EUROPEAN COMMISSION
DG Competition

CASE M.7292 - DEMB/ MONDELEZ/ CHARGER OPCO

(Only the English text is authentic)

MERGER PROCEDURE
REGULATION (EC) 139/2004

Article 8(2) Regulation (EC) 139/2004
Date: 5/5/2015

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EUROPEAN
COMMISSION

Brussels, 5.5.2015
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COMMISSION DECISION

of 5.5.2015

declaring a concentration to be compatible with the internal market and the EEA agreement (Case M.7292 - DEMB / MONDELEZ / CHARGER OPCO)

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declaring a concentration to be compatible with the internal market and the EEA agreement (Case M.7292 - DEMB / MONDELEZ / CHARGER OPCO)

(Only the English text is authentic)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the Agreement on the European Economic Area[1], and in particular Article 57 thereof,

Having regard to Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings[2], and in particular Article 8(2) thereof,

Having regard to the Commission's decision of 15 December 2014 to initiate proceedings in this case,

Having regard to the opinion of the Advisory Committee on Concentrations[3],

Having regard to the final report of the Hearing Officer in this case[4],

Whereas:

1. THE NOTIFICATION

(1) On 27 October 2014 the European Commission received a notification of a proposed concentration pursuant to Article 4 of Regulation (EC) No 139/2004 by which the undertakings Acorn Holdings BV ("Acorn"), the holding company of D.E. Master Blenders 1753 B.V. ("DEMB", Netherlands) and […][×] ("Mondelēz", USA) acquire joint control of Charger OpCo B.V. ("Charger" or "the JV"), a newly created company constituting a joint venture, by way of purchase of shares (the "Transaction"). DEMB and Mondelēz are jointly referred to as the "Parties" or "Notifying Parties".

2. THE PARTIES

(2) DEMB is an international coffee and tea company, established in the Netherlands, which offers a range of coffee and tea products for in-home consumption as well as hot beverage solutions for the out-of-home markets. In the EEA DEMB also operates, including through the use of franchising arrangements, coffee houses in the

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1 OJ L 1, 3.1.1994, p. 3 ("the EEA Agreement").

2 OJ L 24, 29.1.2004, p. 1. 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 OJ C ...,...200. , p....

4 OJ C ...,...200. , p....

× Should read: Mondelēz International, Inc.

Netherlands. DEMB is indirectly owned by Acorn, which in turn is majority owned by JAB Holding Company s.à r.l. ("JAB").

(3) Mondelēz is a company established in the United States, created following a spin-off of Kraft Foods Group in October 2012. It is a global snack company with a product offering spanning biscuits, chocolate, candy, cheese, powdered beverages, chewing gum and coffee. Mondelēz has an in-house coffee procurement and trading business.

3. THE CONCENTRATION

(4) Charger, incorporated in the Netherlands, will combine all material assets of DEMB's and Mondelēz's coffee businesses.[5] Acorn will hold […]*% of Charger's shares, while Mondelēz is to hold up to […]*% of those shares and to receive a cash payment of approximately EUR […]* billion for the contributed assets. As the majority shareholder, Acorn will also control a majority of the JV's Board and have the right to appoint its Chairman. Both Acorn and Mondelēz will have veto rights over the […]* of Charger, which is meant to identify […]*; as well as […]*. According to the Parties the investments covered by the […]* are not merely akin to minority shareholder protection rights but are directly related to the commercial policy of the JV. Furthermore, the […]* will also include […]*; which are in fact key elements of the JV's budget. As a result, the veto rights over the […]* confer joint control over the JV to Acorn and Mondelēz.

(5) Charger will have sufficient resources to operate independently on the market (including management, staff, financing and assets transferred by DEMB and Mondelēz). It will be an independent market-facing business, which will procure, manufacture and sell coffee and tea products. The JV will source coffee beans independently from third parties and not from its parents. It will also sell products to independent downstream customers and not to its parents. The shareholders' agreement, concluded between Acorn's subsidiary ("Oak") and Mondelēz, contains deadlock provisions[6] on the basis of which Oak can […]*. However […]*[7]. Therefore those provisions do not call into question the intention to operate the JV on a lasting basis.[8] For those reasons Charger can be considered as a full-function joint venture.

(6) The Transaction therefore constitutes a concentration within the meaning of Articles 3(1)(b) and 3(4) of the Regulation (EC) No 139/2004.

4. UNION DIMENSION

(7) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million[9] (JAB: EUR […]* million, Mondelēz: EUR 26 579 million). Each of them has a Union-wide turnover in excess of EUR 250 million (JAB EUR […]*, Mondelēz EUR […]* million), but they do not achieve more than two-thirds of their aggregate Union-wide turnover within one and the same Member State. The Transaction therefore has a Union dimension.

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5 As regards coffee business of Mondelēz in France, Mondelēz is obliged to consult with representatives of its French workforce prior to contributing these assets. The consultation process is currently on-going.

6 To this effect that […]*.

7 Shareholders' Agreement clauses 7 and 16.7.6.

8 Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, paragraph 103.

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

5. THE PROCEDURE

(8) In the course of first phase proceedings the Commission contacted competitors and customers (general retailers) of the Parties by means of questionnaires and conference calls. The Parties submitted commitments to the Commission on 26 November 2014. However based on a market investigation, including a market test of the proposed commitments, the Commission preliminarily considered that the Transaction raised serious doubts as to its compatibility with the internal market and adopted a decision to initiate proceedings pursuant to Article 6(1)(c) of Regulation (EC) No 139/2004 on 15 December 2014 (the "Article 6(1)(c) Decision").[10]

(9) The Parties submitted written comments to the Article 6(1)(c) Decision on 9 January 2015.

(10) The market investigation in the second phase consisted, among others, in analysing responses of market participants to the Commission's questionnaires and conference calls with some of the participants. They included: competitors (that is to say other suppliers of the various coffee products), customers (that is to say general retailers); electronic goods retailers as well as manufacturers of coffee machines.

(11) During the second phase investigation the Commission sent, on the basis of Article 11(2) of Regulation (EC) No 139/2004, a number of simple requests for information to the Parties. The Parties responded to the Commission's request for information of 19 December 2014 on 19 January 2015, to the request for information of 21 January 2015 on 31 January 2015, to the request for information of 30 January 2015 on 5 February 2015 and to the request for information of 13 February 2015 on 17 February 2015.

(12) On 21 January 2015 the Commission, having received the agreement of the Parties, extended the procedure by a total of five working days, in accordance with Article 10(3) second subparagraph, third sentence of Regulation (EC) No 139/2004.

(13) On 20 February 2015 the Commission, having received the agreement of the Parties, extended the procedure by a total of ten working days, in accordance with Article 10(3) second subparagraph, third sentence of Regulation (EC) No 139/2004.

(14) On 13 February 2015, the Commission held a state-of-play meeting with the Parties and orally set out its provisional competition concerns following the in-depth investigation.

(15) On 23 February 2015, the Parties submitted commitments to the Commission. The Commission launched a market test on those commitments on 25 February 2015. Following the results of the market test, the Parties provided a revised version of commitments to take account of comments received during the market test. On 20 March 2015, the Parties submitted final commitments that render the Transaction compatible with the internal market.

6. DESCRIPTION OF PRODUCTS

(16) The Parties are active in the manufacture and sale of coffee products both for the multi-serve (that is to say machines producing multiple portions of coffee at a time) and single-serve (that is to say machines producing one portion of coffee at a time) segments. Parties offer coffee products in various formats for use in the different coffee brewing methods: instant coffee, roasted coffee beans (whole and ground) for use in multi-serve machines as well as consumables for single-serve machines: filter

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[10] O.J. C 461, 20.12.2014, p. 11.

pads, capsules compatible with the Nespresso machines and Mondelēz produces T-discs for its Tassimo.[11]

6.1. Roast and ground coffee ("R&G")

(17) R&G consists of coffee beans which have been pre-roasted and pre-ground for use in coffee-specific appliances. Whole beans are simply roasted beans sold to consumers who prefer to grind them freshly at home or use them in fully automated bean-to-cup machines. R&G comprises a wide variety of coffee flavours, aromas and intensities depending on the specific blend of the coffee varieties and origins, and the length of the roasting process. R&G coffee can be used in a range of appliances which often produce multiple cups of coffee at a time.

6.2. Instant coffee

(18) Instant coffee (also called coffee powder or soluble coffee) is prepared by freeze-drying or spray-drying brewed coffee. Consumers can then re-hydrate the coffee by mixing it with hot water. Instant coffee can be prepared at short notice with ready-available appliances (such as a kettle or a stove). Due to its preparation method, instant coffee has a very long shelf life.

6.3. Filter pads

(19) Filter pads are pre-packaged individual portions of R&G coffee for use in compatible machines to produce a single or double serving of coffee. Filter pad coffee is brewed through a process of infusion (whereby hot water is made to flow through ground coffee with minimal or no pressure). Filter pads are circular, flat and naturally permeable (like a traditional tea bag). Filter pads are used in specific single-serve machines. Classic filter pads produce a long coffee with a smooth taste and larger serving size than "espresso-style" coffees; however filter pads with other flavours (caramel, chocolate etc.) are also available.

6.4. Nespresso-compatible capsules ("N-capsules")

(20) Nespresso is a type of single-serve machine which produces individual servings of espresso coffee. The consumables for Nespresso are coffee capsules with a solid shell (in contrast with the soft permeable packaging of a filter pad). N-capsules are compatible only with Nespresso machines. Coffee is prepared by placing the N-capsule in the machine which incorporates a mechanism whereby pressurised water comes into contact with the coffee inside the N-capsule. Some N-capsules are pre-opened or pre-perforated; others are opened or perforated in the machine. Nestlé sells Nespresso coffee machines as well as the original N-capsules (in specialised boutiques and online), while the Parties and other suppliers offer compatible N-capsules on retailers' shelves.

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[11] In addition DEMB operates coffeehouses in the Netherlands, while Mondelēz does not have such activities anywhere in the world and is only a recent entrant into the in-home coffee markets in the Netherlands. According to DEMB its share in the potential market for outlets serving coffee (whether considering all establishments offering coffee or more specialist coffee shops or coffee houses) is less than [0-5]*% in the Netherlands as a whole or in any given city or town within Netherlands. Due to the limited presence of DEMB in the putative market for coffeehouses the potential vertical link between Mondelēz's activities in in-home coffee and DEMB's activities in coffeehouses in the Netherlands will not be analysed further. Furthermore DEMB manufactures and sells tea. Mondelēz does not have any tea activities save for sales of Twinning's tea T-discs sold under licence.

6.5. Other consumables for single-serve machines

(21) Consumables are individually packed (in capsules, pods, pads) portions of coffee to be inserted into a single-serve machine and produce a cup of coffee. In addition to filter pads and N-capsules, there are other types of single-serve consumables on sale to consumers. These consumables will generally all be based on proprietary technology with the aim of producing a single cup of coffee. Each consumable is made to function in a specific type of machine.

6.6. Single-serve systems – Senseo and Tassimo

(22) DEMB owns the Senseo trademark and, together with Philips develops and markets the Senseo system. The consumables for Senseo machine are filter pads. Mondelēz owns the Tassimo trademark and, together with Bosch, develops and markets the Tassimo system. The consumables for Tassimo machines are T-discs. As set out in section 9.4.2, the Parties, although they do not sell single-serve machines[12], are involved in the promotion and advertising of those machines and have influence on their prices. For the purpose of this Decision the term "single-serve system" means single-serve machine and the consumables compatible with those machines.

7. RELEVANT PRODUCT MARKETS

(23) Both Parties are active in the manufacture and sale of various coffee products through different channels, covering many different "routes to the cup". They include sales to businesses ("out-of-home") and to consumers ("in-home"). While multi-serve coffee machines (such as drip filter machine, French press or *cafetiere*) produce more than one portion of coffee at a time, single-serve machines produce in principle one cup of coffee at a time. The main coffee formats used in multi-serve machines are R&G coffee and whole beans. The consumables used for single-serve machines include: filter pads for DEMB's Senseo system, N-capsules for Nestlé's Nespresso system and, additionally, Mondelēz' capsules ("T-discs") for its closed[13] single-serve system Tassimo. Another coffee format is instant coffee, for which no machine is needed.

Parties' arguments

(24) While the Parties consider that it is not necessary for the Commission to reach a conclusion on the precise market definition in this case, they nevertheless analyse the overlaps of their activities in the coffee sector on the narrowest – in their view – plausible segmentations.

Market segmentations assessed in this Decision

(25) The Commission analysed several possible segmentations of the overall coffee sector. First of all it will be analysed whether in-home coffee and out-of home coffee belong to the same product market. Secondly it will be assessed whether private label brands compete with branded coffee products in the same market. Thirdly it will be considered whether conventional and non-conventional coffee should be considered as one relevant market. Fourthly the single-serve machines and their consumables (such as filter pads and N-capsules) will be analysed. Fifthly coffee format compatible with multi-serve machines, that is R&G coffee and its potential

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[12] Tassimo machines are sold by Bosch while Senseo machines are sold by Philips.

[13] As Mondelēz has intellectual property rights ("IP") to produce capsules for its Tassimo single-serve system, no other company can lawfully produce compatible T-discs.

segmentations (whole beans, Greek coffee, Robusta and Arabica) will be assessed. Finally the instant coffee segment will be considered.

(26) An overview of the segments referred to Recital (25) is provided in Figure 1.

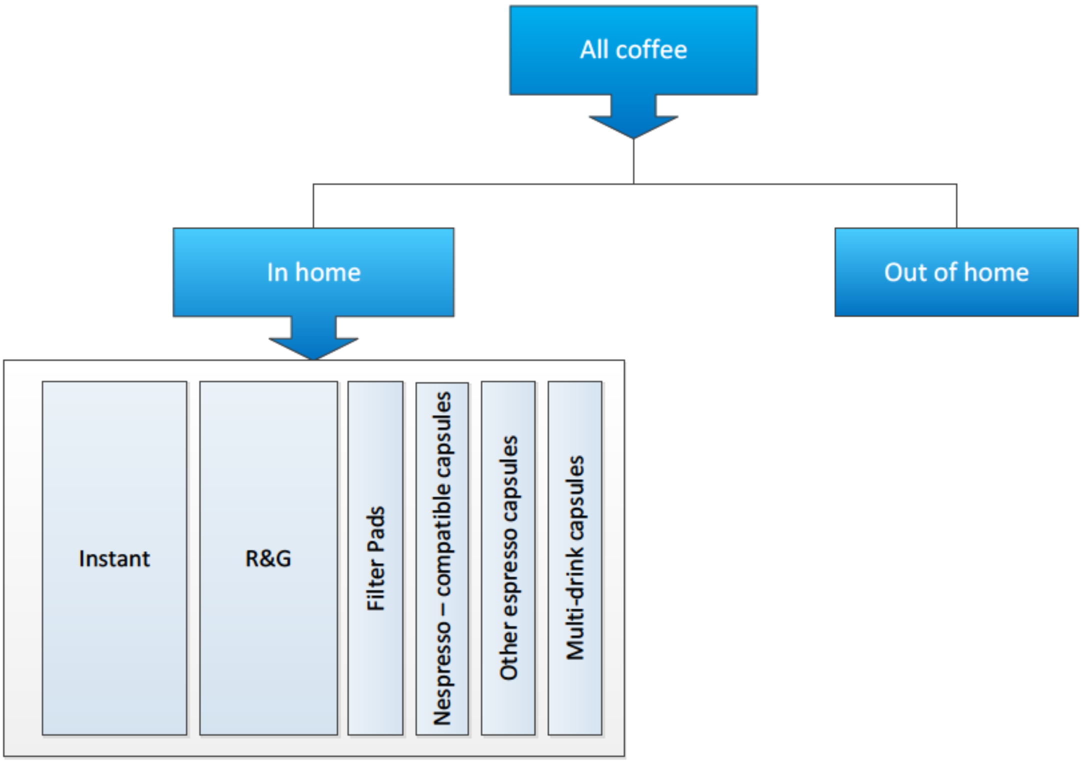

Figure 1 Coffee Sector[14]

7.1. In-Home vs. Out-Of-Home

(27) The Parties are both active in the manufacture and sale of coffee products through two key channels:

(1) "in-home", that encompasses the sale of coffee to consumers via retailers or directly to consumers through, for example, mail order systems; and

(2) "out-of-home", that encompasses the sale of coffee to hotels, restaurants, cafes (referred to as "HoReCa") but also to offices, hospitals, educational establishments and other work places.

(28) According to the Parties, the in-home channel covers around 70% of the worldwide coffee sales, while the out-of-home channel represents the remaining 30%.

7.1.1. Out-of-home

(29) The out-of-home channel targets a variety of customers, to which the coffee manufacturers offer a portfolio of products and related services based on the individual customers' needs (that is to say types of beverages, crockery and maintenance of machines).

(30) The out-of-home channel could potentially be further segmented, that is per portfolio of drinks sourced, per customer categories, or per type of contract (whether it includes also any maintenance or just the supply of coffee products).

14 Source: Form CO.

Parties' arguments

(31) The Parties submit that the solutions offered to customers usually include a combination of coffee, tea, other consumables, coffee machine, vending machines, crockery and support services. The combination of these products and services will depend on the needs and preferences of the customer.

(32) Each of the elements provided in an out-of-home solution (the coffee, other consumables, coffee machine, crockery and services) can be sourced from one or multiple suppliers. Furthermore the regular delivery of ingredients can be made directly by the supplier or through the preferred logistical provider of the customer.

(33) Some larger customers opt for a formal tender process, specifying requirements and inviting various players for bids. However, most customers will have an informal buying process, where they discuss their needs and preferences with sales representatives from their current supplier and from other suppliers. Each supplier will assess the needs of the customer and propose a solution from his portfolio of products and machines. Given the range of options and the different specialities of suppliers, the customer is rarely choosing between identical offers.

(34) Both Parties internally divide their out-of-home customers into various groups according to their customer's businesses. However DEMB and Mondelēz do not split their customers into the same types of categories. DEMB follows a split focussed on sales effort, while Mondelēz splits the out-of-home customers based on a […]*; as a result, the categories used are not comparable;[15] moreover, the Parties do not consider that such divisions are appropriate for the purpose of defining relevant markets. The Parties also claim that there is no need to separate the various distribution channels within the out-of-home channel as separate product markets. Instead, according to the Parties, the relevant market should comprise all types of out-of-home coffee sales.

7.1.2. In-home

(35) In the in-home channel, coffee manufacturers normally[16] negotiate supply agreements with national and regional retailers in order to place their coffee products on the retailers' shelves for purchase by final consumers. Such negotiations normally encompass all types of coffee products and, in some cases all the products of the manufacturer across several categories (that is snacks and beverages). According to the Parties, negotiations tend to be annual.

(36) Through retailers the Parties sell coffee in multiple formats compatible with various existing coffee brewing methods. Those formats include for instance R&G, instant coffee, filter pads, N-capsules and other consumables for single-serve systems.

Parties' arguments

(37) The Parties submit that within each format, a consumer can find a considerable variety of coffee (for instance coffee made from Robusta or Arabica beans, from single country origin or mixed origin, fair trade, "long" coffee, espresso coffee).

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15 DEMB's categories include: small business, medium business, large business, health and care, education, hotel and gaming, BaReCa, QSR and coffee houses, convenience and retail, and leisure. Mondelēz categories include: […]*.

16 There might be exceptions, i.e. a manufacturer supplying private label products or Nestlé selling Nespresso capsules in dedicated shops and online.

(38) Moreover, the price range of coffee products within each format and between formats varies (from low-priced to mid-priced to premium).

(39) The popularity of a specific type of coffee (whether in terms of format or taste) varies from one Member State to another.

(40) The further segmentation of the in-home channel is described in the following sections.

Commission's investigation and assessment

(41) The Commission acknowledges the difference in customers and distribution (retail negotiation vs. service contracts) between the in-home and out-of-home channels. Those differences have been confirmed by interviews with market participants, which highlighted also the possibility of several segmentations among out-of-home customers (that is to say per size, per volume or per activity).[17]

(42) Coffee manufacturers can be active in both the in-home and out-of-home channels. The out-of-home suppliers, however, also comprise a range of other players such as service companies, catering companies and vending operators selling hot beverage, cold beverage and snack solutions, which might have in-house roasting capabilities or might source their coffee from third-party manufacturers, while in-home suppliers are mainly coffee manufacturers and retailers via private labels products.

Conclusion

(43) Although the available coffee formats tend to be broadly the same in both channels[18], given the presence of different customer groups, different products or services offered, partly different competitors and the different competitive dynamics (that is to say yearly negotiations with retailers for in-home as opposed to a customised offers tailored at specific customers' needs for out-of-home), the Commission considers that for the purposes of this Decision, sales via the in-home and out-of-home channels form part of separate product markets.

(44) Moreover, for the purposes of this Decision, the Commission considers that all out-of-home sales belong to the same product market given the individual needs of each out-of-home customer and the tailor made approach applied to each of their customers by the Parties.

(45) In relation to in-home sales, the Commission considers that a further segmentation is necessary (see sections 7.2, 7.3, 7.5 and 7.6).

7.2. Private label vs. brands

(46) The coffee sector is a differentiated sector which is characterised by the presence of brands and their perception by consumers. A coffee company might have multiple brands with different positioning in the market (for example, a premium brand sold at a higher price and a mainstream brand sold at a lower price).

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[17] See for instance the non-confidential minutes of a conference call with a competitor dated 18 November 2014 at 13.00 CET, non-confidential minutes of a conference call with a competitor dated 18 November 2014 at 10.45 CET, non-confidential minutes of a conference call with a competitor dated 19 November 2014 at 16.00 CET.

[18] Coffee is usually provided in larger quantity formats to out-of-home customers. Another difference is that DEMB's out-of-home customers can have access to Liquid coffee, which is not available to in-home customers: this is proprietary DEMB technology where coffee is brewed under ideal circumstances and immediately concentrated, packed in a closed bag-in-box pack and deep-frozen, maintaining the coffee quality until the moment of serving.

(47) Private label brands do exist but their penetration varies from country to country and retailer to retailer, and in many countries still remains relatively low, in particular in comparison to the penetration of private label brands in a number of other fast moving consumer goods such as frozen ready cooked meals, frozen vegetables, canned vegetables or edible oil.[19] It should also be noted that penetration of private label brands may vary depending on the coffee format.

Parties' arguments

(48) The Parties argue that private label brands are present at all levels of the coffee sector: in addition to offering the cheapest option to consumers, private label brands also compete with branded coffee across the full range of price, quality and variety of offerings, including high quality premium beans and single country origin coffee.[20] Furthermore private label brands often mirror the offering of branded coffee, are sold from the same shelves and sometimes have even better placements than branded coffee products on the shelves.

(49) The Parties point to the high degree of supply side substitutability between branded coffee and private label products, as most coffee manufacturers supply retailers with both types of products. Also, in some instances the retailers have in-house roasting capabilities and are thus also coffee manufacturers.

Information obtained in the Commission's investigation

(50) According to the majority of respondents to the market investigation, private label and branded coffee are substitutable to a certain extent in the eyes of the consumer[21] and private label and branded coffee compete with each other on retailers' shelves.[22]

(51) Retailers in the course of the market investigation pointed out that in the majority of cases private label products do not have special[23] placements on retailers' shelves[24] and have lower but rather stable prices, while branded coffee is normally priced at a higher level but is characterised by temporary promotions that lower the price.[25] In general, retailers tend to obtain higher margins from the sale of private label products than from branded coffee products.[26]

(52) Lastly, for the majority of respondents to the Commission's questionnaires, the supply of private label products is different from the supply of branded goods in

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[19] See the "The Commission's final report on the economic impact of modern retail on choice and innovation in the EU food sector", published on 19 September, 2014, available at: http://ec.europa.eu/competition/publications/KD0214955ENN.pdf.

[20] In its recently published study on "The economic impact of modern retail on choice and innovation in the EU food sector", the European Commission stated: "*Private labels are increasingly being seen by retailers as important tools for building client loyalty and strengthening banner image. Thus, beyond generic and 'mimic' private labels, which are designed to provide low cost alternatives or directly compete with manufacturer's brands, retailers have increasingly developed high quality private label brands that compete side by side with manufacturer's brands or specifically positioned product ranges, such as organic*." (see: European Commission, "The economic impact of modern retail on choice and innovation in the EU food sector: final report" *ibidem*, at p. 54).

[21] Responses to question 35 of Questionnaire Q2-Retailers and responses to question 35 of Questionnaire Q1-Competitors.

[22] Responses to question 36 of Questionnaire Q2-Retailers and responses to question 36 of Questionnaire Q1-Competitors.

[23] Special placement usually implies putting products in the so called "diamond area" that is in the upper middle of the retail shelf that provides the best product visibility – see Form CO par. 514.

[24] Responses to question 37 of Questionnaire Q2-Retailers.

[25] Responses to questions 38 and 38.1 of Questionnaire Q2-Retailers.

[26] Responses to questions 39 and 39.1 of Questionnaire Q2-Retailers.

general, given that a keen focus on price and multi-year contracts characterises the former and yearly negotiations with detailed promotion plans are typical for the latter.[27]

(53) The Parties' internal documents also show that coffee manufacturers monitor the performance of private label brands and thus consider private label as competing with both DEMB's and Mondelēz's brands.[28]

Conclusion

(54) Overall, taking into account the results of the market investigation and the Parties' arguments which have been confirmed by the Commission’s investigation, the Commission considers for the purposes of this Decision that private label and branded coffee products, irrespective of the coffee format, belong to the same product market. However, given the differentiated nature of the relevant coffee markets, different penetration rates and ranges of offerings, as well as the fact that private labelsare fragmented by nature (each retailer having a different strategy and policy), the competitive pressure exercised by private label brands on the Parties varies from country to country and format to format.

7.3. Conventional vs. non-conventional coffee

(55) Given the presence of non-conventional coffee (that is to say organic, fair trade and other certified coffees) across several formats, the Commission investigated whether there is a separate market for non-conventional coffee across all the formats.

Parties' arguments

(56) The Parties do not consider non-conventional coffee as a separate market, in particular since they do not gather data on coffee products by sustainability certification[29] and therefore were not able to provide market share estimates at that level.

Information obtained in the Commission's investigation

(57) During the market investigation the majority of competitors indicated that the two coffee categories are perceived as potential alternatives by consumers[30] and are substitutable to a certain extent.[31] On the other hand, the responses from retailers indicated that consumers might not necessarily switch between the two coffee categories in case of a small but permanent price increase[32], and some consumers might perceive non-conventional coffee as fulfilling different needs from conventional coffee, such as the need for an organic product which is perceived as healthier or the need to feel more environmentally sustainable or to contribute to sustainable development, or again the need to have a higher quality products

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27 Responses to questions 40 and 40.1 of Questionnaire Q2-Retailers and responses to questions 38 et seq. of Questionnaire Q1-Competitors.

28 See for instance Mondelēz internal document, dated 20 June 2014 "*Project Sequoia – Key Themes*" page 2, Mondelēz internal document, dated 15 April 2014 "*On Demand: how to boost mondelez performance?*" page 71 et seq., DEMB internal document, dated October 2013, "*Capsules market data / JvB*" page 5 and 6 and DEMB internal document, undated, "*Thank You for this new Exciting Challenge – Let's be Partners in Success*" page 118 et seq.

29 Responses of 18 September 2014 to QP2, question 5(j) and Form CO paragraph 307.

30 Responses to question 33 of Questionnaire Q1-Competitors.

31 Responses to questions 32 et. seq. of Questionnaire Q1-Competitors.

32 Responses to questions 32 et. seq. of Questionnaire Q2-Retailers.

produced in an environmentally-friendly way.[33] Respondents also noted differences in consumption patterns, prices and targeted consumer groups.[34]

(58) As regards supply-side substitutability, the majority of competitors who responded to the market investigation considered that a supplier active only in conventional coffee will be able to start, swiftly and without significant costs, production and sales of non-conventional coffee and vice-versa.[35]

Conclusion

(59) Taking into account the views expressed in the market investigation and in particular for reasons of supply-side substitutability, the Commission considers that for the purposes of this Decision, it is not necessary to differentiate between conventional and non-conventional coffee. Moreover, no competition concerns were raised during the investigation either by the Parties' customers or competitors in respect of the hypothetical non-conventional coffee segment.

7.4. Single-serve machines and consumables

7.4.1. Single-serve vs. multi-serve machines

Parties' arguments

(60) The Parties maintain that they do not manufacture or sell coffee machines but they admit that they do own machine brands and participate in the marketing of machines. The Parties also state that coffee machines are differentiated by the number of servings they produce (single-serve or multi-serve), the type of coffee (filter or espresso), and whether they make other types of drinks (hot cocoa, tea and cold drinks). In particular the Parties note that the advantages of single-serve coffee machines over the multi-serve ones include: ease of use, consistent quality and in some instances additional variety.

(61) The Parties also argue that when consumers buy a single-serve machine, they do not switch the entirety of their coffee consumption from the previous multi-serve machine to the new single-serve but rather keep using both machines (this is referred to as multi-homing). For that reason, the Parties claim that when it comes to the (after-)markets of consumables for single-serve machines, R&G coffee, which is used in multi-serve systems like drip filter machines, constrains in particular DEMB's Senseo (which produces filter coffee) and that therefore the line between multi-serve and single-serve is not clear (see section 9.7.1.4).

Commission's investigation and assessment

(62) Coffee machines are various appliances used to produce coffee ranging between simple French press machines to the more complicated single-serve machines which can produce various types of beverages in addition to coffee (so called multi-drink machines).

(63) The coffee machines sector can be further differentiated according to whether the brewing method used produces more than one cup at a time, like for instance traditional drip filter machines (so-called "multi-serve"), or only one cup at a time (so-called "single-serve").

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33 Responses to questions 33 and 33.1 of Questionnaire Q2-Retailers.

34 Responses to question 34 of Questionnaire Q1-Competitors and responses to question 34 of Questionnaire Q2-Retailers.

35 Responses to questions 31 et seq. of Questionnaire Q1-Competitors.

(64) Each of these brewing methods requires a coffee machine and a coffee of a particular format, which can range from loose ground coffee (R&G) to ground coffee packed in soft pads, and from coffee sealed in N-capsules or other consumables to whole beans.

(65) The most common multi-serve machines are drip filter machines, French presses and *cafetiers* which are normally used with R&G coffee.

(66) The main single-serve machines in the EEA include: Senseo, Tassimo, Dolce Gusto and Nespresso. Other machines on the market, with more national or regional presence, include Cafissimo, Expressi and A Modo Mio.

(67) Retailers and competitors in the course of the market investigation emphasised the following differences between single-serve and multi-serve coffee machines: the former are more premium and associated with better quality, they enable the final customer to prepare coffee in a much more convenient way, to choose not only black coffee but also milky coffees and other flavoured coffees.[36] Retailers and competitors also noted that single-serve machines are much more expensive than multi-serve machines and similarly the corresponding consumables for single-serve are more costly than the coffee formats used for multi-serve, which leads to higher cost per cup for the former.[37] As a result, retailers consider that single-serve machines are targeted at wealthier consumers. Due to the single-serve machines' qualities and in particular the ease of use and cleanliness they are also targeted at younger customers. An overwhelming majority of competitors does not consider that a supplier active in multi-serve coffee products could swiftly change into production of single-serve and cite investment into manufacturing lines and in “consumer communication package” as main obstacles for the switch.[38]

(68) Moreover, in their internal documents, the Parties consider the competitive dynamics pertaining to single-serve segment separately from those pertaining to multi-serve segment.[39]

Conclusion

(69) On the basis of differences in product characteristics, intended use and prices, as well as limited supply-side substitutability the Commission concludes that single-serve coffee machines belong to a different product market than multi-serve coffee machines. Since the Parties are not active in the latter, they will not be analysed further in this Decision. Since the Parties, as explained in the section 9.4.2, do have influence on the prices of single-serve machines even though they do not sell those machines, the Commission will consider the relevant market for single-serve machines in Section 7.4.2.

7.4.2. The relevant market for single-serve machines

(70) As a general rule, the machine manufacturers (such as Bosch, Philips, Magimix, Krups and others) are responsible for the technical development, manufacturing and

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36 Responses to question 19 of Questionnaire Q2 – Retailers and to question 14 of Questionnaire Q1-Competitors.

37 Responses to question 20 of Questionnaire Q2 – Retailers and to questions 14, 15 of Questionnaire Q1-Competitors.

38 Responses to question 13 of Questionnaire Q1 – Competitors.

39 See for instance Mondelēz internal document, dated 15 April 2014, "*On Demand: how to boost mondelez performance?*" page 6, Mondelēz internal document, dated 2011, "*EU Coffee – KFE Management Overview*" page 7, DEMB internal document, undated, "*Multi Serve Benelux*" and DEMB internal document, dated November 2013, "*DEMB – Retail Sales – November 2013*".

sale of the machines, for which they set the selling prices, whereas the coffee manufacturers (such as Mondelēz, DEMB, Tchibo, Nestlé) are responsible for the development, manufacturing and sales of consumables, for which they set the selling price. However, coffee manufacturers can and do allocate part of their marketing resources to subsidise machines sales. Due to the high interdependence between coffee machines and compatible consumables sales, the coffee manufacturers have a material interest to promote as much as possible the penetration of the single-serve system, for which they sell coffee consumables to maximise their sales of coffee consumables. The degree of collaboration and independence between the coffee manufacturer and the machine manufacturer can vary from one case to another, as described in section 9-4-2.

Parties' arguments

(71) The Parties submit that single-serve machines are sold by their manufacturers and not by DEMB or Mondelēz. Whilst they admit that both DEMB and Mondelēz do provide certain levels of marketing and promotional support to incentivise sales of the machines in order to boost sales for their respective consumables, they submit that the market for the single serve machines is not relevant for the analysis of the effects of the Transaction given that they do not realise any machine sales.

Nestlé's arguments

(72) According to Nestlé all single-serve machines belong to the same market for the following reasons: (i) all of them aim at fulfilling similar consumer needs, namely to produce a single portion of hot beverage (mainly coffee) in an easy, quick and convenient way, (ii) even the multi-drink machines are used predominantly to make coffee, (iii) they all compete with each other and promotion on one of the machines has an impact on sales of the others, (iv) there is supply-side substitution between them.

Previous decisions by the Commission and other competition authorities

(73) The Commission has previously analysed the market for coffee machines, where it considered that electric filter coffee makers (also called drip filter coffee machines) and espresso machines belong to separate product markets[40] but when analysing single-serve filter pad machines, the Commission did not conclude whether such coffee machines are in the same market as espresso machines.[41] In the same decision, the Commission stated that *"[p]ad machines such as Senseo clearly appear as an improvement of the traditional drip filter machines"*.[42]

(74) The French competition authority in its decision concerning an abuse of a dominant position by Nestlé considered the existence of a separate market for high pressure single-serve coffee machines.[43] It also concluded that coffee manufacturers are active in the market for such machines. Consequently the French competition authority attributed the share of sales of those machines to Nestlé and not to the relevant machine manufacturer.

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[40] M.2621 - SEB / Moulinex paragraph 59.

[41] M.5547 - Koninklijke Philips Electronics / Saeco International Group paragraph 30.

[42] M.5547 - Koninklijke Philips Electronics / Saeco International Group paragraph 30.

[43] Decision No 14-D-09 of 4 September 2014.

Commission's investigation and assessment

(75) As stated at Recital 22, DEMB owns the Senseo trademark and, together with Philips develops and markets the Senseo machines and filter pads (the "Senseo system"). Mondelēz owns the Tassimo trademark and, together with Bosch, develops and markets machines and T-discs (the "Tassimo system"). Details of the cooperation between the Parties and their respective machine partners are set out in Section 9.4.2.

(76) As will be presented in more detail in Section 9.4.2, although the Parties (unlike Nestlé) do not directly sell single-serve coffee machines, they have both the ability and incentive to influence the machines' prices and they do actually influence it. They are also heavily involved in the marketing and promotion of those machines, consulted on their design and so on. Therefore, contrary to what the Parties argue, given the influence that the Parties exercise on the machine sales, the Commission takes the view that it is relevant to assess the effects of the Transaction on the market for single-serve machines.

(77) As regards the issue whether all single-serve machines belong to the same product market, an overwhelming majority of electronic goods retailers and a majority of retailers and machine manufacturers that responded to the Commission's market investigation confirmed that final consumers view the various single-serve machines as broad substitutes because they all allow for brewing a cup of coffee with one click.[44] The common features shared by all single-serve machines and important for the final customers are: simplicity, convenience and speed.[45]

(78) As regards the importance for the final consumers of the level of pressure with which single-serve coffee machines functions, the results of the Commission's market investigation were not conclusive, with some of the retailers stating that in most cases the final consumers are not even aware of the pressure of the machine they purchase while other retailers took the view that the higher the level of pressure the better quality coffee can be made.[46] As a result it can be concluded that for some final customers the level of pressure of single-serve coffee machine can be one of the factors they take into account when deciding to purchase a single-serve machine. However the main product characteristics differentiating single-serve machines from other machines include their convenience, cleanliness, and their quick and easy operation.

(79) On the other hand fully automated coffee machines or the bean-to-cup machines[47] are not considered as belonging to the same market as single-serve coffee machines due to their significantly higher prices. Furthermore they do not offer the same cleanliness, convenience and speed in preparing the hot beverage as single-serve machines, because for the latter the coffee is already pre-packaged in the pads, pods, capsules etc.

(80) While different single-serve machines are positioned differently, with some of them being presented to final customers as offering in principle dark strong coffee (for instance Nespresso), while others as offering a variety of different drinks (such as

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44 Responses to question 2 of Questionnaire Q10 – Retailers and to question 6 of Questionnaire Q11 – Electronic goods retailers and to question 8 of Questionnaire Q12 – Machine manufacturers.

45 Responses to question 2 of Questionnaire Q10 – Retailers and to question 8 of Questionnaire Q12 – Machine manufacturers.

46 Responses to question 5 of Questionnaire Q10 – Retailers and to question 9 of Questionnaire Q11 – Electronic goods retailers.

47 These machines grind coffee beans for each serving of coffee individually.

Tassimo and Dolce Gusto) this does not imply that they belong to different product markets. It is rather, as Nestlé argues, that in the eyes of final consumers they are broad substitutes, competing with each other. However the specific characteristics of a given single-serve machine (for instance offering only dark coffee or offering also a variety of other drinks) are important for the closeness of competition within the differentiated market. Thus they will be taken into account in Section 9.4.5.1.

Conclusion

(81) On the basis of the foregoing, the Commission concludes that all single-serve machines belong to one differentiated product market. While the Parties do not directly sell their single-serve machines they are able and they do influence the prices of such machines. Therefore, although the market for single-serve coffee machines is not an affected market within the meaning of Section 6.3 Form CO[48], the Commission will consider it in its assessment in the Sections 9.4.5 and 9.4.6.

7.4.3. Consumables for single-serve machines (filter pads, N-capsules and other)

Introduction

(82) Each type of single-serve machine requires a specific format of consumable. DEMB's Senseo machine, for example, requires filter pads though such pads can be produced by any coffee company as Senseo is an open system. Mondelēz' Tassimo machine requires T-discs which can be produced only by Mondelēz (Tassimo being a closed system). Nestlé's Dolce Gusto requires Dolce Gusto capsules which can be manufactured only by Nestlé (Dolce Gusto being a closed system). Nestlé's Nespresso machine requires Nespresso capsules which, can be produced by any coffee company which manages to develop a suitable technology to build compatible capsules (Nespresso being a semi-open system). There are a number of local or regional players having different single-serve systems comprising specific capsules, for example, Tchibo with Cafissimo, Aldi with Expressi and Paulig with Cupsolo.

(83) As regards consumables for single-serve machines, the Parties' activities overlap in the production of filter pads and N-capsules.

Parties' arguments

(84) As mentioned in Recital (24), the Parties claim that it is not necessary for the Commission to reach a conclusion as to the exact scope of the relevant product markets in this case. However, they describe their activities with respect to the narrowest segments of coffee consumables for single-serve coffee machines, that is filter pads and N-capsules separately.

(85) The Parties also argue that no distinction should be made according to the different distribution channels and that original N-capsules belong to the same market as compatible N-capsules, since Nespresso has clearly reacted to the entry of compatible N-capsules on the market.

(86) Specifically with respect to filter pads, the Parties claim they are very close to R&G in terms of product features, taste pattern, and production process; moreover they

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48 Form CO relating to the notification of a concentration pursuant to regulation (EC) no 139/2004, Annex 1 to Commission Regulation (EC) No 802/2004 of 21 April 2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (OJ L 133, 30.04.2004, p. 1-39), as amended by Commission Regulation (EC) No 1033/2008 (OJ L 279, 22.10.2008, p. 3-12) and by Commission Implementing Regulation (EU) No 1269/2013 of 5 December 2013 (OJ L 336, 14.12.2013, p. 1-36).

state that both types of products can be produced in the same production facilities, and that the production of both product types is not patent protected. The Parties therefore argue that R&G and filter pads belong to the same market or at least that R&G exercises a significant competitive constraint on filter pads. To support their claim, the Parties refer to a sector inquiry carried out by the German competition authority[49] which focuses on relative differences in production technologies between the different coffee formats and considers that instant coffee, cappuccino powders, coffee substitutes and N-capsules require more complex technologies than filter pads and R&G.

(87) Furthermore, the Parties claim that filter pads consumers are highly price sensitive, which is evidenced by the increasing share of private label filter pads over time. Moreover, for instance in France, the majority of filter pads users also has a multi-serve machine and therefore could easily switch between the two types of coffee.

Nestlé's arguments

(88) Nestlé submits that all consumables for the various single-serve machines (in particular filter pads, T-discs and N-capsules) belong to the same product market for the following reasons: (i) all consumables are aimed at satisfying the same need, that is to have a cup of hot beverage, (ii) there is demand-side substitution between all the different consumables which means that in particular the consumers owning a Senseo machine switch to Tassimo machine once the lifetime of their Senseo machine has lapsed, (iii) there is supply-side substitutability in terms of production, stocking and delivery of all types of consumables.

Commission's investigation and assessment

(89) As regards single-serve coffee consumables, the Commission has never analysed the markets for coffee in those different formats.

(90) It needs to be reiterated that within the single-serve category, there is (i) inter-system competition between providers of the various coffee systems and (ii) intra-system competition at the consumables level between providers of consumables for those coffee systems, whenever the system is not closed. Therefore, since each system has one specific consumable with which it operates (that is to say Senseo operates only with filter pads, Nespresso only with N-Capsules and Tassimo only with T-discs), once a consumer has bought a specific machine, that consumer is bound to the machine and its consumables. Whenever the same consumer would wish to switch to different consumables (that is to say switch from filter pads to N-capsules or from N-capsules to T-discs), it would need to purchase a new single-serve machine. Thus, despite Nestlé's claims, once a consumer has bought a single-serve machine, switching to consumables for another machine is not straightforward and requires the purchase of a new machine.

(91) The Commission acknowledges that the relatively high subsidisation and the aggressive promotional activities exercised by coffee manufacturers on coffee machines result in lower prices of single-serve machines which might reduce the barriers to switching and thus entice consumers to purchase new single-serve machines. However, it seems unlikely that changes in relative prices of different consumables would trigger consumers to keep on switching their machines or have

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[49] Bundeskartellamt, Sektoruntersuchung Lebensmitteleinzelhandel, September 2014, p. 201, (http://www.bundeskartellamt.de/Sektoruntersuchung_LEH.pdf;jsessionid=8621409BCB6D56A341A9EC2CAEAFC9D8.1_cid371?__blob=publicationFile&v=7)

multiple single-serve machines in their household. This was also confirmed by retailers, electronic goods retailers, machine manufacturers and competitors.[50]

(92) Furthermore with the different levels of patent protection over the various consumables, supply-side substitutability is also questionable. This is reinforced by the fact that in order to start producing single-serve coffee consumables, most often a company needs to invest in new machinery with new or licensed intellectual property rights ("IP") (or to team up with a machine manufacturer to create a totally new system). In particular for closed systems, such as Tassimo and Dolce Gusto, for which only Mondelēz and Nestlé respectively produce consumables, other suppliers are not able to offer compatible consumables.

Conclusion

(93) Due to limited demand and supply-side substitutability the Commission concludes that consumables for the various single-serve systems do not belong to the same market. Moreover, the Commission considers that ultimately, only those consumables that are compatible with a specific system compete with each other, that is for instance filter pads supplied by various coffee producers compete with each other. That, however, does not imply that the relative prices of different types of consumables have no significance since the price of consumables is one factor that the consumers may take into account when deciding which single-serve machine to purchase.[51]

(94) In Sections 7.4.3.1 to 7.4.3.2 the Commission analyses in more detail the arguments put forward by the Parties and Nestlé with regard to N-capsules and filter pads, as those are the consumables for which the Parties' activities overlap.

7.4.3.1. N-capsules

(95) Until very recently, Nespresso was a closed system, with Nestlé seeking to prevent other coffee producers from competing in the supply of N-capsules through legal action and various other means.[52] The closed nature of the Nespresso system allowed Nestlé to charge high prices[53] for its N-capsules, supported by its unique distribution system in which Nestlé controls the distribution and prices through its boutique stores, its website and call centres.

(96) The Nespresso system is now semi-open (pending the result of ongoing legal challenges), allowing other producers to compete for the supply of N-capsules. The "opening" of the Nespresso system has led to third party producers beginning to generate significant sales of N-capsules. Figure 2 shows the share of Nespresso of N-capsule sales in blue and that of third parties in red:

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[50] Responses to question 9 of Questionnaire Q10 – Retailers, to question 10 of Questionnaire Q12 – Machine manufacturers, to question 13 of Questionnaire Q11- Electronic goods retailers and to question 8 of Questionnaire Q9- Competitors.

[51] Responses to question 6 of Questionnaire Q10 – Retailers, to question 10 of Questionnaire Q11 – Electronic goods retailers, to question 6 of Questionnaire Q9 – Competitors and to question 6 of Questionnaire Q12 – Machine manufacturers.

[52] See these measures in the French competition authority's recent preliminary report: (http://www.autoritedelaconcurrence.fr/user/standard.php?id_rub=592&id_article=2343).

[53] Even after the compatible N-capsules were introduced on retailers' shelves, according to the Parties the average price per cup for Nespresso is between 35-42 cents, while the price of compatible N-capsules is approximately 30 cents – see Parties response to Article 6(1)(c) Decision and DEMB internal document, dated May 2014, "*DEMB Category Strategy – Single serve*" slide 10.

[…]*

Figure 2 – Nespresso EU N-capsules vs. Third party sales[54]

(97) Whereas Nestlé sells Nespresso products either on the internet or through a small number of boutique retail shops, the new entrants have introduced N-capsules through multiple traditional retail and grocery channels. While Nespresso remains the largest supplier by a very considerable margin, other brands are steadily eroding Nestlé's share with some brands (including strong retailer brands) having achieved significant success.[55]

(98) In the Sections 7.4.3.1.1 and 7.4.3.1.2 the Commission will assess whether (i) N-capsules should be considered as a separate market and (ii) original and compatible N-capsules belong to the same market

7.4.3.1.1 N-capsules as a separate relevant market

(99) The Commission investigated in more detail the supply- and demand-side substitutability of N-capsules with filter pads and other capsules.

N-capsules vs filter pads

(100) The majority of respondents to the Commission's questionnaires in the market investigation consider that N-capsules and filter pads are not substitutable in the eyes of the consumers[56] and that N-capsules are different from filter pads in consumption patterns, prices and targeted consumer groups.[57]

(101) Moreover, the majority of competitors who replied to the questionnaire are of the view that a supplier active only in filter pads would not be able to start swiftly and without significant costs the production and sale of N-capsules and vice versa.[58] The Commission also notes that any company wishing to start the production of N-capsules or filter pads would need to invest in new dedicated production lines. In addition, a company wishing to start production of N-capsules would need to develop a production technology or get a licence for an existing one.

(102) Moreover, the Parties' internal documents show that there is a […]* difference in the profitability of filter pads and N-capsules, with the former averaging EUR […]* of gross margin per cup and the latter reaching an average gross margin […]* higher at EUR […]*.[59]

Conclusion

(103) Given the lack of supply- and demand-side substitutability and the differences in prices, profitability, production processes and consumption patterns, the Commission considers, for the purposes of this Decision that N-capsules are in a separate market from filter pads.

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54 Mondelēz´s estimates.

55 For example, in Spain, Mercadona entered the N-capsules segment in July 2013 and within a year acquired at [30-40]* % segment share. (Source Form CO paragraph 280).

56 Responses to questions 24 et seq of Questionnaire Q1-Competitors and responses to questions 26 et seq. of Questionnaire Q2-Retailers.

57 Responses to question 26 of Questionnaire Q1-Competitors and responses to question 28 of Questionnaire Q2-Retailers.

58 Responses to questions 23 et seq. of Questionnaire Q1-Competitors.

59 Source: Annex 6-2 to Form CO.

N-capsules vs other capsules

(104) Retailers who responded to the market investigation indicated that N-capsules and other capsules are not substitutable,[60] are considered a distinct product fulfilling specific needs[61] and have different consumption patterns, prices and targeted consumer groups.[62]

(105) Although competitors responding to the market investigation suggested that other capsules (that is to say multi-drink capsules used in Tassimo or Dolce Gusto) could be perceived as potential alternatives to N-capsules[63] and do not differ significantly from N-capsules in consumption patterns, prices and targeted consumer groups,[64] the fact remains that a consumer can only buy capsules that are compatible with the system that the consumer has at home. Therefore, competition between different types of capsules really does not take place after the consumer has made a choice. This is different from competition for the single-serve machines where indeed different single-serve machines could be considered as broadly substitutable with each other, with some of them potentially competing closer with each other in this differentiated market.

(106) Moreover, the Commission notes that the majority of other capsules are covered by IP rights making them a "closed system", in which only the owner(s) of the rights can manufacture and sell the capsules. On the contrary, as already explained, N-capsules can be manufactured and sold by any coffee company.

Conclusion

(107) In conclusion, the Commission considers that for the purpose of this Decision, N-capsules belong to a separate product market.

7.4.3.1.2 Compatible vs. Original N-capsules

(108) The Commission investigated whether original N-capsules, sold in Nespresso-dedicated shops and online or via call centres, belong to the same market as compatible N-capsules sold by other coffee companies via the traditional retail channels

(109) The majority of respondents to the market investigation clearly consider that original and compatible N-capsules compete with each other.[65] They both address the same type of consumer, that is to say, a consumer who has a Nespresso machine in their household and is looking for certain values that can be represented by the original Nespresso brand but also values expressed by other coffee brands which the consumer knows from purchasing coffee in other formats.

(110) Internal documents of the Parties and Nestlé show that both original and compatible N-capsules are monitored by market participants[66] and, although some market

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[60] Responses to questions 29 et seq. of Questionnaire Q2-Retailers.

[61] Responses to question 30 of Questionnaire Q2-Retailers.

[62] Responses to question 31 of Questionnaire Q2-Retailers.

[63] Responses to question 29 of Questionnaire Q1-Competitors.

[64] Responses to question 30 of Questionnaire Q1-Competitors.

[65] Responses to question 35 of Questionnaire Q9-Competitors and responses to question 49 of Questionnaire Q10-Retailers.

[66] See for instance DEMB internal document, undated, "*L'Or Espresso – build the right strategy for a top brand*" pag 77 et seq., Mondelēz internal document, dated Q2 2013, "*Business Review DX Project – Launch of Nespresso Compatible Capsules*", Nestlé internal document, dated 15 April 2014, "*Coffee & machine market shares*" non-confidential version pag. 11-12 and Nestlé internal document, dated 15 April 2014, "*A focus on: Jacobs Douwe Egberts*" non-confidential version pag. 17-19.

participants highlight different purchasing patterns between the two,[67] it is clear that original and compatible N-capsules compete with each other.

Conclusion

(111) Given the clear market response and the fact that both original and compatible N-capsules can be used in the same coffee machines, the Commission considers, for the purposes of this Decision, that original and compatible N-capsules belong to the same product market.

7.4.3.2. Filter pads

(112) The Commission has previously considered the differences between filter pads and coffee used in multi-serve machines[68] and concluded that: (i) the coffee product used in those two types of coffee machines is different; (ii) R&G is used in principle in multi-serve coffee machines, while filter pads are used in pad machines; (iii) filter pads allow for preparing a single cup of coffee in a quick, convenient and clean manner (with one click of a button); (iv) filter pads are marketed and promoted by coffee companies as an upgrade from the traditional methods of coffee brewing and as a result, they are associated by consumers with a more modern product.

(113) As regards demand-side substitutability between filter pads and R&G, although the competitors' responses to the Commission's questionnaires indicated that a part of consumers might switch a minor portion of their purchases from one coffee format to the other in case of a small but permanent price increase, the majority of retailers replied that filter pads are not substitutable with R&G and vice versa. Moreover the majority of both retailers and competitors clearly indicated that filter pads are considered a distinct product from R&G coffee fulfilling specific needs.[69]

(114) With regards to supply-side substitutability, the majority of competitors who replied to the Commission's questionnaire considered that a supplier active only in R&G would not be able to start swiftly and without significant costs the production and sale of filter pads and vice versa.[70]

(115) Respondents to the market investigation suggested that many consumers who have a single-serve machine also have a multi-serve appliance.[71] However on the basis of its market investigation the Commission cannot find evidence of a competitive constraint between filter pads and R&G. Moreover, there are many consumers who do not own multiple machines. For those consumers, a switch from R&G to filter pads would entail switching costs given the need to first purchase another machine.

(116) Market studies submitted by the Parties[72] show that there is a switch from R&G to filter pads but not vice versa. That pattern combined with the marketing of filter pads as an upgrade from traditional brewing methods, show a trend whereby consumers who decided to switch to filter pads are not willing to "switch back" or "downgrade" to R&G.

