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***Case No COMP/M.6753 - ORKLA/ RIEBER & SON***

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 04/03/2013

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## EUROPEAN COMMISSION

Brussels, 4.3.2012  
C(2013) 1328 final

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

**Subject: Case No COMP/M.6753 – ORKLA/ RIEBER & SØN  
Commission decision pursuant to Article 6(1)(b) of Council Regulation  
No 139/2004<sup>1</sup>**

1. On 28 January 2013, the European Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 ("the Merger Regulation") by which the undertaking Orkla ASA ("Orkla", Norway) acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of the whole of the undertaking Rieber & Søn ("Rieber", Norway) by way of purchase of shares.<sup>2</sup> Orkla is hereinafter referred to as the "Notifying Party", whereas Orkla and Rieber together are referred to as the "Parties".

#### **1. THE PARTIES**

2. Orkla is a group of companies headquartered in Oslo, Norway. It is listed on the Oslo Stock Exchange. Orkla is divided into three business areas: (i) Sapa, which is active in

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

<sup>2</sup> Publication in the Official Journal of the European Union No C 31, 2.2.2013, p. 14.

the manufacture and sale of aluminium profiles, heat transfer and building systems<sup>3</sup>, (ii) Investments, which manages the group's financial investments, and (iii) Orkla Brands, which is active in the processing and sale of food, drink and snack products to retail shops and food service<sup>4</sup> customers, as well as in the production and sale of detergents and personal care products, cleaning solutions, dietary supplements, health products and basic textiles.

3. Rieber is a group of companies operating in the food sector, headquartered in Bergen, Norway. It is also listed on the Oslo Stock Exchange. Rieber is a supplier of branded food products, primarily to the grocery and out of home channels.

## **2. THE OPERATION**

4. On 19 August 2012, Orkla and several investment companies owned by the Rieber family entered into an agreement according to which Orkla intends to acquire 90.11% of the shares in Rieber. This acquisition will trigger a mandatory offer for the remaining shares on the Oslo Stock Exchange.
5. The proposed transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

## **3. EU DIMENSION AND PARTIAL REFERRAL TO NORWAY**

6. The notified operation has an EU dimension within the meaning of Article 1(3) of the Merger Regulation.<sup>5</sup>
7. By reasoned submission of 4 January 2013, Orkla requested in accordance with Article 6 of Protocol 24 to the EEA Agreement that the proposed transaction be referred to the competent Norwegian authorities as regards the Norwegian part of the transaction. Following the agreement of Norway to the referral request on 22 January 2013, the Commission adopted a decision on 25 January 2013 referring the

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<sup>3</sup> Orkla has agreed with Norsk Hydro ASA to place Sapa in a joint venture. Sapa will be a 50/50 joint venture owned by Orkla and Norsk Hydro ASA. Completion of the transaction is expected to take place in the first half of 2013, following approvals from relevant competition authorities (Source: Form CO).

<sup>4</sup> The food service sector comprises the supply to out-of-home eating (e.g. hotels, restaurants, fast-foods and pizzeria outlets, sandwich shops) and institutional catering (factory and office canteens, hospitals, schools etc.)

<sup>5</sup> The proposed transaction does not meet the turnover thresholds of Article 1(2) of the Merger Regulation as only one of the undertakings concerned had a Community-wide turnover of more than EUR 250 million. The proposed transaction fulfils the alternative turnover thresholds of Article 1(3) of the Merger Regulation as the combined aggregate worldwide turnover of all the undertakings concerned is more than EUR 2 500 million [Orkla: EUR [...] million, Rieber: EUR [...] million], in each of at least three Member States the combined aggregate turnover of all the undertakings concerned is more than EUR 100 million and in each of at least three of those Member States the aggregate turnover of at least two of the undertakings concerned is more than EUR 25 million [In Denmark – Orkla: EUR [...] million, Rieber: EUR [...] million; in Poland – Orkla: EUR [...] million, Rieber: EUR [...] million; in Sweden – Orkla: EUR [...] million, Rieber: EUR [...] million]. In addition, the aggregate Community-wide turnover of at least two of the undertakings concerned is more than EUR 100 million [Orkla: EUR [...] million, Rieber: EUR [...] million] and none of the undertakings concerned achieves more than two-thirds of its aggregate Community-wide turnover within one and the same Member State.

assessment of the effects of the proposed transaction on the relevant markets in Norway to the Norwegian Competition Authority.

8. Therefore, only the remainder of the transaction, which primarily concerns Sweden and Denmark<sup>6</sup>, will be assessed by the Commission. This decision is without prejudice to the outcome of the proceedings conducted by the Norwegian Competition Authority in charge of the assessment of the effects of the proposed transaction on the relevant markets in Norway.

#### **4. COMPETITIVE ASSESSMENT**

##### ***4.1. Horizontal overlaps***

9. The Parties are active in the production and supply of a different range of products in the retail and the food service segment in Denmark and Sweden. However, only the following products are affected by the proposed transaction: (i) ketchup, mustard (retail and food service), (ii) frozen cakes and soup (retail), and (iii) wet hot sauces and other cold sauces (food service).

##### **4.1.1. Relevant product markets**

10. According to the Commission's established decisional practice, with which the Notifying Party concurs, a distinction must be made between the production and sale of food products dedicated to (i) the retail sector and (ii) the catering sector (food service sector).<sup>7</sup>

##### **4.1.1.1. Retail sector**

11. The Notifying Party submits that the definition of the relevant product markets in the retail sector is principally made by reference to demand-side characteristics, i.e. the products' characteristics, prices and uses in the eyes of the consumers. The Notifying Party considers that chilled food should not be included in the same market as frozen food as there are substantial differences in prices and preparation methods between both categories of products.
12. Furthermore, the Notifying Party submits, in line with Commission precedents, that branded products and private labels belong to the same product markets.<sup>8</sup> This was confirmed during the market investigation.<sup>9</sup>

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<sup>6</sup> A vertical link in Finland is also assessed in the present decision.

<sup>7</sup> Cases COMP/M.1990 - *Unilever/Bestfoods*, COMP/M.2302 - *Heinz/CSM*, COMP/M.3658 - *Orkla/Chips*.

<sup>8</sup> Case COMP/M.6321 - *Buitenfood/Ad Van Geloven Holding/JV*.

<sup>9</sup> See replies to questions 5 and 8 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to competitors – Retail Sweden (Q8), dated 30 January 2013. See replies to questions 9 and 12 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to customers – Retail Sweden (Q3), dated 30 January 2013. See replies to questions 9, 12 and 15 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to customers – Retail Denmark (Q1), dated 30 January 2013. See replies to questions 5, 8 and 11 of the

4.1.1.1.1. *Ketchup and mustard*

13. The Notifying Party concurs with the Commission's decisional practice according to which ketchup and mustard constitute two product markets that are distinct from other types of cold sauces.<sup>10</sup>
14. In any event, for the purposes of the assessment of the notified operation, the exact delineation of the relevant product markets for ketchup and mustard can be left open since the notified operation does not raise serious doubts as to its compatibility with the internal market even under the narrowest approach.

