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***Case No COMP/M.7340 - FERRERO INTERNATIONAL/  
OLTAN GROUP***

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 12/09/2014

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## EUROPEAN COMMISSION

Brussels, 12.09.2014  
C(2014) 6505 final

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

### **To the notifying party:**

Dear Sir/Madam,

**Subject: Case M.7340 - FERRERO INTERNATIONAL/ OLTAN GROUP  
Commission decision pursuant to Article 6(1)(b) of Council Regulation  
No 139/2004<sup>1</sup>**

1. On 7 August 2014, the European Commission received a notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertaking Ferrero International S.A. ("Ferrero", Luxembourg) acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of the whole of the undertaking Oltan Gıda Maddeleri İhracat İthalat ve Ticaret Anonim Şirketi, the undertaking Oltan Fındık İşletmeleri Sanayi Ve Ticaret Anonim Şirketi, the undertaking Oltan Fındık Sanayi ve Ticaret Anonim Şirketi, the undertaking Oltan Boyer SAS and the undertaking Oltan Grout Limited (together "Oltan") by way of purchase of shares.<sup>2</sup> Ferrero is hereinafter referred to as "the Notifying Party". Ferrero and Oltan are collectively referred to as "the Parties".

### **I. THE PARTIES AND THE TRANSACTION**

2. Ferrero is the holding company of the Ferrero group, a producer of foodstuffs, active worldwide in the manufacturing and sale of confectionery and other sweet products (e.g.

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

<sup>2</sup> Publication in the Official Journal of the European Union No C 267, 14.8.2014, p. 28.

chocolate confectionery, candies, snacks and sweet spreadable products), and in the purchase and commercialization of edible nuts, in particular hazelnuts.

3. Oltan is a group of companies active in the purchase, processing and commercialization of edible nuts, and in particular hazelnuts, all over the world.
4. On 16 July 2014, Ferrero entered into three sale and purchase agreements with Mr Orhan Veli Oltan pursuant to which Ferrero acquires 100% of the share capital and voting rights of Oltan. By means of such sale and purchase agreements, Ferrero will acquire sole control over Oltan. The proposed transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

## **II. EU DIMENSION**

5. The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 000 million [Ferrero: EUR [...] million and Oltan: EUR [...] million]. Each of them has an EU-wide turnover in excess of EUR 250 million [Ferrero: EUR [...] million and Oltan: EUR [...] million], but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State.
6. The notified transaction therefore has an EU dimension pursuant to Article 1(2) of the Merger Regulation.

## **III. COMMISSION'S ASSESSMENT**

### **A. Relevant product markets**

7. The proposed transaction involves horizontal overlaps and vertical relationships. Horizontal overlaps arise in the markets for the procurement and supply of hazelnuts, where both Ferrero and Oltan operate. Ferrero also uses hazelnuts as an ingredient for the manufacturing of chocolate confectionery and sweet spreadable products. There are therefore vertical relationships between Oltan's upstream activities, and Ferrero's downstream activities.

#### ***1. Overview of the hazelnut procurement and supply chain***

8. The proposed transaction mainly concerns the procurement and supply of hazelnuts.
9. Hazelnuts (*Corylus avellana*), or filberts, originated in the Mediterranean region. They are currently grown all over the world in the Northern as well as in the Southern hemisphere. Turkey accounts for around 70% of worldwide hazelnut production; other producing countries include *inter alia* Italy, Georgia and Azerbaijan.
10. After collection, hazelnuts need to undergo several processing stages. First of all, hazelnuts need to be cleaned and dried. Processors air-dry the nuts to reduce their moisture level. Once dried, the hazelnuts are subject to a first sizing in the shell in order to separate nuts of different sizes. The shells of the nuts are then cracked in the crackers, and the nutmeats are separated from the shells. Shelled nuts are sized once again and sorted by grade. Sizing, of both in shell and shelled hazelnuts, takes place in cylinders with holes of different sizes. Hazelnuts are moved through the processing facility by exploiting the force of gravity in tall structures.