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[67] See for instance Mondelēz internal document, dated April 2012, "*Coffee Overview – Kantar Worldpanel*" p. 78.

[68] Case No COMP/M.5547 - Koninklijke Philips Electronics / Saeco International Group para. 30.

[69] Responses to questions 21 et seq. of Questionnaire Q1-Competitors and responses to questions 23 et seq. of Questionnaire Q2-Retailers.

[70] Responses to questions 20 et seq. of Questionnaire Q1-Competitors.

[71] Responses to questions 10 et seq. of Questionnaire Q9-Competitors, responses to questions11 et seq. of Questionnaire Q10-Retailers, responses to questions 14 et seq. of Questionnaire Q11-Electronic Retailers and responses to questions 15 et seq. of Questionnaire Q12-Machine Manufacturers.

[72] Europanel 2013 – France switching behaviours.

(117) The Parties' internal documents also show that the trend in the market is from traditional preparation methods (such as drip filter or instant coffee) to on-demand and single-serve systems (including the Senseo filter pad system), with a key driver of this trend being convenience. The Parties' internal documents and contact with market participants clearly show that customers also appreciate in filter pads the diversity of tastes offered and the various strengths of coffee proposed in comparison with R&G.[73] In conclusion, filter pads respond in a more convenient manner to consumers' needs.

(118) The sector inquiry of the German competition authority put forward by the Parties focuses mainly on production technologies and supply-side substitutability and was not specifically carried out in a merger assessment context. The Commission considers that to define a product market for the purpose of assessing a concentration, a more holistic approach is needed and such approach might lead to a different conclusion than a narrow comparison between the technologies needed to produce different coffee formats. Moreover, even if one were to only consider the production side, it is clear that separate production lines are needed for manufacturing filter pads as opposed to R&G.

(119) The Commission also notes that there are significant price differences between R&G coffee products and filter pads. According to the Parties' submission, the price per cup on average for R&G coffee products is [below 10]* cents, while for filter pads it is [10-20]*.[74] In France, the average price per kg of R&G coffee is EUR [below 10]* per kg whereas for filter pads it is EUR [10-20]* per kg. In Austria, the average price of R&G coffee is EUR [below 10]* per kg whereas in filter pads it is EUR [10-20]* per kg.[75] As a result, consumers already accept to pay a materially higher price per cup for filter pads and they would not in all likelihood decide to switch back to R&G should the price of filter pads increase by merely 5-10%. The Commission considers that in order to give up the convenience offered by filter pads and go back to R&G products, consumers would need to be faced with a much higher price increase than one of 5 to10%.

(120) During the course of the proceedings, the Parties submitted an economic study assessing the substitutability between filter pads and R&G in France. The Parties presented a demand estimation model showing that there is a strong degree of substitution between R&G and filter pads, and vice-versa.[76]

(121) For reasons explained in Annex I, the Commission considers that the Parties' demand estimation model suffers from serious identification and robustness issues. Therefore, the Commission cannot regard the Parties' study as informative for the current case.

(122) In addition, the Commission notes that not only is the profitability different between filter pads and R&G but also the cost structures are different between the two products, with packaging costs being roughly three times higher and raw material costs being roughly half for filter pads when compared with R&G.

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73 See for instance DEMB internal document, undated, "*Senseo – Drive Senseo Brand to 1 Billion €*" page 20 et seq, and non-confidential minutes of a conference call with a retailer of 12 February 2015 11.00 CET.

74 Parties submission on SiSe of 20 November 2014 paragraph 3.10 et seq.

75 Figures based on 2013 data for total market; source: Annex 7-4AA to Form CO for R&G figures for both France and Austria, Annex 7-4a to Form CO for France filter pads figures and Annex 7-4b to Form CO for Austria filter pads figures.

76 A detailed explanation of the Parties' economic study is present in Annex I.

Conclusion

(123) Given the lack of supply-side substitutability, the low demand-side substitutability, the differences in use, purpose, prices and cost structure the Commission considers, for the purposes of this Decision, that filter pads constitute a separate market from R&G.

7.4.4. *Single-serve systems: the interplay between the relevant markets for single-serve machines and consumables*

(124) Single-serve machines and single-serve coffee consumables, which together constitute single-serve systems, are complementary products. Moreover, each single-serve machine is based on a specific technology and, as a consequence, each machine needs specific consumables that are compatible with that machine. As set out in Recital (70), coffee machines are manufactured by one or more electrical appliance manufacturers while the compatible consumables are manufactured by one or more coffee manufacturers depending on whether the system technology is "open" or "closed": technology owners can make use of their intellectual property (IP) rights to prevent non-authorised manufacture of consumables (thus "closing" the system). Systems such as Senseo and Nespresso are "open" or "semi-open" systems, meaning that any or at least some competitors can manufacture compatible consumables. Other systems like Tassimo and Dolce Gusto are "closed" systems, meaning that only the coffee manufacturer owning specific IP rights can manufacture the consumables for the closed system.

(125) The Commission has not assessed "coffee systems" in previous cases.

(126) The Parties propose that different markets for the machines and the consumables be considered, and that given that their activities focus on the consumables' markets, only the consumables markets should be considered for the analysis of the Transaction. However, the Parties also recognise that there is a strong relationship between the machines and the consumables' markets and acknowledged that, due to the strong indirect involvement and interest of coffee manufacturers in the sales of machines, competition takes place not only within the consumables and machines markets separately but also at system level. Furthermore when presenting their arguments the Parties take into account both the consumables for single-serve systems and single-serve machines.

(127) Similarly, Nestlé differentiates between markets for coffee machines and consumables, but also points to the strong interplay between the machines and consumables. According to Nestlé, such interplay is a key element to assess the effects of the Transaction that cannot be captured if the analysis were to focus only on the separate markets for machines and consumables respectively.

(128) The Commission observes that the price and the choice of available consumables is one of the factors final consumers take into account when deciding which single-serve machine to purchase.[77] Given the strong dependence of coffee companies on machine sales and their consequent strong involvement in the marketing of the machines, the relevant markets for single-serve machines and consumables are inter-related.

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77 Responses to question 13 of Questionnaire Q2 – Retailers and to question 7 of Questionnaire Q1-Competitors.

(129) In the light of what is stated in Recital (128), and also in order to address various parties' submissions, the Commission will consider the interplay between the relevant markets for single-serve machines and the markets for single-serve consumables in its competitive assessment. In particular and where appropriate, the Commission will have regard to the Transaction's effects on a wider segment for single-serve systems comprising both machines and consumables. At the same time, it does not appear necessary to define a distinct relevant market for single-serve systems, as the Transaction's effects on that market will be addressed in the assessment of the narrower markets for single-serve machines and consumables.

7.5. R&G coffee

(130) R&G consists of coffee beans that have been roasted, ground and are mostly used in multi-serve machines. R&G coffee comprises a wide variety of flavours, aromas and intensities, depending on the specific blend of coffee varieties and origins of the beans, and how long they are roasted.

(131) The Parties submit that for a manufacturer it is easy to produce different types of R&G coffee. Moreover, consumers will also switch between different R&G coffees depending on the occasion and individual preferences.

7.5.1. Whole beans

Parties' arguments

(132) The Parties submit that whole beans are part of the R&G market given that they result from the same production process, with the only difference that the grinding is not done in advance by the coffee manufacturer but rather by the customer directly before brewing.

(133) According to the Parties most consumers who purchase whole beans grind them and use them in any appliance that would normally use R&G coffee. For this reason the Parties consider that both supply- and demand-side substitutability exists between whole beans and R&G.

Information obtained in the Commission's investigation

(134) The majority of competitors and customers who responded to the Commission's questionnaires stated that whole beans and R&G are considered by the final consumer as distinct products fulfilling different needs and a stronger majority noted significant differences in consumption patterns, prices and targeted consumer groups.[78]

(135) Moreover, the majority of competitors who replied to the market investigation considered that a supplier active only in R&G would not be able to start swiftly and without significant costs the production and sale of whole beans and vice-versa.[79]

Commission's assessment

(136) Taking into account the results of the market investigation, the Commission considers that it may be necessary to distinguish between whole beans and R&G. However, for the purpose of this Decision the precise product market delineation concerning R&G and whole beans can be left open since the assessment of the Transaction does not materially change under either alternative product market

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[78] Responses to questions 11 et seq. of Questionnaire Q1-Competitors and responses to questions 16 et seq. of Questionnaire Q2-Retailers.

[79] Responses to question 9 of Questionnaire Q1-Competitors.

definition, namely under a broad product market definition comprising R&G and whole beans or under a narrower delineation where the two coffee products constitute different product markets.

7.5.2. *Greek Coffee*

(137) In Greece there is a specific type of R&G coffee, ground in a slightly different way and producing finer grind, which is brewed following a specific process and which produces what is known as "Greek coffee". The Commission considered whether Greek coffee is a separate market from "normal" R&G.

Parties' arguments

(138) The Parties are both active in the "normal" R&G segment, whereas only DEMB is active in Greek coffee and they consider that such narrow segmentation of the market would not form a relevant basis for the Commission assessment.

(139) The Parties claim that there exists both demand- and supply-side substitutability between "normal" R&G coffee and "Greek coffee". They submit that the majority of consumers drinking "Greek coffee" also purchase "normal" R&G and that "normal" R&G manufacturers could easily start producing "Greek coffee".

(140) The Parties also highlight also a decision by the Greek national competition authority[80] relating to an abuse of dominance which whilst reaching the conclusion that "*each type of coffee, meaning instant coffee, Greek coffee, filter coffee and espresso constitute a separate product market*", also elucidated that the definition of the relevant market could "*be given differently in a concentration case versus a case investigating a possible abuse of dominant position*". Consequently the Parties submit that segmenting the R&G further into Greek and "normal" R&G is not applicable for the purpose of analysing the Transaction.

Information obtained in the Commission's investigation

(141) Although the majority of respondents to the Commission's questionnaires indicated that "Greek coffee" and "normal" R&G are not substitutable and are considered distinct products fulfilling specific needs,[81] the respondents also highlighted that there is supply-side substitutability between "Greek coffee" and "normal" R&G and that a supplier active only in "normal" R&G would be able to start swiftly and without significant costs the production and sale of "Greek coffee" and vice versa.[82]

Conclusion

(142) The Commission considers that it might be necessary to distinguish between "Greek coffee" and "normal" R&G in Greece. However, for the purpose of this Decision, that issue can be left open as the Transaction would not significantly impede effective competition in the internal market under either alternative product market definition, namely under a broader market comprising "Greek coffee" and "normal" R&G or under a narrower delineation where the two coffee products are considered to constitute different product markets.

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80 Decision 434/V/2009 paragraph 12, page 13 (http://oxcat.ouplaw.com/view/10.1093/law:ocl/cr016.case.16/OCL-CR016(GR2009).pdf).

81 Response to question 169 to 171 of Questionnaire Q1-Competitors and responses to question 278 et seq. and 279 of Questionnaire Q2-Retailers.

82 Response to question 168 of Questionnaire Q1-Competitors.

7.5.3. *Robusta vs. Arabica beans*

(143) The two most widely cultivated varieties of the coffee plant are the *Coffea arabica* and the *Coffea canephora* (called also "Robusta"). In *Cafeteros de Colombia*,[83] the Commission made reference to "*the market for green coffee*" and identified three types of green coffee "*arabicas, robustas and mild arabicas*" but in the end did not define a relevant product market.

Parties' arguments

(144) The Parties submit that there are no supply-side barriers to switching between Arabica and Robusta since each is a traded commodity.[84] The Parties also argue that within each of Arabica and Robusta, tastes and aromas will vary widely according to the quality of the specific plant: much like the different quality levels in the grape varieties used to make wines. Furthermore, most coffee products are a blend of Arabica and Robusta beans of different varieties and in different proportions to achieve a range of tastes and aromas, therefore in the majority of cases, the type of bean is not a significant part of consumer choice, which will focus more on the taste without the need for detailed knowledge of the blend's composition.[85] Indeed, data splits for Arabica or Robusta are not available in all countries because that aspect simply does not factor into supplier and customer decisions.[86]

Commission's investigation and assessment

(145) The Commission acknowledges the variety of blends available on the market and the fact that internal documents from the Parties, while showing a tracking of both the Arabica and Robusta green beans prices for supply reasons, do not indicate that the Parties give particular importance to the split between Arabica and Robusta in their final products.

Conclusion

(146) Given the wide range of blends between Arabica and Robusta commercially available, and the limited role that the composition of the blend plays in consumers' choices, the Commission considers, for the purpose of defining the relevant market in this Decision, that it is not necessary to distinguish between Arabica and Robusta.

7.6. Instant coffee

Parties' arguments

(147) The parties submit that instant coffee is a ready substitute for other coffee formats, given that it can be prepared in a short time and without the use of any dedicated appliances and that moreover it can be conserved for long periods.

(148) The Parties submit that, due to the ease of transport, instant coffee can be sourced globally by retailers and such global reach is one of the reasons behind a strong penetration of private label brands in instant coffee.

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83 Case 82/860EEC (1982).

84 According to the Parties, unroasted (that is to say green) beans are publicly traded on the New York International Commodities Exchange for Arabica green beans and the London LIFFE exchange for Robusta green beans and more than 95% of the final price is a reflection of the public trading price.

85 Only in France the Arabica/Robusta distinction has been used prominently in the marketing of coffee products.

86 Form CO paragraph 307.

Information obtained in the Commission's investigation

(149) The majority of retailers who responded to the market investigation confirmed that instant coffee is not substitutable with any other coffee product while competitors' replies were mixed on that issue. However, the majority of both retailers and competitors clearly indicated that instant coffee is considered a distinct product fulfilling specific needs.[87]

(150) Moreover the majority of competitors who replied to the Commission's questionnaire, consider that a supplier active only in instant coffee will not be able to start swiftly and without significant costs the production and sale of any other coffee product and vice versa.[88]

Conclusion

(151) In conclusion, the Commission considers, for the purposes of this Decision, that instant coffee forms a separate product market from any other coffee product.

8. RELEVANT GEOGRAPHIC MARKETS

Parties' arguments

(152) The Parties submit that, in line with previous Commission's decisions in the retail food sector,[89] the relevant geographic market for all coffee products is at least national in scope with customers purchasing products at the national level. Similarly, pricing and marketing of coffee products is considered national by the Parties. Moreover, the Parties consider that consumer national preferences vary according to Member State given different coffee drinking cultures which are reflected in different brands, types and tastes of coffee sold.

(153) The Parties argue that one exception to such national markets is represented by Estonia, Latvia and Lithuania, which should be treated together as the Baltics for the following reasons:

(1) the Commission has found that competition takes place throughout the Baltic cluster in previous cases involving wholesale supply of fast-moving consumer goods[90];

(2) there is a strong presence of pan-Baltic retailers, and of the same key competitors across the Baltics;

(3) coffee products are supplied in the same packaging across the Baltics;

(4) there is scope for transhipments of coffee products across the Baltics and into the Baltics from other countries both by coffee manufacturers and retailers;

(5) the pan-Baltic nature of the market has influenced the Parties' internal management structures, since they have one General Manager determining the strategy for the Baltics.

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87 Responses to questions 18 et seq. of Questionnaire Q1-Competitors and responses to questions 21 and 22 of Questionnaire Q2-Retailers.

88 Responses to questions 17 et seq. of Questionnaire Q1-Competitors.

89 M.5644 - Kraft Foods / Cadbury para. 42; M.4824 - Kraft / Danone Biscuits, para. 19; M.2072 - Philipp Morris / Nabisco, para. 17.

90 M.6455 – SCA / Georgia Pacific Europe; M.4533 – SCA/P&G.

Information obtained in the Commission's investigation

(154) With respect to all the product markets identified in Section 7 the Commission notes the high importance of national brands in the Member States despite the growing importance of some international brands.

(155) In addition the Commission's market investigation, with respect to all the product markets confirmed inter alia the presence of national differences in terms of consumption by consumers;[91] the divergence in market shares of the relevant suppliers in the different Member States; that negotiations with retailers regarding supply and pricing of coffee products are national[92] and the presence of national and regional competitors.[93]

(156) In respect of the Baltics, market participants in the Baltic countries[94] highlighted national differences in consumption habits, limited transhipment and national-level budgeting for the promotion of coffee products. The different nature of each of the Baltic states is also highlighted by different market shares attained by each of the relevant players in each of Estonia, Latvia and Lithuania.

Conclusion

(157) Given all the elements highlighted by the market investigation, and in line with previous decisions on fast moving consumer goods, [95] the Commission considers, for the purposes of this Decision, that the relevant geographic scope of all relevant markets defined in this Decision is national.

9. COMPETITIVE ASSESSMENT

(158) The Commission reached the conclusion that the Transaction would lead to a significant impediment to effective competition, in particular through the creation of a dominant position, in: (i) the R&G markets in France, Denmark and Latvia; and (ii) filter pads markets in Austria and France. Moreover, for the reasons set out in Sections 9.4 to 9.7, the Commission has reached the conclusion that the Transaction would not significantly impede effective competition in the internal market in: (i) single-serve machines market in the countries where both Tassimo and Senseo are present and account for at least 25% of the market for single-serve machine sales[96] (that is to say Austria, Denmark, France, Germany, the Netherlands, Spain and the United Kingdom); (ii) the R&G markets in the Czech Republic, Greece, Poland, Bulgaria, Hungary, the Netherlands and Spain; (iii) instant coffee markets in the Czech Republic, Denmark, Estonia, Greece, Hungary, Latvia, Lithuania, the Netherlands, Poland, Slovakia, Spain or the United Kingdom; (iv) filter pads markets in Germany and the Netherlands and (v) out-of-home markets in Denmark, Germany, Sweden and the United Kingdom.

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91 Responses to question 42 of Questionnaire Q1-Competitors and responses to question 43 of Questionnaire Q2-Retailers.

92 Responses to questions 41 and 44 of Questionnaire Q1-Competitors and responses to questions 41 and 42 of Questionnaire Q2-Retailers.

93 Responses to questions 39 and 40 of Questionnaire Q1-Competitors.

94 Non-confidential minutes from a conference call with a competitor on 18 November 2014 at 17.00 CET; non-confidential minutes from a conference call with a competitor on 18 November 2014 at 10.45 CET.

95 See footnote 89.

96 Tassimo's and Senseo' position has been calculated based on GfK sales data provided by the Parties.

9.1. General – market characteristics

(159) On the basis of its market investigation, the Commission notes that coffee products belong to differentiated markets, in which brands play an important role. Players in those markets invest in promotion and advertising to maintain the desired image of their brands and ensure final customers' loyalty. As a result the barriers to entry into the coffee products markets are not insignificant. Furthermore those markets are dynamic and subject to change. In Sections 9.1 to 9.9 those characteristics of coffee product markets will be analysed in more detail. For the retailers coffee products are important because they attract final customers to their retail outlets. Therefore their position in those markets will also be analysed.

9.1.1. Differentiated markets

(160) The various coffee product markets affected by the Transaction are characterised by a high degree of product differentiation, covering a spectrum of products with which coffee suppliers try to respond to the different expectations of final consumers.

(161) To some extent coffee products might differentiate according to objective characteristics reflecting personal coffee tastes and preferences, such as the strength of the beverage (for instance distinction between mild, medium and dark roast) or species of coffee bean (for instance the distinction between Robusta and Arabica).

(162) However the principal factors of differentiation are the "consumer need states", which are the reasons, contexts or motivations for final consumers to drink coffee, according to market intelligence reports, such as "BrandneXt study Coffee Market R&G (NL, Esp, FR)", prepared for coffee suppliers.[97] Those needs can range from "[…]*" to "[…]*" or from "[…]*" to "[…]*".[98] Other identified contexts might include: […]*.[99]

(163) The various coffee brands position themselves in order to correlate with the needs of the consumer. As soon as a brand "stands for something" it is also "making the communication faster and cheaper".[100] Thus within a given coffee market the high-end brands are meant to fit with the motivations centred on exclusivity and therefore serve as status symbols. On the other end the mid and low-range brands are meant to fit with the context of affinity and satisfy the need of belonging and homeliness.

9.1.2. Importance of brands, advertising and promotion

(164) Coffee suppliers create and successively maintain a desired set of correlations between their coffee brand and the consumers' needs and consequently the desired concept and image of the brand by means of advertising and promotion of their coffee products in various media – for example paper, electronic and social. As a result, final customers assume that a given coffee brand will guarantee the quality they associate with it and that it will match with a given set of coffee tastes and preferences. For those reasons brands are important in all the coffee product markets, as established in Section 7.

(165) Advertising and promotion efforts are also aimed at maintaining the awareness of the brand, which is the extent to which consumers can recognise and recall a brand. The

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97 DEMB internal document dated August 2012, "*BrandneXt study Coffee Market R&G (NL, Esp,FR)*", slide 3.

98 *Ibidem*, slide 13.

99 Mondelēz internal document, not dated, "*Items to cover*", slide 55.

100 DEMB internal document, not dated, "*A Marketing Training Seminar specially prepared for DE Master Blenders 1753 by Mike Philippson Associates*", slide 13.

ultimate aim is to create brand loyalty which means, inter alia, that consumers will continue purchasing the branded products even in times of austerity and "*not worry about (...) premium price*".[101] That strategy is successful in the coffee category. As one competitor put it, *"[c]onsumers would probably not even switch from branded coffee (...) should the price of branded coffee increase, but will rather try to economise on other products in order to keep their purchasing power for branded coffee. Coffee is still considered as a small luxury, from which customers do not want to refrain even in the times of financial crisis.*"[102]

(166) The Parties themselves in internal documents refer to their coffee brands as *"[…]*"* and admit that they *"[…]*"*. For example, consumers of Tassimo interviewed by a market research company for Mondelēz *"[…]*"*.[103] On the other hand DEMB notes in its internal documents that thanks to its long history Douwe Egberts guarantees coffee quality.[104]

(167) Some of the particularly strong brands (such as Jacobs, Carte Noire, Tchibo, Nescafe, Senseo) serve as "umbrella brands" or "master brands" with various coffee products and formats being sold with the same brand and identification. That enables coffee suppliers to "transfer their brand equity" that is to say to leverage their strong position within one coffee market (for instance R&G) into a new market (for instance filter pads or N-capsules). In particular when an umbrella brand appears on a new or innovative product, the final customers might be more convinced to try it because they will believe the master brand guarantees the quality, taste and other features to which they are used to. In addition, with umbrella brands, advertising and promoting coffee products within one market increases brand awareness of products in other markets as well. Umbrella brands also allow for spreading and splitting of the brand promotion costs.

(168) As a result coffee still remains a brand-oriented category, despite the introduction of private label coffee products by retailers. As it was mentioned in Recital (47), penetration of private label brands within coffee in most EEA countries is still relatively low as compared with other fast moving consumer goods and it has been rather stable over the last years.[105] Retailers confirm that final customers tend to be brand loyal.[106]

(169) Brand loyalty and awareness is maintained by continuous investment in advertising and promotion. That is important for existing coffee brands and the effectiveness of those investments is closely monitored.[107] However, advertising and promotion is

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101 DEMB internal document, not dated, "*A Marketing Training Seminar specially prepared for DE Master Blenders 1753 by Mike Philippson Associates*", slides 13, 71.

102 Non-confidential minutes of a conference call with a competitor dated 18 November 2014 at 13.00 CET.

103 Mondelēz internal document, "*Tassimo Portfolio qualitative study -lpsos Spain September 2010*"

104 DEMB internal document, dated 5 May 2009, "*Make your move. Aroma Lady & Senseo. Equity Pofiles and Interactions*", slide 5.

105 The Commission's final report on the economic impact of modern retail on choice and innovation in the EU food sector, published on 19 September 2014 considered, amongst other things, the penetration of PL in the coffee sector. For example, in Denmark, penetration of PL in coffee has only slightly grown from 12.1% to 14.8% between 2004 and 2012. Similarly, in Germany, PL penetration in the coffee sector has only grown by 2.9% between 2004 and 2012 (from 18.3% to 21.2%). In France, according to the report, PL penetration has in fact decreased from 7% to 5.3% between 2004 and 2012.

106 Response to question 46 of Questionnaire Q2 – Retailers.

107 For instance DEMB's internal document, undated, "*Douwe Egberts Digital Performances Report for Q1 and Q2 of 2013*" in which the effects of numerous digital media campaigns of the various DEMB

even more crucial at the time of launching new coffee products. For example, Mondelēz internal documents show that when preparing the introduction of Carte Noire branded N-capsules in France in 2013, the launch campaign included […]*".[108] All those efforts are meant to "[…]*".[109]

(170) The Parties admit that "[p]romotional spending is an important part of negotiations with retailers…"[110] and that they "work with retailers to promote both the category and its brands" with particular arrangements being made for "[…]*".[111] All those marketing and promotion elements – from sampling, through social media, digital and TV campaign to promotions in the point of sale - form the *"continued awareness and trial"* plan aimed at securing most shelf space against closely competing brands.[112] That aim is acknowledged by the overwhelming majority of retailers across various Member States as well as a majority of competitors, who confirm that marketing and promotions (discounts) offered by the coffee suppliers are the major parameters of competition.[113]

9.1.3. Barriers to entry and expansion

(171) Since coffee products belong to differentiated markets dominated by brands, barriers to entry and expansion in those markets are not insignificant. Established positions of the incumbent coffee companies and the strength of their power brands to which customers remain loyal increase the risks and costs of potential entry.[114]

(172) Critical factors for success in the coffee market, as identified by competitors and customers, include – apart from having a well-known brand – also financial strength to sustain investments; effective marketing strategy (in particular, TV advertising) and other PR activities.[115] As it is stated in DEMB's internal document "[…]*".[116] For example, DEMB's expenditure for advertising and promotion of single-serve machines and consumables amounted to approximately EUR […]* million in 2014, while that of Mondelēz amounted to approximately EUR […]* million in 2014. The Parties themselves identify *"360° targeted media campaign: increased spend, geo-marketing &sampling"* as well as *"strong customer activation: improved in-store visibility and customer activation"* as key growth levers.[117] Brand awareness has also been mentioned by competitors as one of the main obstacles for a coffee producer to gain access to retail shelf space (with the exception of the retailers' own brands).[118]

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brands in the EEA are assessed in terms of conversion ratio, i.e. the extent to which site visitors can be converted into paying visitors.

108 Mondelēz internal document, dated 25 October 2013, "*Boost plan Recommendation Q4 13-Q1 14*".

109 *Ibidem*.

110 Response of DEMB to Request for Information - QP4 dated 11 September 2014.

111 Response of Mondelēz to Request for Information - QP4 dated 11 September 2014.

112 DEMB internal document, dated 3 September 2013, "*Country visit*", pp. 23-26.

113 Responses to question 48 of Questionnaire Q2 – Retailers and to question 46 of Questionnaire Q1 – Competitors.

114 Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings, paras. 70, 71 c).

115 Responses to questions 92, 107, 120, 133, 193, 206, 219, 252, of Questionnaire Q1 – Competitors and to questions 272, 309, 343, 481, 515, 586, of Questionnaire Q2 – Retailers.

116 DEMB internal document dated 2 March 2011, "FY12 AOP Sara Lee C&T France", slide 10.

117 For instance DEMB internal document, dated 23 May 2013, "*CDT Capsules. Strategic outlook 2013*", slide 22.

118 Responses to questions 93, 108, 121, 134, 194, 207, 220, 233, 246, 259, 272, 287 of Questionnaire Q1 – Competitors.

(173) As a result, new players or players wishing to expand are faced with the barriers resulting in particular from the necessary significant investment into advertising and promotion aimed at creating and maintaining brand awareness.

9.1.4. Position of retailers

(174) Another consequence of the fact that coffee is a brand-oriented category is that the bargaining power of retailers does not necessarily countervail the market position of suppliers of branded coffee products. Faced with the suppliers of the brands with the highest awareness, which cannot be easily replaced by alternative products, retailers will not credibly threaten to delist them in order to put pressure on their coffee suppliers in the course of negotiations. Since final consumers, incited by the advertising and promotion efforts carried independently by the coffee suppliers, request those brands, retailers cannot afford not to have them on their shelves. As a result retailers might not have the necessary buyer power to counter potential price increases. Furthermore retailers might simply pass-on the price increase, in particular if they assume that competing retailers are faced with a similar increase and their trade margin remains unchanged.[119]

9.1.5. Future trends and innovation

(175) Coffee markets are dynamic and subject to change. Although due to differences in consumer preferences, historical developments and the various coffee cultures, trends in the coffee markets are not uniform among the EEA countries, some common characteristics can be identified. First, there is a trend towards more premium coffee products. Second, the traditional coffee preparation methods are being gradually replaced by more sophisticated ones, in particular single-serve coffee machines. That trend was confirmed by retailers and competitors in all the affected geographic markets, who in the course of the market investigation expressed the view that in the future "*single serve and more convenient coffee products*"[120] will continue to increase.[121]

(176) The Parties agree that there is a trend towards differentiation and premiumisation, which is shown by the rise of products such as single-origin coffee, special blends, organic or fair trade products, local brands. Moreover the growth of the whole beans category can be considered as another manifestation of the move towards more premium products because whole beans are purchased by more sophisticated coffee connoisseurs, who either have a coffee machine which grinds beans or a separate grinder and are ready to devote time to the grinding process in order to obtain fresher coffee.

(177) In its internal strategy for the years 2014 to 2016 Mondelēz expects the global coffee category […]*.[122] Depending on the maturity of the coffee markets in a given country, this expected growth may be derived from different coffee products. In mature markets (that is to say markets with long established coffee cultures, such as France or the Netherlands) the trend is towards an increase in the more convenient and trendy single-serve segment. To some extent that trend is accompanied by a move away from the "traditional" coffee brewing methods (such as filter coffee or instant coffee) for which in principle R&G coffee is used. As a result the R&G

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119 Responses to question 12 of Questionnaire Q2 – Retailers.

120 Responses to question 167 of Questionnaire Q2 – Retailers.

121 Responses to question 76 of Questionnaire Q1 – Competitors.

122 Mondelēz internal document, dated 20 March 2013, "*Coffee Global Strategy 2014-2016 MLT Discussion*", slide 2.

markets are somewhat decreasing in those countries, due to the outflow of consumers towards the use of single-serve machines. The expected continuous growth of the single-serve segment was also confirmed by retailers and competitors when asked about future trends in coffee products. They stated that "*single serve and more convenient coffee products*"[123] will continue to increase.[124]

(178) However, there are also countries where R&G remains by far the largest coffee category (for instance Denmark, Latvia or Poland) with instant coffee being usually the second most popular coffee product. Nevertheless the Parties admit that in those countries the single-serve segment is also expected to increase in the future also as a result of the "lifestyle upgrade" by final consumers who become interested in more sophisticated coffee preparations.[125]

(179) Consumers associate single-serve products with greater quality, luxury and modernity, while R&G, used mainly for the drip filter machines, is considered more of a basic, routine product.[126] At the same time, single-serve coffee products generate higher margins since consumers are ready to pay a premium for the perceived better product. The Parties' internal documents show that single-serve coffee products are […]* than the multi-serve ones.[127] Therefore, the Parties consider […]*, while the plans as regards R&G and instant products are to simply […]*".[128]

9.2. Affected markets

(180) The proposed Transaction leads to a number of affected markets, which will be analysed in turn below: (i) R&G markets[129] in France, Denmark, Latvia, the Czech Republic, Greece, Poland, Bulgaria, Hungary, the Netherlands and Spain; (ii) instant markets in Latvia, Lithuania, Estonia, Czech Republic, Denmark, Ireland, Poland, Slovakia, the United Kingdom; (iii) filter pads in France, Austria, Germany, the Netherlands and (iv) out-of-home markets in Denmark, Germany, Sweden and the United Kingdom. Furthermore, even though the market for coffee machine sales is not a technically affected market, for the reasons set out above (see Recitals (124) - (129)) the effects of the Transaction will be also assessed in relation to the market for single-serve machines. For this purpose the interplay between single-serve machines and consumables (that is within the single-serve systems) will be taken into account. Similarly, the Commission will assess also the effects of the Transaction on the market for N-capsules will also be assessed, as well as potential portfolio effects.

9.3. The Parties' economic studies (calibrated merger simulation models)

(181) During the pre-notification period, as well as the Phase I and Phase II proceedings, the Parties submitted a set of economic studies with calibrated merger simulation models for a number of countries (Austria, the Czech Republic, Denmark, France, Greece, Spain and the United Kingdom). The aim of those models was to predict the price impact of the Transaction in the in-home consumables markets of those

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123 Responses to question 167 of Questionnaire Q2 – Retailers.

124 Responses to question 76 of Questionnaire Q1 – Competitors.

125 Response to question 483 of Questionnaire Q2 – Retailers.

126 DEMB internal document dated August 2012 "*BrandneXt study Coffee Market R&G (NL, Esp,FR)*", pp. 13-15.

127 For instance: Oct 2013 CI French Coffee Market Induction FINALE, p. 12; Mondelēz Confidential Annex 5-4a - Project Charger Update Audit Commitee vf 3 October 2013, pp. 3, 9; Annex 5-4s to the Form CO, Project Charger Discussion Materials Dec 15, 2013, p. 11.

128 Mondelēz internal document, undated, "*Managing Innovation Funnel. Toolkit. Define growth drivers & innovation needs to deliver SP growth strategies*", slide 17.

129 An affected R&G market arises also in Belgium, however the overlap amounts to [0-5]*%.

countries. However, for the reasons set out in Annex I to this Decision, the Commission finds that these merger simulation models of the Parties cannot be considered reliable as they likely underestimate the anti-competitive effect of the Transaction.[130]

9.4. Single-serve coffee machines and systems

(182) As further set out in Recitals (237) to (319), the Commission has reached the conclusion that the Transaction will not lead to a significant impediment to effective competition in the markets for single-serve coffee machines in the countries where both Tassimo and Senseo are present and account for at least 25% of the market for single-serve machine sales[131] (that is Austria, Denmark, France, Germany, the Netherlands, Spain and the United Kingdom).

(183) As regards markets for single-serve consumables, the Transaction would lead to a significant impediment to effective competition, in particular through the creation of a dominant position; in the filter pads markets in Austria and France (see sections 9.7.1 and 9.7.2 below).

(184) For the reasons set out in Recitals (124) to (129), in order to address various parties' submissions, the Commission also considered the interplay between the market for the single-serve machines and the market for single-serve consumables. For this purpose, the Commission has in particular taken regard to the cooperation between the manufacturers of single-serve machines and consumables and the positioning of the Parties' brands within the single-serve segment comprising both machines and consumables. As a result of this analysis (see Recitals (237) to (349)), the Commission concludes that the Transaction would not give rise to competition concerns in relation to single-serve systems.

Parties' arguments

(185) The Parties argue that the Transaction does not lead to a significant impediment to effective competition because Tassimo and Senseo do not constrain each other closely whether at the machines or consumables level. To support their argument the Parties advance the following reasons.

(186) Firstly, the Parties argue that they do not manufacture or sell coffee machines. After the Transaction, machine manufacturers including those manufacturers (Bosch and Philips) which are the Parties' partners for the production and sale of single-serve systems, would continue to have an incentive to compete aggressively against each other and other machine producers. The Parties do admit that machine sales are a relevant consideration in understanding the dynamics of competition between single-serve products. However they also state that the machine sales realised by machine manufacturers are not always indicative of the sales achieved in coffee consumables and, in particular the share of Senseo machines achieved by Philips is not indicative of DEMB’s competitive strength in relation to single-serve systems. The Parties further point out that, due to the fact that Senseo is an open system, if DEMB invests in increasing Senseo’s machine park, it will only gain a part of the revenue from the associated increase in filter pad sales.

(187) Secondly, the Parties argue that after the Transaction numerous other single-serve systems would still remain in the market, in particular those of Nestlé, in addition to

[130] For a detailed description and assessment of the submissions, see section 2 of Annex I to this Decision.

[131] Tassimo's and Senseo' position has been calculated based on GfK sales data provided by the Parties.

Tchibo, Lavazza, Illy, Starbucks, Melitta, Paulig, Delta Café or Aldi. The Parties also note that fully automatic bean-to-cup machines are being introduced at substantially lower price points, thus increasing their accessibility to customers and rendering them a real alternative to single-serve machines. The Parties consider that single-serve is a new standard means of producing different coffee beverages in-home and most coffee manufacturers already actively participate in it. Therefore, the Parties argue that they would lose significant volumes to third party competitors if they were to compete less fiercely on price, quality or choice after the Transaction.

(188) Thirdly, the Parties maintain that among single-serve systems Senseo and Tassimo each have a different positioning in the market and are not close competitors. In fact, since Tassimo was initially launched by Mondelēz as a response to Nestlé's Nespresso and triggered, in turn, the launch of Dolce Gusto by Nestlé as a response, the Parties consider Dolce Gusto as Tassimo’s closest competitor. To justify those claims the Parties put forward a number of arguments.

(189) The Parties note that the product positioning of Dolce Gusto and Tassimo is similar: they both have the multi-drink capability as their purchase driver, they cater for the needs of those consumers who value variety and are often used as supplementary machines to produce beverages for special occasions. On the other hand the Parties maintain that Senseo in the eyes of consumers is a convenient single-serve alternative to R&G drip filter coffee. Also the price per cup of Tassimo (amounting to [20-30]* to [30-40]* cents) is close to that of Dolce Gusto (amounting to [20-30]* to [30-40]* cents), but different from Senseo (which is significantly cheaper and amounts to [10-20]* to [10-20]* cents). That difference is also reflected in the throughput data[132], which are much higher for Senseo than for Dolce Gusto and Tassimo, which also shows – according to the Parties – that the two latter systems are viewed by consumers as *"occasional treats"* as opposed to *"everyday long black coffee"*, which is the domain of Senseo. The Parties further argue that Tassimo is not a closer constraint on Senseo than other single-serve machines because levels of switching from Senseo to Tassimo are low, that is customers who owned a Senseo machine and wish to purchase a new single-serve machine do not choose a Tassimo machine more often than for instance a Dolce Gusto one. The Parties also present marketing materials and strategy documents of Mondelēz, which demonstrate, in their view, Tassimo’s positioning as a multi-drink system and its focus on Dolce Gusto as its main competitor. The Parties carried out an analysis of the effects of Tassimo’s entry on prices of Senseo and Dolce Gusto single-serve machines over the past 10 years, which – according to their interpretation – indicates that Senseo machine prices have remained largely stable over time, while Tassimo and Dolce Gusto react to each other's entries by reducing machine prices.[133] Moreover, the Parties claim that Senseo and Tassimo are not close competitors but rather complementary products as shown by the fact that Mondelēz continues to sell filter pads in competition with DEMB and in addition to Tassimo T-discs. As a result, the Parties maintain that there can be no expectation that the Tassimo system would capture material amounts of consumers from the Senseo system or vice versa.

(190) Fourthly, the Parties claim that they would have no ability (either through reducing support for Senseo machine purchases or through increasing prices of filter pads) or incentive to transfer consumers from Senseo to Tassimo after the Transaction.

[132] That is data on how many cups of a given beverage are consumed in a given period of time.
[133] Response to Article 6(1)(c) decision, Annex 2, ID02428.

According to the Parties, that lack of ability results from two facts. In the first place, [financial argument of the Parties]* after the Transaction. In the second place, the open character of the Senseo system implies that competitors selling filter pads could defeat any attempt of a price increase of Senseo filter pads. The lack of incentive to move customers from Senseo to Tassimo is corroborated by the fact that [comparison between the two systems]*.

(191) Fifthly, the Parties maintain that Tassimo is not a maverick and the Transaction will not lead to the loss of an important competitor to Senseo. Instead, the Parties argue that Dolce Gusto, similarly to Tassimo, has been promoting its machines aggressively and the Parties could not afford to decrease the intensity of their competitive efforts after the Transaction on either Senseo or Tassimo because they would lose customers to their various competitors.

(192) Sixthly, the Parties argue that the Transaction will not lead to loss of innovation because if the Parties stopped innovating they would lose customers to their competitors. Existing suppliers of single-serve systems, system licensors[134×] (such as Caffitaly or Krüger) as well as future potential entrants (for instance US company Keurig) are, in view of the Parties, also a source of innovation as regards single-serve systems. Finally the model of cooperation between DEMB and Mondelēz on the one side and their respective partner machine manufacturers on the other side also implies, according to the Parties, that the latter are driving the innovation in the market. The Transaction will not bring about any change in the machine manufacturers' incentives to innovate.

Nestlé's arguments

(193) Nestlé maintains that the Transaction is likely to give rise to competition concerns, in particular with respect to single-serve systems (that is, coffee machines and consumables for those machines). To support its concerns the complainant raises a number of arguments.

(194) Firstly, coffee companies are involved in the machine business – they carry out research and development (or at least finance it), manage and finance advertising and promotion of single-serve machines.

(195) Secondly, single-serve machines constitute a point of entry for final consumers and the choice of machine influences the choice of consumables. Since most of the profits are made through sales of consumables it is critical for actors in the consumables market to be strong on the market for the machines.

(196) Thirdly, Tassimo and Senseo systems are each other's closest competitors, because: (i) they have a similar strategy of capitalising on their brands to expand market shares through different coffee categories; (ii) they have a similar price positioning of their single-serve machines at the low end of the price spectrum; and (iii) their respective market shares have evolved in close correlation in opposite directions during the past years – in particular economic data shows that in Germany and in the Netherlands sales of Tassimo machines have increased at the expense of those of Senseo.

(197) Fourthly, Tassimo is a maverick in the single-serve segment, with strong promotions, an aggressive commercial pricing policy, and significant investments in media

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134 Role of system licensors is described in […] ×.

× Should read: Section 9.4.5.5.

advertisement. As a result the sales of Tassimo machines increased in most countries, mainly to the detriment of Senseo. After the Transaction the "competitive animation" created by Tassimo and the competitive pressure currently exerted on Senseo will be lost. In addition, the entry of Tassimo in Member States where it is currently not present becomes less likely.

(198) Fifthly, the elimination of Tassimo as a maverick is even more problematic due to existence of high barriers to entry in the single-serve segment resulting from: (i) the need for investment to develop and produce machines; (ii) the need for investment in brand promotion; (iii) the need for investment to convince retailers to grant shelf space; (iv) the long time required to achieve a return on investment; and (v) competition from existing well-known brands.

(199) Sixthly, after the Transaction the JV will have increased incentives to raise prices of filter pads to make consumers switch from the open Senseo system to the closed Tassimo system. In addition, since Mondelēz currently also offers competing filter pads, the JV would capture some of the customers switching away from Senseo branded filter pads to other filter pads. The JV could then progressively remove Senseo single-serve system from the market, thereby reducing consumers' choice. Alternatively, promotions for Senseo and Tassimo could be synchronised to move all consumers from Senseo to Tassimo.

Commission's investigation and assessment

9.4.1. Introduction

(200) In the late 1980s Nestlé launched its Nespresso single-serve system, which achieved significant commercial success in 1990s. DEMB's Senseo was launched in the early 2000s and subsequently Mondelēz introduced its Tassimo (2004), while Nestlé its Dolce Gusto (2006).

(201) The value of the single-serve machines market in the EEA[135] in 2013 amounted to approximately EUR 1 558 million as compared with EUR 1 482 in 2011. The countries where the single-serve machines market is the largest and where it also grows significantly include: Germany where in 2013 value of machines' market amounted to EUR 629 million (EUR 594 million in 2011); France where in 2013 it amounted to EUR 268 million (EUR 257 million in 2011), the Netherlands where in 2013 it amounted to EUR 87 million (EUR 82 million in 2011) and the United Kingdom where in 2013 it amounted to EUR 94 million (EUR 57 million in 2011).

(202) Machines which are able to produce a single portion of coffee, or of another hot beverage, at a click of a button are available at different price points, with their nominal retail prices ranging from EUR 30 to several hundred Euros. However coffee companies subsidise the prices of single-serve machines heavily, by using various promotional tools and thereby reducing the final price paid by the consumers at the cashier, or reducing the cost borne by the consumers by offering them additional perks. Those promotional tools include among others cash-back coupons or vouchers for free coffee consumables.

(203) DEMB owns the Senseo trademark and other IP rights relating to the Senseo system. It also participates in the marketing of Senseo coffee machines, which are

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[135] Estimates on the basis of GfK data, which does not include sales made by direct channels, such as Nestlé or Tchibo stores. The data are available for the following countries: Austria, Belgium, Czech Republic, Germany, Denmark, Spain, Finland, France, Greece, Hungary, Italy, Ireland, the Netherlands, Poland, Portugal, Romania, Sweden, Slovakia and the United Kingdom.

manufactured by Philips. Since patents for the consumables for the Senseo system filter pads have expired, Senseo is an open system and apart from DEMB also Mondelēz and other players offer filter pads which can be used in Senseo single-serve machines.

(204) Mondelēz created the Tassimo system and it owns the Tassimo trademark and IP rights relating to essential technological features of Tassimo machine. The machines are manufactured and sold by Bosch, but Mondelēz participates in their marketing, in particular by offering cash-backs and other promotional support for Tassimo machines. Tassimo is a closed system and only Mondelēz produces its consumables, that is to say T-discs.

9.4.2. Cooperation between machine manufacturers and coffee companies

General remarks

(205) Single-serve systems are in principle developed in cooperation between, on the one side, the appliance or machine manufacturers (such as AEG, Bosch, DeLonghi, Kitchen Aid, Miele, Philips) or system licensors (such as Caffita System for the Caffitaly technology or Perfect Steam Appliances in cooperation with Krüger for the K-Fee technology) and, on the other side, owners of coffee brands (that is coffee companies or coffee manufacturers), such as the Parties, Nestlé, Tchibo, Lavazza, Melitta, Starbucks or even retailers such as Aldi or Lidl. There are various models as to which entity (coffee company or machine manufacturer) sells the single-serve machines. For instance Nestlé sells its Nespresso machines in own boutiques and online, similarly to Tchibo selling its Caffissimo machines and Aldi selling its Expressi machines. On the other hand Senseo single-serve machines are sold by Philips, while Tassimo by Bosch.

(206) Nestlé in the course of the market investigation emphasised that it is absolutely critical for the suppliers of consumables for single-serve systems (that is to say in principle the coffee manufacturers) to be strong in the single-serve machines (that is to say to have a high level of penetration of one's single-serve machines) because that is the entry point for the consumers, who have a tendency to stay with their purchased machines during the lifetime of the machine and consequently through this period they will continue purchasing compatible consumables. As a result, in the eyes of Nestlé, coffee manufacturers compete most intensively, fiercely and face the largest stakes with respect to single-serve machines and therefore are heavily involved in the development of those machines, their innovation, advertisement and commercial promotion, in particular by managing and financing those activities. Nestlé further notes that the single-serve machines are co-branded with the coffee brand and therefore consumers tend to identify them as coffee suppliers' products rather than those of machine manufacturers. Consequently Nestlé argues that both Parties are active, through their machine partners in the sale of single-serve machines.

(207) Broadly speaking the primary responsibility of a machine manufacturer in the course of the cooperation with a coffee company is the production and marketing of the single-serve coffee machine, while the coffee company is primarily responsible for the marketing and production of the coffee consumables. However, since those two elements, that is to say single-serve machine and consumables, are closely interlinked, the cooperation is usually structured in such a way that both partners can be involved, they can among others support, intervene, finance each other in their respective roles. The degree of that intervention can however vary.

(208) For instance Nestlé appears to be involved to a significant extent in the activities relating to the coffee machines, since it sells those machines via its network of Nespresso boutiques and on-line sales. It participates in the conception and development of not only consumables but also the machines; one of Nestlé's affiliates finances the costs of R&D related to their single-serve systems. Furthermore, Nestlé owns patents on the machines as well as on the moulds necessary for the manufacture of their different machines. The position of Nestlé in the coffee sector and in particular in relation to single-serve coffee machines appears to be so significant that machine manufacturers approach Nestlé to propose cooperation.[136]

(209) Even though the majority of machine manufacturers who participated in the Commission's investigation consider that they have discretion in setting prices for coffee machines, they also admit that their coffee partners are able in other ways (for instance by coupons, cash-back offers) to influence prices paid by final customers for the coffee machine.[137] Machine manufacturers, retailers and electronic goods retailers also stated that the driving force behind promotion and advertising of single-serve machines is either the coffee supplier exclusively or both the coffee supplier and appliance producer.[138] None of them indicated that it is solely the machine manufacturer driving the advertising and promotion of single-serve machines. An overwhelming majority of retailers and electronic goods retailers who participated in the Commission's investigation explained that the advertising and promotion of single-serve machines are decided together with both machine manufacturers and coffee companies and not only with the machines manufacturers.[139] Retailers and electronic goods retailers further confirm the involvement of coffee companies in the sale of single-serve machines. They also emphasise the importance of those sales because, as one of the respondents stated, the aim of coffee suppliers is to *"sell more machines and to achieve more customers"*.[140] Therefore, it can be concluded that coffee manufacturers, such as the Parties, even if they do not directly sell single-serve coffee machines are able to influence their prices and are thus involved in the single-serve machines market.

Parties' cooperation with machine manufacturers

(210) As regards the Senseo system, DEMB acquired sole ownership of the Senseo trademark in 2012. It also owns other IP rights relating to that single-serve system. On 30 March 2012 DEMB entered into a Partnership Agreement with Philips […]*. On the basis of that agreement both DEMB and Philips […]*.[141] On the other hand one of DEMB's responsibilities is to define the brand vision and strategy for Senseo and to run the in-market activation and promotion, in particular the "*appliance + coffee promotions & displays & local media support*".[142] […]*.[143] […]*.[144] DEMB

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136 Response to question 23.1 of Questionnaire Q12 Machine manufacturers.

137 Responses to questions 27.1, 27.2 of Questionnaire Q12 Machine manufacturers.

138 Response to question 26 of Questionnaire Q12 Machine manufacturers and to question 25 of Q10 Retailers and to question 27 of Questionnaire Q11 Electronic goods retailers.

139 Responses to question 24 of Questionnaire Q10 Retailers and to question 26 of Questionnaire Q11 Electronic goods retailers.

140 Response to question 26.1 of Questionnaire Q12 Machine manufacturers.

141 Annex 6-1a, Partnership Agreement, par. 2.5.

142 Schedules 1-3 to the Partnership Agreement.

143 Schedules 1-3 to the Partnership Agreement.

144 Annex 6-1a, Partnership Agreement, par. 2.7.

also admitted that it is consulted by Philips in the course of establishing prices for Senseo machines to ensure that they are competitively positioned.

(211) In the course of the market investigation Philips admitted that it is in charge of, inter alia, setting the recommended retail price for Senseo machines and that it receives revenues from these sales. However it also stated that *"[t]he division of responsibilities between [DEMB and Philips] regarding the promotion of the Senseo machines is […]*"* Philips explained further that *"[w]hen joint promotions are done, costs are often split [between Philips and DEMB]*.Promotion on machines are normally issued and sponsored by Philips; promotions on pads by DEMB; for promotions on the brand or on a combination of machine & pads, costs are split as outlined above.*"[145] This evidences that DEMB is also able to influence the prices of Senseo machines.

(212) Mondelēz owns the Tassimo trademark as well as IP rights […]*.[146] Specific provisions govern the influence of Mondelēz over the prices of Tassimo machines. […]*.[147]

(213) In the course of the market investigation Bosch confirmed that its cooperation with Mondelēz was initiated by the latter and that *"usually the coffee producers (...) take the lead in the development of new coffee systems and also later on sit in the driving seat".*[148] It also stated that vouchers for coffee machines, which form part of an overall promotion scheme, are mainly issued at the discretion of Mondelēz.[149]

(214) The Parties themselves admit that the level of sales of Tassimo and Senseo machines are relevant to the sale of consumables and for that reason they support single-serve machines' sales through promotional funding. Moreover internal documents of the Parties demonstrate that they are vividly interested in pushing the sales and penetration of "their" single-serve coffee machines. Mondelēz states that in order to "[…]*" one of their priorities is to provide "[…]*[150] "[151], and it aims at "[…]*".[152] In another internal document Mondelēz plans to […]*.[153] Moreover DEMB's internal documents indicate that it is constantly trying to increase the penetration of Senseo machines, in particular through "[…]*".[154]

Conclusion

(215) Consequently, on the basis of the Commission's investigation it can be concluded that although they indeed do not manufacture or sell single-serve machines, both Mondelēz and DEMB have an ability to influence the machine prices of Tassimo and Senseo machines respectively. That influence takes the form of promotional support aimed at pushing the penetration of their machines. However in practice and as will be further explained, Mondelēz appears to be engaged in […]* than DEMB.

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145 Non-confidential minutes of a conference call with machine manufacturer dated 1 December 2014 at 16.00 CET.

146 Annex 6-3a, Agreement for the development, manufacture, packaging, sale and distribution of Bosch-branded Tassimo advanced one cup in-home brewers, par. 21.

147 Annex 6-3a, Agreement for the development, manufacture, packaging, sale and distribution of Bosch-branded Tassimo advanced one cup in-home brewers, par. 24.2.

148 Non-confidential minutes of a conference call with Bosch dated 1 December 2014 at 15.00 CET.

149 *Ibidem*.

150 That is single-serve coffee machine.

151 Mondelēz internal document, dated 31 March 2011, "*KFE Coffee Strategic Plan 2012-2014*", p. 12.

152 Mondelēz internal document, dated 23 September 2013, "*AC14 CE Coffee*", p. 9.

153 Mondelēz internal document, dated February 2014, "*Link Meeting Spain*", p. 9.

154 DEMB internal document submitted as Annex 7-Netherlands-5 to the Form CO, p. 8.

Mondelēz appears to be […]* than DEMB monitors the sales of Senseo machines. This is evidenced by the fact that – according to the Parties – DEMB does not […]*, while Mondelēz does.[155]

(216) The analysis of cooperation between the Parties and their respective machine manufacturer partners also shows the great degree of importance which coffee companies attach to the level of penetration of their single-serve machines in the market.

