



EUROPEAN COMMISSION
DG Competition

***Case M.8150 - DANONE / THE WHITEWAVE FOODS
COMPANY***

Only the English text is available and authentic.

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

Article 6(1)(b) in conjunction with Art 6(2)
Date: 16/12/2016

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EUROPEAN COMMISSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

To the notifying party:

Subject: Case M.8150 - DANONE / THE WHITEWAVE FOODS COMPANY
Commission decision pursuant to Article 6(1)(b) in conjunction with Article 6(2) of Council Regulation No 139/2004¹ and Article 57 of the Agreement on the European Economic Area²

Dear Sir or Madam,

- (1) On 26 October 2016, the European Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which Danone S.A. ("Danone", France) acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control over The WhiteWave Foods Company ("WhiteWave", USA) (the "Transaction"). Danone is referred to as the Notifying Party, while Danone and WhiteWave are collectively referred to as the "Parties".

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

² OJ L 1, 3.1.1994, p. 3 (the 'EEA Agreement').

1. THE PARTIES

- (2) **Danone** is a food-products group of companies headquartered in France. It has a worldwide presence and its activities may be divided into four main divisions: (i) the fresh dairy products division; (ii) the waters division; (iii) the early life nutrition division; and (iv) the medical nutrition division. Danone is publicly listed on the Euronext Paris stock exchange.
- (3) **WhiteWave** is a US consumer packaged food and beverage group of companies headquartered in Denver, Colorado and publicly listed on the New York Stock Exchange. It manufactures, markets and distributes plant-based foods and milks, coffee creamers and beverages, premium dairy products and organic products primarily in North America and, to a lesser extent, in Europe. WhiteWave achieves 86% of its turnover in North America and 14% in Europe.

2. THE OPERATION AND CONCENTRATION

- (4) The Transaction was publicly announced on 7 July 2016. According to the Merger Agreement signed by the Parties on 6 July 2016, the operation will be carried out through a merger of a subsidiary of Danone S.A. into WhiteWave, in exchange for cash, so that WhiteWave becomes solely controlled by Danone.
- (5) The Transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3. EU DIMENSION

- (6) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million³ [Danone: EUR 22 412 million; WhiteWave: EUR 3 485 million]. Each of them has an EU-wide turnover in excess of EUR 250 million [Danone: EUR [...] million; WhiteWave: EUR [...] million], but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has an EU dimension within the meaning of Article 1(2) of the Merger Regulation.

4. COMPETITIVE ASSESSMENT

4.1. Activities of the Parties in the EEA

- (7) In Europe, WhiteWave is present through its subsidiary **Alpro**, headquartered in Belgium. Alpro manufactures and markets plant-based products (e.g. milk, yoghurts, desserts) under the Alpro and Provamel brands. Products sold under the Alpro brand are generally distributed in conventional retailers' stores; products sold under the Provamel brand are organic products and are generally distributed through the organic channel.

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

- (8) **Danone** manufactures dairy products. Its limited activities in plant-based products concern only (i) Belgium and Italy where Danone markets plant-based liquid Growing-Up Milk and (ii) Spain where Danone markets plant-based yoghurts under its Savia brand.

4.2. Introduction to the plant-based sector

- (9) Plant-based products are made of plants as opposed to animal milk. They are mostly made from soy, and, to a lesser extent, from almonds, coconut, hazelnut, or other types of plants or cereals. Plant-based products can comprise, similar to dairy products e.g. milk, yoghurt, desserts and cream.
- (10) As opposed to dairy products, an essential step in the production process of plant-based products is the manufacturing of the so-called milk base, which is a water extract of the plants. This process has no equivalent in the dairy industry, which is characterised by the availability of raw milk.⁴
- (11) In Europe, plant-based products represented in 2015 around EUR 1.2 billion in sales, which is around 4% of the dairy sector.⁵ In Europe, the household penetration of plant-based products is 15%, while in the US this is higher, 30%.⁶ The plant-based products sector is dynamic and has been constantly growing in the past years in the EU. It is expected that such trend will continue in the years to come. The evolution of the plant-based sector size in Europe since 2012 is detailed in the chart below.⁷



Source Form CO, page 54

- (12) The Notifying Party explains that plant-based products were initially made for consumers intolerant to lactose or having an allergy to cow milk. However, two recent trends created additional demand for plant-based products in the EU. Firstly, plant-based producers have been able, to some extent, to mitigate the impact of the plant-base on the products' taste. Secondly, some consumers tend to diversify their eating habits and to balance their alimentation.⁸

⁴ Form CO, pages 48-52.

⁵ Form CO, page 11.

⁶ Form CO, Annex 5.4.N, "Buy-side due diligence – project Blanco" by [...].

⁷ Form CO, page 54.

⁸ Form CO, page 53.

- (13) Apart from Alpro, the main players in the plant-based sector in the EEA are Hain Celestial, Distriborg, Triballat and Nutrition&Santé according to the Notifying Party. Local companies such as Valsoia (mainly Italy), Liquats Vegetals (Spain), Oatly (Sweden) and Blue Diamond Almond (mainly UK) are also present.

4.3. Product market definition

4.3.1. Manufacture and marketing of dairy and plant-based products

4.3.1.1. Dairy versus plant-based products

(a) The Commission's practice

- (14) The Commission has not previously assessed the plant-based sector in any detail and has thus not defined all the relevant markets in relation thereto. In one case in relation to the Netherlands in 2008, the Commission examined a small part of the sector considering the relation between dairy fresh cream and plant-based fresh cream and concluded that the two products do not belong to the same market. The same conclusion was also reached in relation to butter and margarine.⁹

(b) The Notifying Party's arguments

- (15) The Notifying Party argues that the manufacture and marketing of plant-based products on the one hand and of dairy products on the other hand are distinct product markets due to differences in product characteristics, product claims and appeal to consumers, prices and production processes.¹⁰
- (16) With regard to supply-side considerations, the production of the milk base requires specific equipment (in particular, extraction units). As to demand, this is still limited in Europe due to the products' characteristics. In Europe dairy products are very traditional and part of consumers' regular, daily alimentation (unlike in Asia for instance) and the metallic taste of soy plant is not appreciated.¹¹

(c) The Commission's market investigation and assessment

- (17) The Commission's market investigation in the present case focused on yoghurts and desserts.
- (18) The market investigation, contrary to the Notifying Party's claim, has indicated that plant-based and dairy-based yoghurts and desserts cannot necessarily be regarded as separate product markets.

⁹ COMP/M.5046 Friesland Foods / Campina.

¹⁰ Form CO, pages 66-79.

¹¹ Form CO, page 53.

- (19) Respondents to the market investigation confirmed the growing trend for plant-based products, while dairy was regarded as declining or stagnating.¹²
- (20) With regard to supply-side substitutability, the majority of competitors explained that they cannot produce plant-based products on the same production equipment of dairy without significant costs.¹³ One plant-based competitor explained that while "*[i]t is possible to produce the plant-[based] products [on dairy equipment, it] is [necessary] to [invest] in equipment, change in the label of different products, risk of reduction of the sales as a consequence of traceability of the products (ex.; traces of almond in lactose free product).*"¹⁴
- (21) As regard demand-side substitutability, competitors argue that dairy and plant-based products compete with each other, at least to some extent. As one dairy competitor summarised, "*Plant-based products are still relatively small but growing very rapidly across EEA, sometimes at expense of dairy. [...] Both propositions also compete for the same space on shelf and visibility in-store*". A plant-based competitor confirmed that "*[e]xcept for a minority of vegans who are 'obliged' to eat plant-based yoghurts, the dairy and plant-based yoghurts are competing with [each other]*."¹⁵
- (22) Competitors are also of the view that dairy and plant-based yoghurts and desserts fulfil the same need. "*Plant-based yoghurts [fulfil] the same needs as dairy-based yoghurt but is often perceived as healthier/ smarter choices. Consumption is largely related to life-style and not restricted to health issues.*"¹⁶
- (23) On the other hand, retailers tend to separate both categories and they consider that dairy and plant-based yoghurts and desserts do not fulfil the same need and do not compete with each other.¹⁷ Nevertheless, the majority of retailers sell dairy and plant-based products from the same shelves in their shops.¹⁸
- (24) The market investigation in general suggests that while there is a group of customers who exclusively buy plant-based products due to health or allergy reasons, there is at least a certain consumer category (the emerging group of "flexitarians", a life-style driven customer group) purchasing both products and switching between both.¹⁹ As one Belgian retailer explained: "*there are different categories of consumers. On one hand, there is a category that buys either dairy*

¹² Q1 – Questionnaire to non-dairy competitors, question 4, Q2a-e – Questionnaire to retailers, question 6, Q3a-e – Questionnaire to dairy competitors, question 5, Q4 – Questionnaire to retailers, question 2.

¹³ Q1 – Questionnaire to non-dairy competitors, questions 7 and 8, Q3a-e – Questionnaire to dairy competitors, question 7.

¹⁴ Q1 – Questionnaire to non-dairy competitors, questions 7 and 8. Q3a-e – Questionnaire to dairy competitors, question 7.

¹⁵ Q1 – Questionnaire to non-dairy competitors, question 11.

¹⁶ Q1 – Questionnaire to non-dairy competitors, question 9.

¹⁷ Q2a-e – Questionnaire to retailers, questions 9 and 13. Q4 – Questionnaire to retailers, questions 4 and 8.

¹⁸ Q2a-e – Questionnaire to retailers, question 10. Q4 – Questionnaire to retailers, question 5.

¹⁹ Q1 – Questionnaire to non-dairy competitors, question 9.

or plant-based products (lactose intolerants, vegans...), whereas another category switches repetitively from dairy products to plant-based products and vice versa. There are more and more customers who buy both categories, these are the "switchers"."²⁰

- (25) In this respect, Alpro's internal documents suggest that the "*wellbeing & balance*" group, which are customers who purchase its plant-based products not merely for health or conviction reasons, make up more than [...] % of customers. This customer group was identified by Alpro as a key segment.²¹ According to one Belgian retailer, consumers who buy both dairy and plant-based products account for 30% of plant-based customers.²²
- (26) Finally, the market investigation also revealed that the degree of substitutability between dairy and plant-based products seems to depend on geography. While market participants view those as rather distinct product markets in certain Central/South-eastern European countries²³, in North-western Europe and in particular in Belgium, the boundaries are more blurry. This is also evidenced by Danone's internal documents: while, for instance in Belgium and the Netherlands Danone analyses the yoghurt market indicating Alpro as a direct competitor, in other countries in South-eastern Europe and Central/South-eastern Europe this is not the case.²⁴

(d) Conclusion

- (27) For the purpose of this decision, the exact product market definition, i.e. whether dairy-based and plant-based yoghurts and desserts form part of the same market, can be left open as the outcome of the competitive assessment remains the same under any alternative product market definitions.

