



EUROPEAN COMMISSION
DG Competition

***Case M.8988 - ENERGIZER / SPECTRUM BRANDS (BATTERY
AND PORTABLE LIGHTING BUSINESS)***

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: 11/12/2018

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PUBLIC VERSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

To the notifying party

Subject: Case M.8988 – Energizer/Spectrum Brands (Batteries and Portable Lighting Business)
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

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').

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Dear Sir or Madam,

- (1) On 19 October 2018, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Energizer Holdings, Inc. ("Energizer") will acquire within the meaning of Article 3(1)(b) of the Merger Regulation sole control of the whole of the global battery and portable lighting business (the "Target Business") of Spectrum Brands Holdings, Inc. ("Spectrum"), (the "Transaction").³ Energizer is further referred to as the "Notifying Party". Energizer and Spectrum (or the Target Business, as the context requires) are further referred to together as the "Parties", whilst the undertaking that would result from the Transaction is referred to as "the merged entity".

1. THE PARTIES

- (2) Energizer's main business is the manufacturing and marketing of consumer batteries sold under the Energizer and Eveready brands, mostly through the retail channel to end-consumers. In the EEA, Energizer predominantly sells Energizer-branded consumer batteries, including household batteries, specialty batteries and hearing aid batteries. Energizer is also active in the sale of Energizer-branded portable chargers for rechargeable batteries as well as some lighting products (such as flashlights, lanterns and mini lights). Energizer is also active in the design and marketing of automotive fragrance and appearance products.
- (3) The Target Business comprises Spectrum's consumer battery and portable lighting business worldwide. Spectrum supplies consumer batteries under the Varta and Rayovac brands, as well as private label batteries to retailers. Furthermore, pursuant to a distribution and supply agreement entered into with Varta Microbattery in 2002, Spectrum distributes Varta-branded specialty batteries manufactured by Varta Microbattery.⁴ Spectrum is also active in the sale of portable chargers for rechargeable batteries as well as some portable lighting products.

2. THE OPERATION AND CONCENTRATION

- (4) Pursuant to an Acquisition Agreement signed on 15 January 2018, Energizer intends to purchase shares and assets comprising the Target Business. As a result of the Transaction, Energizer will obtain sole control over the Target Business.
- (5) Therefore, the Transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3. EU DIMENSION

- (6) The Transaction does not have a Union dimension within the meaning of Article 1 of the Merger Regulation as the turnover thresholds set out therein are not met. As the Transaction was capable of being reviewed under the national competition laws of Germany, Spain and the United Kingdom, the Notifying Party requested the referral of the case to the Commission pursuant to Article 4(5) of the Merger Regulation on 13 June 2018. The Member States

³ Publication in the Official Journal of the European Union No C 388, 26.10.2018, p.12.

⁴ As explained in more detail below, for historic reasons, three separate entities under different ownership are active in the manufacturing and distribution of batteries under the Varta brand.

competent to examine the Transaction did not express their disagreement to the request for referral within 15 working days. The Transaction is therefore deemed to have a Union dimension.

4. RELEVANT MARKETS

4.1. Introduction to the industry and the Parties' activities

4.1.1. Consumer batteries

- (7) Batteries are devices that produce electrical energy by means of a chemical interaction between a negative electrode (“anode”) and a positive electrode (“cathode”) through a conductive material (“electrolyte”).⁵ The resulting electricity can be used to power a wide range of devices or installations.
- (8) The overall battery industry encompasses different categories: (i) industrial batteries (such as stationery power supplies that are used in business and factories), (ii) automotive batteries (which are used in cars, trucks and other wheeled vehicles), (iii) batteries that are directly integrated into consumer devices (such as mobile telephones and laptops), and (iv) batteries used in relatively small devices (such as power tools and toys).⁶ The batteries in the latter category are commonly known as “consumer batteries”. Energizer and Spectrum only supply consumer batteries.⁷ Therefore, this decision will only deal with consumer batteries.
- (9) The industry appears to distinguish consumer batteries based on their size and overall purpose:⁸
- (a) The general purpose cylindrically shaped consumer batteries, with common battery sizes such as AA and AAA, and typically used to power various types of household electronic devices, are often referred to as “general purpose” or “**household**” **batteries**. These household batteries can be disposable (primary), if manufactured for example according to an alkaline or lithium chemistry, or rechargeable (secondary), if manufactured according to a chemistry that allows recharging, for example nickel-metal hydride (NiMH).
 - (b) Batteries that have a coin or a button shape and which are most commonly manufactured according to chemistries such as lithium, with commonly known sizes such as CR2032, CR2016, or cylindrical batteries with sizes such as AAAA or A23, and which are typically used for electronic watches and photo equipment, are commonly known as “**specialty**” **batteries**.⁹

⁵ Case M.7655 – *Berkshire/Hathaway/The Duracell Business*, paragraph 10.

⁶ Form CO, paragraph 94.

⁷ Form CO, paragraph 94.

⁸ Form CO, paragraphs 97-99. See also Minutes of a call with a competitor, 8 August 2018, 14:00, paragraph 4. There are also other forms of consumer batteries, such as power banks. Given that there are no horizontal overlaps between the Parties in the supply of power banks (Form CO, paragraph 177), this decision will not assess the competitive effects of the Transaction on the markets for power banks.

⁹ Like household batteries, specialty batteries can also be disposable or rechargeable. However, given that neither Energizer nor Spectrum sells rechargeable specialty batteries (Form CO, paragraph 98), these are not considered further in this decision.

- (c) Batteries used to power hearing aid devices are very small button-cell shaped specialty batteries that tend to be manufactured according to a zinc-air chemistry, and are typically known as "**hearing aid batteries**".
- (10) There are a number of manufacturers and suppliers of consumer batteries in the EEA. The other suppliers of consumer batteries sold in the EEA include Duracell, Panasonic, Gold Peak, Sony (now Murata), Philips, Agfa, Kodak, Toshiba, FDK (Fujitsu), Ansmann, Cegasa, Emos, Maxell, Camelion, Renata, Powercell, Airam, and Varta Microbattery.¹⁰
- (11) Today, the ownership and use of the Varta brand is split between three separate entities:¹¹
- (a) Johnson Controls holds the rights to the automotive batteries division;¹²
 - (b) Spectrum holds rights to the Varta-branded consumer batteries division (including household batteries, portable chargers and portable lighting products).¹³ Spectrum owns a manufacturing facility in Dischingen, Germany, where Varta-branded consumer batteries are manufactured; and
 - (c) Varta AG, via its subsidiary Varta Storage GmbH, holds the rights to storage solutions,¹⁴ and via its subsidiary Varta Microbattery GmbH ("Varta Microbattery"), to the microbattery division (which includes specialty and hearing aid batteries).¹⁵ Varta Microbattery is based in Ellwangen, Germany, where it owns a manufacturing facility that manufactures Varta-branded specialty batteries, as well as hearing aid batteries under the Varta Microbattery's PowerOne brand and hearing aid batteries under private label.



Source: <http://varta.com/>

¹⁰ Form CO, paragraphs 313-385 and 404. A number of other suppliers may also export batteries from outside the EEA, including Zhejiang Hengwei Battery (China), Sichuan Changhong Electric (China), Zhejiang Yonggao (China), Chung Pak (Hong Kong), ChaoChuang (China), Power Glory Battery Tech (China), Eve (China), EBL Mall (China), Ultralife (USA) – see Form CO, paragraphs 386-408.

¹¹ See <http://varta.com/>.

¹² See <https://www.varta-automotive.com/en-gb>.

¹³ See <http://www.varta-consumer.com/en>.

¹⁴ See <https://b2b.varta-storage.com/en/nc/b2b.html>.

¹⁵ See <https://www.varta-microbattery.com/?lang=en>.

- (12) Pursuant to a distribution agreement between Varta AG and Spectrum in relation to Varta Microbattery products, [Distribution of distribution agreement]^{16,17}
- (13) Energizer and Spectrum are both active in the production and sale of consumer batteries which they do not sell directly to consumers, but rather to retailers (e.g. [Parties' retailers/customers] and others), wholesalers and distributors.¹⁸ Energizer and Spectrum are therefore only active at the wholesale level, where they compete to supply retailers, wholesalers and distributors with consumer batteries.¹⁹
- (14) The Parties supply some of their consumer batteries through other channels, in particular to original equipment manufacturers ("OEM"), who integrate such batteries directly in their devices. Unlike the parties in *Panasonic/Sanyo*,²⁰ neither Energizer, nor Spectrum has significant activities regarding the supply of consumer batteries to OEMs. Energizer realized less than [Percentage]% of its 2017 EEA consumer batteries revenues through the sale of consumer batteries to OEMs, industrial and institutional customers²¹ while such sales accounted for around [Percentage]% of Spectrum's revenues in the EEA in 2017.²²
- (15) In the EEA, Energizer predominantly sells Energizer-branded batteries, including household batteries (disposable and rechargeable), specialty and hearing aid batteries. Approximately [Percentage]% of the consumer batteries sold by Energizer in the EEA (by volume) are not manufactured by Energizer, but are sourced from third parties.²³ For example, Energizer does not itself manufacture the hearing aid batteries that are sold under the Energizer brand, but procures these from [Supplier].²⁴
- (16) In the EEA, Spectrum supplies household (disposable and rechargeable) and specialty batteries under the Varta brand, as well as hearing aid batteries under the Rayovac brand. Spectrum also supplies hearing aid batteries, as well as other consumer batteries, under the Rayovac and Varta brands in non-EEA territories.²⁵

4.1.2. *Portable battery chargers*

- (17) Household rechargeable batteries (otherwise known as secondary batteries) can be recharged by the consumer using a portable battery charger.
- (18) Energizer is active in the sale of Energizer-branded portable chargers for rechargeable batteries.²⁶

¹⁶ Form CO, paragraph 62.

¹⁷ Form CO, paragraph 61.

¹⁸ Form CO, paragraph 3.

¹⁹ Form CO, paragraph 3.

²⁰ Case M.5421 - *Panasonic/Sanyo*.

²¹ The term "institutional customers" refers to governmental entities such as the Ministry of Defense and institutions such as hospitals

²² Form CO, paragraphs 106 and 111.

²³ Form CO, paragraph 45.

²⁴ Form CO, paragraphs 1326-1327; Parties' reply to RFI 3, Annex 47.1.

²⁵ Form CO, paragraph 50.

²⁶ Form CO, paragraph 46.

(19) Spectrum's battery portfolio also includes portable chargers for rechargeable batteries. These products are licensed to and produced by third parties.²⁷

4.1.3. *Portable lighting products*

(20) Energizer is active in the sale of Energizer-branded portable lighting products.

(21) Spectrum's portable lighting products include flashlights, lanterns, headlights, special lights (e.g. bike lights, handbag lights, book lights), and mini lights (e.g. mini torches, keyrings).²⁸

4.1.4. *Other products*

(22) Spectrum supplies hearing aid battery testers and cleaning kits, which are not supplied by Energizer.²⁹

4.2. **Relevant product markets**

(23) The Transaction gives rise to overlaps in the wholesale supply of consumer batteries, the wholesale supply of portable battery chargers and the wholesale supply of portable lighting products.

4.2.1. *Wholesale supply of consumer batteries*

(24) In previous decisions the Commission has differentiated the market for batteries into three separate product markets:³⁰ (a) portable batteries;³¹ (b) heavy-duty industrial batteries;³² and (c) automotive batteries.³³

(25) Consumer batteries are part of the portable batteries category and are used in relatively small devices such as power tools and toys but do not comprise built-in batteries used in small electronic devices such as mobile phones.³⁴

(26) In relation to markets identified by levels of trade, the Commission has previously distinguished between the upstream market for the manufacture and supply of portable batteries and the downstream market for the distribution of portable batteries.³⁵

(27) Since the Parties are not active in the manufacture and/or supply of heavy industrial batteries or automotive batteries and also not in the distribution of portable batteries, the relevant product and geographic market definitions below are considered in relation to the wholesale supply of consumer batteries.

²⁷ Form CO, paragraph 52.

²⁸ Form CO, paragraph 51.

²⁹ Form CO, paragraph 1354.

³⁰ Case M.5421 - *Panasonic/Sanyo*, paragraph 12.

³¹ The term "portable" battery denotes sealed power cells that can be hand-carried and are meant for use in relatively small devices like mobile telephones, laptop computers, power tools, toys, and the like.

³² Stationary power supplies that are used in businesses, factories and the like.

³³ Batteries which are used in cars, trucks, and other wheeled vehicles.

³⁴ Case M.5421 - *Panasonic/Sanyo*, footnote 6.

³⁵ Case M.7655 - *Berkshire Hathaway/The Duracell Business*, paragraphs 10-21.

4.2.1.1. Distinction between the OEM and retail channels

(a) The Commission's past practice

- (28) In its previous decisional practice, the Commission has considered putative industrial/consumer channels in the context of consumer batteries.³⁶ However, the Commission has left open whether the battery market should be segmented according to sales channel.³⁷ The term 'industrial channel' as used in the *Panasonic/Sanyo* precedent is largely synonymous with 'OEM channel': "*The industrial channel would consist of sales to device manufactures and pack makers (including private label suppliers) while the consumer channel according to the Parties consists of direct sales to wholesalers and retailers*".³⁸

(b) The Notifying Party's view

- (29) The Notifying Party submits that there is a distinction between the wholesale supply of consumer batteries by specialized manufacturers to the OEM channel and the wholesale supply of consumer batteries by battery manufacturers to retailers and wholesalers, which is the level of trade where the Parties mainly overlap.³⁹
- (30) The Notifying Party cites the arguments made by the Parties in *Panasonic/Sanyo*, which were as follows. First, the batteries that are sold to these two channels are different, as the batteries for the industrial channel are enhanced so they are more reliable and have longer shelf life. Second, the batteries for the customer channel are standardized as opposed to the OEM channel, where the customers can have the products tailored to their own specifications. Third, consumer branding is significantly more important at the consumer level as opposed to the OEM level. Fourth, the contractual terms for the customers in these two channels are also different. Fifth, the price levels in these two channels are different.⁴⁰

(c) The Commission's assessment

- (31) The Commission's investigation has clearly indicated that consumer batteries sold in the OEM channel and consumer batteries sold in the retail channel are not viewed as being part of the same product market due to differing conditions of competition both on the demand side and on the supply side.
- (32) A majority of competitors replying to the Commission's market investigation consider that the wholesale supply of batteries to OEMs is distinct from the wholesale to retailers, taking into account market dynamics, competitors, product characteristics and prices.⁴¹
- (33) A competitor stressed the importance of the support function for sales to the OEM channel: "*The sale to OEMs is distinct from the wholesale to retailers because whole sales business regards the brand name of suppliers as important more than OEM business and OEM business considers the support function of suppliers as more important.*"⁴² Another

³⁶ Case M.5421 - *Panasonic/Sanyo*, paragraph 35.

³⁷ Case M.5421 - *Panasonic/Sanyo*, paragraph 33.

³⁸ Case M.5421 - *Panasonic/Sanyo*, *ibid.*

³⁹ Form CO, paragraph 120.

⁴⁰ Form CO, paragraph 124.

⁴¹ Replies to Q2 - Questionnaire to Competitors, question 5.

⁴² Replies to Q2 - Questionnaire to Competitors, question 5.1.

competitor indicated that cost, price and production to specification are more important commercial drivers for OEM sales: "*OEM sales is more cost, price & technical specification driven. Wholesale is next to cost and price, more marketing driven (support for retailer sell out such as promotions, listing fees, POS material, brand, ...*".⁴³ Another competitor explained that batteries for the OEM channel are priced differently and sometimes made to order: "*Technical / Industrial market is catered by different pricing levels and also with different product, sometimes tailor-made.*"⁴⁴

- (34) For these reasons, the Commission considers that it is appropriate to distinguish between the wholesale supply of consumer batteries to the retail channel and the wholesale supply of consumer batteries to the OEM channel.

4.2.1.2. Distinction between primary (disposable) and secondary (rechargeable) consumer batteries

(a) The Commission's past practice

- (35) The Commission has previously drawn a fundamental distinction between 'primary' ('disposable') batteries and 'secondary' ('rechargeable') batteries on the basis that primary batteries hold more energy by size/weight (i.e., have a higher 'energy density') than rechargeable batteries, but may be used after purchase only until their chemical charge is depleted before being discarded.⁴⁵

(b) The Notifying Party's view

- (36) The Notifying Party submits that a distinction between primary and secondary batteries need not be made, since (i) retailers typically look to procure both primary and secondary batteries - reflecting the fact that they represent direct alternatives for consumers; (ii) secondary batteries are functionally identical to and substitutable for primary batteries, with the consumer being able to use an AA battery to power a given device, whether with a primary or a secondary battery, and with device power requirements not distinguishing between disposable and rechargeable batteries; and (iii) secondary batteries are also marketed under the same brands, and are merchandised by retailers in the same in-store locations, as primary batteries.⁴⁶

(c) The Commission's assessment

- (37) The Commission's investigation has indicated that primary and secondary consumer batteries, a distinction which, as discussed in paragraph (9)(a), is materially relevant only for the household category, are in separate markets.
- (38) First, secondary batteries require specific production equipment and are not produced by certain suppliers such as Spectrum and Energizer (which only purchase and resell secondary batteries).

⁴³ Replies to Q2 - Questionnaire to Competitors, question 5.1.

⁴⁴ Replies to Q2 - Questionnaire to Competitors, question 5.1.

⁴⁵ Case M.5421 – *Panasonic/Sanyo*, paragraph 11. See also Case M.7655 - *Berkshire Hathaway/The Duracell Business*, paragraph 12.

⁴⁶ Form CO, paragraphs 141-148.

- (39) Second, respondents to the market investigation point to significant differences in price, technical characteristics and intended use.⁴⁷ For example, a Swedish customer explained: *"Rechargeable batteries are priced at a high premium, which is partially due to the fact that they are much more expensive to produce."* A Bulgarian customer further commented: *"Rechargeable batteries are not substitutable with disposable batteries, considering use intensity and price."*⁴⁸ A Slovenian customer pointed to different categories of users: *"Disposable and rechargeable are not substitutable because of different type of users."*⁴⁹ These views were echoed by competitors. For example, a competitor pointed to significant differences in price and end use: *"In particular, rechargeable household batteries are more than five times the price of disposable household batteries. Moreover, on top of this premium for the batteries themselves, end-consumers also have to purchase a battery charger. Chargers can cost as much as €40."*⁵⁰
- (40) Third, some respondents point out that certain electronic devices are not suitable for the use of rechargeable batteries while others are typically used with rechargeable rather than disposable batteries.⁵¹
- (41) Fourth, market participants highlight the decline in sales of secondary batteries. A Swedish customer explained: *"Rechargeable batteries sales are overall decreasing in volume year on year. Consumers appear to prefer the convenience of disposable batteries, even though the per unit price of rechargeable batteries can be significantly lower than that of disposable batteries after the initial investment is made, as every rechargeable battery can be recharged hundreds of times."*⁵² A competitor pointed out that *"Rechargeable is a declining segment, [...]"*.⁵³
- (42) For these reasons, the Commission finds that primary (disposable) and secondary (rechargeable) consumer batteries are in separate relevant product markets.

4.2.1.3. Distinction based on chemistry for the wholesale supply of consumer batteries to the retail channel

(a) The Commission's past practice

- (43) In previous decisions, the Commission has considered that the market for primary and secondary consumer batteries might be distinguishable according to their chemistry. More specifically, the Commission has considered that: (i) primary household batteries could be further segmented into chemistries such as (a) carbon zinc, (b) alkaline, and (c) lithium;⁵⁴ (ii) primary coin shaped/specialty batteries can be made from lithium, silver oxide, alkaline or

⁴⁷ Replies to Q1 – Questionnaire to Customers, question 15.

⁴⁸ Replies to Q1 – Questionnaire to Customers, question 15.

⁴⁹ Replies to Q1 – Questionnaire to Customers, question 15.

⁵⁰ Replies to Q2 – Questionnaire to Competitors, question 18.

⁵¹ Replies to Q1 – Questionnaire to Customers, question 15; Replies to Q2 – Questionnaire to Competitors, question 18.

⁵² Minutes of a call with a customer, 8 August 2018, 11:00 CET.

⁵³ Minutes of a call with a competitor, 8 August 2018, 14:00 CET.

⁵⁴ Case M.7655 - *Berkshire Hathaway/The Duracell Business*, paragraph 12.

zinc air;⁵⁵ and (iii) secondary batteries could be further segmented into chemistries such as (a) nickel cadmium (“NiCd”), (b) NiMH, (c) Li-ion, and (d) lithium.⁵⁶

(b) The Notifying Party's view

- (44) In the Notifying Party's view, the chemistry of primary and secondary batteries is not a relevant dimension for defining the boundaries of a relevant product market - both at the downstream level, and at the upstream wholesale level of supply.⁵⁷
- (45) First, the Notifying Party contends that final consumers are mostly unaware of the particular chemistry embodied in the battery: the technical capabilities of the battery and its intended use are far more important considerations than chemical composition from the perspective of consumers.⁵⁸
- (46) Second, the Notifying Party submits that most suppliers of consumer batteries offer batteries based on all the different chemistries, that they either manufacture themselves or source from third parties. It is the retailers and the distributors which choose whether they want to source all types of chemistries from a single supplier or whether they prefer procuring these chemistries from multiple suppliers.⁵⁹
- (47) Third, the Notifying Party submits that, within the primary household battery categories, carbon zinc, alkaline and lithium technology exist in a continuum of price and performance (in terms of running time), with carbon zinc at the lower end of the range and lithium at the higher end.⁶⁰
- (48) Fourth, as for secondary batteries, the Notifying Party submits that no distinction needs to be drawn between chemistries, whether they are manufactured using (a) NiCd; (b) NiMH; (c) Li-ion or (d) lithium.⁶¹

(c) The Commission's assessment

- (49) The market investigation has indicated that end users do not tend to distinguish among the various chemistries of consumer batteries.
- (50) A clear majority of customers replied that end users consider household batteries of different chemistries (alkaline vs carbon zinc, alkaline vs lithium, and lithium vs carbon zinc) to be substitutable taking into account technical characteristics, intended use and price considerations.⁶²

⁵⁵ Case M.7655 - *Berkshire Hathaway/The Duracell Business*, paragraph 14.

⁵⁶ Case M.5421 - *Panasonic/Sanyo*, paragraph 14.

⁵⁷ Form CO, paragraph 154.

⁵⁸ Form CO, paragraph 154.

⁵⁹ Form CO, paragraph 171.

⁶⁰ Form CO, paragraph 159.

⁶¹ Form CO, paragraph 176.

⁶² Replies to Q1 – Questionnaire to Customers, question 15.

- (51) A Danish customer stated: "*In Denmark, most people do not understand the difference between alkaline and other types of batteries. So they are substitutable. The only difference are the customers who are looking for rechargeable batteries, they are non-substitutable.*"⁶³
- (52) A Czech competitor commented: "[...] *most of consumers don't understand the real technical difference across chemistries, so they most often substitute batteries.*"⁶⁴
- (53) *Panasonic/Sanyo* focused on the supply of household and specialty batteries to OEMs, and segmented the markets for consumer batteries on the basis of several criteria including chemistry. The market investigation had clearly shown limited demand-side substitutability because OEM customers clearly differentiated between batteries of different chemistries based on their diverging technical and performance characteristics and therefore suitability for the devices that they manufacture. This Transaction, however, focuses on the supply of consumer batteries for the retail channel, and therefore in this case it is the purchasing behaviour of end consumers that determines demand-side substitutability. In this regard, the market investigation has shown that end consumers at the retail level have little awareness of the different kinds of chemistries when buying consumer batteries and that there is therefore a high degree of demand-side substitutability in the wholesale of consumer batteries for the retail channel.
- (54) For these reasons, the Commission finds that for the wholesale supply of consumer batteries to the retail channel, it is not necessary to distinguish between batteries by chemistry.

4.2.1.4. Potential segmentations within the wholesale supply of household and specialty batteries to the OEM channel

(a) The Commission's past practice

- (55) In its decision in *Panasonic/Sanyo*, which assessed in detail the supply of household and specialty batteries to OEMs, as the parties to that transaction were mainly active in the sale to OEM customers, the Commission segmented the markets for consumer batteries on the basis of rechargeability (primary/secondary), shape (cylinder, coin, etc.) and chemistry.⁶⁵

(b) The Notifying Party's view

- (56) The Notifying Party submits that there is no need to provide a market definition for the supply of consumer batteries to OEMs on the grounds that it does not appear to be relevant to the current case given that neither Energizer nor Spectrum has significant sales in this market.⁶⁶

(c) The Commission's assessment

- (57) The Commission considers that the markets for the supply of household and specialty batteries to the OEM channel should be segmented based on rechargeability (primary/secondary), shape (cylinder, coin) and chemistry (alkaline, lithium, silver oxide, zinc carbon and NiMH). This is in view of the conclusions of the Commission's in-depth

⁶³ Replies to Q1 – Questionnaire to Customers, question 15.

⁶⁴ Replies to Q2 – Questionnaire to Competitors, question 18.1.

⁶⁵ Case M.5421 - *Panasonic/Sanyo*, paragraphs 13-32.

⁶⁶ Form CO, paragraph 125.

investigation in *Panasonic/Sanyo*,⁶⁷ which focused on the market for the supply of household and primary batteries to OEMs.

4.2.1.5. Distinction between branded and private label consumer batteries

(a) The Commission's past practice

(58) In its *Berkshire Hathaway/Duracell* and *MEI/Philips* decisions, the Commission treated private label and branded supplies as part of the same relevant market at the “upstream” wholesale level, taking private label sales into account in its market share calculations.⁶⁸

(b) The Notifying Party's view

(59) The Notifying Party takes the view that branded batteries and private label consumer batteries form part of the same relevant product market and fiercely compete at the wholesale level, as: (i) this reflects its business experience (where the Parties face strong competition from private label suppliers and private label brands); (ii) this is how retailers sell battery products with identical performance; and (iii) this reflects the characteristics and the dynamics in the market, where sales of private label consumer batteries have grown, and this growth has been maintained, at the expense of branded consumer batteries.⁶⁹

(60) The Notifying Party further submits that private label and branded consumer batteries compete at the downstream retail level, which drives the level of interaction at the wholesale level, on the following grounds: (i) the quality of private label consumer batteries is similar to branded products; (ii) private label consumer batteries continue to gain market share; (iii) retailers increasingly promote their own brands, (iv) consumer batteries are “low emotion” products characterized by low brand loyalty and reactivity of customers to promotions and special offers. In particular, the Notifying Party claims that there is demand-side substitutability since end consumers increasingly do not differentiate between branded and private label batteries, as evidenced by the high share⁷⁰ of private label battery sales.⁷¹

(c) The Commission's assessment

(61) The market investigation has clearly indicated that branded and private label consumer batteries are not viewed as being part of the same product market.⁷²

(62) First, the vast majority of consumer battery customers who responded to the market investigation consider that it would not be an economically sound option for them to purchase

⁶⁷ Case M.5421 - *Panasonic/Sanyo*.

⁶⁸ Case M.7655 - *Berkshire Hathaway/The Duracell Business*, paragraph 25. See also Case M.2386 - *MEI/Philips*, paragraph 13.

⁶⁹ Form CO, paragraph 179.

⁷⁰ Sales of private label consumer batteries are currently at [20-30]% in value and [30-40]% in volume in the EEA, ranging from less than [0-5]% to [60-70]% at national level.

⁷¹ Form CO, paragraph 201.

⁷² Replies to Q1 – Questionnaire to Customers, questions 6-11; Replies to Q3 – Questionnaire to Competitors, questions 6-11.

only private label batteries or only branded batteries⁷³ and that they do not source private label and branded batteries from the same supplier per EEA country.⁷⁴

- (63) Second, a very large number of the customers who responded to the Commission's market investigation stated that they trade only in branded batteries,⁷⁵ which suggests that there are different players on the market: those that engage in private label batteries trade, those that engage in only branded batteries trade and those that engage in trade of both branded and private label batteries. As one customer put it: "*we want to be perceived as a brand distributor*".⁷⁶ This seems to be confirmed by the competitors, the majority of whom have indicated that they do not sell white label and branded batteries to the same customers per EEA country.⁷⁷
- (64) Third, of those customers that trade in both branded and private label batteries, the majority explain that selection procedures for branded and private label batteries are often run separately, and often by different departments.⁷⁸ As one customer explained: "*The negotiation timing and the negotiation process are organized separately for private label batteries and branded batteries. A bundling or combined sourcing does not take place, even though a branded partner can also offer private label, just at a different time.*"⁷⁹ The majority of competitors responding to the market investigation that sell both branded and private label batteries have similarly stated that they have separate sales teams for the sales of branded and white label batteries in the EEA.⁸⁰ As one competitor explained: "*Branded consumer batteries requires more marketing activities whereas white label does not.*"⁸¹ Another competitor explained that sales teams are different due to "*[d]ifferent customers structure and price*"⁸². In addition, the vast majority of consumer battery competitors that sell both branded and private label batteries do not sell private label and branded batteries to the same customers per EEA country⁸³.
- (65) Fourth, customers apply different criteria for the selection of branded and private label batteries.⁸⁴ For example, in choosing a private label batteries supplier, customers consider factors such as technical specifications, commercial characteristics, logistics modalities, potential volumes and prices, whereas in their choice of branded consumer batteries, factors such as the availability and frequency of promotions, brand value and awareness and market leadership are often considered key alongside volume and prices.⁸⁵ As one customer explained: "*Tender processes are different for the purchasing of branded and white label batteries to take into account different selection criterias [and] different duration for procurement*".⁸⁶ In the opinion of another customer: "*The negotiation of private label and*

⁷³ Replies to Q1 – Questionnaire to Customers, question 7.

⁷⁴ Replies to Q1 – Questionnaire to Customers, question 8.

⁷⁵ Replies to Replies to Q1 – Questionnaire to Customers, question 6.1, question 7.1.

⁷⁶ Replies to Q1 – Questionnaire to Customers, question 7.1.

⁷⁷ Replies to Q3 – Questionnaire to Competitors, question 7.

⁷⁸ Replies to Q1 – Questionnaire to Customers, questions 6 and 8.

⁷⁹ Minutes of a call with a customer, 31 July 2018, 16:00 CET.

⁸⁰ Replies to Q3 – Questionnaire to Competitors, question 6.

⁸¹ Replies to Q3 – Questionnaire to Competitors, question 6.1.

⁸² Replies to Q3 – Questionnaire to Competitors, question 6.1.

⁸³ Replies to Q2 – Questionnaire to Competitors, question 7.

⁸⁴ Replies to Q1 – Questionnaire to Customers, question 6.1.

⁸⁵ Replies to Q1 – Questionnaire to Customers, question 6.1.

⁸⁶ Replies to Q1 – Questionnaire to Customers, question 6.1.

branded are based on a completely different commercial logic, it is unthinkable to conduct a single negotiation."⁸⁷ Furthermore, the purchase of private label batteries typically involves additional checks and quality tests, in particular with regard to health, safety and technical standards.⁸⁸

- (66) Fifth, an overwhelming majority of customers and competitors that responded to the Commission's market investigation stated that end consumers perceive technical or quality differences between private label and branded consumer batteries.⁸⁹ The market investigation showed that consumer preferences are based on several factors, such as price, brand loyalty and expected lifetime. For example, branded batteries were said to be perceived by consumer as being of "better" "superior" or "higher quality", "more precisely processed", "more technical", "more innovative", of having a "longer life" and being products in which consumers "place more trust".⁹⁰ Private label batteries were described as being perceived by consumers as "much cheaper" and as being of "lower" or "inferior quality".⁹¹ As one customer explained: "The brand value of for example Varta or Duracell is substantial in Denmark. We as a company do much to promote our white label items, but the branded batteries are still king."⁹²
- (67) According to another customer, branded batteries are a "must-stock" item, which it could not delist, as it would then lose all brand-loyal customers.⁹³ This customer explained that even if in general it is growing its offering of private label batteries, "[n]evertheless, consumers still trust brands more. Customers that buy private label batteries tend to be more price-oriented".⁹⁴ Furthermore, despite the availability of literature on product testing and comparisons of the performance of branded and private label batteries, "brand recognition has remained quite unchallenged – at least for the group of brand-conscious buyers".⁹⁵
- (68) Sixth, brand recognition was shown to be very important, with the vast majority of customers indicating that brand recognition was important or very important when selecting a supplier, both from a wholesaler/retailer and from an end-consumer point of view.⁹⁶ This is reflected in the fact that marketing activity in general is a very important driver of battery sales. For example, a customer reports that, if a manufacturer is engaged in a marketing campaign for its brand of batteries in a particular period of time, it is a good idea to stock that brand for that period of time.⁹⁷ As one customer explains, promotions are "a good way to attract the attention of consumers", with that customer offering "several (on average 6-8) price

⁸⁷ Replies to Q1 – Questionnaire to Customers, question 7.1; translated from Italian original "*Le negoziazioni della private label e quelle della marca si fondono su logiche commerciali completamente diverse, è impensabile fare una negoziazione unica.*"

⁸⁸ Replies to Q1 – Questionnaire to Customers, question 6.

⁸⁹ Replies to Q1 – Questionnaire to Customers, question 9; Replies to Q2 – Questionnaire to Competitors, question 8.

⁹⁰ Replies to Q1 – Questionnaire to Customers, question 9.1.

⁹¹ Replies to Q1 – Questionnaire to Customers, question 9.1.

⁹² Replies to Q1 – Questionnaire to Customers, question 9.1.

⁹³ Minutes of a call with a customer, 31 July 2018, 16:00 CET.

⁹⁴ Minutes of a call with a customer, 31 July 2018, 16:00 CET.

⁹⁵ Minutes of a call with a customer, 31 July 2018, 16:00 CET.

⁹⁶ Replies to Q1 – Questionnaire to Customers, question 26. For instance, one customer explained specifically with respect to hearing aid batteries: "*brand recognition matters in the hearing aid battery market. The battery business is a brand business.*" Minutes of a call with a customer, 26 July 2018, 15:30 CET.

⁹⁷ Minutes of a call with a customer, 8 August 2018, 11:00 CET.

promotions over the year. Timing and purchase conditions are usually negotiated with the manufacturer."⁹⁸

- (69) For retailers it seems to be important to have appealing and well-recognised battery brands in their store in order to draw customers' attention to their battery offer. A customer commented: "*Consumer batteries are purchased on impulse as a "coincidental purchase". Most consumers do not enter grocery stores like ALDI or EDEKA with the purpose of buying batteries: these are usually not planned purchases. Consumers need milk or sugar and may then decide spontaneously to buy batteries as well. Therefore, the eye-catching placement of batteries is of crucial importance to incentivize unplanned impulse purchases*".⁹⁹
- (70) Seventh, the results of the market investigation show that there are significant price differences between branded and private label consumer batteries. Customers' replies indicated that depending on the battery type, branded products are on average around 50% and up to 75% (and in some cases, even up to 200%) more expensive at the wholesale level,¹⁰⁰ whereas replies from competitors suggest that, depending on the battery type, branded products are up to 300% more expensive at the wholesale level¹⁰¹ and that profit margins are proportionally higher for branded batteries than for private label products.¹⁰² In this context, a customer explained for instance that on the German market, the prices of private label batteries are driven by the price signals from the private label offerings of big German discounter retailers. By contrast, given that the price-setting discount retailer Aldi is not active in the branded batteries segment, price competition among other German retailers is less fierce in the branded segment.¹⁰³
- (71) Eighth, the different price levels for branded and private label consumer batteries are also reflected in the Parties' internal documents which show that branded products can command a price premium when compared with private label batteries. An Energizer document cites as one of the main considerations for private label supply "[Comment on margins]".¹⁰⁴ The same Energizer document states "[Comments on private label and brands]" and that "[Comments on private label and brands]".
- (72) Ninth, the respective strength of competitors differs between the sale of branded and private label batteries. A competitor contends in this context that Varta, Energizer and Duracell compete head-to-head in branded batteries, (although there are some markets/countries where Duracell is a weaker, more distant competitor to Varta and Energizer), but not with regard to private label batteries.¹⁰⁵
- (73) Tenth, as regards the alleged growth of private label battery sales, such growth appears to have slowed down or stopped in a number of EEA countries.¹⁰⁶ Furthermore, a competitor

⁹⁸ Minutes of a call with a customer, 31 July 2018, 16:00 CET.

⁹⁹ Minutes of a call with a customer, 31 July 2018, 16:00 CET

¹⁰⁰ Replies to Q1 – Questionnaire to Customers, question 11.1.

¹⁰¹ Replies to Q2 – Questionnaire to Competitors, question 10.1.

¹⁰² Replies to Q2 – Questionnaire to Competitors, question 10.2.

¹⁰³ Minutes of a call with a customer, 31 July 2018, 16:00 CET.

¹⁰⁴ Energizer internal document [Internal document], submitted as 5(4) Annex 13.

¹⁰⁵ Minutes of a call with a competitor, 8 August 2018, 14:00 CET.

¹⁰⁶ For instance, between 2008 and 2017 the value share of private label went from [20-30]% to [20-30]% in Belgium, from [30-40]% to [20-30]% in France, from [10-20]% to [10-20]% in Italy, and from [10-20]% to [10-20]% in the UK (Annex 34.1 to the reply to RFI 3).

submits that, insofar as there is nonetheless growing demand for private label batteries, it is not driven by a particular battery-related consumer choice inside the stores; the increasing popularity of private label batteries simply reflects the overall trend that increasingly more people are shopping in discounters than in grocery stores. This is currently the case in countries such as Germany and Spain, where discounters (e.g. Aldi, Lidl and Mercadona respectively) have an increasing demand and consumers move to the same extent to private labels.¹⁰⁷ Not all end consumers who switch from branded batteries to private label do so of their own volition. A number of consumers who buy private label batteries in discount stores would not buy private label batteries in grocery stores, where they are offered the choice between branded and private label.