4.1.1.1.2. *Frozen cakes*

15. The Notifying Party submits that, on the basis of Commission precedents, the market for cakes should be segmented between (i) cakes, mini cakes and other pastries and (ii) morning goods, which include bagels, croissants, scones and similar products that are normally eaten for breakfast.<sup>11</sup> The Notifying Party adds that a further distinction should be made between frozen and non-frozen desserts. As a consequence, the Notifying Party considers that there is a distinct market for frozen pastries that encompasses cakes, mini cakes and other pastries.
16. The Notifying Party also suggests that it may be relevant to segment this market further in order to distinguish between frozen cakes and frozen fruit and berry pies. The distinction between finished and semi-finished products is also considered to be relevant.
17. The market investigation was inconclusive as regards the product market definition for frozen cakes. Whereas half of the competitors and customers who responded to the Commission's requests for information consider that customers regard frozen cakes as a distinct product fulfilling a specific need, the other half considers that there are realistic alternatives to frozen cakes such as fresh cakes or ice cream that would be indicative of a broader product market definition than purely frozen cakes.<sup>12</sup> At the same time, however, the market investigation revealed that the various suppliers and retailers categorise frozen cakes separately in their internal business reporting.<sup>13</sup>

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Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to competitors – Retail Denmark (Q7), dated 30 January 2013.

<sup>10</sup> Cases COMP/M.1802 – *Unilever/Amora Maille*, COMP/M.1990 – *Unilever/Bestfoods*.

<sup>11</sup> Cases COMP/M.2817 – *Barilla/BPL/Kamps*, COMP/M.5286 – *Lion Capital/Foodvest*, COMP/M.6143 – *Princes/Premier Foods Cannes Grocery Operations*.

<sup>12</sup> See reply to question 4 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to competitors – Retail Sweden (Q8), dated 30 January 2013. See reply to question 8 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to customers – Retail Sweden (Q3), dated 30 January 2013.

<sup>13</sup> See reply to question 3 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to competitors – Retail Sweden (Q8), dated 30 January 2013. See reply to question 7 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to customers – Retail Sweden (Q3), dated 30 January 2013.

18. In any event, for the purposes of the assessment of the notified operation, the exact delineation of the relevant product market for frozen cakes can be left open since the notified operation does not raise serious doubts as to its compatibility with the internal market under any possible approach.

#### *4.1.1.1.3. Soups*

19. The Notifying Party submits that soups are a distinct product market and should be segmented, pursuant to the Commission's previous decisions, between ambient wet soups, regular dry soups and instant dry soups.<sup>14</sup> The Notifying Party considers that a further distinction can be made by reference to the size of the products (i.e. products that serve one or two persons or larger portions). It also suggests that a further segmentation based on the soup's ethnicity could be relevant (for example Asian soups).
20. The Commission, in its previous decisions,<sup>15</sup> considered ambient wet soups to include soups sold in cans, glass jars and aseptic packaging and which are intended for consumption as part of a traditional family meal. This category does not include chilled or frozen soups which are generally sold under different brands and require different logistics as they need refrigeration both in the distribution chain and in the home.
21. In reply to the Commission's requests for information, all the competitors and one out of two customers considered that there were alternatives to ambient wet soup such as chilled or frozen soup.<sup>16</sup> One competitor and one customer mentioned that ambient wet soup could also be seen as competing with other types of ready meals.<sup>17</sup>
22. In any event, for the purposes of the assessment of the notified operation, the exact delineation of the relevant product market for soups can be left open since the notified operation does not raise serious doubts as to its compatibility with the internal market under any possible approach.

#### **4.1.1.2. Food service sector**

##### *4.1.1.2.1. General*

23. As in the retail sector, the Notifying Party concurs with the Commission's approach in previous cases according to which relevant product markets are delineated by reference to

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<sup>14</sup> Case COMP/M.1990 - *Unilever/Bestfoods*.

<sup>15</sup> *Idem*.

<sup>16</sup> See reply to question 7 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to competitors – Retail Sweden (Q8), dated 30 January 2013. See reply to question 11 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to customers – Retail Sweden (Q3), dated 30 January 2013.

<sup>17</sup> See reply to question 7 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to competitors – Retail Sweden (Q8), dated 30 January 2013. See reply to question 11 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to customers – Retail Sweden (Q3), dated 30 January 2013.

demand-side characteristics. In addition, the Notifying Party submits that, as is the case for the retail sector, differences in conservation methods and storage temperature indicate different markets.

24. However, the Notifying Party disagrees with the approach according to which the food service markets could be defined by distinguishing different customer segments.
25. First, contrary to the Commission's previous practice,<sup>18</sup> the Notifying Party considers that there should be no distinction between a commercial segment (restaurants, snack-bars, hotels, fast-food chains, leisure sector etc.) and a social segment (public institutions factory and office canteens, hospitals, schools etc.).
26. Second, the Notifying Party disagrees with a possible distinction between front-of-house products and back-of-house products.<sup>19</sup> Front-of-house products are used, for example, in office buildings (e.g. ready-made drinks sold out of a coffee-machine) or canteens (such as salt, pepper and salad oils, which are typically offered on the tables of a canteen). Back-of-house products are typically used in the kitchen and not visible to the consumer. The Notifying Party considers that such a distinction could only be made within the cold sauce market between large containers, which are used back-of-house, and smaller containers which are used front-of-house.
27. Third, the Notifying Party indicates that, within the food service sector in the Nordic countries, a segmentation could be made between the two main customer groups, that is to say between "horeca" (hotels, restaurants, catering) and "KGS" (Kiosks and Gas Stations). However, as such a distinction is not supported by structural or demand-side differences, the Notifying Party submits that it would not be appropriate to use it to define relevant product markets.
28. From a demand side perspective, most of the respondents to the market investigation indicated that the commercial and social segment do not belong to different markets. The products are perceived as more or less identical, especially in terms of price and packaging.<sup>20</sup> From a supply side perspective, the market investigation was not conclusive as to whether a possible distinction between the commercial and the social segment would be relevant.<sup>21</sup>
29. As for the distinction between the front-of-house and back-of-house segments, the majority of respondents to the Commission's requests for information agree with the Commission's approach in earlier cases and submit that such a distinction is justified by packaging size and presentation of the product. In addition, brand value is more important in the front-of-house segment, whereas private labels dominate the back-of-

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<sup>18</sup> Cases COMP/M.1990 - *Unilever/Bestfoods*, COMP/M.4216 - *CVC/Bocchi/De Weide Blik*, COMP/M.5199 - *De Weide Blik/Atlanta*.

<sup>19</sup> Case COMP/M.1990 - *Unilever/Bestfoods*.

<sup>20</sup> See reply to question 4 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to customers - Food Service - Denmark (Q2), dated 30 January 2013.