9.4.3. Positioning of brands in single-serve systems

(217) This section 9.4.3will first discusses the importance of brands within the single-serve segment (that is both for single-serve machines and consumables for those machines) and it will subsequently deal with the positioning of those different brands.

(218) According to retailers who participated in the Commission's market investigation, having a well-established coffee or other beverage brand is one of the main criteria in order for a single-serve system to achieve a substantial presence in a given country.[156] A well-known system brand is also one of the main factors customers take into account when purchasing their single-serve machine.[157]

(219) Mondelēz provides T-discs for Tassimo with various brands, including its numerous coffee brands (Carte Noire, Jacobs, Gevalia, Kenco) but also other Mondelēz/Kraft brands such as Milka, Oreo, Twining's and Cadbury.

(220) Towards the end of 2010 Tassimo changed the image and strategy for its brand (that is to say it rebranded itself), moving away from espresso-focused premium coffee proposition towards a multi-brand, multi-drink and more mainstream positioning. That change meant that it was moving away from the Nespresso single-serve machines and emphasizing instead its multi-beverage functions, which brought it closer to Dolce Gusto. It was also aiming at increasing the easiness to shop for consumers (in view of its rapidly expanding range) as well as easier identification of different drink types available. The key marketing message of Tassimo is now *"choose not to choose"* or *"be indecisive"* offering "*limitless branded beverage possibilities"*.[158] The power brands offered for T-discs are also meant to drive the throughput of consumables.[159] As a result Tassimo's main selling point is the variety of drinks it offers with the various brands.

(221) Tassimo machines are available at different price points (spanning between entry price segment, through core, core plus and premium)[160] and with different characteristics in order to meet various consumer needs, for instance for quick brewing process consumers are offered Tassimo Sunny, while those who have limited space in their kitchens can choose the compact Tassimo Vivy.

(222) DEMB considers that core strengths of the Senseo brand image are its functional qualities, that is to say being fast, easy and affordable, and relate to the emotional

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155 Responses of the Parties to Request for Information - QP4 dated 11 September 2014.

156 Responses to question 18 Questionnaire Q10 – Retailers.

157 Responses to question 7 Questionnaire Q1 – Competitors and to question 13 Questionnaire Q2 – Retailers.

158 Mondelēz internal document, dated 2 May 2013, "*Tassimo*", slide 58.

159 Mondelēz internal document, dated 9 October 2013, "*AC'14 Beverages. Brewing delicious moments of joy*", slide 22.

160 Mondelēz internal document, dated March 2014, "*Tassimo brewer launch program*", slide 9.

and coffee pleasure appeal.[161] Senseo customers are quite loyal to the brand, to a large extent replacing their Senseo machine with a new one once its lifetime lapses. However it was also noticed in DEMB's internal documents that they become […]* with the Senseo brand since […]*"[162].

(223) The extract from DEMB's internal document presented in Figure 3 […]*

[…]*

Figure 3 Shopper study 2014. Summary and final report.[163]

(224) In order to prevent customers' switching away from Senseo and to differentiate Senseo from its competitors, DEMB was considering different strategies, including […]* [164] ".[165]

(225) On the other hand Nestlé's Nespresso is positioned as a high-end, luxurious brand offering in principle strong, dark, espresso-type coffee. It is a social status symbol, a stylish item. Nestlé's Dolce Gusto positions itself as a trendy, playful, fun brand offering consumers a wide variety of drinks.[166]

9.4.4. The structure of the market for single-serve machines

(226) Table 1 presents shares of the sales of the machines of the Parties' single-serve systems in the countries where both Tassimo and Senseo are present and account for at least 25% of the market for single-serve machine sales. These figures do not take into account the current penetration rates of each single-serve machine, rather simply the additional sales made by each machine in 2013. It should also be noted that France, Germany, the Netherlands and the United Kingdom jointly represent more than 60% of the EEA market for consumables for single-serve coffee systems. Data are presented both in volume and value, since, due to significant promotions applied to the prices of coffee machines, those two factors often differ significantly.

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161 DEMB internal document, dated 30 June 2014, "*Senseo – reunion Philips-DEMB*", p. 60.

162 DEMB internal document, undated, "*Shopper study 2014. Summary and final report. E2E Coffee Benelux*", slide 2.

163 DEMB internal document, undated, "*Shopper study 2014. Summary and final report. E2E Coffee Benelux*", slide 2.

164 DEMB internal document, dated 13 January 2014, "*Senseo NSC Philips-DEMB*", p. 14.

165 *Ibidem*, p. 14.

166 DEMB internal document, undated, "*Challenge 1: Develop brand equity & hierarchy for the masterbrand Senseo and its segments*", slide 61.

Table 1 Single-serve coffee machines market shares for 2013[167]

Single-serve machines market shares for 2013[168]														
System	**Austria**[169]		**France**		**Denmark**		**Germany**[170]		**Netherlands**		**Spain**		**United Kingdom**	
	volume	value	volume	value	volume	value	volume	value	volume	value	volume	value	volume	value
Senseo	[10-20]*%	[10-20]*%	[40-50]*%	[30-40]*%	[10-20]*%	[5-10]*%	[40-50]*%	[30-40]*%	[50-60]*%	[40-50]*%	[5-10]*%	[5-10]*%	[5-10]*%	na
Tassimo	[10-20]*%	[5-10]*%	[10-20]*%	[10-20]*%	[20-30]*%	[10-20]*%	[10-20]*%	[10-20]*%	na[171]	na[172]	[20-30]*%	[10-20]*%	[30-40]*%	[30-40]*%
Combined	**[30-40]*%**	**[20-30]*%**	**[60-70]*%**	**[50-60]*%**	**[30-40]*%**	**[20-30]*%**	**[60-70]*%**	**[40-50]*%**	-	-	**[20-30]*%**	**[10-20]*%**	**[40-50]*%**	-
Dolce Gusto	[10-20]*%	[5-10]*%	[10-20]*%	[10-20]*%	[30-40]*%	[20-30]*%	[10-20]*%	[10-20]*%	[10-20]*%	[10-20]*%	[40-50]*%	[30-40]*%	[30-40]*%	[20-30]*%
Nespresso	[40-50]*%	[60-70]*%	[20-30]*%	[20-30]*%	[20-30]*%	[40-50]*%	[10-20]*%	[30-40]*%	[30-40]*%	[40-50]*%	[20-30]*%	[40-50]*%	[10-20]*%	[30-40]*%
Others	[0-5]*%	[0-5]*%	[0-5]*%	[0-5]*%	[0-5]*%	[0-5]*%	[0-5]*%	[0-5]*%	[0-5]*%	[0-5]*%	[0-5]*%	[0-5]*%	[0-5]*%	[5-10]*%
Cremesso	[0-5]*%	[0-5]*%	-	-	-	-	-	-	-	-	-	-	-	-

(227) As is apparent from […][×] the combined share of machine sales of Senseo and Tassimo would be particularly high in France ([60-70]*% in volume and [50-60]*% in value), with an overlap of approximately [10-20]*% resulting from Tassimo sales. Sales of Tassimo machines have also been increasing in France in the past three years staring at the level of [10-20]*% in volume and [10-20]*% in value in 2011. Senseo's shares of sales also slightly increased in value (from [30-40]*% in 2011 to

167 Commission's estimates on the basis of GfK sales data.

168 The market shares displayed do not include the full automated machines. Machines with a volume or value share lower than [0-5]*% have been aggregated in the "OTHERS" category.

169 In Austria the underlying sales figures do not fully cover the Cafissimo system (which in the table falls within the category of "Others"). Caffissimo's share might amount to approximately [10-20]*%.

170 In Germany the underlying sales figures do not fully cover certain systems (Cafissimo, Aldi and Lidl). Consequently, the reported market shares are overestimated, while the share of Caffissimo is underestimated and might amount to approximately [20-30]*% to [20-30]*%.

171 Tassimo Data for 2014: volume [5-10]*%.

172 Tassimo Data for 2014: value [5-10]*%.

× Should read: Table 1.

[30-40]*% in 2013) but declined in volume (from [40-50]*% in 2011 to [40-50]*% in 2013). The next strongest player in France is Nestlé with its Nespresso (the sales of which decreased in value from [30-40]*% in 2011 to [20-30]*% in 2013) and Dolce Gusto (the sales of which have been stable over the past 3 years) machines. Other players in the market occupy a niche position with a share of approximately [0-5]*% which is a slight increase in value from [0-5]*% in 2011.

(228) The combined sales of Senseo and Tassimo machines are also very high in Germany ([60-70]*% in volume and [50-60]*% in value), again with Nestlé occupying the second position. Senseo has lost significant sales in volume as compared with 2011 ([50-60]*%); while Tassimo increased its position in volume from [10-20]*% in 2011. Also Dolce Gusto has slightly increased its sales in volume from [10-20]*% in 2011. GfK data for Germany do not track sales of single-serve systems by entities that operate private label brands, such as Aldi (with its Expressi system) as well as those sold through dedicated Tchibo boutiques (Caffissimo system). As a result the position of the players in Germany as presented is likely overstated.

(229) In the Netherlands the share of sales of Senseo machines in 2013 was quite significant ([50-60]*% in volume and [40-50]*% in value), though decreasing in volume as compared with 2011 (when it amounted to [50-60]*%). Tassimo entered the Dutch market only in 2013 and on the basis of data for 2014, which covers only until October/November and therefore does not take into account the Christmas period sales, it achieved a share of [10-20]*% in volume and [5-10]*% in value. Nespresso maintained its position throughout the past three years in volume, although it decreased in value (from [40-50]*% in 2011).

(230) In Denmark the combined sales of Tassimo and Senseo machines in volume are the largest in the market, however on the basis of value data Nestlé with Nespresso machines occupies the first position. Senseo and Dolce Gusto have lost significant sales over the past three years in Denmark (Senseo [10-20]*% in volume and [10-20]*% in value in 2011; Dolce Gusto [40-50]*% in volume, [30-40]*% in value in 2011), while Tassimo has increased its share of machine sales in this period (from [5-10]*% in volume and [5-10]*% in value in 2011).

(231) Similarly in Austria Nestlé's sales of Nespresso are the largest with Tassimo's and Senseo's combined share of sales amounting to [30-40]*% in volume and [20-30]*% in value. It should be further noted that in Austria a Swiss player Cremesso – which has entered the Austrian market in 2013 - has a non-insignificant presence in that market with approximately [0-5]*% of single-serve machines' sales.

(232) In Spain Senseo's and Tassimo's combined share of machines' sales occupies the second position after Nestlé. Nespresso and Senseo have lost sales over the past three years, in particular in volume– from [40-50]*% for Nespresso and from [10-20]*% for Senseo in 2011. On the other hand Dolce Gusto and Tassimo increased their sales in volume as compared with 2011, from [30-40]*% and [5-10]*% respectively.

(233) In the United Kingdom Senseo is not particularly strong (with the volume share of approximately [5-10]*%); while Tassimo and Nestlé's Dolce Gusto are the leaders in the machines market with the former having a share of [30-40]*% in volume and [30-40]*% in value and the latter having a share of [30-40]*% in volume and [20-30]*% in value. Tassimo's position has increased from [20-30]*% in volume in 2011, while that of Dolce Gusto decreased from [40-50]*%.

(234) Table 2 presents levels of penetration, that is to say, the percentage of households which own a given machine of the main coffee machines, in the EEA countries,

where both Tassimo and Senseo are active and account for at least [20-30]*% of the market for single-serve machine sales.[173]

Table 2 Penetration of single-serve machines in Q4 2013[174]

Penetration of single-serve machines in Q4 2013				
Country	**Senseo**	**Tassimo**	**Dolce Gusto**	**Nespresso**
Denmark	[5-10]*%	[0-5]*%	[5-10]*%	[5-10]*%
France	[30-40]*%	[10-20]*%	[5-10]*%	[10-20]*%
Germany	[30-40]*%	[10-20]*%	[5-10]*%	[5-10]*%
Netherlands	[50-60]%	[0-5]%	[5-10]%	[10-20]%
Spain	[5-10]*%	[5-10]*%	[10-20]*%	[20-30]*%
United Kingdom[175]	[0-5]*%	[5-10]*%	[5-10]*%	[0-5]*%

(235) As evidenced in Table 2, Senseo is the clear leader in terms of machine penetration in France, Germany and the Netherlands, with no other single-serve machine achieving similar levels. The penetration of Tassimo is highest in France ([10-20]*%) whilst both Nespresso and Dolce Gusto achieve highest levels of machine penetration in Spain (Nespresso [20-30]*%; Dolce Gusto [10-20]*%).

(236) The data in Table 2 can also be considered as a proxy for the strength and popularity of the various single-serve machines. As such, they clearly show that Senseo and Tassimo, together with the single-serve machines of Nestlé are the most prevalent in Austria, Denmark, France, Germany, the Netherlands, Spain and the United Kingdom. In fact all other players have a very small presence in those countries with the share of machine sales not exceeding 5%. However, as evidenced by the sharp increases in the value of the market for single-serve machines in the concerned Member States, mentioned in Recital (201), as well as the volatility of sales (in particular the growth of Tassimo and Dolce Gusto in some countries), the market for single-serve machines and consequently the segment of single-serve systems appears to be highly dynamic in character and therefore its structure can be unstable due to innovation and further growth.[176]

9.4.5. *Non-coordinated effects*

(237) The Commission guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings (the "Horizontal Merger Guidelines")[177] distinguish between two main ways in which mergers between actual or potential competitors on the same relevant market might

173 According to the Parties the penetration data for Austria are not available.

174 Parties' estimates.

175 Data for the United Kingdom are for Q3 2013.

176 Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings, par. 15.

177 Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings.

significantly impede effective competition, namely non-coordinated and coordinated effects. Non-coordinated effects might result from eliminating important competitive constraints on one or more firms, which consequently would have increased market power, without resorting to coordinated behaviour. In that regard, the Horizontal Merger Guidelines consider not only the direct loss of competition between the merging firms, but also the reduction in competitive pressure on non-merging firms in the same market that could be brought about by the merger.[178]

(238) The Horizontal Merger Guidelines list a number of factors which might influence whether or not non-coordinated effects are likely to result from a merger, such as the large market shares of the merging firms, the fact that the merging firms are close competitors, the limited possibilities for customers to switch suppliers, or the fact that the merger would eliminate an important competitive force. That list of factors applies equally if a merger would create or strengthen a dominant position, or would otherwise significantly impede effective competition due to non-coordinated effects. Furthermore, not all of those factors need to be present to make significant non-coordinated effects likely and it is not an exhaustive list.[179]

(239) After the Transaction the Parties would have influence over two of the four main single-serve systems (that is, Tassimo and Senseo) and Nestlé would have influence over the other two systems (that is, Nespresso and Dolce Gusto). Elimination of the current competition between Senseo and Tassimo could potentially lead to non-coordinated effects through (i) higher prices and (ii) less innovation in the single-serve systems.

(240) Firstly, as already explained, the Parties – even though they do not sell coffee machines directly – do have some influence over machine prices by various means. Therefore, as further evidenced in section 9.4.2, they theoretically have the ability to increase prices for their single-serve machines by decreasing or stopping promotion efforts. Alternatively or in addition to increasing machine prices the Parties could increase also the prices of consumables (filter pads) for the Senseo machines.[180] In addition, the Parties could theoretically have incentives to engage in such price increases post-merger. For example some of the customers who would have been lost, pre-merger, from Tassimo would, post-merger, be captured through sales of Senseo. This could result in a general price increase for all single-serve machines and consumables. With horizontal mergers, in particular mergers concerning concentrated, oligopolistic markets, it is often the case that even non-merging firms can benefit from the reduction of competitive pressure which results from the merger. This is because the merging firms' price increase may switch some demand to the rival firms, which, in turn, may find it profitable to increase their prices[181]. Likewise, the main remaining player in the single-serve segment - Nestlé - would likely follow possible price increases because it would achieve higher profits from its increased prices as compared with the profits it could gain from undercutting the JV.

(241) Secondly, combining two out of the four main single-serve systems in the hands of the JV could also lead to less innovation, in particular through limiting or blocking the development of a new single-serve system by one of the Parties or through

178 Horizontal Merger Guidelines, par. 24.
179 Horizontal Merger Guidelines, par 25.
180 Consumables for Tassimo are currently supplied exclusively by Mondelēz and the transaction does not change anything in that respect.
181 Horizontal Merger Guidelines, par. 24.

decreasing the competitive pressure on the other players, which therefore might be less prone to innovate as well.

(242) The Commission assessed the theories of harm referred to in Recital 239 and 240 in relation to single-serve systems, taking into account in particular the interplay between the market for single-serve machines and the market for single-serve consumables. On the basis of that assessment and for the reasons set out in Sections 9.4.5.1 to 9.4.5.6, the Commission has reached the conclusion that the Transaction would not give rise to competition concerns in relation to single-serve systems or to single-serve coffee machines in the countries where both Senseo and Tassimo are present and account for at least 25% of the market for single-serve machine sales (that is to say Austria, Denmark, France, Germany, the Netherlands, Spain and the United Kingdom). In reaching that conclusion, the Commission analysed (i) the closeness of competition between Tassimo and Senseo (Sections 9.4.5.1 and 9.4.5.2 below); (ii) the consequences of loss of competition between Tassimo and Senseo (Section 9.4.5.3 below); (iii) the competitive constraints exercised by other suppliers of single-serve coffee machines (Section 9.4.5.4 below); (iv) entry and expansion of the existing players (Section 9.4.5.5 below); and (v) the importance of the machine penetration (Section 9.4.5.6 below). As regards markets for single-serve consumables, the Transaction would lead to a significant impediment to effective competition, in particular through the creation of a dominant position, in the filter pads markets in Austria and France (See sections 9.7.1 and 9.7.2 below).

(243) In Sections 9.4.5.1 to 9.4.5.6 the general arguments that apply to all relevant geographic markets are set out and analysed. Thereafter in Sections 9.4.6.1 to 9.4.6.7 set out an assessment of the Parties' positions in each of those countries.

9.4.5.1. Closeness of competition

Introduction

(244) In differentiated markets, the degree of substitutability between the products of the merging parties is a strong indicator of the likelihood of the implementation of price increases by the merged entity post-merger. The merging firms' incentive to raise prices is more likely to be constrained when rival firms produce close substitutes to the products of the merging firms than when they offer less close substitutes. For example, a merger between two producers offering products which a substantial number of customers regard as their first and second choices could generate a significant price increase. Thus, the fact that rivalry between the merging firms has been an important source of competition on the market might be a central factor in the analysis of the effects of the mergers.

(245) As explained in Section 9.1.1, single-serve systems comprise differentiated products. As such, it is necessary to assess whether Senseo and Tassimo are close substitutes. The Commission has in its investigation paid particular attention to arguments put forward by Nestlé to the effect that Tassimo and Senseo could be each other's closest competitors because (i) they have a similar strategy of using their already well-known brands across coffee categories in order to capitalise on those brands and expand market share, (ii) they are positioned similarly in particular as regards their single-serve machines' prices, as they both occupy the low price spectrum and (iii) there is a negative relation between the relative volumes and the relative prices of Tassimo's and Senseo's machines, suggesting that there is substitution between those two machines and that Senseo and Tassimo are close competitors.

(246) In its assessment on closeness of competition, the Commission has taken into account the responses of market participants (retailers, electronic goods retailers,

competitors and machine manufacturers) to the market investigation as well as the Parties' internal documents, which discuss Senseo's and Tassimo's current and anticipated positioning in the market vis-à-vis their competitors. Those internal documents also contain marketing studies, consumer preference surveys and analyses of purchasing patterns.

(247) The Commission also analysed three economic studies submitted by Nestlé during the course of the proceedings which are claimed to show the closeness of Senseo and Tassimo. The Commission found that they are affected by serious shortcomings undermining the reliability of their results, and, hence, the conclusions of such studies. A detailed assessment of those studies can be found in Annex I. The Commission also carried out its own quantitative analysis on Tassimo's entry events which are further discussed in Section 9.4.5.2.

(248) For reasons explained in Recitals (249) to (270), the Commission considers that Senseo and Tassimo cannot be considered to be particularly close competitors on the market for single-serve machines or on the single-serve system segment as a whole. Rather, the Commission considers that Tassimo's closest competitor on the machines market is in fact Dolce Gusto.

Information obtained in the Commission's investigation

(249) Considering first the replies given by market participants to questions on the closeness of the four single-serve systems, the Commission notes that the majority of retailers in Denmark and in Germany as well as all French retailers consider that Tassimo would be the second choice for final customers whose first option is Senseo.[182] However, when asked about the second choice of customers for whom Tassimo would be the first option, all of responding retailers in Denmark, Germany and the Netherlands mention Dolce Gusto; while those in Spain and the United Kingdom name either Dolce Gusto or Nespresso.[183] In France only the responses are more diverse and inconclusive with some retailers mentioning Senseo as the second best option to Tassimo, while others state it is rather Dolce Gusto or Nespresso.[184]

(250) Electronic goods retailers, when asked about the best alternatives to Senseo, in terms of targeted consumer groups, product characteristics, prices, brand strategy and perception by consumers, mention Nespresso in Austria and Dolce Gusto in Denmark and the United Kingdom.[185] In Germany and France the responses point in different directions with some retailers mentioning Tassimo, while others mention both Nestlé systems.[186] As regards the best alternative to Tassimo, in the eyes of Danish electronic goods retailers it is Dolce Gusto. By contrast,respondents from France and Netherlands mention Senseo and those from Germany and Austria are divided between Senseo and Dolce Gusto.[187] As for competitors, while most of them consider that Tassimo is the second best alternative for customers if they do not buy Senseo, their responses are not conclusive when asked which is the best alternative to Tassimo, with some of them mentioning Senseo, others Nespresso or Dolce Gusto.[188]

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182 Responses to question 26 of Questionnaire Q10 – Retailers.
183 *Ibidem*.
184 *Ibidem*.
185 Responses to question 29 of Questionnaire Q11 – Electronic goods retailers.
186 *Ibidem*.
187 Responses to question 30 of Questionnaire Q11 – Electronic goods retailers.
188 Responses to question 16 of Questionnaire Q9 – Competitors.

(251) The Parties in their internal documents analyse and assess the threats posed by different single-serve systems to their own system. A large number of documents mention all four systems when analysing the single-serve systems segment. […]*.[189] That implies that customers moving away from Senseo (that is to say soft pads) choose in principle the Tassimo single-serve system and therefore DEMB considers Tassimo as an important threat. […]*.[190]

(252) However, there are many more internal documents of Mondelēz in which Mondelēz in particular […]*.[191] […]*.[192] […]*,[193] . […]*.[194] […]*.[195]

Commission's assessment

(253) As mentioned in Section 9.4.3 the main selling point of both Tassimo and Dolce Gusto machines and systems is their multi-drink functionality. That key selling point is confirmed by retailers and electronic goods retailers who consider that the main reasons final customers choose a Tassimo machine relate to the multi-drink functionality, brand and price; while for Dolce Gusto those reasons relate to multi-drink functionality, price and quality.[196] An external study prepared for Mondelēz by a research company also established that Tassimo and Dolce Gusto are chosen by the consumers for the same reason, namely, that they can produce a variety of beverages and therefore they are also perceived similarly across Europe, whereas Nespresso and Senseo have a clear and distinct positioning.[197] One of the slides from this study is presented in Figure 4.

Figure 4 […]*[198]

(254) In this respect, the Commission notes that although milky or other flavoured filter pads (that is to say chocolate, caramel and speculoos among others) are available also for the Senseo system, there is still a difference in the perception of the two systems. Whilst it is not so clear-cut that – as the Parties' claim - the Senseo system is only perceived by consumers as a convenient alternative to filter coffee (and therefore associated primarily with long black coffee),[199] the majority of retailers who responded to Commission's market investigation, believe that Tassimo and

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189 DEMB internal document, undated, "*Kantar Worldpanel. High definition inspiration*", pages 14, 18.

190 Mondelēz internal document, dated January 2012, "*Coffee Pods Platform Funnel 2014+*", p. 88, 89, 92.

191 Mondelēz internal document, dated 28 February 2013, "*Tassimo TDiscs Performance analysis 2012*". It is worth noting that this internal document does not mention Senseo at all.

192 Mondelēz internal document, undated, "*Tassimo current platforms*", slides 25, 26, 27.

193 Mondelēz internal document dated 9 October 2013, "*AC'14 Beverages. Brewing delicious moments of joy*", slides 21, 22.

194 For instance Mondelēz internal document, dated 20 September 2011, "*2012 Annual Contract. Germany*", slide 38. […]*.

195 Mondelēz internal document, dated 7 December 2010 "*Global sales council Vienna 2010 Competitive systems analysis*", slide 13.

196 Responses to questions 37, 38 of Questionnaire Q10 – Retailers and to questions 32-33 of Questionnaire Q11 – Electronic goods retailers.

197 Mondelēz internal document dated 9 February 2011, "*Benchmarking Tassimo against competition and across markets to identify opportunities and levers for growth*", slide 18.

198 Mondelēz internal document dated 9 February 2011, "*Benchmarking Tassimo against competition and across markets to identify opportunities and levers for growth*", slide 18.

199 Some respondents stated that *"Senseo is easier to use with different beverages variety and prepares beverages with foam (such as long coffee, espresso…) which is not the case for filter coffee makers"*, and that *"Senseo's advertising (...) suggests that Senseo allows consumers to prepare espresso."* (as opposed to long black coffee) as well as emphasised the importance of easy dosage due to single portion which differentiates Senseo from filter coffee.

Senseo appeal to different types of customers.[200] For example, a French retailer stated that differences in price, quality and the choice of drinks available indicate that Senseo and Tassimo are aimed at different customers, while a Dutch retailer noted that since they see people moving from Senseo to Tassimo *"[p]robably Tassimo is the next step after Senseo"*.[201]

(255) That difference in perception is further supported by Mondelēz's internal documents. In one particular document Mondelēz specifically notes that, […]*.[202] In an analysis of Senseo carried out in 2006 it is further stated that "[…]*[203] "[204]

(256) What came through from the responses to the market investigation is that consumers' perception of Tassimo and Dolce Gusto is very similar. As one French competitor highlighted, while *"each single-serve system has specificities and may address different kinds of customers (...) Tassimo and Dolce Gusto systems target the same kind of customers because these two systems are based on machines that can provide not only coffee but also other beverages like chocolate or tea…"*[205] Another competitor also perceives Tassimo and Dolce Gusto as being in direct competition with each other due to their multi-beverage selling point.[206]

(257) That direct competition perception is also supported by the machine manufacturers who consider either that Dolce Gusto and Tassimo compete mostly with each other in terms of attracting the same customers or because all major suppliers of single-serve systems compete with each other.[207] One of those respondents stated *"Tassimo and Nescafé Dolce Gusto have the most similar product offer, being both multi beverage systems and competing often head to head on price. Then, as previously stated the big players in the single-serve are Senseo, Tassimo, Nescafé Dolce Gusto and Nespresso, and they all compete targeting for the same customer."*[208]

(258) DEMB itself in its internal documents appears […]*.[209]

[…]*

Figure 5 FY12 AOP Sara Lee C&T France[210]

(259) Internal documents of Mondelēz also show that […]*.

[…]*

[…]*

Figure 6 BSH and Kraft Brewer Workshop[211]

(260) Moreover, some of Nestlé's internal documents indicate that it similarly monitors, targets and benchmarks its Dolce Gusto against Tassimo. For instance, in the

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200 Responses to question 40.1 of Questionnaire Q10 – Retailers.

201 Response to question 40.1 of Questionnaire Q10 – Retailers.

202 Mondelēz internal document dated June 2012 "*Kraft Coffee Pods Ambition*", p. 7.

203 That is single-serve.

204 Mondelēz internal document "*Senseo Overall Analysis*", pages 7-8.

205 Response to question 5 of Questionnaire Q5 – Market test France.

206 Response to question 5 of Questionnaire Q5 – Market test France.

207 Responses to question 30 of Questionnaire Q12 – Machine manufacturers.

208 *Ibidem*.

209 Internal document of DEMB, undated, entitled "*Kantar Worldpanel. High definition inspiration*", page 33.

210 DEMB internal document, dated 2 March 2011, "*FY12 AOP Sara Lee C&T France*", slide 16.

211 Mondelēz internal document, dated 3 May 2010, "*BSH and Kraft Brewer Workshop no app"*, slides 15 and 19.

Netherlands, Nestlé has prepared a special *"welcome plan Tassimo"* for the launch of Mondelēz's system.[212] It also plans detailed responses to various types of promotional activities it expects from Tassimo, including pricing of machines, presentation in points of sale and TV advertising.[213] Those internal documents show the preparation of *"anti-Tassimo"* plans[214] and analyse in detail Tassimo's offer, including photos with the presentation of both machines and consumables on retailers' shelves.[215]

(261) The differences in throughput (referred to in Recital (188)), which are broadly confirmed by the Parties' internal documents, also further support the Parties' claim that Senseo and Tassimo address different consumer needs: the former, which is drank more often, is more of a regular, daily beverage; while the latter with lower throughput is considered by consumers as suitable for their moments of indulgence.

(262) The Parties also argue that levels of switching from Senseo machines to Tassimo machines are low, which further proves that those two are not close competitors. To substantiate their argument they cite an analysis of French customers' switching behaviour in 2013. […]*.[216] The results of the analysis imply that users of all investigated single-serve machines – excluding Nespresso – seem interested in the various alternative machines to a similar extent (between 20% and 30%) and no clear pattern of switching between particular single-serve machines can be found. That appears to suggest that the various single-serve machines all compete with each other to the same extent.

(263) As regards the argument put forward by Nestlé that both Senseo and Tassimo have a similar strategy of using their well-known brands across coffee categories in order to capitalise on those brands and expand the market share, it should first be noted that, the fact that DEMB and Mondelēz use their already strong coffee brands across different coffee products (in other words, the same brands appear across for example R&G, filter pads and N-capsules) is not in itself an indication of closeness. In a differentiated market, where brands are important that seems to be not only reasonable but also the prevalent strategy. In particular Nestlé uses its Nescafé brand (particularly strong in the instant coffee market) to endorse Dolce Gusto single-serve machines; Tchibo coffee brand is put on the Cafissimo single-serve machines, while Lavazza's brand is on the A Modo Mio machines. Moreover, whilst Mondelēz uses a multi-brand strategy for Tassimo consumables (in other words manufacturers sell consumables compatible with the Tassimo system under a number of different Mondelēz brands), DEMB does not use this multi-brand strategy. In fact, both Tassimo and Dolce Gusto capitalise on their owners' strong non-coffee related brands in their consumables offerings (Tassimo uses Mondelēz brands such as Oreo, Milka or Twining's and Dolce Gusto uses Nestlé brands such as Nestea or Nesquick).

(264) As regards price positioning of single-serve machines, an analysis of the price chart submitted by Nestlé to evidence that Tassimo and Senseo are closest competitors due to their similar price positioning indicates that, while players in the single-serve machines markets offer machines at all various price points, there seems to be a continuum of single-serve machines beginning with Senseo as an entry-level and

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212 Nestlé internal document, undated, "*Tassimo launch in NL*", slide 16-ff.

213 Nestlé internal document, dated March 2014, "*Operational meeting – the Netherlands*", slide 6.

214 Nestlé internal document, dated 8-9 September 2011, "*Operational meeting – Czech & Slovak Republics*", slide 4.

215 Nestlé internal document, dated 8-9 September 2011, "*Operational meeting*", slide 14.

216 DEMB internal document, undated, "*Brand tracking report 2013*", slide 19.

most affordable machine, followed by Tassimo and Dolce Gusto, with Nespresso positioned at the end of the continuum, offering the most expensive machines. That continuum seems to be confirmed by the fact that Senseo is particularly strong in the price range below EUR 50, Tassimo and Dolce Gusto between EUR 50 and 100 and Nespresso above EUR 100. However it should also be added that Figure 7 is based on retail ticket prices, that is to say, it does not take into account cash-backs, coupons and other promotional measures which are widely used in the single-serve machines market. With respect to price positioning it is also worth noting that, as per the Parties' submission, the consumables for Senseo and Tassimo are priced at different points, with the latter being two to three times more expensive. Therefore the comparison presented in Figure 7 does not, contrary to Nestlé's view, prove closeness of competition between Tassimo and Senseo.

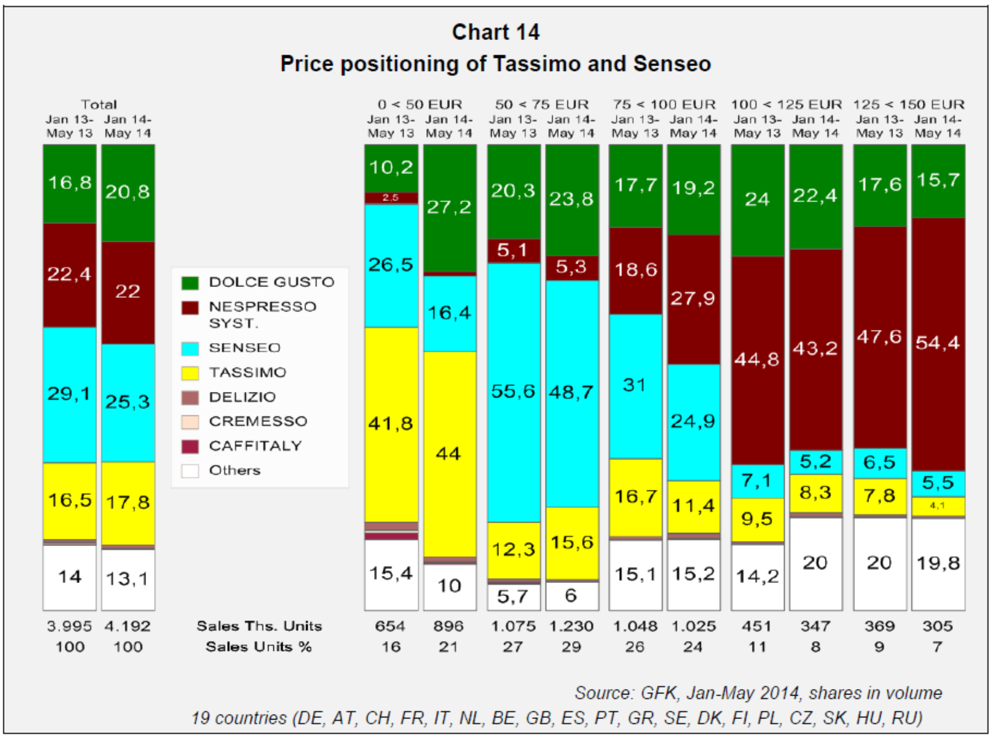

Figure 7 Price positioning of Tassimo and Senseo machines[217]

(265) Moreover, positioning in the market place and thus closeness of competition is not only price related but rather depends on multiple other factors relating to the image and functionalities of a given system.

(266) As regards Nestlé's third argument of, namely that the Parties are close competitors because there is a negative correlation between the relative prices and volumes of Tassimo and Senseo machines, the Commission notes that such a correlation is not directly informative for the purpose of assessing the closeness of competition between Tassimo and Senseo, as it might be driven by factors unrelated to competition. In addition, unilateral variations in the price of one machine, keeping the price of the other machine constant, result in the same negative relation.

(267) Finally, the Parties also submitted an analysis of the effects of Tassimo's entry on the price of Senseo and Dolce Gusto machines.[218] The Commission notes that that

217 Nestlé's compilation on the basis of GfK data.
218 Response to Article 6(1)(c) decision, Annex 2.

analysis is not based on a systematic analytical comparison of the underlying prices. Rather, it is a purely graphical comparison of the price series. Even though a graphical representation is not necessarily unreliable in general, particularly for the purposes of carrying out a preliminary analysis of price series, an in-depth assessment requires a more systematic approach in order to rule out the possibility of drawing erroneous conclusions due to spurious relations between the price series and entry events. The Commission, however, carried out a systematic, analytic comparison the methodology and conclusions of which are summarised in Section 9.4.5.2.

(268) On the basis of what has been said, the Commission considers that there seems to be a heterogeneity of single-serve systems, possibly on a sliding scale, with some being perceived as more suitable for first-time buyers who do not yet have experience with single-serve machines, while others appear targeted rather at consumers willing to further upgrade and wishing to satisfy additional needs (such as the need for the availability of drinks other than coffee). That could be reinforced by the fact that Tassimo was considered as an alternative option to Senseo but not necessarily vice versa. Moreover it could also be confirmed by the fact that Senseo sells most of its machines – as compared with other players – in the lower price spectrum. Furthermore, one of the machine manufacturers in the course of the market investigation noted that it would be difficult to establish clear segmentations according to consumer preferences, since each company has its own strategy and therefore one could rather speak of a *"continuum along which consumer would be placed"*.[219] Moreover a retailer confirmed that within the single-serve machines there are more premium products and that *"customers will generally trade up"* to those products.[220] That could potentially imply that on the sliding scale Senseo would be the entry-level machine followed by Tassimo or Dolce Gusto, or both, with Nespresso being perceived as the high level machine.

(269) On the basis of the evidence available, the Commission considers that on the continuum of single-serve systems, Tassimo and Dolce Gusto are closer competitors to each other than each is to Senseo or Nespresso. That is because they both share the same key selling point, which is offering a variety of drinks and utilising a multi-brand strategy for their consumables. That is the message delivered to consumers in Tassimo's and Dolce Gusto's marketing campaigns. Consumers are receptive of that message and perceive them as close competitors. Dolce Gusto, similarly to Tassimo and unlike Senseo, also engages in extensive promotional activities with respect to its machines, heavily subsidising their sales. As a result, much of the "competitive animation" in the single-serve segment results from the rivalry between Tassimo and Dolce Gusto. Moreover, although DEMB […]*.

Conclusion

(270) The Commission therefore concludes that Senseo and Tassimo cannot be considered as particularly close competitors. In fact, the Commission considers that all the main four single-serve systems compete with each other and within those systems, Tassimo's closest competitor is in fact Dolce Gusto.

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219 Response to question 5.1 of Questionnaire Q12- Machine manufacturers.

220 Response to question 5 of Questionnaire Q6 – Market test Denmark.

9.4.5.2. Closeness of competition: Quantitative Assessment

(271) The Commission performed a quantitative analysis on Tassimo's entry events and found that Tassimo machines exert a competitive constraint on both Senseo machines and Dolce Gusto machines. The Commission notes that the presence of a degree of competition across coffee machines is a necessary but not sufficient condition to conclude that the merger would give rise to non-coordinated effects in the coffee system market. In fact, DEMB has a very limited ability to raise Senseo machines' prices, and Mondelēz has little or no incentives to raise Tassimo machines' prices.

(272) In this particular case the Commission's entry analysis should be seen as a one-sided test. That means that it provides information about the potential (lack of) merger effect only if it shows that the different coffee machine systems do not compete with each other. However, if the analysis finds that the different coffee machines (and in particular Tassimo and Senseo) compete against each other further evidence would be needed to show that the merger would have an anti-competitive effect. In other words, the finding that the different coffee machines compete with each other is a necessary but not sufficient ingredient for building a theory of harm showing anti-competitive effects on the market for coffee machines. That is due to the particular complementarity structure between coffee machines and coffee consumables of the single-serve coffee systems already described.

(273) The Commission performed a fixed effect regression model (in this application the model is also called *difference in differences estimation*) using GfK data provided by the Parties.[221] The data included coffee machines' sales and prices in 20 countries on a monthly basis from January 2004 to November 2014.[222,223] The model quantifies the relationship between the (log) monthly average price of the coffee machine on the one hand and indicator variables for the presence of a rival coffee machine in a country for a given period and control variables on the other hand.[224,225,226] The model was performed on Senseo machines' prices ("Senseo regression") and Dolce Gusto machines' prices ("Dolce Gusto regression").

(274) The regression model captures how the average price of a coffee machine is affected by the presence of a rival coffee machine. To properly capture that effect the model requires some variation in the variable indicating the presence of a rival machine during the period considered. In other words, the estimation of the model requires observations of entry or exit events, or both, of the rival machine systems. The variable of interest in the present case is the presence of Tassimo. In the data there

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221 See Response to RFI of 19 December 2014, 9 January 2015.

222 Countries included: Austria, Belgium, Switzerland, Czech Republic, Germany, Denmark, Spain, Finland, France, Greece, Hungary, Ireland, Italy, Netherlands, Poland, Portugal, Romania, Sweden, Slovakia, United Kingdom.

223 For some countries the data were not available for the full period. However, this limitation did not hinder the reliability of the analysis.

224 The estimation method was linear regression. The other control variables were country specific control variables in logarithms (exchange rate, HICP index for coffee, tea and cocoa products, GDP and GDP per capita), and time and country fixed effects.

225 The GFK data include also sales of coffee machines that are due to parallel imports from other countries. To avoid the inclusion of parallel imports in the analysis, the Commission excluded those coffee machines that did not reach 5% market share in any year of the analysis.

226 The regressions employed heteroskedasticity robust standard errors. As a robustness check, the Commission also clustered the standard errors on a country level. The conclusions of this specification do not differ from the conclusions using robust standard errors.

are eight Tassimo entry events for the Senseo regression, and eight Tassimo entry events for the Dolce Gusto regression.

(275) Intuitively, the effect of Tassimo's entry on Senseo or Dolce Gusto machines' prices is identified as the difference of the average machine's price before and after Tassimo's entry in a given country, relative to other countries where entry did not occur. Such countries where Tassimo did not enter are called control (or comparator) countries. In the Senseo regression there are two such control countries, while in the Dolce Gusto regression there are five control countries. The main estimated coefficient of the model represents the average effect of Tassimo's entry across the countries the markets of which it entered.

(276) It should be noted that because of the usage of that comparator country (or difference-in-differences) methodology, and also taking into account the effect of other variables, the Commission's analysis is more systematic than the entry analysis presented by the Parties.[227]

(277) It might be expected that the effect of Tassimo's entry on Senseo's and Dolce Gusto's prices would also depend on the relative strength of Senseo and Dolce Gusto in a given a country. In other words, it is possible that Senseo and Dolce Gusto may react differently to Tassimo's entry in those countries where they have a stronger presence. To account for that possibility, the Commission also estimated a specification where the regression model is weighted by a proxy measure of the machine penetration in each country.[228]

(278) An examination of the GfK data evidenced a sharp decrease in Tassimo machines' prices from 2012 onwards in all the countries of the analysis. The Parties explained that that sharp decrease was due to the implementation of the "[…]*" by Mondelēz. […]*In the Commission's view, part of the decrease in Tassimo's prices may be also due to the spin-off of Mondelēz from Kraft Foods announced in early 2012 and occurred in October 2012.[229]

(279) In its regression analysis, the Commission took the increase in Tassimo's aggressive behaviour into account by including in the model an indicator variable equal to one from 2012 onwards in those countries were Tassimo was present before 2012. In the countries where Tassimo entered after 2012 the dummy is equal to zero as the effect is already captured by the presence indicator variable.

(280) The results show that in both the Senseo and Dolce Gusto regressions, the effect of Tassimo's presence is negative and statistically significant. That is, the entry of Tassimo is associated with an average decrease in the prices of both Senseo machines and Dolce Gusto machines. That indicates that Tassimo represents a significant competitive constraint for both machines.[230] However, the Commission finds that the effect of Tassimo's entry on Dolce Gusto's prices is higher (in absolute value) than the effect of Tassimo's entry on Senseo's prices. The Commission's finding is consistent with Tassimo being closer to Dolce Gusto than to Senseo, as indicated by the qualitative evidence.

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227 Response to Article 6(1)(c) decision, Annex 2.

228 This proxy penetration was the total machine sales over the period divided by the sum of the population over the period.

229 See Response to RFI of 30 January 2015, 5 February 2015.

230 The effects slightly differ in magnitude between the weighted and the unweighted regressions, but the negative sign and the statistically significance are the same in both specifications.

(281) The Commission employed several methodologies to test the robustness of the analysis. In particular, following approaches recommended in economic literature, different bootstrap methods were used to assess the statistical significance of the estimates (those methods were the so called classic[231] and wild bootstrap[232] methods).[233] Overall, the outcome of such checks reinforces confidence in the robustness of the estimated coefficients. Furthermore, the wild bootstrap indicated that Tassimo's presence is not statistically significant in the Senseo regression and is statistically significant in the Dolce Gusto regression. The finding gives some further indication that Tassimo is closer to Dolce Gusto than to Senseo.

(282) It is important to point out, however, that the results of the analysis are not directly indicative of the merger effect, or even of the likelihood of the merger effect. What can be learned from the results is that the different single-serve systems compete with other systems. However, the merging Parties are active in the aftermarket, in the production of consumables, and, as it will be explained in more detail below, only Mondelēz has a significant ability to increase the Tassimo machines' prices by reducing the subsidies of the promotional activity (that is to say coupons and "Direct Pricing"). The amount of machine subsidisation that DEMB spends on a yearly basis is minimal. Therefore DEMB is not able to substantially increase Senseo machine prices.

(283) Furthermore, Mondelēz would have a limited incentive to increase Tassimo machine prices post-merger. The lost demand that the merged entity could recapture after the price increase would be limited to the amount of consumers who would switch to Senseo (among the other systems) and would use Senseo's filter pads currently produced by DEMB (among the other filter pads producers). Hence, the recapture would not be only limited by switching to coffee machines other than Senseo, but it would be further fractioned because the market for filter pads is an open market, and only the portion of consumers who switch to Senseo *and* buy DEMB's filter pads will count as recaptured lost demand. Particularly, if the market for filter pads has a high degree of competition, the recapture would represent a small percentage of the loss in demand. Additionally, the market investigation evidenced the current rush for increasing the installed machine base, as the market for single-serve is growing. The willingness to attract new customers incentivises coffee manufacturers to decrease the price of the coffee machines by subsidising them through coupons. That incentive would not disappear post-merger.

(284) For the reasons set out, although the quantitative analysis indicates a degree of competition across different single-serve machines and systems, for the particular complementarity of machine and consumables in the coffee systems, and the particular incentives of the coffee manufacturers, the Commission cannot conclude

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231 See, for example, Bertrand, Marianne, Esther Duflo, and Sendhil Mullainathan. "*How Much Should We Trust Differences-In-Differences Estimates?*." The Quarterly Journal of Economics 119.1 (2004): 249-275.

232 See Cameron, A. Colin, Jonah B. Gelbach, and Douglas L. Miller. "*Bootstrap-based improvements for inference with clustered errors*." Review of Economics and Statistics 90.3 (2008): 414-427.

233 The estimated coefficient of Tassimo's presence in the Senseo regression was found significant at 10% level using the classic bootstrap with replacement, and non-significant using the wild bootstrap. The estimated coefficient of Tassimo's presence in the Dolce Gusto regression was found significant at 5-10% level using the classic bootstrap, and significant at 10% level using the wild bootstrap. In general, the bootstrap methodologies will always decrease the significance level of the estimated coefficients. As the estimated coefficients still maintain a degree of statistical significance, the results can be considered robust.

with the requisite degree of certainty that the merger will give rise to a price increase in respect of single-serve machines or systems.

9.4.5.3. Consequences of loss of competition between Tassimo and Senseo

Introduction

(285) Irrespective of the level of closeness existing between Tassimo and Senseo, the Transaction still leads to a loss of competition between those two single-serve systems. The Commission has therefore assessed whether the Transaction leads to a significant impediment to effective competition, in particular by removing an important competitive force from the market.

Arguments of Nestlé and other competitors

(286) Some of the Parties' competitors argued potential anti-competitive non-coordinated effects could derive from the loss of the current competition between Tassimo and Senseo. In particular, those competitors claimed that the Parties, after the Transaction, could try to shift their customers from the open Senseo system to the closed Tassimo system (with the latter being potentially more profitable to the Parties given that only Mondelēz can manufacture the consumables for that system). Those competitors suggest that the Parties would have the ability to make the shift through: (i) cash-back promotions or bring-in programs for customers willing to trade their Senseo machine for a Tassimo machine, or otherwise synchronising promotions on the machines or consumables; and (ii) increasing the prices of Senseo consumables or machines, or both. As a result, according to those competitors, the open market for Senseo consumables would shrink and competing suppliers of filter pads would be foreclosed, while the JV would progressively remove the Senseo system from the market thereby reducing consumers' choice. The Parties' would have, according to those competitors, significant incentives to implement such a strategy given that the profits they would make from the closed Tassimo system would more than offset the losses they would incur by limiting their sales of Senseo.

(287) Furthermore Nestlé submitted in the course of market investigation that Tassimo is a very aggressive player (so called "maverick") in the single-serve segment, applying an aggressive commercial pricing policy and significant promotions, as well as investing strongly in advertising in various media. All those efforts, according to Nestlé, created "competitive animation" which was not only increasing the awareness of consumers of single-serve systems as a whole but also their willingness to purchase single-serve machines. That in turn resulted in growing the entire demand for single-serve machines. After the Transaction the competitive dynamic and pressure currently exerted by Tassimo in particular on Senseo will, according to Nestlé, be lost. Nestlé further argues that the entry of Tassimo in countries where it is currently not present becomes less likely after the Transaction.

Commission's assessment

(288) The Commission has assessed the potential anti-competitive effects of the Transaction resulting from shifting consumers from the open Senseo system to the closed Tassimo system, and has analysed whether the JV would be likely to implement such a strategy.

(289) First of all, the scope for DEMB to influence prices of Senseo machines is limited to the extent of the promotional support it offers for the Senseo single-serve machines. Moreover, although DEMB does have a contractual possibility to offer such support, in practice it is not using that possibility and its promotional efforts for Senseo machines are limited. As per the Parties' submission, on the basis of aggregate EEA

2013 sales, DEMB's direct investment per machine sold (that is to say machine price support) amounts to EUR […]*. In 2014 DEMB spent approximately EUR […]* in the EEA on promotion of Senseo machines, which amounted to […]*% of the average Senseo machine price. To put those numbers into perspective, Mondelēz, which is a player aggressively promoting its single-serve machines, in 2014 spent EUR […]* on promoting Tassimo machine sales, which amounted to […]*% of the average machine price. DEMB also does not make money transfers to Philips in order to support or influence Senseo machine prices or promotions. In view of its current minimal support for the sales of Senseo machines, the JV would not have significant scope of manoeuvre for increasing Senseo machine prices (notably by reducing the support of those machines) with the hope that that would lead the customers to move to the closed Tassimo system.

(290) Similarly, the Commission notes that the likelihood that the JV would increase the prices of Senseo consumables to shift its customers to Tassimo is also very limited. That is because, due to the open character of the Senseo system, it would be significantly constrained in most countries by the presence of other suppliers of competing filter pads. As regards in particular countries, such as Austria or France, where the JV would possess significant market power in the filter pads market, the competitive situation in these countries is analysed in sections 9.7.1 to 9.7.2.

(291) Furthermore, as concerns the potential promotions by which the customers would be encouraged to bring in their Senseo machine and replace it with a Tassimo machine, the Commission notes that that situation is not merger specific, since nothing would prevent Mondelēz, absent the Transaction, from using such promotion methods immediately and the Transaction does not strengthen anyhow its ability to do so.

(292) Finally, as presented in Section 9.4.2, the commercial policy with regard to single-serve systems, including Senseo, is shaped in cooperation between coffee companies and machine manufacturers. Therefore DEMB cooperates with Philips in that respect and, due to the fact that Philips' profits are derived from the sales of Senseo machines, it is very likely that Philips would oppose any efforts by the JV aimed at "progressively removing Senseo system from the market".

(293) In conclusion, it seems unlikely that the Parties would be able to shift their customers from Senseo to Tassimo machines or system following the Transaction.

(294) As regards the Parties' incentives to shift their customers from Senseo to Tassimo machines or system, it can also be noted that given the differentiated nature of the markets in question, the Parties would not be able to capture all the customers outflowing from Senseo as a result of possibly increased prices of either Senseo machines or consumables, since at least some of them might decide to purchase the competing single-serve systems, particularly taking into account that rivals' products (for example Dolce Gusto) are, as explained in section 9.4.5.4 close substitutes to each of Senseo and Tassimo. That would diminish the JV's incentives to increase Senseo prices (machines or consumables) and renders those price increases further unlikely.

(295) The Parties also claim that they would not have incentives to transfer customers from Senseo towards Tassimo, […]*Nevertheless the lack of ability to implement a strategy of moving consumers from Senseo to Tassimo still constitutes the critical reason why it is unlikely that the anti-competitive effects evoked by Nestlé and described in Recital (286) would materialise.

(296) With respect to Nestlé's claim that following the Transaction Tassimo would decrease its promotional efforts and thus increase prices of the machines for

consumers, the Commission considers that whilst Mondelēz, unlike DEMB, has the ability to increase those prices, it is unlikely that it will do so. The Commission found that Mondelēz is currently investing heavily in supporting sales of its Tassimo machines. In fact historical evolution of shares of sales of single-serve machines indicates that Mondelēz's efforts were quite successful and its aggressive promotional spending translated into an increase in Tassimo machines' sales. Therefore, Mondelēz could theoretically stop its aggressive promotion of the machines. Nonetheless in a growing and dynamic market, as evidenced in Section 9.4.4, where the positions of market players are shifting in time and where one of the critical success factors is achieving a sufficient level of penetration of machines, decreasing aggressiveness in recruiting customers would be a harmful and thus irrational strategy. The Parties' claim that the JV could not afford to let up the intensity of its competitive efforts for both Tassimo and Senseo because it would lead to losses to different sets of competitors seems in this context founded. In addition, high prices for single-serve machines would also slow down the shift of consumers from multi-serve to single-serve systems, thus slowing down the growth of the entire single-serve category to the detriment of all single-serve suppliers, as described in Section 9.4.5.6.

