segmented.
30. In Denmark, the market investigation was not conclusive as to whether the market for long-life milk should be further segmented. Certain respondents indicated that the long-life milk market should be further segmented, in particular between flavoured and basic long-life milk, between conventional and organic long-life milk, as well as between branded products and private labels. However an equal number of respondents do not believe that the market should be further segmented.
31. 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.

4.1.4 Long-life dairy cream, kondensmilch and long-life coffee cream

32. Cream is a mix (emulsion) of fat and water, with varying fat percentages. Dairy cream is a by-product of dairy production, which can be produced in pasteurized (fresh) and UHT (long-life) form. Packaged fresh liquid cream has a shelf life of generally four weeks and has to be refrigerated. Long-life cream has a shelf life of several months and can be kept at ambient temperature.
33. Long-life dairy cream is, according to the Notifying Party, a distinct market from fresh cream since market conditions such as demand and logistics differ. This distinction was confirmed by the market investigation, as the majority of competitors and customers considered this segmentation necessary.¹⁸

¹⁷ Replies to questions 6.1 and 6.1.1 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Dairy Products Competitors in the EU (Q. 1), dated 27 August 2012 and Replies to question 6 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Dairy Products Customers in the EU (Q. 6), dated 27 August 2012.

¹⁸ Replies to question 9 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Dairy Products Competitors/Customers at EU level (Q. 1 and Q.6.), and Germany (Q.2 and Q.7.); as well as replies to questions 8 and 6 of the Commission's request

34. In a previous case the Commission has left open the issue whether fresh and long-life dairy cream represent separate relevant markets¹⁹. With regard to both fresh and long-life dairy cream, the Commission has raised the possibility of further sub-segmentations in this market, namely between private and branded products and between the retail and OOH channels. However, both at EU level and national level (Germany, Denmark and Greece) the majority of respondents in the market investigation do not find further sub-segmentations relevant.²⁰
35. In any event, the question whether the markets for fresh and long-life dairy cream should be further segmented can be left open as it will not change the outcome of the competitive assessment of the proposed concentration.
36. *Kondensmilch* is defined by the Notifying Party as evaporated milk where about 60% of water is removed via evaporation. This definition provided by the Notifying Party was broadly confirmed in the market investigation²¹ and is also in line with the definition of dehydrated milk established by the Council Directive 2001/114/EC.²²
37. The large majority of respondents at EU level consider that *kondensmilch* is a homogenous product and that there should be no further subsegmentations. However, at national level results are inconclusive.²³

for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Dairy Products Competitors/Customers in Denmark (Q.3 and Q8) and Greece (Q. 5 and Q10), all dated 27 August 2012

¹⁹ Case COMP/ M.5046 *Friesland Foods/Campina*, recital 1364.

²⁰ Replies to question 9 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Dairy Products Competitors/Customers at EU level (Q. 1 and Q.6.), and Germany (Q.2 and Q.7.); as well as replies to questions (respectively) 8 and 6 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Dairy Products Competitors/Customers in (respectively) Denmark (Q.3 and Q8) and Greece (Q. 5 and Q10), all dated 27 August 2012

²¹ Replies to question 11 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Dairy Products Competitors/Customers at EU level (Q. 1 and Q.6.), and Germany (Q.2 and Q.7.); as well as replies to questions 10 and 6 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Dairy Products Competitors/Customers in Denmark (Q.3 and Q8) and Greece (Q. 5 and Q10), all dated 27 August 2012

²² Council Directive 2001/114/EC, OJ L15/19 of 17.1.2002, para 1 of Annex 1: "This means the liquid product, whether or not sweetened, obtained directly by the partial removal of water from milk, from wholly or partly skimmed milk or from a mixture of these products, which may have an admixture of cream or of wholly dehydrated milk or both, the addition of wholly dehydrated milk not to exceed, in the finished products, 25 % of total milk solids."

²³ Replies to question 12 and 13 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Dairy Products Competitors/Customers at EU level (Q. 1 and Q.6.), and Germany (Q.2 and Q.7.); as well as replies to questions 11-12 and 9-10 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Dairy Products Competitors/Customers in Denmark (Q.3 and Q8) and Greece (Q. 5 and Q10), all dated 27 August 2012.

38. In any event, the question whether the *kondensmilch* market should be further segmented can be left open as it will not change the outcome of the competitive assessment of the proposed concentration.
39. Coffee cream is derived from dairy based cream, which is itself produced from raw milk. The raw milk is first separated into skimmed milk and cream with a 40% fat content. Then the cream is collected in a tank and UHT-treated (6 seconds at 140°C) and after that it is homogenised, resulting in a shelf life of 136 days.²⁴
40. The Commission has raised the possibility of further sub-segmentations in this market, namely between private and branded products and between the retail and OOH channels. The market investigation demonstrated that, both at EU level and national level (Germany, Denmark and Greece) the majority of respondents do not find further sub-segmentations relevant.²⁵
41. The Notifying Party further submitted that (i) long-life dairy cream, (ii) *kondensmilch* and (iii) long-life coffee cream all belong to the same long-life dairy cream market, since there is a degree of substitutability on the demand side. However, in *Friesland Foods /Campina* the Commission has distinguished liquid coffee whiteners (which corresponded in that case to *kondensmilch* according to the Notifying Party) from long-life dairy cream.²⁶
42. The respondents to the market investigation provided ambiguous results on this issue. At an EU level there is a certain trend towards regarding long-life dairy cream, *kondensmilch* and coffee cream as a part of the same market, whilst at national level, namely in Germany, Denmark and Greece, the majority of competitors and customers do not see these products as interchangeable.²⁷ This is essentially due to specific taste expectations from consumers and to difficulty in supply-side substitutability, giving that each product requires different types of production machinery.²⁸
43. However, the questions as to whether long-life dairy cream, *kondensmilch* and coffee cream are a part of the same market and as to whether a further segmentation should be

²⁴ Case COMP/M.5046 *Friesland Foods /Campina*, recital 1458.

²⁵ Replies to question 10 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Dairy Products Competitors/Customers at EU level (Q. 1 and Q.6.), and Germany (Q.2 and Q.7.); as well as replies to questions 9 and 7 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Dairy Products Competitors/Customers in Denmark (Q.3 and Q8) and Greece (Q. 5 and Q10), all dated 27 August 2012

²⁶ Case COMP/ M.5046 *Friesland Foods /Campina*, recital 1468.

²⁷ Replies to question 14 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Dairy Products Competitors/Customers at EU level (Q. 1 and Q.6.), and Germany (Q.2 and Q.7.); as well as replies to question 11 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Dairy Products Competitors/Customers in Denmark (Q.3 and Q8) and Greece (Q. 5 and Q10), all dated 27 August 2012

²⁸ *Idem*.

made by distinguishing between private label and branded products or between the retail and OOH channels can be left open in this case, as it will not change the outcome of the competitive assessment of the proposed concentration.

4.1.5 Long-life flavoured dairy drinks

44. Long-life flavoured dairy drinks ("LLDDs") are produced from long-life milk to which flavours and other ingredients like sugar are added.
45. The Commission has previously concluded that fruit flavoured and chocolate flavoured dairy drinks belong to separate product markets²⁹.
46. However, the Notifying Party is of the opinion that LLDDs of all flavours belong to a single market since in the retail segment they are presented in direct proximity to one another and certain retailers and also discounters source LLDDs as assortments containing a certain percentage of chocolate and usually smaller amounts of the other flavours. Moreover, all those flavours are consumed for the same occasions which are breakfast, lunch and snacks in-between meals³⁰. Furthermore, according to the Notifying Party, supply-side substitutability between flavours is high, as the production process and equipment is the same.
47. The replies to the market investigation at EU level indicate that customers do not believe that there should be a further segmentation³¹. On the contrary, competitors do believe that there should the market of long-life flavoured dairy drinks should be further segmented³² by distinguishing between fruit flavoured and chocolate flavoured, retail and out-of-home (OOH), and branded products and private labels³³. However, the market investigation also indicated that the majority of competitors could easily switch production, in terms of time, equipment, manufacturing costs and marketing costs, between the different product segments³⁴.

29 M.5046 *Friesland Foods/Campina*, recital 1085.

30 M.5046 *Friesland Foods/Campina*, recitals 1077 and 1082.

31 Replies to question 8 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Customers The Dairy Sector in the EU (Q. 6), dated 27 August 2012.

32 Replies to question 8.1 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Competitors in the European Union (Q. 1), dated 27 August 2012.

33 Replies to question 8.1.1 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Competitors in the European Union (Q. 1), dated 27 August 2012.

34 Replies to question 8.2 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Competitors in the European Union (Q. 1), dated 27 August 2012.