11. Raw hazelnuts may further undergo different types of processing. They may be dry roasted in an oven (most hazelnuts are lightly roasted to provide flavour), or they may be diced or processed into flour or paste.
12. Hazelnuts are sold all over the world as raw or processed hazelnuts to large industrial customers that are, by market convention, customers who purchase 2 000 tons or more of shelled hazelnuts, or to smaller non-industrial customers such as patisseries and bakeries.
13. Given that the proposed transaction concerns the acquisition of a hazelnut trader active almost exclusively in the trade of Turkish hazelnuts and given that Turkey is by far the largest exporter of hazelnuts, accounting for around 70% of worldwide export, the following will briefly provide a more detailed description of the hazelnut supply chain in Turkey.
14. In Turkey, the hazelnut supply chain is divided into five levels:
  - a. Farmers cultivate the land and grow the hazelnuts. There are around 300,000 - 400,000 farmers in Turkey, with a fragmented orchard structure, each orchard being on average one hectare.
  - b. Farmers sell the hazelnuts to collectors, called manau in Turkish. There are around 800-1,000 manau in Turkey, whose main function is to act as intermediaries between farmers and players further downstream in the supply chain by gathering sufficient quantities of hazelnuts from the orchards that are then sold on to crackers or, sometimes, directly to exporters.
  - c. Crackers are undertakings that shell hazelnuts and carry out a first selection based on the size and quality of the shelled hazelnuts. According to the Notifying Party, there are around 80-100 crackers in Turkey. Crackers generally do not export hazelnuts but sell them on to exporters.
  - d. Exporters are larger firms that have the necessary know-how and infrastructure to carry out a more sophisticated selection of hazelnuts than crackers and to process hazelnuts by, for example, toasting or dicing them. According to the Notifying Party, exporters generally export most of the hazelnuts they buy as around 80% of the Turkish hazelnut harvest is exported. Hazelnuts are sold to other traders, to large industrial customers in the confectionery sector, and to other customers such as smaller confectionery producers, bakeries and patisseries.
  - e. Traders purchase hazelnuts from exporters and resell them on the international market. These traders such as Cargill, Olam, Tiryaki Agro Gida San Ve Tic, Shoei Fodds Corporation, Besana, or brokers generally deal in several products, whether edible nuts or other food ingredients, and sell, potentially, to the same customers as the exporters, although the largest industrial customers tend to purchase directly from exporters. According to the Notifying Party, exporters and traders compete against each other.
15. The structure of the hazelnut procurement chain in Turkey described above is not rigid. In particular, exporters may purchase hazelnuts from either crackers or manau. Oltan, for

example, buys from both categories of suppliers. According to the Notifying Party, the choice depends on three main factors:

- a. the quantity of the harvest;
- b. the supply and availability of hazelnuts at any given time; and
- c. the quality of the hazelnuts available.

## **2. *Procurement and supply of hazelnut***

16. The Parties do not operate their own hazelnut plantations, but rather purchase hazelnuts from farmers, crackers and exporters. Ferrero<sup>3</sup> and Oltan purchase hazelnuts in Turkey and other countries around the world, and resell them on a global basis.
17. There are no Commission precedents relating to the procurement and supply of hazelnuts.
18. The Notifying Party submits that the relevant product markets are the market for the procurement and supply of edible nuts. In particular, edible nuts have similar characteristics and satisfy the same needs, as the nutritional content of edible nuts is very similar, all types of edible nuts contain antioxidants, all edible nuts can be consumed as a snack or can be used as a food ingredient or in the manufacture of confectionery products and sweet spreads or in the preparation of cakes, desserts and bread. In addition, according to the Notifying Party, the soil and weather conditions necessary for the growth of nut tree cultivation are very similar, all edible nuts are almost all harvested once a year, the know-how, equipment and logistical infrastructure necessary for the procurement of one type of edible nuts is similar to those necessary for the procurement of other types of edible nuts.
19. The large majority of the respondents to the Commission's requests for information stated that hazelnuts are not substitutable with other edible nuts.<sup>4</sup> This is because of the unique taste profile of hazelnuts, which make them unsuitable for substitution, as well as the need to adjust recipes for final products, which may affect the final taste. This is confirmed by the fact that no hazelnut buyer among those questioned by the Commission has in the past 5 years switched a substantial share of their hazelnut purchases to other types of edible nuts.<sup>5</sup>
20. In addition, the large majority of the respondents to the Commission's requests for information stated that it is not possible for hazelnut suppliers to start supplying other types of edible nuts, and that a price change in hazelnuts would not have an impact on other types of edible nuts.