4.3.1.2. Potential segmentation of dairy and plant-based products

(a) The Commission's practice

- (28) In the dairy sector, the Commission has previously segmented the market taking into account demand-side considerations relating in particular to taste, texture and consumption patterns. It thus considered that milk constitutes a separate segment from, for instance, buttermilk, cream, yoghurt, flavoured dairy drinks or dairy desserts. Margarine was also viewed as a different market.

²⁰ Non-confidential minutes of a conference call with a Belgian retailer, 17 October 2016.

²¹ Form CO, Annex 6.2.3.

²² Non-confidential minutes of a call with a Belgian retailer, 17 October 2016.

²³ Notably in Hungary, Romania, Bulgaria which were subject to the Commission's market investigation in the current case.

²⁴ Form CO, Annex 6.4.8., "Business Review Benelux dated 10 January 2014".

- (29) As far as yoghurts are concerned, the Commission considered whether fresh plain yoghurts should be separate product markets from value-added yoghurts and quark, leaving the market definition open.²⁵
- (30) Other possible segmentations, i.e. conventional and organic as well as the different channels of distribution (retail vs. organic shops and out-of home) are not relevant in the present case as the Parties' activities concentrate on the conventional retail sector. Moreover, as the overlaps concern fresh products, it is not necessary to distinguish between fresh and long-life products in the case at stake.

(b) The Notifying Party's arguments

- (31) The Notifying Party submits that the same segmentation retained by the Commission in the dairy milk sector, (milk, yoghurt, desserts...) can be applied to plant-based products.²⁶
- (32) The Notifying Party also takes the view that branded and private label products are part of the same product market due to the competitive constraint they exercise on one another. In particular, they submit that a segmentation of the plant-based market between branded and private-label products is not relevant in the present case as plant-based brands do not have the same degree of consumers' recognition as branded products in other food markets.²⁷

(c) The Commission's market investigation and assessment

- (33) The Commission has investigated whether a further segmentation of the product market for yoghurts would be appropriate.
- (34) With regard to the segmentation into plain vs value-added, the market investigation was not conclusive. For some respondents, there is a clear distinction between plain and value added yoghurts from the consumer's perspective, while for others such a sub-segmentation is not relevant.²⁸
- (35) With regard to a special "healthy" category within yoghurts, there was also no clear-cut view in the market investigation. According to many respondents, certain categories can indeed be regarded as healthier and there is "*a group of customers who consider the use of organic or healthy products as a way of life*" with certain categories of yoghurts addressing this type of customers (such as natural, organic or plant-based yoghurts), but there is no clear distinction and they often overlap. Rather, "healthy" yoghurts are "*simply seen as an additional*

²⁵ COMP/M.6119 Arla / Hansa, COMP/M. 5046 Friesland Foods / Campina, COMP/M.6441 Senoble / Agrila / Sanagral JV, COMP/M.6522 Groupe Lactalis / Skanemejerier.

²⁶ Form CO, pages 71-79.

²⁷ Form CO, pages 76-78.

²⁸ Q1 – Questionnaire to non-dairy competitors, question 12, Q2a-e – Questionnaire to retailers, question 14, Q3a-e – Questionnaire to dairy competitors, question 11, Q4 – Questionnaire to retailers, question 9.

variety" and organic yoghurts *"tend to be seen as more premium and healthier version of the standard category."*²⁹

- (36) In the view of the majority of market participants, branded and private label yoghurts and *vice versa* compete with each other both in the dairy and plant-based segments, although private label is still much less widespread in the plant-based segment than in dairy. Moreover, some retailers also noted that private label is more prevalent in plain than in value added yoghurts.³⁰
- (37) Finally, the differentiation according to plant (soy, rice, almond, etc.) within the plant-based segment does not seem to be relevant. According to plant-based competitors, the *"choice is primarily between dairy and non-dairy options"* and *"most consumers see the plant-based category as one category instead of several subcategories."*³¹

(d) Conclusion

- (38) For the purpose of this decision, the exact product market definition, i.e. whether yoghurt should be further sub-segmented, can be left open as the outcome of the competitive assessment remains the same under the alternative product market definitions.

4.3.2. *Manufacture and marketing of Growing-Up Milk*

- (39) In the EEA, both Danone and Alpro are active in selling so-called growing-up milk ("GUM"), i.e. nutritional milks for children aged 1 to 3 years.
- (40) While Alpro is only active in liquid soy-based growing up milk, Danone is mainly active in dairy-based GUM in the EEA but it also has an activity in Belgium that is soy-based GUM under the "Olvarit" brand. Belgium is thus the only EEA country where both Danone and Alpro are present in soy-based growing up milk.

(a) The Commission's practice

- (41) In a prior decision,³² the Commission considered that within the category of baby milk, a distinction can be made between (i) Infant and Follow-on Milk ("IFFO" milk) - nutritional milks for babies aged 0 to 12 months; and (ii) GUM nutritional milks for children aged 1 to 3 years.
- (42) In that case, the Commission also found that standard cow milk cannot be seen as an adequate alternative for GUM since the latter is enhanced with nutrients appropriate for the developing needs of children, having in particular a higher

²⁹ Q1 – Questionnaire to non-dairy competitors, question 6, Q2a-e – Questionnaire to retailers, question 7, Q3a-e – Questionnaire to dairy competitors, question 6, Q4 – Questionnaire to retailers, question 9.

³⁰ Q1 – Questionnaire to non-dairy competitors, question 5.

³¹ Q1 – Questionnaire to non-dairy competitors, question 14, Q2a – Questionnaire to retailers – Belgium, questions 16 and 17, Q2b-e – Questionnaire to retailers, question 16, Q3a-e – Questionnaire to dairy competitors, question 13, Q4 – Questionnaire to retailers, question 11.

³² COMP/M. 4842 Danone / Numico.

iron content. GUM is almost exclusively sold in the retail channel and its price is on average twice as high as the price of standard cow milk. Furthermore, the Commission noted that GUM is sold in both powder and liquid form although the latter (bottle or tetra pack format) is prevalent in Western Europe.

(b) The Notifying Party's arguments

- (43) For the purpose of this case, the Notifying Party submits that the relevant market should be defined as the market for liquid plant-based GUM.³³

(c) The Commission's market investigation and assessment

- (44) In the present case, the Commission's investigation focused on whether dairy and plant-based GUM are part of the same product market.
- (45) The market investigation, similarly to yoghurts and desserts, and contrary to the Notifying Party's claim, has indicated that plant-based and dairy-based GUM cannot necessarily be regarded as separate product markets.
- (46) While some market respondents consider dairy and plant-based GUM as distinct product markets, GUM competitors underline that plant-based and dairy-based Gum compete with each other: *"Dairy-based GUMs and plant-based GUMs are viewed by consumers as alternatives, except for children who have a diagnosed lactose intolerance."*³⁴
- (47) Although some retailers do not view them as alternatives, others pointed out that not only parents who have lactose intolerant/milk allergy infants buy plant-based GUM and *"switchers start to be present also in this market. There are parents that are looking for alternatives to cow milk and thus choose to buy plant-based GUM."*³⁵
- (48) This trend is also evidenced by a survey prepared for Alpro, which states that *"Alpro users mention to alternate between the current Alpro Soy +1 and a regular GUM, because they're convinced it's healthy to use plant-based products"*. It also seems that there is a clear connection between the decision to give plant-based GUM to a child and the fact that a parent consumes such products.
- (49) Finally, as for yoghurts and desserts, the market investigation also revealed that the degree of substitutability between dairy and plant-based GUM might depend on geography. In Belgium, where the penetration of Alpro products is high, dairy and plant-based GUM are generally sold from the same shelves in the baby-food section. In other countries, such as the UK, Ireland and the Netherlands, dairy and

³³ Form CO, page 80.

³⁴ Replies to Question 3 of the Commission's email questionnaire of 28 October 2016.

³⁵ Non-confidential minutes of a call with a Belgian retailer, 15 November 2016.

plant-based GUM are sold from different shelves, with plant-based GUM being located in the plant-based milk section.³⁶

(d) Conclusion

- (50) For the purpose of this decision, the exact product market definition, i.e. whether dairy-based and plant-based growing-up milk form part of the same market, can be left open as the outcome of the competitive assessment remains the same under the alternative product market definitions.

4.4. Geographic market definition

- (51) The Commission has considered the geographic markets for dairy products sold in retail stores as national, with some limited exceptions.³⁷ In a prior decision,³⁸ the Commission also took the view that the different markets for baby milk products have a national geographic dimension.
- (52) The Notifying Party agrees with the Commission precedents and considers the market for the sale of plant-based and dairy products as national in scope, including baby milk products.³⁹
- (53) The Commission's market investigation did not reveal any evidence which would contradict its conclusions in relation to national markets for yoghurt, desserts and GUM.⁴⁰

4.5. Competitive Assessment

- (54) The proposed Transaction leads to horizontally affected markets (i) in a number of EEA countries with regard to yoghurts, desserts and GUM, if the relevant market is defined as the overall market comprising both dairy and plant-based products, and (ii) in plant-based GUM in Belgium and in plant-based yoghurts in Spain, should separate markets be defined for dairy products and plant-based products.
- (55) Should separate markets be defined for dairy and plants-based products, the Commission has also investigated whether the proposed Transaction may give rise to conglomerate effects.⁴¹

³⁶ The Notifying Party's submission of 23 November 2016 Replies to Question 4 of the Commission's email questionnaire of 17 November 2016 and 25 November 2016.

³⁷ COMP/M. 6242 Lactalis / Parmalat, COMP/M. 5046 Friesland Foods / Campina, COMP/M. 6441 Senoble / Agrila / Sanagral JV, COMP/M. 6522 Groupe Lactalis / Skanemejerier.

³⁸ COMP/M. 4842 Danone / Numico.

³⁹ Form CO, pages 85-86.

⁴⁰ Q1 – Questionnaire to non-dairy competitors, questions 19-20, Q2a – Questionnaire to retailers – Belgium, questions 26-28, Q2b-e – Questionnaire to retailers, questions 20-21, Q3a-e – Questionnaire to dairy competitors, questions 16-17.