48. In Germany, competitors' replies to the market investigation indicate that there should not be a further segmentation on the market for long-life flavoured dairy drinks³⁵. However, customers' replies to the market investigation have been inconclusive as to whether the product market should be divided into further segments³⁶.
49. Some of the respondents in Denmark consider that the long-life milk flavoured dairy drinks market should be further segmented by distinguishing between fruit flavoured and chocolate flavoured long-life flavoured dairy drinks, and branded products and private labels³⁷, while other distinctions are not supported by the respondents³⁸.
50. In the Swedish market investigation, respondents suggested that there no need to further subsegment the market for long-life flavoured dairy drinks³⁹.
51. However, the question as to whether the market for long-life flavoured dairy drinks should be further segmented can be left open, as it will not change the outcome of the competitive assessment of the proposed concentration.

4.1.6 Butter

52. The Parties' activities overlap in packet butter. Butter is essentially what is left of milk when all other non-fat components have been removed. Butter is typically packed in 25 kilogram cartons (bulk butter) or in 250 gram wrappers (packet butter).
53. According to the Commission case practice, packet butter does not form part of the same product market as bulk butter.⁴⁰ As regards packet butter, the Commission considered that margarine and packet butter are not part of the same product market, concluding for packet butter that the retail sales channel and the OOH sales channel

³⁵ Replies to question 8.1 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Competitors in the Dairy Sector in Germany (Q. 2), dated 27 August 2012.

³⁶ Replies to question 8.1 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Customers in Germany (Q. 7), dated 27 August 2012.

³⁷ Replies to question 7 and 7.1 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Customers in the Dairy Sector – Denmark (Q. 8), dated 27 August 2012.

³⁸ Replies to question 7.1 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Competitors in the dairy sector – Denmark (Q. 3), dated 27 August 2012.

³⁹ Replies to question 7 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Customers in the Dairy Sector - Sweden (Q. 9), dated 27 August 2012.

⁴⁰ M.5046 *Friesland Foods/Campina*, recital 816.

each represent a separate product market but leaving open the question as to whether the market should be further segmented into branded and private labels⁴¹.

54. However, the precise market definition with regard to butter can be left open in this case, since the concentration does not raise serious doubts as to its compatibility with the internal market under any possible approach.

4.1.7 Milk powder

55. Milk powder is made from milk which has been pasteurised, condensed and processed so as to dehydrate the milk until it attains a powder form. Milk powder is made with different fat contents ranging from around 1.5 % fat to 26 % fat. It is easy to store since it has a very long shelf life and may be stored at temperatures from below 0°C to 40-50°C. Milk powder may be delivered to customers as fluid milk concentrate which is basically the same product with higher moisture content.
56. The Notifying Party considers that milk powder and fluid milk concentrate belong to the same market since the only material difference is the moisture level.
57. However, the precise market definition with regard to milk powder can be left open in this case, since the concentration does not raise serious doubts as to its compatibility with the internal market under any possible approach.

4.1.8. Dessert sauce

58. The Notifying Party submits that dessert sauces are a niche product, since they are not consumed as a dessert as such but are used as a supplement together with other desserts, ice-cream or cake. MUH does not produce any other desserts (e.g. puddings and other ready-to-eat desserts). The Commission has not previously envisaged the market for dessert sauce.
59. In any event, the precise market definition with regard to dessert sauce can be left open since the concentration does not raise serious doubts as to its compatibility with the internal market under any possible approach.

4.2 Relevant geographic markets

4.2.1 Procurement of raw milk

60. Raw milk is perishable in nature and the maximum storage duration prior to further processing is limited.
61. The Commission has concluded in past decisions that the relevant geographic markets for procurement of raw milk are not wider than national in scope.⁴²
62. The German Federal Cartel Office has defined smaller regional markets for the procurement of raw milk in Germany, based on a 200km radius around each specific

⁴¹ M.5046 *Friesland Foods/Campina*, recitals 855 and 870.

⁴² M.5046 *Friesland Foods/Campina*; M.5875 *Lactalis / Puleva Dairy*.

dairy. Indeed, raw milk in Germany is often procured on a local basis, partly due to historic reasons.⁴³

63. The Notifying Party submits that the market for procurement of raw milk should not be considered narrower than national.
64. However, the precise geographic definition can be left open in this case, since the concentration does not raise serious doubts under any possible approach.

4.2.2 Fresh milk

65. Fresh milk is a perishable product, which makes it difficult to travel long distances. Fresh milk needs to be chilled during the transport and has a shelf-life significantly shorter than long-life milk. In previous decisions, the Commission concluded that, as regards the fresh milk market and its possible segments, the geographical scope should be defined as national.⁴⁴ 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).
66. The Notifying Party suggests that the exact geographic scope can be left open since the transaction does not lead to any competition concerns regarding fresh milk.
67. The market investigation was not conclusive. Competitors, both at the EU level and in Germany, indicated that the maximum economically viable transportation distance from the production plant to customers is 650 kilometres, which allows some cross-border flows.⁴⁵ However, the majority of German customers only purchase from German suppliers.⁴⁶
68. As the transaction does not raise serious doubts as to its compatibility with the internal market under any alternative definition, it can be left open in this case whether the relevant geographic market may be wider than Germany and include the cross-border areas which are within viable transportation distance from the Parties' German plants.

4.2.3 Long-life milk

⁴³ The former "Milch- und Fettgesetz" (Gesetz über den Verkehr mit Milch, Milcherzeugnissen und Fetten of 28.02.1951, BGBl. 1952 I, p. 811) had defined fix procurement areas and dairies often maintained these areas even after the law went out of force, see Bundeskartellamt case B 2 - 127/98 p. 13 – MZO.

⁴⁴ M.5046 – *Friesland/Campina*, recital 230, M.6119 – *Arla/Hansa*, recital 36.

⁴⁵ Replies to question 19 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Dairy Products Competitors in the EU (Q. 1), dated 27 August 2012 and Replies to questions 18 to 22 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Dairy Products Customers in the EU (Q. 6), dated 27 August 2012

⁴⁶ Replies to question 27 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Dairy Products Competitors in Germany (Q. 2), dated 27 August 2012 and Replies to questions 18 to 22 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Dairy Products Customers in Germany (Q. 7), dated 27 August 2012

69. Long-life products can be transported over longer distances than fresh products, which can result in a longer shelf life and broader geographical markets than for fresh dairy products. With regard to the supply of long-life milk, the Commission concluded in *Friesland Foods/Campina* that the geographic scope is wider than national.⁴⁷ However, in its latest precedents the Commission has analysed the supply of long-life milk at national level.⁴⁸
70. The Notifying Party submits that the geographic market for long-life milk is wider than national and may cover the entire EEA due to significant amounts of imports across the EEA, the imperishable nature of the product, its homogeneity throughout the EU and the relatively low transport costs.⁴⁹
71. Replies from third parties in this case did not allow any firm conclusions to be drawn, since both EU wide and in Germany the competitors were divided as to whether the market is wider than national. As for customers, the tendency is to define the market as national, as the majority requires German suppliers only⁵⁰.
72. With regard to the UK, in *Arla/Milk Link*, the Commission found that the UK constituted a distinct geographic market. The Commission noted that the majority of major retailers in the UK have a UK only sourcing policy for long-life milk to support British farmers. Furthermore, imports account for only 10-15% of UK long-life milk consumption but are not seen as an alternative to long-life milk produced in the UK since UK consumers have a strong preference for UK long-life milk.⁵¹ Replies from third parties in the UK in this case did not indicate that the market was other than national.
73. With regard to Denmark, the Notifying Party emphasise that 48% of long-life milk consumed there is imported⁵². The replies to the market investigation also provided indications that the market is wider than national. Indeed most Danish retail customers procure long-life milk from suppliers outside Denmark and would consider suppliers outside Denmark in the event of a price increase by 5-10%. In addition, several competitors are active through imports from Germany and, according to a majority of respondents, Danish customers do not show a clear preference for milk and dairy products originated in Denmark.

47 COMP/M.5046 – *Friesland Foods/Campina*, recital 422.

48 Case COMP/M.5875 – *Lactalis/Puleva Dairies*, recital 86; case COMP/M.6242 – *Lactalis/Parmalat*, recital 42 and Case COMP/M.6611 *Arla/Milk Link*.

49 Form CO, p. 50.

50 Replies to questions 18 to 27 of the Commission’s request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Dairy Products Competitors in the EU (Q. 1), dated 27 August 2012 and Replies to questions 18 to 22 of the Commission’s request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Dairy Products Customers in the EU (Q. 6), dated 27 August 2012.

51 See Commission Decision COMP/M.6611 – *Arla/Milk Link*.

52 Form CO, p. 72.

74. With regard to Sweden, the Notifying Party emphasises that 70% of long-life milk consumed there is imported⁵³. The market investigation also provided indications that the market is wider than national. Indeed, imports account for a large share of long-life milk sales. In addition, customers that are not currently importing indicated that they could easily start.
75. Except for the UK, the precise geographic definition can be left open in this case, since the concentration does not raise serious doubts as to its compatibility with the internal market under any possible approach.