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<sup>3</sup> Ferrero entered the procurement and supply of hazelnuts in 2013, through its acquisition of the Stelliferi group, an Italian hazelnut trader active mainly in Italy and, to a lesser extent, in Turkey and other producing countries.

<sup>4</sup> See replies to question 4 of the Commission's request for information addressed to hazelnuts customers (Q2) on 7 August 2014.

<sup>5</sup> See replies to question 5 of the Commission's request for information addressed to hazelnuts customers (Q2) on 7 August 2014.

21. Respondents have also stated that in general all different types and qualities of hazelnuts are interchangeable, and that suppliers can switch from one type of hazelnuts to another within a short time frame and without incurring significant expenses.<sup>6</sup>
22. In light of the above and of the other available evidence, the Commission will assess in this decision the impact of the proposed transaction on the markets for the procurement and supply of hazelnuts. In any event, it is not necessary to conclude on the precise scope of the product market, given that the proposed transaction does not raise serious doubts as to its compatibility with the internal market under any plausible definition.

### **3. *Manufacturing and sale of chocolate confectionery***

23. Ferrero is active in the manufacturing and sale of confectionery. Ferrero uses hazelnuts as an ingredient for some of its chocolate products, such as Kinder Bueno, Kinder Surprise, Rocher and Mon Cheri.
24. In *Kraft/Danone Biscuits*, the Commission defined as two different relevant markets countlines<sup>7</sup> and other chocolate confectionery, only limited to Hungary.<sup>8</sup> In *Kraft Foods/Cadbury*, the Commission found different relevant product markets for countlines, chocolate tablets and pralines.<sup>9</sup>
25. The Notifying Party submits that the relevant product market is the market for the manufacturing and sale of chocolate confectionery. The Notifying Party also submits that the above-mentioned findings of the Commission are not applicable to the proposed transaction because the segmentation of the chocolate confectionery sector based on the product format was upheld only in relation to certain national markets and not for others, which means that this approach cannot be generalised as it may vary from country to country.
26. The Commission's market investigation has broadly confirmed the approach followed by the Commission in previous cases. In any event, the precise scope of the product market can be left open, given that the transaction does not raise serious doubts as to its compatibility with the internal market under any plausible definition.

### **4. *Manufacturing and sale of sweet spreadable products***

27. Ferrero is active in the market for manufacturing and sale of sweet spreadable products. In particular, Ferrero uses hazelnuts as an ingredient for manufacturing its sweet spreadable cream Nutella.
28. In *Heinz/CSM*, the Commission considered that the relevant market for the purpose of assessing that case included all sizes of bread toppings packaging. The Commission

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<sup>6</sup> See replies to questions 8 and 10 of the Commission's request for information addressed to hazelnuts customers (Q2) on 7 August 2014.

<sup>7</sup> Chocolate countlines are chocolate-covered bars designed to be eaten in one go (e.g. Kinder Bueno).

<sup>8</sup> Case COMP/M.4824 *Kraft/Danone Biscuits*, para 22.