Conclusion

(297) The Commission therefore concludes that it is not likely that the Parties – after the Transaction – would be able and incentivised to shift customers from Senseo machines and system to Tassimo machines and system.

9.4.5.4. Competitive constraint exercised by other suppliers of single-serve systems

Competitive constraint exercised by Nestlé

(298) The Parties' single-serve systems, as presented in Table 1, are particularly strong at least in France, Germany and the Netherlands. Sales of Nestlé's Dolce Gusto and Nespresso systems constitute in essence the remaining part of the single-serve systems markets in those countries, while in the other countries where both Senseo and Tassimo are present, that is to say in Austria, Denmark, Spain and the United Kingdom, Nestlé occupies the first position.

(299) In fact competitors in Denmark, Austria, Spain, Greece, consider Nestlé's systems as their primary competitors in the single-serve systems.[234] As regards suppliers of single-serve systems active in multiple EEA countries two of them view Nestlé as their main competitor, while the remaining two mention Tassimo.[235]

(300) Nestlé was the first coffee company to introduce a single-serve machine for in-home consumption into the market and maintained that first mover advantage by maintaining a constantly high level of investment in advertising and promotion on points of sales of its single-serve brands.[236] Its strong position results also from the "premium brand image" of their Nespresso system; which is marketed as "affordable luxury", the fact that it maintains the quality level of both the machines and consumables, has a good distribution network and offers a broad range of

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234 Responses to question 19 of Questionnaire Q9-Competitors.

235 *Ibidem*.

236 Resposes to questions 15.3 and 15.4 of Questionnaire Q9 – Competitors.

machines.[237] As a result it is perceived by other suppliers of single-serve systems as the market leader.[238]

(301) The apparent fierce pre-Transaction rivalry between Tassimo and Dolce Gusto also implies that following the creation of the JV, despite increased concentration in the single-serve segment, both the JV and Nestlé will remain incentivised to compete with each other. This was also noted by some of the retailers and electronic goods retailers who participated in the Commission's investigation and stated that, in particular for the Netherlands, there would be more competition between Nestlé and JV after the Transaction,[239] and that prices will remain low.[240] For the reasons mentioned in this Section, if the JV were to increase prices of Tassimo machines or consumables after the Transaction, it would likely lose sales to Nestlé (in particular to Tassimo's closest competitor Dolce Gusto) and therefore the latter will still constrain the JV after the Transaction.

Competitive constraint exercised by other players

(302) Furthermore, in addition to Nestlé, there are also other players in the single-serve segment, although they currently occupy niche positions and are not necessarily present across the EEA. However their positions are not insignificant, which is confirmed by their presence on retailers' shelves. Those other players include: Tchibo in Germany and Austria, Aldi in Germany, and Lavazza and Illy in France.

(303) In the course of market investigation machine manufacturers indicated that they expect private label single-serve systems as well as those of Lavazza or Illy to increase their market share in the coming years.[241]

Conclusion

(304) Consequently in the countries where the combined share of machine sales of the Parties' system is the largest, in addition to the competitive constraint exercised by Nestlé, the Parties also face constraint from the smaller players. Should the JV decrease its promotional efforts thereby increasing prices of machines there could be *"an opportunity for smaller local players to find their niche and penetrate the markets of the machines more easily."*[242] The competitive constraint exercised by Nestlé and other suppliers of single-serve systems also implies that the Parties will remain incentivised to maintain investment into innovation (by means of introducing new single-serve machines and upgrading existing ones) in order not to be outgrown by their competitors.

9.4.5.5. Entry and expansion of existing players

(305) The entry of new players in a market as well as the expansion of existing ones act as a competitive constraint on the merged entity. However, for entry to be considered a sufficient competitive constraint on the merging parties, it must be shown that entry is likely, timely and sufficient to deter or defeat any potential anti-competitive effects of the merger.

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[237] *Ibidem.*

[238] *Ibidem.*

[239] Response to question 51 of Questionnaire Q10 – Retailers.

[240] Response to question 43 of Questionnaire Q11 – Electronic goods retailers.

[241] Non-confidential minutes of a conference call with a machine manufacturer dated 1 December 2014 at 15.00 CET and of a conference call with machine manufacturer dated 1 December 2014 at 15.00 CET.

[242] Non-confidential minutes of a conference call with a competitor dated 6 February 2015 at 16.00 CET.

(306) Barriers to enter and expand in the single-serve machines market are certainly not insignificant. First of all, those are the barriers resulting from the general characteristics of the market, referred to in Section 9.1, such as the importance of brands and the need to devote substantial financial resources to advertising and promotion. Retailers and electronic goods retailers consider that in order to achieve a substantial presence within a given country with a single-serve system one needs to have a well-known brand and invest in promotion and advertising.[243] Secondly additional barriers result from the need to finance the single-serve technology and the penetration of single-serve coffee machines, since only a sufficiently large machine park allows for recoupment of the investment made into development of the single-serve system. Competitors confirm that the main driver for purchasing a new single-serve system is promotion of the coffee machine.[244] Furthermore the high costs of introducing new single-serve system into the market result also from the need to offer a range of coffee machines and a range of consumables, positioned at different price points in order to match the wide ranges already offered by the existing players.

(307) The Parties themselves in their internal documents take the view that high barriers exist in relation to single-serve systems: *"[…]*"*.[245]

(308) Nevertheless the majority of retailers and electronic goods retailers as well as all machine manufacturers who responded to the Commission's questionnaire confirmed that there have been entries into the single-serve segment in the past three years.[246] In that context, Segafredo is mentioned in France, Aldi in Germany, Lavazza with A Modo Mio in the United Kingdom and Germany, Illy in the United Kingdom and Starbucks with Verismo system in France.[247]

(309) As regards future entry, the vast majority of machine manufacturers expect a new single-serve system to be introduced into the market in the next 2–3 years.[248] In particular the US company Keurig is viewed as a potential new entrant into Europe (in particular into the United Kingdom, Poland and Sweden), for instance by Bosch. That entry is also expected by Mondelēz because Keurig is viewed as a strong player in the US with a *"[…]*"* and thus, according also to Mondelēz internal documents, potentially *"[…]*"*[249] A Dutch electronic goods retailer states that Tchibo with its Cafissimo system might become active in the Netherlands. It also adds that Dutch retailers might follow the example of the German retailers and also introduce their own single-serve systems.[250] Another competitor expects that *"[c]ompetition will continue to be fierce, with 2 systems potentially merging into one there is another 10 ready to step in."*[251] In its market investigation the Commission found also evidence of plans of entry or expansion of offer of single-serve systems by a number of players within the EEA.

(310) The reason why, despite relatively high barriers to entry, a number of companies have decided to start marketing single-serve systems in the past – and for which

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243 Responses to question 18, Q10 – Competitors and question 20 of Q11 – Electronic goods retailers.
244 Responses to question 5 Q9 - Retailers.
245 DEMB internal document Strategy, February 2014 submitted as Annex 6-2 to Form CO, pp. 64, 69.
246 Responses to question 43 of Questionnaire Q12- Machine manufacturers, question 38 of Questionnaire Q11 – Electronic goods retailers and question 41 of Questionnaire Q9 – Retailers.
247 *Ibidem*.
248 Responses to question 48 of Questionnaire Q12- Machine manufacturers.
249 Mondelēz internal document, dated 23 May 2012, "*Tassimo Product Council*", slide 10.
250 Responses to question 40 of Questionnaire Q11 – Electronic goods retailers.
251 Response to question 6.1 of Questionnaire Q6 – Market test Denmark.

entries are expected in the future – lays in the attractiveness of the market. Single-serve is a dynamic and growing market, with potential for substantial margins. Therefore incentives to enter, expand, participate in it are indeed high. As a machine manufacturer has noted, single-serve *"[is] not saturated leaving room for other entrants [which will] accelerate single serve penetration"*.[252]

(311) In addition, the entry barriers resulting from the investment into single-serve technology are less significant since that technology is becoming more easily available. For instance, entry and expansion in single-serve segment can also take place in cooperation with licensors of single-serve technology, which are ready to pair with a coffee supplier or with a retailer. Tchibo's Caffisimo system is, for instance, an example of collaboration between Tchibo and the system licensor – Caffitaly. Similarly Krüger licenses its K-Fee technology for instance to Aldi, but also to Starbucks. Those systems are semi-open, which means for instance that all licencees of the technology can offer compatible consumables. As a result final consumers have more choice and variety, which can constitute a good selling point for its suppliers, who can thus gain easier access to retailers' shelves.[253] This is reflected in Mondelēz internal documents, where Mondelēz notes that Caffitaly *"[…]*"*.[254]

Conclusion

(312) Consequently, while barriers to entry and expansion in the single-serve segment are relatively high it remains attractive for potential and expanding players. The market for single-serve machines experienced a significant growth in the last years, as explained in Recital (201), and is likely to experience a growth in the future, both in terms of higher consumer penetration in the EAA countries where those systems are already present and expansion to other countries. As a result entry is still likely,[255] as confirmed by the market participants who responded to the Commission's investigation. Therefore the potential entrants and expanding players are likely to exercise a competitive constraint on the JV also after the Transaction.

9.4.5.6. Importance of machine penetration

(313) For the reasons previously mentioned in Recital (201), the demand for single serve machines is far from being mature and stable and is expected to grow rapidly in the future. At the same time the pace of growth of that demand depends on the conditions under which single-serve machines are offered. If those conditions worsen (for instance by decreasing the promotional efforts – not offering cash-backs, coupons) the development of the demand for single serve machines risks a significant slowdown. Consequently also the shift of consumers from multi-serve to single-serve systems would be hampered. As it has been shown in Section 9.1.5 single-serve is much more profitable than multi-serve for coffee companies. Therefore also in light of the need to recoup the high investments incurred to start marketing a single serve system it is unlikely that the coffee companies would run the risk of slowing down the development of the demand for single-serve machines.

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[252] Response to question 43 of Questionnaire Q12- Machine manufacturers.

[253] Non-confidential minutes of a conference call with a competitor dated 6 February 2015 at 16.00 CET.

[254] Mondelēz internal document, dated 22 November 2011, "*Tchibo ATC – Caffitaly system*", slide 2.

[255] Horizontal Merger Guidelines, paragraph 69.

(314) As a result, in order to ensure high levels of sales in coffee consumables, coffee companies are incentivised to increase demand for single-serve machines and thus the machine penetration.

(315) The Parties' competitors stated in the course of market investigation that the promotion of coffee machines is one of the main drivers for consumers to purchase a new single-serve system.[256] That confirms that the levels of inflow of new consumers into the single-serve system depend on the aggressiveness of promotional efforts. As a result a supplier of single-serve systems, which decides to tone down its promotional efforts, might have difficulties recruiting new customers. A competitor explained that since in principle the majority of households will only purchase one single-serve machine, which will then determine the choice of compatible consumables for the lifetime of this machine, *"the competition among single-serve systems is very aggressive"*.[257] Another competitor noted *"The key in this business model is to achieve high penetration of coffee machines so it is expected that the owners of the main SiSe will continue to push machine sales by aggressive promotions. Only this way they will also ensure their consumables are placed on retailers' shelves (i.e. retailers will welcome consumables for systems with high machine park, since this will guarantee high turnaround for the consumables)."*[258] When asked about the impact of the Transaction on single-serve machines prices a machine manufacturer submitted that *"the trend is to 'buy' consumers to the systems; we don't expect this to change significantly. The pressure on prices will continue"*.[259]

(316) Internal documents of Mondelēz confirm […]*.[260] […]*.[261] That suggests that JV will continue its aggressive promotion strategy also after the Transaction because it considers it crucial for its success in the market.

(317) Moreover, a competitor in the market investigation noted that one of the competitive advantages of Tassimo is the price of its machines, since Mondelēz subsidises them strongly, which *"leads to high level of machine penetration"*.[262]

(318) A survey carried out for DEMB […]*".[263] Such consumers would purchase a Tassimo machine only because it was offered at a low price but would not afterwards buy the consumables. It has concluded that the new Tassimo buyers are not less regular consumers of T discs than the new buyers of Dolce Gusto or Senseo of the respective consumables and they are not less loyal. That implies that in fact such consumers are not "less qualitative".[264] Therefore the strategy of Mondelēz is rational and effective and as such likely to be continued.

Conclusion

(319) The importance of pushing the penetration of single-serve machines is a feature of the single-serve segment largely confirmed by the market participants in the course of the Commission's investigation and corroborated by the Parties' internal

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256 Responses to question 5 of Questionnaire Q9 – Competitors.

257 Response to question 5 Questionnaire Q5 – Market test France.

258 Non-confidential minutes of a conference call with a competitor dated 6 February 2015 at 16.00 CET.

259 Response to question 48 of Questionnaire Q12 – Machine manufacturers.

260 Mondelēz internal document dated 9 October 2013, "*AC'14 Beverages. Brewing delicious moments of joy*", slide 11.

261 Mondelēz internal document dated 3 December 2014, "*BSH- Mondelēz 2nd GSCM 2014 Minutes*", p. 1.

262 Response to question 15.2 of Questionnaire Q9 – Competitors.

263 DEMB internal document, undated, entitled "*Kantar Worldpanel. High definition inspiration*", pages 40-41.

264 *Ibidem*.

documents. That feature influences market dynamics and indicates that even after the Transaction, […]*, the JV will have to remain aggressive in order not to lose its market position to existing strong players, which include Nestlé, or those entering or expanding in the single-serve segment. Another reason not to decrease promotional efforts lays in the necessity to ensure the inflow of customers into the single-serve segment. Importance of machine penetration also implies that the Parties will remain incentivised to innovate and offer new, upgraded versions of their machines in order to convince final customer to choose their single-serve systems over those of competitors or to switch to them from multi-serve systems.

9.4.6. Country analysis

(320) For the reasons presented in Section 9.4.5, the Commission has reached the conclusion that the Transaction would not give rise to competition concerns in relation to single-serve systems or to single-serve coffee machines in the countries where both Senseo and Tassimo are present and account for at least 25% of the market for single-serve machine sales (that is to say Austria, Denmark, France, Germany, the Netherlands, Spain and the United Kingdom). Those reasons apply to all the relevant countries. In addition, Sections 9.4.6.1 to 9.4.6.7 analyse in more detail the effects of the Transaction in each of those countries.

9.4.6.1. Austria

(321) In Austria the combined sales of Tassimo and Senseo machines amount to [20-30]% in value. The clear leader in the single-serve machines market is Nestlé with its Nespresso and Dolce Gusto machines.

(322) Furthermore in Austria Tchibo is active with its Cafissimo system. As mentioned in footnote 169 the competitive significance of Tchibo's single-serve machines is not reflected in market shares presented in Table 2 due to the fact that GfK data does not capture sales made through Tchibo's own boutiques. Furthermore in Austria another important player is Cremesso with its share increasing in value from [0-5]*% in 2011 to [0-5]*% in 2013.

(323) Machine manufacturers in Austria confirm even though Tassimo is closest competitor to Senseo, it is in fact Dolce Gusto which is the closest competitor to Tassimo.[265]

(324) As a result those other players in addition to Nestlé will continue to exercise competitive constraint on Tassimo and Senseo in Austria. The effects of the Transaction on the filter pads market in Austria are analysed in section 9.7.2. Therefore the Transaction does not lead to competition concerns in relation to single-serve systems in Austria.

9.4.6.2. Denmark

(325) In Denmark the combined sales of Tassimo and Senseo machines amount to [20-30]*% in value, while sales of Nestlé's machines are much larger and amount to [70-80]*%.

(326) While the majority of Danish retailers which responded to the Commission’s questionnaire consider Tassimo to be the closest competitor to Senseo, they all consider Tassimo’s closest competitor to be, in fact, Dolce Gusto.[266] The majority of

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[265] Responses to question 31, 32 of Questionnaire Q12 – Machine manufacturers.
[266] Responses to question 26 of Questionnaire Q10 – Retailers.

machine manufacturers also view Dolce Gusto as the closest competitor to Tassimo.[267]

(327) Furthermore the sales value of Senseo machines have been decreasing in Denmark, from [10-20]*% in 2011 to [5-10]*% in 2013. The main player in Denmark remains Nestlé.

(328) As a result the Transaction does not lead to competition concerns in relation to single-serve systems in Denmark.

9.4.6.3. France

(329) In France, although Tassimo and Senseo jointly would have the highest share of single-serve machine sales amounting to [50-60]*% in value, Nestlé's position is also quite significant. Therefore for the reasons set out in Section 9.4.5, Nestlé will continue to exercise competitive constraint on the Parties' single-serve systems in France.

(330) Retailers in France confirmed that they do not only allocate shelf space to single-serve machines of Tassimo, Senseo and Nestlé. In particular, those retailers stated that shelf space is also allocated to other suppliers of single serve machines, in particular, Malongo (owner of "1,2,3 Spresso" system) and Lavazza.[268]

(331) As regards the Italian competitors, that is Lavazza (with its A Modo Mio) and Illy (with its Iperespresso) Mondelēz in its internal documents […]*.[269]

(332) In terms of market shares Lavazza is slowly but gradually increasing its presence in France, while in 2011 its value market share amounted to [0-5]*% in 2013 it amounted to [0-5]*% (in volume it grew from [0-5]*% in 2011 to [0-5]*% in 2013).

(333) Machine manufacturers perceive Dolce Gusto as the closest competitor to Tassimo in France. Views were, however, mixed as to who represented Senseo's closest competitor. Certain respondents mentioned Tassimo, while others referred to Nestlé.[270]

(334) Consequently players such as Lavazza will, in addition to Nestlé, continue to exercise competitive constraint on Tassimo and Senseo in France. The effects of the Transaction on filter pads market in France are analysed in Section 9.7.1. Therefore the Transaction does not lead to competition concerns in relation to single-serve systems in France.

9.4.6.4. Germany

(335) In Denmark the combined sales of Tassimo and Senseo machines amount to [50-60]*% in value, closely followed by Nestlé's with its sales of machines amounting to [40-50]*%.

(336) In Germany retailers allocate shelf space to competing single-serve systems of Lavazza Krüger, Tchibo and Illy.[271]

(337) Retailers and machine manufacturers also confirmed that in Germany the closest competitor to Tassimo is Dolce Gusto.[272]

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[267] Responses to question 31 of Questionnaire Q12 – Machine manufacturers.

[268] Response to question 22 of Q10 – Retailers and to question 24 of Q11– Electronic goods retailers.

[269] Mondelēz internal document, dated 26 February (no year indicated), "*Tassimo SP 14/16. WIP Assumptions*", slide 2.

[270] Responses to question 31 of Questionnaire Q12 – Machine manufacturers.

[271] Response to question 22 of Q10 – Retailers and to question 24 of Q11– Electronic goods retailers.

(338) In Germany, similarly to Austria[273] Tchibo is active with the Cafissimo system and sells its single-serve machines and consumables not only through retailers but mostly through its own network of dedicated Tchibo boutiques. The competitive significance of Caffisimo is confirmed by the fact that it is analysed in the internal documents of the Parties[274] but also those of Nestlé[275]. Smaller competitors present in Germany also view Tchibo's Cafissimo as an important player and estimate its share in Germany at [20-30]*%.[276] Tchibo itself admits that single-serve segment is the fastest developing coffee market at the moment and it is very attractive for Tchibo to be present and expand.[277]

(339) Furthermore in Germany retailer Aldi offers its own single-serve system Expressi. Although that system certainly is positioned differently from those of the Parties and Nestlé, its presence in the market and thus certain competitive constraint it exercises is acknowledged and monitored in […]* internal documents.[278]

(340) As a result the Transaction does not lead to competition concerns in relation to single-serve systems in Germany.

9.4.6.5. Netherlands

(341) Tassimo entered the Netherlands in 2014 and achieved sales of [5-10]*% in value. The strongest player in the Dutch single-serve machines market is Nestlé with the combined share of sales of its Nespresso and Dolce Gusto machines amounting to [50-60]*% in value.

(342) One of the main retailers in the Netherlands stated that Tassimo's closest competitor is in fact Dolce Gusto and not Senseo.[279] Similarly the majority of machine manufacturers mentioned Nestlé's single-serve machines as closest competitors to Senseo in the Netherlands.[280]

(343) As a result in the Netherlands, where Tassimo has entered only recently the key competition will continue to take place between the system of Mondelēz and Dolce Gusto. This is also evidenced by Nestlé's internal documents describing a "welcome plan" for Tassimo in the Netherlands cited in Recital (260). Therefore the Transaction does not lead to competition concerns in relation to single-serve systems in the Netherlands.

9.4.6.6. Spain

(344) Combined shares of sales of Tassimo and Senseo machines in Spain are not very significant and amount to only [10-20]*% in value. Nestlé remains the clear leader in Spain and it will exercise a significant competitive constraint on the JV.

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272 Responses to question 3.1 and to question 26 of Questionnaire Q10 – Retailers and to question 31 of Questionnaire Q12 – Machine manufacturers.

273 In addition to other countries, including inter alia Poland, Czech Republic, Romania, Slovakia.

274 See for instance Mondelēz internal document, dated January 2012, *"BSH and Kraft Tassimo Strategy Alignment Workshop. Anticipating competition"*, slide 26-ff and DEMB internal document, dated 19 November 2012, *"Senseo in Poland. Single serve market overview"*, slide 12and ff.

275 With respect to Poland – see Nestlé internal document dated 8-9 September 2011, *"Operational meeting"*, slide 15.

276 Non-confidential minutes of a conference call with a competitor dated 6 February 2015 at 16.00 CET.

277 Non-confidential minutes of a conference call with a competitor dated 6 February 2015 at 12.30 CET.

278 For instance Mondelēz internal document dated August 2014, *"Brewer sales opportunity. Germany"*, slide 11 and ff.

279 Response to question 3.1 of Questionnaire Q10 – Retailers.

280 Responses to question 32 of Questionnaire Q12 – Machine manufacturers.

(345) The Transaction will not lead to anti-competitive effects in Spain also due to the lack of closeness of competition between Tassimo and Senseo in Spain. Spanish retailers consider Nestlé's systems as competing most closely with both Senseo and Tassimo.[281] Consequently the Transaction does not lead to competition concerns in relation to single-serve systems in Spain.

9.4.6.7. United Kingdom

(346) The share of Senseo machine sales, decreased in value from [0-5]*% in 2011 to [0-5]*% in 2013. As a result the combined share of Tassimo and Senseo sales amounts to [30-40]*% in value.

(347) Retailers in the United Kingdom view Tassimo and Dolce Gusto as the closest competitors.[282] One of them further explained *"Although Senseo was the first single serve brand in the UK with its pads, it was not sufficiently promoted and has been overtaken by Dolce Gusto and Tassimo. Senseo remains very small in the UK. Tassimo on the other hand is very big in the UK. [name of the retailer] does not perceive Tassimo and Senseo (...) as close competitors (...)"*[283]

(348) On the other hand Lavazza's presence in the United Kingdom is gradually increasing with its share of machine sales growing in value from [0-5]*% in 2011 to almost [0-5]*% in 2013.

(349) Thus the Commission concludes that the Transaction does not lead to competition concerns in relation to single-serve systems in the United Kingdom.

9.4.7. Conclusion

(350) On the basis of the foregoing and the available evidence, the Commission concludes that the Transaction will not lead to competition concerns in relation to single-serve systems. In particular, it will not lead to a significant impediment to effective competition in the markets for single-serve machines in Austria, Denmark, France, Germany, the Netherlands, Spain and the United Kingdom.

(351) However, as regards the markets for single-serve consumables, the Transaction would lead to a significant impediment to effective competition, in particular through the creation of a dominant position, in the filter pads markets in Austria and France (as set out at sections 9.7.1 to 9.7.2).

9.5. R&G

(352) For the reasons set out in Recitals (353) to (421), the Commission has reached the conclusion that the Transaction would lead to a significant impediment to effective competition, in particular through the creation of a dominant position, in the R&G markets in France, Denmark and Latvia. Moreover, for the reasons set out in Recitals (422) to (454), the Commission has reached the conclusion that the Transaction would not significantly impede effective competition in the internal market in the R&G markets in the Czech Republic, Greece, Poland, Bulgaria, Hungary, the Netherlands and Spain.

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281 Response to question 26 of Questionnaire Q10 Retailers.
282 Response to question 3.1 of Questionnaire Q10 – Retailers.
283 Non-confidential minutes of a conference call with a retailer dated 24 September 2014 at 16.00 CET.

9.5.1. *France*

(353) R&G represented [30-40]*% of the total coffee market in France in 2013, with the total value amounting to approximately EUR 1,062 million. DEMB supplies the French market with R&G coffee products mainly under L'Or, Ma Tradition and Maison du Café brands. The R&G brands of Mondelēz include Carte Noire, Grand'Mère, Jacques Vabre and Velours Noir.

Parties' arguments

(354) The Parties do admit that DEMB's L'Or brand and Mondelēz's Carte Noire brand could be viewed as closely competing within R&G coffee products. Nevertheless they argue that in France they face strong competition in this market originating mostly from retailers' brands but also from other suppliers of branded coffee products, such as Lavazza, Segafredo, Malongo and Legal. As to private label products the Parties claim that they are present throughout the entire product range, they offer the same quality as branded products.

(355) Secondly, the Parties claim that entry into R&G market in France is easy, given that coffee is a globally traded commodity, and that roasting and packaging process does not require substantial investment or technical expertise. Alternatively a new entrant could outsource in particular roasting to a third party supplier, since there is an overcapacity in roasting in France.

(356) Thirdly, the Parties argue that retailers in France are able to exercise significant buyer power. That would be maintained after the transaction in particular since retailers are linked by buying alliances, which reinforces their position against suppliers. The Parties further claim that French retail market is also witnessing price wars as a result of fierce competition between the different retail groups, and that such competition drives retailers to negotiate lower prices by means of various negotiation levers, such as delisting threats, stopping orders, refusing to agree prices, cancelling promotion slots. The Parties cite examples when such negotiation techniques were used in their relations with French retailers.

Commission's investigation and assessment

(357) In general the overall R&G market in France appears to be rather stable and mature. While the total value of the market decreased by approximately EUR 41 million, various competitors maintained their positions over the course of the past three years.

Table 3 R&G market in France[284]

		2013		2014	
Manufacturer	**Brand**	**Value('000 €)**	**Share**	**Value ('000 €)**	**Share**
DEMB	L'OR	[…]*	[5-10]*%	[…]*	[5-10]*%
	MA TRADITION	[…]*	[0-5]*%	[…]*	[0-5]*%
	OTHER	[…]*	[0-5]*%	[…]*	[0-5]*%
DEMB TOTAL	-	**[…]***	**[10-20]*%**	**[…]***	**[10-20]*%**
MONDELĒZ	CARTE NOIRE	[…]*	[20-30]*%	[…]*	[20-30]*%
	GRAND'MÈRE	[…]*	[5-10]*%	[…]*	[10-20]*%
	JACQUES VABRE	[…]*	[0-5]*%	[…]*	[0-5]*%
	VELOURS NOIR	[…]*	[0-5]*%	[…]*	[0-5]*%
	OTHERS	[…]*	[0-5]*%	[…]*	[0-5]*%
MONDELĒZ TOTAL	-	**[…]***	**[40-50]*%**	**[…]***	**[40-50]*%**
COMBINED	-	**[…]***	**[50-60]*%**	**[…]***	**[50-60]*%**
RETAILERS	PRIVATE LABELS	[…]*	[20-30]*%	[…]*	[20-30]*%
REGIONAL BRANDS	-	[…]*	[0-5]*%	[…]*	[0-5]*%
LAVAZZA	LAVAZZA	[…]*	[0-5]*%	[…]*	[0-5]*%
SEGAFREDO	-	[…]*	[0-5]%	[…]*	[0-5]*%
LEGAL	-	[…]*	[0-5]*%	[…]*	[0-5]*%
OTHER	OTHER	[…]*	[0-5]*%	[…]*	[0-5]*%
TOTAL	-	**[…]***	**100%**	**[…]***	**100%**

Source: the Parties.

9.5.1.1. Parties have high market shares

(358) In general the overall R&G market in France appears to be rather stable and mature. While the total value of the market decreased by approximately EUR 41 million, various competitors maintained their positions over the course of the past three years.

284 There would be no material change in the market shares, if coffee beans were included.

(360)

(361) Table 3 shows that the Parties are significant players in the R&G market in France. In fact they are number one (Mondelēz) and number two (DEMB) providers of branded R&G products. Their market shares have been stable over the past three years, with Mondelēz slightly strengthening its position from [40-50]*% in 2011 to [40-50]*% in 2014, due to an increase in Carte Noire's share.

(362) The combined market share of the Parties amounts to more than [50-60]*% ([50-60]*% in 2014). After the Transaction the various retailers' brands would jointly hold the second largest market share and in any case be twice smaller than the JV (with a share of approximately [20-30]*% which has slightly decreased over the past three years). Furthermore the degree of competitive constraint exercised by private label brands cannot be considered as equivalent to that of a market player with the same market share, since it represents an aggregation of sales of various retailers with some of them having stronger private label brands and others weaker.

(363) It should be also noted that over the past three years none of the suppliers of branded R&G coffee products (other than the Parties) was able to achieve market share in excess of [0-5]*%. French retailers also confirmed in the market investigation that their mix of suppliers of coffee products has been relatively stable over the past three years.[285]

(364) With respect to branded consumer goods the position and competitive importance of a given player depends on whether it is able to target the differentiated consumers, providing a full portfolio of brands, including those catering for price-driven (value) customers as well as less (premium) cost-conscious customers. In the French market the distinction between the value range and the more premium range is also reflected in a distinction between, respectively, Robusta and Arabica. Both Mondelēz and DEMB have indeed in their offering brands positioned as value or mid-range Robustas (Ma Tradition for DEMB and Grand'Mere for Mondelēz) and as premium Arabicas (L'Or for DEMB and Carte Noire for Mondelēz). As regards private label brands, since their market share in volume exceeds by [5-10]*% their market share in value, it could be concluded that they are particularly focused on customers purchasing the mid-range R&G coffee products. Lavazza and Segafredo, the next strongest suppliers of branded R&G coffee products after the Parties appear to address a specific niche in the market, namely high-premium Italian coffee.

(365) As a result the Parties appear as the two strongest players in the French R&G market, with the high market shares and full portfolio of brands cutting across various price points and catering to the needs of different consumers. The fact that the positions of the Parties remained almost unchanged in the course of the past three years implies that the French R&G market is rather stable and mature and none of the competing suppliers of R&G coffee products (either branded or private label) was able to challenge the positions of the Parties and take their market share. Post-Transaction it is even less likely that the strong combined position of the JV will be successfully challenged.

9.5.1.2. Parties are close competitors

(366) The Parties do admit that DEMB's L'Or brand and Mondelēz's Carte Noire brand could be viewed as closely competing within R&G coffee products. Also the market

285 Responses to question 207.2 of Questionnaire Q2-Retailers.

investigation and the analysis of the Parties' internal documents confirm that the Parties are each other's close competitors in the French R&G market.

(367) As regards internal documents a study entitled "Coffee consumption in France" prepared for DEMB, […]*.[286] Another internal document of DEMB, […]*.[287] [288] [289] Review of DEMB's internal documents corroborates the conclusion that in the French R&G market Parties' brands are closet competitors.

(368) Similarly, internal documents of Mondelēz […]*.[290] [291] [292] [293] Consequently analysis of internal documents of Mondelēz confirms that in France the R&G brands of the Parties are close competitors.

(369) Retailers in France view in particular the brands L'Or and Carte Noire as competing vigorously with each other.[294] They also consider Mondelēz as closest competitor to DEMB and *vice versa* in France in coffee products in general and with respect to R&G in particular.[295] Moreover, the majority of competitors active in France perceive Carte Noire as closest competitor to L'Or and vice versa.[296]

(370) In the differentiated R&G market in France, the products of the Parties appear to be close substitutes. Indeed, that is not contested by the Parties themselves. As a result the loss of competition between the brands of DEMB and Mondelēz could potentially lead to higher prices for the French customers for the R&G products.

9.5.1.3. Insufficient constraint exercised by other players in the market, including private label brands

(371) As noted in Recital (354), the Parties argue that competitors, in particular private label products as well as other suppliers of branded coffee products, exercise competitive constraint on DEMB and Mondelēz in France and will continue to do so after the Transaction. Therefore, it would follow from this that private label, Lavazza, Segafredo or Legal could increase supplies of R&G products in France in reaction to a price increase after the Transaction and the final customers could switch to those competing R&G products therefore making the price increase unprofitable for the JV.

(372) Nevertheless, as set out in Section 9.1.2, the Commission's investigation has shown that one of the features of the coffee sector is the importance of brands. That is apparent from the Parties' internal documents, […]*.[297] Also the retailers in France confirm that market characteristic. One of the retailers stated that a supplier with a stronger brand is granted more shelf space and cited Carte Noire as an example.[298]

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286 DEMB internal document, undated, "*Coffee consumption in France*", slide 14.
287 DEMB internal document, dated 7 November 2013, "*France short term rebound*", slides. 26, 31, 33, 45, 52 and 54.
288 *Ibidem*, slide 84.
289 DEMB internal document, undated, "*Introduction to French multiserve business*", slides 30 and 31.
290 Mondelēz internal document "*CCE ordinaire 12 decembre 2013 Categorie Boissons Chaudes*", slide 6.
291 Mondelēz internal document, undated, "*S&I Budget Agreement AP 09-26 of August*", slides 27 and 28.
292 Mondelēz internal document, undated, "*R&G French market overview*", slides 6 and 14.
293 *Ibidem*, slides 40-44.
294 Non-confidential minutes of a conference call with a retailer, dated 23 September 2014 at 11.00 CET and with retailer dated 19 September 2014 at 10.00 CET.
295 Responses to questions 209, 210 of Questionnaire Q2-Retailers.
296 Responses to questions 139, 140 of Questionnaire Q1 – Competitors.
297 Mondelēz internal document, dated 17 March 2008, "*EU Coffee Category Preliminary 2009 Strategic Plan*", slide 64.
298 Response to question 46.1 of Questionnaire Q2-Retailers.

Retailers also mention Parties' brands as must-have brands for R&G coffee.[299] French retailers in the course of market investigation confirmed that having brands with high awareness (such as L'Or and Carte Noire) is one of the competitive advantages of both Parties.[300] Since the final customers in the R&G market in France are attached to brands, that constitutes a barrier to their switching. At the same time the Parties own must-have brands, which are requested by the customers. Therefore other suppliers of branded R&G products would not necessarily be able to constrain the Parties by successfully attracting customers in reaction to a price increase by the JV after the Transaction.

(373) As regards private label products, the Parties do acknowledge their presence in their internal documents […]*.[301] In a study prepared for Mondelēz, […]*.[302] The same document measured "attraction rate" of Grand'Mere as […]*% and "loyalty rate" as […]*%, while for private label products those rates amount to […]*% and […]*% respectively. Furthermore a French retailer admitted that due to the private label brands' limited presence in the coffee category (amounting to 20% at most) they are not real and strong challengers to the branded products.[303] French retailers also note that the share of private label brands in the coffee products has been decreasing over the past years.[304] These pieces of evidence suggest that while private label brands do have some presence in the French R&G market, it is not able to truly challenge the position of the Parties. In fact they are rather more likely to follow any price increase endorsed by the Parties.

9.5.1.4. Lack of countervailing buyer power

(374) Another countervailing factor raised by the Parties is the buyer power of retailers. However the power of retailers *vis-à-vis* suppliers with 'must-have' brands (and Parties' brands in R&G in France are clearly must-have) is obviously limited. The more a given brand is requested by the final customers, the more difficult it will be for the retailers to demonstrate their buyer power by threatening or actually switching to alternative suppliers. […]*[305] Also French retailers admit that it would be difficult to find alternatives to Mondelēz brands (in particular to Carte Noire) in case they would no longer be able to stock them.[306] As regards DEMB's brands one of the retailers stated it would be able to replace them with those of Mondelēz.[307] That implies that in the eyes of French retailers Mondelēz, at least, has 'must-have' brands and DEMB is perceived as its key challenger. As a result the ability (due to the must-have character of the JV's brands and limited number of credible alternatives) and incentives of retailers to switch to alternative suppliers after the Transaction are both questionable.

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299 Responses to question 211 of Questionnaire Q2-Retailers and non-confidential minutes of a conference call with a retailer, dated 23 September 2014 at 11.00 CET.

300 Responses to questions 49.1.1, 149.2.1 of Questionnaire Q2 – Retailers.

301 DEMB internal document "*R&G market review by country*", slide 32; and "*Plan per country*", slide 36.

302 Mondelēz internal document, "*Brand Health Tracking - All Coffee 2012 Review France, January - December 2012*", slide 97.

303 Response to question 213.1 of Questionnaire Q2 – Retailers.

304 Responses to question 215 of Questionnaire Q2 – Retailers.

305 Mondelēz internal document, dated 14 October 1, Aix-en-Provence, slides 22, 33, 35.

306 Responses to question 58 of Questionnaire Q2 – Retailers.

307 Response to question 57.1 of Questionnaire Q2 – Retailers.

(375) With regard to the various negotiation levers the Parties submit the French retailers are applying in their negotiations with coffee suppliers, they are in fact factored into the Parties' strategies. […]*[308] […]*.

9.5.1.5. Barriers to entry

(376) Finally, as regards the Parties' claim of an absence of barriers to entry, such absence was not in fact confirmed by the Commission's investigation.[309] Whilst neither competitors nor retailers mentioned access to coffee beans, roasting or packaging capacity as potential entry barriers into the overall coffee market and in particular into R&G market, strong brand image and high financial resources were identified as necessary requirements for a successful entry into R&G in particular by one of the competitors.[310] Similarly a French retailer stated that high brand awareness is needed for a successful entrant, while communication and promotion efforts are required from a supplier wishing to expand in the R&G market.[311] All French retailers confirmed that lacking brand image is the principal obstacle for a supplier of coffee products to get access to their shelves.[312] In addition, none of the competitors in France or of the French retailers was able to identify any potential entrant into the R&G market in France. The […][×] of those barriers to entry and expansion confirmed by the results of the Commission's market investigation implies that the Parties' strong market position after the Transaction would not be countervailed by potential entry or expansion of rivals.

9.5.1.6. Conclusion on R&G in France

(377) The Commission concludes that the proposed Transaction would lead to a significant impediment to effective competition, in particular through the creation of a dominant position, in the French R&G market.

9.5.2. Denmark

(378) The sales of R&G in Denmark in 2013 amounted to approximately EUR 194 million and represented [70-80]*% of the total value of the coffee market in the country. DEMB supplies the Danish market with R&G coffee products mainly under the Merrild and Café Noir brands, while Mondelēz is present with its Gevalia, Karat and Ali Kaffe brands.

Parties' arguments

(379) The Parties maintain that the Danish R&G market is highly competitive and dynamic and therefore any attempt to raise prices after the Transaction would lead to substantial volume losses making the price increase unprofitable. The Parties view retailers' brands as their strongest competitors in Denmark, followed by the largest Danish coffee manufacturer – BKI and the Swedish supplier Peter Larsen.

(380) The Parties claim that private label products are particularly successful in Denmark. They also note that retailers in Denmark use the same raw materials as DEMB or Mondelēz to produce their coffee products. The Parties further claim that private

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308 For instance DEMB internal document, dated 19 May 2014, "*Tariff increase DEMB France*"; pp. 11, 21.

309 Responses to question 234 of Questionnaire Q2 – Retailers and to question 144 of Questionnaire Q1 – Competitors.

310 Response to question 146 of Questionnaire Q1- Competitors.

311 Responses to question 235 of Questionnaire Q2 – Retailers.

312 Responses to question 236 of Questionnaire Q2 – Retailers.

× Should read: existence.

label products are given a better position on the shelves by retailers and use packaging which closely resembles packages of branded coffee products. As a result, private label products exercise a strong constraint on Parties' products.

(381) The Parties further argue that Danish consumers are highly price sensitive and have low brand loyalty.

(382) Another argument raised by the Parties with respect to the Danish R&G market is that there are low barriers to entry, because access to raw materials is easy and the presence of spare capacity for roasting coffee in Denmark could give the opportunity to outsource roasting activities at competitive prices to any new entrant. The Parties cite Starbucks and another coffee shop chain, Baresso, as having recently started partnership and cooperation agreements with Danish retailers and claim that both companies could be potential entrants into the Danish R&G market.

(383) Lastly the Parties state that retailers' buyer power imposes a substantial constraint on them and will continue to do so after the Transaction.

Commission's investigation and assessment

(384) Table 4 and the analysis below are based on the premise that in Denmark private label brands compete with branded R&G coffee products.

Table 4 R&G market in Denmark[313]

Manufacturer	Brand	2013		2014	
		Value ('000 €)	Share	Value ('000 €)	Share
DEMB	MERRILD	[…]*	[20-30]*%	[…]*	[20-30]*%
	CAFE NOIR	[…]*	[5-10]*%	[…]*	[5-10]*%
	OTHER			[…]*	[0-5]*%
DEMB TOTAL	-	**[…]***	**[30-40]*%**	**[…]***	**[30-40]*%**
MONDELĒZ	KARAT	[…]*	[5-10]*%	[…]*	[5-10]*%
	GEVALIA	[…]*	[5-10]*%	[…]*	[10-20]*%
	ALI	[…]*	[0-5]*%	[…]*	[0-5]*%
MONDELĒZ TOTAL	-	**[…]***	**[10-20]*%**	**[…]***	**[20-30]*%**
COMBINED	-	**[…]***	**[50-60]*%**	**[…]***	**[50-60]*%**
RETAILERS	PRIVATE LABEL	[…]*	[20-30]*%	[…]*	[10-20]*%
BKI TOTAL	VARIOUS BRANDS	[…]*	[10-20]*%	[…]*	[10-20]*%

313 If coffee beans are included the combined market share of the Parties drops to [40-50]*% in 2014.

Manufacturer	Brand	2013		2014	
		Value ('000 €)	Share	Value ('000 €)	Share
PETER LARSEN TOTAL	VARIOUS BRANDS	[…]*	[5-10]*%	[…]*	[5-10]*%
EMDRUPLUND	EMDRUPLUND	[…]*	[0-5]*%	[…]*	[0-5]*%
OTHER	OTHER	[…]*	[0-5]*%	[…]*	[0-5]*%
TOTAL	-	**[…]***	**100%**	**[…]***	**100%**

Source: the Parties

9.5.2.1. Parties have high market shares and the constraint exercised by other players and operators of private label brands is limited

(385) The Parties maintain that the Danish R&G market is highly competitive and dynamic and therefore any attempt to raise prices after the Transaction would lead to substantial volume losses making the price increase unprofitable. The Parties view retailers' brands as their strongest competitors in Denmark, followed by the largest Danish coffee manufacturer – BKI and the Swedish supplier Peter Larsen.

(386) The R&G market in Denmark has been declining in its value constantly since 2011. The shares of the Parties have increased between 2013 and 2014, while the share of private label brands has declined sharply in the same period. While the positions of BKI and Peter Larsen have strengthened slightly, both of those players are still much smaller than any of the Parties individually and significantly smaller than the JV.

(387) Therefore it is apparent that the Parties are the main two market players in R&G in Denmark and have increased their market shares in the last years. Other competitors are the regional players, with the main contender being operators of private label products, which, on top of having declined sharply in the last year, as discussed previously, are fragmented in nature and pose a lower competitive constraint as compared to branded coffee products.

(388) Moreover, as regards private label brands, the retailers clearly indicated that they expect an increase in the market share of such brands in the coming years while competitors were a bit more cautious on the future growth of private label brands.[314] Furthermore hard discounters are not considered to pose any competitive constraint on branded coffee products sold via traditional retail channels.[315] Therefore the constraint posed by private label branding does not seem to be as strong as the Parties submit.

9.5.2.2. Parties are close competitors

(389) When looking at closeness of competition between the Parties, DEMB's internal document states that […]*[316] .[317]

[314] Responses to questions 115 et seq. Of Questionnaire Q1-Competitors and responses to questions 141 et seq of Questionnaire Q2-Retailers.

[315] Responses to questions 163 et seq of Questionnaire Q2-Retailers.

[316] […]*.

(390) When looking at average prices per kilo[318] the competitive landscape is the following:

(1) Peter Larsen has a value brand sold at an average price of 7.37 EUR/kg;

(2) Merrild Special Regular has a weighted average price of [below 10]* EUR/kg, while Mondelēz's Karat has a weighted average price of [below 10]* EUR/kg; BKI main brand is sold at an average of [below 10]* EUR/kg;

(3) Merrild Roed Regular has a weighted average price of 9.49 EUR/kg, and Gevalia Roed Regular has a weighted average price of 9.95 EUR/kg;

(4) The main Peter Larsen brands are sold at an average of 10.48 EUR/kg;

(5) At the high end of the market BKI premium brand is sold at an average of 13.14 EUR/kg and DEMB's Café Noir brand has a weighted average price of 12.48 EUR/kg

(391) In view of the price positioning and some indication from the market investigation, the Commission considers that DEMB and Mondelēz are close competitors for the bulk for their R&G activities in Denmark.

9.5.2.3. Barriers to entry

(392) Another argument put forward by the Parties with respect to the Danish R&G market is that there are low barriers to entry, because access to raw materials is easy and the presence of spare capacity for roasting coffee in Denmark could give the opportunity to outsource roasting activities at competitive prices to any new entrant. The Parties cite Starbucks and another coffee shop chain, Baresso, as having recently started partnership and cooperation agreements with Danish retailers and claim that both companies could be potential entrants into the Danish R&G market.

(393) With regards to the argument of potential entry in the Danish market, the respondent to the market investigation did not mention any company that could be considered – in their view – as a potential entrant.[319]

(394) Elaborating further on the possible entry, the respondent to the market investigation highlighted the importance of having a well-known brand and sufficient financial resources as a key success factor and the minimum sales volume to be attained by the new entrant as a main barrier to entry.[320]

(395) Given the relative size of the Danish market and the declining trend of the R&G market highlighted by the Parties' data and the respondent to the market investigation[321], even if an entry were to happen in the near future, it seems unlikely that such new entrant would reach a market penetration sufficient to be a competitive constraint on the Parties.

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317 Responses to questions 113 and 114 of Questionnaire Q1-Competitors and responses to questions 138 and 139 of Questionnaire Q2-Retailers.

318 These prices were provided by the Parties in the Form CO paragraphs 760 to 766.

319 Responses to question 119 of Questionnaire Q1-Competitors and responses to question 164 of Questionnaire Q2-Retailers.

320 Responses to questions 120 and 121 of Questionnaire Q1-Competitors and responses to questions 165 and 166 of Questionnaire Q2-Retailers.

321 Annex 7-4aa of Form CO, submission of 10 March 2015 and Responses to question 122 of Questionnaire Q1-Competitors and responses to question 167 of Questionnaire Q2-Retailers.

9.5.2.4. Lack of countervailing buyer power

(396) The Parties state that retailers' buyer power imposes a substantial constraint on them and will continue to do so after the Transaction, in particular since [70-80]*% of downstream coffee sales is controlled by two retail groups – Dansk Supermarked and Fællesforeningen for Danmarks group. Furthermore the Danish R&G market is highly promotion driven and therefore obtaining access to promotion slots[322] is of crucial importance for coffee suppliers. The Parties argue that any attempt to increase prices or reduce promotional support after the Transaction would be met with retailers' reactioning and cancelling of JV promotion slots. Finally the Parties claim that retailers would also be ready to support growth of a competitor to the disadvantage of the JV as they had already done so in other categories.

(397) With regards to the Parties' argument on the retailers' buyer power, the Commission notes that the JV will have more than half of the market and the respondents to the market investigation indicated that both Parties have 'must-have' brands[323]. Therefore the Commission considers that both the size of the JV and the 'must-have' brands it possesses, constitutes a counter-weight to the bargaining power of the retailers *vis-à-vis* the JV.

(398) With regards to the importance of promotions, the respondents to the market investigation confirmed the importance of promotions for coffee sales in Denmark, especially for R&G, for which approximately 85% of the volumes are sold on promotion.[324] Those results confirm the importance of promotions in order to be a successful player in Denmark in the coffee market in general and especially in the R&G market. Furthermore, in case of overall price increases, promotion prices could also go up. Moreover, any price increase is likely to be passed on to consumers.[325]

9.5.2.5. Conclusion

(399) The Commission therefore concludes that the proposed Transaction would lead to a significant impediment to effective competition, in particular through the creation of a dominant position, in the Danish R&G market.

9.5.3. Latvia

(400) The sale of R&G in Latvia in 2014 reached an amount of approximately EUR 31 million and represented [50-60]*% of the total value of the coffee market in the country.[326] DEMB supplies the Latvian market with R&G coffee products exclusively under the Merrild brand[327], while Mondelēz is present almost exclusively with its Jacobs brand.

Parties' arguments

(401) The Parties maintain that the Latvian R&G market is highly competitive and dynamic and therefore any attempt to raise prices after the Transaction would lead to

322 Promotion slots are the dedicated areas in retail outlets where consumer goods on promotion are displayed, advertised etc.

323 Responses to question 140 of Questionnaire Q2-Retailers.

324 Responses to questions 147 and 148 of Questionnaire Q2-Retailers.

325 Responses to question 12 of Questionnaire Q2 – Retailers.

326 Calculation made on the base of the Parties submission of 10 March 2015 and following the Parties' assumption in the Form CO (i.e. paragraph 567 et seq and 603) that the only coffee products sold in Latvia are R&G including whole beans and instant coffee.

327 With the exception of a very limited amount of whole beans sold under other brands, i.e. Douwe Egberts.

substantial volume losses making the price increase unprofitable. As evidence of the dynamic nature of the market, the Parties point to the volatility of market shares in the past years and also during the same calendar year.

(402) According to the Parties, their R&G products are also not each other's closest competitors because Mondelēz benchmarks its prices against […]*, while DEMB benchmarks against […]*.

(403) Furthermore, the Parties submit that competition in the wholesale supply of coffee takes place across all three Baltic States given that the same large retailers are present in all these countries and the same competitors are also active across all the Baltics.

(404) The Parties argue that Rimi and Maxima, the main Baltic retailers, have significant buyer power.

(405) Finally the Parties claim that there are no significant barriers to entry or expansion in R&G in the Baltics in general; furthermore the Parties claim that manufacturers already present in the Baltics could expand in response to any attempt to increase prices by the Parties, facilitated by the price sensitive nature of consumers.

Commission's investigation and assessment

(406) The table and the analysis below are based on the premise that in Latvia private label brands compete with branded R&G coffee products.

Table 5 R&G market in Latvia[328]

Manufacturer	Brand	2013		2014	
		Value ('000 €)	Share	Value ('000 €)	Share
DEMB TOTAL	MERRILD	**[…]***	**[20-30]*%**	**[…]***	**[20-30]*%**
MONDELĒZ	JACOBS	[…]*	[20-30]*%	[…]*	[…]*%
	OTHER	[…]*	[0-5]*%	[0-5]*	[0-5]*%
MONDELĒZ TOTAL	-	**[…]***	**[20-30]*%**	**[…]***	**[20-30]*%**
COMBINED	-	**[…]***	**[40-50]*%**	**[…]***	**[40-50]*%**
PAULIG TOTAL	**VARIOUS BRANDS**	**[…]***	**[10-20]*%**	**[…]***	**[10-20]*%**
TCHIBO TOTAL	**VARIOUS BRANDS**	**[…]***	**[10-20]*%**	**[…]***	**[10-20]*%**
DALLMAYR	DALLMAYR	[…]*	[5-10]*%	[…]*	[5-10]*%
LOFBERGS LILA TOTAL	**VARIOUS BRANDS**	**[…]***	**[5-10]*%**	**[…]***	**[5-10]*%**
LAVAZZA	LAVAZZA	[…]*	[5-10]*%	[…]*	[5-10]*%

328 There would be no material change in the market shares, if coffee beans were included.

Manufacturer	Brand	2013		2014	
		Value ('000 €)	Share	Value ('000 €)	Share
DAISENA TOTAL	**VARIOUS BRANDS**	**[…]***	**[0-5]*%**	**[...]***	**[0-5]*%**
RETAILERS	RETAILER BRANDS	[…]*	[0-5]*%	Incl. In "OTHER"	Incl. In "OTHER"
JULIUS MEINL	JULIUS MEINL	[…]*	[0-5]*%	Incl. In "OTHER"	Incl. In "OTHER"
EESTI PAKEND IP TOTAL	**VARIOUS BRANDS**	**[…]***	**[0-5]*%**	Incl. In "OTHER"	Incl. In "OTHER"
ALVORADA	ALVORADA	[…]*	[…]*%	Incl. In "OTHER"	Incl. In "OTHER"
OTHER	OTHER	[…]*	[0-5]*%	[…]*	[5-10]*%
TOTAL	-	**[…]***	**100%**	**[…]***	**100%**

Source: the Parties

9.5.3.1. Parties have high market shares

(407) The R&G market in Latvia has been declining in its value constantly since 2011. Despite the decline in its market share, DEMB is still the main market participant by value, closely followed by Mondelēz. The main competitor is Paulig with a market share similar to that of Mondelēz.

(408) The sharp decline in Tchibo's share and the relatively small and fragmented market share of the other competitors present in the Latvian R&G market indicate that the JV will be the main player in the Latvian market with very limited competitive constraints posed by the other incumbents.

(409) The overall value of the Latvian R&G market decreased between 2013 and 2014 and in particular Mondelēz's share dropped by [0-5]*. However the positions of the remaining players remained rather stable and both Parties remain the two main suppliers of R&G products in Latvia.

9.5.3.2. Parties are close competitors

(410) According to the Parties, their R&G products are also not each other's closest competitors. They observe that Mondelēz benchmarks its prices against […]*, while DEMB benchmarks against […]*.