4.2.4 Long-life dairy cream, kondensmilch and long-life coffee cream

76. With regard to long-life dairy cream, the Commission has previously concluded that the geographical dimension is wider than national.⁵⁴
77. According to the market investigation at EU level, there are indications that the geographic scope for long-life dairy cream, *kondensmilch*, and long-life coffee cream may be wider than national since there is distribution to other Member States⁵⁵, and also due to the economically viable distance within which the products can be transported⁵⁶.
78. The replies received during the market investigation in Germany indicate that customers have a national preference for these products and do not source from outside Germany⁵⁷. However, competitors are currently supplying all of the three products to other Member States⁵⁸. In addition, if the price were to increase by 5-10 % in Germany the majority of the customers would choose to source from outside Germany⁵⁹. The market investigation therefore suggests that the geographic market is at least national, if not wider.

⁵³ Form CO, p. 72.

⁵⁴ M.5046 *Friesland Foods/Campina*, recitals 422 and 1393.

⁵⁵ Replies to question 18 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Competitors in the European Union (Q. 1), dated 27 August 2012

⁵⁶ Replies to question 19.1 and 19.2 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Competitors in the European Union (Q. 1), dated 27 August 2012, and replies to question 18.1 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Customers the Dairy Sector in EU (Q. 1), dated 27 August 2012

⁵⁷ Replies to question 19 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Customers in Germany (Q. 7), dated 27 August 2012.

⁵⁸ Replies to question 18 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Competitors in the dairy sector in Germany (Q. 2), dated 27 August 2012.

⁵⁹ Replies to question 21 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Customers in Germany (Q. 7), dated 27 August 2012.

79. The market investigation in Denmark indicates that several players are active through imports from Germany and the distance for products sold in Denmark reaches (average-maximum) 350-530 km for long-life dairy cream and 300-530 km for long-life coffee cream⁶⁰. Customers indicate that if the price were to increase by 5-10 % they would consider sourcing outside Denmark⁶¹. From the market investigation there are no signs of a preference for national origination for any of these three products. Therefore, the replies received during the market investigation suggest that the geographic market is wider than national.
80. With regard to Greece, the Parties emphasise that 86% of long-life cream is being imported. Further, the maximum economically viable transporting distance suggests that the geographic market is wider than national⁶². Customers indicate that they procure long-life dairy cream and *kondensmilch* from outside Greece, and long-life coffee cream customer indicate that even though they procure from national producers they could easily start procuring from outside Greece⁶³. Customers also suggest that they would source from outside Greece if there was a price increase of 5-10 %⁶⁴. This suggests that the geographic market for long-life dairy cream, *kondensmilch*, and long-life coffee cream is at least wider than national, if not EU-wide.
81. However, the precise geographic definition can be left open in this case, since the concentration does not raise serious doubts as to its compatibility with the internal market under any possible approach.

4.2.5 Long-life flavoured dairy drinks

82. For LLDDs, the Commission defined the scope for private label products as being wider than national whereas for branded long-life drinks national markets were defined.⁶⁵ The

⁶⁰ Replies to question 16.1 and 16.2 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Competitors in the Dairy Sector –Denmark (Q. 3), dated 27 August 2012.

⁶¹ Replies to question 20 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to customers in the dairy sector – Denmark (Q. 8), dated 27 August 2012, and replies to question 17.1 and 17.2 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Competitors in the Dairy Sector – Denmark (Q. 3), dated 27 August 2012.

⁶² 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 competitors in the dairy sector in Greece (Q. 5), dated 27 August 2012.

⁶³ Replies to question 16 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to customers in the dairy sector – Greece (Q. 10), dated 27 August 2012.

⁶⁴ Replies to question 18 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to customers in the dairy sector – Greece (Q. 10), dated 27 August 2012.

⁶⁵ M.5046 *Friesland Foods/Campina*, recital 1130.

Notifying Party submits that the geographical market for long-life products is wider than national and covers the entire EU.

83. According to the EU market investigation there are indications that the cross-border trade of long-life flavoured takes place⁶⁶, due to the economically viable distance within which long-life flavoured dairy drinks can be transported⁶⁷.
84. The replies to the market investigation in Germany confirm that the geographic market for long-life flavoured dairy drinks is wider than national⁶⁸.
85. The replies to the market investigation in Denmark suggest that the market is probably wider than national since several players are active through imports from Germany and distance for products sold in Denmark then reaches (average-maximum) 360-800 km for long-life flavoured dairy drinks⁶⁹.
86. According to the market investigation in Sweden, most customers are not currently importing but have indicated that they could easily start⁷⁰.
87. In any event, the precise geographic definition can be left open in this case, since the concentration does not raise serious doubts as to its compatibility with the internal market under any possible approach.

4.2.6 Butter

88. With respect to butter, the Commission has previously found that the market for bulk butter is EEA-wide.⁷¹ With regard to the market for packet butter, the Commission has defined the geographical scope as at least regional and maybe EEA-wide.⁷²

⁶⁶ Replies to question 18 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Competitors in the European Union (Q. 1), dated 27 August 2012.

⁶⁷ Replies to question 19.1 and 19.2 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Competitors in the European Union (Q. 1), dated 27 August 2012, and replies to question 18.1 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Customers the Dairy Sector in EU (Q. 1), dated 27 August 2012.

⁶⁸ Replies to question 18 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Competitors in the European Union (Q. 2), dated 27 August 2012, and replies to question 18.1 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Customers in Germany (Q. 7), dated 27 August 2012.

⁶⁹ Replies to question 17.1 and 17.2 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to customers in the dairy sector – Denmark (Q. 8), dated 27 August 2012, and Replies to question 16, 16.1 and 16.2 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Competitors in the Dairy Sector –Denmark (Q. 3), dated 27 August 2012.

⁷⁰ Replies to question 12 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Customers in the Dairy Sector - Sweden (Q. 9), dated 27 August 2012.

89. The Notifying Party submits that the market for packet butter is at least EEA-wide.
90. However, the precise geographic definition can be left open in this case, since the concentration does not raise serious doubts as to its compatibility with the internal market under any possible approach.

4.2.7 Milk powder

91. With regard to milk powder, the Notifying Party submits that the market is at least EU wide, and presumably worldwide, since milk powder is traded as a world market commodity at world market prices.
92. In previous decisions the Commission found that milk powder was a commodity product, easily transported and sold all over Europe. It thus concluded that the geographical markets were EEA-wide in scope.⁷³
93. However, the precise geographic definition can be left open in this case, since the concentration does not raise serious doubts as to its compatibility with the internal market under any possible approach.

4.2.8. Dessert sauce

94. The Notifying Party submits that the potential market for the supply of dessert sauces or the supply of desserts would be wider than national and possibly even EEA-wide.
95. However, the precise geographic definition can be left open in this case, since the concentration does not raise serious doubts as to its compatibility with the internal market under any possible approach.

4.3 Competitive assessment

4.3.1 General introduction

96. The transaction gives rise to a number of potentially affected markets in relation to fresh milk (Germany), long-life milk (Germany Denmark, Sweden and the UK), long-life dairy cream, *kondensmilch* and long-life coffee cream (EU level, Germany, Denmark, Greece) and long-life flavoured dairy drinks (EU level, Germany, Denmark, Sweden).
97. As far as the procurement of raw milk is concerned, although the Parties are active in Germany, the geographic focus of their collection areas is different. In case the Parties' procurement activities were assessed on the regional level as proposed by the FCO, a 200 km radius needed to be drawn around the production facilities of Arla and MUH. As the relevant dairies are located in Upahl (Mecklenburg-West Pomerania) and in the Allgäu (Bavaria and Baden-Württemberg) for Arla and in Pronsfeld (Rhineland-Palatinate) for MUH, the Parties' respective procurement activities would not overlap at all. The distances between the dairies exceed 500km.

71 M.5046 *Friesland Foods/Campina*, recital 834.

72 M.5046 *Friesland Foods/Campina*, recital 874.

73 M.3535 *Van Drie/Schils*, recital 20.

98. Even though the Parties' procurement activities encompass geographical areas beyond Germany as well, there is no relevant overlap between hypothetical cross-border procurement markets using the radius of 200 km around the respective production facility. The only Arla non-German production site that might be within a reasonable reach from MUH's production facility in Pronsfeld is Arla's production site in Nijkerk (Netherlands) which is 320 km away from Pronsfeld. However, Arla does not source any raw milk from farmers (be it in the Netherlands or elsewhere) but only buys it from other dairies located in the Netherlands. Therefore, Arla's production site in Nijkerk cannot constitute a possible alternative for MUH's farmers.
99. At a national level, the Parties' combined shares are approximately [5%-10%], even when a distinction between organic and raw milk is made. With regard to vertical relationships between raw milk and other dairy products, it is unlikely that the merged entity would be able to foreclose its competitors downstream since the Parties only have *de minimis* sales of raw milk to independent customers⁷⁴. Post-transaction a number of strong competitors would remain on the different milk and dairy products markets. Furthermore, the Parties' main customers who compete on the downstream markets for the supply of milk and dairy products did not raise any concerns with regard to the impact of the proposed transaction in relation to the procurement of raw milk. 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.
100. Although the Parties' activities overlap in the supply of packet butter, milk powder and dessert sauces, their combined market shares remain well below 15% under any possible product market definition (including these market's narrower segments) and geographic market definition (whether at EU or national level). It can therefore be concluded that the proposed transaction does not raise serious doubts concerning its compatibility with the internal market as regards these markets and their possible narrower segments.