- (74) For these reasons, the Commission finds that branded consumer batteries are in a separate relevant product market, distinct from private label consumer batteries.

4.2.1.6. Distinction between household batteries and specialty batteries

(a) The Commission's past practice

- (75) The Commission has previously assessed coin-shaped¹⁰⁸ and cylindrical consumer batteries separately.¹⁰⁹ In particular, the Commission found that, in contrast to cylindrical batteries, primary coin-shaped batteries make up almost all sales of coin-shaped batteries. As discussed in paragraph (9)(b)), the term 'coin shaped batteries' largely coincides with 'specialty batteries'.

(b) The Notifying Party's view

- (76) The Notifying Party indicates that a distinction can be made between household and specialty batteries.¹¹⁰
- (77) Within household batteries, the Notifying Party submits that the different sizes and shapes of such batteries can be seen as forming part of one overall market at the wholesale supply level. From a supply-side perspective, most manufacturers offer (or can easily offer through contract manufacturing by a third party) all different shapes and sizes of household batteries.¹¹¹
- (78) Within specialty batteries, the Notifying Party submits that the different sizes and shapes of such batteries can also be seen as forming part of one overall market at the wholesale supply level. From a supply-side perspective, manufacturers typically offer the full range of specialty batteries through third party supply manufacturing arrangements.¹¹²

¹⁰⁷ Minutes of a call with a competitor, 8 August 2018, 14:00 CET.

¹⁰⁸ The term 'Coin shaped batteries' largely coincides with 'specialty batteries' (see paragraph (9)(b))

¹⁰⁹ Case M.5421 - *Panasonic/Sanyo*, paragraph 14; Case M.7655 - *Berkshire Hathaway/The Duracell Business*, paragraph 14.

¹¹⁰ Form CO, paragraph 97.

¹¹¹ Form CO, paragraph 135.

¹¹² Form CO, paragraph 136.

(c) The Commission's assessment

- (79) The Commission concludes that household and specialty batteries are in separate relevant product markets.
- (80) First internal documents show that the Parties attach importance to those different battery segments.¹¹³
- (81) Second, feedback from customers and competitors indicates that tenders are often run for household and specialty batteries separately and that household and specialty batteries are sourced from different suppliers in ranges¹¹⁴, notably because purchase prices, offerings, profit margins¹¹⁵ and end consumer perception of branded vs private label products differ for household compared to specialty batteries.¹¹⁶ For example, a Spanish customer commented: "*Household batteries present a minor differentiation (specially concerning toys or simple devices). Differentiation grows along with the device energy requirements. Specialty batteries definitely present a big differentiation. Branded miniatures and lithium batteries perform significantly better, in our opinion.*"¹¹⁷ Furthermore, one competitor explained specifically that household batteries should be distinguished from specialty batteries, contrasting "*the common AA, AAA type alkaline batteries (general purpose category or the 'historical' business)*" with "*the specialty battery segment (e.g. lithium coin and button cells) as a growing and fast moving business*".¹¹⁸
- (82) Third, asked whether it was important for their customers to be able to purchase household and specialty consumer batteries under the same contract from the same supplier, none of the competitors replying answered that this is important or very important.¹¹⁹
- (83) Fourth, on the question how easy it is for a supplier to offer both household and specialty batteries to customers that demand both categories, a majority of competitors replying answered that this is difficult or fairly difficult.¹²⁰
- (84) Fifth, while most battery suppliers are able to supply both categories, suppliers seem to differ in strength, with diverging market shares, between those categories. Producing household consumer batteries on the one hand and specialty consumer batteries on the other hand requires specific production equipment. Therefore, specialty batteries are not produced by certain suppliers such as Spectrum (who only purchases and resells secondary batteries).
- (85) For these reasons, the Commission finds that household batteries and specialty batteries are in separate relevant product markets.

¹¹³ See Energizer internal document "[Internal document]", submitted as 5(4) Annex 33

¹¹⁴ Replies to Q1 – Questionnaire to Customers, question 8.2

¹¹⁵ Replies to Q1 – Questionnaire to Customers, questions 11.1; Replies to Q2 – Questionnaire to Competitors, questions 10.1, 10.2.

¹¹⁶ Replies to Q1 – Questionnaire to Customers, 9.2; Replies to Q2 – Questionnaire to Competitors, question 8.2.

¹¹⁷ Replies to Q1 – Questionnaire to Customers, 9.2.

¹¹⁸ Minutes of a call with a competitor, 8 August 2018, 14:00 CET.

¹¹⁹ Replies to Q2 – Questionnaire to Competitors, question 13.

¹²⁰ Replies to Q2 – Questionnaire to Competitors, question 15.

4.2.1.7. Hearing aid batteries as a distinct relevant product market

(a) The Notifying Party's view

- (86) The Notifying Party submits that for the purposes of this Transaction, hearing aid batteries should be considered separately, since (i) hearing aid batteries were developed specifically to fit and work well only with hearing aid devices, (ii) hearing aid batteries are smaller in size than the vast majority of other consumer batteries and feature different packaging that is designed, inter alia, to facilitate the placement of a hearing aid battery into a hearing aid device; (iii) hearing aid batteries are primarily sold through specialist audiologist stores or provided through the healthcare systems of certain Member States, as opposed to the other types of consumer batteries which are sold primarily through the mass retail channel.¹²¹
- (87) The Notifying Party further submits that it is not necessary to further segment the relevant market into primary and secondary hearing aid batteries, since neither Energizer nor Spectrum sell secondary hearing aid batteries.¹²²
- (88) The Notifying Party also submits that segmentation on the basis of chemistry is not appropriate for hearing aid batteries, since the total sales of silver oxide hearing aid batteries (designed specifically for waterproof devices) are so small as to render any conclusion regarding possible segmentation by chemistry largely meaningless.¹²³

(b) The Commission's assessment

- (89) The results of the market investigation confirm the Parties' view that hearing aid batteries should be considered separately. For the following reasons the Commission finds that hearing aid batteries constitute a separate relevant product market, distinct from other consumer batteries.
- (90) First, there is no demand-side substitutability between hearing aid batteries and other types of specialty batteries since customers cannot use them interchangeably.
- (91) Second, producing hearing aid batteries on the one hand and other specialty consumer batteries on the other hand requires specific production equipment. Therefore, the identity and respective strength of producers differ. For instance, Duracell and Energizer do not produce their own hearing aid batteries and have a much more limited market position in hearing aid batteries than in other types of batteries.
- (92) Third, the most important brands used in the EEA for hearing aid batteries and other batteries differ in part. For instance, Spectrum Brands uses the Rayovac brand for sales of its hearing aid batteries while using the Varta brand for its sales of other specialty batteries. Similarly, PowerOne, an important hearing aid brand in the EEA, is not used for specialty batteries.
- (93) Fourth, hearing aid batteries are typically available for sale through different sales channels as compared with household and specialty batteries. In addition to the mass retail channel, hearing aid batteries are also available through audiologists, specialised doctors and national health systems.

¹²¹ Form CO, paragraphs 1356-1359,

¹²² Form CO, paragraphs 1364-1365.

¹²³ Form CO, paragraphs 1365-1369.

- (94) Fifth, in certain countries in the EEA, national health systems provide subsidies for hearing aids and hearing aid batteries (e.g. Denmark, Netherlands, Sweden and Norway¹²⁴). As one customer explained, in those countries, social security or national health services procure hearing aids and hearing aid batteries by way of a public tender on two-year contracts.¹²⁵ When submitting quotes to such a social security or national health service in those countries, hearing aid manufacturers tend to agree a price with a hearing aid battery manufacturer and quote together. In those markets, Varta Microbattery¹²⁶ and Rayovac would each pair up with a local hearing aid company and have the complete market for two years at a time.¹²⁷ The dynamics for competition, on those markets, is therefore quite different for branded hearing aid batteries than for other types of branded specialty batteries.
- (95) Sixth, for a supplier it is not necessary to have hearing aid batteries in a range of consumer batteries. A significant number of wholesale and retail customers responding to the Commission's market investigation have indicated that they either do not trade in hearing aid batteries or that hearing aid batteries represent a very small part of their business.¹²⁸ For example, one customer explains that hearing aid batteries are not a "*very important type of batteries in our business*", but that it is "*more of a 'nice to have and offer' product*".¹²⁹ A German customer explained further that: "*Hearing aid batteries are not considered as essential product, but as a product for rounding off the product range*".¹³⁰ Another customer remarked: "*The proportion of sales of [hearing aid] batteries is so small compared to alkaline batteries that this is only an additional offer for our customers.*"¹³¹
- (96) For these reasons, the Commission finds that hearing aid batteries are in a separate relevant product market, distinct from other consumer batteries. The Commission further finds that for the purposes of the present Transaction, it is not necessary to further subsegment the relevant product market for hearing aid batteries by chemistry or rechargeability.

4.2.1.8. Distinction between different retail channels for hearing aid batteries

(a) The Notifying Party's view

- (97) The Notifying Party submits that it is not appropriate to define the audiologist and the non-audiologist retailer channels as separate relevant product markets, since (i) there is no competitive overlap between the Parties as regards audiologist retailers (because Energizer

¹²⁴ According to the information supplied by the Parties in the Form CO, paragraph 1376, Table 6.II.4 and in their Reply to RFI 1, paragraph 2, a number of EEA countries provide some form of reimbursement for hearing aid batteries regardless of where these are purchased (Bulgaria, Finland, Germany, Liechtenstein, Norway) and for purchases made via pharmacies or audiologists (France) or via a community audiology service (Ireland). In other EEA countries, hearing aid batteries are provided free of charge (Denmark, UK), or at a subsidised rate (Hungary) or are otherwise subsidised via tax deductions (Italy). Conditions for being eligible to participate in the support scheme vary from country to country.

¹²⁵ Minutes of a call with a customer, 26 July 2018, 16:00 CET.

¹²⁶ As explained in section 4 above, Varta Microbattery is a separate entity (and not part of the Target Business) that owns the rights to use the Varta brand in specialty and hearing aid batteries.

¹²⁷ Minutes of a call with a customer, 26 July 2018, 16:00 CET.

¹²⁸ Replies to Q1 – Questionnaire to Customers, question 14.1.

¹²⁹ Replies to Q1 – Questionnaire to Customers, question 14.1.

¹³⁰ Replies to Q1 – Questionnaire to Customers, question 14.1.

¹³¹ Replies to Q1 – Questionnaire to Customers, question 14.1.

does not sell to audiologists), and (ii) both Parties sell their hearing aid batteries as part of the respective consumer battery offerings to non-audiologist retailers.¹³²

(b) The Commission's assessment

- (98) The results of the market investigation indicate that the mass retail channel (i.e. traditional retailers such as grocery stores, do-it-yourself stores and other consumer retail stores where a range of consumer products are made available) for hearing aid batteries constitutes a separate relevant product market, distinct from the specialist hearing aid retail channel (e.g. audiologists).
- (99) First, not all suppliers are active in all channels. For example, Energizer does not sell to the OEM channel or to audiologists, only to the mass retail channel.¹³³
- (100) Second, dedicated personnel and marketing strategies are necessary for suppliers to market and sell their products in other channels (e.g. audiologists, national health services).¹³⁴
- (101) Third, the vast majority of customers in the mass retail channel that responded to the Commission's market investigation have stated that they do not compete with other types of sales outlets, only with other mass retailers like themselves, in the sale of hearing aid batteries.¹³⁵
- (102) Fourth, in those countries where national health systems subsidise hearing aids and hearing aid batteries, end-consumers have a strong preference for buying hearing aid batteries in the specialist (e.g. audiologist) channel. As one hearing aid customer explains: "*in Denmark, where hearing aid batteries are provided to consumers for free in hearing aid shops, the consumers have no incentive to purchase these via any other channel. In France, however, where consumers have to pay for their own hearing aid batteries, there is more competition between the different sales channels.*"¹³⁶ In those countries where end-consumers still have to pay for hearing aid batteries, but may be partially reimbursed by national health systems, end-consumers also seem to have a preference for specialist rather than the mass retail channel, as this makes reimbursement from the national health system easier. As one French retailer explains: "*Social Welfare can reimburse 60% of the price of the Hearing aid batteries. It is easier to be paid back when the sell is made in the audiologist'office than when it is made in a retailer store.*"¹³⁷
- (103) Fifth, the sale of hearing aid batteries in channels other than the mass retail channel are typically accompanied with supplementary services, e.g. checking the proper fitting of a hearing aid, showing the end-consumer how to replace the battery, discussing the end-consumer's other needs with respect to the hearing aid.¹³⁸ Such services are not available in the mass retail channel. For example, as one retailer customer explains: "*With us, the*

¹³² Form CO, paragraphs 1389-1390.

¹³³ Form CO, paragraphs 1326, 1336, 1482-1483.

¹³⁴ Form CO, paragraphs 1487-1497.

¹³⁵ Replies to Q1 – Questionnaire to Customers, question 14.

¹³⁶ Minutes of a call with a customer, 20 July 2018, 11:00 CET; See also Replies to Q3 – Questionnaire to Hearing Aid Batteries Customers, question 7.1.

¹³⁷ Replies to Q1 – Questionnaire to Customers, question 14.1.

¹³⁸ Form CO, paragraph 1316; Replies to Q1 – Questionnaire to Customers, question 16.1; Replies to Q2 – Questionnaire to Competitors, question 19.1.

customer must know exactly what type of hearing aid battery they need and should also be in the position to insert the battery by themselves. At the audiologist, the customer pays a higher price, but is however advised more intensively and in case of doubt, even gets the battery put in. Self-service vs. consultation".¹³⁹ This is echoed by an Italian customer (a retailer): "To date, the customer purchases hearing aid batteries mainly from specialised operators for greater assistance in assembly and a sense of security."¹⁴⁰ Ultimately, as another customer (a retailer) explained, the channel in which end-consumers choose to purchase hearing aid batteries is "based on end consumer needs if they need technical support they buy in sales channels as audiologists, doctor's offices,....if they don't they go to mass [retail channel]."¹⁴¹

- (104) Sixth, in channels other than the mass retail channel, the sale of hearing aid batteries is sometimes made complementary (and often at a significant discount) with the purchase of a hearing aid. The mass retail channel, therefore, can be seen as a replenishment channel only.¹⁴²
- (105) Seventh, many customers in the mass retail channel do not consider hearing aid batteries to be an essential product, but rather as a product to round off the product range.¹⁴³ Indeed, many customers in the mass retail channel that responded to the Commission's market investigation stated that they do not at present engage in the sale of hearing aid batteries.¹⁴⁴ This is also the view of the Parties.¹⁴⁵
- (106) For these reasons, the Commission finds that the wholesale supply of hearing aid batteries to the mass retail channel constitutes a separate relevant product market, distinct from other retail channels.

4.2.2. Wholesale supply of portable battery chargers

- (107) While portable battery chargers can take various forms, their fundamental function is to recharge empty household batteries. Chargers and rechargeable batteries do not need to have the same brand in order to be compatible and to charge a battery.
- (a) The Commission's past practice
- (108) The Commission has not considered the market definition of battery chargers in previous cases. In its *Berkshire Hathaway/Duracell* decision¹⁴⁶, the Commission made reference to battery chargers but did not assess those products due to the insignificant presence of Duracell in the sale of battery chargers.

¹³⁹ Replies to Q1 – Questionnaire to Customers, question 16.1 (Translation from German original: "*Bei uns muss der Kunde ganz genau wissen, welchen Typ einer Hörgerätebatterie er braucht und sollte somit auch in der Lage sein, die Batterie selbstständig einzusetzen. Bei einem Hörakustiker bezahlt der Kunde einen höheren Preis, wird jedoch intensiver beraten und bekommt die Batterie im Zweifel noch eingesetzt. Selbstbedienung vs. Beratung.*")

¹⁴⁰ Replies to Q1 – Questionnaire to Customers, question 16.1 (Translation from Italian original: "*Ad oggi il cliente acquista le pile per apparecchi acustici principalmente presso gli operatori specializzati per avere maggiore assistenza al montaggio e senso di sicurezza.*")

¹⁴¹ Replies to Q1 – Questionnaire to Customers, question 16.1.

¹⁴² Replies to Q2 – Questionnaire to Competitors, question 19.1.

¹⁴³ Replies to Q1 – Questionnaire to Customers, question 14.1.

¹⁴⁴ Replies to Q1 – Questionnaire to Customers, question 6.1, question 7.1, question 14.1.

¹⁴⁵ Form CO, paragraph 573; Parties' reply to RFI 3, paragraph 49.

¹⁴⁶ Case M.7655 - *Berkshire Hathaway/The Duracell Business*.

(b) The Notifying Party's view

- (109) The Notifying Party considers that the product market definition with respect to portable battery chargers can be left open in this case as, irrespective of the precise market definition, the Transaction cannot be considered to impede effective competition. However, the Notifying Party submits that the only level of trade that is relevant in the context of the Parties' activities with respect to chargers is the wholesale supply of portable battery chargers to retailers and wholesalers.

(c) The Commission's assessment

- (110) The Commission considers that the relevant market consists of the wholesale supply of branded portable battery chargers without further subsegmentation, in particular because those chargers are compatible with rechargeable batteries of the same size regardless of the make or brand of the charger and the rechargeable battery.¹⁴⁷ As portable battery chargers are a closely related product to consumer batteries and are often sold in packs, together with a set of rechargeable batteries¹⁴⁸, the Commission considers that branded portable battery chargers can be distinguished from private label portable battery chargers in the same way as for consumer batteries.

4.2.3. *Wholesale supply of portable lighting products*

- (111) Portable lighting products can take various forms, ranging from handhelds/flashlights, lanterns, headlights to mini-lights and special lights.

(a) The Notifying Party's view

- (112) The Notifying Party considers that the product market definition with respect to lights can be left open in this case as, irrespective of the precise market definition adopted, the Transaction cannot reasonably be conceived as giving rise to any meaningful competition concerns.

(b) The Commission's assessment

- (113) The Commission considers that the relevant market consists of branded portable lighting products without further subsegmentation, in particular because they are substitutable in terms of running costs, price and intended use, namely to provide a portable source of light. In addition, internal documents from the Parties show that [Internal document].¹⁴⁹

4.2.4. *Conclusion on relevant product markets*

- (114) On the basis of the foregoing, the Commission finds that:

- (a) The market for the wholesale supply of branded consumer batteries to the consumer channel constitutes a distinct relevant product market, separate from the wholesale supply of consumer batteries to the OEM channel.

¹⁴⁷ Form CO, paragraph 1575.

¹⁴⁸ Form CO, paragraph 1573.

¹⁴⁹ Spectrum internal document " [Internal document]", slide 17, submitted as 5(4) Annex 14

- (b) The market for the wholesale supply of branded consumer batteries constitutes a distinct relevant product market, separate from the wholesale supply of private label consumer batteries.
- (c) Within the market for the wholesale supply of branded consumer batteries, the wholesale supply of primary (disposable) batteries constitutes a distinct relevant product market, separate from the wholesale supply of secondary (rechargeable) batteries.
- (d) The markets for the wholesale supply of (i) branded specialty batteries and (ii) branded hearing aid batteries, constitute distinct relevant product markets, separate from the wholesale supply of (iii) branded household batteries.
- (e) The mass retail channel for hearing aid batteries constitutes a separate relevant product market from other sales channels for hearing aid batteries.
- (f) With regard to the wholesale supply of household and specialty batteries to OEMs, it is appropriate to further subsegment the relevant product market according to chemistry.
- (g) It is not necessary, for the purposes of the present Transaction, to further subsegment the market for the wholesale supply of branded consumer batteries to the retail channel according to chemistry.
- (h) The market for branded portable chargers can be considered to constitute one relevant product market without further subsegmentation.
- (i) The market for branded portable lighting products can be deemed to form one relevant product market without further subsegmentation.

4.3. Geographic market definition

4.3.1. Wholesale supply of branded consumer batteries to the retail channel

(a) The Commission's past practice

(115) In *Panasonic/Sanyo*¹⁵⁰ the Commission considered that the geographic scope of cylindrical lithium batteries is at least EEA-wide in scope and assessed each affected market by reference to the parties' shares at an EEA-level and at a worldwide level. However, this case focused on consumer batteries in the industrial (OEM) channel. The exact geographic market definition was ultimately left open.

(b) The Notifying Party's view

(116) The Notifying Party submits that the geographic market for the supply of consumer batteries is wider than national in scope.¹⁵¹

¹⁵⁰ Case M.5421 - *Panasonic/Sanyo*.

¹⁵¹ Form CO, paragraph 196

- (117) First, the Notifying Party contends that manufacturing facilities are located around the world and supply is shipped from those facilities into the EEA. Indeed, Energizer has no manufacturing facilities in the EEA. In addition, many battery suppliers, including the Parties, are supplied by third-party manufacturers located in Asia.¹⁵²
- (118) Second, the Notifying Party claims that from a demand-side perspective, there are also several arguments to support a relevant geographic market that is broader than national. Customers (retailers) either buy directly from a manufacturer or via a European buying alliance. When customers buy directly, they reach out to consumer battery suppliers at both national and international levels.¹⁵³
- (119) Third, the Notifying Party submits that some customers also operate with a European warehouse system. For instance, when Spectrum supplied [Comments on distribution methods].¹⁵⁴
- (120) Nonetheless, the Notifying Party has provided market data and a competitive assessment at the national level.

(c) The Commission's assessment

- (121) Contrary to the arguments of the Notifying Party, the Commission's investigation did not confirm that the markets for consumer batteries, namely the relevant markets for branded household primary batteries, branded household secondary batteries, branded specialty batteries and branded hearing aid batteries, are wider than national. This is for the following reasons.
- (122) First, the presence of different brands and consumers' brand perception varies across Member States. The market investigation confirmed that customer preferences differ materially in terms of preferred brands among EEA countries. Both customers and competitors stated that brand perception varies on a national basis.¹⁵⁵ For example, a customer explained that "*[...] consumers in different countries in the EU have different preferences for some hearing aid battery brands over others, which in [...]s view is driven by brand loyalty.*"¹⁵⁶ A hearing aid battery customer stated that "*[...] brand power and brand recognition matter to a certain extent.*" and that they were "*[...] aware of geographical differences. For example, VARTA Microbattery is recognized as being very powerful in Germany.*"¹⁵⁷
- (123) Second, there appear to be material differences among Member States in business models, channels to market and distribution strategies. Internal documents show that [Internal document].¹⁵⁸ The market investigation confirmed that suppliers sell their consumer batteries at different prices according to the country.¹⁵⁹ For example, a competitor commented: "*The*

¹⁵² Form CO, paragraph 190

¹⁵³ Form CO, paragraph 193

¹⁵⁴ Form CO, paragraph 195

¹⁵⁵ Replies to Q2 – Questionnaire to Competitors, question 22; Replies to Q1 – Questionnaire to Customers, question 19.

¹⁵⁶ Minutes of a call with a customer, 7 August 2018, 15:00 CET.

¹⁵⁷ Minutes of a call with a customer, 23 July 2018, 12:00 CET.

¹⁵⁸ See for instance internal Energizer document – [Internal document], submitted as 5(4) Annex 32.

¹⁵⁹ Replies to Q2 – Questionnaire to Competitors, question 21.

pricing depends on the relevant country and is done market by market."¹⁶⁰ Furthermore, a customer explained: "*In the European Union, [the customer] is aware of some price differences from country to country, but is of the view that these price differences are becoming increasingly narrower.*"¹⁶¹

(124) Third, there seem to be substantial differences among Member States in terms of retailer landscape and procurement strategies of retailers. The market investigation clearly indicated that the typical scope of contracts with suppliers of consumer batteries is national.¹⁶² As a competitor commented: "*Even for customers that are present in more than one country, the procurement often has a national element, which means that suppliers compete for selling batteries in individual countries.*"¹⁶³ A customer explained: "*Each of the EEA countries in which [customer] is present negotiates its own batteries supply contracts taking into consideration its domestic demand and procurement constraints.*"¹⁶⁴

(d) Conclusion on geographic market definition for the wholesale supply of consumer batteries to the retail channel

(125) For the purpose of this Decision and for the relevant markets for the wholesale supply of consumer batteries, the Commission will assess the effects of the Transaction at national level given the varying presence of different brands and consumers' brand perception across Member States, the material differences among Member States in business models, channels to market and distribution strategies, as well as the differences in retailer landscape and procurement strategies of retailers among Member States.

4.3.2. Wholesale supply of branded consumer batteries to the OEM channel

(a) The Notifying Party's view

(126) The Notifying Party submits that the geographic market for the supply of consumer batteries to OEMs is at least in EEA-wide in scope, in line with the Commission decision in *Panasonic/Sanyo*^{165 166}

(b) The Commission's assessment

(127) The Commission considers that the geographic scope of the market for the supply of consumer batteries to OEMs is EEA in scope, in view of the conclusions of the Commission's in-depth investigation in *Panasonic/Sanyo*¹⁶⁷, which focused on the market for the supply of consumer batteries to OEMs.

¹⁶⁰ Minutes of a call with a competitor, 8 August 2018, 14:00, paragraph 27.

¹⁶¹ Minutes of a call with a customer, 26 July 2018, 16:00 CET, paragraph 10.

¹⁶² Replies to Q2 – Questionnaire to Competitors, question 20; Replies to Q1 – Questionnaire to Customers, question 17.

¹⁶³ Replies to Q2 – Questionnaire to Competitors, question 20.1.

¹⁶⁴ Replies to Q1 – Questionnaire to Customers, question 17.1.

¹⁶⁵ Case M.5421 - *Panasonic/Sanyo*.

¹⁶⁶ Form CO, paragraph 128.

¹⁶⁷ Case M.5421 - *Panasonic/Sanyo*.

4.3.3. Wholesale supply of branded battery chargers

(a) The Notifying Party's view

- (128) The Notifying Party submits that the market for the supply of branded battery chargers to retailers and wholesalers is at least EEA-wide, and probably worldwide in its geographic scope.¹⁶⁸
- (129) First, the Notifying Party argues that from a supply-side perspective manufacturing facilities are located around the world and supply is shipped from those facilities into the EEA. [Information on production facilities]. The Notifying Party claims that transportation costs are low relative to the value of the chargers, while tariff rates are set at very low levels worldwide.¹⁶⁹
- (130) Second, the Notifying Party submits that from a demand-side perspective, the geographic scope of the market for branded battery chargers is at least EEA-wide in scope, for the same reasons that are set out above in Section 4.3.1 with respect to consumer batteries.¹⁷⁰

(b) The Commission's assessment

- (131) The Commission considers that the geographic scope of the market for branded battery chargers is national, based on the same supply-side and a demand-side considerations as set out in Section 4.3.1 with respect to consumer batteries.

4.3.4. Wholesale supply of branded portable lighting products

(a) The Notifying Party's view

- (132) The Notifying Party submits that from a supply-side perspective, the relevant markets where the Parties are active for the supply of lights to their customers are worldwide in scope. Manufacturing facilities are located around the world (mostly in Asia) and supply is shipped from those facilities into the EEA. For example, Energizer manufactures and sources lights from China.¹⁷¹
- (133) The Notifying Party contends that from a demand-side perspective, in the circumstances of this case the geographic market definition can be left open, since irrespective of whether the relevant geographic market is considered to be national, EEA-wide or worldwide in scope, it is inconceivable that the Transaction would give rise to any competition concerns with respect to portable lighting products.¹⁷²

(b) The Commission's assessment

- (134) The Commission considers that because the Transaction would not raise competition concerns with regard to the wholesale supply of branded portable lighting products, the exact scope of the geographic market can be left open.

¹⁶⁸ Form CO, paragraph 1588.

¹⁶⁹ Form CO, paragraph 1585.

¹⁷⁰ Form CO, paragraph 1587.

¹⁷¹ Form CO, paragraph 1651.

¹⁷² Form CO, paragraph 1652.

4.4. Conclusion on market definition

- (135) On the basis of the foregoing, the Commission finds that:
- (a) The market for the wholesale supply of branded consumer batteries to the consumer channel constitutes a distinct relevant product market, separate from the wholesale supply of consumer batteries to the OEM channel. This market is national in geographic scope.
 - (b) The market for the wholesale supply of branded consumer batteries constitutes a distinct relevant product market, separate from the wholesale supply of private label consumer batteries.
 - (c) Within the market for the wholesale supply of branded consumer batteries, the wholesale supply of primary (disposable) batteries constitutes a distinct relevant product market, separate from the wholesale supply of secondary (rechargeable) batteries.
 - (d) The markets for the wholesale supply of (i) branded specialty batteries and (ii) branded hearing aid batteries, constitute distinct relevant product markets, separate from the wholesale supply of (iii) branded household batteries.
 - (e) The mass retail channel for hearing aid batteries constitutes a separate relevant product market from other sales channels for hearing aid batteries.
 - (f) With regard to the wholesale supply of household and specialty batteries to OEMs, it is appropriate to further subsegment the relevant product market according to chemistry. The market for the wholesale supply of household and specialty batteries to the OEMs is EEA-wide in geographic scope.
 - (g) It is not necessary, for the purposes of the present Transaction, to further subsegment the market for the wholesale supply of branded consumer batteries to the retail channel according to chemistry.
 - (h) The market for branded portable chargers can be considered to constitute one relevant product market without further subsegmentation. The market for branded portable chargers is national in geographic scope.
 - (i) The market for branded portable lighting products can be deemed to form one relevant product market without further subsegmentation. For the purposes of the present Transaction, the exact scope of the geographic market can be left open.
- (136) Given the activities of Energizer and the Target Business (described above at section 4), the present Decision will assess the Transaction's impact on competition in the national markets for the wholesale supply to the retail channel of: (a) branded household primary batteries; (b) branded household secondary batteries, (c) branded specialty batteries, and (d) branded hearing aid batteries (to the mass retail channel), (e) branded portable battery chargers and (f) branded portable lighting products (the exact scope of the geographic market for which can be left open), as well as for the EEA-wide wholesale supply to the OEM channel of (g) branded household and specialty batteries.

5. COMPETITIVE ASSESSMENT

5.1. Analytical framework

- (137) Under Article 2(2) and 2(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 through the creation or strengthening of a dominant position.
- (138) In this respect, a merger may entail horizontal and/or non-horizontal effects. Horizontal effects are those deriving from a concentration where the undertakings concerned are actual or potential competitors of each other in one or more of the relevant markets concerned. Non-horizontal effects are those deriving from a concentration where the undertakings concerned are active in different relevant markets.
- (139) As regards non-horizontal mergers, two broad types of such mergers may be distinguished: vertical mergers and conglomerate mergers.¹⁷³ Vertical mergers involve companies operating at different levels of the supply chain.¹⁷⁴ Conglomerate mergers are mergers between firms that are in a relationship, which is neither horizontal (as competitors in the same relevant market) nor vertical (as suppliers or customers).¹⁷⁵
- (140) The Commission appraises horizontal effects in accordance with the guidance set out in the relevant notice, that is to say the Horizontal Merger Guidelines.¹⁷⁶ Additionally, the Commission appraises non-horizontal effects in accordance with the guidance set out in the relevant notice, that is to say the Non-Horizontal Merger Guidelines.¹⁷⁷

5.2. Horizontal non-coordinated effects

- (141) The Horizontal Merger Guidelines 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.¹⁷⁸
- (142) Under the substantive test set out in Article 2(2) and 2(3) of the Merger Regulation, mergers that do not lead to the creation or the strengthening of the dominant position of a single firm may also be incompatible with the internal market. The Merger Regulation provides that *"under certain circumstances, concentrations involving the elimination of important competitive constraints that the merging parties had exerted upon each other, as well as a reduction of competitive pressure on the remaining competitors, may, even in the absence of*

¹⁷³ Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings ("Non-Horizontal Merger Guidelines"), OJ C 265, 18.10.2008, paragraph 3.

¹⁷⁴ Non-Horizontal Merger Guidelines, paragraph 4.

¹⁷⁵ Non-Horizontal Merger Guidelines, paragraph 5.

¹⁷⁶ Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings ("Horizontal Merger Guidelines"), OJ C 31, 05.02.2004.

¹⁷⁷ Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings ("Non-horizontal Merger Guidelines"), OJ C 265/6, 18.10.2008.

¹⁷⁸ In the present decision, the Commission has not found evidence that the Transaction would raise serious doubts as regards its compatibility with the internal market with respect to coordinated effects in any of the horizontally affected markets. During the market investigation, the Commission received no concerns about possible anti-competitive coordinated effects arising from the Transaction.

a likelihood of coordination between the members of the oligopoly, result in a significant impediment to effective competition".¹⁷⁹

- (143) The Horizontal Merger Guidelines list a number of factors which may influence whether or not significant horizontal non-coordinated effects are likely to result from a merger, such as the large market shares of the merging firms, the fact that the merging firms are close competitors, the limited possibilities for customers to switch suppliers, or the fact that the merger would eliminate an important competitive force. That list of factors applies equally, regardless of whether a merger would create or strengthen a dominant position, or would otherwise significantly impede effective competition due to non-coordinated effects. Furthermore, not all of these factors need to be present to make significant non-coordinated effects likely and it is not an exhaustive list.¹⁸⁰
- (144) Finally, the Horizontal Merger Guidelines describe a number of factors, which could counteract the harmful effects of the merger on competition, including the buyer power, entry and efficiencies.

5.3. Wholesale supply of branded consumer batteries to the retail channel – overview of market dynamics across different national markets in the EEA¹⁸¹

- (145) There are a number of common characteristics of the national markets for consumer batteries and their sub-markets across the EEA which will be discussed in sections 5.3.1 to 5.3.4: (i) the Parties are close and important competitors in an already concentrated industry; (ii) private label batteries only exercise a limited constraint on the Parties; (iii) e-commerce is unlikely to affect the Parties' market position in the short- to medium term; and (iv) customers only exercise a limited constraint on the Parties' ability to increase prices.

5.3.1. The Parties are close and important competitors in most of the national markets in the EEA in an already concentrated industry with limited alternatives

(a) The Notifying Party's view

- (146) The Notifying Party argues that Energizer and Spectrum are often positioned differently in the market and are not close competitors. In the Notifying Party's view, the closest competitor to Energizer in the eyes of consumers is Duracell, whereas Spectrum's closest competitor may vary from country to country, but is not Energizer.¹⁸²

(b) The Commission's assessment

- (147) The Commission considers the Parties to be close and important competitors in an already concentrated industry in many of the national markets in the EEA. This is for the following reasons.
- (148) First, post-Transaction, the Parties would be the clear market leader across all consumer batteries in many of the national markets, which is illustrated by their combined share for all national markets aggregated of [30-40]% (Energizer [10-20]%, Spectrum [10-20]%),

¹⁷⁹ Merger Regulation, recital 25. Similar wording is also found in paragraph 25 of the Horizontal Merger Guidelines.

¹⁸⁰ Horizontal Merger Guidelines, paragraph 26.

¹⁸¹ Excluding hearing aid batteries which are discussed separately below.

¹⁸² Form CO, paragraphs 5(a).

followed by Duracell ([30-40]%), Panasonic ([5-10]%), and Gold Peak ([0-5]%).¹⁸³ Likewise, the Parties would be the largest player across many of the national markets in each of the markets for primary ([30-40]%), secondary ([40-50]%), and specialty ([30-40]%) batteries followed by Duracell, as illustrated by the Parties' combined aggregated national market shares.

- (149) Second, the aggregate national markets for branded consumer batteries at the EEA level are highly concentrated with HHI levels post-Transaction of [Above 2000] (primary batteries), [Above 2000] (secondary batteries), [Below 2000] (specialty batteries) and deltas of [Above 250], respectively.
- (150) Third, the Parties and Duracell are the main suppliers of branded consumer batteries in the EEA, which limits the number and strength of available alternative suppliers in each of the national markets. [Internal documents].¹⁸⁴ [Competitors].¹⁸⁵

Figure 1

[Competitors]

Source [Internal documents]

- (151) A majority of respondents from different EEA countries that expressed a view in response to the Commission's market investigation consider Spectrum and Energizer as each other's closest competitors across primary, secondary, and specialty batteries in their national market,¹⁸⁶ while Duracell is seen by many as addressing a higher price point.¹⁸⁷ Moreover, a majority of respondents to the market investigation that expressed a view consider Varta, Energizer and Duracell as the main three battery suppliers in the different national markets in terms of brand strength and technological capacity to innovate.¹⁸⁸

5.3.2. *Private label batteries only exercise a limited constraint on the Parties*

(a) The Notifying Party's view

- (152) The Notifying Party argues that private label batteries will continue to exercise a strong competitive constraint on the Parties post-Transaction.¹⁸⁹

(b) The Commission's assessment

- (153) The Commission considers that private label batteries only exercise a limited constraint on the Parties. This is for the following reasons.

¹⁸³ Form CO, Annex 6.I.3.

¹⁸⁴ See, among other, the Parties' internal documents [Internal documents].

¹⁸⁵ M.8988- 5(4)-014 - [Internal documents].

¹⁸⁶ Replies to Q2 – Questionnaire to Competitors, questions 26 and 27; Replies to Q1 – Questionnaire to Customers, questions 24 and 25.

¹⁸⁷ Replies to Q2 – Questionnaire to Competitors, questions 26.1 and 27.1; Replies to Q1 – Questionnaire to Customers, questions 24.1 and 25.1.

¹⁸⁸ Replies to Q2 – Questionnaire to Competitors, questions 29 and 30; Replies to Q1 – Questionnaire to Customers, questions 27 and 28.