<sup>21</sup> See reply to question 3 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to competitors - Food Service - Denmark (Q5), dated 30 January 2013.

house segment.<sup>22</sup> The market investigation also confirms the possible distinction between the horeca and KGS segment for Denmark and Sweden.<sup>23</sup>

30. In any event, the precise market definitions can be left open as the notified operation does not raise serious doubts as to its compatibility with the internal market under any possible approach.

4.1.1.2.2. *Ketchup, mustard and other cold sauces (dressing and rémoulade)*

31. As in the retail sector, the Notifying Party considers that, in line with previous Commission decisions<sup>24</sup>, ketchup and mustard belong to distinct product markets within the food service sector.
32. In two earlier decisions, the Commission found that cold sauces can be segmented into categories for salad dressing, mayonnaise, mustard, ketchup and other cold sauces whereby each represents a separate product market.<sup>25</sup> Dressing is a type of cold sauce mainly used as a topping for salads or other food to add taste and juiciness to the meal. Dressing can be based on for example oil, mayonnaise, cream, crème fraiche or yoghurt to which spices or herbs are added for a better taste. The Notifying Party submits that it could be appropriate to distinguish between dressings and other cold sauces.
33. From a supply side perspective, the market investigation was not conclusive as to whether other cold sauces are a category of their own or belong to a broader category. From a demand side perspective, the majority of respondents suggest that dressings are part of a broader category (e.g. garnishes or fast food accompaniments).<sup>26</sup> The market investigation in the present case has indicated, however, that one type of cold sauce, namely rémoulade, is particularly appreciated by Danish consumers and as such it could constitute a distinct product market with no realistic alternatives.<sup>27</sup>
34. However, the exact market definitions can be left open as the notified operation does not raise serious doubts as to its compatibility with the internal market under any possible approach.

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<sup>22</sup> See reply to questions 6 and 7 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to customers and competitors - Food Service - Denmark (Q2 and Q5), dated 30 January 2013.

<sup>23</sup> See reply to questions 4 and 5 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to customers and competitors - Food Service - Denmark (Q2 and Q5), dated 30 January 2013.

<sup>24</sup> Cases COMP/M.1990 - *Unilever/Bestfoods*, COMP/M.1802 - *Unilever/Amora-Maille*.

<sup>25</sup> Cases COMP/M.1990 - *Unilever/Bestfoods*, COMP/M.1802 - *Unilever/Amora-Maille*.

<sup>26</sup> See reply to question 15 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to customers - Food Service-Denmark (Q2), dated 30 January 2013.

<sup>27</sup> See reply to questions 16 and 15 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to customers and competitors - Food Service - Denmark (Q2 and Q5), dated 30 January 2013. See also minutes of the conference call with one wholesaler of 13 February 2013.



#### 4.1.1.2.3. *Wet hot sauces*

35. The Notifying Party agrees with the Commission's previous decisional practice,<sup>28</sup> according to which a distinction can be made between *dry hot sauces* (used as meal ingredients to add flavour to a prepared dish) and *wet hot sauces* (liquid and pasta sauces for cooking or for serving hot).
36. The majority of the respondents to the Commission's requests for information agree with the Commission's previous practice to distinguish between dry hot sauces and wet hot sauces.<sup>29</sup> From a demand side perspective, wet hot sauces are seen as part of a broader category (e.g. dressing or garnishes), while from a supply side perspective wet hot sauces are seen as a category on their own by the majority of the respondents to the market investigation.<sup>30</sup>
37. In any event, the precise market definitions can be left open as the notified operation does not raise serious doubts as to its compatibility with the internal market under any possible approach.

#### **4.1.2. Relevant geographic markets**

##### **4.1.2.1. Retail sector**

38. The Notifying Party considers that the markets for food products in the retail sector are national in scope, as there are significant differences in sales channels, retailers, logistics, brands, and eating habits between the various EEA countries. This is consistent with the Commission's findings in a number of previous decisions.<sup>31</sup>
39. The market investigation in this case did not provide any reasons to deviate from the Commission's previous practice.

##### **4.1.2.2. Food service sector**

40. The Notifying Party submits that, in line with previous Commission decisions,<sup>32</sup> the markets in the food service sector are national in scope.
41. The market investigation in this case did not reveal any reasons to deviate from the Commission's previous position on the scope of the geographic market.

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<sup>28</sup> Cases COMP/M.1802 - *Unilever/Amora-Maille*, COMP/M.1990 - *Unilever/Bestfoods*.

<sup>29</sup> See reply to questions 12 and 11 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to customers and competitors - Food Service - Denmark (Q2 and Q5), dated 30 January 2013.

<sup>30</sup> See reply to questions 11 and 10 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to customers and competitors - Food Service - Denmark (Q2 and Q5), dated 30 January 2013.

<sup>31</sup> Cases COMP/M.5975 - *Lion Capital/Picard Group*, COMP/M.3658 - *Orkla/Chips*.

<sup>32</sup> Case COMP/M.1990 - *Unilever/Bestfoods*.

### **4.1.3. Competitive assessment**

42. The Notifying Party has identified two affected markets in the Danish retail sector (ketchup and mustard) and three affected markets in the Swedish retail sector (ketchup, frozen cake, and soup). As regards the food service sector, the Notifying Party has identified four affected markets in Denmark (ketchup, mustard, wet hot sauces, and other cold sauces) and one affected market in Sweden (ketchup).

#### **4.1.3.1. Retail sector in Denmark**

##### *4.1.3.1.1. General considerations*

43. Orkla is mainly active in the retail sector in Denmark through its subsidiaries Beauvais, which sells ketchup, mustard and salad dressings under the *Beauvais* brand, and Kolding Salatfabrik, which sells salad spreads, dinner salads, crispy fried onions, hot and cold sauces, mayonnaise, rémoulade, stock jelly, and soup under the *Kolding* brand.
44. Rieber is mainly active through its Danish subsidiary Rieber & Søn Denmark which sells ketchup, mustard and fast food dressings under the *Bähncke* brand. Rieber also sells salad spreads, dinner salads, mayonnaise, rémoulade, and sauces under the *K-Salat* brand.
45. On 4 February 2013, the Notifying Party informed the Commission that Orkla had divested its subsidiary Kolding Salatfabrik on 1 February 2013. This removed the overlaps between the Parties' activities in salad spreads, dinner salads, crispy fried onions, mayonnaise, rémoulade and wet hot sauces in the retail sector. As a consequence, these products will not be discussed further in the present decision.
46. The Notifying Party submits that the retail sector in Denmark is very concentrated with three umbrella chains (COOP, Dansk Supermarked, and Supergros) accounting for [90-100]% of all retail sales. According to the Notifying Party, the retail chains exercise significant pressure on the suppliers during the annual negotiations and private labels are being increasingly marketed and promoted in the same way as branded products.
47. The buying power of the retails chains has been confirmed during the market investigation as several of them explained that they could delist products,<sup>33</sup> even if they were strong brands,<sup>34</sup> and that they are active through numerous private labels.<sup>35</sup>

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<sup>33</sup> See for example replies to questions 24 and 25 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to customers – Retail Denmark (Q1), dated 30 January 2013. See for example reply to question 14 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to competitors – Retail Denmark (Q7), dated 30 January 2013.