(411) As regards the closeness of competition, the respondents to the market investigation gave indications that Jacobs and Merrild are close competitors.[329] Further interviews with market participants did not give clearer indications with one competitor highlighting how Jacobs is positioned as a premium brand and at a higher price point

[329] Responses to questions 199 and 200 of Questionnaire Q1-Competitors and responses to questions 351 and 352 of Questionnaire Q2-Retailers.

than Merrild[330] and another competitor stating that both Merrild and Jacobs are mainstream brands.[331]

(412) Given the high market share obtained by Jacobs, the Commission considers that it cannot be positioned as a premium brand, which, by definition, would appeal to a minority of the market. Therefore, it can be inferred that at least the bulk of both Merrild's and Jacobs' target customers are the mainstream consumers and hence the Parties are close competitors.

(413) The majority of respondents to the market investigation indicated that private label brands are not close competitors of branded coffee products in Latvia.[332] The Commission therefore considers that private label brands are not exercising a competitive constraint on branded R&G in Latvia.

9.5.3.3. Insufficient constraint exercised by players from other Baltic states

(414) Furthermore, the Parties submit that competition in the wholesale supply of coffee takes place across all three Baltic States given that the same large retailers are present in all of the three countries and the same coffee suppliers are also active across all the Baltics. Furthermore the Parties claim that they supply the same coffee products in the same packaging in all three countries and therefore there is scope for transhipment of coffee products between Estonia, Latvia and Lithuania.

(415) As regards the arguments of "pan-Baltics" competition, one retailer stated that there are separate contracts for Latvia for the supply of coffee products.[333] Furthermore follow-up interviews with market participants gave a clear indication that Estonia, Latvia and Lithuania are considered by coffee companies as separate markets, having each a different leading incumbent, different coffee cultures and different consumer preferences.[334]

9.5.3.4. Lack of countervailing buyer power

(416) The Parties argue that Rimi and Maxima, the main retailers in Latvia have significant buyer power, since they account for [60-70]*% of retail coffee sales in Latvia. They further state that coffee is a key traffic driver for retailers which take a proactive role in seeking to offer the lowest prices and use strong negotiations levers (such as delisting, freezing or reducing promotions, unilaterally imposing promotions) towards that end.

(417) With regards to the buyer power exercised by retailers, the Commission's investigations confirmed the presence of a strong buyer power concentrated in the hands of the main retailers.[335] The Commission considers nonetheless that the JV will be having important brands accountable for considerable volumes which will serve as a counter-weight to the buying power of the retailers.[336]

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330 Non-confidential minutes of a conference call with a competitor of 18 November 2014 at 10.45 CET.

331 Non-confidential minutes of a conference call with a competitor of 18 November 2014 at 17.00 CET.

332 Responses to question 201 of Questionnaire Q1-Competitors and responses to question 335 of Questionnaire Q2-Retailers.

333 Responses to question 376 of Questionnaire Q2-Retailers.

334 Non-confidential minutes of a conference call with a competitor of 18 November 2014 at 10.45 CET and at 17.00 CET.

335 Non-confidential minutes of a conference call with a competitor of 18 November 2014 at 10.45 CET and at 17.00 CET.

336 For instance the Merrild brand has a very strong historic heritage in Latvia, where it was the first foreign coffee brand and still in 2014 accounts for one quarter of all the R&G sales in the country.

9.5.3.5. Barriers to entry

(418) Finally the Parties claim that there are no significant barriers to entry or expansion in R&G in the Baltics in general. Furthermore, the Parties claim that manufacturers already present in the Baltics could expand in response to any attempt to increase prices by the Parties, facilitated by the price sensitive nature of consumers.

(419) When looking for trends in the Latvian R&G market, the Parties' data show a decline in the years 2011 to 2014 but the responses to the market investigation are mixed indicating, according to the respondents, a stabilisation, an increase and a decline of the R&G sales.[337]

(420) With regards to potential new entrants in the Latvian R&G market, the respondents to the market investigation did not mention any company that could be considered, in their view, as a potential entrant.[338]

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[337] Responses to question 208 of Questionnaire Q1-Competitors and responses to question 380 of Questionnaire Q2-Retailers.

[338] Responses to question 205 of Questionnaire Q1-Competitors and responses to question 377 of Questionnaire Q2-Retailers.

(421) Further interviews with market participants highlighted that a regional coffee company active in instant coffee in Latvia was planning to enter the R&G Latvian market from January 2015.[339] The Commission considers that such entry, even if successful, is unlikely to reach a scale which could pose a competitive constraint to the JV.

(422) Elaborating further on the possible entry, the respondent to the market investigation highlighted the importance of having a well-known brand and sufficient financial resources to support the promotional activities as a key success factor and the minimum sales volume to be attained by the new entrant as an additional barrier to entry.[340]

9.5.3.6. Conclusion

(423) The Commission concludes that the proposed Transaction would lead to a significant impediment of effective competition, in particular through the creation of a dominant position, in the Latvian R&G market.

9.5.4. The Czech Republic

Parties' arguments

(424) The Parties argue that the Transaction would not lead to anti-competitive effects due to their low combined market share in the R&G market in the Czech Republic. They also state their activities will be constrained by other players in particular Tchibo. Furthermore the Parties claim that their pricing strategies do not indicate any closeness of competition between their brands in the Czech Republic and present extracts from internal documents which show that […]*.

Commission's investigation and assessment

(425) Table 6 shows the Parties’ and their competitors’ market shares by value in 2014 within the R&G segment in the Czech Republic including private label brands.[341]

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339 Non-confidential minutes of a conference call with a competitor of 18 November 2014 at 10.45 CET.

340 Responses to questions 206 and 207 of Questionnaire Q1-Competitors and responses to questions 378 and 379 of Questionnaire Q2-Retailers.

341 The Parties' combined market share excluding PL would be slightly higher, namely [30-40]*%.

Table 6 R&G market in the Czech Republic[342]

Manufacturer	Brand	2014	
		Value ('000 €)	Share
DEMB	DOUWE EGBERTS	[…]*	[10-20]*%
	OTHERS	[…]*	[0-5]*%
DEMB TOTAL		**[…]***	**[10-20]*%**
MONDELĒZ	JACOBS	[…]*	[10-20]*%
	DADAK	[…]*	[5-10]*%
	OTHERS	[…]*	[0-5]*%
MONDELĒZ TOTAL		**[…]***	**[20-30]*%**
COMBINED		**[…]***	**[30-40]*%**
TCHIBO	JIHLAVANKA	[…]*	[30-40]*%
	TCHIBO	[…]*	[10-20]*%
	OTHERS	[…]*	[0-5]*%
TCHIBO TOTAL		**[…]***	**[40-50]*%**
RETAILERS	PRIVATE LABEL	[…]*	[5-10]*%
MOKATE	MARILA	[…]*	[5-10]*%
	OTHERS	[…]*	[0-5]*%
MOKATE TOTAL		**[…]***	**[5-10]*%**
LAVAZZA	LAVAZZA	[…]*	[0-5]*%
SEGAFREDO ZANETTI	SEGAFREDO ZANETTI	[…]*	[0-5]*%
OTHERS	OTHERS	[…]*	[0-5]*%
TOTAL		**[…]***	**100%**

Source: Parties

342 There would be no material change in the market shares, if coffee beans were included.

(426) The joint venture would be second on the market with a combined market share of [30-40]*% in 2014. Tchibo would remain the market leader post-Transaction with a market share of approximately [40-50]*%. In addition, a number of other competitors are present in the Czech Republic with smaller market shares, including Mokate ([5-10]*%), Lavazza ([0-5]*%) and Segafredo ([0-5]*%).

(427) The market investigation confirmed that the rivals' products are close substitutes to the products of the merging parties. Tchibo, the market leader, is closer to Mondelēz than DEMB is.[343] Respondents to the market investigation also did not raise any concerns related to the R&G segment in the Czech Republic.

(428) DEMB has an arrangement with […]* for the manufacture of instant coffee to sell under […]* own brand. Mondelēz does not supply any retailer with coffee for resale under retailer brands in the Czech Republic. There is therefore no overlap between the Parties 'activities in supply of coffee to retailers to re-sell under their own brands. However, due to DEMB' supply arrangement with […]*, the market for the upstream coffee supply to retailers and the downstream market for the retail supply of branded coffee products are a vertically affected market.

(429) The combined entity would not have the ability to foreclose Coop from supplies of coffee since it would lack any significant market power in the upstream supply of retail branded coffee. DEMB estimates that its share of retailer coffee supplies in the Czech Republic are approximately [10-20]*% by volume. There are many manufacturers in the upstream segment likely to supply in the Czech Republic who would be able to supply instant coffee under the same terms. Moreover, the combined entity would have no incentive to foreclose Coop, since it would be sacrificing revenues in the upstream supply without any reasonable prospect of increasing margins on its own branded products or to increase consumer prices of coffee on the retail market for the sale of coffee to final customers.

Conclusion

(430) The Commission concludes that the proposed Transaction does not give rise to a significant impediment to effective competition in the R&G market in the Czech Republic.

9.5.5. Greece

Parties' arguments

(431) The Parties submit that the Transaction does not give rise to any competition concerns in Greece. The Parties further submit that "Greek" coffee imposes a constraint on normal R&G and that the Parties are not each other's closest competitors.

(432) With respect to normal R&G, the Parties argue that DEMB positions its main brand Douwe Egberts as a premium coffee while Mondelēz' main brand Jacobs is a value-for-money product. The difference between those brands would also be seen in the fact that Douwe Egberts is seldom sold at a discount while Jacobs often is, and that the average unit price (taking into account promotions) of Douwe Egberts is significantly higher than that for Jacobs. The Parties provided data according to which between September 2011 and September 2013, Douwe Egbert's unit price remained above [10-20]* EUR/kg with the sole exception of November 2012 when the average price was [10-20]* EUR/kg. During the same period, Jacobs' prices

[343] Responses to questions 100 and 101 of the questionnaire Q1 – Competitors.

remained below [10-20]* EUR/kg, with the sole exception of March 2012 when the price was [10-20]* EUR/kg.

(433) In the potential sub-segment of "Greek" coffee, there would not be any overlap as Mondelēz is not present in the market. DEMB achieved a market share of [5-10]*% in 2014 in value while the clear market leader was Nestlé with a market share of [70-80]*%.

Commission's investigation and assessment

(434) The Commission assessed the R&G market in Greece as a whole as well as the potential sub-segment of "normal" R&G. There is no overlap in the potential sub-segment of "Greek" coffee as Mondelēz is not active.

Table 7 R&G – without coffee beans in Greece, including private label and Greek coffee[344]

Manufacturer	Brand	2014	
		Value ('000 €)	Share
DEMB	Bravo	[…]*	[5-10]*%
	Douwe Egberts	[…]*	[0-5]*%
	La Meloise	[…]*	[0-5]*%
DEMB total		**[…]***	**[5-10]*%**
Mondelēz	Jacobs	[…]*	[10-20]*%
	Others	[…]*	[0-5]*%
Mondelēz total		**[…]***	**[10-20]*%**
COMBINED		**[…]***	**[20-30]*%**
Nestlé	Loumidis Papagalos	[…]*	[40-50]*%
	Others	[…]*	[0-5]*%
Nestlé total		**[…]***	**[40-50]*%**
Retailers	Private Label	**[…]***	**[10-20]*%**
AO	**AO**	**[…]***	**[5-10]*%**
Lavazza	Qualita Rossa	[…]*	[0-5]%
	Others	[…]*	[0-5]*%
Lavazza total		[…]*	[0-5]%
Illy	**Illy**	**[…]***	**[0-5]*%**
Melitta	MelitaSL	[…]*	[0-5]*%
	Others	[…]*	[0-5]*%
Melitta total		**[…]***	**[0-5]*%**
Others	**Others**	**[…]***	**[0-5]*%**
TOTAL		**[…]***	**100%**

Source: Parties

344 There would not be a material change if whole coffee beans were to be included; the Parties' combined market share in 2014 would have been [20-30]*% if beans were included.

Table 8 R&G – without coffee beans in Greece including private label products, excluding Greek coffee

Manufacturer	Brand	2014	
		Value ('000 €)	Share
DEMB	Douwe Egberts	[…]*	[0-5]*%
	La Meloise	[…]*	[0-5]*%
	Other	[…]*	[0-5]*%
DEMB total		**[…]***	**[5-10]*%**
Mondelēz	Jacobs	[…]*	[50-60]*%
	Carte Noire	[…]*	[0-5]*%
	Maxwell House	[…]*	[0-5]*%
Mondelēz total		**[…]***	**[50-60]*%**
COMBINED		**[…]***	**[60-70]*%**
Retailers	Retailer brands	[…]*	[10-20]*%
Lavazza	Qualita Rossa	[…]*	[0-5]*%
	Lavzqlor	[…]*	[0-5]*%
	Others	[…]*	[0-5]*%
Lavazza total		**[…]***	**[10-20]*%**
Illy	Illy	[…]*	[5-10]*%
Melitta	MelitaSL	[…]*	[0-5]*%
	Others	[…]*	[0-5]*%
Melitta total		**[…]***	**[0-5]*%**
Dallmayr	Prodomo	[…]*	[0-5]*%
	Others	[…]*	[0-5]*%
Dallmayr total		**[…]***	**[0-5]*%**
Others	Others	[…]*	**[0-5]*%**
TOTAL		**[…]***	**100%**

Source: Parties

(435) In all R&G market consisting of both “normal” and “Greek” R&G coffee, the joint venture would become the second largest player, after the market leader Nestlé. Nestlé’s market share of [40-50]*% is significantly higher than the Parties’ combined market share of [20-30]*%. A number of other competitors will remain on the market, including various retailer brands ([10-20]*%) and AO ([5-10]*%). Greek coffee represents around […]* of the overall R&G market in Greece (approximately EUR […]* and […]* tonnes out of a total R&G market of EUR […]* and […]* tonnes in 2014)[345], and it is therefore far more important in terms of volume and value to both coffee manufacturers and retailers.

(436) In the potential sub-segment of “normal” R&G coffee (excluding “Greek” coffee), the Parties would achieve a high combined market share of [60-70]*% in value in 2014. The remaining main competitors would include the various retailer brands ([10-20]*%), Lavazza ([10-20]*%) and Illy ([5-10]*%).

(437) A high market share in the potential sub-segment of “normal” R&G coffee is, however, unlikely to be indicative of the Parties’ actual market power in the market. Even if “Greek” coffee and “normal” R&G were considered to be in separate markets, due to the low demand-side substitutability, “Greek” coffee places an out of market competitive constraint on “normal” R&G in Greece. That conclusion is supported by the finding that there is significant supply-side substitutability between “Greek” and “normal” R&G coffee.[346]

(438) The results of the market investigation appear to support the view that rivals products are close to the Parties' products and even closer than the parties' products are to each other. Multiple customers mention Nestlé and private label brands for being closer to each of the Parties than the Parties are to each other.[347]

(439) A significant share of customers that responded also appears to consider that private label products are close competitors to branded R&G coffee in Greece.[348] The majority of customers further considered that the share of private label products has been increasing in Greece, and that it would continue to increase.[349] This is in line with the market share estimates provided by the Notifying Parties that show an increase in the market share of private label products from [5-10]*% in 2011 to [10-20]*% in 2014 for all R&G and from [5-10]*% in 2011 to [10-20]*% for the potential sub-segment of “normal” R&G in Greece. At the same time, the Parties’ combined market share in “normal” R&G dropped from [70-80]*% to the 2014 figure of [60-70]*%.

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345 See the Parties reply to the Commission’s request for information of 13 March 2015.

346 See, e.g. responses to question 168 of Questionnaire Q1 – Competitors.

347 Responses to questions 283 and 284 of Questionnaire Q2 – Customers.

348 Responses to questions 287 and 288 of Questionnaire Q2 – Customers.

349 Responses to questions 289 and 290 of Questionnaire Q2 – Customers.

(440) Customers replying to the market investigation did not consider that the proposed Transaction would give rise to increased prices or any other competition concerns with respect to any of the potential sub-segments of R&G coffee in Greece.[350] To the contrary, some customers considered the Transaction to be generally positive, commenting for instance that the proposed Transaction *"is estimated to have a positive effect on competition and may balance to a certain degree Nestle's leading position on the coffee market in Greece"*[351].

Conclusion

(441) The Commission therefore concludes that the proposed Transaction does not give rise to a significant impediment to effective competition in the R&G market, or in any of its potential sub-segments, in Greece.

9.5.6. Poland

Parties' arguments

(442) The Parties submit that the Transaction does not give rise to competition concerns with respect to the market for R&G coffee in Poland, which is highly competitive and dynamic. First of all the Parties maintain that they are not each other's closest competitor, with their two main brands Jacobs Kroenung and Prima positioned differently. Furthermore the Parties meet strong competition from suppliers of branded products, such as Tchibo, Polish coffee supplier– - Elite/MK Café and Mokate – as well as from private label brands. Finally […][×] Parties submit that their combined market shares have been decreasing from [30-40]*% in 2011 to [30-40]*% in 2014.

Commission's investigation and assessment

(443) Polish R&G market has remained relatively stable over the past years. The positions of the Parties and their rivals are set out in Table 9.

[350] See, e.g. responses to questions 312–314 of Questionnaire Q2 – Customers.

[351] Response to question 312 of Questionnaire Q2 – Customers.

[×] Should read: the.

Table 9 R&G market in Poland[352]

		2013		2014	
Manufacturer	**Brand**	**Value('000 €)**	**Share**	**Value ('000 €)**	**Share**
DEMB	PRIMA	[…]*	[10-20]*%	[…]*	[10-20]*%
	DOUWE EGBERTS	[…]*	[0-5]*%	[…]*	[0-5]*%
DEMB TOTAL	**-**	[…]*	[10-20]*%	**[…]***	**[10-20]*%**
MONDELĒZ	JACOBS	[…]*	[10-20]*%	[…]*	[10-20]*%
	MAXWELL HOUSE	[…]*	[0-5]*%	[…]*	[0-5]*%
	CARTE NOIRE	[…]*	[0-5]*%	[…]*	[0-5]*%
MONDELĒZ TOTAL	**-**	[…]*	[20-30]*%	**[…]***	**[20-30]*%**
COMBINED	**-**	**[…]***	**[30-40]*%**	**[…]***	**[30-40]*%**
TCHIBO	TCHIBO	[…]*	[20-30]*%	[…]*	[20-30]*%
	GALA	[…]*	[0-5]*%	[…]*	[0-5]*%
	OTHER	[…]*	[0-5]*%	[...]*	[0-5]*%
TCHIBO TOTAL	**-**	[…]*	[20-30]*%	**[…]***	**[20-30]*%**
ELITE/MK CAFE	MK CAFE	[…]*	[10-20]*%	[…]*	[10-20]*%
	ELITE			[…]*	[5-10]*%
	FORT	[…]*	[0-5]*%	-	-
	PEDROS	[…]*	[0-5]*%		
	SAHARA	[…]*	[0-5]*%		
	OTHER	[…]*	[0-5]*%		
ELITE/MK CAFÉ TOTAL	**-**	**[…]***	**[10-20]*%**	**[…]***	**[10-20]*%**
WOSEBA ODOLANOW	WOSEBA	[…]*	[5-10]*%	[…]*	[5-10]*%
RETAILERS	PRIVATE LABEL	[…]*	[5-10]*%	[…]*	[5-10]*%
MOKATE	LAVAZZA	[…]*	[0-5]*%	[…]*	[0-5]*%
	OTHER	[…]*	[0-5]*%	[…]*	[0-5]*%
MOKATE TOTAL		**[…]***	**[0-5]*%**	**[…]***	**[0-5]*%**
DALLMAYR	DALLMAYR	[…]*	[0-5]*%		
ASTRA	ASTRA	[…]*	[0-5]*%	[…]*	[0-5]*%
SIDO & PARTNER	SIDO	[…]*	[0-5]*%		
OTHER	OTHER	[…]*	[0-5]*%	[…]*	[5-10]*%
TOTAL	**-**	**[…]***	**100%**	**[…]***	**100%**

Source: Parties

(444) As is apparent from Table 9, the JV would become the market leader in the Polish R&G market with an estimated market share of [30-40]*%. However, two significant competitors, Tchibo ([20-30]*%) and Elite / MK Café ([10-20]*%) would remain on the market after the Transaction, together with private label products and a number of other branded products suppliers such as Woseba with [5-10]*% share or Mokate with more than [0-5]*%. A Polish retailer confirmed that the Polish R&G market is a difficult and competitive one.[353]

(445) Polish retailers do not view the Parties as close competitors in R&G coffee. With respect to DEMB, Tchibo, Woseba and MK Café are indicated as close competitors, whereas for Mondelēz, Tchibo was also the primary competitor identified.[354] One

352 There would be no material change in the market shares, if coffee beans were included.
353 Non-confidential minutes of a conference call with a retailer dated 18 November 2014 at 16.00 CET.
354 Responses to questions 455, 456 of Questionnaire Q2- Retailers.

Polish retailer stated that the main brand of Mondeléz in Poland – Jacobs Kroenung is an A brand, while that of DEMB- Prima is a B brand.[355]

(446) Internal documents of the Parties confirm that *[quotes from internal documents on brand positioning*]* are positioned differently. The former is a […]*.[356] On the other hand […]*.[357]

Conclusion

(447) The Commission therefore concludes that the proposed Transaction does not give rise to a significant impediment to effective competition in the R&G market in Poland.

9.5.7. Other Member States with affected markets in R&G coffee

(448) The Parties' activities give rise to horizontally affected markets for R&G coffee in a number of other Member States, including Bulgaria, Hungary, the Netherlands and Spain.

(449) The Parties submit that the Transaction does not give rise to any competition concerns in the R&G coffee markets in any of the mentioned territories.

9.5.7.1. Market shares and market structure, R&G coffee

(450) In Bulgaria, the Parties achieved a combined market share of [60-70]*% in 2014 (DEMB [0-5]*%, Mondelēz [60-70]*%). However, the market share increment is only [0-5]* due to DEMB's limited market presence. Other competitors include, for instance Lavazza ([10-20]*%) and Tchibo ([5-10]*%).

(451) In Hungary, the Parties achieved a combined market share of [40-50]*% in 2014 (DEMB [30-40]*%, Mondelēz [0-5]*%). However, the market share increment is [0-5]* due to Mondelēz' limited market presence. Other competitors include, for instance Tchibo ([20-30]*%) and various retailer brands ([10-20]*%).

(452) In the Netherlands, the Parties achieved a combined market share of [60-70]*% in 2014 (DEMB [60-70]*%, Mondelēz [0-5]*%). However, the market share increment is only [0-5]* due to Mondelēz' limited market presence. Other competitors include, for instance various retailer brands ([30-40]*%) and Lavazza ([0-5]*%).

(453) In Spain, the Parties achieved a combined market share of [20-30]*% in 2014 (DEMB [10-20]*%, Mondelēz [5-10]*%). Other competitors include, for instance various retailer brands ([30-40]*%) and Nestlé ([10-20]*%).

Commission's investigation and assessment

(454) The Commission notes that while the Parties achieve a significant combined market share in R&G coffee in Bulgaria, Hungary and the Netherlands, the market share increment in each of the markets in question is notably small. In light of that, and taking into account the number of remaining competitors, the Commission considers that merger-specific competition concerns can be excluded.

(455) As to Spain, the Parties' combined market shares remain modest. In light of that, and taking into account the number of remaining competitors, the Commission considers that competition concerns can be excluded.

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[355] Non-confidential minutes of a conference call with a retailer dated 18 November 2014 at 10.00 CET.

[356] DEMB internal document, dated January 2013, entitled "*Prima Jan 13*", slides 6 and 10.

[357] Mondelēz internal document, undated, entitled "*Countries – PL*", slide 22.

9.5.7.2. Conclusion

(456) The Commission concludes that the proposed Transaction does not give rise to a significant impediment to effective competition in the markets for R&G coffee in Bulgaria, Hungary, the Netherlands or Spain.

9.6. Instant coffee

(457) For the reasons set out in Recitals (456) to (496), the Commission has reached the conclusion that the Transaction would not significantly impede effective competition in the markets for instant coffee in the Czech Republic, Denmark, Estonia, Greece, Hungary, Latvia, Lithuania, the Netherlands, Poland, Slovakia, Spain or the United Kingdom.

9.6.1. Latvia

(458) For the reasons set out in this Section, the Commission finds that the Transaction would not lead to a significant impediment to effective competition in the instant coffee market in Latvia.

(459) DEMB is active in the instant coffee market in Latvia with its brand Merrild, while Mondelēz serves the […]* instant coffee market with its brand Jacobs.

(460) The combined market share of the Parties in instant coffee in Latvia will amount to [20-30]*%. However the increment brought about by the Transaction is small ([0-5]*%) as DEMB's instant coffee sales in Latvia in 2014 amounted only to EUR […]*. Other players active in the Latvian market are Nestlé ([20-30]*%), Daisena ([10-20]*%) and Unilever ([5-10]*%)

(461) No specific concerns were voiced by Latvian customers as regards the impact of the Transaction on the Latvian market for instant coffee.[358]

9.6.2. Lithuania

(462) For the reasons set out in this Section, the Commission finds that the Transaction would not lead to a significant impediment to effective competition in the instant coffee market in Lithuania.

(463) DEMB is active in the instant coffee market in Lithuania with its brand Merrild, while Mondelēz serves the Lithuanian instant coffee market with its brand Jacobs.

(464) The combined market share of the Parties in instant coffee in Lithuania will amount to [30-40]*%. However the increment brought about by the Transaction is small ([0-5]*%) as DEMB's instant coffee sales in Lithuania in 2014 amounted only to […]*. Other players active in the Lithuanian market are Nestlé ([20-30]*%), Daisena ([10-20]*%) and Maspex Wadowice ([5-10]*%).

(465) No specific concerns were voiced by Lithuanian customers as regards the impact of the Transaction on the Lithuanian market for instant coffee.[359]

9.6.3. Estonia

(466) For the reasons set out in this Section, the Commission finds that the Transaction would not lead to a significant impediment to effective competition in the instant coffee market in Estonia.

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[358] Responses to questions 381, 382 and 383 of Questionnaire Q2-Retailers.

[359] Responses to questions 416,417 and 418 of Questionnaire Q2-Retailers.

(467) DEMB is active in the instant coffee market in Estonia with its brands Merrild and Douwe Egberts, while Mondelēz serves the Estonian instant coffee market with its brand Jacobs.

(468) The combined market share of the Parties in instant coffee in Estonia will amount to [30-40]*%. However the increment brought about by the Transaction is negligible ([0-5]*%) as DEMB's instant coffee sales in Estonia in 2014 amounted only to EUR […]*. Other players active in the Estonian market are Nestlé ([50-60]*%), JFK ([0-5]*%) and Unilever ([0-5]*%).

(469) No specific concerns were voiced by Estonian customers as regards the impact of the Transaction on the Estonian market for instant coffee.[360]

9.6.4. The Czech Republic

(470) For the reasons set out in this Section, the Commission finds that the Transaction would not lead to a significant impediment to effective competition in the instant coffee market in the Czech Republic.

(471) DEMB is active in the instant coffee market in the Czech Republic with its brand Douwe Egberts, while Mondelēz serves the Czech instant coffee market with its brand Jacobs.

(472) The combined market share of the Parties in instant coffee in Czech Republic will amount to [30-40]*%. However the increment brought about by the Transaction is relatively small ([0-5]*%). The new entity will continue facing competition from the market leader Nestlé ([40-50]*%), as well from private label products ([10-20]*%) and Tchibo ([5-10]*%). Rivalry between Nestlé and Mondelēz has spurred competition in the Czech market recently, according to the findings of a GfK study on consumer switching commissioned by Mondelēz.[361] That study demonstrates clearly that the most significant constraint on the Jacobs brand in instant coffee is posed by Nestlé.

(473) No specific concerns were voiced by Czech customers as regards the impact of the Transaction on the Czech market for instant coffee.[362]

9.6.5. Denmark

(474) For the reasons set out in this Section, the Commission finds that the Transaction would not lead to a significant impediment to effective competition in the instant coffee market in Denmark.

(475) DEMB is active in the instant coffee market in Denmark with its brand Café Noir, while Mondelēz serves the Danish instant coffee market with its brands Karat and Gevalia.

(476) The combined market share of the Parties in instant coffee in Denmark will amount to [20-30]*% (Douwe Egberts [10-20]*%, Mondelēz [10-20]*%). The new entity will continue facing competition from the market leader Nestlé ([50-60]*%), as well as from private label products ([5-10]*%) and Peter Larsen ([5-10]*%). Rivalry between Nestlé and Mondelēz has spurred competition in the Danish market recently, as Neslé has been the primary focus of the launch of the new Mondelēz' instant coffee product range.

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360 Responses to questions 204,205 and 206 of Questionnaire Q2-Retailers.

361 Commission's Request for Information of 18 July 2014 (QP2) - Annex Question 17 at p. 8.

362 Responses to questions 133, 134 and 135 of Questionnaire Q2-Retailers.

(477) No specific concerns were voiced by Danish customers as regards the impact of the Transaction on the Danish market for instant coffee.[363]

9.6.6. Ireland

(478) For the reasons set out in this Section, the Commission finds that the Transaction would not lead to a significant impediment to effective competition in the instant coffee market in Ireland.

(479) DEMB is active in the instant coffee market in Ireland with its brand Douwe Egberts, while Mondelēz serves the Irish instant coffee market with its brands Kenco, Maxwell House and Carte Noire.

(480) The combined market share of the Parties in instant coffee in Ireland will amount to [40-50]*%. However the increment brought about by the Transaction is negligible ([0-5]*%) as DEMB's instant coffee sales in Ireland in 2014 amounted only to EUR […]*. DEMB has significantly lost sales in Ireland between 2011 and 2014, from the amount of EUR […]* and market share of [0-5]*% in 2011 to the figures of 2014, which shows that its competitive strength is declining. Other players active in the Irish market include Nestlé ([50-60]*%) and private label products ([5-10]*%).

(481) No specific concerns were voiced by Irish customers as regards the impact of the Transaction on the Irish market for instant coffee.

9.6.7. Poland

(482) For the reasons set out in this Section, the Commission finds that the Transaction would not lead to a significant impediment to effective competition in the instant coffee market in Poland.

(483) DEMB is active in the instant coffee market in Poland with its brands Douwe Egberts and Prima, while Mondelēz serves the Polish instant coffee market with its brands Jacobs, Maxwell and Carte Noire.

(484) The combined market share of the Parties in instant coffee in Poland will amount to [30-40]*%. However the increment brought about by the Transaction is relatively modest ([0-5]*%). The new entity will continue facing competition from the market leader Nestlé ([30-40]*%), as well as from private label products ([10-20]*%), Tchibo ([5-10]*%) and Mokaté ([5-10]*%).

(485) No specific concerns were voiced by Polish customers as regards the impact of the Transaction on the Polish market for instant coffee.[364]

9.6.8. Slovakia

(486) For the reasons set out in this Section, the Commission finds that the Transaction would not lead to a significant impediment to effective competition in the instant coffee market in Slovakia.

(487) DEMB is active in the instant coffee market in Slovakia with its brands Douwe Egberts, while Mondelēz serves the Slovakian instant coffee market with its brand Jacobs.

(488) The combined market share of the Parties in instant coffee in Slovakia will amount to [20-30]*%. However the increment brought about by the Transaction is negligible ([0-5]*%) as DEMB's instant coffee sales in Slovakia in 2014 amounted only to

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[363] Responses to questions 168, 169 and 170 of Questionnaire Q2-Retailers.

[364] Responses to questions 484,485 and 486 of Questionnaire Q2-Retailers.

EUR […]*. Other players active in the Slovak market are Nestlé ([40-50]*%), private label products ([10-20]*%) and Tchibo ([0-5]*%).

(489) No specific concerns were voiced by Slovakian customers as regards the impact of the Transaction on the Slovakian market for instant coffee.[365]

9.6.9. United Kingdom

9.6.9.1. Commission's assessment: horizontal overlap

(490) For the reasons set out in this Section, the Commission finds that the Transaction would not lead to a significant impediment to effective competition in the instant coffee market in the United Kingdom.

(491) DEMB is active in the instant coffee market in the United Kingdom with its brand Douwe Egberts, while Mondelēz serves the United Kingdom instant coffee market with several brands, notably Kenco and Carte Noire, the largest brands of its portfolio and three smaller ones: Rappor, Maxwell House and Mellow Bird's.

(492) The combined market share of the Parties in instant coffee in the United Kingdom will amount to [30-40]*% (Douwe Egberts [5-10]*%, Mondelēz [20-30]*%). The new entity will continue to face competition from the market leader Nestlé with its brand Nescafé ([50-60]*%), as well as from private label products ([10-20]*%).[366]

(493) DEMB and Mondelēz do not appear to be closest competitors as they both target […]* as a specific point of reference. Douwe Egberts takes […]* Gold Blend stock keeping unit as the main benchmark when it is planning strategy and pricing for its DEMB Pure Gold, which accounts for the vast majority of DEMB's sales in instant coffee. This is due to the fact that Kenco and Carte Noire do not offer any similar products with the positioning of a medium or 'gold' roast, but it is only […]* that offers that type of product.[367]

(494) From a comparison of the two brands portfolio[368], it is evident that Mondelēz assumes that [*positioning versus Nestle*] across the product range. Internal documents on the British instant market follow that approach, focussing on the comparison between Kenco and Nestlé.[369]

(495) No specific concerns were voiced by United Kingdom customers as regards the impact of the Transaction on the United Kingdom market for instant coffee.[370]

9.6.9.2. Commission's assessment: vertical link

(496) Mondelēz has an arrangement for the manufacture of instant coffee for […]* to sell under […]* own brand. DEMB does not supply any retailer with coffee for resale under retailer brands in the United Kingdom. There is therefore no overlap between the Parties' activities in the supply of coffee to retailers to re-sell under their own brands.

(497) The combined entity would not have the ability to foreclose […]* from supplies of coffee since it would lack any significant market power in the upstream supply of retail branded coffee. Mondelēz estimate that its share of retailer coffee supplies in

365 Responses to questions 518, 519 and 520 of Questionnaire Q2-Retailers.

366 Private labels have increased their market share by [0-5]* between 2013 and 2014.

367 DEMB internal document, undated "DE Instants : Preparing for battle" annex -7 UK-2, slides 2-3.

368 Form CO, paragraph 1209.

369 Form CO, Annex-7-UK-3, slides 1–15.

370 Responses to questions 590, 591 and 592 of Questionnaire Q2-Retailers.

the United Kingdom amounts to approximately [5-10]*% by volume and approximately [10-20]*% by value. There are many manufacturers in the upstream segment in the United Kingdom who would be able to supply instant coffee under the same terms. Moreover, the combined entity would have no incentive to foreclose […]*, since it would be sacrificing revenues in the upstream supply without any reasonable prospect of increasing margins on its own branded products sold through […]* or any other retailers, or to increase consumer prices of coffee.

9.6.10. Other Member States

(498) The activities of the Parties overlap in other EEA Member States in instant coffee but none of those markets are affected. The states concerned are Greece (combined market share of [5-10]*%), Hungary ([5-10]*%), the Netherlands ([5-10]*%) and Spain ([0-5]*%).

9.7. Filter pads

(499) For the reasons set out in Recitals (498) to (584), the Commission has reached the conclusion that the Transaction would lead to a significant impediment to effective competition, in particular as a result of the creation of a dominant position, in the markets for filter pads in France and Austria. On the other hand the Commission concludes for the reasons presented in Recitals (585) to (596) that the Transaction would not significantly impede effective competition in the internal market in the filter pads markets in Germany and the Netherlands.[371]

9.7.1. France

9.7.1.1. Merging firms have high market shares

(500) According to the Nielsen data submitted by the Notifying Parties, the filter pad coffee market in France had a total value of EUR 449.1 million in 2014, 74.1% of which is covered by supplier brands and the remaining 25.9% by private label brands.

(501) DEMB is active in the filter pads coffee market in France mainly with its brand Senseo and to a very limited extent with Ma Tradition and L'Or, while Mondelēz serves the French filter pad coffee market with its brands Carte Noire, Grand-Mère and Milka.

(502) Table 10 shows the market shares of the Parties and their main competitors on the filter pads coffee market in 2014 in France.

[371] The Transaction leads also to an affected market in Spain, however the overlap in the Spanish filter pads market amounts to [0-5]*% in 2013 and there is no overlap in 2014 as Mondelēz has ceased selling filter pads in the Spanish market. Private label products account for almost 70% of the filter pads in market in 2014. No specific concerns were voiced by Spanish customers as regards the impact of the Transaction on the Spanish market for filter pads.

Table 10 Filter pads in France

Manufacturer	Brand	2014	
		Value ('000 EUR)	Share
DEMB	*SENSEO*	[…]*	[40-50]*%
	OTHERS	[…]*	[0-5]*%
DEMB TOTAL	**-**	**[…]***	**[40-50]*%**
MONDELĒZ	*CARTE NOIRE*	[…]*	[10-20]*%
	GRAND'MÈRE	[...]*	[0-5]*%
	MILKA	[…]*	[0-5]*%
MONDELĒZ TOTAL	**-**	**[…]***	**[10-20]*%**
COMBINED	**-**	**[…]***	**[60-70]*%**
RETAILERS	*PRIVATE LABEL*	[…]*	[20-30]*%
LAVAZZA	*LAVAZZA*	[…]*	[0-5]*%
OTHER	*OTHER*	[…]*	[5-10]*%
TOTAL	**-**	**[…]***	**100%**

Source: the Parties

(503) Post-Transaction, the new entity would achieve a combined market share of [60-70]*% which has increased by [0-5]* between 2011 and 2014. The overlap between the Parties' activities ([10-20]*%) is also significant. The Transaction will combine the two main suppliers of branded filter pads in the market, with private label products as a distant follower (market share of [20-30]*%). Another branded player with a very limited share of the market is Lavazza ([0-5]*%).

(504) The filter pad coffee market in France has experienced an increase in value of [10-20]*% between 2011 and 2014, and [10-20]*% in volume. The most successful supplier in that market is Mondelēz with its brand Carte Noire, whose sales increased during the same period by [30-40]*% in value and [30-40]*% in volume. The other brand of Mondelēz, Grand-Mère, has achieved lower, albeit quite positive, results (increase of [0-5]*% in value and [10-20]*% in volume).

(505) Senseo, DEMB's major brand in filter pads, has also grown between 2011 and 2014 although to a more limited extent than Carte Noire ([10-20]*% in value and [10-20]*% in volume). Finally sales of private label products have increased significantly less than the overall market in: [0-5]*% in value and [10-20]*% in volume. Their market share has consequently slightly decreased from [20-30]*% in 2011 to [20-30]*% in 2014.

9.7.1.2. Merging firms are close competitors

(506) An important aspect for assessing unilateral effects arising from the proposed merger is the degree of substitutability between the Parties' filter pad coffee products. The higher the degree of substitutability between their products, the more likely it is that

the Parties will be able to significantly raise prices to retailers for filter pad coffee products.

Commission's investigation and assessment

(507) Retailers in France who responded to the market investigation consider, in particular, the brands Senseo and Carte Noire to be competing vigorously with each other in the filter pad coffee market.[372] They also consider Mondelēz as the closest competitor to DEMB and *vice versa* in France in coffee products in general and with respect to filter pads in particular.[373] Also the majority of competitors having responded to the market investigation perceive Carte Noire as closest competitor to Senseo as regards filter pads and *vice versa*.[374] The Parties appear as the two strongest players in the French filter pads market, with the high market shares and full portfolio of brands cutting across various price points.

(508) Retailers have explained in that regard that the main branded suppliers like DEMB and Mondelēz tend to adopt similar policies as regards the supply of their products. Since filter pads are not perishable products and can be kept by customers for long periods, branded suppliers tend to launch very aggressive promotion campaigns in order to induce end-consumers to stock significant volumes of filter pads.[375] All branded suppliers follow that strategy but DEMB and Mondelēz are the largest players in the market and each of them react significantly to promotions campaigns launched by the other party. As explained by one retailer "*Competition is very fierce between national brands and it eliminates any price differences* [with private label brands]. *For example, the entry of Carte Noire in the N-capsules market in 2013 has triggered a new price war*".[376] […]*.[377]

[…]*

(509) An analysis of the Parties' other internal documents confirms the conclusion that the Parties are each other's close competitors in the French filter pads market.

(510) For example, an internal document of DEMB assessing Senseo brand's performance in filter pads in 2012 and way forward notes that "*Senseo has a similar price structure than Carte Noire*"[378] and compares price per cup of Senseo and Carte Noire.[379] In terms of positioning, that document indicates that "*Senseo is the higher* (sic) *brand of the Fr. Market (strong emotional dimension) and is in the same area as Carte Noire*".[380] Likewise, the portfolio structure is very similar for Senseo and Carte Noire with respectively [60-70]*% and [80-90]*% of volumes respectively

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372 Non-confidential minutes of a conference call with a retailer dated 23 September 2014 at 11.00 CET. Non-confidential minutes of a conference call and with a retailer dated 19 September 2014 at 10.00 CET.

373 Responses to questions 209 and 210 of Questionnaire Q2-Retailers.

374 Responses to questions 139 and 140 of Questionnaire Q1 – Competitors.

375 Non-confidential minutes of a conference call with a retailer, 18 February 2015 at 16.30 CET.

376 Non-confidential minutes of a conference call with a retailer, 9 February 2015 at 17.30 CET. The French original reads "*Il existe une concurrence très forte entre les marques nationales elles-mêmes qui font donc fondre les écarts de prix (l'arrivée de Carte Noire en 2013 par exemple sur le marché des capsules Nespresso a contribué à relancer la guerre des prix)*".

377 Mondelēz internal document, dated 27 March 2014, "*Understand and optimize promotional efficiency on the coffee market*", slide 138.

378 DEMB internal document "France 2a" attached as, Annex 7 to the Form CO, slide 102.

379 *Ibidem*, slide 103.

380 *Ibidem*, slide 137.

achieved in the "mainstream" range (between EUR […]* and […]* per pad), whereas private label products achieve 90% of their volumes in the value range (less than EUR 0.10 per pad).[381] Another internal document from DEMB related to filter pads notes as a strategic objective "[…]*".[382]

Conclusion on closeness of competition

(511) On the basis of what has been said in Recitals (498) to (508), the Parties' brands are the closest substitutes in the filter pads market in France.

9.7.1.3. Private label products do not exert sufficient competitive constraint

Parties' arguments

(512) The Parties have argued that retailer brands impose a substantial constraint on DEMB and Mondelēz in filter pads coffee. According to the Parties, there is no difference in the quality of Filter Pad coffee offered by retailer brands and manufacturer brands. Retailer brands are in the process of successfully expanding their portfolio, recording significant sales increases for organic and premium coffee products in private label products. As with R&G, retailer and manufacturer brands may be made by the same companies, such as Legal and Segafredo.

(513) The Parties submit that retailer brands offer a full range of products at the same quality and in the same variations as manufacturer brands, with comparable packaging, and often better on-shelf visibility. Retailers’ packaging often closely mimics manufacturer brands for the same variations and in addition to adopting the traditional approach of retailer branding, some retailers use a differentiated brand strategy for filter pads.

Commission's investigation and assessment

(514) The Commission has carefully assessed the arguments brought forward by the Parties and considers that competition from private label products will not be sufficient to offset the adverse effects of the merger. On the contrary, it appears that Carte Noire has been a growing and dynamic competitor in the French filter pads coffee market that has spurred competitive rivalry and that private label products have played a minor role in this competitive setting.

(515) In the first place and similarly to R&G, the Commission's investigation has shown that one of the features of the coffee sector is the importance of brands. That importance is documented in the Parties' internal documents, in which they refer to their brands as "[…]*", admit that they "[…]*" and aim at "[…]*".[383]

(516) Moreover, retailers in France confirm the importance of brands in the market. One of the retailers stated that a supplier with a stronger brand is granted more shelf space and cited Carte Noire as an example.[384] Retailers also mention Parties' brands as ‘must-have’ brands for filter pads coffee (brands that need to be kept on shelves otherwise the retailer would lose a significant share of turnover in this category).[385]

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[381] *Ibidem*, slide 145.

[382] DEMB internal document, dated 13 February 2014, "*France, Board of Directors*" attached as Annex 7 France 1-b to the Form CO, slide 21.

[383] Mondelēz internal document, dated 17 March 2008, "*EU Coffee Category Preliminary 2009 Strategic Plan*", slide 64.

[384] Response to question 46.1 of Questionnaire Q2-Retailers.

[385] Responses to question 211 of Questionnaire Q2-Retailers and non-confidential minutes of a conference call with a retailer, dated 23 September 2014 at 11.00 CET.

On the basis of the results of the market investigation, it can also be concluded that having brands with high awareness (such as L'Or, Senseo and Carte Noire) is one of the competitive advantages of both Parties. The fact that the Parties are considered by retailers to hold ‘must-have’ brands relativizes the competitive constraint exerted by private label products on the Parties' filter pads products.

(517) The Parties' internal documents also show that 90% of private label filter pads portfolio can be found in the value range, while for Carte Noire it is only [10-20]*% and for Senseo only [5-10]*%, implying that private label products indeed target rather the value segment of the market (up to a price of EUR 0.10 per pad)[386], as it is further confirmed by the much lower share in value of private label filter pads in France as compared with its volume share ([30-40]*% in volume and [20-30]*% in value)

(518) Moreover, the relative strength of private label products compared to branded products tends to stabilise in France in the recent years. The graph in Figure 8 shows the evolution of penetration of private label products in the French retail market in the last 15 years. Although those figures represent penetration of such products across all categories of food and personal care products sold in supermarkets, they are indicative of the current slowing of growth of private label branding in France.[387]

[…]*

Figure 8 Nielsen, conjoncture 2013 tendance et perspectives[388]

(519) Private label products in filter pads coffee have followed the same trend. As mentioned in Section 9.7.1.1, sales of private label products have increased significantly less between 2011 and 2014 than the size of the overall market: [0-5]*% in value ([10-20]*% for the total market) and [10-20]*% in volume ([10-20]*% for the total market). The private label’s market share has consequently slightly decreased from [20-30]*% in 2011 to [20-30]*% in 2014. It follows that the competitive pressure exerted by private label filter pads on branded products has decreased in the last years.

(520) As explained in Ssection 9.7.1.1., the most successful brand over the same period has been Carte Noire, the sales of which have increased during the same period by [30-40]*% in value and [30-40]*% in volume.

(521) During the market investigation, French retailers have explained that this drop of private label brands’ penetration is the direct consequence of fierce competition between branded producers. As the filter pads category has been growing to a more limited extent than other single serve coffee products available on the market (like N capsules), branded producers have increased their marketing and advertisement expenses in order to get a larger share of a rather sluggish market. By doing so, they have improved the awareness of their filter pads brands and increased barriers to expansion for private label products. As explained by one French retailer, customers are attached to their brands and the filter pad market (as well as single-serve coffee products in general) is driven by technical evolution, which is led by branded producers like Nestlé, DEMB or Mondelēz.[389]

386 DEMB internal document undated, submitted as Annex 7 France 2a to the Form CO.

387 DEMB internal document, dated 31 January 2013, "*Nielsen, conjoncture 2013 tendance et perspectives*", slide 11.

388 *Ibidem*.

389 Non-confidential minutes of a conference call with a retailer dated 20 February 2015 at 9.30 CET.

(522) Moreover, branded products suppliers have intensified their promotional activity in the French filter pad market recently, particularly because of the slowing down of the category's growth and in the light of the specific features of coffee filter pads. As one retailer explained: "*Promotion works quite well because the unit price of filter pads is high, filter pads are non-perishable and consumers use them frequently and regularly*".[390] Promotional activity has decreased the average price of branded filter pads and narrowed down the price differences between branded filter pads and PL products. Consequently "*[Private label] sales have remained stable in the last years, because of the very aggressive pricing policy of branded suppliers. This very liberal attitude tends to downgrade the brand because it eliminates the price gap between branded and [private label] products*".[391]

(523) Another retailer noted that in the situation where price differences between branded products and private label products is gradually disappearing end-consumers tend to reduce their private label purchases, since they can afford to buy branded products sold at lower price points.[392] That has been confirmed by all French retailers that participated in the market investigation

(524) One retailer has also explained that its private label product range is narrower than Senseo's or Carte Noire's: "*The [private label] filter pads range is more limited than the range of national brands (half the number of references). National brands are frequently launching new products whereas branded producers cannot afford this. To the best of our knowledge, this is also the case for other retailers*".[393]

(525) The Parties' internal documents of the Parties confirm the decrease of penetration by private label brands coffee filter pads. In a document assessing Senseo's performance in 2012 in filter pads, DEMB notes that private label brands have been the "*looser [sic] of the year*" with a decreasing volume share from [30-40]*% to [30-40]*% whereas there has been a "*stronger long-term push for Carte Noire*" with an increasing volume share from [10-20]*% to [10-20]*%.[394] That strong long-term push of Carte Noire is due according to DEMB to two main factors: "*a very strong*

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390 Non-confidential minutes of a conference call with a retailer dated 20 February 2015 at 9.30 CET. The French original reads "*La promotion fonctionne très bien, puisque les dosettes sont des produits chers à l'unité, qui se conservent longtemps et que les clients consomment avec une grande fréquence*".

391 Non-confidential minutes of a conference call with a retailer dated 12 February 2015 at 11.00 CET. The French original reads "*Du côté des marques de distributeurs (MDD), les ventes sont stagnantes depuis plusieurs années, ce qui est lié à la politique très agressive des marques nationales sur les prix. Cette politique excessivement libérale en matière de promotion a tendance à dévaloriser la marque en annulant l'écart de prix entre la marque et la MDD la marque*".

392 Non-confidential minutes of a conference call with a retailer dated 9 February 2015 at 17.30 CET. "*Les marques de distributeurs ne peuvent pas se permettre de faire des promotions aussi agressives et donc elles perdent des parts de marché. Il en résulte que les marques nationales sont parfois vendues au même prix que les marques de distributeurs. Les consommateurs ont donc tendance à diminuer leurs achats de marques de distributeurs, compte tenu de l'absence de différence notable de prix*". See also non-confidential minutes of a conference call with a retailer dated 18 February 2015 at 14.00 CET "*Par exemple, lorsque Carte Noire est entrée sur le marché des dosettes souples, elle a proposé des prix particulièrement bas. Les dosettes Carte Noire en promotion se vendaient donc au même prix que les marques de distributeurs.*"

393 Non-confidential minutes of a conference call with a retailer dated 9 February 2015 at 17.30 CET. The French original reads "*Chez [name of retailer], la gamme de produits disponible en dosettes est plus limitée que pour les marques nationales (nombre de références deux fois plus faible). Les marques nationales se renouvellent sans cesse, alors que les marques de distributeurs ne peuvent pas se le permettre. A la connaissance de [name of retailer], c'est aussi le cas chez les autres distributeurs*".

394 DEMB internal document undated, submitted as Annex 7 France 2a to the Form CO, slide 16.

increase in media spending ([…]**)"* and "*Promotion as a key driver of the growth : Promo volumes :* […]**%*".[395]

Conclusion on private label competition

(526) On the basis of what has been said in Recitals (510) to (523), private label products do not exert sufficient competitive constraint on the Parties' brands.

9.7.1.4. R&G products do not exert sufficient competitive constraint on filter pads products

Parties' arguments

(527) The Parties have argued that there is clear evidence that R&G coffee exerts a significant competitive constraint on filter pads. For example, DEMB conducted a research in 2013 which purportedly showed that the effect of a reduction in the price of filter pads was to make the price of R&G coffee and filter pads more comparable, leading to increased substitution between R&G coffee and filter pads. In particular, the Parties submitted that that has accelerated net switching from R&G to filter pads. According to the Parties, this may be driven by the fact that in France the majority of consumers use more than one coffee format and machine, with French households using an average of 1.7 coffee machines. Of the consumers that own a Senseo machine, just 28% use that machine exclusively, with the remaining 72% using alternative machines in addition to their Senseo machine, the most common alternative being R&G brewers (55%).

(528) In addition to the lower price differential between filter pads and R&G coffee, the Parties argued that switching to R&G is likely to be particularly pronounced for consumers using Senseo machines because Senseo machines produce a coffee that is more similar to that produced using R&G coffee, compared to machines such as Nespresso that produce espresso-type coffee. Moreover, the Parties put forward that this trend is likely to intensify as French consumers are becoming more price conscious – DEMB's research suggests that most French consumers have in recent years adapted their behaviour to save money on coffee, by buying more coffee products on promotion or buying cheaper products.

Commission's investigation and assessment

(529) The Commission has carefully assessed the Parties' arguments and found no evidence that R&G products exert sufficient competitive constraint on filter pads.

(530) The French retailers which responded to the market investigation did not confirm such a competitive interaction between R&G and filter pads. One retailer explained that it is not expected that French consumers would switch away from filter pads to R&G products even if filter pads prices increase by 5 to 10%. Filter pads have significant advantages compared to R&G: filter pads are easier to use, convenient and include many references among which the end-consumer can choose. Moreover consumers having purchased a filter pad machine want to use it and it is more difficult to make them switch towards another product.[396]

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[395] *Ibidem*, slide 123.