¹⁸⁹ Form CO, paragraph 5(b).

- (154) First, private label batteries and branded batteries belong to separate product markets for the reasons set out in Section 4.2.1.5.
- (155) Second, in their internal documents the Parties [Internal document].¹⁹⁰ These considerations appear to be unaffected by competition from private label batteries and appear to apply across national markets in the EEA.

Figure 2

[Energizer's revenues, sales policy and strategy]

Source: [Energizer's revenues, sales policy and strategy; internal documents names]

- (156) Third, customers across the different national markets run separate tenders for private label and branded batteries, and supply agreements can provide that the vast majority of shelf space be reserved for branded batteries.¹⁹¹
- (157) Fourth, when assessing competitive conditions in the market the Parties [Varta's and other competitors market shares].

Figure 3

[Varta's and other competitors market shares]

Source: M.8988- 5(4)-014 - [internal document]

Figure 4

[Varta's and other competitors market shares]

Source: M.8988- 5(4)-23 - [Internal documents names]

5.3.3. *E-commerce is unlikely to affect the Parties' market position in the short- to medium term*

(a) The Notifying Party's view

- (158) The Notifying Party argues that the growth of e-commerce and the ability for consumers to buy batteries online from suppliers such as Amazon and retailer online shops make it easier for consumers to choose from a large variety of consumer batteries (branded and private label), which are available online in greater variety than in brick and mortar outlets and are only 'a click away' from home.¹⁹² In the Notifying Party's view, this availability of batteries online (often at lower prices) exercises a material constraint, because it reinforces the need for both retailer and suppliers to keep prices low in order to avoid consumers switching to online alternatives.¹⁹³

¹⁹⁰ M.8988- 5(4)-36 - [Internal document].

¹⁹¹ M.8988 - Reply to RFI3-Annex 20 - [Internal documents names].

¹⁹² Form CO, paragraph 5(c).

¹⁹³ Form CO, paragraph 5(c).

(b) The Commission's assessment

- (159) The Commission considers that e-commerce is unlikely to affect the Parties' market position in the different national markets in the EEA in the short- to medium term. This is for the following reasons.
- (160) First, e-commerce represents only a small share of total battery sales not only in the EEA (that is to say on average across the different national markets) but also in those national markets where sales of batteries online is more widespread. For instance, Energizer estimates that in 2015 its total online sales amounted to only [0-5%]% of its total retail shipments.¹⁹⁴ Moreover, while sales of batteries in the e-commerce channel are likely to increase in the coming years, they are expected to continue to be far lower than in the traditional brick-and-mortar outlets for the foreseeable future.¹⁹⁵
- (161) Second, the Parties appear to be significant players in the online sales channel across the different national markets¹⁹⁶ [Position in online sales channel and strategic considerations].¹⁹⁷
- (162) Third, the impact of online sales on the traditional retail segment appears to be limited across the different national markets. As one customer explained, “*internet sales are not generally relevant in the consumer batteries segment, which is very different to the other segments where Amazon (or online sales more generally) play a bigger role*”.¹⁹⁸

5.3.4. *Customers only exercise a limited constraint on the Parties' ability to increase prices*

(a) The Notifying Party's view

- (163) The Notifying Party argues that the Parties' customers are mainly large retail chains which negotiate with their suppliers for the listing of their brands on their shelves. Moreover, it points out that these retailers use sophisticated procurement methods such as tenders and other retail strategies which maximize their downstream profits and have the ability and the incentives to resist strongly any attempts exercised by suppliers to reduce their profits.

(b) The Commission's assessment

- (164) The Commission considers that customers only exercise a limited constraint on the Parties' ability to increase prices in the different national markets. This is for the following reasons.
- (165) First, the Transaction would reduce the main suppliers of branded batteries from three (the Parties and Duracell) to two (the merged entity and Duracell) across the different national markets in the EEA, as set out in paragraph (150). This significant reduction in potential suppliers would materially affect retailers' and distributors' ability to negotiate prices with the Parties and their main competitor, Duracell in the different national markets.
- (166) Second, the Parties appear able already today to generate considerable gross margins from the sale of their batteries without customers being able to negotiate a different distribution of

¹⁹⁴ M.8988- 5(4)-20 - [Internal document].

¹⁹⁵ M.8988- 5(4)-25 - [Internal document].

¹⁹⁶ M.8988- 5(4)-41 - [Internal document].

¹⁹⁷ M.8988- 5(4)-25 - [Internal document].

¹⁹⁸ Minutes of a call with a customer, 31 July 2018, 16:00 CET.

profits. This is exemplified by the slide below which shows that in the last the years Varta's European business has generated gross margins of about [Percentage]%.

Figure 5

[Sales and margins]

Source: M.8988- 5(4)-10- - [Internal document]

(167) Third, as shown in the slide provided below, Energizer [Pricing].

Figure 6

[Pricing]

Source: M.8988- 5(4)-32 - [Internal document]

Fourth, some respondents to the market investigation pointed out that consumer battery prices have increased in recent years in different countries in the EEA. For instance one customer indicated that “[o]ne of the major brand increased the prices during 2017-2018, constantly”.¹⁹⁹ Another customer reported instead that it was “surprise[d] to see our prices increases for 2019, regarding ranges that only ENERGIZER and VARTA are supplying”.²⁰⁰

5.4. Assessment of potential horizontal non-coordinated effects on the national markets for the wholesale supply of branded household primary batteries to the retail channel

(168) Varta and Energizer are currently the second and third largest players in the EEA in disposable branded household batteries (with market shares of [10-20[% and [10-20[% respectively), behind Duracell at [30-40]%. The merged entity would become the clear market leader in a number of EEA countries with Duracell as a considerably smaller second player.

(169) As shown in Table 1 below, the combined market shares of the merged entity would exceed [50-60]% in a number of countries (exceeding [80-90]% in Finland, [60-70]% in Germany, Norway and Sweden, [50-60]% in Czechia, Greece and Slovakia), and would exceed [40-50]% in Denmark, France, Hungary, Latvia and Slovenia. The market shares thus indicate that the Transaction could create or strengthen a dominant position in several EEA countries.

(170) There are horizontal overlaps that lead to (i) combined market shares above 25%, (ii) HHI levels post-Transaction of above 2,000 and a HHI delta of more than 150, or (iii) HHI levels post-Transaction of between 1 000 and 2 000 and a HHI delta of above 250,²⁰¹ in 28 EEA

¹⁹⁹ Q1 question 31.1.

²⁰⁰ Q1 question 31.1.

²⁰¹ The Horizontal Merger Guidelines indicate that the Commission is unlikely to identify horizontal competition concerns in a market: (i) with a post-merger HHI below 1 000, (ii) with a post-merger HHI between 1 000 and 2 000 with a delta below 250; or (iii) with a post-merger HHI above 2 000 and a delta below 150, except where special circumstances are present, such as (but not limited to): (a) a merger involving a potential entrant or a recent entrant with a small market share; (b) one or more merging parties being important innovators in ways not reflected in market shares; (c) there being significant cross-shareholdings among market participants; (d) one of the merging parties having a pre-merger market share of 50% or more.

countries, and other horizontal overlaps with combined market shares and HHI levels below those levels in 2 other EEA countries.

Table 1 – Market shares in branded household primary batteries, 2017 by value²⁰²

Country	Energizer	Target Business	Combined	Duracell	Panasonic	Third supplier	Fourth supplier	HHI Post-Merger	Delta HHI
Austria	[0-5]%	[20-30]%	[30-40]%	[40-50]%	[5-10]%	[0-5]%	[0-5]%	[Above 2000]	[Below 250]
Belgium	[5-10]%	[5-10]%	[10-20]%	[50-60]%	[20-30]%	[0-5]%	[0-5]%	[Above 2000]	[Above 250]
Bulgaria	[0-5]%	[10-20]%	[10-20]%	[20-30]%	[0-5]%	[20-30]%	[10-20]%	[Above 2000]	[Below 150]
Croatia	[5-10]%	[20-30]%	[30-40]%	[20-30]%	[0-5]%	[10-20]%	[5-10]%	[Above 2000]	[Above 250]
Cyprus	[30-40]%	[5-10]%	[30-40]%	[5-10]%	[5-10]%	[10-20]%	[5-10]%	[Above 2000]	[Above 250]
Czechia	[10-20]%	[30-40]%	[50-60]%	[0-5]%	[0-5]%	[10-20]%	[5-10]%	[Above 2000]	[Above 250]
Denmark	[20-30]%	[20-30]%	[40-50] %	[30-40]%	[0-5]%	[0-5]%	[0-5]%	[Above 2000]	[Above 250]
Estonia	[5-10]%	[5-10]%	[10-20]%	[10-20]%	[40-50]%	[5-10]%	[0-5]%	[Above 2000]	[Above 250]
Finland	[20-30]%	[50-60]%	[80-90]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[Above 2000]	[Above 250]
France	[20-30]%	[10-20]%	[40-50]%	[20-30]%	[5-10]%	[5-10]%	[0-5]%	[Above 2000]	[Above 250]
Germany	[20-30]%	[40-50]%	[60-70]%	[5-10]%	[0-5]%	[0-5]%	[0-5]%	[Above 2000]	[Above 250]
Greece	[30-40]%	[10-20]%	[50-60]%	[0-5]%	[5-10]%	[10-20]%	[5-10]%	[Above 2000]	[Above 250]
Hungary	[10-20]%	[30-40]%	[40-50]%	[10-20]%	[0-5]%	[10-20]%	[10-20]%	[Above 2000]	[Above 250]
Iceland	[0-5]%	[0-5]%	[5-10]%	[40-50]%	[10-20]%	[5-10]%	[5-10]%	[Above 2000]	[Below 150]
Ireland	[20-30]%	[0-5]%	[20-30] %	[20-30]%	[20-30]%	[5-10]%	[5-10]%	[Below 2000]	[Above 250]
Italy	[10-20]%	[10-20]%	[30-40]%	[30-40]%	[10-20]%	[0-5]%	[0-5]%	[Above 2000]	[Above 250]
Latvia	[20-30]%	[20-30]%	[40-50] %	[10-20]%	[10-20]%	[5-10]%	[5-10]%	[Above 2000]	[Above 250]
Lithuania	[10-20]%	[10-20]%	[30-40]%	[20-30]%	[10-20]%	[5-10]%	[5-10]%	[Above 2000]	[Above 250]
Luxembourg	[10-20]%	[0-5]%	[10-20]%	[60-70]%	[10-20]%	[0-5]%	[0-5]%	[Above 2000]	[Above 250]
Malta	[20-30]%	[5-10]%	[30-40]%	[40-50]%	[10-20]%	[0-5]%	[0-5]%	[Above 2000]	[Above 250]
Netherlands	[0-5]%	[10-20]%	[10-20]%	[40-50] %	[10-20]%	[10-20]%	[0-5]%	[Above 2000]	[Below 250]
Norway	[60-70]%	[5-10]%	[60-70]%	[10-20]%	[0-5]%	[0-5]%	[0-5]%	[Above 2000]	[Above 250]
Poland	[10-20]%	[10-20]%	[20-30]%	[10-20]%	[10-20]%	[10-20]%	[5-10]%	[Below 2000]	[Above 250]
Portugal	[10-20]%	[10-20]%	[20-30]%	[20-30]%	[5-10]%	[10-20]%	[5-10]%	[Above 2000]	[Above 250]
Romania	[0-5]%	[10-20]%	[10-20]%	[20-30]%	[0-5]%	[30-40]%	[0-5]%	[Below 2000]	[Above 250]
Slovakia	[10-20]%	[30-40]%	[50-60]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[Above 2000]	[Above 250]
Slovenia	[0-5]%	[40-50]%	[40-50]%	[20-30]%	[5-10]%	[5-10]%	[5-10]%	[Above 2000]	[Below 250]
Spain	[10-20]%	[5-10]%	[20-30]%	[10-20]%	[0-5]%	[30-40]%	[5-10]%	[Above 2000]	[Above 250]
Sweden	[20-30]%	[40-50]%	[60-70]%	[0-5]%	[10-20]%	[5-10]%	[0-5]%	[Above 2000]	[Above 250]
UK	[10-20]%	[0-5]%	[20-30]%	[50-60]%	[5-10]%	[0-5]%	[0-5]%	[Above 2000]	[Above 250]
EEA	[10-20]%	[10-20]%	[30-40]%	[30-40]%	[5-10]%	[0-5]%	[0-5]%	[Above 2000]	[Above 250]

Source: Parties' reply to RFI 5, Annex 14.1

²⁰² Rounding errors may occur. Duracell is present in all countries. Panasonic is present in almost all countries. "Third supplier" and "fourth supplier" stands for the largest and second-largest suppliers other than the Parties, Duracell and Panasonic. The identity of the third and fourth suppliers varies by country. There are no horizontal overlaps in EEA countries that are not listed in the table.

5.4.1. *Finland*

- (171) For the reasons set out below, the Transaction raises serious doubts as to its compatibility with the internal market with respect to the wholesale supply of branded household primary batteries in Finland.
- (172) First, post-Transaction, the Parties would be the clear market leader in the market for the wholesale supply of branded household primary batteries in Finland with a combined share of [80-90]% (Energizer [20-30]%, Spectrum [50-60]%), followed by Duracell ([0-5]%), Panasonic ([0-5]%), and Gold Peak ([0-5]%).
- (173) Second, the market for the wholesale supply of branded household primary batteries in Finland is highly concentrated with an HHI level post-Transaction of [Above 2000] and a delta of [Above 250].
- (174) Third, as discussed in Section 5.3.1, the Commission considers the Parties to be close and important competitors in relation to the wholesale supply of branded household primary batteries.
- (175) Fourth, as discussed in Section 5.3.2, the Commission considers that private label batteries exercise only a limited constraint on the Parties in the markets for the wholesale supply of branded household primary batteries.
- (176) Fifth, as discussed in Section 5.3.3, the Commission considers that e-commerce is unlikely to affect the Parties' market position in the short- to medium term in the markets for the wholesale supply of branded household primary batteries.
- (177) Sixth, as discussed in Section 5.3.4, the Commission considers that customers exercise only a limited constraint on the Parties' ability to increase prices in the markets for the wholesale supply of branded household primary batteries.
- (178) Seventh, the Parties submit that because of Energizer's reliance on third-party wholesalers and distributors in Finland, there is only limited direct competition between Energizer and Spectrum. However, the Commission considers that the reliance on third-party wholesalers and distributors does not alter Energizer's market position or the competitive dynamics in the Finnish market.

5.4.2. *Germany*

- (179) For the reasons set out below, the Transaction raises serious doubts as to its compatibility with the internal market with respect to the wholesale supply of branded household primary batteries in Germany.
- (180) First, post-Transaction, the Parties would be the clear market leader in the market for the wholesale supply of branded household primary batteries in Germany with a combined share of [60-70]% (Energizer [20-30]%, Spectrum [40-50]%), followed by Duracell ([5-10]%), Panasonic ([0-5]%), and Philips ([0-5]%).
- (181) Second, the market for the wholesale supply of branded household primary batteries in Germany is highly concentrated with an HHI level post-Transaction of [Above 2000] and a delta of [Above 250] respectively.

- (182) Third, as discussed in Section 5.3.1, the Commission considers the Parties to be close and important competitors in relation to the wholesale supply of branded household primary batteries.
- (183) Fourth, as discussed in Section 5.3.2, the Commission considers that private label batteries exercise only a limited constraint on the Parties in the markets for the wholesale supply of branded household primary batteries.
- (184) Fifth, as discussed in Section 5.3.3, the Commission considers that e-commerce is unlikely to affect the Parties' market position in the short- to medium term in the markets for the wholesale supply of branded household primary batteries.
- (185) Sixth, as discussed in Section 5.3.4, the Commission considers that customers exercise only a limited constraint on the Parties' ability to increase prices in the markets for the wholesale supply of branded household primary batteries.
- (186) Seventh, several respondents to the Commission's market investigation expect the Transaction to have a negative impact on the market for the wholesale supply of branded household primary batteries in Germany.²⁰³ One German customer in particular commented: *"Varta and Energizer are by far the biggest and most important suppliers in Germany in particular with respect to branded batteries for normal customer purposes. The market share of the remaining two competitors, Panasonic and Duracell, is far behind that of Energizer or Varta. It is foreseeable, that competition would be limited if not totally neutralised as a consequence of the proposed transaction."*²⁰⁴

5.4.3. Norway

- (187) For the reasons set out below, the Transaction raises serious doubts as to its compatibility with the internal market with respect to the wholesale supply of branded household primary batteries in Norway.
- (188) First, post-Transaction, the Parties would be the clear market leader in the market for the wholesale supply of branded household primary batteries in Norway with a combined share of [60-70]% (Energizer [60-70]%, Spectrum [5-10]%), followed by Duracell ([10-20]%), Gold Peak ([0-5]%), Panasonic ([0-5]%) and Philips ([0-5]%).
- (189) Second, the market for the wholesale supply of branded household primary batteries in Norway is highly concentrated with an HHI level post-Transaction of [Above 2000] and a delta of [Above 250] respectively.
- (190) Third, as discussed in Section 5.3.1, the Commission considers the Parties to be close and important competitors in relation to the wholesale supply of branded household primary batteries.
- (191) Fourth, as discussed in Section 5.3.2, the Commission considers that private label batteries exercise only a limited constraint on the Parties in the markets for the wholesale supply of branded household primary batteries.

²⁰³ Replies to Q1 – Questionnaire to Customers, questions 33 to 39.

²⁰⁴ Replies to Q1 – Questionnaire to Customers, question 33.1.

- (192) Fifth, as discussed in Section 5.3.3, the Commission considers that e-commerce is unlikely to affect the Parties' market position in the short- to medium term in the markets for the wholesale supply of branded household primary batteries.
- (193) Sixth, as discussed in Section 5.3.4, the Commission considers that customers exercise only a limited constraint on the Parties' ability to increase prices in the markets for the wholesale supply of branded household primary batteries.

5.4.4. *Sweden*

- (194) For the reasons set out below, the Transaction raises serious doubts as to its compatibility with the internal market with respect to the wholesale supply of branded household primary batteries in Sweden.
- (195) First, post-Transaction, the Parties would be the clear market leader in the market for the wholesale supply of branded household primary batteries in Sweden with a combined share of [60-70]% (Energizer [20-30]%, Spectrum [40-50]%), followed by Panasonic ([10-20]%), Gold Peak ([5-10]%), Duracell ([0-5]%) and Philips ([0-5]%).
- (196) Second, the market for the wholesale supply of branded household primary batteries in Sweden is highly concentrated with an HHI level post-Transaction of [Above 2000] and a delta of [Above 250] respectively.
- (197) Third, as discussed in Section 5.3.1, the Commission considers the Parties to be close and important competitors in relation to the wholesale supply of branded household primary batteries.
- (198) Fourth, as discussed in Section 5.3.2, the Commission considers that private label batteries exercise only a limited constraint on the Parties in the markets for the wholesale supply of branded household primary batteries.
- (199) Fifth, as discussed in Section 5.3.3, the Commission considers that e-commerce is unlikely to affect the Parties' market position in the short- to medium term in the markets for the wholesale supply of branded household primary batteries.
- (200) Sixth, as discussed in Section 5.3.4, the Commission considers that customers exercise only a limited constraint on the Parties' ability to increase prices in the markets for the wholesale supply of branded household primary batteries.

5.4.5. *Czechia*

- (201) For the reasons set out below, the Transaction raises serious doubts as to its compatibility with the internal market with respect to the wholesale supply of branded household primary batteries in Czechia.
- (202) First, post-Transaction, the Parties would be the clear market leader in the market for the wholesale supply of branded household primary batteries in Czechia with a combined share of [50-60]% (Energizer [10-20]%, Spectrum [30-40]%), followed by Gold Peak ([10-20]%), Philips ([5-10]%), Panasonic ([0-5]%) and Duracell ([0-5]%).

- (203) Second, the market for the wholesale supply of branded household primary batteries in Czechia is highly concentrated with an HHI level post-Transaction of [Above 2000] and a delta of [Above 250].
- (204) Third, as discussed in Section 5.3.1, the Commission considers the Parties to be close and important competitors in relation to the wholesale supply of branded household primary batteries.
- (205) Fourth, as discussed in Section 5.3.2, the Commission considers that private label batteries exercise only a limited constraint on the Parties in the markets for the wholesale supply of branded household primary batteries.
- (206) Fifth, as discussed in Section 5.3.3, the Commission considers that e-commerce is unlikely to affect the Parties' market position in the short- to medium term in the markets for the wholesale supply of branded household primary batteries.
- (207) Sixth, as discussed in Section 5.3.4, the Commission considers that customers exercise only a limited constraint on the Parties' ability to increase prices in the markets for the wholesale supply of branded household primary batteries.

5.4.6. *Greece*

- (208) For the reasons set out below, the Transaction raises serious doubts as to its compatibility with the internal market with respect to the wholesale supply of branded household primary batteries in Greece.
- (209) First, post-Transaction, the Parties would be the clear market leader in the market for the wholesale supply of branded household primary batteries in Greece with a combined share of [50-60]% (Energizer [30-40]%, Spectrum [10-20]%), followed by Sony ([10-20]%), Gold Peak ([5-10]%), Panasonic ([5-10]%) and Duracell ([0-5]%).
- (210) Second, the market for the wholesale supply of branded household primary batteries in Greece is highly concentrated with an HHI level post-Transaction of [Above 2000] and a delta of [Above 250].
- (211) Third, as discussed in Section 5.3.1, the Commission considers the Parties to be close and important competitors in relation to the wholesale supply of branded household primary batteries.
- (212) Fourth, as discussed in Section 5.3.2, the Commission considers that private label batteries exercise only a limited constraint on the Parties in the markets for the wholesale supply of branded household primary batteries.
- (213) Fifth, as discussed in Section 5.3.3, the Commission considers that e-commerce is unlikely to affect the Parties' market position in the short- to medium term in the markets for the wholesale supply of branded household primary batteries.
- (214) Sixth, as discussed in Section 5.3.4, the Commission considers that customers exercise only a limited constraint on the Parties' ability to increase prices in the markets for the wholesale supply of branded household primary batteries.

5.4.7. Slovakia

- (215) For the reasons set out below, the Transaction raises serious doubts as to its compatibility with the internal market with respect to the wholesale supply of branded household primary batteries in Slovakia.
- (216) First, post-Transaction, the Parties would be the clear market leader in the market for the wholesale supply of branded household primary batteries in Slovakia with a combined share of [50-60]% (Energizer [10-20]%, Spectrum [30-40]%), followed by Gold Peak ([5-10]%), Panasonic ([5-10]%), Philips ([5-10]%) and Duracell ([5-10]%).
- (217) Second, the market for the wholesale supply of branded household primary batteries in Slovakia is highly concentrated with an HHI level post-Transaction of [Above 2000] and a delta of [Above 250] respectively.
- (218) Third, as discussed in Section 5.3.1, the Commission considers the Parties to be close and important competitors in relation to the wholesale supply of branded household primary batteries.
- (219) Fourth, as discussed in Section 5.3.2, the Commission considers that private label batteries exercise only a limited constraint on the Parties in the markets for the wholesale supply of branded household primary batteries.
- (220) Fifth, as discussed in Section 5.3.3, the Commission considers that e-commerce is unlikely to affect the Parties' market position in the short- to medium term in the markets for the wholesale supply of branded household primary batteries.
- (221) Sixth, as discussed in Section 5.3.4, the Commission considers that customers exercise only a limited constraint on the Parties' ability to increase prices in the markets for the wholesale supply of branded household primary batteries.

5.4.8. Denmark

- (222) For the reasons set out below, the Transaction raises serious doubts as to its compatibility with the internal market with respect to the wholesale supply of branded household primary batteries in Denmark.
- (223) First, post-Transaction, the Parties would be the clear market leader in the market for the wholesale supply of branded household primary batteries in Denmark with a combined share of [40-50]% (Energizer [20-30]%, Spectrum [20-30]%), followed by Duracell ([30-40]%), Gold Peak ([0-5]%), Panasonic ([0-5]%) and Philips ([0-5]%).
- (224) Second, the market for the wholesale supply of branded household primary batteries in Denmark is highly concentrated with an HHI level post-Transaction of [Above 2000] and a delta of [Above 250] respectively.
- (225) Third, as discussed in Section 5.3.1, the Commission considers the Parties to be close and important competitors in relation to the wholesale supply of branded household primary batteries.

- (226) Fourth, as discussed in Section 5.3.2, the Commission considers that private label batteries exercise only a limited constraint on the Parties in the markets for the wholesale supply of branded household primary batteries.
- (227) Fifth, as discussed in Section 5.3.3, the Commission considers that e-commerce is unlikely to affect the Parties' market position in the short- to medium term in the markets for the wholesale supply of branded household primary batteries.
- (228) Sixth, as discussed in Section 5.3.4, the Commission considers that customers exercise only a limited constraint on the Parties' ability to increase prices in the markets for the wholesale supply of branded household primary batteries.

5.4.9. *Slovenia*

- (229) For the reasons set out below, the Transaction raises serious doubts as to its compatibility with the internal market with respect to the wholesale supply of branded household primary batteries in Slovenia.
- (230) First, post-Transaction, the Parties would be the clear market leader in the market for the wholesale supply of branded household primary batteries in Slovenia with a combined share of [40-50]% (Energizer [0-5]%, Spectrum [40-50]%), followed by Duracell ([20-30]%), Gold Peak ([5-10]%), Atc ([5-10]%) and Panasonic ([5-10]%).
- (231) Second, the market for the wholesale supply of branded household primary batteries in Slovenia is highly concentrated with an HHI level post-Transaction of [Above 2000] and a delta of [Between 150 and 250] respectively.
- (232) Third, as discussed in Section 5.3.1, the Commission considers the Parties to be close and important competitors in relation to the wholesale supply of branded household primary batteries.
- (233) Fourth, as discussed in Section 5.3.2, the Commission considers that private label batteries exercise only a limited constraint on the Parties in the markets for the wholesale supply of branded household primary batteries.
- (234) Fifth, as discussed in Section 5.3.3, the Commission considers that e-commerce is unlikely to affect the Parties' market position in the short- to medium term in the markets for the wholesale supply of branded household primary batteries.
- (235) Sixth, as discussed in Section 5.3.4, the Commission considers that customers exercise only a limited constraint on the Parties' ability to increase prices in the markets for the wholesale supply of branded household primary batteries.

5.4.10. *Hungary*

- (236) For the reasons set out below, the Transaction raises serious doubts as to its compatibility with the internal market with respect to the wholesale supply of branded household primary batteries in Hungary.
- (237) First, post-Transaction, the Parties would be the clear market leader in the market for the wholesale supply of branded household primary batteries in Hungary with a combined share

of [40-50]% (Energizer [10-20]%, Spectrum [30-40]%), followed by Duracell ([10-20]%), Sony ([10-20]%), Atc ([10-20]%) and Panasonic ([0-5]).

- (238) Second, the market for the wholesale supply of branded household primary batteries in Hungary is highly concentrated with an HHI level post-Transaction of [Above 2000] and a delta of [Above 250] respectively.
- (239) Third, as discussed in Section 5.3.1, the Commission considers the Parties to be close and important competitors in relation to the wholesale supply of branded household primary batteries.
- (240) Fourth, as discussed in Section 5.3.2, the Commission considers that private label batteries exercise only a limited constraint on the Parties in the markets for the wholesale supply of branded household primary batteries.
- (241) Fifth, as discussed in Section 5.3.3, the Commission considers that e-commerce is unlikely to affect the Parties' market position in the short- to medium term in the markets for the wholesale supply of branded household primary batteries.
- (242) Sixth, as discussed in Section 5.3.4, the Commission considers that customers exercise only a limited constraint on the Parties' ability to increase prices in the markets for the wholesale supply of branded household primary batteries.
- (243) Seventh, several respondents to the Commission's market investigation expect the Transaction to have a negative impact on the market for the wholesale supply of branded household primary batteries in Hungary.²⁰⁵ In particular, one customer indicated that “*Energizer and Varta competition in the country was one of the key to keep the battery consumer prices down*”.²⁰⁶

5.4.11. Latvia

- (244) For the reasons set out below, the Transaction raises serious doubts as to its compatibility with the internal market with respect to the wholesale supply of branded household primary batteries in Latvia.
- (245) First, post-Transaction, the Parties would be the clear market leader in the market for the wholesale supply of branded household primary batteries in Latvia with a combined share of [40-50]% (Energizer [20-30]%, Spectrum [20-30]%), followed by Duracell ([10-20]%), Panasonic ([10-20]%), Camelion ([5-10]%) and Gold Peak ([5-10]%).
- (246) Second, the market for the wholesale supply of branded household primary batteries in Latvia is highly concentrated with an HHI level post-Transaction of [Above 2000] and a delta of [Above 250] respectively.
- (247) Third, as discussed in Section 5.3.1, the Commission considers the Parties to be close and important competitors in relation to the wholesale supply of branded household primary batteries.

²⁰⁵ Replies to Q1 – Questionnaire to Customers, questions 33 to 39.

²⁰⁶ Replies to Q1 – Questionnaire to Customers, question 39.

- (248) Fourth, as discussed in Section 5.3.2, the Commission considers that private label batteries exercise only a limited constraint on the Parties in the markets for the wholesale supply of branded household primary batteries.
- (249) Fifth, as discussed in Section 5.3.3, the Commission considers that e-commerce is unlikely to affect the Parties' market position in the short- to medium term in the markets for the wholesale supply of branded household primary batteries.
- (250) Sixth, as discussed in Section 5.3.4, the Commission considers that customers exercise only a limited constraint on the Parties' ability to increase prices in the markets for the wholesale supply of branded household primary batteries.

5.4.12. France

- (251) For the reasons set out below, the Transaction raises serious doubts as to its compatibility with the internal market with respect to the wholesale supply of branded household primary batteries in France.
- (252) First, post-Transaction, the Parties would be the clear market leader in the market for the wholesale supply of branded household primary batteries in France with a combined share of [40-50]% (Energizer [20-30]%, Spectrum [10-20]%), followed by Duracell ([20-30]%), Panasonic ([5-10]%), Philips ([5-10]%) and Sony ([0-5]%).
- (253) Second, the market for the wholesale supply of branded household primary batteries in France is highly concentrated with an HHI level post-Transaction of [Above 2000] and a delta [Above 250] respectively.
- (254) Third, as discussed in Section 5.3.1, the Commission considers the Parties to be close and important competitors in relation to the wholesale supply of branded household primary batteries.
- (255) Fourth, as discussed in Section 5.3.2, the Commission considers that private label batteries exercise only a limited constraint on the Parties in the markets for the wholesale supply of branded household primary batteries.
- (256) Fifth, as discussed in Section 5.3.3, the Commission considers that e-commerce is unlikely to affect the Parties' market position in the short- to medium term in the markets for the wholesale supply of branded household primary batteries.
- (257) Sixth, as discussed in Section 5.3.4, the Commission considers that customers exercise only a limited constraint on the Parties' ability to increase prices in the markets for the wholesale supply of branded household primary batteries.
- (258) Seventh, several respondents to the Commission's market investigation expect the Transaction to have a negative impact on the market for the wholesale supply of branded household primary batteries in France.²⁰⁷ A customer in particular commented that the impact

²⁰⁷ Replies to Q1 – Questionnaire to Customers, questions 33 to 39.

of the Transaction on the sourcing of consumer batteries would be to lead to a "*monopoly of the group*".²⁰⁸

5.4.13. Other affected markets

(259) With regards to the wholesale supply of branded household primary batteries in Austria, Croatia, Cyprus, Italy, Ireland, Lithuania, Malta, Poland, Portugal, Spain and the UK, the Commission notes, on the one hand, that:

- (a) First, the Parties have sizable combined market shares on those markets: [30-40]% in Austria, [30-40]% in Croatia, [30-40]% in Cyprus, [30-40]% in Italy, [20-30]% in Ireland, [30-40]% in Lithuania, [30-40]% in Malta, [20-30]% in Poland, [20-30]% in Portugal, [20-30]% in Spain and [20-30]% in the UK.
- (b) Second, as shown in Table 1 above, all of those markets are concentrated, with HHI levels post-Transaction of between [Below 2000] and [Above 2000] and HHI delta of between [Below 250] and [Above 250].
- (c) Third, the Transaction would create the largest (in the case of Croatia, Cyprus, Lithuania, Poland and Portugal) or the second largest (in the case of Austria, Italy, Malta, Spain and the UK) supplier, thereby also reducing the number of suppliers on these already concentrated markets. In Ireland the Transaction would create the third-largest supplier, which very closely follows Panasonic ([20-30]%) and Duracell ([20-30]%).
- (d) Fourth, the market dynamics identified by the Commission at 5.3.1 to 5.3.4, apply equally to the markets for household primary batteries in these countries.
- (e) Fifth, several market participants have raised concerns about potential price increases or decreases in quality or innovation in these markets.²⁰⁹

(260) On the other hand, the Commission also notes that:

- (a) First, there are significant alternative suppliers of branded household primary batteries on those markets. Duracell is, and will post-Transaction remain, the market leader in Austria ([40-50]%), Malta ([40-50]%), Italy ([30-40]%), UK ([50-60]%) and Cegasa is, and will post-Transaction remain, the market leader in Spain ([30-40]%). Duracell will also remain a close second competitor to the merged entity in Croatia ([20-30]%), Lithuania ([20-30]%) and Portugal ([20-30]%).
- (b) Second, in addition to the above-mentioned closest competitors to the merged entity, there are three other alternative suppliers of branded household primary batteries active on each of those markets, including suppliers such as Panasonic, Camelion, Gold Peak, Sony, Philips, Kodak, Toshiba and Atc.
- (c) Third, a number of market participants have indicated that they do not anticipate any price increase or decreases in quality or innovation in those markets.²¹⁰

²⁰⁸ Replies to Q1 – Questionnaire to Customers, question 33.1.

²⁰⁹ Replies to Q1 – Questionnaire to Customers; question 35; Replies to Q2 – Questionnaire to Competitors, question 35.

(261) Ultimately, the question of whether serious doubts arise in Austria, Croatia, Cyprus, Italy, Ireland, Lithuania, Malta, Poland, Portugal, Spain and the UK can be left open as the commitments discussed in Chapter 6 include all of the activities of Spectrum's Varta Business in Europe, Middle East and Africa ("EMEA") and therefore entirely remove the overlap in the markets for branded household primary batteries in those countries.

5.4.14. Other horizontal overlaps

(262) With regard to the wholesale supply of branded household primary batteries in Belgium, Bulgaria, Estonia, Iceland, Luxembourg, Netherlands and Romania, the Commission notes that the horizontal overlaps between the Parties in these countries do not lead to combined market shares above [10-20]%. Therefore, in these markets, the Transaction does not raise serious doubts as regards its compatibility with the internal market.

5.4.15. Conclusion on the assessment of potential horizontal non-coordinated effects on the national markets for the wholesale supply of branded household primary batteries to the retail channel

(263) On the basis of the above, the Commission concludes that:

- (a) the Transaction raises serious doubts as regards its compatibility with the internal market due to horizontal non-coordinated effects in the markets for the wholesale supply of branded household primary batteries in Czechia, Denmark, Finland, France, Germany, Greece, Hungary, Latvia, Norway, Slovakia, Slovenia and Sweden;
- (b) the question of whether serious doubts arise in Austria, Croatia, Cyprus, Ireland, Italy, Lithuania, Malta, Poland, Portugal, Spain and the UK can be left open as the commitments include all of the activities of Spectrum's Varta Business in the EMEA region and therefore entirely remove the overlap in the markets for branded household primary batteries in those countries; and
- (c) the Transaction does not raise serious doubts as regards its compatibility with the internal market due to horizontal non-coordinated effects in the markets for the wholesale supply of branded household primary batteries in Belgium, Bulgaria, Estonia, Iceland, Luxembourg, Netherlands, and Romania.

5.5. Assessment of potential horizontal non-coordinated effects on the national markets for the wholesale supply of branded household secondary batteries to the retail channel

(264) In relation to the wholesale supply of household secondary batteries Spectrum and Energizer are currently the first and third largest players in the EEA (with market shares of [20-30]% and [20-30]% respectively), with Duracell as the second-largest player ([20-30]%). The merged entity would become the clear market leader in a number of Member States.

²¹⁰ Replies to Q1 – Questionnaire to Customers; question 35; Replies to Q2 – Questionnaire to Competitors, question 35.

- (265) As shown in Table 2 below, the Parties' combined market shares would exceed [50-60]% in six countries and [40-50]% in an additional six countries. The market shares indicate that the Transaction could create or strengthen the merged entity's dominant position in several Member States, with a much smaller market share for its next competitor, Duracell.
- (266) There are horizontal overlaps that lead to (i) combined market shares above 25%, (ii) HHI levels post-Transaction of above 2 000 and a HHI delta of more than 150, or (iii) HHI levels post-Transaction of between 1 000 and 2 000 and a HHI delta of above 250, in 26 EEA countries, and other horizontal overlaps with combined market shares and HHI levels below those levels in 3 other EEA countries.