⁴¹ As regards possible vertical links as a result of the proposed Transaction, Danone procures soy milk base from the French company [supplier] for the manufacture of its plant-based yoghurts on the Spanish market and is therefore active on the market for the procurement of plant-based milk base. WhiteWave is present (although marginally) on the selling side in Spain. Therefore, the Transaction

4.5.1. Horizontal assessment

- (56) Under Article 2(2) and (3) of the Merger Regulation, the Commission must assess whether a proposed concentration would significantly impede effective competition in the internal market or in a substantial part of it, in particular as a result of the creation or strengthening of a dominant position.
- (57) The Horizontal Merger Guidelines⁴² distinguish between two main ways in which mergers between actual or potential competitors on the same relevant market may significantly impede effective competition, namely non-coordinated and coordinated effects.
- (58) The assessment of the compatibility of the Transaction with the internal market will focus on non-coordinated horizontal effects in the dairy and plant-based market, including yoghurt, dessert and GUM where the Parties' activities overlap.

4.5.1.1. Yoghurts and desserts

(a) Overall yoghurts and desserts markets in certain EEA Member States

- (59) The following markets are affected with regard to the overall market including plant-based and dairy-based products: Austria yoghurts ([20-30]%; increment of [0-5]%), Hungary yoghurts ([40-50]%; increment of [0-5]%), Ireland yoghurts ([20-30]%; increment of [0-5]%), Italy yoghurts ([20-30]%; increment of [0-5]%), Portugal yoghurts ([30-40]%; increment of [0-5]%), Romania desserts ([20-30]%; increment of [0-5]%), Spain yoghurts ([50-60]%; increment of [0-5]%) and UK yoghurts ([20-30]%; increment of [0-5]%).⁴³
- (60) In all the above Member States the market share increment is near inexistent and at most [0-5]% (mainly due to the small size of the plant-based product segment where Alpro is active) and therefore the effects of the Transaction are expected to be minimal. The market investigation did not reveal any competition concerns arising from a horizontal perspective in those countries.⁴⁴

(b) Overall yoghurts markets in Belgium

- (61) The only Member State where the increment in market share in yoghurt overall is noteworthy is Belgium.

leads to a potential vertical link between the Parties' activities on this market. However, according to the Notifying Party, Danone currently purchases limited volumes of soy milk base from [supplier] and WhiteWave only sells very limited volumes of its plant-based milk to third parties as it uses the bulk of it internally. [Supplier] have not expressed any concerns as regards the impact of the merger on its activities. As a result, the impact of such vertical link will be limited and therefore will not be discussed further in this decision.

⁴² Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings (OJ C 31, 5.2.2004), paragraph 27 ('Horizontal Merger Guidelines').

⁴³ Market shares would not be substantially different if the yoghurt markets are further segmented between plain and value-added yoghurts.

⁴⁴ Q2b-e – Questionnaire to retailers, Q3b-e – Questionnaire to dairy competitors, Q4 – Questionnaire to retailers.

- (62) The total value of the Belgian yoghurt market amounts to EUR 397 million in 2015. In Belgium, Danone is mainly active with the brands Danone, Activia/Actimel, Vitalinea and Oikos while WhiteWave markets the Alpro brand. Besides Danone and Alpro, a number of players offer yoghurts in Belgium but only Alpro sells branded (as opposed to private label) plant-based products.
- (63) The Transaction would add to Danone's leading position in yoghurts in Belgium as the Parties' combined market share in the market including dairy and plant-based yoghurts in Belgium would amount to [50-60]% (Danone: [40-50]%, Alpro [0-5]%) in value. The nearest group of competitors in terms of market share would be private label products with [20-30]%. Other branded dairy competitors include Belgian company Pur Natur with [5-10]% and global players such as Nestlé ([0-5]%), Yoplait ([0-5]%) and RoyalFrieslandCampina ([0-5]%).
- (64) This market structure triggered some concerns among respondents to the market investigation in Belgium. One dairy player explained that as dairy and plant-based categories are increasingly seen as one, Danone may use its reinforced position to increase prices in the premium segment, as their bargaining power versus retail and consumers alike will increase.⁴⁵ This opinion has also been expressed by some plant-based players (not present in Belgium) which have explained that large companies are able of buying the shelf space for their products from the retailers thus making it harder for smaller players to succeed.⁴⁶ As explained by another competitor "*It will be tougher as a brand next to Alpro & Danone to take a space in the fridge*".⁴⁷
- (65) As explained above in the section related to product market definition, dairy and plant-based yoghurts compete for the same shelf space and visibility in-store. This is because WhiteWave's strategy in Belgium is [description of strategy]⁴⁸. In this context, [description of strategy].⁴⁹
- (66) In this context of shelf space competition between dairy and plant-based products, the Commission has investigated whether the merger would lead to an increased incentive for Danone's to reduce retailer margins (that is to say, to raise wholesale prices) on Alpro's products. This would mean that Danone would post-merger raise wholesale prices for plant-based products potentially leading to retail price increases on plant-based products.
- (67) However, taking all elements into account, the Commission does not consider that post-merger Danone would have an incentive to alter Alpro's prices in a way that would have a detrimental effect on competition on the market for yoghurts in Belgium. The following reasons are relevant in this respect.

⁴⁵ Q1 – Questionnaire to non-dairy competitors, question 39.1

⁴⁶ Q1 – Questionnaire to non-dairy competitors, question 32.

⁴⁷ Q3a - Questionnaire to dairy competitors – Belgium, question 36.

⁴⁸ Form CO, paragraph 127. See also Form CO Annex 5.4.P, Presentation to the WhiteWave Board, 11 June 2016.

⁴⁹ Form CO, Annex 5.4.N, "Buy-side due diligence : Project [...]" by [...], slides 103 and 104.

- (68) Firstly, it does not appear that Danone and Alpro are close competitors as confirmed by the majority of respondents to the market investigation.⁵⁰ In general, competitors have rather identified Nestlé, Pur Natur RoyalFrieslandCampina and private labels as close competitors to Danone. This is also the case for retailers in Belgium. Nevertheless, within Danone's portfolio of yoghurt brands, mainly Activia has been identified as competing more closely with Alpro than the other Danone brands.⁵¹
- (69) Secondly, the Notifying Party provided an economic analysis on the degree of price competition between Danone and Alpro yoghurts in Belgium carried out by Danone's economic advisor. Specifically, this analysis econometrically estimated own- and cross-price elasticity of dairy and plant-based yoghurts in Belgium using the Nielsen scanner data submitted to the Commission, in order to measure the degree of substitution between products in response to a relative price change at retail level.⁵²
- (70) This study shows that a change in the retail price of plant-based yoghurt has no statistically significant effect on quantities of dairy yoghurt sold, and vice versa, which indicates that there is limited substitution and price-competition between dairy and plant-based yoghurts as a result of price changes. This study is therefore consistent with the qualitative results of the market investigation.
- (71) This study analyses the effect on consumers' demand of retail price changes, which are set by retailers. However, the competitive interaction (or lack thereof) between dairy and plant-based yoghurts at retail level has an impact on the wholesale pricing of Alpro's products at the wholesale level (where suppliers provide products to retailers). Danone would have limited incentives to increase wholesale prices of Alpro's products if consumers' demand does not switch to a significant extent on dairy yoghurts to make such a wholesale price increase profitable.
- (72) Thirdly, in addition to the limited cannibalization between dairy and plant-based products, a price increase for Alpro could restrict its growth which is crucial to its market penetration strategy.
- (73) Fourthly, Danone's revenue synergies estimates as a result of the merger do not show any additional revenue synergies in Belgium going beyond the mere addition of turnover achieved individually by Danone and Alpro in Belgium.⁵³
- (74) Fifthly, retailers could probably to some extent replace Alpro with other types of plant-based products. Although a full-range entry of a plant-based producer seems unlikely considering the strength of Alpro ([90-100]% share in plant-based yoghurts) in Belgium, the development of private label products in Belgium appears possible. A comparison with the situation in other Member States (UK,

⁵⁰ Q1 – Questionnaire to non-dairy competitors, questions 25 and 26, Q3a - Questionnaire to dairy competitors – Belgium, questions 21 and 22.

⁵¹ Non-confidential minutes of a call with a Belgian retailer, 21 October 2016.

⁵² Memorandum "Danone/WhiteWave: Econometric estimation of elasticities for yoghurts in Belgium" submitted by the Notifying party on 24 November 2016.

⁵³ The Notifying Party's reply to the Commission's Request for information dated 2 December 2016.

Germany, and the Netherlands) indeed shows that private labels, although recently starting from relatively modest positions, have been able to grow very fast and reach market shares of [0-5]% in Germany and [5-10]% in the UK.⁵⁴

- (75) In the light of the above, the Transaction does not raise serious doubts as regards its impact on the Belgian yoghurts market.

(c) Overall desserts markets in Belgium

- (76) The total value of the Belgian desserts market amounts to EUR 106.9 million in 2015. In Belgium, Danone is mainly active with the brands Danone and Danette while WhiteWave markets the Alpro brand.

- (77) In a market including dairy and plant-based desserts in Belgium, the Parties' combined market share would amount to [20-30]% in value with a [5-10]% overlap. Private label products have a share of [30-40]% and Nestlé holds a share of [20-30]%. In the light of the limited market position of the Parties and the presence of strong competitors, the transaction does not raise serious doubts as regards its impact on the Belgian desserts markets.

(a) Plant-based yoghurt market in Spain

- (78) There is also a horizontal overlap between the Parties in soy-based yoghurts in Spain, where Danone is present with its Savia brand marketing conventional soy-based yoghurts through the conventional retail channel. In contrast, Alpro's position in plant-based yoghurts in Spain is very limited and it focuses exclusively on organic yoghurts sold under the Provamel brand through the organic sales channel.

- (79) Danone's market share in a potential market for plant-based yoghurts in Spain is [30-40]% and Alpro's is [0-5]%. Hence, the increment brought about by the Transaction in the plant-based yoghurt market would be very limited, so that there would be no material Transaction-specific effect in this market.

- (80) Customers and competitors did not raise any concerns during the market investigation with respect to plant-based yoghurts in Spain.⁵⁵

4.5.1.2. GUM markets

- (81) For the reasons set out in Recitals (82) to (104), the Commission has reached the conclusion that the Transaction would lead to serious doubts in the GUM market in Belgium. Moreover, for the reasons set out in recital (105) to (126) the Commission has reached the conclusion that the Transaction would not raise serious doubts in the GUM market in Ireland, the Netherlands and the UK.⁵⁶

⁵⁴ The Notifying Party's submission of 25 November 2016.