[396] Non-confidential minutes of a conference call with a retailer dated 12 February 2015 at 11.00 CET "*Il n'est plus possible d'imaginer un retour en arrière sur le marché français, à savoir que les consommateurs ne se tourneraient plus vers le café moulu si le prix des dosettes augmentait de 5 à 10% . Les dosettes souples et les capsules présentent de nombreux avantages. Le dosage est juste (alors que dans le café moulu, le consommateur doit faire son dosage lui-même en fonction de l'intensité du café qu'il veut obtenir- ce qui est très aléatoire), l'utilisation est pratique et l'offre est flexible et diversifiée,*

(531) Another retailer submitted that whilst it is true that most of the households own a filter coffee machine and a single-serve system, usages differ significantly. Filter coffee machines are mostly used for breakfast coffee whereas the use of single-serve machines is more diversified. Both types of machines (and therefore both types of coffee) thus cater to different needs.[397]

(532) Moreover, from a commercial perspective, producers enjoy higher margins from the sales of filter pads and N-capsules than from the sales of coffee beans and R&G products. It appears from the Parties' internal documents that single-serve coffee products generate higher margins and require premium brands, while R&G coffee products are low margin products.[398] That is also evidenced by the stability of the overall French coffee market between 2011 and 2013 (207 000 tonnes) which has grown in value by 10% over the same period thanks to single-serve products such as filter pads and N-capsules. Coffee companies have therefore an interest in maintaining the current level of advertising and promotion (provided that the competitive environment remains dynamic) rather than incentivise customers to switch to R&G products.[399]

(533) Finally, there are significant price differences between filter pads and R&G products that limit substitution. According to the Parties' internal documents, the price per cup on average for R&G coffee products is EUR [0-5]*, while for filter pads it is EUR [0-5]*. In France, the average price per kg of R&G coffee is EUR [5-10]* whereas for filter pads it is EUR [10-20]* per kg. It is not very likely that customers that already accept to pay a higher price per cup for filter pads would decide to switch to R&G should the price per cup of filter pads increase by 5 to 10%, since they already pay a higher price.

Conclusion on R&G competition

(534) On the basis of what has been said in Recitals (525) to (531), R&G products do not exert sufficient competitive constraint on filter pads products.

9.7.1.5. Lack of countervailing buyer power

Parties' arguments

(535) The Parties have argued that retailers in France are able to exercise buyer power through a wide range of “negotiation levers”. According to the Parties, those levers impose, and would continue following the proposed Transaction to impose, a substantial constraint on the Parties. The Parties argued that the French food retail market is characterised by a combination of relatively high levels of concentration with fierce competition for market share amongst the key retail groups.

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avec de nombreuses références parmi lesquelles le consommateur peut choisir. De surcroit, les consommateurs investissent dans une machine et souhaitent l'utiliser et il donc d'autant plus difficile de les faire basculer vers un autre produit'.

397 Non-confidential minutes of a conference call with a retailer dated 17 February 2015 at 9.40 CET. "*Beaucoup de ménages ont aujourd'hui des machines à dosette et des machines à filtre. Les usages sont différents, la machine à filtre étant réservée pour les petit déjeuner, la machine à dosette pour un moment de convivialité après le repas".*

398 For instance: Mondelēz internal document dated October 2013, "CI French Coffee Market Induction FINALE, p. 12; dated 3 October 2013 "Project Charger Update Audit Commitee vf", pp. 3, 9 and dated 15 December 2013 "Project Charger Discussion Materials", p. 11.

399 Non-confidential minutes of a conference call with a retailer dated 12 February 2015 at 11.00 CET "*Il n'est donc pas non plus dans l'intérêt de la marque de retourner en arrière et l'intensité de la guerre commerciale entre les marques sur les dosettes montre leur volonté de faire croitre la catégorie des dosettes et de la capsule, au détriment du café moulu".*

(536) The Parties submitted that buyer power is reinforced by the highly competitive nature of downstream retail markets, with retailers in France engaged in a "price war", led by Leclerc, Carrefour and Géant Casino, where offering coffee products at low prices is seen as an important traffic generator. This, it is claimed, puts pressure on retailers' downstream margins, and in turn on wholesale pricing. The Parties believe that this trend is likely to increase, in particular as a result of the recently announced buying alliances between Auchan and Système U (currently fourth and fith in the French market) in September 2014, between Casino and Intermarché in October 2014 and between Carrefour and Cora in October 2014.

Commission's investigation and assessment

(537) In the first place, as regards buying alliances, despite the fact that three alliances have been announced in the last three months of 2014, it is too early to assess their real impact, especially considering that none of these buying alliances have been implemented and the expected changes in the retail landscape brought by the "Macron law", currently under discussion in the French Parliament.[400]

(538) Moreover, as explained in Recitals (512) to (524), the market investigation pointed out that Parties filter pads' brands (Senseo and Carte Noire) are 'must-have' brands that cannot be excluded from the shelves otherwise retailers would lose substantial turnover in that category. Therefore retailers will not replace those power 'must-have' brands with other smaller brands. Considering the significance of brands in the filter pads coffee market and the relative decline of their market position, private label products are not an alternative either.

(539) It is in any event not sufficient that buyer power (if any) exists prior to the merger; it must also exist and remain effective following the merger. A merger between two suppliers may reduce buyer power if it thereby removes a credible alternative. In assessing buyer power, it is essential to look at the alternatives available to French retailers. In the filter pad market where DEMB's and Mondelēz' brands are close competitors or even the sole competitors on the market, supermarkets could not switch to alternative brands with the required level of recognition to compete with those of the Parties. If the retailer is not willing to entirely eliminate the JV's's products from the shelves, even a partial delisting of important JV brands such as Carte Noire or Senseo would clearly endanger the retailer's turnover in the coffee category.

(540) As to the threat of delisting and other negotiation levers, […]*. This suggests they negotiate with retailers as equal partners and not from a position of a weaker player. This is consistent with the fact that the Parties hold must-have brands which give them an influence on the retailers' bargaining position – in case of failure to reach an agreement, the retailer has as much to lose as the branded supplier.

Conclusion on countervailing buyer power

(541) On the basis of what has been said in Recitals (533) to (538), buyer power does not appear to be sufficient to counter the increase in market power that the transaction is likely to create.

[400] For example, the "Macron law" specifies that any retail buying alliances should be submitted to the French Competition Authority before its implementation.

9.7.1.6. Entry unlikely to occur

Parties' arguments

(542) The Notifying Parties have also argued that there are no material barriers to entry in the filter pad market for other competitors, given the ease of obtaining supply of good quality pads and coffee, and the open nature of the Senseo system. The Parties submit that there are a number of manufacturers that produce or offer filter pads production for use in retailer brands in France, including: Fichaux, United Coffee, Meo, Legal, Malongo, Segafredo and Warca.

Commission's investigation and assessment

(543) As mentioned in the general Section 9.1 related to the coffee sector as a whole, since coffee products belong to differentiated markets dominated by brands, barriers to entry and expansion in those markets are not insignificant. Established positions of the incumbent coffee companies and the strength of their power brands to which customers remain loyal increase the risks and costs of potential entry.

(544) Critical factors for success in the coffee market, as identified by competitors and customers, include, apart from having a well-known brand, also financial strength to sustain investments, effective marketing strategy (television advertising) and other public relation activities.

(545) The barriers to entry referred to in Recital (542) have been confirmed by French retailers as regards filter pads in the market investigation. The retailers have indicated that entering the filter pad markets requires substantial marketing and promotion overheads and would only be achievable by a company able to afford significant expenditure.[401]

(546) Finally, retailers have not confirmed in the market investigation that they would be ready to sponsor a new entrant in the filter pad market as their primary objective is to rationalise their coffee shelves and make their coffee offering easier to grasp and to understand by the end-consumers.[402]

Conclusion on market entry

(547) On the basis of what is said in Recitals (540) to (544), market entry is not considered as likely to exert sufficient competitive constraint on the merging Parties.

9.7.1.7. Conclusion on filter pads in France

(548) The Commission concludes that the proposed Transaction would lead to a significant impediment to effective competition, in particular through the creation of a dominant position, in the French filter pads market.

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[401] Non-confidential minutes of a call with a retailer dated 18 February 2015 at 14.00 CET "*Deuxièmement, les marques nationales ont des moyens marketings plus importants que les distributeurs pour promouvoir les marques de distributeurs. Ce qui compte pour réussir sur un tel marché est la promotion et la publicité*".

[402] Non-confidential minutes of a call with a retailer dated 20 February 2015 at 9.30 CET " *le rayon café est devenu difficile à comprendre et à appréhender pour le consommateur avec beaucoup de marques et de formats différents L'objectif du distributeur comme [name of retailer] aujourd'hui est de clarifier et de rationaliser ce rayon. Dans ce contexte, l'arrivée de nouvelles marques risquerait de complexifier encore davantage le rayon et donc de perdre le consommateur. Le coût qu'un distributeur doit assumer afin de faire de la place pour une nouvelle marque est particulièrement important*."

9.7.2. Austria

9.7.2.1. Merging firms have high market shares

(549) According to the Nielsen data submitted by the Parties, the filter pad coffee market in Austria had a total value of EUR 15.8 million in 2014, [80-90]*% of which is covered by supplier brands and the remaining [10-20]*% by private label brands.

(550) DEMB is active in the filter pads coffee market in Austria mainly with its brand Senseo, while Mondelēz serves the Austrian filter pad coffee market with its brands Jacobs and to a lesser extent with its brand Hag.

(551) Table 11 shows the market shares of the Parties and their main competitors on the filter pads coffee market in 2014 in Austria.

Table 11 Filter pads in Austria

Manufacturer	**Brand**	**2014**	
		Value ('000 EUR)	**Share**
DEMB	*SENSEO*	[…]*	[30-40]*%
DEMB TOTAL	**-**	**[…]***	**[30-40]*%**
MONDELĒZ	*JACOBS*	[…]*	[30-40]*%
	HAG	[…]*	[0-5]*%
MONDELĒZ TOTAL	**-**	**[…]***	**[30-40]*%**
COMBINED	**-**	**[…]***	**[70-80]*%**
RETAILERS	*PRIVATE LABEL*	[…]*	[10-20]*%
TCHIBO	*EDUSCHO*	[…]*	[0-5]*%
	TCHIBO	[…]*	[0-5]*%
TCHIBO TOTAL	-	[…]*	[0-5]*%
ILLY	*ILLY*	[…]*	[0-5]*%
DALLMAYR	*DALLMAYR*	[…]*	[0-5]*%
MEINL	*MEINL*	[…]*	[0-5]*%
OTHERS	-	[…]*	[0-5]*%
TOTAL	-	[…]*	100%

Source: the Parties

(552) The new entity will achieve a combined market share of [70-80]*% which has remained quite stable between 2011 and 2014 ([70-80]*% in 2011). The overlap between the Parties' activities ([30-40]*%) is also particularly significant. The Transaction will combine the two main suppliers of branded filter pads in the market, with private label products as a very distant follower (market share of [10-20]*%). Other branded players with a particularly limited share of the market are German

player Tchibo ([0-5]*%) with its brand Eduscho and Tchibo, Illy from Italy ([0-5]*%), Dallmayr ([0-5]*%) and local supplier Meinl ([0-5]*%).

(553) The filter pad coffee market in Austria lost [0-5]*% of its value between 2011 and 2014 (and a small increase, [0-5]*% in volume).

(554) Mondelēz' market presence has decreased over the period 2011-2014 ([0-5]*% in value). Senseo, DEMB's major brand in filter pads, has remained stable during the same period. Branded producer Tchibo has also reduced its market presence, with a drop of [40-50]*%. Finally, sales of private label products have increased by [10-20]*% in value.

9.7.2.2. Parties are close competitors

(555) An important aspect for assessing unilateral effects arising from the proposed merger is the degree of substitutability between the Parties' filter pad coffee products. The higher the degree of substitutability between their products, the more likely it is that the Parties will be able to significantly raise prices to retailers for filter pad coffee products.

Commission's investigation and assessment

(556) Retailers in Austria that responded to the market investigation view in particular the brands Senseo and Jacobs as competing vigorously with each other in the filter pad coffee sector. They also consider Mondelēz as closest competitor to DEMB and *vice versa* in Austria in coffee products in general and with respect to filter pads in particular.[403] Also the majority of competitors having responded to the market investigation perceive Jacobs as the closest competitor to Senseo as regards filter pads and *vice versa*.[404] The Parties appear as the two strongest players in the Austrian filter pads market, with the high market shares and full portfolio of brands cutting across various price points.

(557) An analysis of the Parties' other internal documents confirms the conclusion that the Parties are each other's close competitors in the Austrian filter pads market.

(558) For example, an internal document of Mondelēz assessing brand awareness and penetration in Austria notes that "[…]*". In another internal document on Mondelēz dealing with filter pads, […]*. [405]

Conclusion on closeness of competition

(559) The Parties' brands are the closest substitutes in the filter pads market in Austria.

9.7.2.3. Other brands, private label products and R&G products will not exert sufficient competitive constraint.

Parties' arguments

(560) The Notifying Parties have argued that nineteen manufacturers are active in the filter pads segment, including well-established manufacturer brands like Eduscho, Tchibo, Meinl, and Dallmayr. Together those manufacturer brands account for [10-20]*% of the Austrian filter pads segment. According to the Parties, some of those filter pads manufacturers have only very recently entered the segment which shows that the

[403] Responses to questions 66 and 67 of Questionnaire Q2-Retailers.

[404] Responses to questions 85 and 86 of Questionnaire Q1 – Competitors.

[405] Mondelēz, Link meeting Coffee, 25 March 2014, slide 11.

filter pads category in Austria is a dynamic segment and that there are no material barriers to enter.

(561) Likewise, the Parties have argued that retailer brands compete with manufacturer brand products in all areas of the filter pads segment. According to the Notifying parties, retailer brands compete with products from all price points, quality levels and varieties, are marketed with similar packaging and are sold on the same shelves as manufacturer brands.

(562) The Parties further argued that at the end of 2011, DEMB raised list prices of filter pads and as a result retailers increased the average retail prices of filter pads which led to a loss in volumes of about [30-40]*%. As a consequence, DEMB took back the list price increase and retailers followed, taking back the average retail price rise. According to the Notifying Parties, a significant part of the lost volumes was absorbed by retailer brands which experienced the largest increase in sales around that period

Commission's investigation and assessment

(563) As regard other brands, it is clear from the figures shown in Table 11 that they have a minor role in the Austrian market. Tchibo, which achieves a market of [5-10]*% in filter pads in neighbouring Germany, has a share of [0-5]*% in Austria. Dallmayr, which has a share of [0-5]*% in Germany, holds a negligible market presence in Austria ([0-5]*%). None of the brands listed by the Notifying Parties has a share above [0-5]*% and the main alternative brands active in Austria (Tchibo brands, Illy) have seen their sales declining between 2011 and 2014.

(564) Similarly, it is unlikely that private label products will exercise a significant competitive constraint on the merged entity.

(565) In the first place and as explained in Section 9.1, the Commission's investigation has shown that one of the features of the coffee sector is the importance of brands. That is documented in the Parties' internal documents, in which they refer to their brands as "[…]*", admit that they "[…]*" and aim at "[…]*".[406] Competitive constraint by private label products is in this context mitigated by the importance of brands.

(566) In the second place, private label products play a relatively limited role in the Austrian filter pads market. Market share of private label products in Austria is only [10-20]*%. In neighbouring Germany, PL products achieve a much higher share of supply ([40-50]*%). Even assuming that Austrian final customers are price sensitive, it does not appear that price-sensitivity has led Austrian consumers to resort more frequently to private label products, unlike German consumers.

(567) As regards the market situation when DEMB raised list prices of filter pads late 2011, Senseo's sales have dropped from EUR 4.8 million in 2012 to EUR 4.5 million in 2012. Yet, the available data shows that Mondelēz and its brand Jacobs have achieved the most significant growth in the same year (from EUR 6.6 million to EUR 7 million) whilst private label products achieved a more steady growth (EUR 2.6 million in 2011, EUR 2.7 million in 2012).

(568) Similarly to what is explained in Section 9.7.1.4, the Commission has not found, in relation to the Austrian market, any evidence that R&G products exert enough competitive constraint on filter pads.

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406 Mondelēz internal document, dated 17 March 2008, "EU Coffee Category Preliminary 2009 Strategic Plan", slide 64.

Conclusion on competition from other brands, private label products and R&G products

(569) Other brands, private label products and R&G products do not expert sufficient competitive constraint on the Parties' brands.

9.7.2.4. The competitive outlook in Germany does not affect the competitive situation in Austria

Parties' arguments

(570) The Parties have argued that price negotiations for filter pads in Austria are heavily influenced by German prices. German retailers, Rewe, Spar and Lidl, have a strong presence in Austria through their retail subsidiaries. As a result, the Parties contended that German prices have a strong impact on the prices which DEMB negotiates for Austria with Germany-based retailers. That allegedly means that DEMB's respective prices in Austria are the result of the competitive constraints that prevail in the German filter pads segment and this would also be the case following the Transaction. In the German filter pads segment, the Parties' combined share is significantly lower ([20-30]*%), retailer brands hold a share of [40-50]*%, and Aldi is the price leader. Therefore, according to the Parties, sales by the Parties of filter Pads to German retailers in Austria face similar competitive conditions as in Germany. As there is fierce competition in filter pads in Germany, the Parties submitted that such competition should impose competitive constraints on prices in Austria as well.

Commission's investigation and assessment

(571) The Commission does not share the Parties' view on the effects of German competition on the competitive situation in Austria. First, as explained in Section 8, the relevant geographic markets for coffee products in general and filter pads in particular are national due to specific differences between countries in terms of consumption habits, market presence of various players, sales and marketing policies and procurement behaviour.

(572) Germany and Austria are not an exception to what has been said in Recital (569). First there are differences between Germany and Austria in terms of retail market structure. Aldi has much more weight in Germany than in Austria where Rewe and Spar have the highest shares. Moreover, the share of private label products is three times higher in Germany than in Austria. Although the Parties are not directly active at retail level (since they sell their coffee products to retailers), the structure of the downstream retail has an influence on the way the Parties run their coffee business at the upstream level.

(573) With respect to the upstream level where the Parties are active, there are differences between Germany and Austria as regards presence of competitors (Melitta is active in Germany but not in Austria, Tchibo is stronger in Germany than in Austria), structure of the market (filter pads represent [5-10]*% of the Austrian coffee market but [10-20]*% in Germany) or even the regulatory environment (there is a coffee tax in Germany but not in Austria).

(574) During the market investigation, suppliers active in both countries indicated that negotiations with retailers were conducted on a national basis and not on a cross-border basis.[407]

[407] Non-confidential minutes of a conference call with a competitor, dated 6 February 2015 at 12.30 CET.

Conclusion on the influence of the German market on the Austrian situation

(575) The Commission concludes that the competitive outlook in Germany does not affect the competitive situation in Austria.

9.7.2.5. Lack of countervailing buyer power

Parties' arguments

(576) The Parties have argued that retailers in Austria are able to exercise buyer power through a wide range of "negotiation levers". The Parties submitted that those levers impose, and would continue following the proposed Transaction to impose, a substantial constraint on the Parties. The Austrian food retail market is characterised by a combination of relatively high levels of concentration with fierce competition for market share amongst the key retail groups.

Commission's investigation and assessment

(577) As explained in Recitals (563) to (567), market investigation pointed out that Parties filter pads' brands (Senseo and Jacobs) are 'must-have' brands that cannot be excluded from the shelves otherwise retailers would lose substantial turnover in this category. Therefore retailers will not replace those power 'must-have' brands with other smaller brands. Considering the significance of brands in the filter pads coffee market and the lack of growth of their market position, private label products are not an alternative either.

(578) It is in any event not sufficient that buyer power (if any) exists prior to the merger; it must also exist and remain effective following the merger. A merger between two suppliers could reduce buyer power if it thereby removes a credible alternative. In assessing buyer power, it is essential to look at the alternatives available to […]* retailers. In the filter pad market where DEMB's and Mondelēz' brands are close competitors or even the sole competitors on the market, supermarkets could not switch to alternative brands with the required level of recognition to compete with those of the Parties. If the retailer is not willing to entirely eliminate the JV's products from the shelves, even a partial delisting of important JV brands such as […]* would clearly endanger the retailer's turnover in the coffee category.

(579) As to the threat of delisting and other negotiation levers, […]*. This suggests they negotiate with retailers as equal partners and not from a position of a weaker player. This is consistent with the fact that the Parties hold must-have brands which give them an influence on the retailers' bargaining position – in case of failure to reach an agreement, the retailer has as much to lose as the branded supplier.

Conclusion on countervailing buyer power

(580) Buyer power does not appear to be sufficient to counter the increase in market power that the transaction is likely to create.

9.7.2.6. Entry unlikely to occur

Parties' arguments

(581) The Parties have also argued that there are no material barriers to entry in the filter pad market for other competitors, given the ease of obtaining supply of good quality pads and coffee, and the open nature of the Senseo system. The Parties argued that there are a number of manufacturers that have recently entered the filter pads market in Austria, including: Bellarom (2009), Rewe (2010), Gunz (2012), Markant (2013), and Pfeiffer (2013).

Commission's investigation and assessment

(582) As mentioned in the general part related to the coffee sector as a whole, since coffee products belong to differentiated markets dominated by brands, barriers to entry and expansion in those markets are not insignificant. Established positions of the incumbent coffee companies and the strength of their power brands to which customers remain loyal increase the risks and costs of potential entry.

(583) Critical factors for success in the coffee market, as identified by competitors and customers, include, apart from having a well-known brand, also financial strength to sustain investments, effective marketing strategy (television advertising) and other public relation activities.

(584) The barriers to entry referred to in Recital (581) have been confirmed by Austrian retailers as regard filter pads in the market investigation. The retailers have indicated that entering those markets requires substantial marketing and promotion overheads and would only be achievable by a company able to afford significant expenses. [408]

Conclusion on market entry

(585) Market entry is not considered as likely to exert sufficient competitive constraint on the merging Parties.

9.7.2.7. Conclusion on filter pads in Austria

(586) The Commission concludes that the proposed Transaction would lead to a significant impediment to effective competition, in particular through the creation of a dominant position, in the Austrian filter pads market.

9.7.3. Germany

(587) For the reasons set out in this Section, the Commission considers that the Transaction would not lead to a significant impediment of effective competition in the filter pads coffee market in Germany.

(588) According to the Nielsen data submitted by the Notifying Parties, the filter pad coffee market in Germany had a total value of EUR 425.1 million in 2014, [50-60]*% of which is covered by supplier brands and the remaining [40-50]*% by private label brands.

(589) DEMB is active in the filter pads coffee market in Germany with its brand Senseo, while Mondelēz serves the German filter pad coffee market with its brand Jacobs.

[408] Responses to questions 93 and 94 of Questionnaire Q2-Retailers.

(590) Table 12 shows the market shares of the Parties and their main competitors on the filter pads coffee market in 2014 in Germany.

Table 12 Filter pads in Germany

Manufacturer	Brand	2014	
		Value ('000 EUR)	Share
DEMB	*SENSEO*	[…]*	[20-30]*%
DEMB TOTAL	**-**	**[…]***	**[20-30]*%**
MONDELĒZ	*JACOBS*	[…]*	[5-10]*%
MONDELĒZ TOTAL	**-**	**[…]***	**[5-10]*%**
COMBINED	**-**	**[…]***	**[30-40]*%**
RETAILERS	*PRIVATE LABEL*	[…]*	[40-50]*%
TCHIBO	*EDUSCHO*	[…]*	[0-5]*%
	TCHIBO	[…]*	[0-5]*%
TCHIBO TOTAL	-	[…]*	[5-10]*%
MELITTA	*MELITTA*	[…]*	[0-5]*%
DALLMAYR	*DALLMAYR*	[…]*	[0-5]*%
OTHERS	-	[…]*	[0-5]*%
TOTAL	-	[…]*	100%

Source: the Parties

(591) Following the Transaction, the new entity would hold a market share of [30-40]*% with an overlap of [5-10]*%. The German filter pad market will remain dominated by private label products, which hold a market share of more than [40-50]*%. Unlike other European markets where branded filter pads retain a prominent role, private label products hold a leading position in Germany, primarily due to the specific retail structure and in particular the dense network of hard discounters in Germany, notably Aldi (which accounts for half of the private label market share in Germany) and Lidl. The gap between private label and the new entity's market share is in that regard particularly significant (more than [20-30]*%).

(592) The share of retailer brands has also been growing in Germany. While the merging Parties' share decreased by [0-5]*% between 2011 and 2014 retailer brands were not only able to maintain their share, but managed even to increase their share slightly between 2011 ([40-50]*%) and 2014 ([40-50]*%), demonstrating the continuing trend of retailer brands' leadership in the filter pads market in Germany. Some Alternative brands have also managed to increase their sales over the same period, notably Tchibo ([10-20]*%), whereas the overall market has slightly declined. That demonstrates that competition in the German filter pads market is primarily characterised by alternative brands and private label products.

(593) This trend is also acknowledged in the Parties' internal documents. For example, DEMB notes in one internal document assessing Senseo's performance that the volume of lost sales of Senseo filter pads was mainly recaptured by Aldi, other retailer brands and Tchibo (Gala sub-brand).[409]

(594) Finally, no specific concerns were voiced by German customers as regards the impact of the Transaction on the German market for filter pads.[410]

9.7.4. The Netherlands

(595) For the reasons set out in this Section, the Commission considers that the Transaction would not lead to a significant impediment to effective competition in the filter pads coffee market in the Netherlands.

(596) DEMB is active in the filter pads coffee market in Germany with its brands Douwe Egberts and Kanis&Gunnink, while Mondelēz serves the Dutch filter pad coffee market with its brand Velours Noir.

(597) The combined market share of the Parties in filter pads in the Netherlands will amount to [50-60]*%. However the increment that would be brought about by the Transaction is negligible ([0-5]*%) as Velours Noir's filter pad sales in the Netherlands in 2014 amounted only to EUR […]*. Other players active in this market are private label products, Beyers with its brand Moreno and Nestlé with Nescafé.

(598) No specific concerns were voiced by Dutch customers as regards the impact of the Transaction on the Dutch market for filter pads.[411]

9.8. N-capsules

(599) Following the market definition for N-capsules as defined earlier in this Decision, the Transaction does not give rise to any affected market in N-capsules in the EEA.

(600) In several Member States the Parties are the main market participants in the traditional retail channel with Nespresso compatible capsules, while Nespresso is the clear market leader and it is present with its original capsules in its own distribution channels (that is to say dedicated shops and online).

(601) The Parties submit that the N-capsules market is growing at a very high pace and, also in view of its higher margin, is attracting numerous new entrants which act as a competitive constraint on the Parties and will keep acting as constraint also towards the JV.

(602) The Commission recognises the presence of numerous new entrants in the market for N-capsules among branded coffee producers, operators of private label products or companies active in related markets. The majority of respondents to the market investigation indicated that the number of competitors in this market will remain high and some respondents indicated the possibility for some of these players to achieve considerable market shares in the next five years.[412]

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[409] DEMB internal document, dated 12 March 2013, "*Pods Workshop 2012 Douwe Egberts Retail Germany GMBH*", slides 2 and 4.

[410] Responses to questions 275, 276, 277 of Questionnaire Q2-Retailers.

[411] Responses to questions 450, 451, 452 of Questionnaire Q2-Retailers.

[412] Responses to question 36 of Questionnaire Q9-Competitors and responses to question 50 of Questionnaire Q10-Retailers.

(603) Moreover internal documents of Nestlé show that Nespresso considers compatible capsules as competition.[413]

9.9. Out-of home

(604) The Commission considers that the Transaction would not significantly impede effective competition in the internal market with respect to the out-of-home coffee markets.

Parties' arguments

(605) The Parties submit that the Transaction would not raise competition concerns in the out-of-home market mainly due to their low combined market shares and presence of considerable number of competitors According to the Parties, each of the elements provided in an out-of-home solution (the coffee, other consumables, coffee machine, crockery and services) can be sourced from one or multiple suppliers and the regular delivery of ingredients can be made directly by the supplier or can be made through the preferred logistical provider of the customer.

(606) Furthermore the Parties argue that most customers will have an informal buying process, where they discuss their needs and preferences with sales representatives from their current supplier and from other suppliers. Each supplier will assess the needs of the customer and propose a solution from its portfolio of products and machines. Given the range of possible options and the different specialities of suppliers, the customer is rarely choosing between like-for-like propositions.

Commission's investigation and assessment

(607) In the out-of-home market, the proposed Transaction will give rise to affected markets in (i) Denmark, with a combined market share of [20-30]*% (with an increment of [5-10]*%); (ii) Germany, with a combined market share of [20-30]*% (with an increment of [5-10]*%); (iii) Sweden, with a combined market share of [30-40]*% (with an increment of [5-10]*%); and (iv) the United Kingdom, with a combined market share of [20-30]*% (with an increment of [0-5]*%).

(608) The main competitors of the Parties in the out-of-home market include Nestlé (present in Sweden and the United Kingdom), as well as regional players, such as Tchibo, Dallmayr, BKI, Frellsen and Löfberg Lila.The majority of competitors responding to the market investigation confirmed that each offer is tailored to the specific needs of the customer and those needs vary across customer sectors and also among customers in the same sector.[414]

(609) As regards the competitive landscape in the out-of-home market, the Commission acknowledges that several competitors would continue to be present following the Transaction.

(610) With regards to multi-sourcing, the competitors responding to the market investigation gave mixed results on whether their customers would source from multiple suppliers at the same time. Among the customers who responded to the

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[413] Nestlé internal document dated 15 April 2014 "*Coffee & machine market shares*" non-confidential version page 11-12 and Nestlé internal document dated 15 April 2014 "*A focus on: Jacobs Douwe Egberts*" non-confidential version page 17-19. of 2 March 2015.

[414] Responses to question 10, 11 and 12 of the Questionnaire Q4 –Competitors.

market investigation, the vast majority confirmed to multi-source either the same product or different out-of-home products.[415]

(611) Concerning the way contracts are awarded in the out-of-home market, the competitors responding to the market investigation gave mixed results on whether it is by call for tender or through individual negotiation. The majority of customers who responded to the market investigation indicated a clear tendency towards engaging a negotiation process.[416]

(612) The replies to the market investigation indicated that for both competitors and customers the main competition drivers among out-of-home suppliers are price and quality.[417]

(613) Both some customers and some competitors raised initial concerns about the impact of the proposed Transaction on competition in the out-of-home market[418] in view of the Parties' combined market share and in view of the strong brand that would form part of the JV's portfolio.

(614) The Commission contacted the relevant market participants and after further investigation it became apparent that also after the Transaction, there would be a sufficient number of relevant alternative suppliers in all the affected markets.[419]

Conclusion

(615) Taking into account the overall market investigation, the strong presence of several competitors in each of the affected markets, the relatively small market share in certain affected markets and the little increment brought about in some other affected markets, the Commission considers that the Transaction would not significantly impede effective competition in the internal market with respect to the out-of-home coffee markets.

9.10. Potential conglomerate effects

(616) For the reasons presented in this Section, the Commission considers that the proposed Transaction is not likely to lead to foreclosure of competitors as a result of the Parties' enlarged portfolio.

(617) According to previous Commission's decisions conglomerate effects might arise from the Parties' significant portfolio of brands and the fact that they have significant market shares in numerous product markets where their activities do not overlap.[420]

(618) It is proposed that the JV would own a number of 'must-have' brands in the various coffee markets. The Commission has therefore examined whether following the Transaction the JV would be able to impose weak brands on the retailers and

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415 Responses to question 16 of the Questionnaire Q3 –Customers and responses to question 16 of the Questionnaire Q4 – Competitors.

416 Responses to questions 18 et seq of the Questionnaire Q3 –Customers and responses to question 18 et seq. of the Questionnaire Q4 – OOH Competitors.

417 Responses to question 19 of the Questionnaire Q3 –Customers and responses to question 19 of the Questionnaire Q4 – Competitors.

418 Responses to question 26 of the Questionnaire Q3 – Customers and responses to question 29 of the Questionnaire Q4 – Competitors.

419 Non-confidential minutes from a follow up calls with out-of-home customers from 18 to 21 November 2014.

420 See for example, M.3732 Procter &Gamble/Gilette, paragraphs 110 – ff.

therefore foreclose competitors from access to limited shelf space using bundling practices.[421]

(619) First of all, the Commission observes that being active with a portfolio of various coffee products is not a particularity of the Parties, but their competitors also follow the same strategy. In particular Nestlé is active not only with its single-serve systems and their consumables but is also strong in instant markets; Tchibo is present and strong not only in R&G but also in instant coffee and in some countries in filter pads; Lavazza is present in R&G and N-capsules; BKI and Peter Larsen are present in R&G and instant.

(620) With the exception of one German retailer, no other retailer in the course of market investigation raised concerns resulting from the JV having a wide portfolio of brands and coffee products. As regards Germany, it should be noted that the position of retailers in coffee products in Germany is somewhat stronger as compared with other EEA countries. In particular combined private label brands are the strongest player in the R&G market (with a share of [20-30]*%, followed by Tchibo with [20-30]*%), filter pads market (with a share of almost [50-60]*%, followed by the JV with [20-30]*%) and instant coffee market (with a share of [40-50]*%, followed by Nestlé with [20-30]*%). As a result in particular in Germany the retailers are likely to have an ability and incentive to mitigate any portfolio effects that could result from the proposed Transaction.

(621) It also appears that at least retailers in France, Greece, some in Germany and in the Netherlands actually negotiate each of the coffee products (that is to say R&G, instant etc.) separately.[422] Furthermore an overwhelming majority of retailers who responded to the Commission's questionnaire stated that while negotiating with their coffee product suppliers, it does not make a significant difference that those suppliers have a broader portfolio covering many coffee brands and formats, since *"each product is important and plays its own role"*,[423] or covering other product categories.[424] Some of the retailers clearly stated that it is the market share of a given brand which is more important than the breadth of the supplier's portfolio and therefore brands are more significant than the portfolio.[425] Therefore it seems unlikely that the JV would be able to impose its weak brands on the retailers in order to occupy more shelf space and foreclose its competitors by bundling practices.

(622) Consequently the Transaction is not likely to lead to foreclosure of competitors as a result of the JV's enlarged portfolio.

10. CONCLUSION ON THE TRANSACTION'S COMPATIBILITY WITH THE INTERNAL MARKET

(623) The Commission considers that the Transaction leads to a significant impediment to effective competition, in particular through the creation of a dominant position, in the following markets:

(a) R&G market in France, Denmark and Latvia;

(b) Filter pads market in France and Austria.

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421 *Ibidem*, par. 115 – ff.
422 Responses to question 10 of Questionnaire Q2- Retailers.
423 Responses to question 52 of Questionnaire Q2- Retailers.
424 Responses to question 53 of Questionnaire Q2- Retailers.
425 Responses to question 52 of Questionnaire Q2- Retailers.

11. MODIFICATIONS TO THE TRANSACTION

11.1. Framework for the Commission's assessment of commitments

(624) Where a concentration raises serious doubts as to its compatibility with the internal market, the Parties could undertake to modify the concentration so as to remove the grounds for the serious doubts identified by the Commission with a view to having the Notified Transaction approved in phase I of the merger review procedure. In this respect, the Commission has the power to accept commitments provided that they will remove the grounds for serious doubts.

(625) As set out in the Commission's Remedies Notice,[426] the commitments have to eliminate the competition concerns entirely[427] and have to be comprehensive and effective from all points of view.[428]

(626) In assessing whether commitments will maintain effective competition, the Commission considers all relevant factors including, inter alia, the type, scale and scope of the proposed commitments, judged by reference to the structure and particular characteristics of the market in which the competition concerns arise, including the position of the Parties and other participants on the market.[429]

(627) In order for the commitments to comply with those principles, they must be capable of being implemented effectively within a short period of time.[430] Where, however, the Parties submit proposals for remedies that are so extensive and complex that it is not possible for the Commission to determine with the requisite degree of certainty, at the time of its decision, that they will be fully implemented and that they are likely to maintain effective competition in the market, an authorisation decision cannot be granted. [431]

(628) Concerning the form of acceptable commitments, the Regulation (EC) No 139/2004 gives discretion to the Commission as long as the commitments meet the requisite standard.[432] Structural commitments will meet the conditions set out in Recitals (623) to (625) only in so far as the Commission is able to conclude with the requisite degree of certainty that it will be possible to implement them and that it will be likely that the new commercial structures resulting from them will be sufficiently workable and lasting to ensure that effective competition will be maintained.[433] Divestiture commitments are generally the best way to eliminate competition concerns resulting from horizontal overlaps, although other structural commitments, such as access remedies, may be suitable to resolve concerns if those remedies are equivalent to divestitures in their effects.[434]

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426 Commission Notice on remedies acceptable under Council Regulation (EEC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (OJ C 267, 22.10.2008, p. 1-27).

427 See also Case C-202/06 P Cementbouw Handel & Industrie v Commission [2007] ECR 2007 I-12129, paragraph 54.

428 Remedies Notice, paragraphs 9 and 61.

429 Remedies Notice, paragraph 12.

430 Remedies Notice, paragraph 9.

431 Remedies Notice, paragraphs 13, 14 and 61 *et seq*.

432 Case T-177/04 easyJet v Commission [2006] ECR II-1913, paragraph 197.

433 Remedies Notice, paragraph 10.

434 Remedies Notice, paragraph 19.

11.2. Process

(629) To address the competition concerns identified by the Commission, the Notifying Parties submitted commitments on 24 November 2014 and revised them on 26 November 2014 ('the Commitments of 26 November 2014').

(630) After the Commission decided to open proceedings, the Notifying Parties submitted new commitments on 23 February 2015 ('the Commitments of 23 February 2015'). Having received feedback from the Commission on its assessment of the Commitments of 23 February 2015, including the results of the market test, the Parties submitted final commitments on 20 March 2015 ('the Final Commitments').

11.3. Commitments of 26 November 2014

11.3.1. Description of the Commitments of 26 November 2014

(631) The Commitments of 26 November 2014 included measures relating to the coffee markets in (i) France ('the French Divestment Businesses of 26 November 2014'), (ii) Denmark and Latvia ('the Danish and Latvian Divestment Business of 26 November 2014'), and (iii) Austria (the 'Austrian Licence of 26 November 2014').

11.3.1.1. French Divestment Businesses of 26 November 2014

(632) The French Divestment Businesses of 26 November 2014would have consisted of the divestment of (i) the business DEMB currently operates under the brand L'Or (including R&G, N-capsules, filter pads and instant coffee) in the EEA, with the exception of the L'Or out-of-home business, and (ii) the business that Mondelēz currently operates under the brand Grand'Mère (including R&G, filter pads and instant coffee) in the EEA, with the exception of Grand'Mère Tassimo T-discs and the Grand'Mère out-of-home business.

(633) The French Divestment Businesses of 26 November 2014 would also have included various tangible and intangible assets, relevant personnel, as well as DEMB's Andrézieux manufacturing plant, including, at the expiry of the re-configuration period, the necessary number of roasters and manufacturing lines as well as all necessary licences, permits and authorisations to support both the current level of operations and the expansions envisaged in DEMB's business plan. Various transitional support arrangements were also envisaged, in particular to take account of the re-configuration period, such as manufacturing and packing L'Or and Grand'Mère products for the purchaser.

(634) For products excluded from the French Divestment Businesses of 26 November 2014 but currently marketed under the brands to be divested, such as out-of-home products, the purchaser would have been required to grant the Parties and the joint venture a one-year transitional licence for the purpose of rebranding.

11.3.1.2. Danish and Latvian Divestment Business of 26 November 2014

(635) The Danish and Latvian Divestment Business of 26 November 2014 would have consisted of the divestment of the business DEMB currently operates under the brand Merrild in the EEA, with the exception of the Merrild out-of-home business and certain Café Noir and Senseo-products that are primarily marketed under those brands. The in-home products marketed under the Merrild brand are primarily R&G and instant coffee, but there are also filter pads that carry primarily the Merrild brand and those would have been included in the divestment.

(636) With respect to the excluded products, such as the Merrild out-of-home products, the purchaser would have been required to grant the Parties and the joint venture a one-year transitional licence for the purpose of rebranding.

(637) In addition, the Danish and Latvian Divestment Business of 26 November 2014 would have included a number of transitional measures aimed at supporting the purchaser in starting operating the divestment business, such as co-manufacturing of the Merrild products for a transitional period on a reasonable cost-plus basis.

11.3.1.3. Austrian Licence of 26 November 2014

(638) The Austrian Licence of 26 November 2014 would have consisted of granting a three-year exclusive licence for the use of the DEMB brand Senseo for filter pads and N-capsules sold to in-home customers in Austria.

(639) That licence would have been followed by a two year black-out period for the Notifying Parties and the joint venture. During that black-out period neither the Notifying Parties nor the joint venture would have been permitted to use the Senseo brand for filter pads or N-capsules sold to in-home customers in Austria.

(640) In addition, the Austrian Licence of 26 November 2014 would have included a number of transitional measures aimed at supporting the purchaser in starting operating the licence and the rebranding exercise, such as co-manufacturing of the Senseo filter pads and N-capsules on a reasonable cost-plus basis.

11.3.2. Assessment of the Commitments of 26 November 2014

11.3.2.1. French Divestment Businesses of 26 November 2014

(641) The Commission launched a market test on the French Divestment Businesses of 26 November on 26 and 27 November 2014.

(642) The results of the market test indicated that (i) while the French Divestment Businesses of 26 November 2014 seemed, subject to further improvements, to address the competition concerns identified by the Commission in the R&G coffee market in France, they (ii) failed to sufficiently address the competition concerns in the market for filter pads in France.

(643) The Commission found that the French Divestment Businesses of 26 November 2014 would have removed all the overlap brought about by the Transaction with respect to R&G coffee in France. However, the businesses to be divested would only have had a very small market share in filter pads, leading to a marginal impact on the market. As a result, and in light of the results of the market test, the purchaser would most likely not have been able to establish itself as a viable competitor in filter pads in France and the remedy would thus have been insufficient to dispel the competition concerns identified for this market.

11.3.2.2. Danish and Latvian Divestment Business of 26 November 2014

(644) The Commission launched a market test on the Danish and Latvian Divestment Business of 26 November 2014 on 26 and 27 November 2014.

(645) The results of the market test were generally positive. For instance, the majority of respondents considered that the remedy was suitable to remove the competition concerns and that the purchaser would be able to effectively compete on the markets

on a lasting basis.[435] The majority of respondents taking a position during the market investigation also considered the Danish and Latvian Divestment Business of 26 November 2014 as capable of attracting suitable purchasers.[436]

(646) Negative comments were mainly voiced by one competitor who also viewed, for instance that the divestment would not be interesting due to a declining R&G market.[437] Negative comments were also made by competitors concerning the transitional services, such as the 'cost-plus' basis for transitional co-manufacturing services.[438]

(647) The Commission found that the Danish and Latvian Divestment Business of 26 November 2014 would remove more than the overlap in R&G coffee in Denmark and Latvia as Merrild's 2014 market share (Denmark: [20-30]*%, Latvia: [20-30]*%) was higher than the market share increment brought about by the Transaction (Denmark: [10-20]*%, Latvia [10-20]*%). Therefore it would have likely been able to, *prima facie*, remove the competition concerns in the markets in question.

(648) The Danish and Latvian Divestment Business of 26 November 2014 included not only R&G coffee, where competition concerns had been identified by the Commission, but instant coffee and filter pads as well. The commitment therefore went beyond what would be strictly necessary to remove the impediment to effective competition while giving the purchaser the ability to compete with a wider product portfolio. The Commission considers this to significantly improve the viability and attractiveness of the divestment business. Even if the different coffee consumables constitute distinct product markets, being able to offer retailers a wide range of products increases brand visibility. Moreover, cost-synergies may be gained in brand promotion and marketing.

(649) The Commission noted that the Merrild brand is a well-established brand that generates a notable turnover in Denmark and Latvia. Respondents to the market investigation also did not point to factors that would have called the divestment's suitability into question.

(650) The purchaser's ability to start operations immediately after taking over the brand would be supported by the Notifying Parties and the joint venture through the provision of transitional co-manufacturing services. While such services would inevitably create a link and a certain level of dependency between the purchaser and the Parties or the joint venture, such effects, which are not expected to be permanent, are inherent to those types of transitional services and a Monitoring Trustee would be in place to supervise the relationship.

(651) In light of the above, the Commission concluded that the Danish and Latvian Divestment Business of 26 November 2014 would be capable of removing the competition concerns identified by the Commission in the markets for R&G coffee in Denmark and Latvia as such.

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435 Responses to questions 1–3 of the Questionnaire Q6 Denmark; and responses to questions 1–3 of the Questionnaire Q7 Latvia.

436 Responses to question 24 of the Questionnaire Q6 Denmark; and responses to question 24 of the Questionnaire Q7 Latvia.

437 See, e.g. responses to question 1 of the Questionnaire Q6 Denmark; and responses to question 1 of the Questionnaire Q7 Latvia.

438 See, e.g. responses to questions 9, 12, 21, 23 and 24 of the Questionnaire Q6 Denmark; and responses to questions 16, 21, 23 and 25 of the Questionnaire Q7 Latvia.

(652) However, the fact that the transitional services were to be provided at a 'cost-plus' basis was considered to potentially hamper the ability of the purchaser to be competitive in the market. The arrangement might effectively result in a double margin problem which could only be fully avoided if the purchaser forewent its margin. The problem is aggravated in the present case by the fact that the Parties or the joint venture would be supplying the purchaser with finished goods. Consequently, the purchaser would not be engaged in any production that would add any value to those products.

(653) As the Danish and Latvian Divestment Business of 26 November 2014 would not have included production facilities, the viability of the business would inherently have required that the purchaser had access to suitable production capacity after the transitional period during which the Notifying Parties and the joint venture would be obliged to provide the co-manufacturing service.

11.3.2.3. Austrian Licence of 26 November 2014

(654) The Commission launched a market test on the Austrian Licence of 26 November 2014 on 27 November 2014.

(655) The results of the market test were mixed. While the majority of respondents submitted that the remedy was suitable to remove competition concerns,[439] a number of respondents also questioned the viability or details of the licence.

(656) Nestlé was particularly negative of the Austrian Licence, suggesting that a Senseo licence without the Senseo brewing machines was insufficient and unviable as a remedy. Nestlé also submitted that the purchaser's ability to compete would depend on the joint venture's goodwill in developing the Senseo machines and that there could be confusion among consumers.[440] In addition, other market participants also expressed doubts, for instance, in relation to the risks related to re-branding and the 'cost-plus' basis at which the transitional services, such as co-manufacturing, were to be provided to the purchaser by the Parties or the joint venture.[441]

(657) While respondents to the market investigation were generally sceptical about the attractiveness of the Austrian Licence of 26 November 2014, one market participant expressed its interest in acquiring the licence.[442]

(658) The Commission found that the Austrian Licence of 26 November 2014 would have removed all the overlap brought about by the proposed Transaction. Therefore, it could *prima facie*, have removed the competition concerns identified by the Commission in the market for filter pads in Austria. However, in light of the results of the market test, the Commission considered that the licence would likely be viable and attractive only subject to further improvement.

11.4. Commitments of 23 February 2015

11.4.1. Description of the Commitments of 23 February 2015

(659) The Commitments of 23 February 2015 include three measures: (i) the divestment of the brand Merrild in the EEA ('the Merrild Divestment Business'), (ii) the divestment of the brand Carte Noire in the EEA ('the Carte Noire Divestment Business') and (iii) a licence of the Senseo brand in Austria ('the Austrian Licence').

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439 Responses to question 1 of the Questionnaire Q8 Austria.
440 See, e.g. responses to questions 1–4 and 7–10 of the Questionnaire Q8 Austria.
441 See, e.g. responses to questions 2, 6 and 10 of the Questionnaire Q8 Austria.
442 Responses to questions 18 and 19 of the Questionnaire Q8 Austria.

11.4.1.1. Merrild Divestment Business

(660) The Merrild Divestment Business aims at remedying the competition concerns identified by the Commission in the R&G coffee markets in Denmark and Latvia. It is identical to the divestment offered as part of the Commitments of 26 November 2014 ('Danish and Latvian Divestment Business of 26 November 2014').

11.4.1.2. Carte Noire Divestment Business

(661) The Carte Noire Divestment Business aims at remedying the competition concerns identified by the Commission in the R&G coffee and filter pad markets in France. It consists of the divestment of the business currently operated in the EEA by Mondelēz under the brand Carte Noire, including in-home R&G coffee, filter pads and N-capsules – but excluding instant coffee, Tassimo T-discs and out-of-home products as well as the related Velours Noir brand. The purchaser would be required to grant a transitional licence-back for the excluded products in favour of the Notifying Parties and the joint venture for the purpose of allowing them to rebrand those products. The duration of the licence would be one year for the Velours Noir products and two years for the other excluded products.

(662) The divestment would further include Mondelēz' Lavérune production facility that, after a reconfiguration period of 18 months, would house the production lines currently primarily employed in the manufacture of Carte Noire R&G, filter pads and N-capsules, including production lines currently located at other factories. The Notifying Parties or the joint venture would also provide the purchaser with certain transitional services, including the manufacturing of products not at present produced at the Lavérune facility, on a 'reasonable cost-plus' basis. During the reconfiguration period, production lines employed in the production of other than divested products would be removed from the Lavérune site.

(663) The Carte Noire Divestment Business would only include those IP rights currently owned by Mondelēz and would therefore not cover all the IP rights required to produce Carte Noire N-capsules as Mondelēz does not own all those rights. Instead, the Notifying Parties would have committed to making all reasonable efforts to facilitate a licence between the proprietor of the technologies, an Italian company Tuttoespresso S.r.l, and the purchaser at terms no less favourable than those currently enjoyed by Mondelēz.

11.4.1.3. Austrian Licence

(664) The Austrian Licence aims at remedying the competition concerns identified by the Commission in the filter pads market in Austria. It consists of a five-year exclusive licence for the Senseo brand for use in filter pads and N-capsules, during which period the purchaser can re-brand the products.

(665) The five-year licence period would be followed by a five-year black-out period during which the Notifying Parties and the joint venture would be barred from using the Senseo brand for the sale of filter pads or N-capsules to in-home customers in Austria.

(666) The Austrian Licence has been developed from the one offered as part of the Commitments of 26 November 2014 by lengthening the duration of both the licence period (from three to five years) and the following black-out period (from two to five years), and by including express obligations for the Notifying Parties and the joint venture to facilitate direct contacts and cooperation between the purchaser and Philips to allow joint planning between them for support of the Senseo brewer park in Austria.

11.4.2. Assessment of the Commitments of 23 February 2015

11.4.2.1. Merrild Divestment Business

(667) The Commission had launched a market test on the Commitments of 26 November 2014, including the divestment of the Merrild brand ('the Danish and Latvian Divestment Business'), on 26 and 27 November. As the Merrild Divestment Business offered as part of the Commitments of 23 February 2015 was identical to the one offered and market-tested as part of the Commitments of 26 November 2014, the Commission did not launch a new market test on it during Phase II.

(668) A detailed assessment of the Merrild Divestment Business is included under the heading 11.3.2 "11.3.2. Assessment of the Commitments of 26 November 2014".

(669) The Commission concluded that the Merrild Divestment Business would constitute a viable and competitive business that would be able to compete effectively with the Notifying Parties and the joint venture in the market for R&G coffee in Denmark and Latvia, subject to the transitional services and, in particular, the co-manufacturing being offered to the purchaser at a price level that does not hamper the purchaser from establishing itself on the market.

11.4.2.2. Carte Noire Divestment Business

Results of the market test

(670) The Commission launched a market test on the Carte Noire Divestment Business on 25 February 2015.

(671) The market test was generally positive. The majority of respondents considered that the remedy was suitable to remove the competition concerns and that the purchaser would be able to effectively compete on the markets on a lasting basis.[443]

(672) However, market participants commented particularly on (i) the uncertainty of acquiring the required N-capsules technologies from their third-party proprietor, (ii) the 'cost-plus' basis for the transitional services and (iii) the exclusion of the Velour Noir brand and excluded Carte Noire products from the remedy. Negative comments were made primarily by two competitors. In particular Nestlé submitted that the divestment should be "coupled with the sale of a portion coffee system[444], including both the machine and the corresponding pods".[445] In Nestlé's view, the Commitments of 23 February 2015 fail to address competition concerns on the level of single-serve systems.

(673) The lack of the divestment of the N-capsules technologies received negative feedback from a number of competitors, submitting that without the technology the purchaser would not be able to compete efficiently, if at all, in N-capsules. The requirement for the Notifying Parties or the joint venture to make all reasonable efforts to procure a licence between the proprietor of the relevant technologies and the purchaser was considered inadequate.[446]

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443 Responses to questions 1–3 of the Questionnaire Q14 France – Retailers; and responses to questions 1-3 of the Questionnaire Q16 France – Competitors.

444 That is single-serve system.

445 See, e.g. responses to question 1 of the Questionnaire Q16 France – Competitors.

446 Responses to questions 3, 5 and 6 of the Questionnaire Q16 France – Competitors.

(674) Some competitors also questioned whether the 'cost-plus' basis for the transitional services would enable the purchaser to establish itself as a viable and effective competitor to the Notifying Parties and the joint venture. Other market participants nonetheless also commented that such terms are acceptable as long as they are in line with market standards.[447]

(675) Two competitors considered that the Velours Noir brand related to the Carte Noire brand should be included in the remedy.[448] Two competitors also commented negatively on the exclusion of certain Carte Noire products, such as out-of-home products.[449]

(676) No customer commented negatively on the exclusion of the Velours Noir or excluded Carte Noire products during the market test.

(677) Finally, the majority of competitors taking a position replied that they would be interested in acquiring the Carte Noire Divestment Business[450] and all of the customers replying considered that a suitable purchaser will likely be found[451].

Commission's assessment

(678) The Commission finds that the Carte Noire Divestment Business would remove more than the overlap brought about by the Transaction in R&G and would remove almost all of the overlap in relation to filter pads (R&G: Carte Noire's market share [20-30]*%, overlap [10-20]*%; filter pads: Carte Noire's market share [10-20]*%, overlap [10-20]*%, all in 2014). The Carte Noire Divestment Business would therefore be able to remove the competition concerns in the markets concerned.

(679) The Commission further notes that the Carte Noire brand is a well-established and successful brand in France and together with the related production assets and IP rights appears to be capable of being a self-standing business.