<sup>9</sup> Case COMP/M.5644 *Kraft Foods/Cadbury*, paras 22-23.

pointed out that sweet bread toppings may be distinguished from savoury bread toppings.<sup>10</sup>

29. The Notifying Party submits that the relevant product market is the market for the manufacturing and sale of sweet spreadable products. The Notifying Party submits that Ferrero's internal reporting is structured on the basis that there is a market for sweet spreadable products in which Ferrero competes against suppliers of products such as jam, honey and peanut butter. The Notifying Party submitted information also on a narrower potential product market definition, which could be the market for the manufacturing and sale of chocolate spreadable products.
30. The market investigation has been inconclusive as to whether chocolate spreadable products form part of the same market as other sweet spreadable products. In any event, the precise scope of the product market can be left open, given that the transaction does not raise serious doubts under any plausible definition.

## **B. Relevant geographic markets**

### ***1. Procurement and supply of hazelnut***

31. There are no Commission precedents relating to the procurement and supply of hazelnuts.
32. The Notifying Party submits that the relevant geographic markets for the procurement and supply of hazelnuts are worldwide in scope mainly because of (i) globally active exporters, (ii) low transport costs and (iii) globally active customers.
33. In procurement markets, international traders and exporters compete in the country of origin for exportable quantities. Respondents overall converged in mentioning the elements submitted by the Notifying Party (e.g. low transport costs). In view of the above, the Commission concludes that the relevant geographic market for the procurement of hazelnuts is global in scope.
34. The relevant geographic market for the supply of hazelnuts is at least EEA-wide in scope. The majority of the respondents to the Commission's requests for information stated that contracts for the sale of hazelnuts are negotiated on a global basis.<sup>11</sup> In any event, it is not necessary to conclude on the precise scope of the geographic market for the supply of hazelnuts, given that the transaction does not raise serious doubts under any plausible approach.

### ***2. Manufacturing and sale of chocolate confectionery***

35. According to Commission's previous decisions,<sup>12</sup> the market for manufacturing and sale of chocolate confectionery is national. This is not contested by the Notifying Party.

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<sup>10</sup> Case COMP/M.2302 - *Heinz/CSM*, para. 14.

<sup>11</sup> See replies to question 17 of the Commission's request for information addressed to hazelnuts suppliers (Q1) on 7 August 2014.

<sup>12</sup> See e.g. COMP/M. *Kraft/Danone Biscuits*, para. 19; COMP/M.2072 *Philipp Morris/Nabisco*, para. 17.

36. The Commission's market investigation has essentially confirmed the Commission's approach in previous cases. In any event, the exact definition of the geographic market can be left open, given that the transaction does not raise serious doubts under any alternative approach.

### ***3. Manufacturing and sale of sweet spreadable products***

37. In *Heinz/CSM*, the Commission left open the geographic market definition for bread toppings.
38. The Notifying Party submits that the geographic market definition for manufacturing and sale of sweet spreadable products is at least national in scope. Customer tastes vary between Member States, negotiations with customers of sweet spreadable products are predominantly national in scope and the prices of sweet spreadable products are generally determined on a national basis.
39. The Commission's market investigation has essentially confirmed the Notifying Party's position. In any event, the exact definition of the geographic market can be left open, given that the transaction does not raise serious doubts under any alternative approach.

### **C. Competitive assessment**

#### **Horizontal overlaps**

##### ***1. Procurement and supply of hazelnuts***

40. Both Ferrero and Oltan are active in the procurement and supply of hazelnuts.
41. According to the Notifying Party, the size of the worldwide market for the procurement of hazelnuts was approximately [...] tons in 2013. On this market, the merged entity's combined market share would be approximately [20-30]% (Ferrero [5-10]%, Oltan [10-20]%). The merged entity's main competitors would be Progida (market share of [5-10]% in 2013, up from [0-5]% the previous year),<sup>13</sup> Ozgun (market share of [5-10]%), Balsu (market share of [0-5]%), Durak (market share of [0-5]%), Gursoy and Yavuz.
42. According to the Notifying Party, the size of the worldwide market for the supply of hazelnuts would be around [...] tons in 2013. On the worldwide market for the supply of hazelnuts, Ferrero and the Oltan would have market shares of [0-5]% and [20-30]%, respectively. The other players active in the supply of hazelnuts would be almost the same as in the procurement of hazelnuts.