⁵⁵ Q2e – Questionnaire to retailers, questions 58-61 and Q3e, questionnaire to dairy competitors, questions 35-38.

⁵⁶ In the overall GUM market, the proposed Transaction leads to affected markets also in Czech Republic (Danone: [30-40]% and Alpro: [0-5]%), Hungary (Danone: [60-70]% and Alpro [0-5]%), Poland (Danone: [60-70]% and Alpro [0-5]%), Portugal (Danone: [20-30]% and Alpro: [0-5]), and Slovakia

(a) GUM in Belgium

(i) The Notifying Party's arguments

- (82) The Notifying Party acknowledges that Danone and Alpro are the only two players in the plant-based GUM market in Belgium. However, they claim that the Transaction does not give rise to any competition concerns, notably due to the (i) the ease of entry in this market, (ii) retailers' buyer power and incentive to sponsor new entry on this market, and (iii) the fact that Alpro does not constitute a competitive constraint for Danone given its limited recognition.
- (83) Similarly, on the potential overall market including the regular and plant-based GUM, the Notifying Party claims that the Transaction will not affect competition as (i) the overlap is extremely limited, (ii) Danone and Alpro are not close competitors and so Alpro does not exert a significant competitive constraint on Danone and (iii) the market is growing so that competitors have incentives to expand and potential competitors can enter into the market.

(ii) Commission's assessment

- (84) The size of the GUM market in Belgium is roughly EUR 45 million, out of which the plant-based segment is ca. EUR 3 million.
- (85) In plant-based GUM, the merged entity would become the only supplier in Belgium and thus have a monopoly in such a narrowly defined market (market shares in value: Danone: [50-60]%, Alpro: [40-50]%).
- (86) Danone procures its liquid soy-based GUM products from a Belgian subcontractor ([...]). It generated about EUR [...] million of net sales (wholesale level) in 2015 in Belgium and about EUR [...] million of net sales for 2016 until the end of August. Alpro manufactures and commercializes its liquid soy-based GUM products in Belgium in its [...] plant – it generated about EUR [...] million of net sales in 2015 and about EUR [...] million for 2016 until the end of August.
- (87) When considering the broader overall GUM market including soy-based and dairy products, the Transaction would lead to a reduction of suppliers from 3 to 2 with the Parties' combined market share in value of [50-60]% (Danone: [50-60]%, Alpro: [0-5]%) with Nestlé holding [40-50]%.⁵⁷ Other smaller players include Candia, which has been just introduced by Carrefour, and private label.

Closeness of competition

- (88) According to the Horizontal Merger Guidelines, a merger between close competitors is more likely to have anticompetitive effects and lead to a significant increase in price. The higher the degree of substitutability between the merging firms' products, the more likely it is that the merging firms will raise prices

(Danone: [60-70]% and Alpro: [0-5]%). However, as the increment in Czech Republic, Hungary, Poland and Slovakia is [0-5]% at most and in Portugal the combined market share is less than [20-30]%, such markets will not be discussed any further in this Decision. See Notifying Party's submission of 17 November, 2016.

⁵⁷ Danone is active in Belgium in GUM with two brands: Olvarit and Nutrilon.

significantly. The purpose of assessing the closeness of competition between the Parties is therefore to determine whether they currently exert a significant competitive constraint on each other which would be removed post-Transaction and whether other suppliers would be able to sufficiently constrain the merged entity.⁵⁸

- (89) The Parties do not see each other as close competitors in Belgium, notably as they are active in different segments on the GUM market: while Danone's focus is mainly on dairy products, Alpro specialises on plant-based products.
- (90) Respondents to the market investigation, which are active in Belgium and expressed an opinion, indicated that in the plant-based GUM segment the Transaction would lead to a monopoly and no alternative suppliers of plant-based products will remain post-merger.⁵⁹
- (91) The Commission considers that while it is true that both Danone and Alpro focus on different segments, a certain degree of competition between the two brands is present even when considering an overall GUM market. In this respect, retailers who replied to the markets investigation emphasized that Danone and Alpro are generally considered as important brands, and as a result of the present Transaction, they would lose an important challenger to the very strong Danone and Nestlé brands.⁶⁰
- (92) The majority of the respondents to the market investigation also emphasized the importance of strong brands - as it is the case for Danone and Alpro - in securing shelf space.
- (93) In light of the above, and considering all evidence available to it, the Commission concludes that in the very concentrated GUM market the Parties' brands in Belgium are competing with each other.

Entry and expansion

- (94) When entering a market is sufficiently easy, a merger is unlikely to pose any significant anti-competitive risk. For entry to be considered a sufficient competitive constraint on the merging parties however, it must be shown to be likely, timely and sufficient to deter or defeat any potential anti-competitive effects of the merger.⁶¹ As some mergers could significantly impede competition by enabling the merged entity to make the expansion of smaller firms and potential competitors more difficult, the impact of the Transaction on the Parties' competitors' ability to enter or expand will be assessed.⁶²
- (95) The Notifying Party is of the view that there are no significant barriers to entry in the GUM market in Belgium, notably given the ease to find supplies from third

⁵⁸ Horizontal Merger Guidelines, paragraphs 28 and following.

⁵⁹ Q2e - Questionnaire to retailers, question 32.

⁶⁰ Q2e - Questionnaire to retailers, questions 31-33.

⁶¹ Horizontal Merger Guidelines, paragraph 68.

⁶² Horizontal Merger Guidelines, paragraph 36.

party sub-contractors ([...], [...], [...]), which would allow other players to offer its own GUM products to the Belgian retailers.

- (96) The information obtained by the Commission in its market investigation did not confirm the Notifying Party's view and in particular indicated the existence of significant barriers to entry. In particular, critical factors for success in the GUM market, as identified by some competitors and customers, include having a well-known brand, financial strength to sustain investments and effective marketing strategy as well as brand awareness for suppliers to have access to retail shelf space.⁶³
- (97) None of the responding competitors and customers were aware of any new entrant in Belgium in the past 3 years, nor did they expect any specific entry in the near future. While some of the competitors may have the ability to enter the soy-based liquid GUM market their incentive remains questionable.⁶⁴
- (98) Finally, respondents to the market investigation indicate that the Transaction would increase the existing barriers to entry, notably due to the merged entity's increased know-how in both the dairy and plant-based GUM market and the breadth of its portfolio.⁶⁵
- (99) In view of the above, the Commission considers that there is no prospect of a timely and sufficient entry/expansion that could counteract attempts by the merged entity to increase prices post-merger in the dairy and plant-based GUM market in Belgium.

Buyer Power

- (100) According to the Horizontal Merger Guidelines, the Commission considers, when relevant, to what extent customers will be in a position to counter the increase in market power that a merger would otherwise be likely to create. Countervailing buyer power in this context should be understood as the bargaining strength that the buyer has vis-à-vis the seller in commercial negotiations due to its size, its commercial significance to the seller and its ability to switch to alternative suppliers.⁶⁶
- (101) The results of the market investigation indicate that negotiations between suppliers and retailers for dairy-based GUM and plant-based GUM in Belgium are generally conducted (i) through bilateral agreements or bidding processes, (ii) at the same time involving the same procurement manager, (iii) on the basis of the quality of the product and price, and (iv) on a yearly basis.⁶⁷

⁶³ Q2e - Questionnaire to retailers, questions 40-46 Q3e - Questionnaire to dairy competitors, questions 23-29.

⁶⁴ Q2e – Questionnaire to retailers, questions 40-46 and Q3e - Questionnaire to dairy competitors, questions 23-29.

⁶⁵ Q2e – Questionnaire to retailers, question 43 and Q3 - Questionnaire to dairy competitors, question 26.

⁶⁶ Horizontal Merger Guidelines, paragraphs 64–65.

⁶⁷ Q2e – Questionnaire to retailers, questions 47-53 and Q3e – Questionnaire to dairy competitors, question 29.

- (102) While competitors who replied to the market investigation acknowledge the power of retailers, notably due to customers' ability to easily switch between suppliers and the consumers' limited brand loyalty, the majority of customers indicate that they do not enjoy significant buyer power. In particular, when faced with important brands, which are requested by customers, retailers' countervailing power appears more limited.
- (103) In view of the above, the Commission concludes that it is doubtful that such buyer power can, on its own, prevent price increases and the deterioration of competitive conditions in the supply of GUM in Belgium.

(iii) Conclusion

- (104) Based on the above and on the results of our investigation, non-coordinated effects would be likely in the GUM market in Belgium. Therefore, the Commission considers that the Transaction raises serious doubts as to its compatibility with the internal market in relation to GUM in Belgium, both in the narrower segment of plant-based GUM as well as in the broader overall GUM market.

(b) GUM in Ireland

(i) Parties' activities

- (105) With regard to Ireland, the size of the GUM market is roughly EUR 6 million.
- (106) The overall GUM market including soy-based and dairy products is affected with the Parties' combined market share of [80-90]% in 2015. The increment brought about by the Transaction (Alpro) is [0-5]%.

(ii) Commission's assessment

- (107) Additional competitors will remain post-merger such as Wyeth and Hipp with [10-20]% and [0-5]% of market shares.
- (108) The increment brought about by the Transaction in the overall GUM market would be very limited, so that there would be no material Transaction-specific effect in this market.
- (109) Alpro's GUM products are not on the same shelves as Danone's GUM products and the products of the other dairy competitors. The market investigation confirmed the Notifying Party's claim that Alpro GUM is available in the "UHT Health and Wellbeing" fixtures at big retailers whereas Danone's GUM is available in the baby food section.⁶⁸
- (110) Customers and competitors did not raise any concerns during the market investigation with respect to the overall GUM market in Ireland.

⁶⁸ Notifying Party's submission of 23 November 2016.

(iii) Conclusion

(111) The Commission thus concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market in respect of the overall GUM market in Ireland, under any plausible segmentation.

(c) GUM in the Netherlands

(i) Parties' activities

(112) The size of the GUM market in the Netherlands is roughly EUR 119 million.

(113) The overall GUM market including soy-based and dairy products is affected with the Parties' combined market share of [90-100]% in 2015. The increment brought about the Transaction (Alpro) is [0-5]%.