(680) The Carte Noire Divestment Business includes not only R&G coffee and filter pads, where competition concerns have been identified by the Commission, but also N-capsules. The commitment therefore goes beyond what would be strictly necessary to remove the impediment to effective competition in order to enable the purchaser to effectively compete with the Parties trough a wider product portfolio. The Commission considers, however, that this is necessary to ensure the viability and attractiveness of the divestment business. Even if the different coffee consumables constitute distinct product markets, being able to offer retailers a wide range of products increases brand visibility and may provide for cost-synergies in brand promotion and marketing. The addition of a product such as N capsules that are growing at a high pace and provide a high margin also contribute to the viability and attractiveness of the divestment business.

(681) The Commission nonetheless notes that, whilst ensuring that the Purchaser is able to offer a wide variety of products is key to improve the viability of the divested business, it is not necessary to include *all* different coffee consumables and formats in the remedy package to ensure that the purchaser of the Carte Noire brand obtains the benefits related to a wide product range. For instance, Tassimo T-discs have not been offered by brands other than Mondelēz' but that has not prevented other

447 Responses to questions 13 and 19 of the Questionnaire Q16 France – Competitors.
448 Responses to questions 1, 2, 14 and 24 of the Questionnaire Q16 France – Competitors.
449 Responses to questions 1, 14, 23, 24, 30 and 32 of the Questionnaire Q16 France – Competitors.
450 Responses to question 31 of the Questionnaire Q16 France – Competitors.
451 Responses to question 15 of the Questionnaire Q14 France – Retailers.

competitors, such as DEMB or Nestlé, from being successful in the French (and other) coffee markets with their brands. Moreover, Nestlé is not at all present in R&G but it has been very successful in instant coffee with its Nescafe brand.

(682) In particular, the Commission does not consider that the exclusion of the Velours Noir brand, which has a very limited presence in the French market for R&G coffee products, would hamper the viability and effectiveness of the divestment business or otherwise give rise to unacceptable risks of customer confusion.

(683) Currently, the Velours Noir packages carry an endorsement from Carte Noire in the form of a label stating, e.g. 'created by Carte Noire'. Velours Noir is a self-standing brand and Carte Noire merely plays the role of an umbrella brand with respect to Velours Noir. The proposed divestment would include a one-year licence to the Parties and the JV to enable them to remove *inter alia* those endorsements from the Velours Noir products.

(684) Therefore, considering the small size of the Velours Noir brand and the short time period available for the Notifying Parties and the joint venture to carry out the rebranding (one year), it is also unlikely that the arrangement proposed by the Notifying Parties with respect to Velours Noir would result in significant confusion among consumers.

(685) As to the other excluded Carte Noire products, such as the out-of-home and Tassimo T-discs, the proposed divestment would include a two-year licence to the Notifying Parties and the joint venture for the purpose of rebranding.

(686) The two-year rebranding period for the excluded Carte Noire products is unlikely to give rise to significant consumer confusion. The rebranding period is limited in time and the rebranding concerns only a limited part of the in-home Carte Noire products while the market characteristics between in-home and out-of-home products are significantly different. This finding is also supported by the fact that no customers raised the issue in the market test.

(687) With regard to Nestlé's claim that the divestment should include single-serve systems, it is sufficient to recall that following its market investigation, the Commission found that the Transaction would not lead to a significant impediment to effective competition in respect of single-serve systems. As such, no remedy is necessary in this respect.

(688) Moreover, the fact that the remedy does not come with a divestment of the single-serve machines in which the filter pads are used cannot render the divestment business unviable or ineffective. It is adequate to recall in this respect that the Carte Noire brand in filter pads is already at present separate from the Senseo brand under which the brewers are marketed and the owners of the two brands are also different. However, that has not prevented Carte Noire from establishing itself in the filter pads market.

(689) As commented by some market participants in the market test, the Carte Noire Divestment Business would not include the necessary IP rights for the production of N-capsules as Mondelēz only licenses the technologies from their third-party proprietor.

(690) The purchaser could theoretically access the technologies in two ways: either through a sub-licence from Mondelēz, or through a direct licence from the proprietor of the technology. Mondelēz currently has an exclusive worldwide licence though with some exclusions. The licence agreement prohibits sub-licensing to third parties.

(691) Given that the technology is likely crucial for the ability of the purchaser to produce N-capsules, the Commission considers that the mere obligation for the Parties and the JV to take all reasonable actions to procure the licence between the purchaser and the third-party proprietor would likely not be adequate in the present case. This finding is supported by the comments made by a number of competitors in the market test.

(692) The Carte Noire Divestment business would come with the Lavérune production plant where the Carte Noire products are primarily produced. Some production lines are located elsewhere, and they would be relocated to the Lavérune plant during the reconfiguration period, which would also see non-Carte Noire production lines removed from the plant. The Commission considers that concentrating the production in one location can best provide for economies of scale in the present case. According to information provided by the Notifying Parties, the Lavérune facility has adequate capacity and space available for housing all the present, and increased, production of the divested Carte Noire products. The Monitoring Trustee will supervise the reconfiguration to limit risks related to, for example, interruptions and production efficiencies.

(693) The purchaser's ability to start full operations without unnecessary delay is supported by the Notifying Parties or the joint venture providing the purchaser certain transitional services, including manufacturing of those Carte Noire products that are not currently produced at the Lavérune production facility. While such services inevitably create a link and a certain level of dependency between the purchaser and the Notifying Parties or the joint venture, such effects are temporary (limited to 18 moths) and a Monitoring Trustee will be in place to supervise the relationship.

(694) However, the fact that the transitional services are provided at 'cost-plus' basis might affect negatively the ability of the purchaser to be competitive in the market. The arrangement may effectively result in a double margin problem which could only be fully avoided if the purchaser forewent its margin. The problem is aggravated in the present case by the fact that the Parties or the JV joint venture would be supplying the purchaser with finished goods, the purchaser not making any value-adding production on them.

(695) In light of the above, the Commission concludes that the Carte Noire Divestment Business will constitute a viable and competitive business that will be able to compete effectively with the Parties and the JV in the markets for R&G coffee and filter pads in France, subject to (i) the transitional services and, in particular the co-manufacturing being offered to the purchaser at a price level that does not hamper the purchaser establishing itself on the market and (ii) increased level of certainty concerning the purchaser's access to the relevant N-capsules technologies.

11.4.2.3. Austrian Licence

Results of the market test

(696) The Commission launched a market test on the Austrian Licence on 25 February 2015.

(697) The market test was generally positive. Many market respondents taking a position considered that the remedy was suitable to remove the competition concerns and that its effectiveness, viability and workability had been improved from the Commitments of 26 November 2014 so as to enable the licensee to effectively

compete.[452] A majority of market participants taking a position also replied that the licence and black-out periods would be sufficient or at least the minimum required, even if not all respondents shared this view.[453]

(698) Negative comments were voiced in the market investigation mainly by two competitors. In particular, Nestlé considered that a divestment, including the divestment of the Senseo machines and a production plant for consumables, would have been required instead of a licence for the remedy to be effective and in order to avoid risks associated with re-branding. The same respondent also called for the divestment to cover the whole EEA instead of only Austria, for instance because of economies of scale and the avoidance of confusion among consumers.[454] Another competitor also viewed that the licence would need to be Union-wide.[455]

(699) Two market participants replied they would be interested in acquiring the Austrian Licence, one at the conditions offered by the Parties and another one on condition that the remedy was further developed with regard, for instance to the purchaser being able to fully control key variables such as pricing.[456]

Commission's assessment

(700) The Commission found that the Austrian Licence would remove all the overlap in filter pads in Austria as Senseo's market share ([30-40]*% in 2014) equals the market share increment brought about by the Transaction. The Austrian Licence would therefore *prima facie* be able to remove the competition concerns in the markets concerned.

(701) The Austrian Licence includes not only filter pads, where competition concerns have been identified by the Commission, but also N-capsules. The commitment therefore goes beyond what would be strictly necessary to remove the competition concerns while giving the purchaser the ability to compete with a wider product portfolio. The Commission considers this to significantly improve the viability and attractiveness of the licence. Even if the different coffee consumables constitute distinct product markets, being able to offer retailers a wide range of products increases brand visibility. Moreover, cost-synergies may be gained in brand promotion and marketing.

(702) The Commission notes that while structural remedies are often preferable, other types of commitments may also be capable of preventing a significant impediment to effective competition.[457] The Commission further notes that the commitments should not only remove the competition concern but be proportionate to it as well.[458]

(703) The Austrian Licence is essentially a re-branding remedy. Such remedies may be acceptable in circumstances where the brand at stake is widely used and a high proportion of its turnover is generated in markets outside those in which competition

452 Responses to questions 1–3 of the Questionnaire Q13 Austria – Retailers; and responses to questions 1–3 of the Questionnaire Q15 Austria – Competitors.

453 Responses to questions 4 and 5 of the Questionnaire Q13 Austria – Retailers; and responses to questions 4 and 5 of the Questionnaire Q15 Austria – Competitors.

454 Responses to questions 1–11 of the Questionnaire Q15 – Competitors.

455 Responses to question 5of the Questionnaire Q15 Austria – Competitors.

456 Responses to questions 2, 3 and 16 of the Questionnaire Q15 Austria – Competitors.

457 See, e.g. paragraphs 15 and 61 of the Remedies Notice.

458 See, e.g. recital 30 of the Regulation (EC) No 139/2004 and paragraph 85 of the Remedies Notice.

concerns have been identified.[459] In such circumstances it could be disproportionate to require that the whole brand is divested.

(704) In the present case, the Senseo brand is employed by DEMB in the sale of filter pads in a number of EEA countries. In 2013, the turnover accumulated by DEMB through the sale of Senseo-branded filter pads in Austria was EUR […]*, which was approximately only [0-5]*% of the respective EEA turnover of EUR […]*. The vast majority of the turnover is therefore generated in markets outside the filter pads market in Austria.

(705) The Notifying Parties are also active in the market for filter pads in Austria with Mondelēz' brand Jacobs. The turnover generated by Mondelēz through the sale of Jacobs-branded filter pads in Austria in 2013 was EUR […]*, which was only [0-5]*% of the total EEA turnover of the brand in 2013, EUR […]* (including all coffee formats). The proportion of turnover generated outside the filter pads market in Austria is therefore even higher than for DEMB's Senseo brand.

(706) The Commission therefore considers that an EEA-wide measure would be disproportionate to the competition concern in the filter pads market in Austria.

(707) In assessing the suitability of the Austrian Licence as a remedy, the Commission has taken into account factors pertaining to the likelihood of the purchaser being able to establish itself as an active competitor in the market. To this effect, it should first be noted that the brand to be transferred enjoys the second largest market share in the Austrian filter pads market and is widely-known. The Austrian Licence also includes measures related to production and marketing that would support the purchaser in establishing itself in the market, such as IP-rights related to the production and marketing of the products.

(708) The fact that the licence does not come with a divestment of the brewer machines in which the filter pads are used cannot render the divestment business unviable or ineffective. It is sufficient to recall that filter pads are sold in Austria by a number of competitors with brands unrelated to the Senseo brand. For instance, Mondelēz is – independently of DEMB – present in the market with the brand Jacobs and has been able to achieve in 2014 a market share clearly in excess of the market share DEMB reached with the Senseo-branded filter pads.

(709) The Austrian Licence would result in a situation where the Senseo-brand is controlled by a different entity in and outside of Austria during the licence period. However, the Commission does not consider this to give rise to significant consumer confusion risks, given that the relevant markets are national. Moreover, to the extent different Senseo products, such as in-home and out-of-home, are controlled by different entities in Austria, the Commission does not consider that in the present case the risk of confusion would be significant given that the characteristics and dynamics of the markets are different.

(710) The Commission further considers that the duration of the licence and black-out periods are likely to be adequate in the present case which concerns fast-moving consumer goods. The duration of the licence is also significantly longer than the duration in which the Parties themselves have considered to be able to rebrand the excluded Carte Noire and Velours Noir products in the R&G and filter pad markets in France without a black-out period.

[459] See, e.g. paragraph 40 of the Remedies Notice.

(711) The purchaser's ability to start operations immediately after taking over the brand is supported by the Notifying Parties or the joint venture providing the purchaser transitional co-manufacturing services. While such services inevitably create a link and a certain level of dependency between the purchaser and the Notifying Parties or the joint venture, such effects are inherent to these types of transitional agreements and a Monitoring Trustee will be in place to supervise the relationship.

(712) However, the fact that the transitional services are provided at a 'cost-plus' basis might affect negatively the ability of the purchaser to be competitive in the market. The arrangement may effectively result in a double margin problem which could only be fully avoided if the purchaser forewent its margin. The problem is aggravated in the present case by the fact that the Parties or the joint venture would be supplying the purchaser with finished goods. Consequently, the purchaser would not be engaged in any production that would add value to those products.

(713) As the Austrian Licence does not include production facilities, the viability of the Austrian Licence therefore requires that the purchaser has access to suitable production capacity also after the transitional period during which the Notifying Parties and the joint venture are obliged to provide the manufacturing service. Moreover, the nature of the Austrian Licence as a rebranding remedy calls for the purchaser to have adequate financial resources to undertake the rebranding exercise, including promotion expenses.

(714) In light of the considerations laid down in Recitals (695) to (711), the Commission concludes that the Austrian Licence will constitute a viable and competitive business that will be able to compete effectively with the Notifying Parties and the joint venture in the market for filter pads in Austria, subject to the transitional services and, in particular, the co-manufacturing being offered to the purchaser at a price level that does not hamper the purchaser establishing itself on the market and carrying out the rebranding.

11.5. Final Commitments

11.5.1. Description of the Final Commitments

(715) The Final Commitments submitted on 20 February 2015 differ from the Commitments of 23 February 2015 in the following ways:

(a) It is proposed that transitional co-manufacturing services for the purchaser(s) will be provided by the Parties and the joint venture on a cost basis instead of a 'cost-plus' basis with respect to the Merrild Divestment Business, the Carte Noire Divestment Business and the Austrian Licence;

(b) Mondelēz expressly waives, but only in favour of the purchaser of the Carte Noire Divestment Business, the exclusivity it enjoys in the EEA for the N-capsules technologies employed in the production of Carte Noire N-capsules; and

(c) the Notifying Parties must be able to demonstrate, prior to purchaser approval, that the proprietor of the N-capsules technologies has consented to grant the purchaser of the Carte Noire Divestment Business an EEA-wide licence to the technologies on terms no less favourable than currently enjoyed by Mondelēz.

11.5.2. Commission's assessment of the Final Commitments

(716) The Commission considers that the Final Commitments sufficiently address the issues raised in the Commission's assessment of and the market test on the Commitments of 23 February 2015.

(717) The provision of the transitional services, including co-manufacturing, to the purchaser(s) of the Merrild Divestment Business, the Carte Noire Divestment Business and the Austrian Licence on a cost basis will enable the purchasers to acquire the goods at a price that does not hamper the purchaser's ability to compete or set its own pricing on the market. A Monitoring Trustee will be in place to supervise the provision of the transitional services, including pricing.

(718) The requirements concerning the technology used to produce Carte Noir N-capsules remove possible uncertainties related to the purchaser of the Carte Noir Divestment Business ability to conclude an agreement with the provider of the license and guarantee that the purchaser will have access to the technologies on terms no less favourable than currently enjoyed by Mondelēz.

(719) The Commission therefore concludes that the Final Commitments are adequate and sufficient to eliminate the significant impediment to effective competition that the Transaction would have led to in the markets for R&G coffee in Denmark, France and Latvia, and in the markets for filter pads in Austria and France.

11.6. Conclusion on the modifications to the Transaction

(720) The Commission finds that following modifications by the Parties through the Final Commitments the Transaction would not significantly impede effective competition in the internal market or in a substantial part of it.

12. CONDITIONS AND OBLIGATIONS

(721) Pursuant to the second subparagraph of Article 8(2) of the Regulation (EC) No 139/2004, the Commission may attach to its decision conditions and obligations intended to ensure that the undertakings concerned comply with the commitments they have entered into *vis-à-vis* the Commission with a view to rendering the concentration compatible with the internal market.

(722) The fulfilment of the measure that gives rise to the structural change of the market is a condition, whereas the implementing steps which are necessary to achieve that result are generally obligations on the parties. Where a condition is not fulfilled, the Commission's decision declaring the concentration compatible with the internal market is no longer applicable. Where the undertakings concerned commit a breach of an obligation, the Commission may revoke the clearance decision in accordance with Article 8(6) of the Regulation (EC) No 139/2004. The undertakings concerned may also be subject to fines and periodic penalty payments under Articles 14(2) and 15(1) of the Regulation (EC) No 139/2004.

(723) In accordance with the basic distinction described in Recital (720) as regards conditions and obligations, this Decision should be made conditional on the full compliance by the Parties with the Section B (including Schedules A to D of the Final Commitments submitted by the Parties on 20 March 2015 and all other Sections should be obligations within the meaning of Article 8(2) of the Regulation (EC) No 139/2004. The full text of the commitments is attached as an Annex II to this Decision and forms an integral part thereof.

HAS ADOPTED THIS DECISION:

Article 1

The notified operation whereby D.E. Master Blenders 1753 and Mondelēz […][×]. acquire joint control of Charger OpCo B.V. within the meaning of Article 3(1)(b) of the Council Regulation (EC) No 139/2004 is hereby declared compatible with the internal market and the EEA Agreement.

Article 2

Article 1 is subject to compliance with the conditions set out in Section B of Annex II.

Article 3

D.E. Master Blenders 1753 and Mondelēz […][×] shall comply with the obligations set out in the Sections A, C, D, E and F of Annex II.

Article 4

This Decision is addressed to:

Acorn Holdings B.V.

Oosterdoksstraat 80

1011 DK Amsterdam

The Netherlands

and

Mondelēz International, Inc.

Three Parkway North

Deerfield, IL 60015

United States of America

Done at Brussels, 5.5.2015

For the Commission
(Signed)
Margrethe VESTAGER
Member of the Commission

[×] Should read: International, Inc.
[×] Should read: International, Inc.

ANNEX I:

ASSESSMENT OF THE ECONOMIC SUBMISSIONS

Contents

1. This Annex presents the economic studies that the Commission received and assessed during the course of the proceedings. It is divided into three sections. Section 1 sets out the estimated demand model submitted by the Parties to assess the substitutability between roast and ground coffee ('R&G') and filter pads. Section 2 deals with the Parties' calibrated merger simulation models to estimate the likely effects of the Transaction. Finally, Section 3 discusses several economic studies submitted by the Parties and by Nestlé that aimed to assess the closeness of competition among coffee systems by analysing, in particular, the competitive effect of Tassimo's entry in a market.

2. The Commission's quantitative analysis of Tassimo's entry effect can be found in Section 9.4.5.2 of the Decision.

1. ESTIMATED DEMAND MODEL

3. During the course of the proceedings, the Parties submitted a series of estimated demand models for the purpose of assessing the substitutability across coffee segments and to draw insights on the likely effect of the Transaction. The Commission considers that the Parties' demand estimation models cannot be relied upon for the purposes of the present decision as they suffer from a number of substantial shortcomings, the details of which are set out in the following subsections.

1.1. The Parties' First Set of Submissions on Demand Estimation

4. During the pre-notification period and Phase I of the proceedings, the Parties submitted an economic paper on demand estimation for France to assess the substitutability between R&G and filter pads, and to gain more insight into the potential effect of the Transaction in the French coffee markets (the "First Set of Submissions on Demand Estimation").[1],[2] In the First Set of Submissions on Demand Estimation, the Parties' presented estimates of own and cross price elasticities[3] for R&G brands and filter pad brands which are based on the empirical "Almost Ideal Demand System" ('AIDS') model.[4] The Parties use weekly retail scanner data at national level collected by AC Nielsen for this estimation.

5. In the First Set of Submissions on Demand Estimation, the Parties use their demand estimation results in an Indicative Price Rise ('IPR') calculation. The IPR uses the own and cross price elasticities estimated by the AIDS model to predict the price effect of the Transaction in the post-Transaction scenario.[5]

1 M.7292 –DEMB/MONDELĒZ/CHARGER JV, Economic Submission: demand estimation results – France, ID00186.

2 M.7292 DEMB/Mondelez/Charger JV, Demand estimation for in-home coffee in France, ID00187.

3 The elasticities measure the price sensitivity of demand. The own-price elasticity gives the percent change in the demand for a product as a response to a 1% increase in the price of the product. The cross-price elasticity between two products gives the percent change in the demand for the first product as a response to a 1% increase in the price of the other product. Normally, the own-price elasticity is negative (demand decreases as the product becomes more expensive) and cross-price elasticities are positive between substitute products (a product's demand is increasing if its substitute becomes more expensive). Elasticities can be calculated on product, brand, segment or even more aggregated level.

4 Deaton, A., J. Muellbauer. 1980. Economics and Consumer Behavior. Cambridge University Press.

5 The results of the IPR are only a first-order approximation of the magnitude of the effect on the Parties' price because the methodology does not account for the reactions of the competitors in the market.

6. The IPR results proposed by the Parties indicate strong price increases resulting from the Transaction in both R&G and filter pads in France. Nevertheless, the estimated cross price elasticities across the products of the two segments are relatively high, suggesting a high degree of substitution and, hence, a strong competitive constraint between the segments. In fact, once the methodology accounts for the commitments proposed by the Parties on 26 November 2014 (the "Commitments of 26 November 2014"), that is to say, the divestiture of the l'Or and Grand Mere brands, referred to in paragraph (8) of the Decision, the price increases estimated by the IPR become negligible in both segments.

1.2. The Commission's assessment of the First Set of Submissions on Demand Estimation

7. The Commission assessed the Parties' First Set of Submissions on Demand Estimation and found that the model is not able to capture the consumers' inventory behaviour present in the market. This limitation severely biases the estimated own and cross price elasticities, making the inferences based on those estimated elasticities unreliable.

8. The AIDS model is one approach used in economic literature to estimate demand for consumer products. The AIDS model is "flexible" in the sense that it imposes relatively few restrictions on the substitution patterns across products. However, the model often delivers results, such as negative cross price elasticities of demand, that are difficult to reconcile with standard economic theory. While in principle those results can be an indication that the data does not support the basic assumptions of standard economic theory, it is equally or even more likely that they might be the consequence of imprecisely measured data and inadequate estimation methodology[6].

9. The Parties' demand estimation contains well-known econometric problems that are frequently encountered in demand estimations in industries of this type. Firstly, prices may be "endogenously" determined with demand (that is to say they are determined by reasons or elements not incorporated in the model). Secondly, the observed consumer behaviour may reflect the inventory behaviour in the form of stock-piling by consumers during promotional periods. Both issues are difficult to deal with and can lead to potentially serious biases in the estimated elasticities. Importantly, in the present case, the Commission found that the conclusions from these estimates vary substantially depending on how one "trades-off" the two types of problems against each other.

10. According to the Parties, the use of weekly level data in the demand estimation minimises the biases in the estimation which are due to the endogeneity of prices[7]. The Commission notes that the economic literature argues that the use of high frequency (that is to say

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[6] Such as lack of instrumentation or poor instrumental variables. The use of instrumental variables is an estimation methodology developed to prevent the so-called endogeneity bias of the parameter estimates. See point 9. The Parties argue that no instrumentation is needed, see point 10.

[7] The endogeneity problem here refers to the case where prices and quantities are simultaneously determined in the market. That is to say, the prices and quantities observed in the data are generated by multiple instances where demand and supply meet; hence, each pair of price and quantity is determined simultaneously (that is to say one determines the other and vice-versa). That "simultaneous causality" introduces a bias in the estimation of the causal relation between quantities and prices (that is to say it is not possible to disentangle how changes in quantities are *caused* by changes in prices). The Parties argue that using high-frequency data (that is to say weekly data) solves the endogeneity problem because the observed prices are pre-determined, in the sense that they are not determined simultaneously with the quantities.

weekly) data can in some specific cases alleviate the problem of endogeneity. More specifically, the use of high frequency data relies on the assumption that the price setters (that is to say, the retailers) do not form expectations of future consumption and are not able to change the prices in a week's time[8].

11. As regards inventory behaviour by consumers, the Commission notes that coffee is a storable good that can be stocked for at least 18 to 24 months before it becomes non-consumable regardless of the format. In addition, the Commission's investigation found that coffee was often put on promotional sale on the retailers' shelves, and the vast majority of the respondents to the Commission's market investigation indicated that consumers stockpiled coffee products during the promotionnal sale period. This is consistent with the price and quantity movements over time in the observed data, which show high spikes during periods with strong promotional activity and low quantities during regular price periods.

12. Consumers' inventory behaviour is a form of inter-temporal substitution. Consumers purchase more during promotional sales periods in order to substitute future purchases and consumption. The estimated demand based on the AIDS model is static. It measures simultaneous substitution patterns, but it is not able to capture the dynamic nature of consumers' stockpiling behaviour. This limitation of the model introduces an upward bias in the price elasticities estimates[9]. In other words, the results might erroneously imply that there is a strong reaction to price changes, and also a strong inter-segment substitution (such as, for example, between R&G and filter pad products). A similar critique was accepted by the Commission in the merger case *Friesland/Campina*[10].

13. The Commission notes that a similar limitation would arise in contexts of consumer heterogeneity, namely, where a proportion of consumers are strongly influenced by the retailers' promotional activity and purchases coffee only when the product is on promotional sale, while the rest of the consumers purchase coffee on a regular basis. In such circumstances the size of the coffee market would increase during promotional periods and fall during non-promotional periods, leading to a similar upward bias in price elasticities as estimated by the AIDS model.

14. The Commission attempted to deal with the likely serious stock-piling issue by aggregating the data to monthly and quarterly levels. The use of more aggregated data should average out part of the effect of promotional activity and consumers' stockpiling behaviour. However, aggregating the data potentially reintroduces or reinforces the endogeneity problem mentioned in paragraph 10[11].

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8 Capps, Oral, Jr., Jeffrey Church, and H. Alan Love (2003). "*Specification Issues and Confidence Intervals in Unilateral Price Effects Analysis*." Journal of Econometrics, 113, 3-31.

9 Hosken, Daniel, Daniel O'Brien, David Scheffman, and Michael Vita (2002). "*Demand System Estimation and its Application To Horizontal Merger Analysis.*" Federal Trade Commission, Bureau of Economics, Working Paper 246, available at http://www.ftc.gov/be/workpapers/wp246.pdf. In particular, Hosken et al point out that *"[i]f inventory effects are important (this is likely to be the case if the predominate source of price variation are the sales which generate inventory effects), the estimated elasticities will likely be too large*".

10 Commission Decision in Case No COMP/M.5046 – *Friesland/Campina*, Annex 1, section 5.3.2.2.

11 The assumption that prices are pre-determined mentioned in footnote 7 is unreasonable in case of low frequency data (i.e. monthly or quarterly).

15. The Commission found that the estimated unconditional cross price elasticities across the R&G brands and the filter pads brands were substantially lower using lower frequency (that is to say monthly and quarterly) data, suggesting a low degree of substitutability between R&G brands and filter pads brands. In fact, the corresponding IPR results indicate a strong price increase in filter pads even after taking into account the Commitments of 26 November 2014. Therefore, the Parties' argument that the Commitments of 26 November 2014 would also address competition concerns in relation to filter pads is not supported by using lower frequency data, which reduces the likely serious bias due to inventory behaviour (although, at the expense of potentially increasing the endogeneity problem).

16. The Commission therefore considered, in the Article 6(1)c Decision, that the results of the First Set of Submissions on Demand Estimation are unreliable.

1.3. The Parties' Second Set of Submissions on Demand Estimation

17. In their response to the Article 6(1)(c) Decision ("Response No. 1") and in a subsequent response to a request for information ("Response No. 2") (together with Response No 1 the "Second Set of Submissions on Demand Estimation"), the Parties contest the Commission's arguments on the limitations of the First Set of Submissions on Demand Estimation and conclude that "the concerns [...] are unfounded and the Commission can safely rely on the demand estimation results"[12],[13],[14]. The Commission finds that the arguments put forward by the Parties to sustain such conclusion do not alleviate the severe limitations of the Parties' demand estimation analysis. Points 18 to 26 set out the Parties' arguments and the Commission's assessment.

18. Firstly, in Response No. 1 the Parties argue that promotional sales on coffee in France are relatively infrequent. The Parties show that in France the promotional sales at segment level amount to a […]* proportion (less than [30-40]*% in R&G and less that [20-30]*% in filter pads) of the total coffee sales during the period of the analysis. Questioned on the reliability of the promotion's indicator in the AC Nielsen data and on the proportion of promotional sales divided by brand, in Response No. 2 the Parties provided the share of promoted and non-promoted sales by segment and brand for 2014, based on new data provided by AC Nielsen.[15] Based on those figures the Parties conclude that "Approximately [30-40]*% of total volume sales of the products were sold under promotion."[16]

19. However, having reviewed the Parties' argument the Commission concludes that the segments' share of promotional sales over the period of the analysis is not informative enough to assess the impact of consumers' inventory behaviour[17]. The Commission notes

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12 Response No. 1: Parties' response to Article 6(1)(c) decision, Annex 5, ID02431.

13 Response No. 2: Response to RFI of 21 January 2015, ID02988.

14 Response No. 1, pp.2 par. 5.

15 In Response No. 2 the Parties explain that AC Nielsen may not record some promotional activity in their data. AC Nielsen provided the Parties with data for 2014 including estimates of the amount of promoted and non-promoted sales considering all promotional activities.

16 Response No. 2, pp. 5.

17 The segments' share of promotional sales may be informative of consumers' inventory behaviour in case it was very close to 0% (i.e. no promotional sales) or very close to 100% (i.e. all sales are promotional sales).

that the bias in the demand estimation's coefficients stems directly from the spikes observed in the brands' sales and price figures during periods of high promotional activity. Therefore, as infrequent as the promotions may be, the bias in the estimated elasticities determined by the consumers' inventory behaviour is due to the share of promotional sales *during* highly promotional periods. In addition, the promotional share figures provided by the Parties in Response No. 2 already show that several brands in all segments have a […]* proportion of promoted sales in 2014 (above [40-50]*%), suggesting that the brands' share of promotional sales during highly promotional periods is likely to be even higher.

20. Secondly, the Parties argue that promotions do not impact upon consumer behaviour in a significant way. To support this argument, the Parties submitted a correlation study in Response No. 1 investigating the simultaneous co-movement of brand's volume sales in period *t* and in period *t-1*[18]. The Parties argue that if promotions had a significant impact on the consumers' inventory behaviour one would expect to find a negative correlation coefficient, as consumers who stockpile during promotions in period *t-1* would deplete their inventory in period *t*. Hence, periods with a spike in sales (that is to say sales promotions periods) should be followed by periods with a "dip" in sales (that is to say consumers depleting their inventory), which would result in a negative correlation between the sales in period *t* and *t-1*. Since such negative relation was not found in the data, the Parties concluded that promotions are unlikely to change consumer behaviour.

21. After receiving questions from the Commission on the possibility that other factors might influence the sales' co-movement over time (for example trends, seasonality, different duration of promotions, and aggregate nature of the data), the Parties refined their correlation study in Response No. 2. The Parties included yearly, quarterly and monthly fixed effects in the analysis to take into account unobservable time-varying factors and they aggregated the data from weekly to fortnightly levels to take into account longer duration of the promotions. From the results of the correlation study, the Parties conclude that there is no evidence of strong and negative inter-temporal correlation in the brands' volume sales.

22. However, the Commission found that the Parties' analysis suffered from a number of different shortcomings, notably, with respect to the aggregate nature (across shops, not over time) of the data Although the Commission agrees that in case of consumer stockpiling behaviour there should be such negative inter-temporal relation of the sales volume at a very granular level of aggregation (for example household level), this relation is likely not to be visible in the highly aggregated country level data used in the analysis. At country level, in order to observe the negative inter-temporal correlation sought by the Parties, all the promotional activity of all the retailers in the country should be simultaneous in time. However, it is very unlikely that the promotional activities of all the retailers are carried out simultaneously. In fact, for a given brand the data show a continuum of promotional activity throughout the period of the analysis. That could be explained by promotional activities which vary in different micro-areas depending on observable and unobservable factors (for example the level of competition in the area and the average wage of the inhabitants). The continuum of promotional activity for each brand is formed by weeks of intensive promotional activity (which could be explained by many micro-areas offering promotions simultaneously) and weeks of low promotional activity (that is to say few micro-areas offering promotions simultaneously). In such

[18] The simultaneous co-movement of two time series is measured by the *correlation coefficient*.

circumstances, the evolution of the brands' sales volume over time will not follow a clear pattern of "spikes followed by dips". Different retailers may, for example, offer the same promotion in subsequent weeks, keeping the brands' volume sales at a relatively high level. Ultimately, the evolution of the brands' volume sales will depend upon unobservable factors governing the likelihood that the retailers in many micro-areas offer the same promotion simultaneously. As a result, the negative inter-temporal relation in a brand's sales volume that one would expect to find in disaggregated data will not be visible and will not be measurable in the country level data used by the Parties. As the Parties acknowledge in Response No. 2, "[i]f promotional activity does not occur simultaneously across retailers, then testing correlation of sales over time is less informative".[19]

23. Thirdly, in Response No. 1 the Parties argue that the demand estimation is robust as regards the aggregation at monthly level. As explained in paragraph 14, aggregating the data at monthly or quarterly level alleviates the stockpiling or consumer heterogeneity issue. The Parties present the segment level elasticities, claiming that "[t]he changes in the estimated elasticities using monthly data compared to those obtained using weekly data are quantitatively small, and, most importantly, do not change […] the conclusion that there is significant substitution between R&G and filter pads."[20.] The Commission sent several questions to the Parties to clarify the robustness of the results. In Response No. 2, the Parties submitted two robustness checks, one using monthly data and the other using weekly data, where the Parties included yearly and quarterly fixed effects in all the equations of the segment level system of equations. According to the Parties, the results of those robustness checks confirm the conclusions reached by the original specification submitted in Response No. 1, that there is significant substitution effect between R&G and filter pads.

24. However, the Commission assessed Response No. 1 and Response No. 2 and concluded that the Parties' argument is not able to dispel the Commission's doubts on the reliability of the demand estimation's results.

    a. In the first place, in Response No. 2 the Parties' argue that the endogeneity problem in the demand estimation's results using monthly data is expected to bias own and cross price elasticities downward, suggesting that the estimated elasticities are an upper bound of the true elasticities. However, in the Commission's view it is not possible to deduce the direction of the endogeneity bias a priori when several price coefficients are estimated within the same equation. Hence, it is not possible to determine whether the estimated elasticities represent a lower bound or an upper bound of the true parameter.

    b. In the second place, the Commission notes that the Parties estimated only the segment-level system of equations in their submissions made after the adoption of the Article 6(1)(c) Decision[21]. However, when estimating also the brand-level

19 Response No. 2, pp. 7.

20 Response No. 1, pp. 5 par. 16.

21 The AIDS model can be formed by several systems of equations, each representing a level of aggregation of the products. In the First Set of Submissions on Demand Estimation, the Parties estimated a two level AIDS, where the levels were "segment" and "brand", while in the Second Set of Submissions on Demand Estimation the Parties estimated only the segment level.

system of equations, the brands' cross price elasticities are not consistent with the segments' cross price elasticities[22]. For example, all the brands of the segment Robusta have a negative cross price elasticity relative to the brands of the segment Arabica, suggesting that Arabica and Robusta are in different markets. This contradicts the segment-level cross price elasticities estimated by the segment-level system of equations.

c. In the third place, in the specification submitted by the Parties' in Response No. 2 that includes yearly and quarterly fixed effects and with the data aggregated at monthly level, the estimated segment-level cross price elasticities are mostly not statistically different from zero. That is, in a statistical sense, the results of the analysis do not call into question the hypothesis that there is no cross-segment substitution. Even if the methodology was not subject to the econometric problems identified, this finding would reduce the importance that can be assigned to the interpretation of the elasticities estimated by this model, particularly in presence of other evidence on cross-segment substitution.

25. Overall the Commission takes the view that considerable bias is likely in the results of the Parties' demand estimation resulting from endogeneity of prices and, in particular, consumer stock-piling behaviour. While the alternative estimations using monthly data rather than weekly data for the estimation cannot fully solve these problems, the fact that using more aggregate data leads to different implications (in particular in terms of the unconditional brand level elasticities and, in many cases, non-significant segment level results) further indicates that such a bias is likely to be serious.

26. The Commission concludes that the econometric demand estimates cannot be considered reliable in the current case and are relatively uninformative compared to other evidence on file regarding switching (or the absence thereof) between R&G and filter pads.[23]

2. MERGER SIMULATION MODELS

27. The Parties submitted calibrated merger simulation models for several coffee product markets in a number of countries to predict the Transaction's likely impact on price. The Commission, however, for the reasons set out below, has found that they cannot be considered reliable as they are likely to underestimate the anti-competitive effect of the Transaction.

2.1. The Parties' First Set of Merger Simulation Models

28. During the pre-notification period, the Parties submitted calibrated merger simulation models for a subset of the affected national markets (Austria[24], the Czech Republic[25], Denmark[26], France[27,28,29,] Greece[30], Spain[31,32,33] and the United Kingdom[34]) (the "First Set

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22 The segment and brand levels systems of equations estimate, respectively, the conditional segment-level own and cross price elasticities and the conditional brand-level own and cross price elasticities.

23 See Section 6.7 of the Decision.

24 Coffee market in Austria: merger simulation, 30 September 2014, ID00144.

25 Coffee market in the Czech Republic: merger simulation, 29 July 2014, ID00038.

26 Coffee market in Denmark: merger simulation, 30 September 2014, ID00145.

27 Coffee market in France: merger simulation analysis, 8 August 2014, ID00041.

28 Additional merger simulation results - France and Spain, 8 September 2014, ID00063.

of Merger Simulation Models"). The aim of these models is to predict the price impact of the Transaction in the R&G coffee, filter pads, instant coffee and N-capsules coffee markets (or some subsets of those markets) of those countries.

29. The models share some general features across the countries. The two key components of the models are the demand side and the supply side. The demand side attempts to describe, in a simplified way, how consumers behave when choosing between different coffee consumable products such as a Carte Noire R&G coffee package, a pack of Senseo filter pads or a Private Label product. In particular, the Parties use the nested logit demand models[35]. Those models take into account the perceived differences between products by grouping them into nests or segments. The nesting is an attempt to capture the differentiation across the different coffee products. For example, one nest could include R&G products, a second filter pad products, a third instant products. The products in the nest can be closer substitutes of each other than of products outside their nests. In some cases, the Parties use two-level nested logit demand models. For example, in some cases within the R&G nest further subsets are specified for Arabica and Robusta products. The set of segments or nests included in the models vary from one country to another[36].

30. The supply side describes, in a simplified way, how firms behave. In particular, a Nash-Bertrand price equilibrium concept is used where the manufacturers are assumed to set their prices to maximise profits, taking into account the competitive responses of their rivals as well as the demand side. The model is used to predict post-Transaction prices by assuming that during the post-Transaction period the merged entity maximises the profits generated by all of its products.

31. The demand parameters of those models are calibrated using three sources of information. Firstly, prices and quantities of the products are obtained from the AC Nielsen retail scanner data. Secondly, the Parties use the observed cost-price ratio of DEMB and Mondelēz and select the models' parameters so that the model's implied pre-Transaction cost-price ratios are consistent with the observed cost-price ratios within a certain range, a practice referred to as "cost calibration". Thirdly, the Parties use an assumption on the aggregate demand elasticity, that is to say, the price sensitivity of coffee demand[37] which

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29 Coffee market in France: additional merger simulation results, 17 October 2014, ID00293.

30 Coffee market in Greece: merger simulation, 17 October 2014, ID00304.

31 Coffee market in Spain: merger simulation, 24 July 2014, ID00030.

32 Additional merger simulation results - France and Spain, 17 October 2014, ID00063.

33 Coffee market in Spain: additional merger simulation results, 17 October 2014, ID00294.

34 In-home coffee market in UK: merger simulation, 20 October 2014, ID00316.

35 See, for example, McFadden, D., (1981): "Econometric Models of Probabilistic Choice," in C.F. Manski, D. McFadden (eds), *Structural Analysis of Discrete Data with Econometric Applications*, MIT Press, Cambridge, Massachusetts, pages 198-272.

36 R&G, Filter Pads and Instant (Austria); R&G and Instant (the Czech Republic, Denmark, Greece, Spain); R&G or Instant (the UK). The subnests also differ from country to country, especially within R&G: Coffee beans and Ground (the Czech Republic); Espresso and Traditional (Denmark and the UK); Greek and Non-Greek (Greece); Mezcla&Torrefacto and Natural (Spain).

37 The aggregate elasticity is the percent change in the overall coffee demand as a response to a 1% overall increase in the coffee products' price. The Parties use two scenarios in their models. The first with aggregate elasticity of -1 and the second with -0.75. This implies, hence, that the model assumes that in response to a 1% overall price increase the coffee demand decreases by 1% (or 0.75%, respectively).

they argue is supported by the economic literature[38]. The calibrated parameters of the model determine the brand level substitution patterns between brands in the same segment and between brands in different segments. Together with an assumption on the aggregate elasticity, the parameters also imply how sensitive the demand is to overall price changes. The calibration approach is unusual in that it leaves one degree of freedom for the two demand parameters. This means that for each model specification considered, there is a range of combinations of demand parameters that is consistent with the Parties' calibration approach. The Parties first perform a search over a chosen set of parameter combinations to determine all combinations of parameters within that set that are consistent with the observed cost-price ratios[39]. They then simulate the merger effects for all those consistent parameter combinations.

32. The overall price increases predicted in the First Set of Merger Simulation Models are below 1% for Austria, the Czech Republic, Spain and the UK, and around 1.3-1.5% for Greece in the R&G coffee, filter pads and instant coffee markets. The predicted overall price increases across those three coffee markets for the Parties' products still tend to be low for Austria, the Czech Republic, Spain and the UK. However, the overall price increases for Denmark and France are more substantial at 2.9% to 3.4% for Denmark, and 3.5% to 4.2% for France without taking into account any commitments. The predicted price increases for the Parties' products are even higher in those two countries at 6.6% to 7.8% and 5.4% to 6.3%, respectively. For France, the Parties also present merger simulations for scenarios including the divestiture of the l'Or and Grand Mere brands, as proposed by the Parties earlier in the proceedings. With those alternative specifications, the models predict a 1.9% to 2.1% price increase in the filter pads market in France which is due to the fact that the envisaged divestments affected mainly the R&G coffee market of the models.

33. In the assessment below, the results take into account such a divestment of the l'Or and Grand Mere brands. It is important to point out, however, that the Final Commitments provide for a different divestment in relation to France, that is to say, that of the Carte Noire brand. Yet, the assessment had to be done based on the previous divestment proposal because the earlier commitment proposal did not alleviate the Commission's concerns in the French filter pads market in a clear cut manner. It would have eliminated the overlap between the Parties' activities in the R&G coffee market but not in the filter pad market.

2.2. The Commission's assessment of the Parties' First Set of Merger Simulation Models

34. In its Article 6(1)(c) Decision, the Commission considered that First Set of Merger Simulation Models was not sufficient to allow it to conclude that no serious doubts would arise as to the compatibility of the proposed Transaction with the internal market in all of the countries modelled. In particular, the Commission had taken the view that the merger

[38] Note on the aggregate elasticity of coffee, 14 November 2014. ID01664 This submission cites papers that present aggregate elasticity estimates closer to -1. Hence, the Parties argue that the aggregate elasticity assumptions in the First Set of Merger Simulation Models (-1 and -0.75) are supported by this literature. For discussion of these arguments see point 35 and footnote 52 below.

[39] Hence, there is not one pair of parameters matching the observed cost-price ratios but several pairs. In this sense, the calibration of the parameters is up to one degree of freedom.

simulation models raised several issues that called into question their reliability as tools not underestimating the likely effect of the Transaction.

35. Firstly, the Commission considered that the Parties applied aggregate elasticity assumptions which were not consistent with established academic literature. In particular, the Parties' assumptions depict an overall coffee segment where demand is not particularly inelastic. On the other hand, the academic literature with focus on the markets in the US[40,41,] France[42], Germany[43,44,] Greece[45], the Netherlands[46,47,] and the Nordic countries[48,49] that is to say Denmark, Sweden[50,51] and Finland, estimates quite inelastic coffee demand, with aggregate elasticity in the range of -0.2; -0.5[52]. The aggregate elasticity is a measure of the price sensitivity of the overall demand for coffee products. An inelastic demand, that is to say an aggregate elasticity close to zero, means that in case of a small price increase of all coffee products the total coffee quantity sold would decrease only to a small extent: the demand is not sensitive to the price change. The aggregate elasticity is an input, that is to say, an assumption, to the Parties' models (see also point 31 above). A less elastic aggregate demand, that is to say, an aggregate elasticity assumed to be closer to zero, would result in higher predicted post-merger price increases when using the Parties' models. That is because a less elastic demand means that consumers are less willing to substitute towards non-coffee consumer goods as the average price of coffee increases, and this gives the merging firms a stronger incentive to raise prices than in a more elastic aggregate demand scenario. On the contrary, a more elastic aggregate demand, that is to sayan aggregate demand elasticity with a large absolute value, leads to lower predicted

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40 Okunande, A. A., and P. E. McLean-Meynise (1992): "Reliability test of elasticity estimates from alternative specifications of the US demand for coffee," *Journal of Agribusiness*, 10(2): 19-35.

41 Bhuyan, S., and R. A. Lopez (1997): "Oligopoly power in the food and tobacco industries," *American Journal of Agricultural Economics*, 79: 1035-1043.

42 Aiyama, T., and P. N. Varangis (1990): "The impact of the international coffee agreement on producing countries," *The World Bank Economic Review*, 4: 157–173.

43 Feuerstein, S., (2002): "Do coffee roasters benefit from high prices of coffee?," *Internation Journal of Industrial Organization*, 20: 89-118.

44 See footnote 42.

45 See footnote 42.

46 Bettendorf, L., and F. Verboven (2000): "Incomplete transmission of coffee bean prices: evidence from the Netherlands," *European Review of Agricultural Economics*, 27: 1-16.

47 See footnote 42.

48 Durevall, D., (2003): "Competition in the Nordic Coffee Markets," *working paper*, Göteborg University.

49 See footnote 43.

50 Durevall, D., (2005): "Demand for Coffee Prices: The Role of Preferences and Market Power," *Food Policy*, 32: 5-6.

51 Durevall, D., (2007): "Competition in the Swedish Coffee Market 1978-2002," *Internation Journal of Industrial Organization*, 25:4.

52 The Parties' submission on aggregate elasticities (see footnote 38) cites, with one exception unpublished, papers that present aggregate elasticity estimates closer to -1. Those papers, however, do not estimate the aggregate elasticity of demand but rather only conditional elasticities (mostly using AIDS models), which are expected to be larger in absolute value than the unconditional aggregate elasticity. Interestingly, one of those papers, (Alamo, C. "Implications of product differentiation in food demand: the case of coffee in the United States", PhD Dissertation in Agricultural and Applied Economics – Texas Tech University. December, 2012) cites an academic paper (see footnote 40) which reviews estimates of unconditional aggregate elasticities for the US implying inelastic aggregate demand.

post-merger price increases in the models. The Parties' submissions assumed a more elastic aggregate demand than what is found by the above cited academic literature. Hence, it follows that the Parties' submissions use assumptions on the aggregate elasticity such that the models likely underestimate the estimated price impact of the Transaction.

36. Secondly, in many of their models[53,54,55] the Parties do not include important segments of the coffee sector such as N-capsules France. The models distinguish between the modelled segments and the non-modelled segments. The modelled segments, for example, the R&G and filter pads markets in France, are those for which the model is able to predict the price increases. The non-modelled segments, for example, the N-capsules in France, include coffee products for which the model does not give price predictions. In the terminology of those types of models, the modelled segments are called the "inside good" and the non-modelled segment the "outside good". The model only needs an assumption on the size of the outside good. According to the logic of the model, if some consumers stop buying a certain coffee product in the inside good segment due to a price increase of that product, some of those consumers will buy another product in the inside good segment. Some of them, however, will rather substitute towards the outside good segment. The products of the outside good segment are treated as non-strategic, that is to say, it is assumed that their prices do not react to the changes in the other segments. However, the Parties often have strong positions in those non-modelled, left-out segments. If the merged entity raises its prices in a segment it will lose some of its customers. Some of those lost customers will switch to another segment that is included in the model. Some of them, however, might instead buy products in the segments not modelled, that is to say the outside goods. For example, if the merged entity raises the price of its filter pad products' price, some of their customers will switch to other filter pad products or to R&G coffee. Some of the switchers might, however, choose other coffee formats for example capsules or instant that are by the models' assumption in the "outside good". It follows that if the merged entity has strong positions in the non-modelled segments, it will recapture some of its lost consumers. This would give it a further incentive to raise prices. In the models of the Parties, however, that effect is not present as they assume that the firms do not take into account the recapture. This leads to smaller predicted post-Transaction price increases compared to a model where the recapture is included. Hence, it was found that the Parties' submissions were likely to underestimate the estimated price impact of the Transaction.

37. Thirdly, the nested logit models impose strong restrictions on the substitution patterns across the different products. In particular, they assume that within a nest the closest substitute of any product is the product with the highest share in the nest. In a two-level nested logit model the same is true within subnests. The implication is that the model, for example, in the French filter pads market assumes that the private label products are the closest competitors of the Senseo or even the Carte Noire brands. Private label products, however, have a lower price positioning than branded products, and are not regarded as close competitors of branded products, especially the premium brands like Carte Noire. As indicated by respondents to the market investigation, private label products exert only a limited competitive constraint on branded products and have been decreasing over the past years[56]. Also, private label products are not uniformly strong across retail channels.

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53 Coffee market in France: merger simulation analysis, 8 August 2014, ID00041.

54 Additional merger simulation results - France and Spain, 8 September 2014, ID00063.

55 Coffee market in France: additional merger simulation results, 17 October 2014, ID00293.

56 See Section 7.2 and Section 8.5.1.3 of the Decision.

Some retailers, like the hard discounters, that is to say, retail stores which sell products at lower prices than the typical market value, for example Aldi and Lidl, sell relatively few branded products and focus more on their private label offerings. In other, more mainstream retailers, such as Carrefour, Leclerc and Auchan private label products are less evident. By not taking this into account, the models over-estimate the competitive constraint exerted by private label products on branded goods. Were the model to capture the closer market positioning of the branded products to each other and their relatively weaker link with the private label products, the merger simulations would imply larger incentives to raise prices following a merger of branded products. In previous cases where similar models were used, private label products were less important in terms of market share and, therefore, the modelling issue at hand was less important.[57] Hence, it was once again found that the Parties' submissions were likely to underestimate the estimated price impact of the Transaction.

38. Remarkably, the Parties' merger simulations predicted non-negligible price increases in many markets, and in particular for the Austrian filter pad market, the French filter pads market (considering potential divestitures of the l'Or and Grand Mere brands) and the Danish R&G and instant coffee markets (and in particular in the R&G market). The Commission also found that, for example, using less elastic aggregate demand assumptions in general tended to increase the predicted price rises. As a result, the Commission found in its Article 6(1)(c) Decision that the First Set of Merger Simulation Models was insufficient to justify the conclusion that the Transaction would not raise serious doubts as to its compatibility with the internal market.

2.3. The Parties' Second Set of Merger Simulation Models

39. During the Phase II investigation the Parties submitted further studies on the merger simulation models[58,59] (the "Second Set of Merger Simulation Models"). First, the Parties argued that the aggregate elasticity estimates of the academic literature the Commission referred to were not relevant. According to the Parties, those estimates are based on a full coffee segment, that is, one including not only the in-home but also the out-of-home segment. Hence, the Parties argued that those estimates were not the relevant benchmark, as "*is well-known, the more products are included in a putative market, the lower is the aggregated elasticity of demand in that market*"[60], and hence the relevant aggregate elasticities should be larger in absolute value than those referred to by the Commission. Moreover, the Parties further argued that lowering the aggregate elasticity assumption did not significantly change their original results[61].

40. Second, the Parties argued that including the capsules markets into the models was unnecessary as consumers could not readily switch between capsules and other coffee

57 See, for example, Case No COMP/M.5658 – *Unilever/Sara Lee Bodycare*.

58 Response to Article 6(1)(c), Annex 5, Response to comments on CL economic submissions in the Article 6(1)(c) Decision, 9 January 2015, ID022431.

59 Response to RFI of 21 January 2015, 30 January 2015, ID02988.

60 Response to Article 6(1)(c), Annex 5, Response to comments on CL economic submissions in the Article 6(1)(c) Decision, 9 January 2015, page 3, ID022431.

61 *Ibid*, page 8.

products[62]. Moreover, including the capsules markets into the models would not significantly change the results[63,64].

2.4. The Commission's assessment of the Parties' Second Set of Merger Simulation Models

41. The Commission, for the reasons set out in points 42-45, has found that the Second Set of Merger Simulation Models cannot be considered reliable because the models included are likely to underestimate the anti-competitive effect of the Transaction.

42. In the first place the Commission notes that the aggregate elasticity estimates of the academic literature referred to in the Article 6(1)(c) Decision are not necessarily lower than what is relevant for the in-home sales channel. Contrary to what the Parties claim, the aggregate elasticity of demand does not always decrease when more products are included in the aggregate segment. There is a decrease in the aggregate elasticity of demand if the products to be added are substitutes of the products already included. Hence, the relevant question is whether the products of the out-of-home sales channel are a substitute of the in-home channel's products. The out-of-home channel, among others, includes forms of consumption (for example hospitals and prisons) which are not suitable alternatives of the in-home consumption[65]. In fact, the Commission concluded that the in-home and out-of-home channels are part of separate product markets[66]. It follows that inclusion of those out-of-home channels should not necessarily decrease the aggregate elasticity. The aggregate elasticity of two unrelated segments is the weighted average of the two segments' elasticities. In any event, the size of the out-of-home segment is significantly smaller than that of the in-home segment. As a consequence, it still cannot be concluded that the high aggregate elasticity assumption used by the Parties' models is plausible and does not lead to an underestimation of the likely price effects of the Transaction.