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<sup>13</sup> According to the Notifying Party, the market share increase is due to Progida's acquisition by Olam and suggests that the market for the procurement of hazelnuts is relatively fluid and there are possibilities for growth for companies with the right financial, technical and commercial characteristics.



Figure 1: Market shares of the Parties (2013, volume)

		Ferrero	Oltan	Combined
<b>Hazelnuts</b>	Worldwide Procurement	[5-10]%	[10-20]%	<b>[20-30]%</b>
	Worldwide Supply	[0-5]%	[20-30]%	<b>[20-30]%</b>
	EEA Supply	[5-10]%	[20-30]%	<b>[20-30]%</b>

Source: Notifying Party's estimates based on Istanbul Exporters' Union<sup>14</sup>

43. Overall, the hazelnut procurement and supply markets are relatively fragmented. Hazelnut customers have generally confirmed that further to the proposed transaction a sufficient number of suppliers would still remain active on the market.<sup>15</sup>
44. Moreover, customers have confirmed that multi-sourcing and switching between different suppliers are common practices in the market.<sup>16</sup> All players have sourced in recent years from more than one suppliers and often from 4 or 5 different suppliers, and respondents who expect to increase their requirements in the future have stated that they will find sufficient alternatives to expand their purchases. In addition, the majority of the respondents stated that in case of price increase from one supplier, they would be able to switch to a different supplier within a short time and without incurring significant costs.
45. Half of the customers have also stated that all or most of the hazelnut suppliers are capable of meeting their quality specification. No customer has stated that Oltan is an unavoidable commercial partner, or that it has peculiar distinctive features in terms of quality of the hazelnuts it supplies.
46. Furthermore, the Notifying Party also submits that entry of new players in this sector is frequent: from the list published by the Istanbul Exporters' Union, it appears that three exporters entered the market in 2010, accounting for a total export share of 1.8%, one exporter entered the market in 2011, accounting for an export share of 1.8%, in 2012 three players entered the market, accounting for a total export share of 0.8%, and in 2013 three players entered the market, accounting for a total market share of 0.4%. These findings are broadly in line with the result of the market investigation, even if according to some players there are some barriers for new players to enter the markets for the procurement and supply of hazelnuts.
47. In view of the above, the Commission concludes that the proposed transaction does not raise serious doubts as to its compatibility with the internal market with respect to the procurement and supply of hazelnuts.

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<sup>14</sup> The Notifying Party has carried out the following exercise: it has added to the export data provided by the Istanbul Exporters' Union an estimate of the volume of the domestic consumption of hazelnuts in Turkey based on its knowledge of the market. To the figure representing the sale of Turkish hazelnuts (representing about 70% of the worldwide market), the Notifying Party has added its estimates of the volumes of the remaining countries.

<sup>15</sup> See replies to question 24 of the Commission's request for information addressed to hazelnuts customers (Q2) on 7 August 2014.

<sup>16</sup> See replies to question 40 of the Commission's request for information addressed to hazelnuts customers (Q2) on 7 August 2014.