(ii) Commission's assessment

(114) Additional competitors will remain post-merger such as Hero, private labels, Nestlé and Hipp with a market share of [10-20]%, [0-5]%, [0-5]% and [0-5]% respectively.

(115) The increment brought about by the Transaction in the overall GUM market would be very limited, so that there would be no material Transaction-specific effect in this market.

(116) With respect to positioning on shelves, Alpro GUM is not positioned in the regular GUM shelf (where Danone's products are) at none of the retailers. Alpro GUM products are positioned in the UHT dairy shelves with dairy milk and plant-based milk.⁶⁹

(117) Customers and competitors did not raise any concerns during the market investigation with respect to the overall GUM market in the Netherlands.

(iii) Conclusion

(118) The Commission thus concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market in respect of the overall GUM market in the Netherlands, under any plausible segmentation.

(d) GUM in the United Kingdom

(i) Parties' activities

(119) The size of the GUM market in the United Kingdom is roughly EUR 155 million.

(120) The overall GUM market including soy-based and dairy products is affected with the Parties' combined market share of [80-90]% in 2015. The increment brought about the Transaction (Alpro) is [0-5]%.

⁶⁹ Notifying Party's submission of 23 November 2016.

(ii) Commission's assessment

- (121) Additional competitors such as Wyeth and Hipp with [5-10]% and [0-5]% of market shares will remain post-merger with a presence on the same shelves of Danone in the stores.
- (122) The increment brought upon the Transaction in the overall GUM market would be very limited, so that there would be no material Transaction-specific effect in this market.
- (123) Alpro GUM is available in the "UHT Milk and Dairy Alternatives" section and/or the "Free From" section, not in the same one as Danone's products which are present on the Baby and Toddler shelf. Alpro has very recently launched chilled soy-based GUM in the UK (to date only listed at Tesco), which can be found in the "Fresh" section. Within the "Fresh" section, Alpro GUM will either sit in a "Health & Wellbeing/Free From" fixture or next to Fresh Dairy Milk, not in the same fixture as Danone's GUM products.⁷⁰
- (124) In Danone's internal documents, neither WhiteWave nor Alpro have been identified as a competitor on the GUM market in the UK.⁷¹
- (125) Customers and competitors did not raise any concerns during the market investigation with respect to the overall GUM market in UK.

(iii) Conclusion

- (126) The Commission thus concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market in respect of the market for the overall GUM market in the United Kingdom, under any plausible segmentation.

4.5.2. *Conglomerate assessment*

4.5.2.1. The Parties' market position

- (127) Should separate markets be defined for dairy and plants-based products, these markets are closely related as the dairy and plants-based products belong to a range of products that is generally purchased by the same set of customers (the retailers) for the same end use. As such the Transaction may give rise to conglomerate effects. Both Danone and Alpro hold a leading position in a number of products in different Member States. Post-transaction, the merged entity would have a portfolio of both dairy-based and plant-based products.
- (128) According to paragraph 92 of the non-horizontal Guidelines,⁷² "*conglomerate mergers in the majority of circumstances will not lead to any competition problems*". According to paragraph 93 of the non-horizontal Guidelines, "*the main concern in the context of conglomerate mergers is foreclosure. The combination of products in*

⁷⁰ Notifying Party's submission of 23 November 2016.

⁷¹ Notifying Party's submission of 23 November – annex "Key GUM players in UK market".

⁷² Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings, OJ C 265 of 18.10.2008, p. 6-25.

related markets may confer on the merged entity the ability and incentive to leverage a strong market position from one market to another by means of tying or bundling or other exclusionary practices."

- (129) The following table indicates the national markets where one of the Parties' has a share of more than 30% while the other one is also present to an appreciable extent (that is to say with a share of more than 1%).

Table 1: The Parties' market position* in the dairy and plant-based yoghurt and dessert markets

Country	Segment	Danone Share Dairy (%)	Alpro Share Plant-based (%)
Austria	Yoghurt	[10-20]%	[50-60]%
Belgium	Yoghurt	[40-50]%	[90-100]%
	Dessert	[10-20]%	[80-90]%
Bulgaria	Dessert	[50-60]%	[70-80]%
Croatia	Yoghurt	[20-30]%	[70-80]%
Germany	Yoghurt	[10-20]%	[90-100]%
Greece	Dessert	[10-20]%;	[90-100]%
Hungary	Yoghurt	[40-50]%	[80-90]%
	Dessert	[10-20]%	[70-80]%
Ireland	Yoghurt	[20-30]%	[90-100]%
Norway	Yoghurt	[5-10]%;	[90-100]%
	Dessert	[0-5]%	[90-100]%
Portugal	Yoghurt	[30-40]%	[60-70]%
Romania	Yoghurt	[30-40]%	[70-80]%
Slovakia	Yoghurt	[10-20]%	[70-80]%
UK	Yoghurt	[10-20]%	[60-70]%

Source Form CO

*For yoghurts, the overall market share is indicated. The market share in the sub-segments (plain vs value-added), where available is not substantially different to alter the assessment.

- (130) In the light of the market shares in Table 1 above, the Commission considers that both Danone and Alpro have a strong market position within the meaning of paragraph 93 of the non-horizontal Guidelines in a number of markets.⁷³
- (131) The Commission therefore investigated whether, post-transaction, the merged entity could have the ability and incentive to pursue strategies of tying and bundling aimed at foreclosing competitors in the markets for plant-based and dairy products respectively. In order to be relevant, any conglomerate effect must be merger specific.

4.5.2.2. The Notifying Party's argument

- (132) According to the Notifying Party, Danone would have neither the ability nor the economic incentive to foreclose its rivals, and in any event, such foreclosure strategy would not have a significant detrimental effect on competition in any of the plant-based or dairy-based markets.

⁷³ Non-horizontal Guidelines, paragraph 99.

- (133) The Notifying Party also notes that Danone and Alpro achieve the bulk of their respective turnover on unrelated markets in the EEA: Danone is strong in yoghurts while Alpro's main source of turnover is milk. Moreover, Alpro's turnover in plant-based yoghurts and desserts markets is too small to be material as compared to Danone turnover on the dairy yoghurts and desserts markets in the EEA, given that Alpro's plant-based yoghurt sales represent only [0-5]% of Danone dairy yoghurts and Alpro's plant-based dessert sales represent a mere [0-5]% of Danone dairy desserts sales.
- (134) According to the Notifying Party, (i) Danone does not have real "must-have" brands; (ii) plant-based and dairy products are negotiated separately by different procurement managers and have different characteristics and (iii) tying or bundling of plant-based products to dairy products would not be profitable and may lead to retaliation by retailers who could de-list Danone's products or switch to other suppliers. With regard to leveraging possible market power in plant-based product markets specifically, the Notifying Party argues, among others, that Alpro's turnover is too small to be material and the change to Danone's size will be immaterial.

4.5.2.3. The Commission's assessment

(a) Leveraging possible market power in plant-based product markets

- (135) The Commission is of the view that leveraging Alpro's possible market power in plant-based products to increase Danone's position in dairy products markets is unlikely to be a concern. The Transaction would not lead to Danone having the ability to foreclose dairy rivals. This is because the incremental value of sales in plant-based products as compared to the current Danone's dairy products sales is very small. Therefore, Danone would not gain much selling power in terms of sales volumes as regards its dairy products.

(b) Leveraging possible market power in dairy product markets

- (136) The market investigation raised some concerns - mostly from competitors - with regards to the possibility for Danone as a result of the present Transaction to leverage its strong position in the market for dairy products to favour its position in plant-based products and exclude rivals from accessing shelf space.
- (137) The Commission found, however, that Danone would not have the ability or incentive to engage into a successful foreclosure strategy. This is because, although technically feasible, any attempt by Danone to leverage its position in dairy products to increase its plant-based sales could incentivise retailers to enter into the plant-based segment with private label products as explained above or to de-list certain Danone SKUs and therefore prevent Danone's from successfully implementing any foreclosure strategy. Further, a potential foreclosure of competitors other than private label is less likely to have a significant overall impact on effective competition on the plant-based yoghurt market, as the plant-based competitors do not tend to exert a significant constraint on Alpro. In any event, in Spain where Danone already sells dairy and plant-based yoghurts, it has not been observed as engaging in bundling practices in the past despite its ability to do so. This is a further indication of the lack of risk of conglomerate effects stemming from the Transaction.

4.5.2.4. Conclusion

- (138) The Commission thus concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market in respect of conglomerate effects.

5. PROPOSED COMMITMENTS

5.1. Procedure

- (139) In order to address the competition concerns identified by the Commission, the Notifying Party submitted two sets of commitments on 25 November 2016.
- (140) The first set of commitments aimed at addressing the serious doubts raised during the procedure in relation to yoghurts in Belgium. As the further investigation led to the conclusion that the Transaction does not raise serious doubts in this regard (see Section 4.5.1.1(b) above), the Commission informed the Notifying Party that such commitments were no longer necessary.
- (141) The second set of commitments ("the Initial Commitments") aims at addressing the serious doubts that arise in the market for GUM, including regular and plant-based products, in Belgium (the "GUM Divestment Business").
- (142) The Commission launched a market test of the Initial Commitments on 1st December 2016. The market test showed that overall the commitments addressed the serious doubts raised in relation to GUM in Belgium subject to some technical improvements.
- (143) The Notifying Party agreed to address the issues expressed by the Commission and during the market test and on 15 December 2016 submitted a revised version of the Commitments ("the Final Commitments").⁷⁴
- (144) The Commission has assessed the Final Commitments and concluded that they remove the serious doubts which have been identified in this decision.

5.2. Framework for the Commission's assessment

- (145) Where a notified concentration raises serious doubts as to its compatibility with the internal market, the parties may modify the notified concentration so as to remove the grounds for the serious doubts identified by the Commission with a view to having it declared compatible with the internal market pursuant to Article 6(1)(b) in conjunction with Article 6(2) of the Merger Regulation.
- (146) As set out in the Commission Notice on Remedies,⁷⁵ commitments have to eliminate the Commission's serious doubts entirely, they have to be comprehensive and effective from all points of view and they must be capable of

⁷⁴ A revised version of Commitments has been submitted on 13 December 2016. Such version was slightly modified by the Final Commitments and will be not further discussed in this Decision.