43. Secondly, in the Parties' extended models, which include the N-capsules market as well, the price effects are higher despite the fact that the Parties use a simpler model, the so-called one-level nested logit model which might still lead to an underestimation of the price effects. The reason for that underestimation can be a one-level nested logit model which can over-estimate the competitive constraint exercised by private label products on branded products, or Nespresso capsules on Nespresso compatible capsules. In a two- or three-level nested logit framework those relative differences in the strength of competitive constraints can be better taken into account. Even the Parties' simple model specification predicts a price increase higher than [0-5]*% in the French filter pads market when a more realistic aggregate elasticity assumption is used[67]. As that estimated price increase is more likely to be an underestimation of the true price increase, in itself it cannot justify the conclusion that the Transaction would not prevent competition significantly in the French filter pads market. It should be noted that those calculations were made by taking into account the Parties' Commitments of 26 November 2014 which divested the l'Or and Grand Mere brands. In France, those commitments would have eliminated the overlap in

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62 *Ibid*, pages 9-11.

63 *Ibid*, pages 10-11.

64 Response to RFI of 21 January 2015, 30 January 2015, pages 20-21, ID02988.

65 Form CO, page 91.

66 See Section 7.1 of the Decision.

67 *Ibid*, Table 8, page 20.

the R&G coffee market but not in the filter pads market. Hence, the assessment of the modelling results is also an indication as to why the Commitments of 26 November 2014 would not have solved the competition concerns raised by the Transaction.

44. Thirdly, nested logit models use only a very limited number of parameters to describe consumer preferences. Even the more realistic two- and three- level models have only three or four parameters, whereas the Parties mainly rely on one-level models, use two-level models only to a limited extent and do not use three-level models. While that model family can in principle provide some guidance on the overall level of expected effects of a merger, it is less useful when determining the strength of competitive interaction between two segments. In the context of the present case, the interaction between R&G and filter pads at the segment level in the Parties' models, including their preferred one-level nested logit models, remains directly proportional to the relative size of the two segments. That implies that, as the result of the assumed structure of the model, the R&G segment will always exert a relatively strong constraint on the filter pads segment in the Parties' model, regardless of the parameter values simply because the R&G segment has a high volume share. That further implies that the segment level's own-price elasticities of the filter pad segment will be significantly higher than that of the corresponding own price elasticity of the R&G segment regardless of the model parameters. The key question regarding the strength of the constraint on filter pads exercised by R&G is hence not measured or tested by the model. Instead it is driven by the assumptions of the model, the relative size of the segments, and the assumed aggregate elasticity. The reliance on strong assumptions to model the competitive interaction between the key segments of the category raises questions on the reliability of the modelling results. This is particularly the case as there are strong qualitative indications that the substitution from filter pads to R&G is very limited[68]. Those indications together with the other factors set out in points 42 and 43 make it more likely that the models underestimate the price effects stemming from the Transaction.

45. Moreover, the chosen quantification strategy, that is to say, cost calibration, can in itself raise questions and criticisms. For example, the methodology does not allow for statistical hypothesis testing to assess the extent to which the results are driven by the modelling assumptions. Though that in itself does not necessarily render a methodology unreliable, in the present case the models are parameterized using only two or three parameters and even those parameters cannot be uniquely determined by the Parties' calibration. The only data used in the calibrations are market shares and an aggregate margin criterion. The combination of the lack of possibility of statistical testing and the necessarily very strong assumptions needed to complete the model imply that it is likely that the results are primarily driven by the untested assumptions. That casts further doubt on the models' ability to provide sufficiently reliable evidence as to the likely impact of the Transaction.

46. Overall, the Commission finds that the merger simulation results of the Parties cannot be considered reliable as, without the Final Commitments, they are likely to underestimate the anti-competitive effect of the Transaction, . Hence, the Parties' merger simulation models cannot cast any doubt on the Commission's conclusion that, in the absence of the Final Commitments, the Transaction would significantly prevent effective competition.

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[68] See Section 6.7.1 of the Decision.

3. STUDIES OF THE EFFECT OF TASSIMO ON SENSEO

47. During the course of the proceedings, the Commission received several economic studies from Nestlé, which aimed at assessing the closeness of competition between Tassimo and Senseo. For the reasons set out in Sections 3.1 and 3.2, due to severe limitations in the models, the Commission does not consider the results of those economic studies to be reliable.

48. Additionally, Nestlé's studies focus primarily on the competition across different single-serve coffee machines (that is to say, Senseo, Tassimo, Dolce Gusto and Nespresso). As stated in the Commission's analysis in Section 8.2.5.2 of the Decision, even if those studies were able to find a degree of competition between Tassimo and Senseo, due to the peculiar complementarity structure between machines and consumables in the coffee systems, and due to the lack of ability (for DEMB) and incentive (for Mondelēz) to increase prices, that finding would still not be enough to assess the likely impact of the Transaction on the price of the components of coffee systems in the present case.

3.1. First Tassimo Study by Nestlé and the Commission's assessment

49. Subsequent to the notification of the Transaction, Nestlé submitted an economic study (the "First Tassimo Study")[69]. In that study, Nestlé argues that Mondelēz, with its Tassimo single-serve system, acts as a "maverick" player, that is to say, a firm with an aggressive low price strategy driving competition, among the single-serve systems. Furthermore, the First Tassimo Study indicates that Tassimo machines are Senseo machine's closest competitors, and that Mondelēz is DEMB's closest competitor in the filter pads and Nespresso compatible consumables' market[70]. Nestlé therefore argues that the Transaction would eliminate a strong competitive constraint between the Parties, leading to a significant restriction of effective competition.

50. To show the competitive constraints that the Tassimo system exerts on the Senseo system, the First Tassimo Study analyses two events: the entry of Tassimo machines in the Netherlands' in 2014, and the price reductions of Tassimo machines in Germany during 2013. The study argues that in both cases the volumes of Tassimo machines sold increased significantly while the volumes of Senseo machines sold decreased. Hence, the First Tassimo Study concludes that Tassimo exerts a strong competitive constraint on Senseo.

51. In their response to the First Tassimo Study[71] (the "Parties' Response to the First Tassimo Study") the Parties argued that the evidence presented by Nestlé is selective and misleading. In particular, they argued that not only the sales of Senseo machines but also the sales of drip filter machines decreased following the events analysed by Nestlé. Moreover, in the Parties' view Nestlé's analysis is incomplete as it does not investigate the price evolutions around the events, and it does not look at other countries to assess Tassimo’s effect on Senseo. The Parties argued that a more complete analysis would have revealed that the relevant substitution happens between Tassimo and either Dolce Gusto or Nespresso, but not Senseo. The Parties further argued that the prices of Tassimo and

[69] M.7292 – DEMB / Mondelez: The merging parties are each other’s closest competitors, 17 November 2014, ID01674.

[70] Filter pads are the consumables for the Senseo machine.

[71] M.7292 - DEMB / Mondelez / Charger OpCo, Response to complaint of 17 November 2014, 20 November 2014, ID01735.

Dolce Gusto machines as well as the price of their consumables are positioned closer to each other than to the corresponding Senseo prices. In addition, according to the Parties, this similarity between Tassimo and Dolce Gusto would be even stronger if the price data accounted for the coupons offered by the coffee manufacturer upon the purchase of the coffee machines, as the available data in Nestlé's study do not include those coupons. Finally, to assess the closeness of competition in respect of consumables, the Parties added that Mondelēz was more closely positioned to Nespresso with regard to N-capsules, and with regard to filter pads Nestlé ignores the effect of private label products.

52. The Commission assessed both the First Tassimo Study and the Parties' Response to the First Tassimo Study in Phase I of the proceeding and found that it was not possible to conclude that Tassimo is Senseo’s closest competitor. However, at that stage of the proceeding, it was not possible to conclude that Tassimo and Senseo do not exert a competitive constraint on each other. In fact, an analysis of recent market entries of Tassimo, that is to say, in the Netherlands in 2014 and in Denmark in 2011, suggested that those market entries might have had a negative impact on the Senseo machine prices, as well as on Dolce Gusto machine prices. However, data limitations severely undermined the inferences that can be drawn from those events[72].

3.2. The Second and Third Tassimo Studies by Nestlé and the Commission's assessment

53. During the course of Phase II of the proceedings, Nestlé submitted two additional economic studies arguing that Tassimo is a closer competitor to Senseo than to other coffee systems (the "Second Tassimo Study" and the "Third Tassimo Study", respectively).[73,74]

54. The Second Tassimo Study analysed the effect of Tassimo's entry in 14 Member States. The study focused on the effect of Tassimo's entry on the other machines' volume sales, most notably on Senseo and Dolce Gusto. For each country, the study compared the machines' volume sales and volume market shares figures during the year before Tassimo's entry, with the same figures for the year after Tassimo's entry[75]. Based on those comparisons, Nestlé concludes that "*[w]hile the arrival of Tassimo is generally accompanied by a significant increase in total market sales, for Senseo it also corresponds to a loss of sales or a complete halt of its sales growth. In contrast the entry of Tassimo has a lower effect on Nescafé Dolce Gusto's sales, even in markets where Senseo is not present.*"[76].

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72 In general, the quantitative technique employed (called "difference-in-differences") may not be strong if the number of "events" analysed (in this case, Tassimo entries) is low and, particularly, if the periods before and after the events are not long enough. The analysis included only two entry events, for which pre-entry and post-entry time periods - respectively in the Danish and Dutch entry cases - are not long enough to deliver a reliable statistical inference

73 M.7292 – DEMB / Mondelez / Charger OpCo: Preliminary assessment of Tassimo's entry in the market of portioned coffee machines, 6 February 2015, ID03083.

74 M.7292 – DEMB / Mondelez / Charger OpCo: Econometric analysis of the effect of promotions on sales of single-served coffee machines, 20 February 2015, ID03169.

75 Due to data limitation, for some countries it was not possible to compute volume sales and volume market shares figures for a full year before/after Tassimo's entry. In such circumstances, the period of the analysis was reduced to the longest feasible period.

76 Preliminary assessment of Tassimo's entry in the market of portioned coffee machines, pp. 3.

55. In the Commission's assessment, a significant problem in the Second Tassimo Study is that it does not take into account the price of the machines. Hence, it disregards price reactions of competitors to Tassimo's entry. The manufacturers of coffee machines compete by setting prices, and the observed movement in the volume sales are the outcome of (among other factors) the machine prices set by the companies. Therefore, the comparison of the volume sales before and after the entry of Tassimo, without taking into account the price reaction of the competitors, cannot fully capture the closeness of competition across coffee machines. Hence, the Commission cannot regard this study as informative on the relative competitive constraint exerted by Tassimo on the other coffee machines.

56. The Third Tassimo Study analysed the effect of promotional activities of different coffee machines on the machines' volume sales. The promotional activities which are of interest in this case are the ones subsidized by the coffee manufacturers, in the form of cash-backs or free consumables. The study employed a regression analysis in first difference where the log volume sales of each coffee machine, that is to say, Nespresso, Dolce Gusto, Tassimo and Senseo, is regressed on the relative size of the promotions of all the coffee machines, and other control variables[77]. The estimated coefficients of the promotions represent the percentage change in the volume sales of the coffee machine should the promotion increase by 1%. For example, the estimated coefficient of the promotions of Tassimo on Senseo's volume sales is -0.01, which means that Senseo's volume sales decrease on average by 1% for each percentage increase in the relative size of Tassimo's promotions. Based on the results of the Third Tassimo Study, Nestlé concluded that "*Senseo and Tassimo exert a significant competitive constraint on each other, and [...] such constraint might be stronger between Senseo and Tassimo than with the two other players*".[78]

57. The Commission notes that there are several shortcomings in the Third Tassimo Study. In particular, the regression model suffers from a severe endogeneity bias, caused by:

    a. *Omitted variable bias*[79]: The model does not account for the variation in the machines' prices that is not caused by promotional activity. For example, the model does not consider instances where the machines manufacturers directly increase or decrease the list prices of the machines. Those changes in list prices have an effect on the machines' volume sales, which the model might erroneously attribute as the effect of the included explanatory variables, which makes the estimated coefficient on those variables biased. That does not mean that *including* the machines' prices as explanatory variables of the regression would be a solution because that inclusion would exacerbate another form of endogeneity bias, the simultaneous causality, referred to in point (c) below.

    b. *Measurement error*[80]: For all the machines the analysis misses an important element of the promotional activity, the redemption rate. That is to say, the amount

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77 The relative size of the promotion is the monetary amount of the promotion divided by the list price of the machine.

78 Econometric analysis of the effect of promotions on sales of single-served coffee machines, pp. 3.

79 Jeffrey M. Wooldridge (2002), Econometric Analysis of Cross Section and Panel Data, MIT Press, Cambridge, Massachusetts, pages 50-51 and 61-63.

80 *Ibid*, pages 51 and 209-239.

of promotions that have been issued by the coffee manufacturer and redeemed by the final consumer. Instead, the analysis assumes that all the sales of a given machine in a given period are subject to the same promotion[81]. That greatly overestimates the magnitude of the promotional activity, and, consequently, introduces a bias in the estimated coefficients.

c. *Simultaneous causality*[82]: Although the machines' list price is not fully included in the regression, it is partially included in the relative size of the promotions, that is to say the promotion value or the list price. That gives rise to the endogeneity problem mentioned in paragraph 10: the dependent variable, that is to say volume sales and the explanatory variable, that is to say the price, are simultaneously determined. Additionally, also the promotional activity may itself be endogenous and simultaneously determined with the volume sales. For example, when the sales are low, the coffee manufacturers initiate or increase the promotional activity to stimulate the demand. Simultaneous causality violates the assumption of strict exogeneity of the Ordinary Least Squares ('OLS') estimation model, as the covariate price is correlated with the error term. Hence, it causes a bias in the estimated coefficients.

58. In addition to the endogeneity bias, Nestlé's regression analysis used standard error estimates of the parameters based on Stock Keeping Unit ('SKU')-country-channel level clustering[83,84]. That clustering choice assumes that the error terms of the regression model are correlated only within a SKU-country-channel. If, however, the error terms are allowed a broader correlation, that is to say at country level or at system-country level, the coefficients estimated by the same regression models become statistically non-significant. That indicates that the regression models' results might not be as precise as Nestlé assumes, and can actually be inconclusive from a statistical point of view.

59. Due to the serious shortcomings examined in this Section, which severely undermine the reliability of the regression analysis' results, the Commission finds the Third Tassimo Study inconclusive for the present case[85].

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81 Note that the machines in the analysis are at Stock Keeping Unit (SKU, the identifier used by retailers to categorize products) level.

82 *Ibid*, pages 51 and 73-76.

83 Channel refers to the sales channel, which is either direct, that is to say Nespresso stores or through retailers.

84 In regression analysis "clustering the standard errors" refers to an adjustment applied to the variance of the estimates which relaxes some of the assumptions of the classical regression model.

85 In the Annex of "*Econometric analysis of the effect of promotions on sales of single-served coffee machines*" Nestlé performs a dynamic version of its main regression model, although Nestlé notes that the model is incomplete as lacking of the necessary tests to confirm its robustness. The Commission notes that the dynamic model suffers the same limitations of the main regression model; hence, Nestlé's dynamic model is not able to produce reliable results.

Annex II

CASE M.7292 – DEMB/MONDELEZ/CHARGER OPCO

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Articles 8(2) and 10(2) of Council Regulation (EC) No 139/2004 (the "***Merger Regulation***"), Acorn and Mondelēz (the **"*Notifying Parties"***) hereby enter into the following Commitments (the **"*Commitments"***) vis-à-vis the European Commission (the "***Commission***") with a view to rendering the creation of a full- function joint venture between the business of DEMB, an international coffee and tea company indirectly owned by Acorn, and the coffee business of Mondelēz (th"***Concentration***") compatible with the internal market and the functioning of the EEA Agreement.

This text shall be interpreted in light of the Commission's decision pursuant to Article 8(2) of the Merger Regulation to declare the Concentration compatible with the internal market and the functioning of the EEA Agreement (the "***Decision***"), in the general framework of European Union law, in particular in light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (the "***Remedies Notice***").

Section A
Definitions

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

   Acorn: Acorn Holding B.V, a private limited liability company (*besloten vennootschap met beperkte annspraklijkheid*) incorporated under the laws of the Netherlands, with its registered office in Amsterdam, the Netherlands, and registered in the Dutch Commercial Register under number 57582041.

   Affiliated Undertakings: undertakings controlled by the Parties and/or by the ultimate parents of the Parties, including the joint venture, whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in light of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (the "***Consolidated Jurisdictional Notice***").

   Andezeno Beans: as defined at paragraph 7.1(b)(v) of Schedule A

   Assets: the assets that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business.

   Austrian Brand-Related IP Rights: as listed in Annex 2 to Schedule D.

   Austrian Closing Date: a date within a period of […]* from the approval of the Purchaser and the licence terms by the Commission. If the […]* period would otherwise have expired prior to the closing of the

Concentration, then the date shall be within a period of […]* after the closing of the Concentration.

Austrian Divestment Brand: as defined in paragraph 4.1(a) of Schedule D.

Austrian Divestment Business: as defined in paragraph 4.1(a) of Schedule D.

Austrian Transitional Support Period: a period to be agreed between the Notifying Parties and the Purchaser, beginning on the Austrian Closing Date and not to exceed 12 months.

Carte Noire Divestment Brand: as defined in paragraph 5(a);

Carte Noire Divestment Business: as defined in paragraph 5(a).

Carte Noire Divestment Business Personnel: as defined in Schedule A, paragraph 7.1(d).

Carte Noire Divestment Products: means the current range of Carte Noire in-home R&G, Filter Pads, and N-Capsules products sold to customers in the EEA including the current Carte Noire in-home R&G, Filter Pads and N- Capsules pipeline products.

Charger OpCo: Charger OpCo B.V., a private limited liability company (*besloten vennootschap met beperkte annspraklijkheid*) incorporated under the laws of the Netherlands, with its registered office in Amsterdam, the Netherlands and registered in the Dutch Commercial Register under number 60551720.

Closing: the transfer of the legal title to the Divestment Business to the Purchaser(s). For the avoidance of doubt, Closing of the Carte Noire Divestment Business, and the Danish Divestment Business could occur on different dates.

Closing Period: the period of […]* from the approval of the Purchaser and the terms of sale by the Commission.

Confidential Information: any business secrets, know-how, commercial information, or any other information of a proprietary nature that is not in the public domain.

Conflict of Interest: any conflict of interest that impairs the Trustee's objectivity and independence in discharging its duties under the Commitments.

Concentration: as defined in the first recital to these Commitments.

Danish Divestment Brand: as defined in paragraph 6(a).

Danish Divestment Business: as defined in paragraph 6(a).

Danish Personnel: all staff currently employed by, seconded to or to be hired by the Danish Divestment Business, who are dedicated to the Danish Divestment Business as set out in Annex 3 to Schedule C.

DEMB: D.E. Master Blenders 1753 B.V., a private limited liability company (*besloten vennootschap met beperkte annspraklijkheid*) incorporated under the laws of the Netherlands, with its registered office in Amsterdam, the Netherlands, and registered in the Dutch Commercial Register under number 54760968.

Divestment Business: the Carte Noire Divestment Business, the Danish Divestment Business.

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

Effective Date: the date of adoption of the Decision.

First Divestiture Period: the period of [...]* from the Effective Date.

[…]*

French Facility: the Lavérune Facility, as defined in paragraph 5(c), and more fully described in Schedule B.

French Facility Personnel: as defined in Schedule B, paragraph 4.

French Personnel: all staff currently employed by, seconded to or to be hired by the Carte Noire Divestment Business, including the Carte Noire Divestment Business Personnel and the French Facility Personnel, as indicated in the Schedules.

FTE: means full-time equivalent.

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

Instant: means instant or soluble coffee, including instant mixes and microground products.

IP: means rights in and to intellectual property.

Key Personnel: all personnel necessary to maintain the viability and competitiveness of the Divestment Business, as listed in the Schedules, including the Hold Separate Manager.

Merrild Products: means the current range of Merrild in-home coffee products, including R&G, Filter Pads and Instant, as well as the current pipeline products (if any).

Mondelēz: Mondelēz International Inc., incorporated under the laws of the Commonwealth of Virginia and registered under company filing number 0550179 with the Secretary of State of the Commonwealth of Virginia.

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

N-Capsules: means Nespresso-compatible capsules.

OOH: means the out-of-home channel.

Parties: the Notifying Party/Notifying Parties and the undertaking that is the target of the Concentration.

Personnel: the Danish Personnel or the French Personnel (as the case may be).

Philips: Philips Consumer Lifestyle B.V., having its principal office at Piet Heinkade 55, (1019 GM) Amsterdam, The Netherlands, and Koninklijke Philips Electronics N.V., having its principal office at Amstelplein 2, (1096 BC) Amsterdam, The Netherlands.

Philips Agreement: means the agreement between DEMB and Philips entitled Coffee System Agreement on Pod Systems, dated 30 March 2012, which governs their collaboration with respect to the joint commercialisation of Senseo appliances.

Purchaser(s): the entity(ies) approved by the Commission as acquirer(s) of the Divestment Business, or, in the case of the Austrian Divestment Business, as licensee, in accordance with the criteria set out in Section D.

Purchaser Criteria: the criteria laid down in paragraph 20 of these Commitments that the Purchaser(s) must fulfil in order to be approved by the Commission.

R&G: roast and ground coffee products.

Schedules: the schedules to these Commitments describing in more detail the Divestment Business.

Senseo Filter Pads Products: in-home Senseo filter pad products as listed in paragraph 1 of Annex 1 to Schedule D.

Senseo N-Capsules Products: in-home Senseo N-Capsules products as listed in paragraph 2 of Annex 1 to Schedule D.

Shared IP Licence: as defined in paragraph 7.1 of **Annex 2** to **Schedule**

A. **T-Discs**: means Tassimo-compatible discs.

TE Licence: as defined in paragraph 7.1(b)(iii) of Schedule A.

Transitional Support Arrangements: the necessary transitional support services to be agreed between the Notifying Parties and the Purchaser(s) and to be supplied to the Purchaser(s) including, at the option of the Purchaser(s), the manufacture of the Carte Noire Divestment Products that are not currently manufactured in the French Facility or the products manufactured under the Danish Divestment Brand (as the case may be), as more fully described in the Schedules.

Transitional Support Period: a period to be agreed between the Notifying Parties and the Purchaser(s), beginning on Closing and not to exceed (without the Commission's prior approval) 18 months in respect of the Carte Noire Divestment Business and 12 months in respect of the Danish Divestment Business during which Charger OpCo shall supply to the Purchaser(s) the Transitional Support Arrangements.

Trustee(s): the Monitoring Trustee and/or the Divestiture Trustee as the case may be.

Trustee Divestiture Period: the period of [...]* from the end of the First Divestiture Period.

[…]*

[…]*

Section B
The commitments to divest and license and the Divestment Business

Commitment to divest

2. In order to maintain effective competition, the Notifying Parties commit to divest, or procure the divestiture of, the Divestment Business by the end of the Trustee Divestiture Period as a going concern to one or more purchasers and on terms of sale approved by the Commission in accordance with the procedure described in paragraph 21 of these Commitments. To carry out the divestiture, the Notifying Parties commit to find a purchaser (or purchasers) and to enter into, or to procure that Charger OpCo or any of their relevant Affiliates enter into, a final binding sale and purchase agreement (or agreements) or, as the case may be, receive an unconditional and binding offer (or put option) under French law, for the sale of the Divestment Business (or the remaining portion of the Divestment Business not already sold to an approved Purchaser) within the First Divestiture Period. If the Notifying Parties, Charger OpCo or any relevant Affiliates have not entered into such an agreement(s), or, as the case may be, have not received an unconditional and binding offer (or put option) under French law, at the end of the First Divestiture Period, the Notifying Parties shall grant, and if necessary shall procure that Charger OpCo and any relevant Affiliates shall grant, the Divestiture Trustee an exclusive mandate to sell the Divestment Business (or the remaining portion thereof) in accordance with the procedure described in paragraph 33 in the Trustee Divestiture Period. For the avoidance of doubt, the Notifying Parties shall be permitted to sell the Carte Noire Divestment Business, the Danish Divestment Business and the Austrian Divestment Business to the same Purchaser or to separate Purchasers.

3. The Notifying Parties shall be deemed to have complied with the commitment in paragraph 2 if:

   (a) by the end of the Trustee Divestiture Period, the Notifying Parties, Charger OpCo or any relevant Affiliates, or the Divestiture Trustee has entered into a final binding sale and purchase agreement(s) or, as the case may be, have received an unconditional and binding offer (or put option) under French law for the sale of the Divestment Business to the Purchaser(s) and the Commission approves the proposed Purchaser(s) and the terms of sale as being consistent with the Commitments in accordance with the procedure described in paragraph 21; and

(b) the Closing(s) of the sale of the Divestment Business to the Purchaser(s) takes(s) place within the Closing Period.

4. In order to maintain the structural effect of the Commitments, the Notifying Parties and Charger OpCo (as the case may be) shall, for a period of 10 years after Closing, not acquire, whether directly or indirectly, the possibility of exercising influence (as defined in paragraph 43 of the Remedies Notice, footnote 3) over the whole or part of the Divestment Business and the Austrian Divestment Business, unless, following the submission of a reasoned request from the Notifying Party or Charger OpCo (as the case may be) showing good cause and accompanied by a report from the Monitoring Trustee (as provided in paragraph 47 of these Commitments), the Commission finds that the structure of the market has changed to such an extent that the absence of influence over the Divestment Business or the relevant part of it or the Austrian Divestment Business is no longer necessary to render the proposed concentration compatible with the internal market.

<u>Structure and definition of the Divestment Business</u>

5. ***France***

(a) Subject to the provisions set out in sub-paragraph (b), the Carte Noire Divestment Business (as defined below), described in more detail in **Schedule A** and **Schedule B**, consists of the Carte Noire brand (including brand-related IP) in the EEA (the "***Carte Noire Divestment Brand***") and of the R&G, Filter Pad and N-Capsules business of Mondelēz currently operated under the Carte Noire Divestment Brand in the EEA (the "***Carte Noire Divestment Business***"). For the avoidance of doubt the Carte Noire Divestment Business does not include the OOH, Instant and T-Discs business of Mondelēz currently operated under the Carte Noire Divestment Brand in the EEA.

(b) For the purpose of rebranding certain products that do not raise competition concerns, the Purchaser shall grant the Notifying Parties, Charger OpCo and their Affiliates exclusive, irrevocable, non- renewable, royalty-free licences to use the Carte Noire Divestment Brand in relation to the marketing, manufacture and sale (and any related disposal, offer to dispose, import and warehousing) of Carte Noire branded OOH, Instant and T-Discs products in the EEA for two years and in relation to Velours Noir products in the EEA for a period of one year.

(c) The Carte Noire Divestment Business will include Mondelēz's Lavérune manufacturing plant (the "***French Facility***"), subject to the reconfiguration arrangements further described in **Schedule B**.

(d) For the avoidance of doubt, the Carte Noire Divestment Business will not include any IP that relates to products that are retained by the Parties, including without limitation the Carte Noire products retained by the Parties under Clause 5(a) above. The Parties will grant to the Purchaser the Shared IP Licence further described at paragraph 7.1 of **Annex 2** to **Schedule A** in respect of shared IP.

6. ***Denmark***

(a) Subject to the provisions set out in sub-paragraph (b), the Danish Divestment Business (as defined below), described in more detail in **Schedule C**, consists of: the business of DEMB currently operated under the brand name Merrild in the EEA (the "***Danish Divestment Brand***"), with the exception of the Merrild OOH business (the "***Danish Divestment Business***")

(b) For the purpose of rebranding certain products that do not raise competition concerns, the Purchaser shall grant DEMB, Charger OpCo and their Affiliates exclusive, irrevocable, non-renewable, royalty-free licences to use the IP of Merrild during a transitional licence period in relation to OOH in the EEA for a period of one year and in relation to Café Noir and Senseo products for a period of one year.

7. The legal and functional structure of the Divestment Business is described in the Schedules. The Divestment Business includes all assets and staff necessary to maintain and run the current operation necessary to ensure the viability and competitiveness of the Divestment Business, in particular:

(a) all tangible and intangible assets (including through intellectual property rights, transfers and licences) necessary to manufacture and sell the Carte Noire Divestment Products, including, if any, pipeline products (except that no manufacturing facility will be transferred in relation to the Merrild Products and in relation to those SKUs the production of which is currently outsourced to third party manufacturers);

(b) all licences, permits and authorisations issued by any governmental organisation for the benefit of the Divestment Business;

(c) all leases and commitments of the Divestment Business;

(d) the disclosure of all customer, credit and other records and full information about the terms of customer contracts of the Divestment Business; and

(e) the French Personnel and the Danish Personnel.

8. In addition, the Divestment Business includes the benefit:

(a) for a Transitional Support Period and on terms and conditions equivalent to those at present afforded to the Divestment Business and described in more detail in **Schedule A** and **Schedule C**, of all current arrangements under which the Notifying Parties or Charger OpCo (as the case may be) or their Affiliated Undertakings supply products or services to the Divestment Business, constituting the Transitional Support Arrangements and as detailed in **Schedule A** and **Schedule C** unless otherwise agreed with the Purchaser(s);

(b) for the Transitional Support Period, on a cost basis to be agreed with the Purchaser and described in more detail in **Schedule A**, of all arrangements under which the Notifying Parties or Charger OpCo (as the case may be) or their Affiliated Undertakings co-manufacture Carte Noire Divestment Products that are not currently manufactured in the French Facility; and

(c) for the Transitional Support Period, on a cost basis to be agreed with the Purchaser and described in more detail in **Schedule C**, of all arrangements under which the Notifying Parties or Charger OpCo (as the case may be) or their Affiliated Undertakings co-manufacture products under the Danish Divestment Brand.

9. Strict firewall procedures will be adopted so as to ensure that any competitively sensitive information related to, or arising from the Transitional Support Arrangements will not be shared with, or passed on to, anyone outside the Notifying Parties' retained businesses or Charger OpCo (as the case may be).

10. For the avoidance of doubt, the Danish Divestment Brand business will not include any IP that relates exclusively or predominantly to products that are retained by the Parties, including without limitation the Café Noir products retained by the Parties as further described in Annex 5 **Schedule C** below.

<u>Commitment to license</u>

11. ***Austria***

(a) the Notifying Parties shall procure that Charger OpCo will grant a licence for the use of the Austrian Divestment Brand. The terms of this licence are further described in paragraph 4.1(a) of **Schedule D**;

(b) the Austrian Divestment Business shall include the benefit, on a cost basis to be agreed with the Purchaser, of co-manufacturing services as further described in paragraph 4.1(c) of **Schedule D**;

(c) the Austrian Divestment Business shall also include the technical services reasonably required by the Purchaser to enable the Purchaser to transfer the production of Senseo Filter Pad Products, as further described in paragraph 4.1(e) of **Schedule D**; and

(d) the Notifying Parties shall be deemed to have complied with the commitment in this paragraph 11 if, by the end of the Trustee Divestiture Period, the Notifying Parties, Charger OpCo or any relevant Affiliates, or the Divestiture Trustee has entered into a final binding licence agreement in relation to the Austrian Divestment Brand, and the Commission approves the proposed Purchaser and the terms of licence as being consistent with the Commitments in accordance with the procedure described in paragraph 21.

Section C
Related commitments

Preservation of viability, marketability and competitiveness

12. From the Effective Date until Closing or until the Austrian Closing Date (as the case may be), the Notifying Parties and Charger OpCo (as the case may be) shall preserve or procure the preservation of the economic viability, marketability and competitiveness of the Divestment Business and the Austrian Divestment Business, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the Divestment Business or the Austrian Divestment Business. In particular the Notifying Parties undertake on their behalf and on behalf of Charger OpCo:

(a) not to carry out any action that might have a significant adverse impact on the value, management or competitiveness of the Divestment Business or the Austrian Divestment Business or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the Divestment Business or the Austrian Divestment Business;

(b) to make available, or procure to make available, sufficient resources for the development of the Divestment Business and the Austrian Divestment Business, on the basis of the business plan of the Carte Noire Divestment Business, the existing business plans for the Merrild Products and the existing business plan for the Austrian Divestment Business;

(c) to take all reasonable steps, or procure that all reasonable steps are being taken, including appropriate incentive schemes (based on industry practice), to encourage all Key Personnel to remain with the Divestment Business, and not to solicit or move any Personnel to the remaining business of the Notifying Parties or Charger OpCo (as the case may be). Where, nevertheless, individual members of the Key Personnel exceptionally leave the Divestment Business, the Notifying Parties or Charger OpCo (as the case may be) shall provide a reasoned proposal to replace the person or persons concerned to the Commission and the Monitoring Trustee(s). The Notifying Parties or Charger OpCo (as the case may be) must be able to demonstrate to the Commission that the replacement is well suited to carry out the functions exercised by those individual members of the Key

Personnel. The replacement shall take place under the supervision of the Monitoring Trustee(s), who shall report to the Commission.

Hold-separate obligations

13. To the extent possible, without impeding the proper functioning of the Divestment Business and/or the business retained by the Notifying Parties, the Notifying Parties or Charger OpCo (as the case may be) commit, from the Effective Date until Closing, to keep the Divestment Business separate from the businesses they are retaining and to ensure that the Key Personnel of the Divestment Business have no involvement in any business retained by the Notifying Parties or Charger OpCo (as the case may be) and do not report to any individual outside the Divestment Business. To the extent possible, without impeding the proper functioning of the Austrian Divestment Business and/or the business retained by the Notifying Parties, the Notifying Parties or Charger OpCo (as the case may be) commit, from the Effective Date until the Austrian Closing Date, to keep the Austrian Divestment Business separate from the businesses they are retaining.

14. Until Closing, the Notifying Parties or Charger OpCo (as the case may be) shall assist the Monitoring Trustee(s) in ensuring, that the Divestment Business is managed as a distinct and saleable entity separate from the businesses which Charger OpCo is retaining. Immediately after the Effective date, the Notifying Parties shall appoint a Hold Separate Manager. The Notifying Parties may either appoint the Hold Separate Manager for the entire Divestment Business and the Austrian Divestment Business or one Hold Separate Manager for each of the Carte Noire Divestment Business, the Danish Divestment Business and the Austrian Divestment Business, or any combination thereof. Each Hold Separate Manager, who shall be part of the Key Personnel (except in the case of the Austrian Divestment Business), shall manage the Divestment Business and the Austrian Divestment Business independently and in the best interest of the business with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from the businesses retained by the Notifying Parties or Charger OpCo (as the case may be). Each Hold Separate Manager shall closely cooperate with and report to the Monitoring Trustee(s) and, if applicable, the Divestiture Trustee. Any replacement of a Hold Separate Manager shall be subject to the procedure laid down in paragraph 12(c) of these Commitments. The Commission may, after having heard the relevant Notifying Party and Charger OpCo, require that Notifying Party or Charger OpCo (as the case may be) to replace the Hold Separate Manager.

Ring-fencing

15. To the extent possible without impeding the proper functioning of the Divestment Business and the Austrian Divestment Business, the Notifying Parties or Charger OpCo (as the case may be) shall implement, or procure to implement, all necessary measures to ensure that they do not, after the Effective Date, obtain any Confidential Information relating to the Divestment Business and the Austrian Divestment Business. In

particular, the Notifying Parties will require appropriate members of the Carte Noire Divestment Business's workforce co-mingled with Mondelēz or appropriate members of the Notifying Parties' retained business's work force to sign non-disclosure agreements relating to Confidential Information, the details of which to be determined in coordination with the Monitoring Trustee. Moreover, the participation of the Divestment Business and the Austrian Divestment Business in any central information technology network shall be severed to the extent possible, without compromising the viability of the Divestment Business or the Austrian Divestment Business. The Notifying Parties or Charger OpCo (as the case may be) may obtain or keep information relating to the Divestment Business and the Austrian Divestment Business which is reasonably necessary for the divestiture of the Divestment Business and the Austrian Divestment Business or the disclosure of which to the Notifying Parties or Charger OpCo (as the case may be) is required by law.

Non-solicitation clause

16. The Parties undertake, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, the Key Personnel transferred with the Divestment Business for a period of two years after Closing.

Due diligence

17. In order to enable potential purchasers to carry out a reasonable due diligence of the Divestment Business and the Austrian Divestment Business, the Notifying Parties shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process and to the extent this has not yet been done already:

(a) provide to potential purchasers sufficient information as regards the Divestment Business and the Austrian Divestment Business;

(b) provide to potential purchasers sufficient information relating to the Personnel and allow them reasonable access to the Personnel.

Reporting

18. The Notifying Parties shall submit written reports in English on potential purchasers of the Divestment Business and the Austrian Divestment Business and developments in the negotiations with such potential purchasers to the Commission and the Monitoring Trustee no later than 10 days after the end of every month following the Effective Date (or otherwise at the Commission's request). The Notifying Parties shall submit a list of all potential purchasers having expressed interest in acquiring the Divestment Business or the Austrian Divestment Business to the Commission at each and every stage of the divestiture process, as well as a copy of all the offers made by potential purchasers within five days of their receipt (or, if received beforehand, within five days of the Effective Date).

19. Subject to the second sentence of this paragraph, the Notifying Parties shall inform the Commission and the Monitoring Trustee(s) on the

preparation of the data room documentation and the due diligence procedure and shall submit a copy of any information memorandum to the Commission and the Monitoring Trustee(s) before sending the memorandum out to potential purchasers. Where any such information memorandum has been sent to potential purchasers prior to the Effective Date, the Notifying Parties shall submit documentation describing the data room and the due diligence procedure and a copy of such information memorandum to the Commission and the Monitoring Trustee(s) no later than five days after the Effective Date (and if the Monitoring Trustee(s) is appointed later than this date, to the Monitoring Trustee(s) no later than five days after its appointment).

Section D
The Purchaser(s)

20. In order to be approved by the Commission, the Purchaser(s) must fulfil the following criteria:

    (a) The Purchaser(s) shall be independent of and unconnected to the Notifying Parties and their Affiliated Undertakings (this being assessed having regard to the situation following the divestiture).

    (b) The Purchaser(s) shall have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business or the Austrian Divestment Business (as the case may be) as a viable and active competitive force in competition with the Parties and other competitors;

    (c) The acquisition of the Divestment Business or the Austrian Divestment Business (as the case may be) by the Purchaser(s) must neither be likely to create, in light of the information available to the Commission, prima facie competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed. In particular, the Purchaser(s) must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business or the Austrian Divestment Business (as the case may be).

21. The final binding sale and purchase agreement(s) (as well as ancillary agreements) or, as the case may be, the unconditional and binding offer (or put option) under French law, relating to the divestment of the Divestment Business, and in case of the Austrian Divestment Business, the licence agreement relating to the Austrian Divestment Brand, shall be conditional on the Commission's approval. When the Notifying Parties or Charger OpCo have reached an agreement(s) with a purchaser(s) or, as the case may be, the purchaser has made an unconditional and binding offer (or given an unconditional or binding put option) under French law, they shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s) or, as the case may be, of the final unconditional binding offer (or put option) under French law, within one week to the Commission and the relevant Monitoring Trustee. The Notifying Parties must be able to demonstrate to

the Commission that (i) the purchaser(s) fulfils the Purchaser Criteria and that the Divestment Business is being sold, (ii) with specific reference to the Carte Noire Divestment Business, […]* has given its consent to grant the Purchaser of the Carte Noire Divestment Business an EEA-wide licence on terms no less favourable than currently enjoyed by Mondelēz, and (iii) the Austrian Divestment Brand is being licensed, in a manner consistent with the Decision and the Commitments. For the approval, the Commission shall verify that the purchaser(s) fulfils the Purchaser Criteria and that the Divestment Business is being sold, and the Austrian Divestment Brand is being licensed, in a manner consistent with the Commitments including their objective to bring about a lasting structural change in the market. At the Notifying Parties' request, the Commission may approve the sale of the Divestment Business without one or more Assets or parts of the Personnel, or by substituting one or more Assets or parts of the Personnel with one or more different assets or different personnel, if this does not affect the viability and competitiveness of the Divestment Business after the sale, taking account of the proposed purchaser(s).

Section E
Trustee

I. Appointment procedure

22. The Notifying Parties shall appoint one or more Monitoring Trustee(s) to carry out the functions specified in these Commitments for a Monitoring Trustee(s). The Notifying Parties commit not to close the Concentration before the appointment of a Monitoring Trustee(s).

23. If the Notifying Parties have not entered into a binding sale and purchase agreement(s) or, as the case may be, have not received an unconditional and binding offer (or put option) under French law, regarding the respective Divestment Business one month before the end of the First Divestiture Period or if the Commission has rejected a purchaser proposed by the Notifying Parties at that time or thereafter, the Notifying Parties shall appoint a Divestiture Trustee(s). The appointment of the Divestiture Trustee(s) shall take effect upon the commencement of the Trustee Divestiture Period.

24. The Trustee(s) shall:

    (i) at the time of appointment, be independent of the Notifying Parties and their Affiliated Undertakings;

    (ii) possess the necessary qualifications to carry out its mandate, for example have sufficient relevant experience as an investment banker or consultant or auditor; and

    (iii) neither have nor become exposed to a Conflict of Interest.

25. The Trustee(s) shall be remunerated by the Notifying Parties in a way that does not impede the independent and effective fulfilment of its mandate. In particular, where the remuneration package of a Divestiture

Trustee(s) includes a success premium linked to the final sale value of the Divestment Business, such success premium may only be earned if the divestiture takes place within the Trustee Divestiture Period.

Proposal by the Notifying Parties

26. No later than two weeks after the Effective Date, the Notifying Parties shall submit the name or names of one or more natural or legal persons whom the Notifying Parties propose to appoint as the Monitoring Trustee(s) to the Commission for approval. No later than one month before the end of the First Divestiture Period or on request by the Commission, the Notifying Parties shall submit a list of one or more persons whom the Notifying Parties propose to appoint as Divestiture Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the person or persons proposed as Trustee fulfil the requirements set out in paragraph 24 and shall include:

    (a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments;

    (b) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks;

    (c) an indication whether the proposed Trustee is to act as both Monitoring Trustee and Divestiture Trustee or whether different trustees are proposed for the two functions.

Approval or rejection by the Commission

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

New proposal by the Notifying Parties

28. If all the proposed Trustees are rejected, the Notifying Parties shall submit the names of at least two more natural or legal persons within one week of being informed of the rejection, in accordance with paragraphs 22 and 26 of these Commitments.

Trustee nominated by the Commission

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

II. Functions of the Trustee

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

Duties and obligations of the Monitoring Trustee(s)

31. The Monitoring Trustee(s) shall:

    (a) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision;

    (b) oversee, in close co-operation with the Hold Separate Manager(s), the on-going management of the Divestment Business and the Austrian Divestment Business with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by the Notifying Parties or Charger OpCo (as the case may be) with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee(s) shall:

        (i) monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Business and the Austrian Divestment Business, and the keeping separate of the Divestment Business from the business retained by the Parties, in accordance with paragraphs 9, 10 and 15 of these Commitments;

        (ii) supervise the management of the Divestment Business and the Austrian Divestment Business as a distinct and saleable entity, in accordance with paragraph 14 of these Commitments;

        (iii) with respect to Confidential Information:

            (A) determine and effectively put in place all necessary measures to ensure that the Notifying Parties or ChargerOpCo (as the case may be) does not after the Effective Date obtain any Confidential Information relating to the Divestment Business and the Austrian Divestment Business;

            (B) in particular strive for the severing of the Divestment Business' participation in a central information technology network to the extent possible, without compromising the viability of the Divestment Business and the Austrian Divestment Business;

(C) make sure that any Confidential Information relating to the Divestment Business and the Austrian Divestment Business obtained by the Notifying Parties or Charger OpCo (as the case may be) before the Effective Date is eliminated to the extent technically possible and will not be used by the party who has obtained such information;

(D) decide whether such information may be disclosed to or kept by the Notifying Parties or Charger OpCo (as the case may be) as the disclosure is reasonably necessary to allow that party to carry out the divestiture or as the disclosure is required by law; and

(iv) monitor the splitting of assets and the allocation of Personnel between the Divestment Business and the Notifying Parties or Charger OpCo (as the case may be, and where applicable) or Affiliated Undertakings;

(c) propose to the Notifying Parties or Charger OpCo (as the case may be) such measures as the Monitoring Trustee considers necessary to ensure that party's compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the Divestment Business and the Austrian Divestment Business, the holding separate of the Divestment Business and the Austrian Divestment Business and the nondisclosure of competitively sensitive information;

(d) review and assess potential purchasers as well as the progress of the divestiture process and verify that, dependent on the stage of the divestiture process:

(i) potential purchasers receive sufficient and correct information relating to the Divestment Business and the Austrian Divestment Business and the Personnel in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process, and

(ii) potential purchasers are granted reasonable access to the Personnel;

(e) act as a contact point for any requests by third parties, in particular potential purchasers, in relation to the Commitments;

(f) provide to the Commission, sending the Notifying Parties or Charger OpCo (as the case may be) a non-confidential copy at the same time, a written report within 15 days after the end of every month that shall cover the operation and management of the Divestment Business and the Austrian Divestment Business as well as the splitting of assets and the allocation of Personnel (where applicable) so that the Commission can assess whether the business is held in a manner consistent with the Commitments and the progress of the divestiture process as well as potential purchasers;

(g) promptly report in writing to the Commission, sending the Notifying Parties or Charger OpCo (as the case may be) a non-confidential copy at the same time, if it concludes on reasonable grounds that either of the Notifying Parties or Charger OpCo is failing to comply with these Commitments;

(h) within one week after receipt of the documented proposal referred to in paragraph 21 of these Commitments, submit to the Commission, sending the Notifying Parties or Charger OpCo (as the case may be) a non-confidential copy at the same time, a reasoned opinion as to the suitability and independence of the proposed purchaser and the viability of the Divestment Business and the Austrian Divestment Business after the sale and as to whether the Divestment Business is sold and the Austrian Divestment Business is licensed in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the Sale of the Divestment Business without one or more Assets or not all of the Personnel affects the viability of the Divestment Business after the sale, taking account of the proposed purchaser;

(i) assume the other functions assigned to the Monitoring Trustee(s) under the conditions and obligations attached to the Decision.

32. If the Monitoring and Divestiture Trustee are not the same legal or natural persons, the Monitoring Trustee and the Divestiture Trustee shall cooperate closely with each other during and for the purpose of the preparation of the Trustee Divestiture Period in order to facilitate each other's tasks.

Duties and obligations of the Divestiture Trustee

33. Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at no minimum price the Divestment Business (or the remaining proportion) to a purchaser, provided that the Commission has approved both the purchaser and the final binding sale and purchase agreement (and ancillary agreements) as in line with the Decision and the Commitments in accordance with paragraphs 20 and 21 of these Commitments. The Divestiture Trustee shall include in the sale and purchase agreement (as well as in any ancillary agreements) such terms and conditions as it considers appropriate for an expedient sale in the Trustee Divestiture Period. In particular, the Divestiture Trustee may include in the sale and purchase agreement such customary representations and warranties and indemnities as are reasonably required to effect the sale. The Divestiture Trustee shall protect the legitimate financial interests of the Notifying Parties and Charger OpCo (as the case may be), subject to the Notifying Parties' and Charger OpCo's unconditional obligation to divest

at no minimum price in the Trustee Divestiture Period. These provisions will apply *mutatis mutandis* to the licensing of the Austrian Divestment Brand.

34. In the Trustee Divestiture Period (or otherwise at the Commission's request), the Divestiture Trustee shall provide the Commission with a comprehensive monthly report written in English on the progress of the divestiture process. Such reports shall be submitted within 15 days after the end of every month with a simultaneous copy to the Monitoring Trustee and a non-confidential copy to the Notifying Parties.

III. Duties and obligations of the Parties

35. The Notifying Parties or Charger OpCo as appropriate shall provide and shall cause its advisors to provide the Trustee(s) with all such co-operation, assistance and information as the Trustee(s) may reasonably require to perform its tasks. The Trustee(s) shall have full and complete access to any of the Notifying Parties', Charger OpCo's or the Divestment Business' and the Austrian Divestment Business' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments and the Notifying Parties, Charger OpCo and the Divestment Business shall provide the Trustee(s) upon request with copies of any document. The Notifying Parties, Charger OpCo and the Divestment Business shall make available to the Trustee(s) one or more offices on their premises and shall be available for meetings in order to provide the Trustee(s) with all information necessary for the performance of its tasks.

36. The Notifying Parties or Charger OpCo (as appropriate) shall provide the Monitoring Trustee(s) with all managerial and administrative support that it may reasonably request on behalf of the management of the Divestment Business and the Austrian Divestment Business. This shall include all administrative support functions relating to the Divestment Business and the Austrian Divestment Business which are currently carried out at headquarters level. The Notifying Parties or Charger OpCo (as the case may be) shall provide and shall cause its advisors to provide the Monitoring Trustee(s), on request, with the information submitted to potential purchasers, in particular give the Monitoring Trustee(s) access to the data room documentation and all other information granted to potential purchasers in the due diligence procedure. The Notifying Parties or Charger OpCo (as the case may be) shall inform the Monitoring Trustee(s) on possible purchasers, submit lists of potential purchasers at each stage of the selection process, including the offers made by potential purchasers at those stages, and keep the Monitoring Trustee(s) informed of all developments in the divestiture process.

37. The Notifying Parties and Charger OpCo (as appropriate) shall grant or procure Affiliated Undertakings to grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee(s) to effect the sale (including ancillary agreements), the Closing and all actions and

declarations which the Divestiture Trustee(s) considers necessary or appropriate to achieve the sale and the Closing, including the appointment of advisors to assist with the sale process. Upon request of the Divestiture Trustee(s), the Notifying Parties or Charger OpCo (as appropriate) shall cause the documents required for effecting the sale and the Closing to be duly executed.

38. The Notifying Parties or Charger OpCo (as appropriate) shall indemnify the Trustee(s) and its employees and agents (each an "***Indemnified Party***") and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to the Notifying Parties or Charger OpCo (as the case may be) for, any liabilities arising out of the performance of the Trustee's duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Trustee(s), its employees, agents or advisors.

39. At the expense of the Notifying Parties or Charger OpCo (as appropriate), the Trustee(s) may appoint advisors (in particular for corporate finance or legal advice), subject to that party's approval (this approval not to be unreasonably withheld or delayed) if the Trustee(s) considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee(s) are reasonable. Should that party refuse to approve the advisors proposed by the Trustee(s) the Commission may approve the appointment of such advisors instead, after having heard that party. Only the Trustee(s) shall be entitled to issue instructions to the advisors. Paragraph 37 of these Commitments shall apply *mutatis mutandis*. In the Trustee Divestiture Period, the Divestiture Trustee(s) may use advisors who served the Notifying Parties or Charger OpCo (as the case may be) during the First Divestiture Period if the Divestiture Trustee(s) considers this in the best interest of an expedient sale.

40. The Notifying Parties and Charger OpCo (as the case may be) agree that the Commission may share Confidential Information proprietary to that party with the Trustee(s). The Trustee(s) shall not disclose such information and the principles contained in Article 17 (1) and (2) of the Merger Regulation apply *mutatis mutandis*.

41. The Notifying Parties agree that the contact details of the Monitoring Trustee(s) are published on the website of the Commission's Directorate- General for Competition and they shall inform interested third parties, in particular any potential purchasers, of the identity and the tasks of the Monitoring Trustee(s).

42. For a period of 10 years from the Effective Date the Commission may request all information from the Parties that is reasonably necessary to monitor the effective implementation of these Commitments.

IV. Replacement, discharge and reappointment of the Trustee

43. If the Trustee(s) ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee(s) to a Conflict of Interest:

    (a) the Commission may, after hearing the Trustee(s) and the Notifying Parties or Charger OpCo (as the case may be), require that party to replace the Trustee(s); or

    (b) the Notifying Parties or Charger OpCo (as the case may be) may, with the prior approval of the Commission, replace the Trustee(s).

44. If the Trustee(s) is removed according to paragraph 43 of these Commitments, the Trustee(s) may be required to continue in its function until a new Trustee(s) is in place to whom the Trustee(s) has effected a full hand over of all relevant information. The new Trustee(s) shall be appointed in accordance with the procedure referred to in paragraphs 19-26 of these Commitments.

45. Unless removed according to paragraph 43 of these Commitments, the Trustee(s) shall cease to act as Trustee(s) only after the Commission has discharged it from its duties after all the Commitments with which the Trustee(s) has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee(s) if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

Section F
The review clause

46. The Commission may extend the time periods foreseen in the Commitments in response to a request from the Notifying Parties or, in appropriate cases, on its own initiative. Where a party requests an extension of a time period, it shall submit a reasoned request to the Commission no later than one month before the expiry of that period, showing good cause**.** This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to the Notifying Parties. Only in exceptional circumstances shall that party be entitled to request an extension within the last month of any period.

47. The Commission may further, in response to a reasoned request from the Notifying Parties showing good cause waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to the Notifying Parties. The request shall not have the effect of suspending the application of the undertaking and, in particular, of suspending the expiry of any time period in which the undertaking has to be complied with.

Section G

Entry into force

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

SCHEDULE A […]*

SCHEDULE B […]*

SCHEDULE C […]*

SCHEDULE D […]*