Table 2: Market shares in branded household secondary batteries, 2017 by value²¹¹

Country	Energizer	Target Business	Combined	Duracell	Panasonic	Third supplier	Fourth supplier	HHI Post-Merger	Delta HHI
Austria	[5-10]%	[40-50]%	[50-60]%	[20-30]%	[0-5]%	[5-10]%	[0-5]%	[Above 2000]	[Above 250]
Belgium	[10-20]%	[10-20]%	[20-30]%	[40-50]%	[5-10]%	[10-20]%	[5-10]%	[Above 2000]	[Above 250]
Bulgaria	[0-5]%	[5-10]%	[5-10]%	[30-40]%	[10-20]%	[10-20]%	[10-20]%	[Above 2000]	[Below 150]
Croatia	[0-5]%	[0-5]%	[0-5]%	[50-60]%	[0-5]%	[10-20]%	[5-10]%	[Above 2000]	[Below 150]
Cyprus	[10-20]%	[0-5]%	[10-20]%	[40-50]%	[5-10]%	[5-10]%	[0-5]%	[Above 2000]	[Above 250]
Czechia	[0-5]%	[20-30]%	[20-30]%	[5-10]%	[10-20]%	[30-40]%	[0-5]%	[Above 2000]	[Above 250]
Denmark	[5-10]%	[10-20]%	[10-20]%	[10-20]%	[0-5]%	[40-50]%	[5-10]%	[Above 2000]	[Below 250]
Estonia	[5-10]%	[5-10]%	[10-20]%	[10-20]%	[20-30]%	[30-40]%	[0-5]%	[Above 2000]	[Above 250]
Finland	[5-10]%	[20-30]%	[20-30]%	[20-30]%	[5-10]%	[30-40]%	[0-5]%	[Above 2000]	[Below 250]
France	[40-50]%	[20-30]%	[60-70]%	[10-20]%	[0-5]%	[0-5]%	[0-5]%	[Above 2000]	[Above 250]
Germany	[10-20]%	[40-50]%	[50-60]%	[10-20]%	[5-10]%	[10-20]%	[5-10]%	[Above 2000]	[Above 250]
Greece	[20-30]%	[20-30]%	[50-60]%	[20-30]%	[0-5]%	[5-10]%	[0-5]%	[Above 2000]	[Above 250]
Hungary	[5-10]%	[50-60]%	[60-70]%	[10-20]%	[0-5]%	[5-10]%	[0-5]%	[Above 2000]	[Above 250]
Iceland	[0-5]%	[0-5]%	[0-5]%	[10-20]%	[10-20]%	[40-50]%	[10-20]	[Above 2000]	[Above 250]
Italy	[20-30]%	[10-20]%	[40-50]%	[40-50]%	[0-5]%	[0-5]%	[0-5]%	[Above 2000]	[Above 250]
Latvia	[0-5]%	[10-20]%	[10-20]%	[10-20]%	[20-30]%	[30-40]%	[0-5]%	[Above 2000]	[Below 150]
Lithuania	[0-5]%	[0-5]%	[5-10]%	[20-30]%	[20-30]%	[30-40]%	[0-5]%	[Above 2000]	[Above 250]
Luxembourg	[5-10]%	[5-10]%	[10-20]%	[50-60]%	[10-20]%	[5-10]%	[0-5]%	[Above 2000]	[Below 250]
Malta	[30-40]%	[10-20]%	[40-50]%	[50-60]%	[0-5]%	[0-5]%	[0-5]%	[Above 2000]	[Above 250]
Netherlands	[5-10]%	[50-60]%	[50-60]%	[10-20]%	[0-5]%	[10-20]%	[0-5]%	[Above 2000]	[Above 250]
Norway	30-40)%	[5-10]%	[40-50]%	[40-50]%	[5-10]%	[0-5]%	[0-5]%	[Above 2000]	[Above 250]
Poland	[5-10]%	[20-30]%	[30-40]%	[10-20]%	[10-20]%	[20-30]%	[5-10]%	[Above 2000]	[Above 250]
Portugal	[10-20]	[0-5]%	[10-20]%	[60-70)%	[0-5]%	[0-5]%	[0-5]%	[Above 2000]	[Above 250]

²¹¹ Rounding errors may occur. Duracell is present in all countries. Panasonic is present in almost all countries. "Third supplier" and "fourth supplier" stands for the largest and second-largest suppliers other than the Parties, Duracell and Panasonic. The identity of the third and fourth suppliers varies by country. There are no horizontal overlaps in EEA countries that are not listed in the table.

Country	Energizer	Target Business	Combined	Duracell	Panasonic	Third supplier	Fourth supplier	HHI Post-Merger	Delta HHI
Romania	[5-10]%	[40-50]%	[40-50]%	[10-20]%	[0-5]%	[10-20]%	[5-10]%	[Above 2000]	[Above 250]
Slovakia	[20-30]%	[20-30]%	[40-50]%	[5-10]%	[5-10]%	[20-30]%	[0-5]%	[Above 2000]	[Above 250]
Slovenia	[0-5]%	[30-40]%	[30-40]%	[10-20]%	[5-10]%	[30-40]%	[0-5]%	[Above 2000]	[Below 150]
Spain	[5-10]%	[5-10]%	[10-20]%	[5-10]%	[50-60]%	[5-10]%	[0-5]%	[Above 2000]	[Above 250]
Sweden	[20-30]%	[10-20]%	[30-40]%	[0-5]%	[10-20]%	[30-40]%	[0-5]%	[Above 2000]	[Above 250]
UK	[30-40]%	[0-5]%	[30-40]%	[50-60]%	[0-5]%	[0-5]%	[0-5]%	[Above 2000]	[Below 250]
EEA	[20-30]%	[20-30]%	[40-50]%	[20-30]%	[5-10]%	[5-10]%	[0-5]%	[Above 2000]	[Above 250]

Source: Parties' reply to RFI 5, Annex 14.1

5.5.1. France

- (267) For the reasons set out below, the Transaction raises serious doubts as to its compatibility with the internal market with respect to the wholesale supply of branded household secondary batteries in France.
- (268) First, post-Transaction, the Parties would be the clear market leader in the market for the wholesale supply of branded household secondary batteries in France with a combined share of [60-70]% (Energizer [40-50]%, Spectrum [20-30]%), followed by Duracell ([10-20]%), Panasonic ([0-5]%), and Gold Peak ([0-5]%).
- (269) Second, the market for the wholesale supply of branded household secondary batteries in France is highly concentrated with an HHI level post-Transaction of [Above 2000] and a delta of [Above 250] respectively.
- (270) Third, as discussed in Section 5.3.1, the Commission considers the Parties to be close and important competitors in relation to the wholesale supply of branded household secondary batteries.
- (271) Fourth, as discussed in Section 5.3.2, the Commission considers that private label batteries exercise only a limited constraint on the Parties in the markets for the wholesale supply of branded household secondary batteries.
- (272) Fifth, as discussed in Section 5.3.3, the Commission considers that e-commerce is unlikely to affect the Parties' market position in the short- to medium term in the markets for the wholesale supply of branded household secondary batteries.
- (273) Sixth, as discussed in Section 5.3.4, the Commission considers that customers exercise only a limited constraint on the Parties' ability to increase prices in the markets for the wholesale supply of branded household secondary batteries.

(274) Seventh, several respondents to the Commission's market investigation expect the Transaction to have a negative impact on the market for the wholesale supply of branded household secondary batteries in France.²¹² One customer in particular commented: "*Reducing the number of players in the battery market will lead to less competition in that market, in terms of both buying and selling*".²¹³

5.5.2. Hungary

(275) For the reasons set out below, the Transaction raises serious doubts as to its compatibility with the internal market with respect to the wholesale supply of branded household secondary batteries in Hungary.

(276) First, post-Transaction, the Parties would be the clear market leader in the market for the wholesale supply of branded household secondary batteries in Hungary with a combined share of [60-70]% (Energizer [5-10]%, Spectrum [50-60]%), followed by Duracell ([10-20]%), Gold Peak ([5-10]%), Panasonic ([0-5]%) and Philips ([0-5]%).²¹⁴

(277) Second, the market for the wholesale supply of branded household secondary batteries in Hungary is highly concentrated with an HHI level post-Transaction of [Above 2000] and a delta of [Above 250] respectively.

(278) Third, as discussed in Section 5.3.1, the Commission considers the Parties to be close and important competitors in relation to the wholesale supply of branded household secondary batteries.

(279) Fourth, as discussed in Section 5.3.2, the Commission considers that private label batteries exercise only a limited constraint on the Parties in the markets for the wholesale supply of branded household secondary batteries.

(280) Fifth, as discussed in Section 5.3.3, the Commission considers that e-commerce is unlikely to affect the Parties' market position in the short- to medium term in the markets for the wholesale supply of branded household secondary batteries.

(281) Sixth, as discussed in Section 5.3.4, the Commission considers that customers exercise only a limited constraint on the Parties' ability to increase prices in the markets for the wholesale supply of branded household secondary batteries.

(282) Seventh, several respondents to the Commission's market investigation expect the Transaction to have a negative impact on the market for the wholesale supply of branded household secondary batteries in Hungary.²¹⁵

²¹² Replies to Q1 – Questionnaire to Customers, questions 33 to 39.

²¹³ Replies to Q1 – Questionnaire to Customers, question 33.1, translation from the French original "*La réduction du nombre d'intervenants sur le marché de piles aura pour effet de restreindre la compétition sur ce même marché, tant à l'achat qu'à la vente*".

²¹⁴ Form CO, Annex 6.I.3.

²¹⁵ Replies to Q1 – Questionnaire to Customers, questions 33 to 39.

5.5.3. *Netherlands*

- (283) For the reasons set out below, the Transaction raises serious doubts as to its compatibility with the internal market with respect to the wholesale supply of branded household secondary batteries in the Netherlands.
- (284) First, post-Transaction, the Parties would be the clear market leader in the market for the wholesale supply of branded household secondary batteries in the Netherlands with a combined share of [50-60]% (Energizer [5-10]%, Spectrum [50-60]%), followed by Gold Peak ([10-20]%) and Duracell ([10-20]).²¹⁶
- (285) Second, the market for the wholesale supply of branded household secondary batteries in the Netherlands is highly concentrated with an HHI level post-Transaction of [Above 2000] and a delta of [Above 250] respectively.
- (286) Third, as discussed in Section 5.3.1, the Commission considers the Parties to be close and important competitors in relation to the wholesale supply of branded household secondary batteries.
- (287) Fourth, as discussed in Section 5.3.2, the Commission considers that private label batteries exercise only a limited constraint on the Parties in the markets for the wholesale supply of branded household secondary batteries.
- (288) Fifth, as discussed in Section 5.3.3, the Commission considers that e-commerce is unlikely to affect the Parties' market position in the short- to medium term in the markets for the wholesale supply of branded household secondary batteries.
- (289) Sixth, as discussed in Section 5.3.4, the Commission considers that customers exercise only a limited constraint on the Parties' ability to increase prices in the markets for the wholesale supply of branded household secondary batteries.

5.5.4. *Austria*

- (290) For the reasons set out below, the Transaction raises serious doubts as to its compatibility with the internal market with respect to the wholesale supply of branded household secondary batteries in Austria.
- (291) First, post-Transaction, the Parties would be the clear market leader in the market for the wholesale supply of branded household secondary batteries in Austria with a combined share of [50-60]% (Energizer [5-10]%, Spectrum [40-50]%), followed by Duracell ([20-30]%), Gold Peak ([5-10]%) and Ansmann ([0-5]).
- (292) Second, the market for the wholesale supply of branded household secondary batteries in Austria is highly concentrated with an HHI level post-Transaction of [Above 2000] and a delta of [Above 250] respectively.
- (293) Third, as discussed in Section 5.3.1, the Commission considers the Parties to be close and important competitors in relation to the wholesale supply of branded household secondary batteries.

²¹⁶ Form CO, Annex 6.I.3.

- (294) Fourth, as discussed in Section 5.3.2, the Commission considers that private label batteries exercise only a limited constraint on the Parties in the markets for the wholesale supply of branded household secondary batteries.
- (295) Fifth, as discussed in Section 5.3.3, the Commission considers that e-commerce is unlikely to affect the Parties' market position in the short- to medium term in the markets for the wholesale supply of branded household secondary batteries.
- (296) Sixth, as discussed in Section 5.3.4, the Commission considers that customers exercise only a limited constraint on the Parties' ability to increase prices in the markets for the wholesale supply of branded household secondary batteries.

5.5.5. *Germany*

- (297) For the reasons set out below, the Transaction raises serious doubts as to its compatibility with the internal market with respect to the wholesale supply of branded household secondary batteries in Germany.
- (298) First, post-Transaction, the Parties would be the clear market leader in the market for the wholesale supply of branded household secondary batteries in Germany with a combined share of [50-60]% (Energizer [10-20]%, Spectrum [40-50]%), followed by Ansmann ([10-20]%), Duracell ([10-20]%), Panasonic ([5-10]%) and Gold Peak ([5-10]%).²¹⁷
- (299) Second, the market for the wholesale supply of branded household secondary batteries in Germany is highly concentrated with an HHI level post-Transaction of [Above 2000] and a delta of [Above 250] respectively.
- (300) Third, as discussed in Section 5.3.1, the Commission considers the Parties to be close and important competitors in relation to the wholesale supply of branded household secondary batteries.
- (301) Fourth, as discussed in Section 5.3.2, the Commission considers that private label batteries exercise only a limited constraint on the Parties in the markets for the wholesale supply of branded household secondary batteries.
- (302) Fifth, as discussed in Section 5.3.3, the Commission considers that e-commerce is unlikely to affect the Parties' market position in the short- to medium term in the markets for the wholesale supply of branded household secondary batteries.
- (303) Sixth, as discussed in Section 5.3.4, the Commission considers that customers exercise only a limited constraint on the Parties' ability to increase prices in the markets for the wholesale supply of branded household secondary batteries.
- (304) Seventh, several respondents to the Commission's market investigation expect the Transaction to have a negative impact on the market for the wholesale supply of branded household secondary batteries in Germany.²¹⁸

²¹⁷ Form CO, Annex 6.I.3.

²¹⁸ Replies to Q1 – Questionnaire to Customers, questions 33 to 39.

5.5.6. *Greece*

- (305) For the reasons set out below, the Transaction raises serious doubts as to its compatibility with the internal market with respect to the wholesale supply of the branded household secondary batteries in Greece.
- (306) First, post-Transaction, the Parties would be the clear market leader in the market for the wholesale supply of branded household secondary batteries in Greece with a combined share of [50-60]% (Energizer [20-30]%, Spectrum [20-30]%), followed by Duracell ([20-30]%), Gold Peak ([5-10]%), Panasonic ([0-5]%) and C.F.L ([0-5]%).
- (307) Second, the market for the wholesale supply of branded household secondary batteries in Greece is highly concentrated with an HHI level post-Transaction of [Above 2000] and a delta of [Above 250] respectively.
- (308) Third, as discussed in Section 5.3.1, the Commission considers the Parties to be close and important competitors in relation to the wholesale supply of branded household secondary batteries.
- (309) Fourth, as discussed in Section 5.3.2, the Commission considers that private label batteries exercise only a limited constraint on the Parties in the markets for the wholesale supply of branded household secondary batteries.
- (310) Fifth, as discussed in Section 5.3.3, the Commission considers that e-commerce is unlikely to affect the Parties' market position in the short- to medium term in the markets for the wholesale supply of branded household secondary batteries.
- (311) Sixth, as discussed in Section 5.3.4, the Commission considers that customers exercise only a limited constraint on the Parties' ability to increase prices in the markets for the wholesale supply of branded household secondary batteries.

5.5.7. *Slovakia*

- (312) For the reasons set out below, the Transaction raises serious doubts as to its compatibility with the internal market with respect to the wholesale supply of the branded household secondary batteries in Slovakia.
- (313) First, post-Transaction, the Parties would be the clear market leader in the market for the wholesale supply of branded household secondary batteries in Slovakia with a combined share of [40-50]% (Energizer [20-30]%, Spectrum [20-30]%), followed by Gold Peak ([20-30]%), Duracell ([5-10]%) and Panasonic ([5-10]%).
- (314) Second, the market for the wholesale supply of branded household secondary batteries in Slovakia is highly concentrated with an HHI level post-Transaction of Above 2000] and a delta of [Above 250] respectively.
- (315) Third, as discussed in Section 5.3.1, the Commission considers the Parties to be close and important competitors in relation to the wholesale supply of branded household secondary batteries.

- (316) Fourth, as discussed in Section 5.3.2, the Commission considers that private label batteries exercise only a limited constraint on the Parties in the markets for the wholesale supply of branded household secondary batteries.
- (317) Fifth, as discussed in Section 5.3.3, the Commission considers that e-commerce is unlikely to affect the Parties' market position in the short- to medium term in the markets for the wholesale supply of branded household secondary batteries.
- (318) Sixth, as discussed in Section 5.3.4, the Commission considers that customers exercise only a limited constraint on the Parties' ability to increase prices in the markets for the wholesale supply of branded household secondary batteries.

5.5.8. *Romania*

- (319) For the reasons set out below, the Transaction raises serious doubts as to its compatibility with the internal market with respect to the wholesale supply of the branded household secondary batteries in Romania.
- (320) First, post-Transaction, the Parties would be the clear market leader in the market for the wholesale supply of branded household secondary batteries in Romania with a combined share of [40-50]% (Energizer [5-10]%, Spectrum [40-50]%), followed by Duracell ([10-20]%), Gold Peak ([10-20]%), Toshiba ([5-10]%) and Panasonic ([0-5]%).
- (321) Second, the market for the wholesale supply of branded household secondary batteries in Romania is highly concentrated with an HHI level post-Transaction of [Above 2000] and a delta of [Above 250] respectively.
- (322) Third, as discussed in Section 5.3.1, the Commission considers the Parties to be close and important competitors in relation to the wholesale supply of branded household secondary batteries.
- (323) Fourth, as discussed in Section 5.3.2, the Commission considers that private label batteries exercise only a limited constraint on the Parties in the markets for the wholesale supply of branded household secondary batteries.
- (324) Fifth, as discussed in Section 5.3.3, the Commission considers that e-commerce is unlikely to affect the Parties' market position in the short- to medium term in the markets for the wholesale supply of branded household secondary batteries.
- (325) Sixth, as discussed in Section 5.3.4, the Commission considers that customers exercise only a limited constraint on the Parties' ability to increase prices in the markets for the wholesale supply of branded household secondary batteries.
- (326) Seventh, several respondents to the Commission's market investigation expect the Transaction to have a negative impact on the market for the wholesale supply of branded household secondary batteries in Romania.²¹⁹

²¹⁹ Replies to Q1 – Questionnaire to Customers, questions 33 to 39.

5.5.9. *Malta*

- (327) For the reasons set out below, the Transaction raises serious doubts as to its compatibility with the internal market with respect to the wholesale supply of the branded household secondary batteries in Malta.
- (328) First, post-Transaction, the Parties would have a significant position in the market for the wholesale supply of branded household secondary batteries in Malta with a combined share of [40-50]% (Energizer [30-40]%, Spectrum [10-20]%), with Duracell at [50-60]% and Panasonic at [0-5]%.
- (329) Second, the market for the wholesale supply of branded household secondary batteries in Malta is highly concentrated with an HHI level post-Transaction of [Above 2000] and a delta of [Above 250] respectively.
- (330) Third, as discussed in Section 5.3.1, the Commission considers the Parties to be close and important competitors in relation to the wholesale supply of branded household secondary batteries.
- (331) Fourth, as discussed in Section 5.3.2, the Commission considers that private label batteries exercise only a limited constraint on the Parties in the markets for the wholesale supply of branded household secondary batteries.
- (332) Fifth, as discussed in Section 5.3.3, the Commission considers that e-commerce is unlikely to affect the Parties' market position in the short- to medium term in the markets for the wholesale supply of branded household secondary batteries.
- (333) Sixth, as discussed in Section 5.3.4, the Commission considers that customers exercise only a limited constraint on the Parties' ability to increase prices in the markets for the wholesale supply of branded household secondary batteries.

5.5.10. *Norway*

- (334) For the reasons set out below, the Transaction raises serious doubts as to its compatibility with the internal market with respect to the wholesale supply of branded household secondary batteries in Norway.
- (335) First, post-Transaction, the Parties would be the clear market leader in the market for the wholesale supply of branded household secondary batteries in Norway with a combined share of [40-50]% (Energizer [30-40]%, Spectrum [5-10]%), followed by Duracell ([40-50]%) and Panasonic ([5-10]%).²²⁰
- (336) Second, the market for the wholesale supply of branded household secondary batteries in Norway is highly concentrated with an HHI level post-Transaction of [Above 2000] and a delta of [Above 250] respectively.
- (337) Third, as discussed in Section 5.3.1, the Commission considers the Parties to be close and important competitors in relation to the wholesale supply of branded household secondary batteries.

²²⁰ Form CO, Annex 6.I.3.

- (338) Fourth, as discussed in Section 5.3.2, the Commission considers that private label batteries exercise only a limited constraint on the Parties in the markets for the wholesale supply of branded household secondary batteries.
- (339) Fifth, as discussed in Section 5.3.3, the Commission considers that e-commerce is unlikely to affect the Parties' market position in the short- to medium term in the markets for the wholesale supply of branded household secondary batteries.
- (340) Sixth, as discussed in Section 5.3.4, the Commission considers that customers exercise only a limited constraint on the Parties' ability to increase prices in the markets for the wholesale supply of branded household secondary batteries.

5.5.11. Italy

- (341) For the reasons set out below, the Transaction raises serious doubts as to its compatibility with the internal market with respect to the wholesale supply of the branded household secondary batteries in Italy.
- (342) First, post-Transaction, the Parties would be the clear market leader in the market for the wholesale supply of branded household secondary batteries in Italy with a combined share of [40-50]% (Energizer [20-30]%, Spectrum [10-20]%), followed by Duracell ([40-50]%) and Panasonic ([0-5]%).
- (343) Second, the market for the wholesale supply of branded household secondary batteries in Italy is highly concentrated with an HHI level post-Transaction of [Above 2000] and a delta of [Above 250] respectively.
- (344) Third, as discussed in Section 5.3.1, the Commission considers the Parties to be close and important competitors in relation to the wholesale supply of branded household secondary batteries.
- (345) Fourth, as discussed in Section 5.3.2, the Commission considers that private label batteries exercise only a limited constraint on the Parties in the markets for the wholesale supply of branded household secondary batteries.
- (346) Fifth, as discussed in Section 5.3.3, the Commission considers that e-commerce is unlikely to affect the Parties' market position in the short- to medium term in the markets for the wholesale supply of branded household secondary batteries.
- (347) Sixth, as discussed in Section 5.3.4, the Commission considers that customers exercise only a limited constraint on the Parties' ability to increase prices in the markets for the wholesale supply of branded household secondary batteries.

5.5.12. Other affected markets

- (348) With regard to the wholesale supply of branded household secondary batteries in Belgium, Czechia, Finland, Poland, Slovenia, Sweden and the UK, the Commission notes, on the one hand, that:
 - (a) First, the Parties have sizeable combined market shares on those markets: [20-30]% in Belgium, [20-30]% in Czechia, [20-30]% in Finland, [30-40]% in Poland, [30-40]% in Slovenia, [30-40]% in Sweden and [30-40]% in the UK.

- (b) Second, as shown in Table 1 above, all of those markets are concentrated, with HHI levels post-Transaction of between [Above 2000] and [Above 2000] and HHI delta of between [Below 250] and [DAbove 250] (with the exception of Slovenia, where the HHI delta is [Below 150] with post-Transaction HHI level of [Above 2000]).
- (c) Third, the Transaction would create the largest (in the case of Poland, Slovenia and Sweden) or the second largest (in the case of Belgium, Czechia, Finland and the UK) supplier, thereby also reducing the number of suppliers on these already concentrated markets.
- (d) Fourth, the market dynamics identified by the Commission at 5.3.1 to 5.3.4, apply equally to the markets for household secondary batteries in these countries.
- (e) Fifth, several market participants have raised concerns about potential price increases or decreases in quality or innovation in these markets.²²¹

(349) On the other hand, the Commission also notes that:

- (a) First, there are significant alternative suppliers of branded household secondary batteries on those markets. Duracell is, and will post-Transaction remain, the market leader in Belgium ([40-50]%) and the UK ([50-60]%), Gold Peak is, and will post-Transaction remain, the market leader in Czechia ([30-40]%) and Finland ([30-40]%). Duracell will also remain a close second competitor to the merged entity in Finland ([20-30]%) and Slovenia ([10-20]%).
- (b) Second, in addition to the above-mentioned closest competitors to the merged entity, there are two or three other alternative suppliers of branded household secondary batteries active on each of those markets, including suppliers such as Panasonic, Philips and Camelion.
- (c) Third, a number of market participants have indicated that they do not anticipate any price increase or decreases in quality or innovation in those markets.²²²

(350) Ultimately, the question of whether serious doubts arise in Belgium, Czechia, Finland, Poland, Slovenia, Sweden and the UK can be left open as the commitments discussed in section 6 include all of the activities of Spectrum's Varta Business in the EMEA region and therefore entirely remove the overlap in the markets for branded household secondary batteries in those countries.

5.5.13. *Other horizontal overlaps*

(351) With regards to the wholesale supply of household secondary batteries in Bulgaria, Croatia, Cyprus, Denmark, Estonia, Iceland, Latvia, Lithuania, Luxembourg, Portugal and Spain, the Commission notes that the horizontal overlaps between the Parties in these countries do not lead to combined market shares above [10-20]%. Therefore, in these markets, the Transaction does not raise serious doubts as regards its compatibility with the internal market.

²²¹ Replies to Q1 – Questionnaire to Customers; question 35; Replies to Q2 – Questionnaire to Competitors, question 35.

²²² Replies to Q1 – Questionnaire to Customers; question 35; Replies to Q2 – Questionnaire to Competitors, question 35.

5.5.14. *Conclusion on the assessment of potential horizontal non-coordinated effects on the branded household secondary batteries markets*

(352) On the basis of the above, the Commission concludes that:

- (a) the Transaction raises serious doubts as regards its compatibility with the internal market due to horizontal non-coordinated effects in the markets for the wholesale supply of branded household secondary batteries in Austria, France, Germany, Greece, Hungary, Italy, Malta, Netherlands, Norway, Romania and Slovakia;
- (b) the question of whether serious doubts arise in Belgium, Czechia, Finland, Poland, Slovenia, Sweden and the UK can be left open as the commitments include all of the activities of Spectrum's Varta Business in the EMEA region and therefore entirely remove the overlap in the markets for the wholesale supply of branded household secondary batteries in those countries; and
- (c) the Transaction does not raise serious doubts as regards its compatibility with the internal market due to horizontal non-coordinated effects in the markets for the wholesale supply of branded household secondary batteries in Bulgaria, Croatia, Cyprus, Denmark, Estonia, Iceland, Latvia, Lithuania, Luxembourg, Portugal and Spain.

5.6. Assessment of potential horizontal non-coordinated effects on the national markets for the wholesale supply of branded specialty batteries to the retail channel

- (353) On the attribution of Spectrum's sales of branded specialty batteries sourced from [Supplier], several elements suggest that those sales should be included in the assessment of Spectrum's position on the markets for specialty batteries, namely the long-standing nature of this distribution agreement, the fact that Spectrum seems to control packaging, marketing, portfolio selection of those products [Comments on distribution structure].²²³
- (354) In branded specialty batteries, Energizer and Spectrum are currently the second and third largest players in the EEA (with market shares of [10-20]% and [10-20]% respectively), with Duracell as the market leader ([10-20]%). The Transaction would create or strengthen a leading position for the merged entity in several Member States, with a much smaller market share for the combined entity's next competitor, Duracell.
- (355) As shown in Table 3 below, combined market shares would exceed [40-50]% in six countries. The market shares indicate that the Transaction could create or strengthen the merged entity's dominant position in several Member States, with a much smaller market share for its next competitor, Duracell.
- (356) There are horizontal overlaps that lead to (i) combined market shares above 25%, and (ii) HHI levels post-Transaction of above 2 000 and a HHI delta of more than 150, or (iii) HHI levels post-Transaction of between 1 000 and 2 000 and a HHI delta of above 250, in 17 EEA countries, and other horizontal overlaps with combined market shares and HHI levels below those levels in 12 other EEA countries.

²²³ Annexes 44 to 48 of the Parties' reply to RFI 1.

Table 3: Market shares in branded specialty batteries, 2017 by value²²⁴

Country	Energizer	Target Business	Combined	Duracell	Panasonic	Third supplier	Fourth supplier	HHI Post-Merger	Delta HHI
Austria	[5-10]%	[20-30]%	[30-40]%	[20-30]%	[10-20]%	[5-10]%	[5-10]%	[Below 2000]	[Below 150]
Belgium	[20-30]%	[10-20]%	[30-40]%	[30-40]%	[5-10]%	[0-5]%	[0-5]%	[Above 2000]	[Above 250]
Bulgaria	[0-5]%	[0-5]%	[5-10]%	[10-20]%	[5-10]%	[20-30]%	[10-20]%	[Below 2000]	[Below 250]
Croatia	[0-5]%	[5-10]%	[10-20]%	[10-20]%	[10-20]%	[20-30]%	[5-10]%	[Below 2000]	[Below 150]
Cyprus	[0-5]%	[0-5]%	[0-5]%	[20-30]%	[10-20]%	[10-20]%	[5-10]%	[Above 2000]	[Above 250]
Czechia	[10-20]%	[10-20]%	[20-30]%	[10-20]%	[5-10]%	[20-30]%	[5-10]%	[Below 2000]	[Above 250]
Denmark	[10-20]%	[5-10]%	[20-30]%	[10-20]%	[0-5]%	[10-20]%	[5-10]%	[Below 2000]	[Above 250]
Estonia	[5-10]%	[0-5]%	[5-10]%	[20-30]%	[20-30]%	[10-20]%	[5-10]%	[Below 2000]	[Below 150]
Finland	[20-30]%	[20-30]%	[50-60]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[Above 2000]	[Above 250]
France	[30-40]%	[10-20]%	[40-50]%	[10-20]%	[5-10]%	[5-10]%	[5-10]%	[Above 2000]	[Above 250]
Germany	[10-20]%	[20-30]%	[40-50]%	[5-10]%	[0-5]%	[10-20]%	[5-10]%	[Above 2000]	[Above 250]
Greece	[10-20]%	[0-5]%	[20-30]%	[10-20]%	[0-5]%	[10-20]%	[10-20]%	[Above 2000]	[Below 150]
Hungary	[5-10]%	[10-20]%	[20-30]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[Above 2000]	[Above 250]
Ireland	[10-20]%	[0-5]%	[20-30]%	[30-40]%	[10-20]%	[10-20]%	[0-5]%	[Below 2000]	[Below 250]
Italy	[20-30]%	[5-10]%	[20-30]%	[20-30]%	[5-10]%	[10-20]%	[5-10]%	[Above 2000]	[Above 250]
Latvia	[5-10]%	[50-60]%	[50-60]%	[20-30]%	[0-5]%	[0-5]%	[0-5]%	[Above 2000]	[Above 250]
Lithuania	[10-20]%	[10-20]%	[20-30]%	[20-30]%	[5-10]%	[10-20]%	[5-10]%	[Below 2000]	[Below 250]
Luxembourg	[5-10]%	[0-5]%	[5-10]%	[40-50]%	[10-20]%	[5-10]%	[5-10]%	[Below 2000]	[Below 150]
Malta	[10-20]%	[5-10]%	[20-30]%	[30-40]%	[5-10]%	[5-10]%	[5-10]%	[Above 2000]	[Above 250]
Netherlands	[0-5]%	[20-30]%	[20-30]%	[10-20]%	[5-10]%	[5-10]%	[5-10]%	[Above 2000]	[Above 250]
Norway	[30-40]%	[5-10]%	[40-50]%	[10-20]%	[10-20]%	[5-10]%	[5-10]%	[Above 2000]	[Above 250]
Poland	[5-10]%	[5-10]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[5-10]%	[Below 2000]	[Below 150]
Portugal	[5-10]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[Above 2000]	[Above 250]
Romania	[0-5]%	[5-10]%	[5-10]%	[10-20]%	[0-5]%	[10-20]%	[10-20]%	[Below 2000]	[Below 150]
Slovakia	[5-10]%	[5-10]%	[10-20]%	[10-20]%	[0-5]%	[20-30]%	[5-10]%	[Below 2000]	[Below 250]
Slovenia	[0-5]%	[10-20]%	[10-20]%	[20-30]%	[10-20]%	[20-30]%	[5-10]%	[Above 2000]	[Above 250]

²²⁴ Rounding errors may occur. Duracell is present in all countries. Panasonic is present in almost all countries. "Third supplier" and "fourth supplier" stands for the largest and second-largest suppliers other than the Parties, Duracell and Panasonic. The identity of the third and fourth suppliers varies by country. There are no horizontal overlaps in EEA countries that are not listed in the table.

Country	Energizer	Target Business	Combined	Duracell	Panasonic	Third supplier	Fourth supplier	HHI Post-Merger	Delta HHI
Spain	[10-20]%	[5-10]%	[20-30]%	[10-20]%	[20-30]%	[10-20]%	[5-10]%	[Below 2000]	[Below 250]
Sweden	[20-30]%	[10-20]%	[40-50]%	[5-10]%	[10-20]%	[5-10]%	[5-10]%	[Above 2000]	[Above 250]
UK	[10-20]%	[0-5]%	[20-30]%	[30-40]%	[5-10]%	[5-10]%	[5-10]%	[Below 2000]	[Below 250]
EEA	[10-20]%	[10-20]%	[30-40]%	[10-20]%	[5-10]%	[5-10]%	[5-10]%	[Below 2000]	[Above 250]

Source: Parties' reply to RFI 5, Annex 14.1

5.6.1. Latvia

- (357) For the reasons set out below, the Transaction raises serious doubts as to its compatibility with the internal market with respect to the wholesale supply of branded specialty batteries in Latvia.
- (358) First, post-Transaction, the Parties would be the clear market leader in the market for the wholesale supply of branded household specialty batteries in Latvia with a combined share of [50-60]% (Energizer [5-10]%, Spectrum [50-60]%), followed by Duracell ([20-30]%; Camelion ([0-5]%) and Philips ([0-5]%).²²⁵
- (359) Second, the market for the wholesale supply of branded specialty batteries in Latvia is highly concentrated with an HHI level post-Transaction of [Above 2000] and a delta of [Above 250] respectively.
- (360) Third, as discussed in Section 5.3.1, the Commission considers the Parties to be close and important competitors in relation to the wholesale supply of branded specialty batteries.
- (361) Fourth, as discussed in Section 5.3.2, the Commission considers that private label batteries exercise only a limited constraint on the Parties in the markets for the wholesale supply of branded specialty batteries.
- (362) Fifth, as discussed in Section 5.3.3, the Commission considers that e-commerce is unlikely to affect the Parties' market position in the short- to medium term in the markets for the wholesale supply of branded specialty batteries.
- (363) Sixth, as discussed in Section 5.3.4, the Commission considers that customers exercise only a limited constraint on the Parties' ability to increase prices in the markets for the wholesale supply of branded specialty batteries.

5.6.2. Finland

- (364) For the reasons set out below, the Transaction raises serious doubts as to its compatibility with the internal market with respect to the wholesale supply of branded specialty batteries in Finland.
- (365) First, post-Transaction, the Parties would be the clear market leader in the market for the wholesale supply of branded household specialty batteries in Finland with a combined share

²²⁵ Form CO, Annex 6.I.3.

of [50-60]% (Energizer [20-30]%, Spectrum [20-30]%), followed by Gold Peak ([5-10]%), Duracell ([5-10]%), Panasonic ([5-10]%) and Maxell ([5-10]%).²²⁶

- (366) Second, the market for the wholesale supply of branded specialty batteries in Finland is highly concentrated with an HHI level post-Transaction of [Above 2000] and a delta of [Above 250] respectively.
- (367) Third, as discussed in Section 5.3.1, the Commission considers the Parties to be close and important competitors in relation to the wholesale supply of branded specialty batteries.
- (368) Fourth, as discussed in Section 5.3.2, the Commission considers that private label batteries exercise only a limited constraint on the Parties in the markets for the wholesale supply of branded specialty batteries.
- (369) Fifth, as discussed in Section 5.3.3, the Commission considers that e-commerce is unlikely to affect the Parties' market position in the short- to medium term in the markets for the wholesale supply of branded specialty batteries.
- (370) Sixth, as discussed in Section 5.3.4, the Commission considers that customers exercise only a limited constraint on the Parties' ability to increase prices in the markets for the wholesale supply of branded specialty batteries.

5.6.3. *France*

- (371) For the reasons set out below, the Transaction raises serious doubts as to its compatibility with the internal market with respect to the wholesale supply of branded specialty batteries in France.
- (372) First, post-Transaction, the Parties would be the clear market leader in the market for the wholesale supply of branded household specialty batteries in France with a combined share of [40-50]% (Energizer [30-40]%, Spectrum [10-20]%), followed by Duracell ([10-20]%), Renata ([5-10]%), Panasonic ([5-10]%) and Sony ([5-10]%).²²⁷
- (373) Second, the market for the wholesale supply of branded specialty batteries in France is highly concentrated with an HHI level post-Transaction of [Above 2000] and a delta of [Above 250] respectively.
- (374) Third, as discussed in Section 5.3.1, the Commission considers the Parties to be close and important competitors in relation to the wholesale supply of branded specialty batteries.
- (375) Fourth, as discussed in Section 5.3.2, the Commission considers that private label batteries exercise only a limited constraint on the Parties in the markets for the wholesale supply of branded specialty batteries.
- (376) Fifth, as discussed in Section 5.3.3, the Commission considers that e-commerce is unlikely to affect the Parties' market position in the short- to medium term in the markets for the wholesale supply of branded specialty batteries.

²²⁶ Form CO, Annex 6.I.3.

²²⁷ Form CO, Annex 6.I.3.