⁷⁵ Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (2008/C 267/01), (the "Commission Notice on Remedies").

being implemented effectively within a short period of time, as the conditions of competition on the market will not be maintained until the commitments have been fulfilled.⁷⁶

- (147) In assessing whether or not commitments will restore effective competition, the Commission considers their type, scale and scope by reference to the structure and the particular characteristics of the market in which the Commission has identified serious doubts as to the compatibility of the notified concentration with the internal market.⁷⁷
- (148) Divestiture commitments are the best way to eliminate serious doubts resulting from horizontal overlaps of the merging parties' activities.⁷⁸ Other commitments (such as licensing) may be suitable to resolve serious doubts if those commitments are equivalent to divestitures in their effects. The divested activities must consist of a viable business that, if operated by a suitable purchaser, can compete effectively with the merged entity on a lasting basis and that is divested as a going concern.⁷⁹
- (149) The business to be divested must include all the assets which contribute to its current operation or which are necessary to ensure its viability and competitiveness and all personnel which are currently employed or which are necessary to ensure the business' viability and competitiveness. Personnel and assets which are currently shared between the business to be divested and other businesses of the parties, but which contribute to the operation of the business or which are necessary to ensure its viability and competitiveness, must also be included. Otherwise, the viability and competitiveness of the business to be divested would be endangered. Therefore, the business to be divested must contain the personnel providing essential functions for the business, at least in a sufficient proportion to meet the on-going needs of the business to be divested.⁸⁰

5.3. The Initial Commitments of 25 November

5.3.1. Description of the Initial Commitments of 25 November

- (150) In order to render the concentration compatible with the internal market, the undertakings concerned have modified the notified concentration by entering into the following commitments, which are annexed to this decision and form an integral part thereof.
- (151) Initially, the Notifying Party proposed:
- (i) a [...] -year exclusive licence for the brand "Olvarit" in relation to the regular and plant-based liquid GUM products sold under this brand in Belgium, including all relevant current product formulae, recipes, goodwill and IP rights

⁷⁶ Commission Notice on Remedies, paragraph 9.

⁷⁷ Commission Notice on Remedies, paragraph 12.

⁷⁸ Commission Notice on Remedies, paragraph 17.

⁷⁹ Commission Notice on Remedies, paragraph 23.

⁸⁰ Commission Notice on Remedies, paragraphs 25 and 26.

together with the copyright in the packaging, advertising and promotional materials used in relation to the products sold under this brand in Belgium, followed by a commitment not to reintroduce the licensed brand in Belgium for a period of [...] years after the termination of the [...] -year licence agreement (black-out period). The plant-based GUM products should be rebranded by the Purchaser during the licensing period;

- (ii) Danone's contracts, customer orders, customer records in relation with Danone's liquid plant-based GUM products in Belgium;
 - (iii) the assignment of Danone's brand "Bambix" for liquid GUM in Belgium which would be the platform for the re-branding of "Olvarit" GUM; and
 - (iv) at the option of the Purchaser and with the prior approval of [...], the transfer of the part of the Manufacturing and Supply Agreement that Danone Trading BV concluded with [...] that concerns the manufacturing, packaging and supply of liquid GUM products sold under the Olvarit brand.
- (152) According to the Notifying Party, the GUM Divestment Business addresses the initial concerns in the GUM market in Belgium, notably as (i) it would create a third competitive player in the GUM market in Belgium with a market share of approximately [20-30]% with Nestlé becoming the market leader (approximately [40-50]%), (ii) the license of the Olvarit brand with its related assets and the assignment of the Bambix brand for the liquid GUM in Belgium will allow the purchaser to carry out the re-branding of Olvarit into Bambix and thus operate the GUM Divestment Business in a viable way, and (iii) the GUM Divestment Business includes not only Danone's sales of soy-based GUM but also its sales of regular liquid GUM sold under the Olvarit brand and therefore the attractiveness of the licence for a potential purchaser is significantly improved.
- (153) The Commission assessed the appropriateness of the remedies offered and carried out a market test.

5.3.2. *The Commission market test*

- (154) The Commission launched a market test of the Commitments on 1 December 2016. The market test included Belgian retailers, GUM competitors and dairy product competitors, as well as European baby food makers and plant-based product manufacturers.
- (155) In general, there was the view that the GUM Divestment Business could be interesting, especially due to the fact that the growing trend towards consumption of plant-based products is also reflected in the baby food category. The market test however identified specific elements of the Commitments which were subsequently improved by the Final Commitments submitted on 15 December in order to remedy the serious doubts identified by the Commission as to the compatibility of the Transaction with the internal market.
- (156) Competitors and customers generally considered that the GUM Divestment Business includes all necessary assets and would be able to compete effectively with the merged entity. However, certain respondents considered that the [...] -year duration

of the Olvarit licence may not be sufficient for a new player to finalize a proper re-branding and it should be extended to [...] years.⁸¹

- (157) In addition, respondents to the market test indicated that it should be clear whether the GUM Divestment Business would have access to new recipes and formulae in the future, as innovation and R&D are key in this segment for the competitiveness of the purchaser of the GUM Divestment Business. Customer care and customer contact has also been suggested as an important element, which was missing from the Initial Commitments.
- (158) Finally, when replying to the question of who could be a suitable purchaser of the GUM Divestment Business, respondents underlined the importance of having experience in the baby food sector. Respondents also explained that a player active in dairy or plant-based products could also be a valid alternative.

5.4. The Final Commitments of 15 December

5.4.1. Description of the Final Commitments of 15 December

- (159) As explained above, the Notifying Party submitted the Final Commitments on 15 December. The full text of the Final Commitments is attached as Annex I to this Decision.
- (160) The Final Commitments have been modified vis-a-vis the Initial Commitments as described in Section 5.3.1 mainly as follows:
- (i) the exclusive licence for the brand "Olvarit" in relation to the regular and plant-based liquid GUM products sold under this brand in Belgium has a duration of [...] years (instead of [...]), with a [...] year black-out period;
 - (ii) the assignment of the "Bambix" brand is for use in Belgium. As Danone sells baby food products in the Netherlands under the Bambix brand, this assignment will include an exclusive royalty-free [...] year license back to Danone for use in the Netherlands and Luxembourg, for the purpose of re-branding the products currently sold under Bambix.
 - (iii) the inclusion of a Senior Brand Manager as Key Personnel;
 - (iv) licences of formulae and recipes include, at the option of the Purchaser, changes made by Danone to the relevant formulae and recipes during the Olvarit License period;
 - (v) a criterion according to which the purchaser has to have an industrial background;
 - (vi) a condition according to which unless the Purchaser has its own manufacturing activities or does not want to be supplied by [...], an agreement between [...] and the Purchaser for the supply of the Divestment Business products will have to be signed prior to the Purchaser approval.
- (161) On 5 December 2016, the Notifying Party also submitted a letter signed by [...] confirming its agreement to transfer to the Purchaser the contract signed with

⁸¹ Replies to the market test Questionnaire.

Danone for the supply of the products commercialized by the Divestment Business, for the remaining duration of the contract (until [...]).

5.4.2. *The Commission's assessment*

- (162) The Commission finds that the GUM Divestment Business would remove the overlap between the Parties' activities in the manufacture and sale of soy-based liquid GUM in Belgium. In addition, the GUM Divestment Business includes also regular liquid GUM sold under the Olvarit brand and therefore it will create a third player in the GUM market in Belgium with a market share of approximately [20-30]%. The assignment of the Bambix brand in Belgium, which will be the platform for the re-branding of the Olvarit brand in GUM, will also reinforce the competitive position of the new player. The GUM Divestment Business would therefore be able to remove the competition concerns in the GUM market in Belgium.
- (163) In assessing the suitability of the GUM Divestment Business 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 GUM market. In this respect, first it should be noted that the brands to be transferred (both Olvarit and Bambix) are widely known in Belgium. The "Bambix" brand was created in 1955 by Nutricia. In 2014, Danone started to rebrand "Bambix" under "Olvarit" to ensure [rationale of the rebranding]. Because of its iconic nature, "Bambix" currently co-exists with "Olvarit" on the packaging of Danone's liquid GUM products sold under the "Olvarit" brand in Belgium.
- (164) The GUM Divestment Business also includes measures related to production and marketing that would support the purchaser in establishing itself in the market, such as the know-how used in the operation of the GUM Divestment Business, notably the relevant product formulae and recipes (including, at the option of the purchaser, all the relevant changes to these recipes made by Danone during Olvarit License Agreement) as well as advertising and promotional materials. The GUM Divestment Business also includes the necessary Key Personnel.
- (165) The Commission further considers that, on the basis of the Final Commitments, the duration of the licence and black-out periods ([...]) are likely to be adequate in the present case to enable a proper re-branding.
- (166) The GUM Divestment Business will also allow the purchaser to use the Bambix brand in Belgium without limitation as to the kind of products through the assignment of the Bambix brand in the Benelux. The license back to Danone for use in the Netherlands and Luxembourg is only done for the purpose of re-branding these products into a new brand owned by Danone and as such will not compromise the viability of the Bambix brand.
- (167) The fact that the GUM Divestment Business mainly consists of intangible assets and no production facility can be divested does not affect the viability of the GUM Divestment Business. In this respect, the purchaser will have access to the Manufacturing and Supply Agreement that Danone concluded with [...] concerning the manufacturing, packaging and supply of liquid regular and soy-based GUM products sold under the Olvarit brand and be able to start operations of the GUM Divestment Business immediately after taking over the brand.

- (168) As such, the Final Commitments address the main comments raised during the market test of the Commitments of 25 November.
- (169) Finally, in order to assure the suitability of the purchaser, the GUM Divestment Business includes the following criteria: (i) the purchaser shall have financial resources, notably to undertake the re-branding exercise, as well as proven expertise with an industrial background, and (ii) unless the purchaser has its own manufacturing activities or does not want to be supplied by [...], an agreement between [...] and the purchaser for the supply of the Divestment Business products will also have to be signed prior to the Commission's purchaser approval. The Commission notes hereto that [...] confirmed its willingness to transfer the contract for the supply of the products commercialized by the Divestment Business.
- (170) In general, the outcome of the market test has confirmed the importance of financial capabilities and industrial background of the Purchaser in order to ensure long-term viability of the Divestment Business, notably considering that it entails a re-branding and that no production capacities are divested. The Commission therefore considers these Purchaser criteria as particularly important for the long-term success of the remedies.
- (171) Based on the above, the Commission therefore concludes that the GUM Divestment Business will constitute a viable and competitive business that will be able to compete effectively in the GUM Market in Belgium.