4.3.2 Fresh milk

4.3.2.1 Germany

101. On the fresh milk market, the Parties only overlap in Germany, where they achieve combined sales of EUR [...] (Arla: EUR [...], MUH: EUR [...]).
102. The Parties' market shares in 2011 for fresh milk in Germany are shown in the table below:

⁷⁴ The Parties use for their own downstream activities almost all the raw milk that they procured either from their members. Only [0-5]% (respectively [0-5]%) of the conventional (resp. organic) milk produced by Arla's farmers and [0-5]% (respectively [0-5]%) of the conventional (resp. organic) milk produced by MUH's farmer is being sold to third parties in Germany.

Germany, 2011	Retail			OOH	Total
	Branded	Private Label	All retail		
	Share (%)	Share (%)	Share (%)	Share (%)	Share (%)
Supply of fresh milk					
Arla	[5-10]	[10-20]	[10-20]	[0-5]	[5-10]
Milch-Union	[0-5]	[5-10]	[0-5]	[0-5]	[0-5]
Combined	[5-10]	[20-30]	[10-20]	[0-5]	[10-20]
Supply of fresh conventional milk					
Arla	[5-10]	[10-20]	[5-10]	[0-5]	[5-10]
Milch-Union	[0-5]	[5-10]	[5-10]	[0-5]	[0-5]
Combined	[5-10]	[10-20]	[10-20]	[0-5]	[10-20]
Supply of fresh organic milk					
Arla	[5-10]	[20-30]	[20-30]	[5-10]	[20-30]
Milch-Union	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]
Combined	[5-10]	[20-30]	[20-30]	[5-10]	[20-30]

103. On the overall market for fresh milk (including fresh and conventional milk), the Parties' combined market share at the retail level (including branded and private label) in Germany would be [10-20]% (Arla: [10-20]% and MUH: [0-5]%).⁷⁵ On a hypothetical market for private label, the merger entity would reach [20-30]%.⁷⁶ The Parties' main competitors are Deutsches Milchkontor GmbH (DMK) ([20-30]%), Hochwald ([10-20]%) and Friesland Campina ([5-10]%).
104. On the market for conventional fresh milk, the Parties' combined market share at the retail level (including branded and private label) in Germany would be [10-20]% (Arla: [5-10]% and MUH: [5-10]%). On a hypothetical market for private label, the merger entity would reach [10-20]%.⁷⁷
105. On the market for organic fresh milk, the merger entity would reach [20-30]% (Arla: [20-30]% and MUH: [0-5]%) on the overall market (i.e including retail and OOH) and [20-30]% (Arla: [20-30] and MUH: [0-5]%) at the retail level. On a hypothetical market for private label, the merged entity would reach [20-30]%.⁷⁸
106. Given the small increment on the market for fresh milk, particularly for organic, the market structure would not change significantly as a result of the proposed transaction. Moreover, the vast majority of the respondents to the market investigation in Germany did not raise concerns on the market for fresh milk.

⁷⁵ There is no overlap in the OOH channel.

⁷⁶ The Parties' combined market shares are below 15% in Germany for the branded fresh milk at the retail level.

⁷⁷ The Parties' combined market shares are below 15% in Germany for the overall market for conventional fresh milk and branded fresh milk at the retail level.

⁷⁸ The Parties' combined market shares are below 15% in Germany for branded fresh milk at the retail level.

107. Some respondents to the market investigation raised some concerns that the proposed transaction would reduce the number of alternatives and create difficulties in the negotiation process with the Parties. However, respondents to the market investigation confirmed, including some customers which were concerned, that there are sufficient alternative suppliers on the market for fresh milk such as DMK, Hochwald, Müller and Friesland Campina.⁷⁹ Moreover, the market investigation supported the Notifying Party's view that competitors on the market for fresh milk have free capacity to increase their production of fresh milk.⁸⁰
108. In view of the above, it can be concluded that the transaction does not raise serious doubts in as to its compatibility with the internal market in relation to the market for fresh milk and its narrower segments in Germany.

4.3.2 Long-life milk

4.3.2.1 Introduction

109. According to the information provided by the Notifying Party, the transaction would lead to high market shares in relation to the overall markets for long-life milk in the retail channel in Denmark ([80-90]%; Arla [50-60]%, MUH [30-40]%) and Sweden ([80-90]%; Arla [50-60]%, MUH [30-40]%). In this regard, the Notifying Party submits that these are typical “fresh milk countries” where long-life milk represents only a small share of all milk consumed. Moreover, in the Notifying Party's view, the market for long-life milk should not be regarded as national since long-life milk travels much better and cheaper than fresh milk, with the consequence that there is significant cross-border trade.
110. In addition, since almost all long-life milk sales in Denmark and Sweden relate to discounters and as MUH is Lidl's supplier with respect to long-life milk, MUH has an important market share in the Scandinavian countries. MUH's sales are imports from Germany, emphasizing in the Notifying Party's view the fact that the market is wider than national.
111. The Notifying Party also point to the significant buyer power of the large retail chains to which their sales are made. This is especially the case according to the Notifying Party where milk volumes are contracted via competitive tendering procedures on the basis of short supply contracts (between 6 and 12 months).
112. Finally, the Notifying Party claims that standard long-life milk is a homogeneous product, which is not technically difficult to produce. Accordingly, existing processors of raw milk could easily adapt their processing facilities to produce long-life milk in a short time frame and at relatively low cost. Such market entry could be sponsored by large retailers in response to an increase in the Parties' prices. The Parties believe that

⁷⁹ Replies to questions 23 and 24 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No139/2004 addressed to Customers in the Dairy Sector- Germany (Q.7), dated 27 August 2012.

⁸⁰ Replies to emails of the Commission's request for further information regarding to spare capacity on the dairy products to Competitors in Germany, dated 13 September 2012.

they will continue to be constrained by other European and especially German suppliers which could expand their production in the short term at relatively low cost.

4.3.2.2 *The UK*

113. At the time of the Commission's investigation, Arla was also in the process of acquiring Milk Link in the UK (Case COMP/M.6611 – *Arla/Milk Link* notified to the Commission on 9 August 2012) and therefore the Commission carried out the investigation of the impact of both transactions on the UK long-life milk market simultaneously.
114. In the UK MUH is not active in the OOH segment, in branded products sold via the retail channel, or in organic milk.
115. The Notifying Party has provided two sets of data regarding the size of the long-life milk market in the UK, based on AC Nielsen⁸¹ and Kantar⁸² data. Both sets of data did not cover Northern Ireland, which accounts for 3% of the population in the UK, and the OOH segment.
116. Both sets of data do not cover Northern Ireland, which accounts for 3% of the population in the UK, nor the OOH segment. Based on these sets of data, the Notifying Party estimated the total market size to range between [300-350] million of litres per year ("mlpa") (Nielsen) and [350-400] mlpa (Kantar). 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 middleground⁸³ and local retailers, or from the major grocery discounters such as Aldi and Lidl.
117. 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.⁸⁴

⁸¹ 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 [200-250] mlpa.

⁸² 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 [300-350] 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.

⁸³ Middleground retailers comprise retail outlets except the largest supermarkets (Tesco, Asda, Sainsburys, Morrisons, Co-op, Waitrose and Marks & Spencer).

⁸⁴ The market reconstruction took into account all the suppliers indicated by the Notifying Party except Lactalis. Furthermore, it assumed an additional extra volume of 10% attributed to "others".