<sup>34</sup> See minutes of the conference call with one retailer of 13 February 2013.

<sup>35</sup> See for example replies to questions 32 and 40 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to customers – Retail Denmark (Q1), dated 30 January 2013.

48. The Notifying Party has identified two affected markets in the Danish retail sector: (i) ketchup and (ii) mustard.<sup>36</sup>

4.1.3.1.2. *Ketchup*

49. In the market for ketchup in Denmark, the Parties' combined market share is [40-50]%<sup>37</sup> with Orkla's market share being [30-40]% and Rieber's being [5-10]%. Other market players include Heinz ([30-40]%), Graasten ([0-5]%), and private labels ([10-20]%).<sup>38</sup>
50. The Notifying Party submits that the competition between ketchups on the branded segment primarily takes place between Heinz and Orkla (*Beauvais*), which have strong customer loyalty. According to the Notifying Party, Rieber's strongest brand (*Bähncke*)<sup>39</sup> is not Orkla's closest competitor as it is more fast food oriented and is always promoted with other products from the *Bähncke* range.
51. The customers who replied to the Commission's requests for information confirmed that Heinz and Orkla (*Beauvais*) are the closest competitors in the Danish retail sector.<sup>40</sup> The responses of the Parties' competitors were inconclusive but one confirmed that Orkla (*Beauvais*) and Heinz were the closest competitors and another explained that Orkla is strong in retail whereas Rieber is mostly active in fast food.<sup>41</sup>
52. In addition, some customers mentioned that several new branded and private label ketchups have entered the market in the past five years.<sup>42</sup>
53. None of the customers approached by the Commission have raised concerns regarding the impact of the proposed transaction on the Danish market for ketchup.<sup>43</sup> Some

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<sup>36</sup> Orkla and Rieber each sell dressings but Orkla is active in salad dressings (which constitute a separate product market according to the Commission's previous decisions in Cases COMP/M.1802 - *Unilever/Amora-Maille*, and COMP/M.1990 - *Unilever/Bestfoods*) whereas Rieber sells dressings used on sandwiches, potatoes or fish products. As there are no overlaps, these products are therefore not discussed further in the present decision.

<sup>37</sup> The latest available market shares as provided by the Parties are used in the present decision. This implies for some markets full year 2012, for others 2012 year-to-date and for some the last twelve months.

<sup>38</sup> Rieber produces private labels which represent [10-20]% of the total sales of private label ketchup in Denmark. This corresponds to [0-5]% of the overall market which is not included in Rieber's market share.

<sup>39</sup> *Bähncke* represents a [5-10]% market share.

<sup>40</sup> See reply to question 28 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to customers – Retail Denmark (Q1), dated 30 January 2013. See reply to question 22 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to competitors – Retail Denmark (Q7), dated 30 January 2013.

<sup>41</sup> See reply to question 22 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to competitors – Retail Denmark (Q7), dated 30 January 2013.

<sup>42</sup> See reply to question 33 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to competitors – Retail Denmark (Q7), dated 30 January 2013.

competitors have expressed concerns which were mostly related to the merged entity's increased product range (portfolio effects) which are discussed below at section 4.1.3.1.4.<sup>44</sup>

54. In light in particular of the presence of other strong competitors both in the branded and private label segments, the buyer power of the retail chains in Denmark and in the absence of substantiated concerns voiced during the market investigation, it is concluded that the proposed transaction does not raise serious doubts as to its compatibility with the internal market with respect to the retail market for ketchup in Denmark.

#### 4.1.3.1.3. *Mustard*

55. The Parties' combined market share is [40-50]%, with Orkla accounting for a negligible increase of [0-5]%.
56. The Notifying Party submits that the Parties are under the constraint of Unilever ([10-20]%) and private labels ([20-30]%).<sup>45</sup> In addition, the Notifying Party stresses that, while Rieber sells a variety of mustard in plastic bottles and glass jars, Orkla only sells two mustard varieties in plastic bottles. The Notifying Party also explains that Orkla's market share is shrinking and that is it only permanently listed in one retail chain (Dansk Supermarked).
57. A majority of customers consider that Orkla and Rieber are indeed not each other's closest competitors in mustard.<sup>46</sup>
58. In addition, market participants have mentioned that there have been new entries on the market for mustard, both of private label and branded products.<sup>47</sup>
59. None of the customers approached by the Commission have raised concerns regarding the impact of the proposed transaction on the Danish market for mustard.<sup>48</sup> Some

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<sup>43</sup> See reply to question 69.1 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to customers – Retail Denmark (Q1), dated 30 January 2013.

<sup>44</sup> See reply to question 54.1 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to competitors – Retail Denmark (Q7), dated 30 January 2013.

<sup>45</sup> Rieber produces private labels which represent [5-10]% of the total sales of private labels in Denmark.

<sup>46</sup> See reply to question 36 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to customers – Retail Denmark (Q1), dated 30 January 2013. See reply to question 28 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to competitors – Retail Denmark (Q7), dated 30 January 2013. The replies of competitors were inconclusive.

<sup>47</sup> See reply to question 41 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to customers – Retail Denmark (Q1), dated 30 January 2013. See reply to question 32 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to competitors – Retail Denmark (Q7), dated 30 January 2013. The replies of competitors were inconclusive.

competitors have expressed concerns which are mainly related to portfolio effects which are discussed in the following section.<sup>49</sup>

60. In light in particular of the limited increment in market share, the presence of other strong competitors both in the branded and private label segments, the buyer power of the retail chains in Denmark and in the absence of substantiated concerns voiced during the market investigation, it is concluded that the proposed transaction does not raise serious doubts as to its compatibility with the internal market with respect to the retail market for mustard in Denmark.

#### 4.1.3.1.4. Portfolio effects

61. One competitor of the Parties noted that they would not only have high market shares in the markets for ketchup and mustard as a result of the proposed transaction but they would also own must-have brands such as *Beauvais* (for ketchup) and *Bähncke* (for mustard). This competitor suggested that this strong position on both products might lead to a dominance of the merged entity in all condiments, primarily in the retail sector.<sup>50</sup> The competitor expressed the concern that this would enable the merged entity to force retailers to accept price increases and to exclude smaller competitors from the markets for condiments.<sup>51</sup> By combining two of the must-have brands in ketchup and mustard, the combined entity could thus expand its product portfolio increasing its ability and incentive to leverage a strong market position from one market to another by means of tying or bundling or other exclusionary practices.
62. Contrary to what the competitor explained, the market investigation demonstrated that the merged entity would not have enough market power to foreclose its rivals, for instance through bundling ketchup and mustard to other condiments, and/or forcing the retailers to accept a price increase.
63. First, responses to the market investigation show that not all the market players consider *Beauvais* and *Bähncke* as must-have brands for ketchup and mayonnaise.<sup>52</sup> A

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<sup>48</sup> See reply to question 69.1.2 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to competitors – Retail Denmark (Q7), dated 30 January 2013.