- (377) Sixth, as discussed in Section 5.3.4, the Commission considers that customers exercise only a limited constraint on the Parties' ability to increase prices in the markets for the wholesale supply of branded specialty batteries.
- (378) Seventh, several respondents to the Commission's market investigation expect the Transaction to have a negative impact on the market for the wholesale supply of branded specialty batteries in France.²²⁸

5.6.4. *Germany*

- (379) For the reasons set out below, the Transaction raises serious doubts as to its compatibility with the internal market with respect to the wholesale supply of branded specialty batteries in Germany.
- (380) First, post-Transaction, the Parties would be the clear market leader in the market for the wholesale supply of branded household specialty batteries in Germany with a combined share of [40-50]% (Energizer [10-20]%, Spectrum [20-30]%), followed by Ansmann ([10-20]%), Duracell ([5-10]%) and Gold Peak ([5-10]%).²²⁹
- (381) Second, the market for the wholesale supply of branded specialty batteries in Germany is highly concentrated with an HHI level post-Transaction of [Above 2000] and a delta of [Above 250] respectively.
- (382) Third, as discussed in Section 5.3.1, the Commission considers the Parties to be close and important competitors in relation to the wholesale supply of branded specialty batteries.
- (383) Fourth, as discussed in Section 5.3.2, the Commission considers that private label batteries exercise only a limited constraint on the Parties in the markets for the wholesale supply of branded specialty batteries.
- (384) Fifth, as discussed in Section 5.3.3, the Commission considers that e-commerce is unlikely to affect the Parties' market position in the short- to medium term in the markets for the wholesale supply of branded specialty batteries.
- (385) Sixth, as discussed in Section 5.3.4, the Commission considers that customers exercise only a limited constraint on the Parties' ability to increase prices in the markets for the wholesale supply of branded specialty batteries.
- (386) Seventh, several respondents to the Commission's market investigation expect the Transaction to have a negative impact on the market for the wholesale supply of branded specialty batteries in Germany.²³⁰

5.6.5. *Norway*

- (387) For the reasons set out below, the Transaction raises serious doubts as to its compatibility with the internal market with respect to the wholesale supply of branded specialty batteries in Norway.

²²⁸ Replies to Q1 – Questionnaire to Customers, questions 33 to 39

²²⁹ Form CO, Annex 6.I.3.

²³⁰ Replies to Q1 – Questionnaire to Customers, questions 33 to 39.

- (388) First, post-Transaction, the Parties would be the clear market leader in the market for the wholesale supply of branded specialty batteries in Norway with a combined share of [40-50]% (Energizer [30-40]%, Spectrum [5-10]%), followed by Duracell ([10-20]%), Panasonic ([10-20]%), Sony ([5-10]%) and Gold Peak ([5-10]).²³¹
- (389) Second, the market for the wholesale supply of branded specialty batteries in Norway is highly concentrated with an HHI level post-Transaction of [Above 2000] and a delta of [Above 250] respectively.
- (390) Third, as discussed in Section 5.3.1, the Commission considers the Parties to be close and important competitors in relation to the wholesale supply of branded specialty batteries.
- (391) Fourth, as discussed in Section 5.3.2, the Commission considers that private label batteries exercise only a limited constraint on the Parties in the markets for the wholesale supply of branded specialty batteries.
- (392) Fifth, as discussed in Section 5.3.3, the Commission considers that e-commerce is unlikely to affect the Parties' market position in the short- to medium term in the markets for the wholesale supply of branded specialty batteries.
- (393) Sixth, as discussed in Section 5.3.4, the Commission considers that customers exercise only a limited constraint on the Parties' ability to increase prices in the markets for the wholesale supply of branded specialty batteries.

5.6.6. *Sweden*

- (394) For the reasons set out below, the Transaction raises serious doubts as to its compatibility with the internal market with respect to the wholesale supply of branded specialty batteries in Sweden.
- (395) First, post-Transaction, the Parties would be the clear market leader in the market for the wholesale supply of branded specialty batteries in Sweden with a combined share of [40-50]% (Energizer [20-30]%, Spectrum [10-20]%), followed by Panasonic ([10-20]%), Sony ([5-10]%), Duracell ([5-10]%) and Gold Peak ([5-10]).²³²
- (396) Second, the market for the wholesale supply of branded specialty batteries in Sweden is highly concentrated with an HHI level post-Transaction of [Above 2000] and a delta of [Above 250] respectively.
- (397) Third, as discussed in Section 5.3.1, the Commission considers the Parties to be close and important competitors in relation to the wholesale supply of branded specialty batteries.
- (398) Fourth, as discussed in Section 5.3.2, the Commission considers that private label batteries exercise only a limited constraint on the Parties in the markets for the wholesale supply of branded specialty batteries.

²³¹ Form CO, Annex 6.I.3.

²³² Form CO, Annex 6.I.3.

- (399) Fifth, as discussed in Section 5.3.3, the Commission considers that e-commerce is unlikely to affect the Parties' market position in the short- to medium term in the markets for the wholesale supply of branded specialty batteries.
- (400) Sixth, as discussed in Section 5.3.4, the Commission considers that customers exercise only a limited constraint on the Parties' ability to increase prices in the markets for the wholesale supply of branded specialty batteries.

5.6.7. *Other affected markets*

- (401) With regard to the wholesale supply of branded specialty batteries in Austria, Belgium, Czechia, Ireland, Italy, Lithuania, Malta, the Netherlands and Spain, the Commission notes, on the one hand, that:
- (a) First, the Parties have sizable combined market shares on those markets: [30-40]% in Austria, [30-40]% in Belgium, [20-30]% in Czechia, [20-30]% in Ireland, [20-30]% in Italy, [20-30]% in Lithuania, [20-30]% in Malta, [20-30]% in the Netherlands and [20-30]% in Spain.
 - (b) Second, as shown in Table 3 above, all of those markets are concentrated, with HHI levels post-Transaction of between [Below 2000] and [Above 2000] and with an HHI delta of between [Below 250] and [Above 250] (with the exception of Austria, where the HHI delta is [Below 150] with post-Transaction HHI of [HHI Below 2000]).
 - (c) Third, the Transaction would create the largest (in the case of Austria, Belgium, Czechia and the Netherlands) or the second largest (in the case of Ireland, Italy, Lithuania, Malta and Spain) supplier, thereby also reducing the number of suppliers on these already concentrated markets.
 - (d) Fourth, the market dynamics identified by the Commission at 5.3.1 to 5.3.4, apply equally to the markets for branded specialty batteries in these countries.
 - (e) Fifth, several market participants have raised concerns about potential price increases or decreases in quality or innovation in these markets.²³³
- (402) On the other hand, the Commission also notes that:
- (a) First, there are significant alternative suppliers of branded specialty batteries on those markets. Duracell is, and will post-Transaction remain, the market leader in Ireland ([30-40]%), Italy ([20-30]%), Lithuania ([20-30]%) and Malta ([30-40]%) and Panasonic is and will post-Transaction remain the market leader in Spain ([20-30]%). Duracell will also remain a close competitor to the merged entity in Austria ([20-30]%), Belgium ([30-40]%) and the Netherlands ([10-20]%) and Gold Peak will remain a close competitor to the merged entity in Czechia ([20-30]%).
 - (b) Second, in addition to the above-mentioned closest competitors to the merged entity, there are three other alternative suppliers of branded specialty batteries active on each

²³³ Replies to Q1 – Questionnaire to Customers; question 35; Replies to Q2 – Questionnaire to Competitors, question 35.

of those markets, including suppliers such as Panasonic, Sony, Philips, Maxell and Renata.

- (c) Third, a number of market participants have indicated that they do not anticipate any price increase or decreases in quality or innovation in those markets.²³⁴

(403) Ultimately, the question of whether serious doubts arise in Austria, Belgium, Czechia, Ireland, Italy, Lithuania, Malta, the Netherlands and Spain can be left open as the commitments discussed in section 6 include all of the activities of Spectrum's Varta Business in the EMEA region and therefore entirely remove the overlap in the markets for branded specialty batteries in those countries.

5.6.8. *Other horizontal overlaps*

(404) With regards to the wholesale supply of specialty batteries in Bulgaria, Croatia, Cyprus, Denmark, Estonia, Greece, Hungary, Luxembourg, Poland, Portugal, Romania, Slovakia, Slovenia and the UK, the Commission notes that the horizontal overlaps between the Parties in these countries do not lead to combined market shares above [10-20]%. Therefore, in these markets, the Transaction does not raise serious doubts as regards its compatibility with the internal market.

5.6.9. *Conclusion on the assessment of potential horizontal non-coordinated effects on the national markets for the wholesale of branded specialty batteries to the retail channel*

(405) On the basis of the above, the Commission concludes that:

- (a) the Transaction raises serious doubts as regards its compatibility with the internal market due to horizontal non-coordinated effects in the markets for the wholesale supply of branded specialty batteries in Finland, France, Germany, Latvia, Norway and Sweden;
- (b) the question of whether serious doubts arise in Austria, Belgium, Czechia, Ireland, Italy, Lithuania, Malta, the Netherlands and Spain can be left open as the commitments include all of the activities of Spectrum's Varta Business in the EMEA region and therefore entirely remove the overlap in the markets for the wholesale supply of branded specialty batteries in those countries; and
- (c) the Transaction does not raise serious doubts as regards its compatibility with the internal market due to horizontal non-coordinated effects in the markets for the wholesale supply of branded specialty batteries in Bulgaria, Croatia, Cyprus, Denmark, Estonia, Greece, Hungary, Luxembourg, Poland, Portugal, Romania, Slovakia, Slovenia and the UK.

5.7. Assessment of potential horizontal non-coordinated effects on the national markets for the wholesale supply of branded hearing aid batteries to the mass retail channel

(406) Spectrum (with its Rayovac brand) is currently the market leader in branded hearing aid batteries in a number of EEA countries. In comparison, Energizer is a less significant supplier

²³⁴ Replies to Q1 – Questionnaire to Customers; question 35; Replies to Q2 – Questionnaire to Competitors, question 35.

of branded hearing aid batteries at the EEA level (with [20-30]% market share in the mass retail channel). Nevertheless, its presence achieves more than [30-40]% market share in 11 EEA countries and more than [20-30]% in 2 further EEA countries.

(407) As shown in Table 4 below, the merged entity would be the largest player in the EEA (with a [50-60]% combined market share) followed by Duracell ([20-30]%) and would become the only supplier of branded hearing aid batteries in the mass retail channel in 9 national markets (Bulgaria, Czechia, Denmark, Finland, Hungary, Ireland, Luxembourg, Norway and Slovakia). The merged entity would also have combined market shares above [90-100]% in 3 further markets (Netherlands, Poland and Slovenia), very high combined market shares (between [40-50]% and [80-90%]) in 8 further national markets, in 6 of which this transaction would constitute a 3 to 2 merger (Austria, Belgium, Italy, Romania, Spain and the UK).

Table 4: Market shares in branded hearing aid batteries in the mass retail channel, 2017 by

Country	Energizer	Target Business	Combined	Duracell	Panasonic	Sony	HHI Post-Merger	Delta HHI
Austria	[5-10]%	[40-50]%	[50-60]%	[0-5]%	[0-5]%	[40-50]%	[Above 2000]	[Above 250]
Belgium	[30-40]%	[40-50]%	[70-80]%	[20-30]%	[0-5]%	[0-5]%	[Above 2000]	[Above 250]
Bulgaria	[0-5]%	[90-100]%	[90-100]%	[0-5]%	[0-5]%	[0-5]%	[Above 2000]	[Below 150]
Czechia	[60-70]%	[30-40]%	[90-100]%	[0-5]%	[0-5]%	[0-5]%	[Above 2000]	[Above 250]
Denmark	[90-100]%	[0-5]%	[90-100]%	[0-5]%	[0-5]%	[0-5]%	[Above 2000]	[Above 250]
Finland	[40-50]%	[50-60]%	[90-100]%	[0-5]%	[0-5]%	[0-5]%	[Above 2000]	[Above 250]
France	[0-5]%	[30-40]%	[30-40]%	[40-50]%	[0-5]%	[0-5]%	[Above 2000]	[Above 250]
Germany	[20-30]%	[20-30]%	[50-60]%	[30-40]%	[5-10]%	[5-10]%	[Above 2000]	[Above 250]
Hungary	[50-60]%	[40-50]%	[90-100]%	[0-5]%	[0-5]%	[0-5]%	[Above 2000]	[Above 250]
Ireland	[60-70]%	[30-40]%	[90-100]%	[0-5]%	[0-5]%	[0-5]%	[Above 2000]	[Above 250]
Italy	[0-5]%	[70-80]%	[70-80]%	[10-20]%	[0-5]%	[0-5]%	[Above 2000]	[Below 250]
Luxembourg	[50-60]%	[40-50]%	[90-100]%	[0-5]%	[0-5]%	[0-5]%	[Above 2000]	[Above 250]
Netherlands	[0-5]%	[90-100]%	[90-100]%	[5-10]%	[0-5]%	[0-5]%	[Above 2000]	[Above 250]
Norway	[40-50]%	[50-60]%	[90-100]%	[0-5]%	[0-5]%	[0-5]%	[Above 2000]	[Above 250]
Poland	[30-40]%	[50-60]%	[90-100]%	[0-5]%	[0-5]%	[0-5]%	[Above 2000]	[Above 250]
Romania	[5-10]%	[30-40]%	[40-50]%	[0-5]%	[50-60]%	[0-5]%	[Above 2000]	[Above 250]
Slovakia	[30-40]%	[60-70]%	[90-100]%	[0-5]%	[0-5]%	[0-5]%	[Above 2000]	[Above 250]
Slovenia	[5-10]%	[90-100]%	[90-100]%	[0-5]%	[0-5]%	[0-5]%	[Above 2000]	[Above 250]
Spain	[20-30]%	[50-60]%	[70-80]%	[10-20]%	[0-5]%	[0-5]%	[Above 2000]	[Above 250]
Sweden	[10-20]%	[30-40]%	[40-50]%	[30-40]%	[0-5]%	[10-20]%	[Above 2000]	[Above 250]
UK	[40-50]%	[30-40]%	[70-80]%	[20-30]%	[0-5]%	[0-5]%	[Above 2000]	[Above 250]

value²³⁵

Source: Parties' reply to RFI 5, Annex 14.1

²³⁵ Rounding errors may occur. There are no horizontal overlaps in EEA countries that are not listed in the table.

(408) There are a number of common characteristics of the markets for the wholesale supply of hearing aid batteries in the mass retail channel across the EEA which will be discussed in sections 5.7.1 to 5.7.5.

5.7.1. *The Parties are close and important competitors in most of the national markets in the EEA in an already concentrated industry with limited alternatives*

(a) The Notifying Party's view

(409) The Notifying Party argues that the Parties are not close competitors²³⁶ and that the merged entity will face fierce competition from other strong branded suppliers.²³⁷ The Notifying Party identifies Duracell (with its Easytab brand), Gold Peak, Panasonic, Sony, Philips and Ansmann as alternative suppliers to the merged entity in the EEA.

(b) The Commission's assessment

(410) The vast majority of retailer and wholesaler customers that responded to the Commission's market investigation stated that Rayovac is Energizer's closest competitor in the supply of hearing aid batteries.²³⁸ Duracell and Varta Microbattery's PowerOne brand were ranked on average as the next closest competitors, followed by Panasonic. The results were similar with regard to the market participants' views of Rayovac's closest competitors: the majority deem Energizer to be Rayovac's closest competitor in the supply of hearing aid batteries.²³⁹

(411) Other than the market participants' views of the Parties' closest competitors, the Commission, in the course of its market investigation, has found that suppliers of branded hearing aid batteries (other than the Parties, Varta Microbattery²⁴⁰ and Duracell), are perceived by customers as being of lower, or less consistently reliable, quality. For example, one customer ranked hearing aid batteries produced by the Chinese company ZhuHai Zhi Li Battery (the ZeniPower brand) in the last place due to "*considerable quality fluctuations*".²⁴¹

(412) Furthermore, there is a perception among some customers that only Varta Microbattery and Spectrum's Rayovac operate a global distribution and sales network. Some of the other non-EEA based suppliers, especially those not yet established with a distribution network for other types of batteries, are not seen to be (at least at present) capable of supplying significant customers in the EEA due to capacity limitations, geographical reach, financial resources and a lack of an international supply network.²⁴² As one hearing aid customer explained: "*The Chinese ZeniPower has so far not made the huge investments accompanied with the operation of a comparable network.*"²⁴³

(413) Furthermore, the barriers to entry appear to be relatively high. The production of hearing aid batteries requires significant investments in R&D and production lines over a number of

²³⁶ Form CO, paragraphs 1406, 1414.

²³⁷ Form CO, paragraphs 1415, 1425-1433.

²³⁸ Replies to Q1 – Questionnaire to Customers, question 24.

²³⁹ Replies to Q1 – Questionnaire to Customers, question 25.

²⁴⁰ As explained in section 4, Varta Microbattery, which is a separate entity not connected to the Parties, [Information on Varta Microbattery].

²⁴¹ Minutes of a call with a customer, 26 July 2018, 15:30 CET.

²⁴² Minutes of a call with a customer, 26 July 2018, 15:30 CET.

²⁴³ Minutes of a call with a customer, 20 July 2018, 11:00 CET.

years, in order to optimize the battery with regard to size and performance. Significant investment into a distribution network would also be required to enter the market. For these reasons, some market participants have indicated that they would not have the ability to manufacture hearing aid batteries themselves.²⁴⁴ As one hearing aid batteries customer explains: "*What would be needed is technology, capacity and the interest of entering a market which is still small in terms of volume and size.*"²⁴⁵ A competitor also explained that "[a] supplier will be required to have and maintain the manufacturing and/or sales operation for starting making sales of hearing aid batteries, too, and it takes lots of costs and man power".²⁴⁶

- (414) Even entering the market as a supplier (and not a manufacturer) alone can be resource-intensive. As a competitor explained, in order to start making sales of hearing aid batteries, a supplier would need to be able to source all the different battery categories and technologies and would have to adapt and manufacture different packaging, manage logistics, conduct internal qualification and negotiate business conditions with manufacturers of hearing aid batteries, which the competitor estimates can take a year.²⁴⁷ On the other hand, the incentives for new entry may be limited, since, as one competitor explained, "*hearing batteries is a specialized field with limited supplier base. As such it requires a long term commitment*".²⁴⁸
- (415) For these reasons, the Commission finds that the Parties are close and important competitors in most of the national markets in the EEA in an already concentrated industry with limited alternatives.

5.7.2. *Private label batteries only exercise a limited constraint on the Parties*

(a) The Notifying Party's view

- (416) The Notifying Party argues that hearing aid batteries are supplied to retailers that are not audiologists (i.e. the mass retail channel) as a part of battery suppliers' consumer battery offering and that, accordingly, the impact of private label on the supply of branded hearing aid batteries in the mass retail channel is similar to that of private label on other branded consumer batteries.²⁴⁹

(b) The Commission's assessment

- (417) With regard to other consumer batteries, the Commission has found at 5.3.2 that private label batteries exercise only a limited constraint on the Parties. The Commission refers to the arguments set out in section 5.3.2, which apply equally to hearing aid batteries sold in the mass retail channel.
- (418) Furthermore, market participants that responded to the Commission's market investigation have stated that brand recognition is very important in the hearing aid battery market specifically. As one hearing aid battery customer explained: "*The battery business is a brand*

²⁴⁴ See e.g. Minutes of a call with a customer, 20 July 2018, 11:00 CET.

²⁴⁵ Minutes of a call with a customer, 26 July 2018, 15:30 CET.

²⁴⁶ Replies to Q2 – Questionnaire to Competitors, question 14.2.

²⁴⁷ Replies to Q2 – Questionnaire to Competitors, question 14.2.

²⁴⁸ Replies to Q2 – Questionnaire to Competitors, question 14.2.

²⁴⁹ Form CO, paragraph 1434.

business."²⁵⁰ Another customer active on the Finnish market for hearing aid batteries explained: "*Big brand have made a lot of marketing in Finland so they are well known.*"²⁵¹ Another customer active on the French market for hearing aid batteries expressed a similar view: "*Brand awareness is important in the battery sector because there is a lot of marketing on some national brands and consumers are reassured and more easily buy the more well-known brands.*"²⁵² According to one Hungarian customer, brands may matter more for hearing aid batteries, since the product for which they are needed is of a medical nature: "*Consumers follow doctor's advise and therefore purchase recommended brands and types.*"²⁵³

(419) For these reasons, the Commission finds that private label hearing aid batteries only exercise a limited constraint on the Parties in their supply of branded hearing aid batteries to the mass retail channel.

5.7.3. *E-commerce is unlikely to affect the Parties' market position in the short- to medium term*

(a) The Notifying Party's view

(420) The Notifying Party argues that the importance of e-commerce on hearing aid batteries is further accentuated by the fact that hearing aid batteries are a high-frequency sales product compared to regular consumer batteries, which in the Notifying Party's view means that e-commerce (in particular subscription services such as Amazon's subscription service) are particularly relevant with respect to hearing aid batteries.²⁵⁴

(b) The Commission's assessment

(421) The Commission has found at 5.3.3 that e-commerce is unlikely to affect the Parties' market position in consumer batteries in the short- to medium term. The same arguments apply to hearing aid batteries.

(422) Furthermore, the results of the market investigation suggest that in regard to hearing aid batteries specifically, e-commerce is likely to play an even less significant role than for other types of consumer batteries, in view of the more specific demographic of a typical hearing aid batteries consumer. For example, one customer explained that "*elderly customers (who are the majority of hearing aid consumers) tend not to trust online channels and would much rather buy directly from an in-store environment.*"²⁵⁵

²⁵⁰ Minutes of a call with a customer, 26 July 2018, 15:30 CET.

²⁵¹ Replies to Q1 – Questionnaire to Customers, question 26.1.

²⁵² Replies to Q1 – Questionnaire to Customers, question 26.1. (Translation from French original: "*La notoriété de la marque est importante dans le secteur des piles car il y a beaucoup de marketing sur certaines marques nationales et les consommateurs sont rassurés et achètent plus facilement les marques davantage connues.*")

²⁵³ Replies to Q1 – Questionnaire to Customers, question 16.1.

²⁵⁴ Form CO, paragraph 1438.

²⁵⁵ Replies to Q1 – Questionnaire to Customers, question 16.1.

5.7.4. *Customers only exercise a limited constraint on the Parties' ability to increase prices*

(a) The Notifying Party's view

(423) The Notifying Party argues that the merged entity will not be in a position to exert market power vis-à-vis its customers (retailers) and will instead face significant countervailing buyer power both from traditional retailers and online retailers and platforms. In the Notifying Party's view, sales of hearing aid batteries to the mass retail channel form part of the overall offering of consumer batteries, with customers, especially traditional large retailers, controlling the number and mix of category players that the customers offer to their customers (including the focus on brand and product placement, shelf space, pricing levels and promotions). The Notifying Party further argues that in tenders concerning hearing aid batteries alone, competition among suppliers is fierce, with retailers often playing suppliers off against one another.²⁵⁶

(b) The Commission's assessment

(424) The Commission has found at 5.3.4 that customers exercise only a limited constraint on the Parties' ability to increase prices for consumer batteries. The same arguments apply with respect to hearing aid batteries. Furthermore, the markets for the wholesale supply of hearing aid batteries to the mass retail channel are highly concentrated, where there are limited (or no) alternative suppliers to the merged entity in a number of EEA countries.²⁵⁷ In those countries, therefore, the merged entity's customers would not be in the position to exercise a significant degree of countervailing buyer power.

5.7.5. *Concerns raised by market participants in the course of the market investigation*

(425) The Commission's market investigation revealed that a significant number of customers and competitors expect prices of branded hearing aid batteries to increase as a result of the Transaction.

(426) The Commission has furthermore received complaints from 14 consumer associations from various Member States representing the interests of the deaf and the hard of hearing, all expressing concerns about the effects of this Transaction on the market for hearing aid batteries, mainly as a result of: (i) the Parties' creation or strengthening of market dominance, and (ii) eventual increases in the prices of hearing aid batteries.

5.7.6. *Bulgaria*

(427) For the reasons set out below, the Transaction raises serious doubts as to its compatibility with the internal market with respect to the wholesale supply of branded hearing aid batteries in the mass retail channel in Bulgaria.

(428) First, post-Transaction, the merged entity would be the only supplier of branded hearing aid batteries in the mass retail channel in Bulgaria with a combined market share of 100%.

²⁵⁶ Form CO, paragraphs 1440-1443.

²⁵⁷ See Table 4.

- (429) Second, as discussed at 5.7.2, the Commission considers that private label batteries exercise only a limited constraint on the Parties in the markets for the wholesale supply of branded hearing aid batteries in the mass retail channel.
- (430) Third, as discussed at 5.7.3, the Commission considers that e-commerce is unlikely to affect the Parties' market position in the short- to medium term in the markets for the wholesale supply of branded hearing aid batteries in the mass retail channel.
- (431) Fourth, as discussed at 5.7.4, the Commission considers that customers exercise only a limited constraint on the Parties' ability to increase prices in the markets for the wholesale supply of branded hearing aid batteries in the mass retail channel.
- (432) Fifth, the Notifying Party argues that the Transaction will not have any impact on the segment for the supply of hearing aid batteries to the mass retail channel in Bulgaria despite the Parties' high combined market shares, since Energizer only made sales worth of EUR [Sales information] in 2017 (and had no sales in the two preceding years), which accounts for [0-5]% of overall hearing aid battery sales.²⁵⁸ The Notifying Party further argues that [Sales strategy].²⁵⁹ However, the Commission finds that by creating a single supplier of branded hearing aid batteries in the mass retail channel in Bulgaria, the Transaction would eliminate the only potential challenger to Spectrum's dominant position in this channel on the Bulgarian market.

5.7.7. *Czechia*

- (433) For the reasons set out below, the Transaction raises serious doubts as to its compatibility with the internal market with respect to the wholesale supply of branded hearing aid batteries in the mass retail channel in Czechia.
- (434) First, post-Transaction, the merged entity would be the only supplier of branded hearing aid batteries in the mass retail channel in Czechia with a combined market share of 100%.
- (435) Second, as discussed at 5.7.2, the Commission considers that private label batteries exercise only a limited constraint on the Parties in the markets for the wholesale supply of branded hearing aid batteries in the mass retail channel.
- (436) Third, as discussed at 5.7.3, the Commission considers that e-commerce is unlikely to affect the Parties' market position in the short- to medium term in the markets for the wholesale supply of branded hearing aid batteries in the mass retail channel.
- (437) Fourth, as discussed at 5.7.4, the Commission considers that customers exercise only a limited constraint on the Parties' ability to increase prices in the markets for the wholesale supply of branded hearing aid batteries in the mass retail channel.
- (438) Fifth, the Notifying Party argues that since Energizer [Distribution strategy], its ability to compete locally with Spectrum in Central and Easter Europe (including Czechia) is limited.²⁶⁰ However, the Commission finds that by creating a [single supplier of branded hearing aid batteries in the mass retail channel in Czechia, the Transaction would eliminate

²⁵⁸ Form CO, paragraph 1462.

²⁵⁹ Form CO, paragraph 1463.

²⁶⁰ Form CO, paragraph 1463.

the only potential challenger to each other's very strong market position in this channel on the Czech market.

5.7.8. *Denmark*

- (439) For the reasons set out below, the Transaction raises serious doubts as to its compatibility with the internal market with respect to the wholesale supply of branded hearing aid batteries in the mass retail channel in Denmark.
- (440) First, post-Transaction, the merged entity would be the only supplier of branded hearing aid batteries in the mass retail channel in Denmark with a combined market share of 100%.
- (441) Second, as discussed at 5.7.2, the Commission considers that private label batteries exercise only a limited constraint on the Parties in the markets for the wholesale supply of branded hearing aid batteries in the mass retail channel.
- (442) Third, as discussed at 5.7.3, the Commission considers that e-commerce is unlikely to affect the Parties' market position in the short- to medium term in the markets for the wholesale supply of branded hearing aid batteries in the mass retail channel.
- (443) Fourth, as discussed at 5.7.4, the Commission considers that customers exercise only a limited constraint on the Parties' ability to increase prices in the markets for the wholesale supply of branded hearing aid batteries in the mass retail channel.
- (444) Fifth, the Notifying Party argues that the Transaction will not have a significant impact on the segment for the supply of branded hearing aid batteries to the mass retail channel in Denmark despite the Parties' high combined market shares, as there is virtually no overlap in the sales of hearing aid batteries in this channel. Spectrum only carried out sales worth EUR [Sales information] in 2017, accounting for [0-5]% of the sales of hearing aid batteries to the mass retail channel.²⁶¹ The Notifying Party further argues that the sales of hearing aid batteries via the mass retail channel in Denmark is constrained by the supply of hearing aid batteries through the Danish national healthcare providers.²⁶² However, the Commission finds that by creating a single supplier of branded hearing aid batteries in the mass retail channel in Denmark, the Transaction would eliminate the only competitor to Energizer's dominant position in this channel on the Danish market.

5.7.9. *Finland*

- (445) For the reasons set out below, the Transaction raises serious doubts as to its compatibility with the internal market with respect to the wholesale supply of branded hearing aid batteries in the mass retail channel in Finland.
- (446) First, the Parties are currently the number one (Spectrum – [50-60]%) and number two (Energizer – [40-50]%) wholesale suppliers of hearing aid batteries to the mass retail channel in Finland, with no other suppliers present on the market. Post-Transaction, the merged entity would be the only supplier of branded hearing aid batteries in the mass retail channel in Finland with a combined market share of 100%.

²⁶¹ Form CO, paragraph 1464.

²⁶² Form CO, paragraph 1465.

- (447) Second, as discussed at 5.7.2, the Commission considers that private label batteries exercise only a limited constraint on the Parties in the markets for the wholesale supply of branded hearing aid batteries in the mass retail channel.
- (448) Third, as discussed at 5.7.3, the Commission considers that e-commerce is unlikely to affect the Parties' market position in the short- to medium term in the markets for the wholesale supply of branded hearing aid batteries in the mass retail channel.
- (449) Fourth, as discussed at 5.7.4, the Commission considers that customers exercise only a limited constraint on the Parties' ability to increase prices in the markets for the wholesale supply of branded hearing aid batteries in the mass retail channel.
- (450) Fifth, by creating a single supplier of branded hearing aid batteries in the mass retail channel in Finland, the Transaction would eliminate Spectrum's only competitor in this channel on the Finnish market.
- (451) Sixth, as one Finnish customer observed, "*[u]sers of hearing aid batteries are buying it mostly from supermarkets in Finland*".²⁶³ This Transaction would therefore significantly affect not only the competitive dynamics on the Finnish wholesale supply market, but also consumer choice in the mass retail channel.

5.7.10. Hungary

- (452) For the reasons set out below, the Transaction raises serious doubts as to its compatibility with the internal market with respect to the wholesale supply of branded hearing aid batteries in the mass retail channel in Hungary.
- (453) First, the Parties are currently the number one (Energizer – [50-60]%) and number two (Spectrum – [40-50]%) wholesale suppliers of hearing aid batteries to the mass retail channel in Hungary, with no other suppliers present on the market. Post-Transaction, the merged entity would be the only supplier of branded hearing aid batteries in the mass retail channel in Hungary with a combined market share of 100%.
- (454) Second, as discussed at 5.7.2, the Commission considers that private label batteries exercise only a limited constraint on the Parties in the markets for the wholesale supply of branded hearing aid batteries in the mass retail channel.
- (455) Third, as discussed at 5.7.3, the Commission considers that e-commerce is unlikely to affect the Parties' market position in the short- to medium term in the markets for the wholesale supply of hearing aid batteries in the mass retail channel.
- (456) Fourth, as discussed at 5.7.4, the Commission considers that customers exercise only a limited constraint on the Parties' ability to increase prices in the markets for the wholesale supply of branded hearing aid batteries in the mass retail channel.
- (457) Fifth, the Notifying Party argues that the Transaction will not have a significant impact on the segment for the supply of hearing aid batteries to the mass retail channel in Hungary despite the Parties' high combined market shares, as there is virtually no overlap in the sales of hearing aid batteries in Hungary. Energizer only carried out sales worth EUR [Sales

²⁶³ Replies to Q1 – Questionnaire to Customers, question 16.1.

information] in 2017 and of approximately EUR [Sales information] in 2016, accounting for only [5-10]% of the overall hearing aid battery sales.²⁶⁴ However, the Commission finds that by creating a single supplier of branded hearing aid batteries in the mass retail channel in Hungary, the Transaction would eliminate Energizer's only competitor in this channel on the Hungarian market.

5.7.11. Ireland

- (458) For the reasons set out below, the Transaction raises serious doubts as to its compatibility with the internal market with respect to the wholesale supply of branded hearing aid batteries in the mass retail channel in Ireland.
- (459) First, the Parties are currently the number one (Energizer – [60-70]%) and number two (Spectrum – [30-40]%) wholesale suppliers of hearing aid batteries to the mass retail channel in Ireland, with no other suppliers present on the market. Post-Transaction, the merged entity would be the only supplier of branded hearing aid batteries in the mass retail channel in Ireland with a combined market share of 100%.
- (460) Second, as discussed at 5.7.2, the Commission considers that private label batteries exercise only a limited constraint on the Parties in the markets for the wholesale supply of branded hearing aid batteries in the mass retail channel.
- (461) Third, as discussed at 5.7.3, the Commission considers that e-commerce is unlikely to affect the Parties' market position in the short- to medium term in the markets for the wholesale supply of branded hearing aid batteries in the mass retail channel.
- (462) Fourth, as discussed at 5.7.4, the Commission considers that customers exercise only a limited constraint on the Parties' ability to increase prices in the markets for the wholesale supply of branded hearing aid batteries in the mass retail channel.
- (463) Fifth, the Commission finds that by creating a single supplier of branded hearing aid batteries in the mass retail channel in Ireland, the Transaction would eliminate Energizer's only competitor in this channel on the Irish market.

5.7.12. Luxembourg

- (464) For the reasons set out below, the Transaction raises serious doubts as to its compatibility with the internal market with respect to the wholesale supply of branded hearing aid batteries in the mass retail channel in Luxembourg.
- (465) First, the Parties are currently the number one (Energizer – [50-60]%) and number two (Spectrum – [40-50]%) wholesale suppliers of hearing aid batteries to the mass retail channel in Luxembourg, with no other suppliers present on the market. Post-Transaction, the merged entity would be the only supplier of branded hearing aid batteries in the mass retail channel in Luxembourg with a combined market share of 100%.

²⁶⁴ Form CO, paragraph 1464. The Commission notes, however, that according to the market share data provided by the Parties (Parties' reply to RFI 5, Annex 14.1), Energizer's sales accounted for [50-60]% of the sales in this channel and that Spectrum's sales in this channel in 2017 amounted to EUR [Number] and accounted for [40-50]% of sales in this channel in 2017.

- (466) Second, as discussed at 5.7.2, the Commission considers that private label batteries exercise only a limited constraint on the Parties in the markets for the wholesale supply of branded hearing aid batteries in the mass retail channel.
- (467) Third, as discussed at 5.7.3, the Commission considers that e-commerce is unlikely to affect the Parties' market position in the short- to medium term in the markets for the wholesale supply of branded hearing aid batteries in the mass retail channel.
- (468) Fourth, as discussed at 5.7.4, the Commission considers that customers exercise only a limited constraint on the Parties' ability to increase prices in the markets for the wholesale supply of branded hearing aid batteries in the mass retail channel.
- (469) Fifth, the Notifying Party argues that the Transaction will not have a significant impact on the segment for the supply of hearing aid batteries to the mass retail channel in Luxembourg despite the Parties' high combined market shares, as there is virtually no overlap in the sales of hearing aid batteries in Luxembourg. Energizer only made sales worth EUR [Sales information] in 2017 (and of approximately EUR [Sales information] in 2015 and in 2016), accounting for only [0-5]% of the overall hearing aid market.²⁶⁵ However, the Commission finds that by creating a single supplier of branded hearing aid batteries in the mass retail channel in Luxembourg, the Transaction would eliminate Energizer's only competitor in this channel on the Luxembourg market.

5.7.13. Norway

- (470) For the reasons set out below, the Transaction raises serious doubts as to its compatibility with the internal market with respect to the wholesale supply of branded hearing aid batteries in the mass retail channel in Norway.
- (471) First, the Parties are currently the number one (Spectrum – [50-60]%) and number two (Energizer – [40-50]%) wholesale suppliers of hearing aid batteries to the mass retail channel in Norway, with no other suppliers present on the market. Post-Transaction, the merged entity would be the only supplier of branded hearing aid batteries in the mass retail channel in Norway with a combined market share of 100%.
- (472) Second, as discussed at 5.7.2, the Commission considers that private label batteries exercise only a limited constraint on the Parties in the markets for the wholesale supply of branded hearing aid batteries in the mass retail channel.
- (473) Third, as discussed at 5.7.3, the Commission considers that e-commerce is unlikely to affect the Parties' market position in the short- to medium term in the markets for the wholesale supply of branded hearing aid batteries in the mass retail channel.
- (474) Fourth, as discussed at 5.7.4, the Commission considers that customers exercise only a limited constraint on the Parties' ability to increase prices in the markets for the wholesale supply of branded hearing aid batteries in the mass retail channel.

²⁶⁵ Form CO, paragraph 1470. The Commission notes, however, that according to the market share data provided by the Parties (Parties' reply to RFI 5, Annex 14.1), Energizer's sales accounted for [50-60]% of the sales in this channel and that Spectrum's sales in this channel in 2017 amounted to EUR [Number] and accounted for [40-50]% of sales in this channel in 2017.

(475) Fifth, the Commission finds that by creating a single supplier of branded hearing aid batteries in the mass retail channel in Norway, the Transaction would eliminate Energizer's only competitor in this channel on the Norwegian market.