5.5. Conclusion

- (172) On the basis of the above, the Commission concludes that the Final Commitments are suitable and sufficient to remedy the serious doubts raised by the Transaction in relation to the GUM market in Belgium. Moreover, the Final Commitments are comprehensive and effective from all points of view, and are capable of being implemented effectively within a short period of time.

6. CONDITIONS AND OBLIGATIONS

- (173) Pursuant to the first sentence of the second subparagraph of Article 6(2) of the Merger Regulation, 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.
- (174) The achievement 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 this 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 and the EEA Agreement no longer stands. Where the undertakings concerned commit a breach of an obligation, the Commission may revoke the clearance decision in accordance with Article 8(6)(b) of the Merger Regulation. The undertakings concerned may also be subject to fines and periodic penalty payments under Articles 14(2) and 15(1) of the Merger Regulation.

- (175) In accordance with the basic distinction between conditions and obligations, the decision in this case is conditional on full compliance with the requirements set out in Section B of the Final Commitments, which constitute conditions. The remaining requirements set out in the other Sections of the said Final Commitments are considered to constitute obligations.
- (176) The full text of the Final Commitments is annexed to this Decision as Annex I and forms an integral part thereof.
- (177) For the above reasons, the Commission has decided not to oppose the notified operation as modified by the Final Commitments and to declare it compatible with the internal market and with the functioning of the EEA Agreement, subject to full compliance with the conditions in Section B of the commitments annexed to the present Decision and with the obligations contained in the other Sections of the said commitments. This decision is adopted in application of Article 6(1)(b) in conjunction with Article 6(2) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(Signed)

Margrethe VESTAGER

Member of the Commission

Case M.8150 - Danone/WhiteWave

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2) of Council Regulation (EC) No 139/2004 (the “*Merger Regulation*”), Danone S.A. (the “*Notifying Party*”) hereby enters into the following Commitment (the “*Commitment*”) vis-à-vis the European Commission (the “*Commission*”) with a view to rendering the acquisition of WhiteWave (the “*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 6(1)(b) 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 Commitment, the following terms shall have the following meaning:

Affiliated Undertakings: undertakings controlled by Danone or WhiteWave, 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*”).

Assets: the assets that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business as indicated in Section B, paragraph 6 (a), (b) and (c) and described more in detail in the Schedule.

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

Closing Period: the period of [*confidential*] 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.

Danone: Danone S.A. incorporated under the laws of France, with its registered office at 17

boulevard Haussman, 75009 Paris, and registered with the Commercial/Company Register of Paris under number RCS PARIS 552 032 534.

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

Divestment Business: the brand “*Bambix*” for use in Belgium and the branded GUM business operated in Belgium under the brand “*Olvarit*” and its related assets, as further defined in paragraphs 2 and 3 of the Schedule, which Danone commits to divest;

Effective Date: the date of adoption of the Commission’s conditional decision.

First Divestiture Period: the period of [*confidential*] from the Effective Date.

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

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

Olvarit License Agreement: the agreement between Danone and the Purchaser granting the Purchaser an exclusive license of the “*Olvarit*” brand for use on liquid GUM products in Belgium for a period of [*confidential*] from Closing;

Monitoring Trustee: one or more natural or legal person(s) who is/are approved by the Commission and appointed by Danone, and who has/have the duty to monitor the conditions and obligations attached to the Decision.

Parties: Danone and WhiteWave.

Purchaser: the entity approved by the Commission as acquirer of the “*Bambix*” brand and, with regard to the “*Olvarit*” brand, as licensee, in accordance with the criteria set out in Section D.

Purchaser Criteria: the criteria laid down in paragraph 16 of these Commitments that the Purchaser must fulfil in order to be approved by the Commission.

Schedule: the schedule to these Commitments describing more in detail the Belgian Divestment Business.

Trustee(s): the Monitoring Trustee and/or the Divestiture Trustee as the case may be.

Trustee Divestiture Period: the period of [*confidential*] from the end of the First Divestiture Period.

SECTION B. THE COMMITMENT TO DIVEST AND LICENSE AND THE DIVESTMENT BUSINESS

Commitment to divest and license

2. In order to maintain effective competition, Danone commits to divest, or procure the divestiture of the Divestment Business by the end of the Trustee Divestiture Period as a going concern to a purchaser and on terms of sale approved by the Commission in accordance with the procedure described in paragraph 17 of these Commitments. To carry out the divestiture, Danone commits to find a purchaser and to enter into a final binding agreement for the sale and license of the Divestment Business within the First Divestiture Period. If Danone has not entered into such an agreement at the end of the First Divestiture Period, Danone shall grant the Divestiture Trustee an exclusive mandate to sell and license the Divestment Business in accordance with the procedure described in paragraph 29 in the Trustee Divestiture Period.
3. Danone shall be deemed to have complied by this commitment if:
 - (a) by the end of the Trustee Divestiture Period, Danone or the Divestiture Trustee has entered into a final binding sale and licensing agreement and the Commission approves the proposed purchaser and the terms of license as being consistent with the Commitments in accordance with the procedure described in paragraph 17; and
 - (b) the Closing of the sale and license of the Divestment Business to the Purchaser takes place within the Closing Period.
4. In order to maintain the structural effect of the Commitments, Danone shall not, for a period of *[confidential]* after Closing, 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, unless, following the submission of a reasoned request from Danone showing good cause and accompanied by a report from the Monitoring Trustee (as provided in paragraph 43 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 is no longer necessary to render the proposed concentration compatible with the internal market.

Structure and definition of the Divestment Business

5. The Divestment Business consists of (i) the assignment of the brand “*Bambix*” for use in Belgium with an exclusive royalty-free *[confidential]* license back to Danone for use in the Netherlands and Luxembourg, for the purpose of re-branding the products currently sold under this brand; and (ii) the license of the brand “*Olvarit*” and its related assets for use in Belgium for the sale of any regular and soy-based liquid GUM products.
6. The Divestment Business, described in more detail in the Schedule, includes in particular:
 - (a) the license of all tangible and intangible assets (including intellectual property rights) which contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divested Business;
 - (b) all licenses, permits and authorisations issued by any governmental organisation for the benefit of the Divestment Business;

- (c) all contracts, commitments and customer orders of the Divestment Business; all customer, credit and other records of the Divestment Business.

SECTION C. RELATED COMMITMENTS

Preservation of viability, marketability and competitiveness

7. From the Effective Date until Closing, the Notifying Party shall preserve or procure the preservation of the economic viability, marketability and competitiveness of the Divestment Business, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the Divestment Business. In particular, Danone undertakes:
 - (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 that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the Divestment Business;
 - (b) to make available, or procure to make available, sufficient resources for the development of the Divestment Business, on the basis and continuation of the existing business plans;
 - (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 the Key Personnel to remain with the Divestment Business. Where the Key Personnel exceptionally leaves the Divestment Business, Danone's shall provide a reasoned proposal to replace the person concerned to the Commission and the Monitoring Trustee. Danone must be able to demonstrate to the Commission that the replacement is well suited to carry out the functions exercised by the Key Personnel. The replacement shall take place under the supervision of the Monitoring Trustee, who shall report to the Commission.

Hold-separate obligations

8. The Notifying Party commits, from the Effective Date until Closing, to keep the Divestment Business separate from the businesses it is retaining and to ensure that, unless explicitly permitted under these Commitments, (i) management and staff of the businesses retained by Danone have no involvement in the commercial functions of the Divestment Business; (ii) the Key Personnel of the Divestment Business has no involvement in any business retained by Danone and does not report to any individual outside the Divestment Business.
9. Until Closing, Danone shall assist the Monitoring Trustee in ensuring that the Divestment Business is managed as a distinct and saleable entity from the businesses which Danone is retaining. Immediately after the adoption of the Decision, Danone shall appoint a Hold Separate Manager. The Hold Separate Manager, who shall be part of the Key Personnel, shall manage the Divestment Business independently and in the best interest of the business with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from the businesses retained by Danone. The Hold Separate Manager shall closely

cooperate with and report to the Monitoring Trustee and, if applicable, the Divestiture Trustee. Any replacement of the Hold Separate Manager shall be subject to the procedure laid down in paragraph 7(c) of these Commitments. The Commission may, after having heard Danone, require Danone to replace the Hold Separate Manager.

Ring-fencing

10. Danone shall implement, or procure to implement, all necessary measures to ensure that it does not, after the Effective Date, obtain any Confidential Information specific to the Divestment Business and that any such specific Confidential Information obtained by Danone before the Effective Date will be eliminated and not be used by Danone. Danone may obtain or keep information relating to the Divestment Business which is reasonably necessary for the divestiture of the Divestment Business or the disclosure of which to Danone is required by law.

Restriction of use of brands

11. Danone undertakes not to re-introduce or promote the “*Olvarit*” licensed brand or designation for a period of *[confidential]* after the termination of the Olvarit License Agreement.

Non-solicitation clause

12. 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 *[confidential]* after Closing.

Due diligence

13. In order to enable potential purchasers to carry out a reasonable due diligence of the Divestment Business, Danone shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process, provide to potential purchasers sufficient information as regards the Divestment Business.

Reporting

14. Danone shall submit written reports in English on potential purchasers of the Divestment Business and developments in the negotiations with such potential purchasers to the Commission and the Monitoring Trustee no later than 10 days after the end of every month following the Effective Date (or otherwise at the Commission’s request) Danone shall submit a list of all potential purchasers having expressed interest in acquiring the 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.
15. Danone shall inform the Commission and the Monitoring Trustee on the preparation of the data room documentation and the due diligence procedure and shall submit a copy of any information memorandum to the Commission and the Monitoring Trustee before sending the memorandum out to potential purchasers.

SECTION D. THE PURCHASER

16. In order to be approved by the Commission, the Purchaser must fulfil the following criteria:
- (a) The Purchaser shall be independent of and unconnected to the Parties and their Affiliated Undertakings (this being assessed having regard to the situation following the divestiture);
 - (b) The Purchaser shall have the financial resources, proven expertise with an industrial background and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors;
 - (c) The acquisition of the Divestment Business by the Purchaser 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.
17. The sale and license agreement relating to Divestment Business shall be conditional on the Commission's approval. Unless the Purchaser has its own manufacturing activities or does not want to be supplied by Milcobel, an agreement between Milcobel and the Purchaser for the supply of the Divestment Business products will have to be signed prior to the Purchaser approval. When Danone has reached an agreement with a purchaser, it shall submit a fully documented and reasoned proposal, including a copy of the sale and license agreement, within one week to the Commission and the Monitoring Trustee. Danone must be able to demonstrate to the Commission that the purchaser fulfils the Purchaser Criteria and that the Divestment Business is being sold and licensed in a manner consistent with the Commission's Decision and the Commitments. For the approval, the Commission shall verify that the purchaser fulfils the Purchaser Criteria and that the Divestment Business is being sold and licensed in a manner consistent with the Commitments including their objective to bring about a lasting structural change in the market. 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.