<sup>49</sup> See reply to question 54.1 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to competitors – Retail Denmark (Q7), dated 30 January 2013.

<sup>50</sup> See minutes of the conference call with a competitor of 6 and 7 February 2013. The competitor considers that the proposed transaction may also have an impact on the food service sector but considers that it will not be important as the players in the food service sector have more freedom to switch from one product to another and can therefore fight a price increase. This is confirmed by another competitor who explained that brands are less important in the food service sector, see minutes of the conference call with [...] of 14 February 2013. Since there are no substantiated concerns raised by competitors or customers in the food service sector, this allegation is not discussed further in the present decision.

<sup>51</sup> Other competitors have mentioned the strong brands and the product range of the parties without, however, showing substantiated concerns about the impact of the transaction. Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to competitors – Retail Denmark.

<sup>52</sup> See replies to questions 31 and 39 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to customers – Retail Denmark (Q1), dated 30

retailer has even explained that it would not hesitate to delist such brands should the merged entity submit demands that are considered not acceptable during negotiations.<sup>53</sup> In addition, as pointed out by the Parties, the strength of the Parties' brands should not be overestimated as Orkla has not managed to use *Beauvais*' strong position in ketchup to increase its market share in mustard and, conversely, *Bähncke*'s strength in mustard has not benefitted Rieber in ketchup.

64. Second, responses provided to the Commission's requests for information and in response to other contacts with market players indicate that there are enough alternatives to the merged entity's products on the markets for ketchup and mustard in Denmark: there are branded products (Heinz for ketchup and Unilever for mustard), a number of private labels, new entrants, and one retailer has even mentioned the possibility of sponsoring local suppliers to enter the market.<sup>54</sup> The complainant himself has recognized that the private labels play an important role on the market and will act as a "fighting-back stick" for the retailers.<sup>55</sup>
65. Third, it should be pointed out that, even if the negotiations with retailers are conducted for broad categories of products (e.g. ambient products), there are generally no assortment or portfolio rebates or bonuses. Therefore, if having a wide portfolio may be an advantage<sup>56</sup> and may be used as a threat in negotiations,<sup>57</sup> it will not be enough to restrict the retailers' freedom to decide which products they sell. In addition, the products at stake do not appear to be easy to bundle as they are not complementary goods.
66. In light of the above, it is concluded that the proposed transaction does not raise serious doubts as to its compatibility with the internal market with respect to the possible portfolio effects in the retail sector in Denmark.

#### 4.1.3.1.5. *Conclusion on retail in Denmark*

67. In view of the above, it is concluded that the proposed transaction does not raise serious doubts as to its compatibility with the internal market with respect to the retail sector in Denmark.

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January 2013. See replies to questions 25 and 31 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to competitors – Retail Denmark (Q7), dated 30 January 2013.

<sup>53</sup> See minutes of the conference call with a retailer of 13 February 2013.

<sup>54</sup> See minutes of the conference call with a retailer of 13 February 2013.

<sup>55</sup> See minutes of the conference call with a competitor of 6 and 7 February 2013.

<sup>56</sup> See minutes of the conference call with a competitor of 14 February 2013.

<sup>57</sup> See minutes of the conference call with a retailer of 13 February 2013.

#### 4.1.3.2. Retail sector in Sweden

##### 4.1.3.2.1. General considerations

68. Orkla is mainly active in Sweden in the retail sector through its subsidiary Procordia Food AB ("Procordia").<sup>58</sup> According to the Parties, Procordia is one of Sweden's leading food manufacturers and its brands include, among others, *Felix* and *Ekström*.
69. Rieber is mainly active in Sweden in the retail sector through its subsidiary Frödinge Mejeri AB ("Frödinge") and markets its chilled and frozen cakes under the same brand. Rieber also sells the *Mrs Cheng's* brand in the Asian food segment.
70. The Notifying Party submits that the concentration of retail chains is very high in Sweden with the four retail chains accounting for [90-100]% of sales. The strong buyer power has manifested itself through the delisting of the Parties' products and the launch of retailer private labels.
71. The Commission identified the following affected markets in Sweden: (i) ketchup, (ii) frozen cakes and (iii) ambient wet soup.<sup>59</sup>

##### 4.1.3.2.2. Ketchup

72. In Sweden, Orkla (Procordia) supplies several ketchup products under its *Felix* brand. Rieber is present under its Danish *Bähncke* brand. The Notifying Party submits that *Bähncke* is sold in Sweden through one wholesaler active in the south of the country and these sales result in a negligible market share.
73. The Commission notes that although the Parties have a relatively high combined market share ([50-60]%), the increment resulting from the addition of Rieber's market position is negligible ([0-5]%)<sup>60</sup>. As such, the proposed transaction will not bring about a significant change in the structure of the ketchup market in Sweden. In addition, the Notifying Party points out that Heinz ([30-40]%) and private labels ([5-10]%) as well as other smaller players ([0-5]%) exercise some significant competitive pressure. The market investigation confirmed this claim.<sup>61</sup>
74. There have been no substantiated concerns emerging during the market investigation with regard to the proposed transaction for the retail market for ketchup in Sweden.

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<sup>58</sup> Abba Seafood AB is also an Orkla subsidiary. It manufactures and markets preserved fish and shellfish products.

<sup>59</sup> The Notifying Party also identified overlaps in the following product categories: cold sauces, potato products, canned vegetables, and chilled desserts. However, these overlaps do not lead to affected markets and are therefore not discussed further in this decision.

<sup>60</sup> See for example a competitor's reply Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to competitors – Retail Sweden: "*only small increment in the ketchup sector in Sweden*".

<sup>61</sup> "*Procordia's brand Felix is a market leader, it strongly competes with Heinz in Sweden. In addition, this market is characterised by a lot of private labels.*" See minutes of the conference call with a retailer dated 21 January 2013.

75. In light of the limited increment in market share, the presence of other strong competitors both in the branded and private label segments, the buyer power of the retail chains in Sweden and in the absence of substantiated concerns voiced during the market investigation, it is concluded that the proposed transaction does not raise serious doubts as to its compatibility with the internal market with respect to the retail market for ketchup in Sweden.