5.7.14. Slovakia

(476) For the reasons set out below, the Transaction raises serious doubts as to its compatibility with the internal market with respect to the wholesale supply of branded hearing aid batteries in the mass retail channel in Slovakia.

(477) First, the Parties are currently the number one (Spectrum – [60-70]%) and number two (Energizer – [30-40]%) wholesale suppliers of hearing aid batteries to the mass retail channel in Slovakia, with no other suppliers present on the market. Post-Transaction, the merged entity would be the only supplier of branded hearing aid batteries in the mass retail channel in Slovakia with a combined market share of 100%.

(478) Second, as discussed at 5.7.2, the Commission considers that private label batteries exercise only a limited constraint on the Parties in the markets for the wholesale supply of branded hearing aid batteries in the mass retail channel.

(479) Third, as discussed at 5.7.3, the Commission considers that e-commerce is unlikely to affect the Parties' market position in the short- to medium term in the markets for the wholesale supply of branded hearing aid batteries in the mass retail channel.

(480) Fourth, as discussed at 5.7.4, the Commission considers that customers exercise only a limited constraint on the Parties' ability to increase prices in the markets for the wholesale supply of branded hearing aid batteries in the mass retail channel.

(481) Fifth, the Commission finds that by creating a single supplier of branded hearing aid batteries in the mass retail channel in Slovakia, the Transaction would eliminate Energizer's only competitor in this channel on the Slovakian market.

5.7.15. Slovenia

(482) For the reasons set out below, the Transaction raises serious doubts as to its compatibility with the internal market with respect to the wholesale supply of branded hearing aid batteries in the mass retail channel in Slovenia.

(483) First, the Parties are currently the number one (Spectrum – [90-100]%) and number two (Energizer – [5-10]%) wholesale suppliers of hearing aid batteries to the mass retail channel in Slovenia, with no other suppliers present on the market. Post-Transaction, the merged entity would effectively be the only supplier of branded hearing aid batteries in the mass retail channel in Slovenia with a combined market share of [90-100]%

(484) Second, as discussed at 5.7.2, the Commission considers that private label batteries exercise only a limited constraint on the Parties in the markets for the wholesale supply of branded hearing aid batteries in the mass retail channel.

(485) Third, as discussed at 5.7.3, the Commission considers that e-commerce is unlikely to affect the Parties' market position in the short- to medium term in the markets for the wholesale supply of branded hearing aid batteries in the mass retail channel.

- (486) Fourth, as discussed at 5.7.4, the Commission considers that customers exercise only a limited constraint on the Parties' ability to increase prices in the markets for the wholesale supply of branded hearing aid batteries in the mass retail channel.
- (487) Fifth, the Commission finds that by creating a single supplier of branded hearing aid batteries in the mass retail channel in Slovenia, the Transaction would eliminate the only potential challenger to Spectrum's dominant position in this channel on the Slovenian market.

5.7.16. Poland

- (488) For the reasons set out below, the Transaction raises serious doubts as to its compatibility with the internal market with respect to the wholesale supply of branded hearing aid batteries in the mass retail channel in Poland.
- (489) First, the Parties are currently the number one (Spectrum – [50-60]%) and number two (Energizer – [30-40]%) wholesale suppliers of hearing aid batteries to the mass retail channel in Poland, with [Market position] Duracell ([0-5]%) as the third supplier present on the market. Post-Transaction, the merged entity would be the dominant supplier of branded hearing aid batteries in the mass retail channel in Poland with a combined market share of [90-100]%.
- (490) Second, as discussed at 5.7.2, the Commission considers that private label batteries exercise only a limited constraint on the Parties in the markets for the wholesale supply of branded hearing aid batteries in the mass retail channel.
- (491) Third, as discussed at 5.7.3, the Commission considers that e-commerce is unlikely to affect the Parties' market position in the short- to medium term in the markets for the wholesale supply of branded hearing aid batteries in the mass retail channel.
- (492) Fourth, as discussed at 5.7.4, the Commission considers that customers exercise only a limited constraint on the Parties' ability to increase prices in the markets for the wholesale supply of branded hearing aid batteries in the mass retail channel.
- (493) Fifth, the Commission finds that by creating a single supplier from the current number one and number two suppliers of branded hearing aid batteries in the mass retail channel in Poland, the Transaction would eliminate Spectrum's closest and only significant competitor in this channel on the Polish market.

5.7.17. Netherlands

- (494) For the reasons set out below, the Transaction raises serious doubts as to its compatibility with the internal market with respect to the wholesale supply of branded hearing aid batteries in the mass retail channel in the Netherlands.
- (495) First, the Parties are currently the number one (Spectrum – [90-100]%) and number three (Energizer – [0-5]%) wholesale suppliers of hearing aid batteries to the mass retail channel in the Netherlands, with [Market position] Duracell ([5-10]%) and Panasonic ([0-5]%) as alternative suppliers present on the market. Post-Transaction, the merged entity would be the dominant supplier of branded hearing aid batteries in the mass retail channel in the Netherlands with a combined market share of [90-100]%.

- (496) Second, as discussed at 5.7.2, the Commission considers that private label batteries exercise only a limited constraint on the Parties in the markets for the wholesale supply of branded hearing aid batteries in the mass retail channel.
- (497) Third, as discussed at 5.7.3, the Commission considers that e-commerce is unlikely to affect the Parties' market position in the short- to medium term in the markets for the wholesale supply of branded hearing aid batteries in the mass retail channel.
- (498) Fourth, as discussed at 5.7.4, the Commission considers that customers exercise only a limited constraint on the Parties' ability to increase prices in the markets for the wholesale supply of branded hearing aid batteries in the mass retail channel.
- (499) Fifth, the Notifying Party argues that the Transaction will not have a significant impact on the segment for the supply of hearing aid batteries to the mass retail channel in the Netherlands despite the Parties' high combined market shares, as there is virtually no overlap in the sales of hearing aid batteries in the mass retail channel. Energizer only made sales worth EUR [Number] in 2017, accounting for only [0-5]% of hearing aid battery sales to the mass retail channel.²⁶⁶ However, the Commission finds that the Transaction would further strengthen the dominant position enjoyed by Spectrum on the Dutch market, with Duracell's modest presence on this market not being likely to exercise a sufficient competitive constraint on the merged entity post-Transaction.

5.7.18. United Kingdom

- (500) For the reasons set out below, the Transaction raises serious doubts as to its compatibility with the internal market with respect to the wholesale supply of branded hearing aid batteries in the mass retail channel in the UK.
- (501) First, the Parties are currently the number one (Energizer – [40-50]%) and number two (Spectrum – [30-40]%) wholesale suppliers of hearing aid batteries to the mass retail channel in the UK, with [Market position] Duracell ([20-30]%) as the third supplier present on the market. Post-Transaction, the merged entity would be the dominant supplier of branded hearing aid batteries in the mass retail channel in the UK with a combined market share of [70-80]%.
- (502) Second, as discussed at 5.7.2, the Commission considers that private label batteries exercise only a limited constraint on the Parties in the markets for the wholesale supply of branded hearing aid batteries in the mass retail channel.
- (503) Third, as discussed at 5.7.3, the Commission considers that e-commerce is unlikely to affect the Parties' market position in the short- to medium term in the markets for the wholesale supply of branded hearing aid batteries in the mass retail channel.
- (504) Fourth, as discussed at 5.7.4, the Commission considers that customers exercise only a limited constraint on the Parties' ability to increase prices in the markets for the wholesale supply of branded hearing aid batteries in the mass retail channel.

²⁶⁶ Form CO, paragraph 1471.

(505) Fifth, the Commission finds that by creating a single supplier from the current number one and number two suppliers of branded hearing aid batteries in the mass retail channel in the UK, the Transaction would eliminate Spectrum's closest competitor in this channel on the UK market, reducing the number of suppliers from three to two.

5.7.19. Spain

(506) For the reasons set out below, the Transaction raises serious doubts as to its compatibility with the internal market with respect to the wholesale supply of branded hearing aid batteries in the mass retail channel in Spain.

(507) First, the Parties are currently the number one (Spectrum – [50-60]%) and number two (Energizer – [20-30]%) wholesale suppliers of hearing aid batteries to the mass retail channel in Spain, with [Market position] Duracell ([10-20]%) as the third supplier present on the market. Post-Transaction, the merged entity would be the dominant supplier of branded hearing aid batteries in the mass retail channel in Spain with a combined market share of [70-80]%.
(508) Second, as discussed at 5.7.2, the Commission considers that private label batteries exercise only a limited constraint on the Parties in the markets for the wholesale supply of branded hearing aid batteries in the mass retail channel.

(509) Third, as discussed at 5.7.3, the Commission considers that e-commerce is unlikely to affect the Parties' market position in the short- to medium term in the markets for the wholesale supply of branded hearing aid batteries in the mass retail channel.

(510) Fourth, as discussed at 5.7.4, the Commission considers that customers exercise only a limited constraint on the Parties' ability to increase prices in the markets for the wholesale supply of branded hearing aid batteries in the mass retail channel.

(511) Fifth, the Notifying Party argues that, despite the Parties' high combined market shares, the merged entity will face significant competition from Duracell post-Transaction.²⁶⁷ However, the Commission finds that by creating a single supplier from the current number one and number two suppliers of branded hearing aid batteries in the mass retail channel in Spain, the Transaction would eliminate Spectrum's closest competitor in this channel on the Spanish market, reducing the number of suppliers from three to two. Duracell, as the only remaining alternative supplier on the market, accounting for only a fifth of the market, is not likely to exert sufficient competitive pressure on the merged entity post-Transaction.

(511) Fifth, the Notifying Party argues that, despite the Parties' high combined market shares, the merged entity will face significant competition from Duracell post-Transaction.²⁶⁷ However, the Commission finds that by creating a single supplier from the current number one and number two suppliers of branded hearing aid batteries in the mass retail channel in Spain, the Transaction would eliminate Spectrum's closest competitor in this channel on the Spanish market, reducing the number of suppliers from three to two. Duracell, as the only remaining alternative supplier on the market, accounting for only a fifth of the market, is not likely to exert sufficient competitive pressure on the merged entity post-Transaction.

5.7.20. Belgium

(512) For the reasons set out below, the Transaction raises serious doubts as to its compatibility with the internal market with respect to the wholesale supply of branded hearing aid batteries in the mass retail channel in Belgium.

(513) First, the Parties are currently the number one (Spectrum – [40-50]%) and number two (Energizer – [30-40]%) wholesale suppliers of hearing aid batteries to the mass retail channel in Belgium, with only Duracell ([20-30]%) as the third supplier present on the market. Post-

²⁶⁷ Form CO, paragraph 1473.

Transaction, the merged entity would be the dominant supplier of branded hearing aid batteries in the mass retail channel in Belgium with a combined market share of [70-80]%.

- (514) Second, as discussed at 5.7.2, the Commission considers that private label batteries exercise only a limited constraint on the Parties in the markets for the wholesale supply of branded hearing aid batteries in the mass retail channel.
- (515) Third, as discussed at 5.7.3, the Commission considers that e-commerce is unlikely to affect the Parties' market position in the short- to medium term in the markets for the wholesale supply of branded hearing aid batteries in the mass retail channel.
- (516) Fourth, as discussed at 5.7.4, the Commission considers that customers exercise only a limited constraint on the Parties' ability to increase prices in the markets for the wholesale supply of branded hearing aid batteries in the mass retail channel.
- (517) Fifth, the Notifying Party argues that, despite the Parties' high combined market shares, the merged entity will face significant competition from Duracell post-Transaction.²⁶⁸ However, the Commission finds that by creating a single supplier from the current number one and number two suppliers of branded hearing aid batteries in the mass retail channel in Belgium, the Transaction would eliminate Spectrum's closest competitor in this channel on the Belgian market, reducing the number of suppliers from three to two. Duracell as the only remaining alternative supplier on the market, accounting for only a quarter of the market, is not likely to exert sufficient competitive pressure on the merged entity post-Transaction.

5.7.21. Italy

- (518) For the reasons set out below, the Transaction raises serious doubts as to its compatibility with the internal market with respect to the wholesale supply of branded hearing aid batteries in the mass retail channel in Italy.
- (519) First, the Parties are currently the number one (Spectrum – [70-80]%) and number three (Energizer – [0-5]%) wholesale suppliers of hearing aid batteries to the mass retail channel in Italy, with Duracell ([10-20]%) as number two and the only other supplier present on the market. Post-Transaction, the merged entity would be the dominant supplier of branded hearing aid batteries in the mass retail channel in Italy with a combined market share of [70-80]%.
- (520) Second, as discussed at 5.7.2, the Commission considers that private label batteries exercise only a limited constraint on the Parties in the markets for the wholesale supply of branded hearing aid batteries in the mass retail channel.
- (521) Third, as discussed at 5.7.3, the Commission considers that e-commerce is unlikely to affect the Parties' market position in the short- to medium term in the markets for the wholesale supply of branded hearing aid batteries in the mass retail channel.
- (522) Fourth, as discussed at 5.7.4, the Commission considers that customers exercise only a limited constraint on the Parties' ability to increase prices in the markets for the wholesale supply of branded hearing aid batteries in the mass retail channel.

²⁶⁸ Form CO, paragraph 1461.

(523) Fifth, the Notifying Party argues that the Transaction will not have a significant impact on the segment for the supply of hearing aid batteries to the mass retail channel in Italy despite the Parties' high combined market shares, as there is virtually no overlap in the sales of hearing aid batteries in Italy. Energizer only made sales worth EUR [Number] in 2017, accounting for only [0-5]% of hearing aid battery sales to the mass retail channel. The Notifying Party further argue that the merged entity will face significant competition from Duracell post-Transaction.²⁶⁹ However, the Commission finds that the Transaction would further strengthen the dominant position enjoyed by Spectrum on the Italian market. Duracell as the only remaining alternative supplier on the market, accounting for only [10-20]% of the market, is not likely to exert sufficient competitive pressure on the merged entity post-Transaction.

5.7.22. Austria

(524) For the reasons set out below, the Transaction raises serious doubts as to its compatibility with the internal market with respect to the wholesale supply of branded hearing aid batteries in the mass retail channel in Austria.

(525) First, the Parties are currently the number one (Spectrum – [40-50]%) and number three (Energizer – [5-10]%) wholesale suppliers of hearing aid batteries to the mass retail channel in Austria, with Sony ([40-50]%) as number two and the only other supplier present on the market. Post-Transaction, the merged entity would be the dominant supplier of branded hearing aid batteries in the mass retail channel in Austria with a combined market share of [50-60]%.

(526) Second, as discussed at 5.7.2, the Commission considers that private label batteries exercise only a limited constraint on the Parties in the markets for the wholesale supply of branded hearing aid batteries in the mass retail channel.

(527) Third, as discussed at 5.7.3, the Commission considers that e-commerce is unlikely to affect the Parties' market position in the short- to medium term in the markets for the wholesale supply of branded hearing aid batteries in the mass retail channel.

(528) Fourth, as discussed at 5.7.4, the Commission considers that customers exercise only a limited constraint on the Parties' ability to increase prices in the markets for the wholesale supply of branded hearing aid batteries in the mass retail channel.

(529) Fifth, the Notifying Party argues that the Transaction will not have a significant impact on the segment for the supply of hearing aid batteries to the mass retail channel in Austria despite the Parties' high combined market shares, as there is virtually no overlap in the sales of hearing aid batteries in Austria. Energizer only made sales worth EUR [Number] in 2017, accounting for only [5-10]% of hearing aid battery sales to the mass retail channel.²⁷⁰ However, the Commission finds that the Transaction would further strengthen the dominant position enjoyed by Spectrum on the Austrian market, and would reduce the number of suppliers from three to two. Sony will remain the only other alternative supplier on the market.

²⁶⁹ Form CO, paragraph 1469.

²⁷⁰ Form CO, paragraph 1460.

5.7.23. Germany

- (530) For the reasons set out below, the Transaction raises serious doubts as to its compatibility with the internal market with respect to the wholesale supply of branded hearing aid batteries in the mass retail channel in Germany.
- (531) First, the Parties are currently the number two (Energizer – [20-30]%) and number three (Spectrum – [20-30]%) wholesale suppliers of hearing aid batteries to the mass retail channel in Germany. Duracell ([30-40]%) is currently the market leader. Panasonic ([5-10]%) and Sony ([5-10]%) are also present on the German market.
- (532) Second, as discussed at 5.7.2, the Commission considers that private label batteries exercise only a limited constraint on the Parties in the markets for the wholesale supply of branded hearing aid batteries in the mass retail channel.
- (533) Third, as discussed at 5.7.3, the Commission considers that e-commerce is unlikely to affect the Parties' market position in the short- to medium term in the markets for the wholesale supply of branded hearing aid batteries in the mass retail channel.
- (534) Fourth, as discussed at 5.7.4, the Commission considers that customers exercise only a limited constraint on the Parties' ability to increase prices in the markets for the wholesale supply of branded hearing aid batteries in the mass retail channel.
- (535) Fifth, the Notifying Party argues that, despite the Parties' high combined market shares, the merged entity will face significant competition from suppliers such as Duracell, Panasonic and Sony post-Transaction.²⁷¹ However, The Transaction would create a market leader, with a combined market share [50-60]%, with the next significant competitor having a sizeably lower market share and with no other significant competitors present on the market. These other suppliers are therefore not very likely to exercise a sufficient competitive constraint on the merged entity post-Transaction.

5.7.24. Sweden

- (536) For the reasons set out below, the Transaction raises serious doubts as to its compatibility with the internal market with respect to the wholesale supply of branded hearing aid batteries in the mass retail channel in Sweden.
- (537) First, the Parties are currently the number two (Spectrum – [30-40]%) and number three (Energizer – [10-20]%) wholesale suppliers of hearing aid batteries to the mass retail channel in Sweden. Duracell ([30-40]%) is currently the market leader. Sony ([10-20]%) is the only other supplier present on the Swedish market.
- (538) Second, as discussed at 5.7.2, the Commission considers that private label batteries exercise only a limited constraint on the Parties in the markets for the wholesale supply of branded hearing aid batteries in the mass retail channel.
- (539) Third, as discussed at 5.7.3, the Commission considers that e-commerce is unlikely to affect the Parties' market position in the short- to medium term in the markets for the wholesale supply of branded hearing aid batteries in the mass retail channel.

²⁷¹ Form CO, paragraph 1467.

- (540) Fourth, as discussed at 5.7.4, the Commission considers that customers exercise only a limited constraint on the Parties' ability to increase prices in the markets for the wholesale supply of branded hearing aid batteries in the mass retail channel.
- (541) Fifth, the Notifying Party argues that, despite the Parties' high combined market shares, the merged entity will face significant competition from suppliers such as Duracell and Sony post-Transaction.²⁷² However, The Transaction would create a market leader, with a combined market share [40-50]%, with the next significant competitor having a sizeably lower market share ([30-40]%) and with no other significant competitors present on the market (Sony's market share being [10-20]%). These other suppliers are therefore not very likely to exercise a sufficient competitive constraint on the merged entity post-Transaction.

5.7.25. *France and Romania*

- (542) With regard to the wholesale supply of branded hearing aid batteries in France and Romania, the Commission notes, on the one hand, that:
- (a) First, the Parties have sizable combined market shares on those markets: [30-40]% in France and [40-50]% in Romania.
 - (b) Second, as shown in Table 4 above, all of those markets are concentrated, with HHI levels post-Transaction of [Above 2000]] in France and [Above 2000] in Romania and HHI delta of [Above 250] and [Above 250], respectively.
 - (c) Third, the Transaction would create the second-largest supplier in each of these countries, thereby also reducing the number of suppliers on these already very concentrated markets. In France, the Transaction would reduce the number of suppliers from four to three, and in Romania, from three to two.
 - (d) Fourth, the market dynamics identified by the Commission at 5.7.1 to 5.7.4 apply equally to the markets for hearing aid batteries in these countries.
 - (e) Fifth, several market participants have raised concerns about potential price increases or decreases in quality or innovation in these markets.²⁷³
- (543) On the other hand, the Commission also notes that:
- (a) First, Duracell is a significant alternative supplier of hearing aid batteries in France ([40-50]%) and Panasonic is a significant alternative supplier of hearing aid batteries in Romania ([50-60]%).
 - (b) Second, Panasonic is also present in France as a third supplier with a [0-5]% market share (which is currently just slightly below Energizer's market share in France).
 - (c) Third, a number of market participants have indicated that they do not anticipate any price increase or decreases in quality or innovation in those markets.²⁷⁴

²⁷² Form CO, paragraph 1474.

²⁷³ Replies to Q1 – Questionnaire to Customers; Replies to Q2 – Questionnaire to Competitors.

²⁷⁴ Replies to Q1 – Questionnaire to Customers; Replies to Q2 – Questionnaire to Competitors.

(544) Ultimately, the question of whether serious doubts arise in France and Romania can be left open as the commitments discussed in section 6 include an exclusive license for the distribution and marketing of Spectrum's Rayovac hearing aid battery in the mass retail channel in the EMEA region, and therefore entirely remove the overlap in the markets for branded hearing aid batteries in those countries for a period of [Information on scope of the commitment].

5.7.26. *Conclusion on the assessment of potential horizontal non-coordinated effects on the national markets for the wholesale supply of branded hearing aid batteries to the mass retail channel*

(545) On the basis of the above, the Commission concludes that:

- (a) the Transaction raises serious doubts as regards its compatibility with the internal market due to horizontal non-coordinated effects in the markets for the wholesale supply of branded hearing aid batteries in Austria, Belgium, Bulgaria, Czechia, Denmark, Finland, Germany, Hungary, Ireland, Italy, Luxembourg, Netherlands, Norway, Poland, Slovakia, Slovenia, Spain, Sweden and the UK.
- (b) the question of whether serious doubts arise in France and Romania can be left open as the commitments include an exclusive license for the distribution and marketing of Spectrum's Rayovac hearing aid battery in the mass retail channel in the EMEA region, and therefore entirely remove the overlap in the markets for branded hearing aid batteries in those countries for a period of [Information on scope of the commitment].

5.8. Assessment of potential horizontal non-coordinated effects on the EEA-wide markets for the wholesale supply of branded household and specialty batteries to OEMs

5.8.1.1. The Notifying Party's view

(546) The Parties submit that the Transaction is not expected to have a significant impact on competition and cannot be conceived to give rise to competition concerns in the markets for the supply of household and specialty batteries to the OEM channel.²⁷⁵

(547) First, the Notifying Party states that the combined share of sales of the Parties in the EEA will remain modest, or the increment in share brought about by the Transaction will be immaterial.²⁷⁶

(548) Second, the Notifying Party submits that they will continue to face significant competition within the EEA.²⁷⁷

(549) Third, the Notifying Party contends that customers are sophisticated purchasers that face no significant barriers to switching supplier.²⁷⁸

²⁷⁵ Form Co, paras 129 and 1111

²⁷⁶ Form Co, paras 1113-1115

²⁷⁷ Form Co, paras 1116-1121

²⁷⁸ Form Co, paras 1122-1123

5.8.1.2. The Commission's assessment

- (550) For the reasons set out below, the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the wholesale supply of household and specialty batteries to the OEM channel in the EEA.
- (551) First, when segmenting the market for the supply of household and specialty batteries to OEM customers within the EEA on the basis of rechargeability, chemistry and shape, and allocating to Spectrum sales of specialty batteries under the distribution agreement with [Supplier], the Parties' combined share exceeded [20-30]% in 2017 in four segments, namely (i) primary alkaline cylinder batteries; (ii) primary lithium cylinder batteries; (iii) primary alkaline coin and (iv) primary lithium coin. However, the Parties' combined market shares are either modest or show a limited increment, or both.
- (a) In the primary alkaline cylinder segment, the Parties' combined share in 2017 was modest, at [20-30]% (Energizer [5-10]% and Spectrum [10-20]%). The Parties will continue to be constrained by competitors with significant markets shares such as Duracell ([40-50]%) and Panasonic ([10-20]%).
 - (b) In the primary lithium cylinder segment the Parties' combined share reached [40-50]% in 2017, but the increment in share brought about by the Proposed Transaction is limited, at [0-5]%. The Parties will continue to be constrained by competitors with non-negligible market shares such as Panasonic ([10-20]%) and Gold Peak ([5-10]%).
 - (c) In the primary alkaline coin batteries segment, the Parties' combined share in 2017 was below [20-30]% on either a volume or value bases, with a limited addition of share, at [0-5]%. The Parties will continue to be constrained by competitors with significant markets shares such as Duracell ([20-30]%), Panasonic ([10-20]%) and Varta Microbattery ([10-20]%).
 - (d) In the primary lithium coin segment, the Parties' combined share in 2017 was slightly above [20-30]%, with virtually no overlap, at less than [0-5]%. The Parties will continue to be constrained by competitors with significant markets shares such as Duracell ([20-30]%), Panasonic ([10-20]%) and Varta Microbattery ([10-20]%).
- (552) Second, the Parties supply very small amounts of batteries that are specifically targeted at OEM customers, [Information on supply strategy], which means that their OEM customers are also treated in the same manner as non-OEM customers so that they are not positioned as specialist suppliers to the OEM channel, unlike competitors such as Panasonic and Duracell.²⁷⁹
- (553) Third, customers in the OEM sales channel are large, often multinational players with the ability to switch easily between suppliers, which is much more the case than in the retail sales channel.²⁸⁰

²⁷⁹ Form CO, Parties' reply to RFI 3

²⁸⁰ Parties' reply to RFI 3

(554) Fourth, the majority of respondents to the Commission's market investigation who expressed a view did not expect the Transaction to have a negative impact on the sale of consumer batteries to OEMs.²⁸¹

(555) A competitor commented: "*The Transaction does not have an impact on the OEM business market.*"²⁸²

5.8.1.3. Conclusion

(556) On the basis of the above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market as regards its impact on competition in the markets for the supply of primary alkaline cylinder batteries, primary lithium cylinder batteries, primary alkaline coin batteries or primary lithium coin batteries to the OEM channel in the EEA.

5.9. Wholesale supply of branded portable battery chargers – overview of market dynamics across different national markets in the EEA

5.9.1.1. The Notifying Party's view

(557) The Notifying Party submits that the Transaction will not impede effective competition as regards the sale of portable battery chargers to retailers and wholesalers in the EEA.

(558) First, the Notifying Party states that the combined share of sales of the Parties, which they claim should at least be considered to be EEA-wide in scope and to include private label, cannot, at [30-40]%, be considered to be able to impede competition in any material respect.²⁸³

(559) Second, the Notifying Party submits that the merged entity will continue to face fierce competition from other strong suppliers post-Transaction.²⁸⁴

(560) Third, the Notifying Party contends that the impact of private label on portable battery chargers is similar to that of private label on other products, including consumer batteries.²⁸⁵

(561) Fourth, they submit that the effect of e-commerce on portable battery chargers is comparable to that experienced with respect to consumer batteries.²⁸⁶

(562) Fifth, they claim that Energizer will face the same strong countervailing buyer power post-transaction with respect to portable battery chargers as in relation to consumer batteries.²⁸⁷

²⁸¹ Replies to Q2 – Questionnaire to Competitors, question 39

²⁸² Replies to Q2 – Questionnaire to Competitors, question 39.1

²⁸³ Form CO, par. 1595

²⁸⁴ Form CO, par. 1596-1599

²⁸⁵ Form CO, par. 1600

²⁸⁶ Form CO, par. 1601-1602

²⁸⁷ Form CO, par. 1602

5.9.1.2. The Commission's assessment

- (563) The Commission considers that, as the Parties suggest, similar market dynamics apply to branded portable battery chargers compared to branded consumer batteries. This is for the following reasons.
- (564) First, most suppliers of branded consumer batteries also sell branded portable battery chargers: a clear majority of competitors responding to the market investigation replied that they also sold branded portable battery chargers in the EEA.²⁸⁸
- (565) Second, the competitive landscape in branded portable battery chargers in the EEA is very similar to that in branded household batteries. At the EEA level, the same top five players, namely Duracell, Energizer, Spectrum, Panasonic and Gold Peak, have very similar positions (around [30-40]%, [20-30]%, [20-30]%, [10-20]% and [5-10]% respectively).
- (566) Third, most customers of branded consumer batteries also sell branded portable battery chargers: a clear majority of customers responding to the market investigation replied that they also purchased branded battery chargers in the EEA.²⁸⁹
- (567) Fourth, portable battery chargers are products that are closely related to consumer batteries. In retail stores they are most commonly displayed alongside consumer batteries and are often sold in packs together with a set of rechargeable batteries.²⁹⁰
- (568) The Commission considers that there are a number of common characteristics of the markets for branded portable battery chargers across the EEA, which will be discussed in paragraphs (569) to (574).
- (569) First, the Commission considers that the Parties are important competitors in the already concentrated market for branded portable battery chargers.
- (570) Post-Transaction, the Parties would be the clear market leader in branded portable battery chargers with a combined share at the EEA level of [40-50]% (Energizer [20-30]%, Spectrum [10-20]%), followed by Duracell ([20-30]%), Panasonic ([10-20]%), and Gold Peak ([5-10]).²⁹¹
- (571) The aggregate national markets for branded portable battery chargers at the EEA level are highly concentrated with HHI levels post-Transaction of [Above 2000] and a delta of [Above 250].
- (572) Second, considering that similar market dynamics apply to branded portable battery chargers compared to branded consumer batteries, as discussed in paragraphs (563) to (567), the Commission is of the view that private label battery chargers exercise only a limited constraint on the Parties in the markets for the wholesale supply of branded chargers, as discussed with regard to consumer batteries in Section 5.3.2.

²⁸⁸ Replies to Q2 – Questionnaire to Competitors, question 4

²⁸⁹ Replies to Q1 – Questionnaire to Customers, question 5

²⁹⁰ Form CO, par. 1573

²⁹¹ Form CO, Annex 7.III.1.

- (573) Third, considering that similar market dynamics apply to branded portable battery chargers compared to branded consumer batteries, as discussed in paragraphs (563) to (567), the Commission is of the view that e-commerce is unlikely to affect the Parties' market position in the short- to medium term in the markets for the wholesale supply of branded chargers, as discussed with regard to consumer batteries in Section 5.3.3.
- (574) Fourth, considering that similar market dynamics apply to branded portable battery chargers compared to branded consumer batteries, as discussed in paragraphs (563) to (567), the Commission is of the view that customers exercise only a limited constraint on the Parties' ability to increase prices in the markets for the wholesale supply of branded chargers, as discussed with regard to consumer batteries in Section 5.3.4.

5.10. Assessment of potential horizontal non-coordinated effects on the national markets for the wholesale supply of branded portable battery chargers

- (575) Energizer and Spectrum are currently the second and third largest players in the EEA in branded portable battery chargers (with market shares of [20-30]% and [10-20]% respectively), with Duracell ([20-30]%) as the number one player. The merged entity would become the clear market leader in a number of EEA countries, with Duracell and other players as considerably smaller players.
- (576) As shown in Table 5 below, the combined market shares of the merged entity would exceed [50-60]% in three countries, namely Germany ([70-80]%), France ([60-70]%), Hungary ([50-60]%), and would exceed [40-50]% in an additional three countries, namely Poland ([40-50]%), the Netherlands ([40-50]%) and the UK ([40-50]%). The market shares thus indicate that the Transaction could create or strengthen a dominant position in several EEA countries.
- (577) There are further horizontal overlaps that lead to (i) combined market shares above 25% and (ii) HHI levels post-Transaction of above 2,000 and an HHI delta of more than 150 in 10 EEA countries, and horizontal overlaps with combined market shares below 25% in 12 other EEA countries.

Table 5: Market shares in branded portable battery chargers, 2017 by value²⁹²

Country	Energizer	Target Business	Combined	Duracell	Panasonic	Third supplier	Fourth supplier / Other	HHI Post-Merger	Delta HHI
Austria	[5-10]%	[20-30]%	[30-40]%	[30-40]%	[5-10]%	[10-20]%	[0-5]%**	[Above 2000]	[Above 250]
Belgium	[5-10]%	[10-20]%	[20-30]%	[40-50]%	[5-10]%	[10-20]%	[10-20]%*	Above 2000	[Above 250]
Bulgaria	[0-5]%	[10-20]%	[20-30]%	[40-50]%	[0-5]%	[10-20]%	[0-5]**	Above 2000	[Below 150]
Croatia	[0-5]%	[20-30]%	[20-30]%	[40-50]%	[0-5]%	[10-20]%	[10-20]**	Above 2000	[Below 150]
Czechia	[0-5]%	[20-30]%	[30-40]%	[5-10]%	[5-10]%	[30-40]%	[0-5]**	Above 2000	[Below 250]
Denmark	[0-5]%	[5-10]%	[10-20]%	[20-30]%	[0-5]%	[30-40]%	[20-30]**	Above 2000	[Below 150]
Estonia	[0-5]%	[0-5]%	[5-10]%	[20-30]%	[20-30]%	[30-40]%	[5-10]**	Above 2000	[Below 150]
Finland	[5-10]%	[20-30]%	[30-40]%	[20-30]%	[20-30]%	[5-10]%	[0-5]**	Above 2000	[Above 250]
France	[40-50]%	[20-30]%	[60-70]%	[10-20]%	[0-5]%	[0-5]%	[10-20]*	Above 2000	[Above 250]
Germany	[10-20]%	[60-70]%	[70-80]%	[5-10]%	[0-5]%	[0-5]%	[0-5]**	Above 2000	[Above 250]
Greece	[10-20]%	[20-30]%	[30-40]%	[20-30]%	[10-20]%	[5-10]%	[0-5]**	Above 2000	[Above 250]
Hungary	[5-10]%	[40-50]%	[50-60]%	[5-10]%	[0-5]%	[10-20]%	[0-5]**	Above 2000	[Above 250]
Iceland	[0-5]%	[0-5]%	[0-5]%	[20-30]%	[10-20]%	[30-40]%	[5-10]**	Above 2000	[Below 150]
Italy	[10-20]%	[10-20]%	[20-30]%	[50-60]%	[0-5]%	[0-5]%	[10-20]*	Above 2000	[Above 250]
Latvia	[0-5]%	[10-20]%	[10-20]%	[20-30]%	[20-30]%	[30-40]%	[5-10]*	Above 2000	[Below 150]
Lithuania	[5-10]%	[0-5]%	[5-10]%	[20-30]%	[30-40]%	[30-40]%	[5-10]*	Above 2000	[Below 150]
Luxembourg	[10-20]%	[10-20]%	[20-30]%	[50-60]%	[10-20]%	[10-20]%	[5-10]*	Above 2000	[Above 250]
Malta	[10-20]%	[0-5]%	[20-30]%	[50-60]%	[5-10]%	[5-10]%	[10-20]*	Above 2000	[Below 250]
Netherlands	[0-5]%	[30-40]%	[40-50]%	[30-40]%	[0-5]%	[10-20]%	[5-10]*	Above 2000	[Above 250]
Norway	[5-10]%	[0-5]%	[5-10]%	[40-50]%	[20-30]%	[10-20]%	[5-10]*	Above 2000	[Below 150]
Poland	[10-20]%	[30-40]%	[40-50]%	[5-10]%	[10-20]%	[20-30]%	[0-5]**	Above 2000	[Above 250]
Portugal	[20-30]%	[5-10]%	[20-30]%	[30-40]%	[20-30]%	[0-5]%	[0-5]**	Above 2000	[Below 250]
Romania	[0-5]%	[20-30]%	[20-30]%	[30-40]%	[10-20]%	[10-20]%	[10-20]**	Above 2000	[Below 250]
Slovakia	[20-30]%	[10-20]%	[30-40]%	[10-20]%	[5-10]%	[30-40]%	[5-10]*	Above 2000	[Above 250]
Slovenia	[0-5]%	[20-30]%	[20-30]%	[10-20]%	[5-10]%	[30-40]%	[10-20]*	Above 2000	[Below 150]

²⁹² Rounding errors may occur. Duracell is present in all countries. Panasonic is present in almost all countries. "Third supplier" and "fourth supplier" stands for the largest and second-largest suppliers other than the Parties, Duracell and Panasonic. The identity of the third and fourth suppliers varies by country. Where the Notifying Party has not provided the identity of the fourth supplier, but has attributed a market share to "other" suppliers, this figure is provided in the table, followed by an asterisk (*). Where there is a market share attributed to a fourth supplier, but there is also a market share attributed to "other" suppliers by the Notifying Party, the figure provided in the table is the market share attributed to the fourth supplier, followed by two asterisks (**). There are no horizontal overlaps in EEA countries that are not listed in the table.

Country	Energizer	Target Business	Combined	Duracell	Panasonic	Third supplier	Fourth supplier / Other	HHI Post-Merger	Delta HHI
Spain	[10-20]%	[5-10]%	[20-30]%	[5-10]%	[50-60]%	[5-10]%	[0-5]**	Above 2000	[Below 150]
Sweden	[10-20]%	[10-20]%	[20-30]%	[10-20]%	[20-30]%	[30-40]%	[5-10]**	Above 2000	[Above 250]
UK	[30-40]%	[0-5]%	[40-50]%	[40-50]%	[5-10]%	[5-10]%	[5-10]*	Above 2000	[Below 250]
EEA	[20-30]%	[10-20]%	[40-50]%	[20-30]%	[10-20]%	[5-10]%	[0-5]%	Above 2000	[Above 250]

Source: Form CO, Annex 7.III.1

5.10.1. France

- (578) For the reasons set out below, the Transaction raises serious doubts as to its compatibility with the internal market with respect to the wholesale supply of branded portable battery chargers in France.
- (579) First, post-Transaction, the Parties would be the clear market leader in the market for the wholesale supply of branded portable battery chargers in France with a combined share of [60-70]% (Energizer [40-50]%, Spectrum [20-30]%), followed by Duracell ([10-20]%) and Panasonic ([0-5]%).
- (580) Second, the market for the wholesale supply of branded portable battery chargers in France is highly concentrated with an HHI level post-Transaction of [Above 2000] and a delta of [Above 250].
- (581) Third, private label battery chargers exercise only a limited constraint on the Parties, as discussed in Section 5.9.1.2.
- (582) Fourth, e-commerce is unlikely to affect the Parties' market position in the short- to medium term, as discussed in Section 5.9.1.2.
- (583) Fifth, customers exercise only a limited constraint on the Parties' ability to increase prices, as discussed in Section 5.9.1.2.