118. 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.
119. Irrespective of the data taken into account, in *Arla/Milk Link* the Commission assessed that, following the acquisition of Milk Link, Arla would have had 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. Furthermore, the acquisition of MUH would increase Arla's market share by [0-5]%. The Notifying Party submitted the parties combined turnover was EUR [...] million (Arla EUR [...] million and Milch-Union EUR [...] million) in long-life milk in the UK in 2011.
120. The 2011 market shares provided by the Notifying Party in relation to the market for long-life milk in the UK, which attribute Milk Link's market shares to Arla, are shown in the table below:

UK, 2011	Retail			OOH	Total
	Branded	Private Label	All retail		
	Share (%)	Share (%)	Share (%)	Share (%)	Share (%)
Supply of conventional and organic long-life milk					
Arla (with Milk Link share)	[30-40]	[60-70]	[60-70]	[50-60]	[60-70]
Arla (without Milk Link share)	[0-5]	[40-50]	[30-40]	[50-60]	[30-40]
Milch-Union	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]
Combined (with Milk Link)	[30-40]	[70-80]	[60-70]	[50-60]	[60-70]
Combined (without Milk Link share)	[0-5]	[40-50]	[40-50]	[50-60]	[40-50]
Supply of long-life conventional milk					
Arla (with Milk Link share)	[30-40]	[60-70]	[60-70]	[50-60]	[60-70]
Arla (without Milk Link share)	[0-5]	[40-50]	[30-40]	[50-60]	[30-40]
Milch-Union	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]
Combined (with Milk Link share)	[30-40]	[70-80]	[60-70]	[50-60]	[60-70]
Combined (without Milk Link share)	[0-5]	[40-50]	[40-50]	[50-60]	[40-50]

Source: Notifying Party

121. The Notifying Party submitted that it is capacity-constrained and unable to bid for additional volumes. However, the Commission found in *Arla/Milk Link* that the Notifying Party has lost various contracts for the supply of long-life milk during the past three years indicating that at least from time to time, the Notifying Party has available capacity. It also argued that competition could come from other UK suppliers of long-life milk who could increase production (e.g. Delamere Dairy) and the largest UK fresh liquid milk processors (e.g. Müller/Wiseman) who could easily invest in additional UHT equipment to produce long-life milk. However the Commission concluded that was not the case. Delamere Dairy

is not seen as a competitor to Arla⁸⁵ and there are significant costs and time involved in establishing a new production facility or switching from fresh milk production to long-life milk production. In addition, there has not been any new entry in the last five years and the Commission concluded in *Arla/Milk Link* that potential entry is very unlikely since there are few incentives and declining demand.

122. According to the Notifying Party, imports from non-UK producers would provide a competitive constraint to the Parties.⁸⁶ 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 (other than MUH) being Lakeland Dairy Supplies ([5-10]% on the overall market; Ireland), Sodial ([0-5]%; France). While it has been confirmed that the long-life milk market also consists of some imports from non-UK suppliers, 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. The Notifying Party also confirmed a strong decrease in demand for MUH long-life milk since 2009.⁸⁷ This indicates that the competitive constraint on Arla (including Milk Link but without the divested interests) from MUH is unlikely to be of any significance.
123. One respondent to the Commission's market investigation in this case expressed concerns about the proposed transaction in the context of the simultaneous acquisition of Milk Link and MUH. The respondent, however, also confirmed that MUH was not a real alternative at the moment since it did not have the production facilities within the UK which are necessary to respond to the preference of British consumers for British milk.
124. The Commission concluded in the *Arla/Milk Link* case, inter alia on the basis of the strong preference for locally produced milk, that the merger would give rise to serious doubts as to its compatibility with the internal market in relation to the supply of long-life milk in the UK. It therefore accepted commitments from Arla to divest the entirety of Milk Link's milk drinks business, including Milk Link's long-life milk business in the UK. Such commitments significantly reduce the market shares to be assessed in this case.
125. This transaction is therefore assessed below on the basis of Arla's share without the addition of Milk Link's share. Based on the Kantar data, the Parties' combined market shares in the retail channel would be [30-40]% (Arla: [30-40]%, MUH: [0-5]%%). If the retail channel is split into private labels, the combined market shares would be [40-50]% (Arla: [40-50]%, MUH: [0-5]%).
126. As regards the Parties' competitors, the merged entity will continue to face strong competition in the UK from the acquirer of the divested interests from the *Arla/Milk Link* case. This acquirer will be the strongest competitor in the market with a share of [30-40]% in the overall market and [20-30]% in the retail channel for private label

⁸⁵ In particular not in the private label segment, which represents more than 80% of the UK long-life milk market.

⁸⁶ Form CO, para. 182.

⁸⁷ Form CO, para. 177.

long-life milk. In addition, Lakeland Dairy is present in the overall long-life milk market ([5-10]% to [5-10]%, depending on the relevant data), while some other suppliers such as Sodiaal, Delamere Dairy and Inex are also present with market shares below [0-5]%. 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).⁸⁸ On the overall retail channel (i.e. including both branded and private label), MUH's presence would be weaker with a market share between [0-5]% and [0-5]% (based on Kantar and Nielsen data).

127. In light of the low increment arising from the proposed transaction and the continued presence of the divested interests from the *Arla/Milk Link* case as well as several smaller competitors, the Commission considers that the proposed transaction does not raise serious doubts as to its compatibility with the internal market in relation to the market for long-life milk and any possible narrower segments of it in the UK.

4.3.2.3 Germany

128. The Parties achieved combined long-life milk sales of EUR [...] million in Germany in 2011 (Arla: EUR [...] million, MUH: EUR [...] million). The Parties' market shares are shown in the table below:

Germany, 2011	Retail			OOH	Total
	Branded	Private Label	All retail		
	Share (%)	Share (%)	Share (%)	Share (%)	Share (%)
Supply of long-life milk					
Arla	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]
Milch-Union	[0-5]	[10-20]	[10-20]	[0-5]	[10-20]
Combined	[5-10]	[10-20]	[10-20]	[0-5]	[10-20]
Supply of long-life conventional milk					
Arla	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]
Milch-Union	[0-5]	[10-20]	[10-20]	[0-5]	[10-20]
Combined	[5-10]	[10-20]	[10-20]	[0-5]	[10-20]

129. On the overall supply of long-life milk (including fresh and conventional) in the retail channel, the Parties' combined market shares in Germany would be [10-20]% (Arla: [0-5]% and MUH: [10-20]%). On a hypothetical market for private label at the retail level, the

⁸⁸ 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 [10-20]% each.

Parties' combined market shares would be [10-20]%.⁸⁹ The Parties' main competitors are DMK ([20-30]%), Müller Group ([10-20]%) and Hochwald ([10-20]%).

130. On a narrow market for long-life conventional milk⁹⁰ in the retail channel, the Parties' combined market shares would be [10-20]% (Arla: [0-5]% and MUH: [10-20]%). On a hypothetical market for private label at the retail level, the Parties' combined market shares would be [10-20]%.⁹¹
131. In the market investigation, some respondents raised the concern that the range of suppliers will be more limited after the transaction. However, several alternative suppliers on the market for long life milk were identified such as DMK, Müller Group, Hochwald and Frischli, and even customers who raised concerns confirmed that they tend to switch supplier depending on the available offers.⁹²
132. In addition, further investigation revealed that some of the Parties' competitors have significant spare capacity in their plants to increase production of long life milk.⁹³
133. In light of the above, it can be concluded that the transaction does not raise serious doubts as to its compatibility with the internal market in relation to the market for long-life milk and its possible narrower segments in Germany.

4.3.2.4 Denmark

134. The Danish market for long-life milk is very small: fresh milk accounts for 99.4% of all drinking milk. The Parties combined long-life milk sales is only EUR [...] million in Denmark in 2011 (Arla: EUR [...] million, MUH: EUR [...] million). According to the Notifying Party, long-life milk is mainly sold by discounters. In addition, the Notifying Party emphasizes that 48% of long-life milk consumed in Denmark is being imported⁹⁴.
135. The transaction gives rise to an affected market in relation to conventional long-life milk (which accounts for all long-life milk sold in the country). The Parties only overlap in the retail channel (MUH is not active in the OOH segment). MUH's only customer in Denmark is Lidl, which imports long-life milk produced at MUH's German facility and then sells it under private label.

⁸⁹ The Parties' combined market shares are below 15% in Germany for the overall market for long-life milk, the out of home and branded at the retail level.

⁹⁰ There is not overlap between the Parties on the market for long-life organic milk in Germany.

⁹¹ The Parties' combined market shares are below 15% in Germany for the overall market for long-life conventional milk, the out of home and branded at the retail level.

⁹² Replies to question 29 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No139/2004 addressed to Customers in the Dairy Sector- Germany (Q.7), dated 27 August 2012.

⁹³ Replies to emails of the Commission's request for further information regarding to spare capacity on the dairy products to Competitors in Germany, dated 13 September 2012.

⁹⁴ Form CO, p. 72.