4.1.3.2.3. *Frozen cake*

76. Orkla (Procordia), supplies frozen fruit and berry pies under the *Ekström* brand (semi-finished), while Rieber is present on the market with its *Frödinge* brand (finished).
77. The Commission notes that although the Parties have a relatively high combined market share ([50-60]%), the increment resulting from the addition of Orkla's market position is very small ([0-5]%). As such, the proposed transaction will not bring about a significant change in the structure of the frozen cake market in Sweden. In addition, the Notifying Party points out that competitors such as Almondy ([30-40]%) and private labels ([5-10]%) as well as other smaller players ([5-10]%) exercise some significant competitive pressure.<sup>62</sup>
78. The Notifying Party submits that Orkla has taken the decision to exit the market and will stop selling its products early 2013.<sup>63</sup> This has been confirmed by the Notifying Party's internal documents as well as by some market participants.<sup>64</sup>
79. There have been no substantiated concerns emerging during the market investigation with regard to the proposed transaction for the retail market for frozen cakes in Sweden.<sup>65</sup>
80. In light of the limited increment in market share, the presence of other strong competitors both in the branded and private label segments, the buyer power of the retail chains in Sweden, Orkla's imminent exit from the market and in the absence of substantiated concerns voiced during the market investigation, it is concluded that the proposed transaction does not raise serious doubts as to its compatibility with the internal market with respect to the retail market for frozen cakes in Sweden.

4.1.3.2.4. *Ambient wet soup*

81. Orkla (Procordia), supplies canned soup under the *Felix* brand, whereas Rieber is present on the market with its *Mrs. Cheng's* brand.

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<sup>62</sup> "Rieber's Frödinge brand is strong but [...] it competes with another major player named Almondy in the Swedish market [...] each of those two players holds a share of approximately [...] in that segment." Minutes with [...] 21/01/2013

<sup>63</sup> The last production date of *Ekström* frozen cake products was in February 2013.

<sup>64</sup> "*Procordia shut down its business in this segment a few months ago.*" See minutes of the conference call with a retailer dated 21 January 2013.

<sup>65</sup> "[Retailer] does not think that the proposed Transaction will create a competition problem" See minutes of the conference call with a retailer dated 21 January 2013.



82. The Commission notes that the Parties' combined market share would be [10-20]%, with Orkla accounting for [10-20]% and Rieber for merely [0-5]%. Competitors include Arla Foods ([30-40]%), Unilever ([20-30]%), Findus ([10-20]%), and Campbell ([5-10]).
83. There have been no substantiated concerns emerging during the market investigation with regard to the proposed transaction for the retail market for ambient wet soup in Sweden.<sup>66</sup>
84. In light of the moderate combined market share, the limited increment in market share, the presence of other strong competitors both in the branded and private label segments, the buyer power of the retail chains in Sweden and in the absence of substantiated concerns voiced during the market investigation, it is concluded that the proposed transaction does not raise serious doubts as to its compatibility with the internal market with respect to the retail market for soup in Sweden.

#### 4.1.3.2.5. *Conclusion on the retail sector in Sweden*

85. Although some market participants (in particular competitors) are of the view that the merged entity will be an overall stronger competitor, there have been no substantiated claims with regard to the negative impact of the proposed transaction on the retail market.<sup>67</sup> The Commission also notes that the increment in all retail markets in Sweden is extremely small.
86. In view of the above, it is concluded that the proposed transaction does not raise serious doubts as to its compatibility with the internal market with respect to the retail market in Sweden.

#### 4.1.3.3. **Food service sector in Denmark**

##### 4.1.3.3.1. *General considerations*

87. The Notifying Party submits that the affected markets in the Danish food service sector are the markets for ketchup, mustard, wet hot sauces, and other cold sauces.

##### 4.1.3.3.2. *Ketchup*

88. In Denmark, the Parties' combined market share of the overall food service ketchup market amounts to [30-40]% with an increment of only [0-5]% from Orkla.<sup>68</sup> The

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<sup>66</sup> "Given that Rieber is not currently active in the retail soups market in Sweden, [...] does not believe that the proposed transaction will have an impact in the sector." A competitor's reply to the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to competitors – Retail Sweden.

<sup>67</sup> "Orkla is today already a major player in the Swedish food retail sector but Rieber's market presence is limited; we therefore anticipate only a limited impact on the retail food sector as a whole." A competitor's reply to the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to competitors – Retail Sweden.

<sup>68</sup> With regard to a possible further segmentation of the overall food service ketchup market in Denmark, the front-of-house segment is not affected (Orkla [0-5]%, Rieber [5-10]%), whilst in the back-of-house-segment there is no overlap, as only Rieber is active. In the commercial and social segments, the Parties' combined market share amounts to [30-40]% and [30-40]% respectively, with

Parties' main competitors are Heinz ([30-40]%) followed by Scandic Food ([10-20]%) and Graasten ([10-20]%). Private labels account for approximately [5-10]% of the market.

89. The Notifying Party submits that the transaction does not raise competition concerns since there are other strong suppliers in the market such as Heinz, ScanFood and Graasten.
90. The market investigation in the present case indicated that Orkla's and Rieber's main competitors in ketchup in Denmark are Heinz, Graasten and the private labels. In addition, the majority of wholesalers in Denmark do not perceive Orkla and Rieber to be each other's closest competitors in ketchup.<sup>69</sup> Although Rieber's ketchup (*Bähncke*) is perceived by majority of wholesalers as a "must-have brand" in Denmark,<sup>70</sup> its strength will not increase post-transaction as the combined market shares will only increase moderately with the acquisition of Orkla ([0-5]% market share). No substantiated concerns were raised by wholesalers in relation to the market for ketchup in Denmark.<sup>71</sup>
91. In view of the foregoing, the proposed transaction does not raise serious doubts as to its compatibility with the internal market with respect to the market for ketchup in the food service sector in Denmark.

#### 4.1.3.3.3. *Mustard*

92. Post transaction, the Parties' combined market share of the overall food service market for mustard would amount to approximately [60-70]%, but the increment is less than [0-5]% (from Orkla).<sup>72</sup>
93. The Notifying Party submits that the transaction does not raise competition concerns due to Orkla's *de minimis* market share and the presence of other suppliers such as

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limited increments from Orkla in each case of [0-5]% and [0-5]%. The Parties' combined market share in the horeca and KGS segments amounts to [30-40]% and [40-50]% respectively though with a negligible increment of only [0-5]% from Orkla in each segment.

<sup>69</sup> See reply to question 32 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to customers - Food Service - Denmark (Q2)

<sup>70</sup> See reply to question 35 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to customers - Food Service - Denmark (Q2), dated 30 January 2013.

<sup>71</sup> See reply to question 29 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to customers - Food Service-Sweden (Q4) and reply to question 47.1 of the Commission request for information addressed to customers customers - Food Service - Denmark (Q2)

<sup>72</sup> With regard to a possible further segmentation of the overall food service mustard market in Denmark, the front-of-house segment is not affected (Orkla [0-5]%, Rieber [10-20]%), whilst in the back-of-house-segment there is no overlap, as only Rieber is active. In the commercial and social segments, the Parties' combined market share amounts to [60-70]% and [30-40]% respectively, with a negligible increment from Orkla of only [0-5]% in the commercial segment and no overlap whatsoever in the social segment. The Parties' combined market share in the horeca and KGS segments amounts to [50-60]% and [80-90]% respectively, with a negligible increment from Orkla of only [0-5]% in the horeca segment and no overlap whatsoever in the KGS segment.