5.10.2. Germany

- (584) For the reasons set out below, the Transaction raises serious doubts as to its compatibility with the internal market with respect to the wholesale supply of branded portable battery chargers in Germany.
- (585) First, post-Transaction, the Parties would be the clear market leader in the market for the wholesale supply of branded portable battery chargers in Germany with a combined share of [70-80]% (Energizer [10-20]%, Spectrum [60-70]%), followed by Duracell ([5-10]%) and Panasonic ([0-5]%).
- (586) Second, the market for the wholesale supply of branded portable battery chargers in Germany is highly concentrated with an HHI level post-Transaction of [Above 2000] and a delta of [Above 250].

- (587) Third, private label battery chargers only exercise a limited constraint on the Parties, as discussed in Section 5.9.1.2.
- (588) Fourth, e-commerce is unlikely to affect the Parties' market position in the short- to medium term, as discussed in Section 5.9.1.2.
- (589) Fifth, customers only exercise a limited constraint on the Parties' ability to increase prices, as discussed in Section 5.9.1.2.

5.10.3. Hungary

- (590) For the reasons set out below, the Transaction raises serious doubts as to its compatibility with the internal market with respect to the wholesale supply of branded portable battery chargers in Hungary.
- (591) First, post-Transaction, the Parties would be the clear market leader in the market for the wholesale supply of branded portable battery chargers in Hungary with a combined share of [50-60]% (Energizer [5-10]%, Spectrum [40-50]%), followed by Gold Peak ([10-20]%) and Duracell ([5-10]%).
- (592) Second, the market for the wholesale supply of branded portable battery chargers in Hungary is highly concentrated with an HHI level post-Transaction of [Above 2000] and a delta of [Above 250].
- (593) Third, private label battery chargers only exercise a limited constraint on the Parties, as discussed in Section 5.9.1.2.
- (594) Fourth, e-commerce is unlikely to affect the Parties' market position in the short- to medium term, as discussed in Section 5.9.1.2.
- (595) Fifth, customers only exercise a limited constraint on the Parties' ability to increase prices, as discussed in Section 5.9.1.2.

5.10.4. Netherlands

- (596) For the reasons set out below, the Transaction raises serious doubts as to its compatibility with the internal market with respect to the wholesale supply of branded portable battery chargers in the Netherlands.
- (597) First, post-Transaction, the Parties would be the clear market leader in the market for the wholesale supply of branded portable battery chargers in the Netherlands with a combined share of [40-50]% (Energizer [0-5]%, Spectrum [30-40]%), followed by Duracell ([30-40]%) and Gold Peak ([10-20]%).
- (598) Second, the market for the wholesale supply of branded portable battery chargers in the Netherlands is highly concentrated with an HHI level post-Transaction of [Above 2000] and a delta of [Above 250].
- (599) Third, private label battery chargers only exercise a limited constraint on the Parties, as discussed in Section 5.9.1.2.

- (600) Fourth, e-commerce is unlikely to affect the Parties' market position in the short- to medium term, as discussed in Section 5.9.1.2.
- (601) Fifth, customers only exercise a limited constraint on the Parties' ability to increase prices, as discussed in Section 5.9.1.2.

5.10.5. Poland

- (602) For the reasons set out below, the Transaction raises serious doubts as to its compatibility with the internal market with respect to the wholesale supply of branded portable battery chargers in Poland.
- (603) First, post-Transaction, the Parties would be the clear market leader in the market for the wholesale supply of branded portable battery chargers in Poland with a combined share of [40-50]% (Energizer [10-20]%, Spectrum [30-40]%), followed by Gold Peak ([20-30]%) and Panasonic ([10-20]%).
- (604) Second, the market for the wholesale supply of branded portable battery chargers in Poland is highly concentrated with an HHI level post-Transaction of [Above 2000] and a delta of [Above 250].
- (605) Third, private label battery chargers only exercise a limited constraint on the Parties, as discussed in Section 5.9.1.2.
- (606) Fourth, e-commerce is unlikely to affect the Parties' market position in the short- to medium term, as discussed in Section 5.9.1.2.
- (607) Fifth, customers only exercise a limited constraint on the Parties' ability to increase prices, as discussed in Section 5.9.1.2.

5.10.6. United Kingdom

- (608) For the reasons set out below, the Transaction raises serious doubts as to its compatibility with the internal market with respect to the wholesale supply of branded portable battery chargers in the United Kingdom.
- (609) First, post-Transaction, the Parties would be the clear market leader in the market for the wholesale supply of branded portable battery chargers in the United Kingdom with a combined share of [40-50]% (Energizer [30-40]%, Spectrum [0-5]%), followed by Duracell ([40-50]%) and Panasonic ([5-10]%).
- (610) Second, the market for the wholesale supply of branded portable battery chargers in the United Kingdom is highly concentrated with an HHI level post-Transaction of [Above 2000] and a delta of [Below 250].
- (611) Third, private label battery chargers exercise only a limited constraint on the Parties, as discussed in Section 5.9.1.2.
- (612) Fourth, e-commerce is unlikely to affect the Parties' market position in the short- to medium term, as discussed in Section 5.9.1.2.

(613) Fifth, customers exercise only a limited constraint on the Parties' ability to increase prices, as discussed in Section 5.9.1.2.

5.10.7. Other affected markets

(614) With regard to the wholesale supply of branded portable battery chargers in Austria, Belgium, Bulgaria, Croatia, Czechia, Finland, Greece, Italy, Luxembourg, Malta, Portugal, Romania, Slovenia, Slovakia and Sweden, the Commission notes, on the one hand, that:

- (a) First, the Parties have sizeable combined market shares on those markets: [30-40]% in Austria, [20-30]% in Belgium, [20-30]% in Bulgaria, [20-30]% in Croatia, [30-40]% in Czechia, [30-40]% in Finland, [30-40]% in Greece, [20-30]% in Italy, [20-30]% in Luxembourg, [20-30]% in Malta, [20-30]% in Portugal, [20-30]% in Romania, [20-30]% in Slovenia, [30-40]% in Slovakia and [20-30]% in Sweden.
- (b) Second, as shown in Table 1 above, all of those markets are concentrated, with HHI levels post-Transaction of [Above 2000] and HHI delta of between [Below 250] and [Above 250] (with the exception of Croatia and Slovenia, where the delta is [Below 150] respectively).
- (c) Third, the Transaction would create the largest (in the case of Finland, Greece and Slovenia) or the second largest (in the case of Austria, Belgium, Bulgaria, Croatia, Czechia, Italy, Luxembourg, Malta, Portugal, Romania, Slovakia and Sweden) supplier, thereby also reducing the number of suppliers on these already concentrated markets.
- (d) Fourth, the market dynamics identified by the Commission in Section 5.9.1.2, apply equally to the markets for branded portable battery chargers in these countries.

On the other hand, the Commission also notes that:

- (a) First, there are significant alternative suppliers of branded portable battery chargers on those markets. Duracell is, and will post-Transaction remain, the market leader in Austria ([30-40]%), Belgium ([40-50]%), Bulgaria ([40-50]%), Croatia ([40-50]%), Italy ([50-60]%), Luxembourg ([50-60]%), Malta ([50-60]%), Portugal ([30-40]%), Romania ([30-40]%), and Gold Peak is, and will post-Transaction remain, the market leader in Czechia ([30-40]%), Slovakia ([30-40]%), Slovenia ([30-40]%) and Sweden ([30-40]%). Duracell will also remain a close second competitor to the merged entity in Finland ([20-30]%), Greece ([20-30]%), Slovenia ([10-20]%).
 - (b) Second, in addition to the above-mentioned closest competitors to the merged entity, there are several other alternative suppliers of branded portable battery chargers active on those markets, including suppliers such as Panasonic, Philips, Ansmann, Cegasa and Toshiba.
- (615) Ultimately, the question of whether serious doubts arise in Austria, Belgium, Bulgaria, Croatia, Czechia, Finland, Greece, Italy, Luxembourg, Malta, Portugal, Romania, Slovakia, Slovenia and Sweden can be left open as the commitments discussed in Chapter 7 include all of the activities of Spectrum's Varta business in the EMEA region and therefore entirely remove the overlap in the markets for branded portable battery chargers in those countries.

5.10.8. *Other horizontal overlaps*

(616) With regard to the wholesale supply of branded portable battery chargers in, Denmark, Estonia, Iceland, Latvia, Lithuania, Norway and Spain, the Commission notes that the horizontal overlaps between the Parties in these countries do not lead to combined shares above [20-30]%. Therefore, in these markets, the Transaction does not raise serious doubts as regards its compatibility with the internal market.

5.10.9. *Conclusion on the assessment of potential horizontal non-coordinated effects on the national markets for the wholesale supply of branded portable battery chargers*

(617) On the basis of the above, the Commission concludes that:

- (a) the Transaction raises serious doubts as to its compatibility with the internal market as regards its impact on competition for branded portable battery chargers in France, Germany, Hungary, Netherlands, Poland and the United Kingdom, due to horizontal non-coordinated effects.
- (b) the question of whether serious doubts arise in Austria, Belgium, Bulgaria, Croatia, Czechia, Finland, Greece, Italy, Luxembourg, Malta, Portugal, Romania, Slovakia, Slovenia and Sweden can be left open as the commitments include all of the activities of Spectrum's Varta Business in the EMEA region and therefore entirely remove the overlap in the markets for the wholesale supply of branded portable battery chargers in those countries.
- (c) the Transaction does not raise serious doubts as regards its compatibility with the internal market due to horizontal non-coordinated effects in the markets for the wholesale supply of branded portable battery chargers in Denmark, Estonia, Iceland, Latvia, Lithuania, Norway and Spain.

5.11. Assessment of potential horizontal non-coordinated effects on the markets for the wholesale supply of branded portable lighting products

5.11.1.1. The Notifying Party's view

(618) The Notifying Party submits that the Transaction does not give rise to affected markets with respect to the wholesale supply of branded portable lighting products in the EEA.

(619) First, Notifying Party submits that the Parties are small market players with modest EEA-wide shares, at [5-10]% each and [10-20]% combined.²⁹³ However, they were not able to provide data more recent than 2014.²⁹⁴

(620) Second, Notifying Party contends that the lights sector is characterised by its numerous competitors, including both large corporations and smaller specialized companies. They have identified over 200 competitors that are active worldwide.²⁹⁵

²⁹³ Form CO, paras 1634 and 1653-1655

²⁹⁴ 2014 figures from Spectrum internal document "[Internal document]", slide 17, submitted as 5(4) document Annex 14; in reply to RFI 16 the Parties confirmed that this document was the most recent source they could identify regarding market share estimates in portable lighting products, according to which the Parties' combined market share in this market would be around [10-20]%.
²⁹⁵

5.11.1.2.The Commission's assessment

(621) On the basis of the EEA-wide data provided by the Parties they would continue to be constrained by other branded suppliers of portable lighting products, such as Maglite ([0-5]%) and Duracell ([0-5]%). However, the Parties were not able to provide any data at national level or data more recent than 2014.

5.11.1.3.Conclusion

(622) Considering the absence of national data and data more recent than 2014 the Commission does not make any conclusive findings with regard to markets for the wholesale supply of branded portable lighting products.. In any event, there is no need for the Commission to conclude on whether the Transaction would significantly impede effective competition on those markets, as the commitments include all of the activities of Spectrum's Varta Business in the EMEA region and therefore entirely remove the overlap in these markets.

6. PROPOSED REMEDIES

6.1. Introduction

(623) In order to remove the serious doubts arising from the Transaction described in Section 5, the Notifying Party submitted commitments modifying the Transaction on 20 November 2018 (the "Initial Commitments").

(624) The Commission launched a market test of the Initial Commitments on 22 November 2018, seeking responses from competitors, customers and potential purchasers for the business to be divested under the Initial Commitments. The Commission informed the Notifying Party of the results of the market test on 3 December 2018. Following the feedback received from market participants in the market test and the Commission's initial assessment, the Notifying Party submitted a revised set of commitments on 5 December 2018 (the "Final Commitments").

(625) The Final Commitments are annexed to this decision and form an integral part thereof.

6.2. Initial Commitments

6.2.1. *Description of the Initial Commitments*

(626) First, the Initial Commitments consist of the divestment of Spectrum's Varta consumer battery, chargers and portable power and lighting business (including the private label and OEM business) in EMEA (the "Divestment Business"), which includes:

- (a) the relevant legal entities and/or the assets of the relevant legal entities currently part of the Divestment Business;

²⁹⁵ Form CO, para 1630

- (b) all intangible assets (including the Varta trademarks and other intellectual property rights) and know-how necessary for use by the Divestment Business. Energizer would retain the exclusive right to use the Varta brand outside of the EMEA region;
 - (c) all R&D equipment, materials, personnel and projects. The Divestment Business would also be granted temporary access to shared R&D assets and personnel;
 - (d) legal title and all real estate rights related to the manufacturing facility at Dischingen, Germany;
 - (e) all facilities used by the Divestment Business, [Information on facilities];
 - (f) all dedicated Spectrum personnel;
 - (g) key personnel, which includes central management, regional managers [Information on key personnel];
 - (h) all licences, permits and authorisations issued by any governmental organisation for the benefit of the Divestment Business;
 - (i) all contracts, leases, commitments and customer orders of the Divestment Business;
 - (j) all customer, credit and other records of the Divestment Business; and
 - (k) the benefit, for a transitional period of [Time period] after the transfer of the legal title to the Divestment Business to the purchaser, and on terms and conditions equivalent to those at present afforded to the Divestment Business, of all current arrangements under which Spectrum or its affiliated undertakings supply products or services to the Divestment Business.
- (627) Second, with regard to the hearing aid batteries business, the Initial Commitments include the commitment by Energizer to enter, upon the request of the purchaser, for a period of [Time period] into an exclusive supply agreement with the Divestment Business for Rayovac-branded hearing aid batteries [Cost formula], to be agreed with the Purchaser. The supply agreement will include a licence for the sale, advertising and marketing of Rayovac-branded hearing aid batteries in the non-audiologist retail channel in EMEA. Moreover, the Notifying Party commits to supply annually to the Divestment Business a quantity of up to [Percentage]% of the Divestment Business's net sales in 2018. In addition, the Notifying Party also commits not to use the Rayovac brand for sales of hearing aid batteries in the non-audiologist retail channel in EMEA for an additional period of [Time period] after the expiration of the supply agreement ("black-out period").
- (628) Third, the Initial Commitments contain related commitments, including those regarding the separation of the Divestment Business from the businesses retained, the preservation of the viability, marketability and competitiveness of the Divestment Business, including the appointment of a monitoring trustee and, if necessary, a divestiture trustee.
- (629) The Notifying Party considers that the Initial Commitments would eliminate the entire overlap across the EEA in the markets for consumer batteries and battery chargers in which the Commission has preliminarily expressed competition concerns and thus remove any significant impediment to effective competition. According to the Notifying Party, the Divestment Business is largely an autonomous business within Spectrum. It includes all the

necessary tangible and intangible assets that enable it to compete effectively on a stand-alone basis (with manufacturing and distribution facilities, supply chain organisation, research and development (“R&D”) capability, personnel [including sales, distribution, management and corporate functions], customer and sourcing contracts and intellectual property rights). The Notifying Party submits that, with around EUR [Number] in annual turnover in 2017 and approximatively [Number] employees across EMEA, the Divestment Business represents a scale competitor in the consumer battery category.²⁹⁶

6.2.2. *Results of the market test*

- (630) The results of the market test were generally positive and several companies expressed an interest in purchasing the Divestment Business.
- (631) The vast majority of respondents that expressed a view indicated that (i) the Initial Commitments should reproduce Spectrum's position in the EEA market for consumer batteries and battery chargers sufficiently so that the identified competition concerns will be eliminated,²⁹⁷ (ii) the Initial Commitments were adequate for the Purchaser to become a viable competitor in the EEA market for consumer batteries and battery chargers,²⁹⁸ and (iii) the Divestment Business would enable the Purchaser to establish itself as an independent competitor.²⁹⁹ Furthermore, the vast majority of customers that expressed a view indicated that they would continue to buy consumer batteries from the Divestment Business.³⁰⁰
- (632) With respect to the scope of the Divestment Business and, in particular, the fact that the Notifying Party would retain the rights to the Varta brand for use outside of the EMEA region, the respondents for the Commission's market test replied as follows:
- (a) The replies of the respondents that provided a view were split as to whether the restriction to the use of the Varta brand outside of the EMEA region would adversely affect the Divestment Business' ability to compete with other suppliers that can offer branded batteries at the worldwide level.³⁰¹ As regards the competitiveness of the Divestment Business in the EEA region specifically, however, a large majority of the respondents that provided a view considered that the restriction to the use of the Varta brand outside of the EMEA region would not adversely affect the Divestment

²⁹⁶ Form RM, paragraph 6.

²⁹⁷ Replies to Q4 – questionnaire to customers on the commitments offered by Energizer, question 1; Q5 - questionnaire to competitors and potential purchasers on the commitments offered by Energizer, question 1.

²⁹⁸ Replies to Q4 – questionnaire to customers on the commitments offered by Energizer, questions 2, 15 and 16; Q5 - questionnaire to competitors and potential purchasers on the commitments offered by Energizer, questions 2, 17 and 18.

²⁹⁹ Replies to Q4 – questionnaire to customers on the commitments offered by Energizer, question 3; Q5 - questionnaire to competitors and potential purchasers on the commitments offered by Energizer, question 3.

³⁰⁰ Replies to Q4 – questionnaire to customers on the commitments offered by Energizer, question 4. Most of the customers who indicated that they would not purchase consumer batteries from the Divestment Business gave reasons unrelated to the Divestment Business, indicating as reasons mainly that they were currently not purchasing Varta batteries or had recently completed a tender process so that no change in supplier was expected for the next years.

³⁰¹ Replies to Q4 – questionnaire to customers on the commitments offered by Energizer, question 5.3; Q5 - questionnaire to competitors and potential purchasers on the commitments offered by Energizer, question 4.3.

Business' ability to compete for the business of EEA customers with other suppliers that can offer branded batteries at the worldwide level.³⁰²

- (b) The clear majority of respondents considered that the restriction to the use of the Varta brand outside of the EMEA region would not limit its ability to grow its business at the worldwide level in the future while a sizable minority considered that this would be the case³⁰³ and, within that minority, some respondents considered this to adversely affect the viability and competitiveness of the Divestment Business (while the overall majority did not raise this concern).³⁰⁴
- (c) A minority of the customers that responded to the market test indicated that they request quotes for consumer batteries which cover countries outside the EMEA region³⁰⁵ and some – albeit few – of those customers that request international quotes indicated that the Divestment Business' inability to sell Varta's branded batteries at the worldwide level would affect its ability to compete for their business.³⁰⁶

(633) As regards intellectual property (IP) and know-how (other than the restriction of the Varta brand discussed in paragraph (632)), while the vast majority of respondents to the market test that provided a view considered the IP rights and know-how transferred with the Divestment Business to be sufficient to allow it to manufacture consumer batteries and compete effectively with the merged entity in the EEA, a small number of respondents did not.³⁰⁷

(634) With regard to hearing aid batteries, the respondents for the Commission's market test replied as follows:

- (a) The majority of respondents that provided an answer indicated that the Initial Commitments would provide the Purchaser with the ability and the incentive to establish itself as an independent competitor in the EEA hearing aid batteries market within a [Time period] timeframe.³⁰⁸ Moreover, the majority of respondents also indicated that the length of the black-out period was sufficient, while a minority of respondent suggested a longer period than [Time period] to avoid consumer confusion.³⁰⁹
- (b) However, around half of the competitors that provided an answer indicated that it would be either difficult or very difficult for the purchaser of the Divestment Business to enter into a supply contract with a suitable producer of hearing aid batteries after

³⁰² Replies to Q4 – questionnaire to customers on the commitments offered by Energizer, question 5.4; Q5 - questionnaire to competitors and potential purchasers on the commitments offered by Energizer, question 4.4.

³⁰³ Replies to Q4 – questionnaire to customers on the commitments offered by Energizer, question 6; Q5 - questionnaire to competitors and potential purchasers on the commitments offered by Energizer, question 5.

³⁰⁴ Replies to Q4 – questionnaire to customers on the commitments offered by Energizer, question 6.2; Q5 - questionnaire to competitors and potential purchasers on the commitments offered by Energizer, question 5.2.

³⁰⁵ Replies to Q4 – questionnaire to customers on the commitments offered by Energizer, question 5.2.

³⁰⁶ Replies to Q4 – questionnaire to customers on the commitments offered by Energizer, question 5.4.

³⁰⁷ Replies to Q5 - questionnaire to competitors and potential purchasers, question 10.

³⁰⁸ Replies to Q4 – questionnaire to customers on the commitments offered by Energizer, question 8; Q5 - questionnaire to competitors and potential purchasers on the commitments offered by Energizer, question 7.

³⁰⁹ Replies to Q4 – questionnaire to customers on the commitments offered by Energizer, question 9; Q5 - questionnaire to competitors and potential purchasers on the commitments offered by Energizer, question 8.

the expiry of the [Time period] supply agreement, pointing to the limited number of producers of hearing aid batteries and therefore of alternative suppliers.³¹⁰

- (c) Other points of criticism, brought forward in particular by one competitor (and generally not brought forward by other market participants), concerned mainly (i) the alleged need to replicate Spectrum's position through the commitments, (ii) the fact that the hearing aid supply agreement would only be entered into upon request of the purchaser, (iii) the alleged high costs for the Divestment Business going forward, including for marketing and advertising and for setting up a distribution network, (iv) the unlikelihood of hearing aid customers switching to a new brand since the re-branding period (supply agreement and black-out period) was too short and the Divestment Business would allegedly continue to face competition for Rayovac branded batteries, and (v) the cost formula for the supply agreement ("[Cost formula]") which was to be ultimately agreed with the Purchaser.

- (635) As regards R&D capabilities, the majority of competitors and customers that provided a view indicated that the proposed carve-out and transfer of R&D assets is sufficient to enable the purchaser to innovate so as to compete effectively with the merged entity in the EEA markets.³¹¹ Some respondents pointed out, however, that since the branded consumer battery business is R&D intensive, access to the same R&D capabilities would be key for the Divestment Business and questioned the effectiveness of the envisioned temporary sharing of R&D capabilities³¹² as well as the number of R&D personnel included in the Initial Commitments.³¹³
- (636) With regard to the envisaged transfer of existing supply and distribution agreements, at least one respondent noted that the Divestment Business might not be able to obtain the same terms as Spectrum, in light of its more limited scale.³¹⁴
- (637) As to personnel, the majority of respondents that expressed a view (among many that did not express a view on this specific point) stated that all country managers should be included as key personnel of the Divestment Business.³¹⁵
- (638) As regards potential purchasers, the vast majority of respondents that expressed a view considered that the Initial Commitments were sufficiently attractive for potential purchasers³¹⁶ with a number of companies contacted in the market test already expressing their interest in purchasing the Divestment Business.³¹⁷ Many respondents also considered it necessary for a suitable purchaser to be already active in consumer batteries, in batteries in

³¹⁰ Q5 - questionnaire to competitors and potential purchasers on the commitments offered by Energizer, question 9.

³¹¹ Replies to Q4 – questionnaire to customers on the commitments offered by Energizer, question 11; Q5 - questionnaire to competitors and potential purchasers on the commitments offered by Energizer, question 11.

³¹² Ibid.

³¹³ Replies to Q4 – questionnaire to customers on the commitments offered by Energizer, question 11; Q5 - questionnaire to competitors and potential purchasers on the commitments offered by Energizer, questions 11, 14 and 15.

³¹⁴ Q5 - questionnaire to competitors and potential purchasers on the commitments offered by Energizer, question 1.

³¹⁵ Replies to Q4 – questionnaire to customers on the commitments offered by Energizer, question 13; Q5 - questionnaire to competitors and potential purchasers on the commitments offered by Energizer, question 13.

³¹⁶ Replies to Q4 – questionnaire to customers on the commitments offered by Energizer, question 20; Q5 - questionnaire to competitors and potential purchasers on the commitments offered by Energizer, question 22.

³¹⁷ Q5 - questionnaire to competitors and potential purchasers on the commitments offered by Energizer, question 24.

general and/or in consumer goods while a sizable minority considered that no specific industry experience was necessary.³¹⁸

6.2.3. *Commission's assessment of the Initial Commitments*

6.2.3.1. Scope of the Divestment Business and removal of competition concerns

- (639) The Initial Commitments include the entire activities of Spectrum in household batteries, specialty batteries and battery chargers in the EEA (and even go beyond that by including the entire activities of Spectrum in household batteries, specialty batteries and battery chargers in the Middle East and Africa, leading to divestments in a total of 103 countries).
- (640) The Initial Commitments also include the activities of Spectrum in the sale of hearing aid batteries in the non-audiologist channel in the EEA by granting the Purchaser a license for the use of the Rayovac brand for [Time period] (followed by a [Time period] black-out period), together with a supply agreement for the hearing aid batteries for a [Time period] period (and even go beyond that by including the activities of Spectrum in the sale of hearing aid batteries in the non-audiologist channel in the Middle East and Africa). The supply agreement and brand license will allow the Purchaser to continue the existing Rayovac business in selling hearing aid batteries in the non-audiologist channel for a [Time period] period, giving it time to re-brand and to establish its own supply source for hearing aid batteries.
- (641) The Initial Commitments therefore remove the entire overlap between the Parties' activities in each of the national markets for the wholesale supply of (i) branded household primary batteries to the retail channel, (ii) branded household secondary batteries to the retail channel, (iii) branded specialty batteries to the retail channel, (iv) branded hearing aid batteries to the mass retail channel, and (v) branded battery chargers, in which the Commission has raised serious doubts as to the compatibility of the Transaction with the internal market.
- (642) Nevertheless, the Commission considers that the Initial Commitments are not sufficiently clear with regard to the products covered by the Initial Commitments. In particular, while the Form RM and the Schedule to the Initial Commitments referred to the Spectrum Varta battery charger business in the EMEA region being divested, there was no reference to battery chargers in the text of the Initial Commitments.

6.2.3.2. Viability and competitiveness of the Divestment Business

- (643) The Commission considers that, based on the evidence on file and the results of the market test, the Initial Commitments are in general suitable to lead to the divestment of a viable and competitive business. The Spectrum Varta business has operated as a stand-alone business within the Spectrum organisation in many ways, [Comments on Spectrum's organization].
- (644) Furthermore, the Divestment Business is likely to be profitable going forward. Historical financial profit and loss information for the Divestment Business indicates net sales of close to EUR [Number], EUR [Number] gross profits ([Percentage]% of net sales) and EUR

³¹⁸ Replies to Q4 – questionnaire to customers on the commitments offered by Energizer, question 18; Q5 - questionnaire to competitors and potential purchasers on the commitments offered by Energizer, question 20.

[Number] million EBITDA ([Percentage]% of net sales) in 2017 and similar performance in 2015 and 2016.³¹⁹

- (645) As regards the points raised by respondents to the market test, summarized in paragraphs (630) to (638), the Commission will assess the most important of those in paragraphs (646) to (671).

Limitation of the use of the Varta brand outside of EMEA

- (646) As regards the limitation of the use of the Varta brand outside of EMEA, the Commission finds that, contrary to feedback received from some market participants, the Divestment Business' viability and competitiveness will not be negatively affected by the limitation of the use of the Varta brand outside of EMEA. The Commission considers that the divestment of the Varta brand in EMEA to the Divestment Business sufficiently ensures that the Divestment Business would be a viable competitor, capable of replicating Spectrum's current competitive position in the EEA markets where the Transaction raised serious doubts as to its compatibility with the internal market. In particular, the limitation on the use of the Varta brand outside the EMEA region is unlikely to affect the sales of the Divestment Business in any material way and would also not affect in any material way the capacity utilisation of the production facility in Germany, for the following reasons.
- (647) First, almost all sales of the Divestment Business are currently achieved within the EMEA region which represents [Percentage]% of the Divestment Business' current business.³²⁰
- (648) Second, only a minority of the Divestment Business' customers currently acquire consumer batteries from Spectrum both within the EEA and outside the EEA ([Limited number] customers). If sales to EEA customers in non-EEA countries other than [Countries] are considered, the number of customers purchasing consumer batteries from Spectrum both within and outside the EEA is reduced to [Limited number].³²¹
- (649) Third, [Number] current customers of Spectrum in the EEA negotiate conditions for the supply outside the EEA jointly with the EEA.³²² Similarly, only a minority of buying alliances active in the EEA negotiate conditions that are applicable outside the EEA.³²³
- (650) Fourth, feedback received in the market test indicates that, among those customers that currently ask for quotes which cover countries outside the EMEA region³²⁴, most are not concerned about a lack of competitiveness of the Divestment Business without a global brand licence³²⁵ and most will continue buying from the Divestment Business in the future.³²⁶

³¹⁹ Form RM, Annex 2.

³²⁰ Memo on Varta Brand Ownership Outside EMEA, paragraph 8, and Reply to the RFI 11, question 2 and Annex 1. Similarly, the Divestment Business' activities in e-commerce outside EMEA [Qualification], see reply to RFI 18, question 3.

³²¹ Reply to the RFI 11, question 2.

³²² Ibid.

³²³ Ibid.

³²⁴ Replies to Q4 – questionnaire to customers on the commitments offered by Energizer, question 5.2.

³²⁵ Replies to Q4 – questionnaire to customers on the commitments offered by Energizer, question 5.4.

³²⁶ Replies to Q4 – questionnaire to customers on the commitments offered by Energizer, question 4.

- (651) Fifth, the limitation on the use of the Varta brand is unlikely to have a material impact on the growth opportunities of the Divestment Business.³²⁷
- (652) In the first place, the Divestment Business can continue growing in those EEA countries where already today it focusses its growth. As can be seen in, the Divestment Business's sales in [Country] have grown at an average rate of [Number]% over the past few years and, pre-Transaction, were expected to continue growing at a similar pace at least until [Year]. These additional sales volumes would mitigate the effects of any potential loss of customers due to the scope of the Divestment Business.

Figure 7 – Varta actual and expected growth rates

[Spectrum data on growth]

Source: M.8988- 5(4)-013 - Alkaline Strategy Meeting Europe (04 and 05.04.2017)

- (653) In the second place, as submitted by the Notifying Party, Varta Branded batteries hold a relatively low share of sales in several EEA countries which could be the target of future marketing efforts to increase sales.
- (654) In the third place, the EMEA region as defined in the Initial Commitments encompasses 103 countries,³²⁸ including economies with a particular potential for growth in Central Europe, Eastern Europe, Russia and Turkey, and therefore scope for growth of the sale of Varta branded products in the future.
- (655) In the fourth place, in those countries outside EMEA where Spectrum is currently not particularly successful with either the Varta or the Rayovac brands, the Divestment Business will be able to introduce a new brand and will not be put in a significantly more difficult position than Spectrum's before the Transaction.
- (656) Sixth, the Divestment Business is currently profitable as set out in paragraph (644), which, together with the other factors mentioned in paragraphs (647) to (655), make it unlikely that the limitation in the Varta brand license would impair the Divestment Business' viability.

Other IP rights and know-how

- (657) The Divestment Business includes the IP [Information on IP rights] necessary for it to operate [Information on IP rights].³²⁹ Moreover, the Notifying Party commits to transfer any intangible asset that is i) used by the Divestment Business; and (ii) contributes to the continued viability and competitiveness of the Divestment Business.³³⁰ The Commission therefore does not identify any need to change the scope of the Initial Commitments as regards other IP rights and know-how.

³²⁷ The arguments set out in paragraphs (652) to (656) apply equally to growth in e-commerce within and outside EMEA, see reply to RFI 18, question 3.

³²⁸ Annex 16 to the Initial Commitments.

³²⁹ Schedule to the Initial Commitments, page 2, definition of "Other IP rights and information", clause 4.2.

³³⁰ Schedule to the Initial Commitments, page 4, clause 4.3.

Supply agreement, brand licensing period and brand black-out period for the sale of hearing aid batteries

- (658) With respect to hearing aid batteries, the Commission notes that the commitment to enter into a supply agreement would only be optional and entered into at the request of the purchaser. However, the serious doubts arising from the Transaction in the market for hearing aid batteries can only be adequately addressed by a mandatory commitment, which would ensure that the solution to those competition concerns does not depend on the will of the purchaser.
- (659) Furthermore, a number of respondents to the market test raised concerns with respect to the duration of the supply agreement, brand licensing period and black-out period for the sale of hearing aid batteries, as summarized in paragraph (634), taking into account in particular that the Divestment Business does not have its own hearing aid battery production and that the number of producers and therefore of potential suppliers of hearing aid batteries is limited. The Commission notes, however, that Energizer has been in a similar position before the Transaction as it does not have its own production of hearing aid batteries but relies on supplies from third party suppliers. Moreover, Varta Microbattery, one of the two main producers of hearing aid batteries worldwide, indicated that it would be very easy to reach an agreement with itself to supply such batteries to the Divestment Business.³³¹ Nevertheless, and taking into account the requirement to re-brand, the Commission considered that the Purchaser should have the option to request more time to re-brand and find its own sources of hearing aid batteries before allowing the merged entity to use the Rayovac brand in the EMEA region.
- (660) Moreover, the Commission considered that the cap on the volumes that can be purchased by the Divestment Business in the Initial Commitments ([Percentage]% of the net sales achieved during the previous year), which is applicable for the entire duration of the supply agreement, risked impairing the growth opportunities and competitiveness of the Divestment Business, which as a consequence and in light of the abovementioned scarcity of possible suppliers might find it difficult to meet a possible increase in demand for hearing aid batteries in the EEA. The Commission also considered that the negotiation of the cost terms should not be left entirely to the negotiations between the Notifying Party and the purchaser but should include an element of oversight by the Commission and the Monitoring Trustee.
- (661) As regards the additional points of concerns brought forward in the market test (summarized in paragraph (634)(c)) not yet addressed, the Commission finds that (i) it is sufficient to replicate the competitive pressure that Energizer (as the smaller of the two Parties) exerted on the national markets for the wholesale supply of branded hearing aid batteries in the mass retail channel (taking into account Energizer's lack of production assets and lack of own R&D department for hearing aid batteries as well as the fact that it operated a competitive business focussing only on the mass retail channel), and (ii) the Divestment Business will be able to use the same marketing, advertising and distribution³³² assets for the household, specialty and hearing aid batteries going forward, limiting the costs.

³³¹ Replies to Q5 - questionnaire to competitors and potential purchasers, questions 9 and 9.1.

³³² For the distribution assets specifically, see reply to RFI 18, question 5.

R&D capabilities

- (662) As regards the Divestment Business' R&D capabilities, the Commission finds that, contrary to feedback received from some market participants, the Divestment Business' viability and competitiveness will not be negatively affected by the transfer and splitting of R&D capabilities between Spectrum and the Divestment Business.
- (663) First, the Divestment Business includes all R&D equipment, materials, personnel and projects so that the Divestment Business continues to have access to the same R&D and sourcing capabilities that it currently has access to.³³³ [Regarding all the assets that will be transferred, Energizer will put in place all the measures to ensure that the Divestment Business has access to the R&D assets. The Notifying Party will assist the Purchaser with the transfer of the assets].
- (664) Second, [Intellectual property and R&D projects will be transferred to the Divestment Business. The shared use will be made available by different means to the Divestment Business and the Notifying Party].³³⁴
- (665) Third, [Given that the majority of R&D staff is not based in Europe, Energizer will make available some of these employees that will be transferred to the Divestment Business].
- (666) Fourth, the Monitoring Trustee will appoint an R&D technical expert who will report to the Monitoring Trustee and who will assist and advise the Monitoring Trustee with regard to all R&D related questions concerning the Divestment Business.³³⁵
- (667) Fifth, if there is any tangible or intangible asset or personnel which is not covered by the Schedule of the Initial Commitments Schedule but which is used by the Divestment Business and contributes to the continued viability and competitiveness of the Divestment Business, that asset or adequate substitute shall be transferred to the Purchaser. This includes all the R&D personnel that is deemed necessary to the Divestment Business, under the supervision of the Monitoring Trustee with the support of the R&D Technical Expert.³³⁶

Supply and distribution agreements

- (668) The Commission finds that the Initial Commitments are sufficient with respect to the transfer of supply and distribution agreements³³⁷ so as not to impair the viability or competitiveness of the Divestment Business.
- (669) First, in relation to global procurement, the Notifying Party will split global direct supply agreements between the Divestment Business and the merged entity, both for raw material sourcing and for third-party finished goods sourcing. Where necessary, each party would provide the other party an appropriate transitional period, which would give, directly or

³³³ Initial Commitments, clause 5(a), and Schedule, pages 2-3.

³³⁴ Initial Commitments, clause 5(a).

³³⁵ Initial Commitments, clauses 27 and 33(i).