136. The Parties currently account for [80-90]% of all long-life milk sold in Denmark (Arla [50-60]%, MUH [30-40]%). Their share is even higher in the retail channel ([80-90]%), particularly in the private label segment ([80-90]%):

	Retail			OOH	Total
	Branded	Private Label	All retail		
	Share (%)	Share (%)	Share (%)	Share (%)	Share (%)
Denmark, 2011					
Supply of (conventional) long-life milk					
Arla	[70-80]	[40-50]	[50-60]	[50-60]	[50-60]
Milch-Union	[0-5]	[40-50]	[30-40]	[0-5]	[30-40]
Combined	[70-80]	[80-90]	[80-90]	[50-60]	[80-90]

137. One respondent to the market investigation raised concerns that there may not be other suppliers that could ensure economic prices given transport and logistics costs. However, this was not confirmed by other respondents to the market investigation, which identified credible alternatives to the Parties for the supply of long-life milk in Denmark, such as the following German suppliers: Osterhusumer Meierei, Deutsches Milchkontor (DMK), Hochwald and Frischli. Several of these alternatives have production facilities closer to Denmark than MUH's facility in Pronsfeld and the market investigation indicated that the Parties' competitors have significant spare capacity⁹⁵. In particular, Coop Trading indicated that DMK is seeking to expand in Scandinavia, notably in Denmark⁹⁶. In addition, as regards the private labels products supplied by MUH, it is easier to switch (for customers) and enter (for potential suppliers) than for branded products, since there is no customer loyalty such as that which is associated with a brand.
138. In light of the above, it is concluded that the transaction does not raise serious doubts as to its compatibility with the internal market in relation to the market for long-life milk and its possible narrower segments in Denmark.

4.3.2.5 Sweden

139. Like in Denmark, the Swedish market for long-life milk is a niche market: fresh milk accounts for 98.2% of all drinking milk. The Parties achieved combined long-life milk sales of EUR [...] million in Sweden in 2011 (Arla: EUR [...] million, MUH: EUR [...] million). According to the Notifying Party, long-life milk is mainly sold by discounters. In addition, the Notifying Party emphasizes that 70% of long-life milk consumed in Sweden is being imported⁹⁷.

⁹⁵ Replies to emails of the Commission's request for further information regarding to spare capacity on the dairy products to Competitors in Germany, dated 13 September 2012.

⁹⁶ Non-confidential minutes of conference call with Coop Trading, 13 September 2012.

⁹⁷ Form CO, p. 72.

140. In Sweden, the transaction gives rise to an affected market in relation to conventional long-life milk and to the overall segment for long-life milk. The Parties only overlap in the retail channel (MUH is not active in the OOH segment). MUH's only customer in Sweden is Lidl, which imports long-life milk produced at MUH's German facility and then sells it under private label.
141. The Parties currently account for [80-90]% of all long-life milk sold in Sweden (Arla [60-70]%, MUH [20-30]%). Their share is even higher in the retail channel ([80-90]%), particularly in the private label segment ([90-100]%), and the segment for conventional milk:

Sweden, 2011	Retail			OOH	Total
	Branded	Private Label	All retail		
	Share (%)	Share (%)	Share (%)	Share (%)	Share (%)
Supply of long-life milk					
Arla	[70-80]	[20-30]	[50-60]	[80-90]	[50-60]
Milch-Union	[0-5]	[70-80]	[30-40]	[0-5]	[20-30]
Combined	[70-80]	[90-100]	[80-90]	[80-90]	[80-90]
Supply of long-life conventional milk					
Arla	[80-90]	[20-30]	[50-60]	[80-90]	[60-70]
Milch-Union	[0-5]	[70-80]	[30-40]	[0-5]	[20-30]
Combined	[80-90]	[90-100]	[90-100]	[80-90]	[80-90]

142. One respondent to the market investigation raised concerns that there may not be other suppliers that would have sufficient capacity to supply long-life milk in Sweden. However, this was not confirmed by other respondents to the market investigation, which identified credible and sufficient existing or potential alternative suppliers of long-life milk in Sweden, including Swedish suppliers (Gefleortens Mejeri, Norrmejerier and Skanemejerier – which belongs to the Lactalis group). Moreover, 70% of the long-life milk sold in Sweden is imported and the market investigation showed that there are several alternatives with significant spare capacity⁹⁸ that have production facilities closer to Sweden than MUH's facility in Pronsfeld. In addition, as regards the private labels products supplied by MUH, it is easier to switch (for customers) and enter (for potential suppliers) than for branded products since there is no customer loyalty such as that which is associated with a brand.
143. In light of the above, it is concluded that the transaction does not raise serious doubts as to its compatibility with the internal market in relation to the market for long-life milk and its possible narrower segments in Sweden.

4.3.3 Long-life dairy cream, kondensmilch and long-life coffee cream

⁹⁸ Replies to emails of the Commission's request for further information regarding to spare capacity on the dairy products to Competitors in Germany, dated 13 September 2012.

4.3.3.1 Germany

144. The Parties achieved combined sales of dairy cream, kondensmilch and coffee cream of EUR [...] million in Germany in 2011 (Arla: EUR [...] million, MUH: EUR [...] million). The Parties' market shares are shown in the table below:

Germany, 2011	Retail			OOH	Total
	Branded	Private Label	All retail		
	Share (%)	Share (%)	Share (%)	Share (%)	Share (%)
Supply of dairy cream, kondensmilch, coffee cream					
Arla	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]
Milch-Union	[0-5]	[20-30]	[20-30]	[0-5]	[20-30]
Combined	[5-10]	[30-40]	[20-30]	[0-5]	[20-30]
Supply of long-life cream					
Arla	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]
Milch-Union	[10-20]	[20-30]	[20-30]	[0-5]	[10-20]
Combined	[10-20]	[20-30]	[20-30]	[0-5]	[10-20]
Supply of Kondensmilch					
Arla	[0-5]	[5-10]	[5-10]	[0-5]	[5-10]
Milch-Union	[0-5]	[30-40]	[30-40]	[0-5]	[20-30]
Combined	[0-5]	[40-50]	[30-40]	[0-5]	[30-40]

145. Under a wider market definition including the supply of long-life dairy cream, coffee cream and kondensmilch, as the Notifying Party proposes, the combined market share would be [20-30] % (Arla: [0-5]% and MUH: [20-30]%) in Germany. On the hypothetical market for the supply of long-life dairy cream, coffee cream and kondensmilch at the retail level, the combined market shares will reach [20-30]% and for the private label [30-40]%.⁹⁹
146. On the market for long-life cream in Germany, the Parties' combined market shares would be [10-20]% (Arla: [0-5]% and MUH: [10-20]%). At the retail level, the combined market shares between the Parties would reach [20-30]%.¹⁰⁰ On a hypothetical product market combining fresh and long life cream, the only segment where the Parties' combined market shares are above [10-20]% is for private label at the retail level with [10-20]%.
147. On the market for kondensmilch in Germany, the Parties' combined market shares would be [30-40]% (Arla: [5-10]% and MUH: [20-30]%). On hypothetical markets for the retail level and for private label at the retail level, the combined market shares

⁹⁹ As regards the retail level for branded products and the OOH channel, the Parties' combined market shares are below 15% in Germany.

¹⁰⁰ On the retail level for private label, the Parties do not overlap since Arla is not active on this segment. As regards the retail level for branded products and the OOH channel, the Parties' combined market shares are below 15% in Germany.

would reach [30-40]% and [40-50], respectively.¹⁰¹ The Parties will face significant constraints from competitors such as Hochwald ([50-60]%), Friesland Campina ([5-10]%) and a small number of competitors who represent [50-60]% of the market.

148. On the market for coffee cream in Germany, there are not overlaps between the Parties since Arla's activity is *de minimis* without any market shares on the market.
149. The vast majority of the respondents to the market investigation did not raise concerns for any of these markets in Germany. A limited number of customers, however, expressed that the proposed acquisition might lead to fewer alternatives and less competition which might translate into higher prices. However, these customers indicated at least two other important competitors who supply them on these markets and they confirmed that they switch suppliers depending on the available offers.¹⁰²
150. In addition, the market investigation showed that there are several credible suppliers on these markets such as: DMK, Hochwald, Omira and Frischli who could constrain the merged entity. Indeed, further investigation revealed that some competitors have spare capacity of their plants to increase the production of these products.¹⁰³
151. On the other hand, several replies to the market investigation indicated that the geographic scope of these markets could be wider than national since German competitors sell these products all around Europe and even outside Europe.¹⁰⁴ Moreover, the vast majority of customers would consider sourcing these products from outside Germany if the price were to increase permanently.¹⁰⁵ On such wider geographical market, the merger entity would reduce their combined market shares.
152. In light of the above, it can be concluded that the transaction does not raise serious doubts in as to its compatibility with the internal market in relation to the markets for long-life cream, *kondensmilch* and long-life coffee cream and their possible narrower segments in Germany.

4.3.3.2 Denmark

¹⁰¹ As regards the branded products and the OOH channel, the Parties' combined market shares would be below 15%.

¹⁰² Replies to questions 23 and 29 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No139/2004 addressed to Customers in the Dairy Sector- Germany (Q.7), dated 27 August 2012.

¹⁰³ Replies to emails of the Commission's request for further information regarding to spare capacity on the dairy products to Competitors in Germany, dated 13 September 2012.