Unilever with its *Maille* brand ([10-20]%) and private label manufacturers ([10-20]%). The market investigation confirmed the presence of other suppliers, such as Unilever, Graasten and private labels.<sup>73</sup>

94. Given the small market share of Orkla and the fact that no substantiated concerns were expressed during the market investigation, the transaction does not raise serious doubts as to its compatibility with the internal market with respect to the market for mustard in the food service sector in Denmark.

#### 4.1.3.3.4. *Other cold sauces (dressing and rémoulade)*

95. As "other cold sauces" encompasses a variety of different products<sup>74</sup>, the Notifying Party submits it is impossible to provide market shares estimates to cover all other cold sauces. Instead, market positions are provided for the narrower market of dressings and rémoulade.<sup>75</sup>
96. In the overall food service market for dressings only, the combined market share would amount post-transaction to [30-40]% with an increment from Orkla of [0-5]%. Scandic Foods ([30-40]%) and private labels ([30-40]%) account for the remainder of the market.<sup>76</sup>
97. In the overall food service market for rémoulade only, the combined market share would be [40-50]% with an increment of [0-5]% from Orkla.<sup>77</sup> This overlap, however, will be eliminated by the divestiture of Kolding Salatfabrik.

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<sup>73</sup> See reply to question 38 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to customers- Food Service-Denmark (Q2), dated 30 January 2013.

<sup>74</sup> In M.1990-*Unilever/Bestfoods*, the Commission identified other cold sauces to comprise mayonnaise based sauces ("béarnaise", "tartare", "cocktail") and "exotic" or "ethnic" sauces with a non-mayonnaise base (tabasco, salsa, guacamole).

<sup>75</sup> The overlap in the Danish food service market in cold sauces only concerns dressing and rémoulade as Orkla is only active in these cold sauces with dressing and rémoulade. Rieber also markets BBQ sauce.

<sup>76</sup> With regard to a possible further segmentation of the overall food service market for dressing only, the front-of-house segment is not affected (Orkla [5-10]%, Rieber [5-10]%), whilst in the back-of-house-segment the Parties' combined market share for dressing would amount to [40-50]% (with a negligible increment of only [0-5]% from Orkla). In the commercial and social segments, the Parties' combined market share amounts to [30-40]% and [20-30]% respectively, with a limited increment from Orkla of only [0-5]% in the commercial segment and [0-5]% in the social segment. The Parties' combined market share in the horeca and KGS segments amounts to [30-40]% and [30-40]% respectively, with a limited increment from Orkla of only [0-5]% in the horeca segment and no overlap whatsoever in the KGS segment.

<sup>77</sup> With regard to a possible further segmentation of the overall food service market for rémoulade only, the front-of-house segment is not affected (Orkla [0-5]%, Rieber [10-20]%), whilst in the back-of-house-segment there is no overlap as only Rieber is active. In the commercial and social segments, the Parties' combined market share amounts to [50-60]% and [80-90]% respectively, with a limited increment from Orkla of only [0-5]% in the commercial segment and no overlap whatsoever in the social segment. The Parties' combined market share in the horeca and KGS segments amounts to [60-70]% and [50-60]% respectively, with a limited increment from Orkla of only [0-5]% in the horeca segment and no overlap whatsoever in the KGS segment.

98. In an overall food service market including both dressing and rémoulade, the Parties' combined market share would amount to [30-40]%, with an increment of [0-5]% from Orkla.<sup>78</sup> The other suppliers retain [60-70]% of the market.
99. The Notifying Party submits that no competition concerns will arise in the market for other cold sauces since Orkla's position in dressing and rémoulade is negligible, and the Parties have negligible sales of other cold sauces.<sup>79</sup>
100. There have been no substantiated concerns voiced during the market investigation with regard to the proposed transaction for the food service market for other cold sauces in Denmark. Only one customer expressed concerns by pointing out that, in general, in the food service sector, the proposed transaction will lead to a reduction in the number of suppliers that can offer a complete range of products.<sup>80</sup> In particular, this customer emphasised that the most important suppliers currently on the market are Graasten, Kolding Salatfabrik (Orkla) and Rieber. However, as explained in paragraph 45 above, Kolding Salatfabrik has been divested.
101. Given in particular the limited presence of Orkla in this market and the divestiture of Kolding Salatfabrik, the proposed transaction will not lead to a change in the market structure and therefore it does not raise serious doubts as to its compatibility with the internal market with respect to the market for other cold sauces (dressing and rémoulade) in the food service sector in Denmark.

#### 4.1.3.3.5. *Wet hot sauce*

102. In the overall food service market for wet hot sauce, Orkla's market share is minimal (less than [0-5]%) and the Parties' combined market share would amount to [40-50]%.<sup>81</sup> Scandic Foods and Graasten each have a market share of [20-30]% while Danish Crown ([10-20]%) comes in fourth position. The Notifying Party submits that no competition concerns arise in the market for wet hot sauce due to Orkla's negligible and declining market position.
103. The market investigation confirmed the presence of other suppliers in the market for wet hot sauces such as Jensen's Køkken, Arla Foods, Kraft Foods, Knorr and private

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<sup>78</sup> With regard to a possible further segmentation of the overall food service market for dressing and rémoulade together, the front-of-house segment is not affected (Orkla [0-5]%, Rieber [5-10]%), whilst in the back-of-house-segment the Parties' combined market share amounts to [50-60]%, with a limited increment from Orkla of only [0-5]%. In the commercial and social segments, the Parties' combined market share amounts to [40-50]% and [70-80]% respectively, with a limited increment from Orkla of only [0-5]% in the commercial segment and only [0-5]% in the social segment. The Parties' combined market share in the horeca and KGS segments amounts to [50-60]% and [50-60]% respectively, with a limited increment from Orkla of only [0-5]% in the horeca segment and no overlap whatsoever in the KGS segment.

<sup>79</sup> Rieber's sales of barbecue sauces in 2011 were approximately EUR [...] million while Orkla's sales of "English sauce" were EUR [...] million.

<sup>80</sup> See reply to question 45 to 47 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to customers-Food Service-Denmark (Q2), dated 30 January 2013. See also minutes with customer (Food Service sector Demark) of 18 February 2013.

<sup>81</sup> With regard to a possible further segmentation of the overall food service market for wet hot sauces, no overlaps would arise in any of the subsegments.

labels.<sup>82</sup> No concerns have been expressed during the market investigation with regard to the proposed transaction for the food service market for wet hot sauces in Denmark.

104. In view of the foregoing, the proposed transaction does not raise serious doubts as to its compatibility with the internal market with respect to the market for wet hot sauce in the food service sector in Denmark.