## Vertical relationships

### 2. *Supply of hazelnut / Manufacturing and sale of chocolate confectionery*

48. The proposed transaction gives rise to technically vertically affected markets between the Parties' activities in the supply of hazelnuts (upstream) and Ferrero's activity in the manufacturing and sale of chocolate confectionery (downstream).
49. In the worldwide market for sale of hazelnuts, the market share of the merged entity would be [20-30]% in 2013. In the downstream markets for the manufacturing and sale of chocolate confectionery, Ferrero has a market share above 30% only in Italy ([30-40]% in 2013). In the potential narrower segments for countlines, chocolate tablets and pralines, the proposed transaction would lead to technically affected markets for countlines in France ([40-50]%) and Italy ([60-70]%), and for pralines in Cyprus (range of [70-80]%), Germany ([30-40]%), Greece ([30-40]%), Spain ([40-50]%) and Italy ([30-40]%). However, even in these narrower segments, the proposed transaction is not likely to create anti-competitive foreclosure effects given that the merged entity does not gain any significant market power on any upstream market and therefore the merged entity does not have the ability to foreclose access to hazelnuts.
50. According to the Notifying Party, Ferrero, once vertically integrated with Oltan, would continue to supply hazelnuts to its competitors in the downstream markets, as it did after the acquisition of Stelliferi in 2013. Even if the amount of hazelnuts purchased by Ferrero through Oltan<sup>17</sup> increased post-transaction, Ferrero would free an equivalent amount of hazelnuts – currently purchased from players other than Oltan – that would become available on the market. This would partially offset any potential reduction of the supplies of hazelnuts to Ferrero International's downstream competitors previously supplied by Oltan. In addition, Ferrero is already the major customer of Oltan.<sup>18</sup>
51. In addition, the large majority of the respondents to the Commission's requests for information confirmed that the Parties will not have the ability and incentive to foreclose access to hazelnuts.<sup>19</sup>
52. In the light of the above, of other available evidence, and taking into account that the merged entity would not gain significant market power so as to foreclose access to upstream market under any plausible definition, the Commission concludes that the proposed transaction does not raise serious doubts as to its compatibility with the internal market as regards the supply of hazelnuts for the downstream manufacturing and sale of chocolate confectionery.

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<sup>17</sup> In 2013, [40-50]% of Ferrero International's overall hazelnut requirements were satisfied by Oltan's volumes.

<sup>18</sup> In 2013 Oltan sold around [...] tons of shelled hazelnuts to third parties and out of these volumes, [...] tons were sold to Ferrero International, representing [50-60]% of Oltan's sales.

<sup>19</sup> See replies to question 51 of the Commission's request for information addressed to hazelnuts customers (Q2) on 7 August 2014 and replies to question 10 of the Commission's request for information addressed to retailers (Q3) on 7 August 2014.

### *3. Supply of hazelnut / Manufacturing and sale of sweet spreadable products*

53. The proposed transaction gives rise to technically vertically affected markets with respect to the Parties' activities in the supply of hazelnuts (upstream) and Ferrero's activity in the manufacturing and sale of sweet spreadable products (downstream).
54. In the worldwide market for sale of hazelnuts, the market share of the merged entity would be [20-30]% in 2013. In the downstream markets for the manufacturing and sale of sweet spreadable products, Ferrero has a market share above 30% only in Italy ([40-50]% in 2013). In the potential narrower market for chocolate spreadable products, the proposed transaction would lead to technically affected markets with high to very high market shares in Austria, Belgium, Cyprus, Denmark, Finland, France, Germany, Hungary, Ireland, Italy, Poland, Slovenia, Sweden, the Netherlands and the UK in a range from [30-40]% to [90-100]%. However, even in this narrower segment, the proposed transaction cannot create anti-competitive foreclosure effects given that the merged entity does not gain any significant market power on any upstream market and therefore the merged entity does not have the ability to foreclose access to hazelnuts.
55. The elements described in the above paragraph 50 also apply to the market for the manufacturing and sale of sweet spreadable products.
56. In addition, the large majority of the respondents to the Commission's requests for information confirmed that the Parties will not have the ability and incentive to foreclose access to hazelnuts.<sup>20</sup>
57. In the light of the above, of other available evidence, and taking into account that the merged entity would not gain significant market power so as to foreclose access to upstream market under any plausible definition, the Commission concludes that the proposed transaction does not raise serious doubts as to its compatibility with the internal market as regards the supply of hazelnuts for the downstream manufacturing and sale of sweet spreadable products.

### **IV. CONCLUSION**

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

*For the Commission*  
(signed)  
*Neelie KROES*  
*Vice-President*

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<sup>20</sup> See replies to question 51 of the Commission's request for information addressed to hazelnuts customers (Q2) on 7 August 2014 and replies to question 10 of the Commission's request for information addressed to retailers (Q3) on 7 August 2014.