¹⁰⁴ Replies to question 18 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No139/2004 addressed to Competitors in the Dairy Sector- Germany (Q.2), dated 27 August 2012.

¹⁰⁵ Replies to question 21 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No139/2004 addressed to Customers in the Dairy Sector- Germany (Q.7), dated 27 August 2012.

153. The Parties achieved combined sales of dairy cream, kondensmilch and coffee cream of EUR [...] million in Denmark in 2011 (Arla: EUR [...] million, MUH: EUR [...] million).
154. In Denmark, *kondensmilch* is not consumed and, therefore, not sold to retailers or out-of-home customers. In addition, the consumption of dairy cream, and coffee cream is limited (less than 0.4% of overall EU consumption) and the significance of long-life cream and coffee cream is low (5.5 kilotons) compared to fresh dairy cream (45 kilotons). The Notifying Party also emphasizes that 27% of long-life cream consumed in Denmark is being imported¹⁰⁶.
155. The transaction gives rise to potentially affected markets in relation to long-life cream and long-life coffee cream. The Parties only overlap in the private label segment in the retail channel (MUH is not active in the OOH segment; neither Arla nor MUH sells branded products). MUH's only customers in Denmark are Uhrenholt A/S (for dairy cream) and Lidl (for coffee cream), which import the products manufactured by MUH at its German facility.
156. The Parties currently account for [30-40]% of all long-life cream sold in Denmark (Arla [20-30]%, MUH [0-5]%) and [30-40]% of the long-life coffee cream sold through the retail channel (Arla [20-30]%, MUH [10-20]%). Their share is higher in the private label retail segment ([70-80]% for long-life cream; [70-80]% for long-life coffee cream):

Denmark	Retail			OOH	Total
	Branded	Private Label	All retail		
	Share (%)	Share (%)	Share (%)	Share (%)	Share (%)
Supply of dairy cream, kondensmilch, coffee cream					
Arla	[0-5]	[60-70]	[20-30]	[20-30]	[20-30]
Milch-Union	[0-5]	[5-10]	[0-5]	[0-5]	[0-5]
Combined	[0-5]	[70-80]	[30-40]	[20-30]	[30-40]
Supply of long-life cream					
Arla	[0-5]	[70-80]	[20-30]	[20-30]	[20-30]
Milch-Union	[0-5]	[5-10]	[0-5]	[0-5]	[0-5]
Combined	[0-5]	[70-80]	[30-40]	[20-30]	[30-40]
Supply of long-life coffee cream					
Arla	[0-5]	[50-60]	[20-30]	[0-5]	[...] ¹⁰⁷
Milch-Union	[0-5]	[20-30]	[10-20]	[0-5]	[...]
Combined	[0-5]	[70-80]	[30-40]	[0-5]	NA

¹⁰⁶ Form CO, p. 90.

¹⁰⁷ The Parties are not able to provide market share in an overall market comprise both the retail and the OOH channel since they do not have information on the volume of sales in the OOH channel. However, since the Parties are not present in the OOH channel, their market shares at the overall level would in any event be smaller than their market shares in the retail segment.

157. One respondent to the market investigation raised concerns that there may not be other suppliers that could ensure economic prices for these products in Denmark given transport and logistics costs. However, this was not confirmed by other respondents to the market investigation, which identified credible alternatives to the Parties for the supply in Denmark of long-life cream (Unilever, Zott, DMK, Naturli and Hochwald) and long-life coffee cream (Turm Sahne, Zott, DMK, FrieslandCampina). Several of these alternatives have production facilities closer to Denmark than MUH facility in Pronsfeld. In particular, Coop Trading indicated that DMK is seeking to expand in Scandinavia, notably in Denmark¹⁰⁸. In addition, as regards the private labels products supplied by MUH, it is easier to switch (for customers) and enter (for potential suppliers) than for branded products since there is no customer loyalty such as that which is associated with a brand.
158. In light of the above, it can be concluded that the transaction does not raise serious doubts in as to its compatibility with the internal market in relation to the markets for long-life cream, *kondensmilch* and long-life coffee cream and their possible narrower segments in Denmark.

4.3.3.3 Greece

159. The Parties only supply long life dairy cream in the Greek market. Their combined sales amounted to EUR [...] million in 2011 (Arla: EUR [...] million, MUH: EUR [...] million). In a market segment, which includes both fresh and long life dairy cream, the market share at (i) the "retail-private label" will be of slightly below [50-60]%, with an increment brought by MUH of [20-30]% and (ii) at the "overall retail" of slightly above [20-30]%, with an increment brought by MUH of slightly below [10-20]%.
160. In a market segment including only long life cream the market share at the "retail-private label" will be of [50-60]%, with an increment brought by MUH of slightly below [20-30]% and (ii) at the "overall retail" of slightly above [20-30]%, with an increment brought by MUH of slightly below [10-20]%.

	Retail			OOH	Total
	Branded	Private Label	All retail		
	Share (%)	Share (%)	Share (%)	Share (%)	Share (%)
Greece, 2011					
Supply of long-life cream					
Arla	[0-5]	[30-40]	[10-20]	[5-10]	[5-10]
Milch-Union	[0-5]	[20-30]	[10-20]	[0-5]	[0-5]
Combined	[0-5]	[50-40]	[20-30]	[5-10]	[10-20]

161. The market investigation did not reveal any particular transaction related concerns. In addition, 86% of long-life cream, including the parties', is imported. Therefore, it can be concluded that the transaction does not raise serious doubts in as to its compatibility with the internal market in relation to the market for long-life\ cream and its possible narrower segments in Greece.

¹⁰⁸ Non-confidential minutes of conference call with Coop Trading, 13 September 2012.

4.3.3.4 EU-level

162. The Parties achieved combined sales of dairy cream, kondensmilch and coffee cream of EUR [...] million in the EU in 2011 (Arla: EUR [...] million, MUH: EUR [...] million).
163. Concerning the three products taken together, in a wider market segment the market share at the "retail-private label" will be of [20-30]%, with an increment brought by Arla of slightly below [0-5]%, while in a narrower market (including only long life dairy cream) the market share would be slightly below [20-30]% with an increment of slightly below [0-5]%.
164. In a market segment including only long life cream the market share at the "retail-private label" will be of slightly below [10-20]%, with an increment brought by Arla of slightly below [0-5]%.
165. For *kondensmilch*, the market share at the "retail-private label" will be of [20-30]%, with an increment brought by Arla of slightly above [0-5]%.
166. For long life coffee cream, the market share at the "retail-private label" will be of slightly below [10-20]%, with an increment brought by Arla of below [0-5]%.

EU, 2011	Retail			OOH	Total
	Branded	Private Label	All retail		
	Share (%)	Share (%)	Share (%)	Share (%)	Share (%)
Supply of dairy cream, kondensmilch, coffee cream					
Arla	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]
Milch-Union	[0-5]	[10-20]	[10-20]	[0-5]	[5-10]
Combined	[0-5]	[20-30]	[10-20]	[0-5]	[10-20]
Supply of long-life cream					
Arla	[5-10]	[0-5]	[0-5]	[0-5]	[0-5]
Milch-Union	[0-5]	[10-20]	[10-20]	[0-5]	[5-10]
Combined	[5-10]	[10-20]	[10-20]	[0-5]	[10-20]
Supply of long-life coffee cream					
Arla	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]
Milch-Union	[0-5]	[10-20]	[10-20]	[0-5]	[10-20]
Combined	[0-5]	[10-20]	[10-20]	[0-5]	[10-20]
Supply of Kondensmilch					
Arla	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]
Milch-Union	[0-5]	[10-20]	[10-20]	[0-5]	[5-10]
Combined	[0-5]	[20-30]	[10-20]	[0-5]	[10-20]

167. The market investigation did not reveal any particular completion related concerns. Therefore, also considering the small increment that will derive from the merger, it can be concluded that the transaction does not raise serious doubts in as to its compatibility with the internal market in relation to the markets for long-life cream, *kondensmilch* and long-life coffee cream and their possible narrower segments at EU level.

4.3.4 Long-life flavoured dairy drinks

168. As far as long-life dairy drinks are concerned, the main overlaps between the Parties occur at a national level in Germany, Denmark and Sweden with the highest market share being for the overall supply of long-life chocolate flavoured dairy drinks in Denmark at [90%-100%] (Arla [90%-100%], MUH [0%-5%]).

4.3.4.1 Germany

169. Both Arla and MUH supply long-life chocolate flavoured dairy drink, long-life fruit flavoured dairy drink and long-life coffee flavoured dairy drink.¹⁰⁹ The Parties achieved combined sales of these products of EUR [...] million in Germany in 2011 (Arla: EUR [...] million, MUH: EUR [...] million).