#### *4.1.3.3.6. General conclusion*

105. In light of all the above, the proposed transaction does not raise serious doubts as to its compatibility with the internal market with respect to the food service sector in Denmark.

#### **4.1.3.4. Food service sector in Sweden**

106. The only affected market in the food service sector in Sweden is ketchup. The Parties' combined market share for the overall food service market for ketchup is [40-50]% with an increment of [0-5]% from Rieber.<sup>83</sup> The Parties' main competitor is Heinz ([40-50]%). Private labels account for approximately [5-10]% of the market.
107. The Notifying Party submits that the transaction does not raise competition concerns since the Parties are not each other's closest competitors (Orkla's ketchup is a basic/standard product, while Rieber's ketchup is a niche product).
108. The market investigation in the present case indicated that Orkla's main competitor is Heinz. No substantiated concerns were raised by wholesalers in relation to the market for ketchup in Sweden.<sup>84</sup>
109. In light of the above, the proposed transaction does not raise serious doubts as to its compatibility with the internal market with respect to the food service sector in Sweden.

#### **4.2. Vertical relations**

110. The Parties have limited vertical relationships in the production of foods ingredients at industry level in Sweden and Denmark and in the retail distribution of frozen cakes in Finland. However, only the vertical links between bakery ingredients/bakery fat

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<sup>82</sup> See reply to questions 33 and 34 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to customers and replies to questions 29 and 33 addressed to competitors - Food Service-Denmark (Q2 and Q5), dated 30 January 2013.

<sup>83</sup> If other sub-segmentations of the food service market for ketchup would be taken into account, the Parties' combined market share would amount to [50-60]% in the front-of-house segment, [10-20]% in the commercial segment and [40-50]% in the horeca segment, with limited increments from Orkla (below [0-5]%). No overlaps would arise in the market for ketchup in the back-of-house segment, social segment and KGS segments.

<sup>84</sup> See reply to question 29 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to customers - Food Service-Sweden (Q4) and reply to question 47.1 of the Commission request for information addressed to customers customers-Food Service-Denmark (Q2)

(upstream) and frozen cakes (downstream) in Sweden, as well as the retail distribution of frozen cakes in Finland lead to affected markets.<sup>85</sup>

#### **4.2.1. Bakery ingredients and bakery fat in Sweden**

111. Orkla produces food ingredients through its subsidiary Orkla Food Ingredients (“OFI”). It is mostly active in bread and cake/pastry mixes and improvers, yeast, margarine products, marzipan and ice cream ingredients.<sup>86</sup>
112. As regards bakery ingredients and bakery fats, the Notifying Party estimates that, under any plausible market definition, the market shares of Orkla would be below [20-30]% and, in most cases, below [10-20]% in the upstream market.<sup>87</sup> Therefore, in the absence of market power in the upstream market, input foreclosure is unlikely.<sup>88</sup> Bakery ingredients and bakery fat are used in a number of downstream markets, although by Rieber in Sweden only in the production of frozen cakes. In addition, Rieber's purchases are limited.<sup>89</sup> Therefore, customer foreclosure concerns can be also excluded.
113. As a consequence, the proposed transaction will not give rise to foreclosure concerns or serious doubts in relation to the supply of bakery ingredients and bakery fat in Sweden.<sup>90</sup>

#### **4.2.2. Distribution of frozen cakes in Finland**

114. Orkla’s Finnish subsidiary, Chips AB, distributes frozen cakes to retail customers in Finland for Rieber’s Swedish subsidiary Frödinge.

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<sup>85</sup> There are some further actual and potential vertical relations between the Parties concerning emulsion bases produced by the Orkla subsidiary, Odense Marzipan A/S used by Rieber's *K-salat* and a specific type of savoury bread topping, stock jelly, produced by Orkla in Denmark through its subsidiary KT Food and sold to *Bähncke* (Rieber buys the product from KT Food packaged and already branded as a *Bähncke* product).

<sup>86</sup> Rieber is active in the industry sector through its subsidiary Rieber Food Ingredients (“RFI”), which sells beef extract powder, hydrolysed vegetable proteins (powder, paste and liquid), thermal process flavours (powder for use in meat related food production), industrial bouillons (powder), spice mixes (powder), precooked pulses (both whole and powder) and specialties like green peas, meat derivatives, sauces, vegetable extracts etc. Rieber has divested in 2011 its division which supplied Orkla with blended spice mixes and flavour blends. As Rieber does not intend to re-enter this segment and does not produce any ingredients that are of use for Orkla, Rieber's activity in the industry sector are not further discussed in the present decision.

<sup>87</sup> For bakery products, Orkla estimates its market share at European level to amount to [5-10]%; for bakery fat, Orkla estimates that, its market share at European level would account for less than [10-20]% and less than [20-30]% on a narrower market (i.e. Sweden).

<sup>88</sup> Paragraph 35 of the "Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings", OJ C 265 of 18.10.2008 ("Non-horizontal Guidelines").

<sup>89</sup> Rieber’s purchase of bakery products amounted to EUR [...] Million in 2011. For bakery fat, Rieber is currently purchasing from three different suppliers and its purchases from Orkla are estimated at EUR [...] Million.

<sup>90</sup> Paragraph 66 of the Non-horizontal Guidelines.

115. As regard the market definition, the Notifying Party submits that the market definition for frozen cakes in Sweden, which concurs with the Commission's approach in previous cases<sup>91</sup>, should also apply to Finland.<sup>92</sup>
116. According to the Notifying Party, Rieber has a [20-30]% market share in the manufacture and sale of frozen cakes in Finland, whereas Orkla has a [0-5]% share in the wholesale distribution of frozen food products in Finland.<sup>93</sup>
117. Post transaction, the merged entity will face a number of strong competitors on the upstream market such as Heinz, Almondy, and Sarp Oy, and at the wholesale level with the three largest Finnish wholesale groups (i.e. S-Group, K-Group, and Suomen Lähikauppa OY).<sup>94</sup>
118. Therefore, in the light in particular of the moderate market shares of the merged entity both at upstream and downstream level, the proposed transaction will not give rise to any risk of foreclosure issues and the combined entity is unlikely to have the ability and incentive to foreclose customers and/or downstream competitors.

## 5. CONCLUSION

119. 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)*

*Neelie KROES  
Vice-President*

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<sup>91</sup> Cases COMP/M.2817 – *Barilla/BPL/Kamps*, COMP/M.5286 – *Lion Capital/Foodvest*, COMP/M.6143 – *Princes/Premier Foods Cannes Grocery Operations*.

<sup>92</sup> Case No COMP/M.6430 - *Oaktree/Panrico*. See also Cases COMP/M.2817 – *Barilla/BPL/Kamps* and COMP/M.5286 - *Lion Capital/Foodvest*.

<sup>93</sup> Market shares based on the Parties' best estimates.

<sup>94</sup> According to the Notifying Party, almost one-third of the total wholesale trade in Finland is transacted through these wholesale organizations.