SECTION E. TRUSTEE

I. Appointment procedure

18. Danone shall appoint a Monitoring Trustee to carry out the functions specified in these Commitments for a Monitoring Trustee. Danone commits not to close the Concentration before the appointment of a Monitoring Trustee.
19. If Danone has not entered into a binding sale and license agreement regarding the Divestment Business one month before the end of the First Divestiture Period or if the Commission has rejected a purchaser proposed by Danone at that time or thereafter, Danone shall appoint a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Trustee Divestiture Period.
20. The Trustee shall:

- (i) at the time of appointment, be independent of the Notifying Party and its 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.
21. The Trustee shall be remunerated by the Notifying Party 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 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 Danone

22. No later than two weeks after the Effective Date, Danone shall submit the name or names of one or more natural or legal persons whom Danone proposes to appoint as the Monitoring Trustee to the Commission for approval. No later than one month before the end of the First Divestiture Period or on request by the Commission, Danone shall submit a list of one or more persons whom Danone proposes 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 20 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

23. 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, Danone 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, Danone shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

New proposal by Danone

24. If all the proposed Trustees are rejected, Danone 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 18 and 23 of these Commitments.

Trustee nominated by the Commission

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

II. Functions of the Trustee

26. 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 Danone, 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

27. The Monitoring Trustee shall:

- (i) 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.
- (ii) oversee, in close co-operation with the Hold Separate Manager, the on-going management of the Divestment Business with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by Danone with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:
 - (a) monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Business, and the keeping separate of the Divestment Business from the business retained by the Parties, in accordance with paragraphs 7 and 8 of these Commitments;
 - (b) supervise the management of the Divestment Business as a distinct and separate entity, in accordance with paragraph 9 of these Commitments;
 - (c) with respect to Confidential Information:
 - determine all necessary measures to ensure that Danone does not after the Effective Date obtain any Confidential Information relating to the Divestment Business, 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,
 - make sure that any Confidential Information specific to the Divestment Business obtained by Danone before the Effective Date is eliminated and

will not be used by Danone, and

- decide whether such information may be disclosed to or kept by Danone as the disclosure is reasonably necessary to allow Danone to carry out the divestiture or as the disclosure is required by law;

(d) monitor the splitting of assets between the Divestment Business and Danone or Affiliated Undertakings;

- (iii) propose to Danone such measures as the Monitoring Trustee considers necessary to ensure Danone's compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the Divestment Business, the holding separate of the Divestment Business and the nondisclosure of competitively sensitive information;
- (iv) 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, potential purchasers receive sufficient and correct information relating to the Divestment Business in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process, and
- (v) act as a contact point for any requests by third parties, in particular potential purchasers, in relation to the Commitments;
- (vi) provide to the Commission, sending Danone 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 as well as the splitting of assets 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;
- (vii) promptly report in writing to the Commission, sending Danone a non-confidential copy at the same time, if it concludes on reasonable grounds that Danone is failing to comply with these Commitments;
- (viii) within one week after receipt of the documented proposal referred to in paragraph 17 of these Commitments, submit to the Commission, sending Danone 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 after the license and as to whether the Divestment Business is licensed in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the license of the Divestment Business without one or more Assets affects the viability of the Divestment Business after the sale, taking account of the proposed purchaser;
- (ix) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision.

28. 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

29. Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at no minimum price the Divestment Business to a purchaser, provided that the Commission has approved both the purchaser and the sale and license agreement as in line with the Commission's Decision and the Commitments in accordance with paragraphs 16 and 17 of these Commitments. The Divestiture Trustee shall include in the sale and license agreement such terms and conditions as it considers appropriate for an expedient sale and licensing in the Trustee Divestiture Period. In particular, the Divestiture Trustee may include in the sale and license 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 Danone, subject to Danone's unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.
30. 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 [*Please indicate the language of the procedure or a different language agreed with the Commission*] 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 Danone

III. Duties and obligations of the Parties

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

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

34. Danone shall indemnify the Trustee 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 Danone 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, its employees, agents or advisors.
35. At the expense of Danone, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to Danone’s approval (this approval not to be unreasonably withheld or delayed) if the Trustee 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 are reasonable. Should Danone refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard Danone. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 34 of these Commitments shall apply *mutatis mutandis*. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served Danone during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.
36. Danone agrees that the Commission may share Confidential Information proprietary to Danone with the Trustee. The Trustee shall not disclose such information and the principles contained in Article 17 (1) and (2) of the Merger Regulation apply *mutatis mutandis*.
37. The Parties agree that the contact details of the Monitoring Trustee 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.
38. 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

39. If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a Conflict of Interest:
 - (a) the Commission may, after hearing the Trustee and Danone, require Danone to replace the Trustee; or
 - (b) Danone may, with the prior approval of the Commission, replace the Trustee.

40. If the Trustee is removed according to paragraph 39 of these Commitments, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 18-25 of these Commitments.
41. Unless removed according to paragraph 39 of these Commitments, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

SECTION F. THE REVIEW CLAUSE

42. The Commission may extend the time periods foreseen in the Commitments in response to a request from Danone or, in appropriate cases, on its own initiative. Where Danone 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 Danone. Only in exceptional circumstances shall Danone be entitled to request an extension within the last month of any period.
43. The Commission may further, in response to a reasoned request from the Notifying Party 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 Danone. 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

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

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duly authorised for and on behalf of Danone

SCHEDULE

1. Further to Section B of the Commitment, the following describes the Divestment Business. The Divestment Business consists of i) the assignment of the brand “*Bambix*” for use in Belgium with an exclusive royalty-free, *[confidential]* license back to Danone for use in the Netherlands and Luxembourg for the purpose of re-branding the products currently sold under this brand; and (ii) the license of the brand “*Olvarit*” and its related assets for use in Belgium for the sale of the regular and soy-based liquid GUM products.
2. The Divestment Business as operated to date under the “*Olvarit*” brand has the following legal and functional structure: the manufacturing, packaging and supply of any regular and soy-based liquid GUM sold under the “*Olvarit*” brand is carried out by Milcobel, pursuant to a contract signed between Danone and INZA cbva, a subsidiary of the Milcobel Group. Danone is the owner of the recipes, know-how and packaging used by Milcobel to manufacture the regular and soy-based liquid GUM.

The “*Bambix*” brand was created in 1955 by Nutricia. In 2014, Danone started to rebrand “*Bambix*” under “*Olvarit*” *[confidential]*. Because of its iconic nature, “*Bambix*” co-exists with “*Olvarit*” on the packaging of Danone’s liquid GUM products sold under the “*Olvarit*” brand in Belgium.

In view of the foregoing, the Divestment Business mainly consists of intangible assets. No production facility can be divested.

[confidential]. Danone is ready to allow the Purchaser to use the same blue-and-green ellipse logo that is currently used together with the “*Bambix*” brand.

[confidential]. Danone is ready to allow the Purchaser to use the double heart logo with the “*Olvarit*” brand.

3. In accordance with paragraph 6 of this Commitment, the Divestment Business includes:
 - (a) the following main intangible assets:
 - (i) the assignment of the “*Bambix*” brand and the use of the blue-and-green ellipse logo surrounding the brand, both for use solely in Belgium (with an exclusive royalty-free license back to Danone for use in the Netherlands and Luxembourg for a period of *[confidential]* from Closing);
 - (ii) an exclusive license of the “*Olvarit*” brand and the use of the double

heart logo, both for use solely in Belgium for the sale of liquid GUM products, for a period of *[confidential]* from Closing;

- (iii) access, by virtue of the license, to the secret know-how used in the operation of the Divestment Business, notably relevant product formulae and recipes (including at the option of the Purchaser, changes made by Danone to the relevant formulae and recipes during the Olvarit License Agreement), as well as slogans, advertising and promotional materials (including the copyrights thereto) used in relation to the Divestment Business at the Effective Date;
 - (iv) access, by virtue of the license, to copyrights relating to the packaging used as per the Effective Date for the products supplied by the Divestment Business to the retail sector in Belgium.
- (b) all purchase orders, contracts, agreements and other obligations exclusively related to, or necessary for, the operation of the Divestment Business. To the extent legally and technically feasible, Danone will transfer the contracts with customers existing at the time of completion of the divestiture of the Divestment Business to the Purchaser.
 - (c) copies of all the books, records and other documents exclusively related to, or necessary for the operation of the Divestment Business (including, without limitation, customer and supplier lists and files, distribution lists, mailing lists, sales materials, operating, production and other manuals, advertising and promotional materials);
 - (d) the following tangible assets: stock of finished goods for resale;
 - (e) the following Key Personnel: *[confidential]*; and
 - (f) at the option of the Purchaser and with the prior approval of Milcobel, the transfer of the part of the Manufacturing and Supply Agreement that Danone Trading BV concluded with Milcobel that concerns the manufacturing, packaging and supply of liquid regular and soy-based GUM products sold under the “Olvarit” brand.
4. Danone confirms that the Commitment in its current formulation allows the purchaser (1) to use words such as "groeimelk", "lait de croissance", "drink de croissance soja", "groeidrink soja" in the font and typesetting in which they are currently used, and (2) to use the layout of the packaging.
5. The Divestment Business shall not include:
- (a) any right, title or interest in any manufacturing facility of either Danone or

WhiteWave nor any intellectual property or asset owned by the Parties other than as set out above;

- (b) the assignment of the “*Olvarit*” brand (trademark), since the Purchaser shall re-brand the products concerned during the period of the license;
 - (c) any right, title or interest in the “*Olvarit*” brand in other countries than Belgium or for products other than liquid GUM;
 - (d) any right to use the “*Bambix*” brand in other countries than Belgium.
6. Danone will commit to the Purchaser not to reintroduce the “*Olvarit*” brand in the GUM sector in Belgium for a period of [*confidential*] following Closing.
7. If there is any asset or personnel which is not be covered by paragraph 3 of this Schedule but which is both used (exclusively or not) in the Divestment Business and necessary for the continued viability and competitiveness of the Divestment Business, that asset or adequate substitute will be offered to potential purchasers.