170. The Parties' market shares in these markets in Germany are show in the table below:

Germany, 2011	Retail			OOH	Total
	Branded	Private Label	All retail		
	Share (%)	Share (%)	Share (%)	Share (%)	Share (%)
Supply of long-life chocolate flavoured dairy drinks					
Arla	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]
Milch-Union	[0-5]	[70-80]	[20-30]	[10-20]	[20-30]
Combined	[5-10]	[70-80]	[20-30]	[10-20]	[20-30]
Supply of long-life fruit flavoured dairy drinks					
Arla	[20-30]	[0-5]	[10-20]	[...]	[10-20]
Milch-Union	[0-5]	[40-50]	[10-20]	[...]	[10-20]
Combined	[20-30]	[40-50]	[30-40]	NA	[30-40]
Supply of long-life coffee-flavoured dairy drinks					
Arla	[0-5]	[0-5]	[0-5]	[...]	[...]
Milch-Union	[60-70]	[5-10]	[30-40]	[...]	[...]
Combined	[60-70]	[5-10]	[30-40]	NA	No provided

171. On the market for long-life chocolate flavoured dairy drinks in Germany, the Parties' combined market shares would be [20-30]% (Arla: [0-5]% and MUH: [20-30]%). At the retail level, the merger entity would reach [20-30]% (Arla: [0-5]% and MUH: [20-30]%).¹¹⁰

172. On the market for long-life fruit flavoured dairy drinks in Germany, the Parties' combined market shares at the retail level would be [30-40]% (Arla: [10-20]% and MUH: [10-20]%).¹¹¹

¹⁰⁹ The overlaps between the Parties are only at the retail level since Arla is not active in the OOH channel.

¹¹⁰ As to a possible further segmentation between branded and private label at the retail level, it should be noted that the Parties do not overlaps in the private label and the combined market shares on the branded products would be below 15%.

¹¹¹ On the overall market for long-life fruit flavoured dairy drinks, the Parties would reach the same market shares at the retail level since none of the Parties are active in OOH. In addition, there would be not

173. On the market for long-life coffee flavoured dairy drinks in Germany, the Parties' combined market shares at the retail level would be [30-40]% (Arla: [0-5]% and MUH: [30-40]%).¹¹²
174. In the market investigations, no German customers expressed competition concerns in relation to these markets¹¹³. Indeed, respondents to the market investigation indicated that a sufficient number of alternative suppliers exist in these markets such as Hochwald, Immergut, Inex, Turm-Sahne.¹¹⁴
175. In light of the above, it can be concluded that the transaction does not raise serious doubts in as to its compatibility with the internal market in relation to the markets for long-life flavoured dairy drinks and their possible narrower segments in Germany.

4.3.4.2 Denmark

176. In Denmark, the transaction gives rise to an affected market in relation to long-life chocolate flavoured dairy drinks. The Parties achieved combined sales this product of EUR [...] million in Denmark in 2011 (Arla: EUR [...] million, MUH: EUR [...] million).
177. The Parties only overlap in the retail channel (MUH is not active in the OOH segment). MUH's only customer in Denmark is Coop Trading A/S, which imports long-life milk produced at MUH's German facility and then sells it under private label.
178. The Parties currently account for [90-100]% of all long-life chocolate flavoured dairy drinks sold in Denmark (Arla [90-100]%, MUH [0-5]%). Their share is also high in the retail channel ([90-100]%).

	Retail			OOH	Total
	Branded	Private Label	All retail		
Denmark, 2011	Share (%)	Share (%)	Share (%)	Share (%)	Share (%)
Supply of long-life chocolate flavoured dairy drinks					

overlaps between the Parties if a further segmentation between branded and private label would be considered.

- ¹¹² The Notifying Party indicated that the data for the overall market for long-life coffee flavoured dairy drinks are not available. However, it should be notice that Arla is not active in the OOH and MUH's activities in the OOH is *de minimis* so that the Parties' combined market shares on the overall market for long-life coffee flavoured dairy drinks would be almost identical as the retail level.
- ¹¹³ Only one customer raises competition concerns, however it was a general concerns about the dairy products and not specific for long-life dairy drinks.
- ¹¹⁴ Replies to question 24 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No139/2004 addressed to Customers in the Dairy Sector- Germany (Q.7), dated 27 August 2012.

Arla	[90-100]	[60-70]	[80-90]	[90-100]	[90-100]
Milch-Union	[0-5]	[5-10]	[0-5]	[0-5]	[0-5]
Combined	[90-100]	[70-80]	[90-100]	[90-100]	[90-100]

179. Some respondents to the market investigation raised concerns that the number of available supply options will be reduced as a result of the merger. However, the market investigation indicated that a number of credible alternatives to the Parties will remain in Denmark for the supply of long-life chocolate flavoured dairy drinks (Eurofit, Gut Ross, Immergut, Frischli, Falengreen, and Hochwald). One company also indicated that it was considering entering this segment in Denmark. Several of these alternatives have production facilities closer to Denmark than MUH facility in Pronsfeld. In addition, as regards the private labels products supplied by MUH, it is easier to switch (for customers) and enter (for potential suppliers) than for branded products since there is no customer loyalty such as that which is associated with a brand.
180. Moreover, the only customer of MUH in Denmark, Coop Trading, indicated that in the last auction it organized, MUH, Arla, DMK, Falengreen, and Rīgas Piensaimnieks were shortlisted on the basis of price and quality. In particular, DMK's offer was close to MUH's and Arla's¹¹⁵. Coop Trading also indicated that DMK is seeking to expand in Scandinavia, notably in Denmark¹¹⁶.
181. In light of the above, it can be concluded that the transaction does not raise serious doubts in as to its compatibility with the internal market in relation to the market for long-life chocolate flavoured dairy drink and its possible narrower segments in Denmark.

4.3.4.3 Sweden

182. In Sweden, the transaction also gives rise to an affected market in relation to long-life chocolate flavoured dairy drinks. The Parties achieved combined sales this product of EUR [...] million in Sweden in 2011 (Arla: EUR [...] million, MUH: EUR [...] million).
183. The Parties only overlap in the overall retail channel (MUH is not active in the OOH segment; Arla does not sell private label; MUH does not sell branded products).
184. The Parties currently account for [70-80]% of all long-life chocolate flavoured dairy drinks sold in Denmark (Arla [70-80]%, MUH [0-5]%) and [70-80]% in the retail channel. However, the overlap is de minimis since MUH sales in Sweden amount to only [...] tons in 2011 (i.e. less than [0-5]% of retail sales of long-life chocolate flavoured dairy drinks in Sweden):

Sweden, 2011	Retail		OOH	Total
	Branded	Private Label	All retail	

¹¹⁵ Non-confidential minutes of conference call with Coop Trading, 13 September 2012.

¹¹⁶ Non-confidential minutes of conference call with Coop Trading, 13 September 2012.

	Share (%)	Share (%)	Share (%)	Share (%)	Share (%)
Supply of long-life chocolate flavoured dairy drinks					
Arla	[70-80]	[0-5]	[70-80]	[90-100]	[70-80]
Milch-Union	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]
Combined	[70-80]	[0-5]	[70-80]	[90-100]	[70-80]

185. In addition, respondents to the market investigation raised concerns indicated that sufficient credible alternatives to the Parties will remain in Sweden for the supply of long-life chocolate flavoured dairy drinks (Gefleortens Mejeri, Norrmejerier and Skanemejerier). In addition, as regards the private labels products supplied by MUH, it is easier to switch (for customers) and enter (for potential suppliers) than for branded products since there is no customer loyalty such as that which is associated with a brand.
186. In light of the above, it can be concluded that the transaction does not raise serious doubts in as to its compatibility with the internal market in relation to the market for long-life chocolate flavoured dairy drink and its possible narrower segments in Sweden.

4.3.4.4 EU-level

187. In the segment of long-life chocolate flavoured dairy drinks, the Parties achieved combined sales of EUR [...] million at EU level in 2011 (Arla: EUR [...] million, MUH: EUR [...] million). Their combined market share at the "retail-private label" will be of slightly below [20-30]%, with an increment brought by Arla of around [5-10]%

	Retail			OOH	Total
	Branded	Private Label	All retail		
	Share (%)	Share (%)	Share (%)	Share (%)	Share (%)
EU, 2011					
Supply of long-life chocolate flavoured dairy drinks					
Arla	[5-10]	[5-10]	[5-10]	[5-10]	[5-10]
Milch-Union	[0-5]	[20-30]	[5-10]	[0-5]	[5-10]
Combined	[10-20]	[20-30]	[10-20]	[5-10]	[10-20]

188. The market investigation did not reveal any particular completion related concerns. In addition, the Parties combined market shares remain relatively limited ([20-30]%). In light of the above, it can be concluded that the transaction does not raise serious doubts as to its compatibility with the internal market in relation to the market for long-life chocolate flavoured dairy drink and its possible narrower segments at EU level.

(5) CONCLUSION

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

*For the Commission
(signed)
Joaquín ALMUNIA
Vice-President*