³³⁶ Initial Commitments, Schedule, clause 4.3

³³⁷ There are no specific third-party rights that may prevent the transfer of the Divestment Business as is to any purchaser, other than the standard change of control provisions in commercial contracts concluded by entities included in the Divestment Business (for which there will be the back-up solution of the back-to-back agreement) and approvals from applicable works councils. The Commission notes, in particular, that the [Supply and distribution agreements].

indirectly, the other party the benefit of any global procurement contracts. This would allow the Divestment Business to develop their own supply agreements. Overall, the projected loss of global sourcing (and the switch to regional sourcing) due to the loss in volume discounts is estimated to be less than EUR [Number] ([Percentage]% of annual EBITDA) and is therefore not material.

(670) Second, in relation to the distribution agreements, the Divestment Business includes the benefit of all distribution contracts which are usually entered into at the national level. Insofar as those contracts include the supply of consumer batteries, chargers and lighting products, the scope of the distribution agreement would remain unchanged and thus not entail any changes in volume (and in pricing linked to those volumes). Insofar as the distribution contracts would in the future not include any other of Spectrum Brands' products, such as products from Spectrum Brands' appliances business, this effect is not expected to be material.³³⁸

Key personnel

(671) In light of the results of the market test, the Commission considers that the list of key personnel included in the Initial Commitments is not sufficiently comprehensive, as it should include [Information on key personnel] ensuring that the Divestment Business has sufficient resources to effectively compete in those territories. As to the number of R&D personnel, the Commission notes that further personnel could be added to the Divestment Business, under the supervision of the monitoring trustee, pursuant to paragraph 4.3 of the schedule to the Initial Commitments.

Purchasers

(672) In the light of the scope and self-standing nature of the Divestment Business, the Commission considers the feedback received from the market test, summarized in paragraph (638), to be sufficient to conclude that the Notifying Party is likely to find a suitable purchaser for the Divestment Business, including its hearing aid battery business, within the divestiture period. The Commission will assess during the purchaser approval process whether the purchaser criteria are fulfilled, including whether the purchaser has the required proven expertise to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Notifying Party and other competitors,³³⁹ taking into account the feedback received in its market test.

6.2.3.3. Conclusion

(673) The Commission therefore considers that the Initial Commitments would not be suitable to remove the serious doubts raised by the Transaction in a clear-cut manner.

³³⁸ The same reasoning applies to the use of the [Storage facilities]. See reply to RFIs 17 and 18.

³³⁹ Initial Commitments, clause 21(b).

6.3. Final Commitments

6.3.1. Description of the Final Commitments

(674) The Final Commitments consist of a revised version of the Initial Commitments. The main modifications included in the Final Commitments with respect to the Initial Commitments are the following:

- (a) The explicit reference to Spectrum's Varta chargers business in the Commitments to clarify that that business falls within the scope of the Divestment Business;³⁴⁰
- (b) The supply of hearing aid batteries [Cost formula];³⁴¹
- (c) The mandatory commitment to enter into a supply agreement for hearing aid batteries, not dependent on a request from the purchaser;³⁴²
- (d) The replacement of the fixed volume cap for the hearing aid batteries' supply arrangement by a mechanism according to which, in case of conflict between the Purchaser and the merged entity, the Commission will decide, after hearing the opinion of the Monitoring Trustee, on any request for supply that [Percentage]exceeds% of the prior year's net sales of Rayovac branded hearing aid batteries;³⁴³
- (e) The possibility to extend, at the request of the purchaser and to be agreed in consultation with the Monitoring Trustee and the Commission, by up to [Time period] the duration of the hearing aid batteries' supply agreement and the license to use the Rayovac brand for hearing aid batteries in the non-audiologist channel;³⁴⁴ the extension of the Black-Out period for the use of the Rayovac brand for hearing aid batteries in the non-audiologist channel by the merged entity to up to [Time period];³⁴⁵ and the introduction of an overall duration of [Time period] for supply/licensing and black-out period;³⁴⁶
- (f) The inclusion, within the key personnel, of the [Information on scope of the commitment].³⁴⁷

6.3.2. The Commission's assessment of the Final Commitments

6.3.2.1. Scope of the Divestment Business

(675) The Commission considers that the explicit reference to the divestment of Spectrum's Varta battery chargers business in clause 5 of the Final Commitments ensures with sufficient clarity

³⁴⁰ Final Commitments, clause 5.

³⁴¹ Final Commitments, clause 16.

³⁴² Final Commitments, clause 16.

³⁴³ Final Commitments, clause 16.

³⁴⁴ Final Commitments, clause 17.

³⁴⁵ Final Commitments, clause 18.

³⁴⁶ Final Commitments, clause 18.

³⁴⁷ Final Commitments, Schedule, Annex 10.

that all markets on which the Transaction raised serious doubts are included within the scope of the Final Commitments.

6.3.2.2. Viability and competitiveness of the Divestment Business

- (676) With regard to the amendments included in the Final Commitments to the hearing aid supply agreement, the Commission considers the following:
- (a) The clarification that the entering into the supply and licence agreements for hearing aid batteries is mandatory addresses the Commission's concern as to the potentially non-binding nature of this clause;
 - (b) [Information on contractual terms];
 - (c) The possible longer duration of the agreement and the overall duration of the commitment adequately addresses the possible problems that the Divestment Business might face to find alternative suppliers, by allowing it to choose to extend the agreement if it needs to do so;
 - (d) The higher cap over the quantities requested by the Divestment Business and the mechanism whereby the Commission ultimately decides on requests exceeding such cap adequately address the risk that an insufficient supply might hamper the growth possibilities of the Divestment Business;
 - (e) The inclusion of additional sales team members, appointed [Information on scope of the commitment], in the key personnel ensures that the Divestment Business can effectively compete in those territories.

6.4. Conclusion

- (677) In light of the foregoing, the Commission therefore considers that the Final Commitments are capable of removing the Commission's serious doubts as to the compatibility of the Transaction with the internal market.

7. CONDITIONS AND OBLIGATIONS

- (678) The commitments in clause 5 of section B and in clauses 16 to 19 of Section C of the Annex constitute conditions attached to this decision, as only through full compliance therewith can the structural changes in the relevant markets be achieved. The other commitments set out in the Annex constitute obligations, as they concern the implementing steps which are necessary to achieve the modifications sought in a manner compatible with the internal market.

8. CONCLUSION

(679) For the above reasons, the Commission has decided not to oppose the notified operation as modified by the 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 clause 5 of section B and in clauses 16 to 19 of Section C 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

Dated 5 December 2018

Energizer Holdings, Inc.
and
Spectrum Brands Holdings' Global Battery And Portable Lighting Business

CASE NO. COMP/M.8988 – Energizer / Spectrum Brands

Commitments to the European Commission

CASE NO. COMP/M.8988 – ENERGIZER / SPECTRUM BRANDS

Commitments to the European Commission

Pursuant to Article 6(2) of Council Regulation (EC) No. 139/2004 (the “Merger Regulation”), Energizer Holdings, Inc. (“Energizer” or the “Notifying Party”) hereby enters into the following Commitments (the “Commitments”) vis-à-vis the European Commission (the “Commission”) with a view to rendering the acquisition by Energizer Holdings, Inc. of the global battery and lighting business of Spectrum Brands Holdings, Inc. (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 Commitments, the following terms shall have the following meaning:

Affiliated Undertakings: undertakings controlled by the Parties and/or by the ultimate parents of the Parties, 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 5 (a), (b) and (c) and described more in detail in the Schedule.

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

Closing Period: the period of [Duration] 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.

Divestment Business: the business or businesses as defined in Section B and in the Schedule which the Notifying Party commits to divest.

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

Effective Date: the date of adoption of the Decision.

Energizer: Energizer Holdings, Inc., incorporated under the laws of the state of Missouri, United States, with its registered office at 533 Maryville University Drive, St. Louis, Missouri 63141, United States.

EMEA: includes all of Europe, the Middle East and Africa. A full list of the 103 countries included in EMEA is provided in **Annex 16**.

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

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

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

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

Non-Audiologist Retail Channel: those customers (namely, retailers, wholesalers and distributors) that are not specialised in the primary or sole sourcing and resale of hearing aid batteries ("HAB") (as opposed to other consumer batteries). For the avoidance of doubt, the Non-Audiologist Retail Channel excludes original equipment manufacturers, governmental health care organizations and audiologists, irrespective of whether those customers source HABs directly from the Divestment Business or indirectly through wholesalers or distributors.

Parties: Energizer and the undertaking that is the target of the concentration.

Personnel: all staff currently employed by the Divestment Business, including staff seconded to the Divestment Business, shared personnel as well as the additional personnel listed in the Schedule.

Purchaser: the entity approved by the Commission as acquirer of the Divestment Business in accordance with the criteria set out in Section D. [Information on the identity of a potential Purchaser].

Purchaser Criteria: the criteria laid down in paragraph 21 of these Commitments that the Purchaser must fulfil in order to be approved by the Commission.

R&D Technical Expert: one or more natural or legal person(s), appointed by and reporting to the Monitoring Trustee, who has/have R&D expertise relevant to the Divestment Business. If the Monitoring Trustee has the necessary technical expertise, the Monitoring Trustee and Technical Expert can be the same natural or legal person.

Spectrum: Spectrum Brands Holdings, Inc., incorporated under the laws of the State of Delaware, United States, with its principal executive office at 3001 Deming Way, Middleton, Wisconsin, WI 53562, United States and registered with the Commercial/Company Register under number 4720870.

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

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

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

Varta® Trademarks: all trademark rights owned by Spectrum currently used for EMEA, [Information on contractual relations].

Section B. The commitment to divest and the Divestment Business

Commitment to divest

2. In order to maintain effective competition, the Notifying Party 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 22 of these Commitments. To carry out the divestiture, the Notifying Party commits to find a purchaser and to enter into a final binding sale and purchase agreement for the sale of the Divestment Business within the First Divestiture Period. If the Notifying Party has not entered into such an agreement at the end of the First Divestiture Period, the Notifying Party shall grant the Divestiture Trustee an exclusive mandate to sell the Divestment Business in accordance with the procedure described in paragraph 35 in the Trustee Divestiture Period.
3. The Notifying Party shall be deemed to have complied with this commitment if:
 - (a) by the end of the Trustee Divestiture Period, the Notifying Party or the Divestiture Trustee has entered into a final binding sale and purchase agreement and the Commission approves the proposed purchaser and the terms of sale as being consistent with the Commitments in accordance with the procedure described in paragraph 22; and
 - (b) if the Closing of the sale of the Divestment Business to the Purchaser takes place within the Closing Period.
4. In order to maintain the structural effect of the Commitments, the Notifying Party shall, for a period of 10 years after Closing, not acquire, whether directly or indirectly, the possibility of exercising influence (as defined in paragraph 43 of the Remedies Notice, footnote 3) over the whole or part of the Divestment Business, unless, following the submission of a reasoned request from the Notifying Party showing good cause and accompanied by a report from the Monitoring Trustee (as provided in paragraph 72 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 Spectrum's Varta® consumer battery, chargers and portable power as well as portable lighting business in EMEA. For the avoidance of doubt, (a) this business includes the chargers business that forms an integral part of the Divestment Business and in particular it includes the supply and distribution contracts covering chargers identified in Annexes 11 and 13 to the Schedule, (b) but this business does not include Spectrum's hearing aid batteries business, which is primarily marketed under the Rayovac® brand and has no sales of Varta® branded product. The Divestment Business shall nonetheless benefit, on the terms set out in paragraphs 16-19 below, of an exclusive supply agreement for Rayovac®-branded HAB in the Non-Audiologist Retail Channel in EMEA. The legal and functional structure of the Divestment Business as operated to date is described in the Schedule. The Divestment Business, described in more detail in the Schedule, includes all assets and staff that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business, in particular:

- (a) all tangible and intangible assets (including the Varta® Trademarks, other intellectual property rights and Know-How necessary for use by the Divestment Business, subject to the arrangements set out in the Schedule; as well as all R&D equipment, materials, personnel and projects so that the Divestment Business continues to have access to the same R&D capabilities that it currently has access to); [Information on trademarks and R&D projects];
 - (b) all licences, permits and authorisations issued by any governmental organisation for the benefit of the Divestment Business;
 - (c) all contracts, leases, commitments and customer orders of the Divestment Business (including those for consumer battery, chargers and portable power as well as portable lighting); all customer, credit and other records of the Divestment Business (it being understood that the Notifying Party shall use its best efforts to obtain all consents where applicable, and, to the extent any such consents could not be obtained, or any contract could not be otherwise (partially) transferred, the Notifying Party shall enter into back-to-back agreements with the Divestment Business [Information on contractual terms]. In the case of supply contracts, the duration of the back-to-back agreements should be [Duration] after Closing, if a longer duration is not provided for in the original contract); and
 - (d) the Personnel.
6. In addition, the Divestment Business includes the benefit, for a transitional period of [Duration] after Closing and on terms and conditions equivalent to those at present afforded to the Divestment Business, of all current arrangements under which Spectrum or its Affiliated Undertakings (outside the Divestment Business) supply products or services to the Divestment Business, as detailed in the Schedule, unless otherwise agreed with the Purchaser. Strict firewall procedures will be adopted so as to ensure that any competitively sensitive information related to, or arising from such supply arrangements (for example, product roadmaps) will not be shared with, or passed on to, anyone outside the relevant business division providing the products or services.

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, the Notifying Party 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 and up to a period of [Duration] after the Effective Date), to encourage all Key Personnel to

remain with the Divestment Business, and not to solicit or move any Personnel to Energizer's remaining business. Where, nevertheless, individual members of the Key Personnel exceptionally leave the Divestment Business, the Notifying Party shall provide a reasoned proposal to replace the person or persons concerned to the Commission and the Monitoring Trustee. The Notifying Party must be able to demonstrate to the Commission that the replacement is well suited to carry out the functions exercised by those individual members of the Key Personnel. The replacement shall take place under the supervision of the Monitoring Trustee, who shall report to the Commission. [Information on scope of the commitment].

Hold-separate obligations

8. The Notifying Party commits, from the Effective Date until Closing, to keep the Divestment Business separate from the business(es) it is retaining and to ensure that unless explicitly permitted under these Commitments:
 - (a) management and staff of the business(es) retained by the Notifying Party have no involvement in the Divestment Business;
 - (b) the Key Personnel and Personnel of the Divestment Business have no involvement in any business retained by the Notifying Party and do not report to any individual outside the Divestment Business;
 - (c) with respect to R&D employees, all appropriate measures will be taken, under the supervision of the Monitoring Trustee and the R&D Technical Expert, [Information on transitional measures], in order to ensure that there is no interruption of the R&D function for the Divestment Business.
9. Until Closing, the Notifying Party shall assist the Monitoring Trustee in ensuring that the Divestment Business is managed as a distinct and saleable entity separate from the business(es) which the Notifying Party is retaining. Immediately after the adoption of the Decision, the Notifying Party 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 the Notifying Party. The Hold Separate Manager shall closely cooperate with and report to the Monitoring Trustee, who may be assisted by the R&D Technical Expert, 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 the Notifying Party, require the Notifying Party to replace the Hold Separate Manager.
10. To ensure that the Divestment Business is held and managed as a separate entity the Monitoring Trustee shall exercise the Notifying Party's rights as shareholder in the legal entity or entities that constitute the Divestment Business (except for its rights in respect of dividends that are due before Closing), with the aim of acting in the best interest of the business, which shall be determined on a stand-alone basis, as an independent financial investor, and with a view to fulfilling the Notifying Party's obligations under the Commitments. Furthermore, the Monitoring Trustee shall have the power to replace members of the supervisory board or non-executive directors of the board of directors, who have been appointed on behalf of the Notifying Party. Upon request of the Monitoring Trustee, the Notifying Party shall resign as a member of the boards or shall cause such members of the boards to resign.

Ring-fencing

11. The Notifying Party shall implement, or procure to implement, all necessary measures to ensure that it does not, after the Effective Date, obtain any Confidential Information relating to the Divestment Business and that any such Confidential Information obtained by the Notifying Party before the Effective Date will be eliminated and not be used by the Notifying Party. This includes measures vis-à-vis the Notifying Party's appointees on the supervisory board and/or board of directors of the Divestment Business. In particular, the participation of the Divestment Business in any central information technology network shall be severed to the extent possible, without compromising the viability of the Divestment Business. The Notifying Party 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 the Notifying Party is required by law.

Non-solicitation clause

12. The Notifying Party undertakes, 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 [Duration] after Closing.

Due diligence

13. In order to enable potential purchasers to carry out a reasonable due diligence of the Divestment Business, the Notifying Party shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process:
 - (a) provide to potential purchasers sufficient information as regards the Divestment Business;
 - (b) provide to potential purchasers sufficient information relating to the Personnel and allow them reasonable access to the Personnel.

Reporting

14. The Notifying Party 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). The Notifying Party 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. The Notifying Party 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.

Other Related Commitments

16. The Notifying Party commits to enter into an exclusive supply agreement with the Divestment Business for Rayovac®-branded HAB [Information on contractual terms]. The purpose of the supply agreement is to allow the Purchaser to continue the supply of Rayovac® HAB in the Non-Audiologist Retail Channel in EMEA, on an exclusive basis. For

the avoidance of doubt, it shall be a condition of the supply agreement entered into with the Purchaser that these Rayovac®-branded HAB can only be resold in the Non-Audiologist Retail Channel in EMEA (accordingly the Notifying Party is only required to supply insofar the customer commits to resell the HABs in question in the Non-Audiologist Retail Channel or (for wholesalers and distributors) to retailers in the Non-Audiologist Retail Channel). Under the supply agreement, the Notifying Party will supply the Divestment Business with sufficient quantities of HAB, including all current HAB models and future HAB models that will be commercialized by the Notifying Party under the Rayovac® brand during the term of the supply agreement to allow the Divestment Business to satisfy demand in the Non-Audiologist Retail Channel in EMEA.

The supply agreement referred to above will include the following thresholds and mechanism for adaptation:

- a) For all current and future HAB models, the Notifying Party will supply up to [Information on contractual terms] of the prior year net sales of Rayovac® branded HABs to the Divestment Business under the terms set out below and this [Information on contractual terms] threshold will be set on a rolling annual basis during the term of the supply agreement.
 - b) If the request of the Divestment Business for the supply of HAB exceeds [Information on contractual terms] of the net sales achieved during the prior financial year and the fulfilment of such request imposes unreasonable costs on the Notifying Party, the Notifying Party commits to discuss with the Divestment Business in good faith, in consultation with the Monitoring Trustee, a means of resolving such supply request. If the Notifying Party and the Purchaser do not reach an agreement, the Commission will, after hearing the opinion of the Monitoring Trustee, determine whether the supply request beyond this threshold should be maintained. In doing so, due account will be taken of the reasonableness of the request of the Divestment Business, any capacity constraint encountered by the Notifying Party, and any additional necessary expenditures that may be borne by the Notifying Party in the fulfilment of such request.
17. The supply agreement will be granted for a period of [Duration of the supply agreement] from the date of Closing. This period can be extended for a period of [Duration of the supply agreement] at the request of the Purchaser (the period of extension to be agreed in consultation with the Monitoring Trustee and the Commission, taking into account that such extension will have an impact on the duration of the period referred to in paragraph 18 below). The supply agreement will include a limited licence to use the Rayovac® brand for sales, advertising and marketing of HAB in the Non-Audiologist Retail Channel in EMEA. The terms of the supply agreement shall be approved by the Commission in accordance with the procedure described in paragraph 22 of these Commitments. This will provide the Divestment Business with the opportunity to develop its own branded HAB supply, via a re-branding strategy, in order to replace the Rayovac® brand for hearing aid batteries by the end of the supply period.
 18. The Notifying Party also commits not to use the Rayovac® brand for sales of HAB in the Non-Audiologist Retail Channel in EMEA for an additional period of [Duration] ("Black-out Period") after the expiration of the supply agreement. If the supply agreement is extended [Duration], the duration of the Black-out Period will be shortened accordingly so that, in any event, the supply agreement and the Black-out Period together do not exceed [Duration]. For the avoidance of doubt, the Notifying Party may supply HAB that are not Rayovac®-branded to the Non-Audiologist Retail Channel in EMEA during the term of the supply agreement and the Black-out Period.

19. The Notifying Party shall disclose to the Purchaser the Divestment Business' corresponding customer records and will transfer to the Purchaser the Divestment Business' corresponding current customer contracts regarding the supply of HAB in the Non-Audiologist Retail Channel in EMEA (to the extent not yet covered by the disclosure of records in paragraph 13 of these Commitments).
20. Where requested by the Purchaser and needed for the operation of the Divestment Business, the Notifying Party will provide for appropriate transitional service or supply arrangements, for appropriate duration [Duration and information on contractual terms]. A non-exhaustive list of possible TSAs is provided in Annex 17 to the Schedule.

Section D. The Purchaser

21. 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 Notifying Party and its Affiliated Undertakings (this being assessed having regard to the situation following the divestiture).
 - (b) The Purchaser shall have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Notifying Party 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. In particular, the Purchaser must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business.
22. The final binding sale and purchase agreement (as well as ancillary agreements) relating to the divestment of the Divestment Business shall be conditional on the Commission's approval. When the Notifying Party has reached an agreement with a purchaser, it shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), within one week to the Commission and the Monitoring Trustee. The Notifying Party must be able to demonstrate to the Commission that the purchaser fulfils the Purchaser Criteria and that the Divestment Business is being divested to a purchaser 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 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

23. The Notifying Party shall appoint a Monitoring Trustee to carry out the functions specified in these Commitments for a Monitoring Trustee. The Notifying Party commits not to close the Concentration before the appointment of a Monitoring Trustee.

24. If the Notifying Party has not entered into a binding sale and purchase 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 the Notifying Party at that time or thereafter, the Notifying Party shall appoint a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Trustee Divestiture Period.
25. The Trustee shall:
- (a) at the time of appointment, be independent of the Notifying Party and its Affiliated Undertakings;
 - (b) possess the necessary qualifications to carry out its mandate, for example have sufficient relevant experience as an investment banker or consultant or auditor; and
 - (c) neither have nor become exposed to a Conflict of Interest.
26. 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.
27. An R&D Technical Expert shall be appointed by and report to the Monitoring Trustee. The R&D Technical Expert will be independent of and will not have or be exposed to any conflict of interest in relation to the Parties. The Notifying Party and the Purchaser shall have the right to be heard with any reasoned objections as to the suitability of any R&D Technical Expert candidates, e.g., lack of competence or conflict of interest. In cases of controversy between the Notifying Party and the Monitoring Trustee, and/or the Purchaser and the Monitoring Trustee as to the suitability of the R&D Technical Expert candidate, the Commission will decide on the matter.

Proposal by the Notifying Party

28. No later than two weeks after the Effective Date, the Notifying Party shall submit the name or names of one or more natural or legal persons whom the Notifying Party 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, the Notifying Party shall submit a list of one or more persons whom the Notifying Party 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 25 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

29. The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one name is approved, the Notifying Party shall appoint or cause to be appointed the person or persons concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, the Notifying Party 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 the Notifying Party

30. If all the proposed Trustees are rejected, the Notifying Party 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 23 and 29 of these Commitments.

Trustee nominated by the Commission

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

II. Functions of the Trustee

32. The Trustee shall assume its specified duties and obligations in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or the Notifying Party, 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

33. 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. The Monitoring Trustee may, if he deems necessary, be assisted and advised by the R&D Technical Expert with regard to all R&D related questions concerning the Divestment Business. Any information provided to the Monitoring Trustee may also be exchanged with the R&D Technical Expert.
 - (ii) oversee, in close co-operation with the Hold Separate Manager and the R&D Technical Expert, the on-going management of the Divestment Business with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by the Notifying Party 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 saleable entity, in accordance with paragraph 9 of these Commitments;
 - (c) with respect to Confidential Information:
 - determine all necessary measures to ensure that the Notifying Party 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 relating to the Divestment Business obtained by the Notifying Party before the Effective Date is eliminated and will not be used by the Notifying Party and
 - decide whether such information may be disclosed to or kept by the Notifying Party as the disclosure is reasonably necessary to allow the Notifying Party to carry out the divestiture or as the disclosure is required by law;
 - (d) monitor the splitting of assets and the allocation of Personnel between the Divestment Business and the Notifying Party or Affiliated Undertakings;
- (iii) propose to the Notifying Party such measures as the Monitoring Trustee considers necessary to ensure the Notifying Party's compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the Divestment Business, the holding separate of the Divestment Business and the non-disclosure 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:
 - (a) potential purchasers receive sufficient and correct information relating to the Divestment Business and the Personnel in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process, and
 - (b) potential purchasers are granted reasonable access to the Personnel;
 - (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 the Notifying Party 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 and the allocation of Personnel 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 the Notifying Party a non-confidential copy at the same time, if it concludes on reasonable grounds that the Notifying Party is failing to comply with these Commitments;

- (viii) within one week after receipt of the documented proposal referred to in paragraph 22 of these Commitments, submit to the Commission, sending the Notifying Party 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 sale and as to whether the Divestment Business is sold in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the sale of the Divestment Business without one or more Assets or not all of the Personnel affects the viability of the Divestment Business after the sale, taking account of the proposed purchaser;
 - (ix) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision.
34. 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

35. 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 final binding sale and purchase agreement (and ancillary agreements) as in line with the Commission's Decision and the Commitments in accordance with paragraphs 21 and 22 of these Commitments. The Divestiture Trustee shall include in the sale and purchase agreement (as well as in any ancillary agreements) such terms and conditions as it considers appropriate for an expedient sale in the Trustee Divestiture Period. In particular, the Divestiture Trustee may include in the sale and purchase agreement such customary representations and warranties and indemnities as are reasonably required to effect the sale. The Divestiture Trustee shall protect the legitimate financial interests of the Notifying Party, subject to the Notifying Party's unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.
36. In the Trustee Divestiture Period (or otherwise at the Commission's request), the Divestiture Trustee shall provide the Commission with a comprehensive monthly report written in English on the progress of the divestiture process. Such reports shall be submitted within 15 days after the end of every month with a simultaneous copy to the Monitoring Trustee and a non-confidential copy to the Notifying Party.

III. Duties and obligations of the Parties

37. The Notifying Party shall provide and shall cause its advisors to provide the Trustee and the R&D Technical Expert with all such co-operation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee and the R&D Technical Expert shall have full and complete access to any of the Notifying Party'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 Energizer and the Divestment Business shall provide the Trustee and the R&D Technical Expert upon request with copies of any document. The Notifying Party and the Divestment Business shall make available to the Trustee and the R&D Technical Expert one or more offices on their premises and shall be available for meetings in order to provide the Trustee and the R&D Technical Expert with all information necessary for the performance of their tasks.
38. The Notifying Party 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. The Notifying Party 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. The Notifying Party 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.
39. The Notifying Party 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, the Notifying Party shall cause the documents required for effecting the sale and the Closing to be duly executed.
40. The Notifying Party shall indemnify the Trustee and its employees and agents and the R&D Technical Expert (each an "Indemnified Party") and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to the Notifying Party for, any liabilities arising out of the performance of the Trustee's and the R&D Technical Expert'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, the R&D Technical Expert, their employees, agents or advisors.
41. At the expense of the Notifying Party, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to the Notifying Party'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 the Notifying Party refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard the Notifying Party. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 40 of these Commitments shall apply *mutatis mutandis*. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served the

Notifying Party during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.

42. The Notifying Party agrees that the Commission may share Confidential Information proprietary to the Notifying Party with the Trustee and the R&D Technical Expert. The Trustee and the R&D Technical Expert shall not disclose such information and the principles contained in Article 17 (1) and (2) of the Merger Regulation apply mutatis mutandis.
43. The Notifying Party agrees 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.
44. For a period of 10 years from the Effective Date the Commission may request all information from the Notifying Party that is reasonably necessary to monitor the effective implementation of these Commitments.

IV. Replacement, discharge and reappointment of the Trustee

45. 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 the Notifying Party, require the Notifying Party to replace the Trustee; or
 - (b) the Notifying Party may, with the prior approval of the Commission, replace the Trustee.
46. If the Trustee is removed according to paragraph 45 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 23-31 of these Commitments.
47. Unless removed according to paragraph 45 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. Arbitration

48. In the event that the Purchaser claims that the Notifying Party or any Affiliated Undertaking is failing to comply with the requirements of the commitment described in paragraphs 16-19 above, the third party may choose to utilise the fast track dispute resolution procedure as described in this Section.

I. Fast Track Dispute Resolution

49. If the Purchaser wishes to avail itself of the fast track dispute resolution procedure, it shall send a written request to the Notifying Party (with a copy to the Monitoring Trustee) setting out in detail the reasons leading the Purchaser to believe that the Notifying Party is failing to comply with the requirements of these Commitments. The Purchaser and the Notifying Party will use their best efforts to resolve all differences of opinion and to settle

all disputes that may arise through cooperation and consultation within a reasonable period of time not exceeding fifteen (15) working days after receipt of the request.

50. The Monitoring Trustee shall present its own proposal (the "Trustee Proposal") for resolving the dispute within seven (7) business days, specifying in writing the action, if any, to be taken by the Notifying Party in order to ensure compliance with the Commitments vis-à-vis the Purchaser, and be prepared, if requested, to facilitate the settlement of the dispute.
51. Should the Purchaser and the Notifying Party (together "Parties to the Arbitration") fail to resolve their differences of opinion in the consultation phase, the Requesting Party shall serve a notice (the "Notice"), in the sense of a request for arbitration, to the London Court of International Arbitration (hereinafter the "Arbitral Institution") with a copy of such Notice to the Notifying Party.
52. The Notice shall set out in detail the dispute, difference or claim (the "Dispute") and shall contain, inter alia, all issues of both fact and law, including any suggestions as to the procedure, and all documents relied upon shall be attached, e.g. documents, agreements, expert reports, and witness statements. The Notice shall also contain a detailed description of the action to be undertaken by the Notifying Party.
53. The Notifying Party shall, within thirty (30) days from receipt of the Notice, submit its answer (the "Answer"), which shall provide detailed reasons for its conduct and set out, inter alia, all issues of both fact and law, including any suggestions as to the procedure, and all documents relied upon, e.g. documents, agreements, expert reports, and witness statements. The Answer shall, if appropriate, contain a detailed description of the action which the Notifying Party proposes to undertake vis-à-vis the Purchaser.

II. Appointment of the Arbitrators

54. The Arbitral Tribunal shall consist of three (3) persons. The Purchaser shall nominate its arbitrator in the Notice; the Notifying Party shall nominate its arbitrator in the Answer. The arbitrators nominated by the Purchaser and by the Notifying Party shall, within five (5) working days of the nomination of the latter, nominate the chairman, making such nomination known to the Parties to the Arbitration and the Arbitral Institution which shall forthwith confirm the appointment of all three (3) arbitrators.
55. Should the Parties to the Arbitration fail to nominate an arbitrator, or if the two (2) arbitrators fail to agree on the chairman the default appointment(s) shall be made by the Arbitral Institution.
56. The three-person arbitral tribunal is herein referred to as the "Arbitral Tribunal".

III. Arbitration Procedure

57. The Dispute shall be finally resolved by arbitration under the rules of the Arbitral Institution, with such modifications or adaptations as foreseen herein or necessary under the circumstances (the "Rules"). The arbitration shall be conducted in London, England, in the English language.
58. The procedure shall be a fast-track procedure. For this purpose, the Arbitral Tribunal shall shorten all applicable procedural time-limits under the Rules as far as admissible and appropriate in the circumstances. Parties to the Arbitration shall consent to the use of e-mail for the exchange of documents.
59. The Arbitral Tribunal shall, as soon as practical after the confirmation of the Arbitral Tribunal, hold an organisational conference to discuss any procedural issues with the Parties to the Arbitration. Terms of reference shall be drawn up and signed by the Parties

to the Arbitration and the Arbitration Tribunal at the organisational meeting or thereafter and a procedural time-table shall be established by the Arbitral Tribunal. An oral hearing shall, as a rule, be established within two months of the confirmation of the Arbitral Tribunal.

60. In order to enable the Arbitral Tribunal to reach a decision, it shall be entitled to request any relevant information from the Parties to the Arbitration, to appoint experts and to examine them at the hearing, and to establish the facts by all appropriate means. The Arbitral Tribunal is also entitled to ask for assistance by the Monitoring Trustee in all stages of the procedure.
61. The Arbitral Tribunal shall not disclose Confidential Information and apply the standards attributable to Confidential Information under the Merger Regulation. The Arbitral Tribunal may take the measures necessary for protecting confidential information in particular by restricting access to Confidential Information to the Arbitral Tribunal, the Monitoring Trustee and outside counsel and experts of the opposing party.
62. The burden of proof in any dispute under these Rules shall be borne as follows: (i) the Purchaser must produce evidence of a prima facie case and (ii) if the Purchaser produces evidence of a prima facie case, the Arbitral Tribunal must find in favour of the Purchaser unless the Notifying Party can produce evidence to the contrary.

IV. Involvement of the Commission

63. The Commission shall be allowed and enabled to participate in all stages of the procedure by:
 - (i) Receiving all written submissions (including documents and reports, etc.) made by the Parties to the Arbitration;
 - (ii) Receiving all orders, interim and final awards and other documents exchanged by the Arbitral Tribunal with the Parties to the Arbitration (including Terms of reference and procedural timetable);
 - (iii) Having the opportunity to file amicus curiae briefs; and
 - (iv) Being present at the hearing(s) and being allowed to ask questions to the Parties to the Arbitration, witnesses and experts.
64. The Arbitral Tribunal shall forward, or shall order the Parties to the Arbitration to forward, the documents mentioned to the Commission without delay.
65. In the event of disagreement between the Parties to the Arbitration regarding the interpretation of the Commitments, the Arbitral Tribunal may seek the Commission's interpretation of the Commitments before finding in favour of any Party to the Arbitration and shall be bound by the interpretation.

V. Decisions of the Arbitral Tribunal

66. The Arbitral Tribunal shall decide the dispute on the basis of the Commitments and the Decision. Issues not covered by these Commitments and the Decision shall be decided (in the order as stated) by reference to the Merger Regulation, EU law and the general principles of law common to the legal orders of the Member States without a requirement to apply a particular national system. The Arbitral Tribunal shall take all decisions by majority vote.
67. Upon request of the Purchaser, the Arbitral Tribunal may make a preliminary ruling on the Dispute. The preliminary ruling shall be rendered within one month after the confirmation

of the Arbitral Tribunal, shall be applicable immediately and, as a rule, remain in force until a final decision is rendered.

68. The Arbitral Tribunal shall, in the preliminary ruling as well as in the final award, specify the action, if any, to be taken by the Notifying Party or any Affiliated Undertaking in order to comply with these Commitments vis-à-vis the Purchaser (e.g. specify a contract including all relevant terms and conditions). The final award shall be final and binding on the Parties to the Arbitration and shall resolve the Dispute and determine any and all claims, motions or requests submitted to the Arbitral Tribunal. The arbitral award shall also determine the reimbursement of the costs of the successful Party to the Arbitration and the allocation of the arbitration costs. In case of granting a preliminary ruling or if otherwise appropriate, the Arbitral Tribunal shall specify that terms and conditions determined in the final award apply retroactively.
69. The final award shall, as a rule, be rendered within six (6) months after the date of the terms of reference. The time-frame shall, in any case, be extended by the time the Commission takes to submit an interpretation of these Commitments if asked by the Arbitral Tribunal.
70. The Parties to the Arbitration shall prepare a non-confidential version of the final award, without business secrets. The Commission may publish the non-confidential version of the award. Nothing in the arbitration procedure shall affect the power to the Commission to take decisions in relation to the Commitments in accordance with its powers under the Merger Regulation.

Section G The review clause

71. The Commission may extend the time periods foreseen in the Commitments in response to a request from the Notifying Party or, in appropriate cases, on its own initiative. Where the Notifying Party requests an extension of a time period, it shall submit a reasoned request to the Commission no later than one month before the expiry of that period, showing good cause. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to the Notifying Party. Only in exceptional circumstances shall the Notifying Party be entitled to request an extension within the last month of any period.
72. 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 the Notifying Party. 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 H. Entry into force

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

duly authorised for and on behalf of the Notifying Party

[...]

Authorized to sign on behalf of Energizer Holdings, Inc.
Based on a power of attorney dated 10 October 2018

Schedule to the EEA Commitments

- 1 The Divestment Business consists of Spectrum's Varta® consumer battery, chargers and portable power and lighting business in the EMEA region ("Europe, Middle East and Africa"). For the avoidance of doubt, this business does not include Spectrum's hearing aid batteries business, which is primarily marketed under the Rayovac® brand and has no sales of Varta® branded product. "EMEA" includes all of Europe, the Middle East and Africa. A full list of the 103 divestment countries is included in **Annex 16**.
- 2 The legal ownership structure and organisational structure of the Divestment Business is laid out in **Annex 1**[Detailed description of Annex 1].
- 3 The functional structure charts of the Divestment Business, [Detailed description of Annex 2] are provided in **Annex 2**.
- 4 In accordance to paragraph 5 of the Commitments, the Divestment Business includes, but is not limited to, the following tangible and intangible assets:
 - 4.1 Main tangible assets included in the Divestment Business:
 - Dischingen production facility. The alkaline production facility in Dischingen (Germany), [Detailed description of Annex 3].
 - Facilities. A complete list of the facilities used by the Divestment Business, [Detailed description of Annex 4] is provided in **Annex 4**.
 - IT organisation/infrastructure. A description of the functional structure of the IT organisation, the IT applications and the IT infrastructure and hardware used by the Divestment Business, [Detailed description of Annex 5], is provided in **Annex 5**.
 - Raw materials/inventories/work in progress. The Divestment Business will also include all existing raw material, work in progress, and semi-finished and finished goods inventory of the Divestment Business as of the Effective Date of the Commitments.
 - 4.2 Main Intangible assets included in the Divestment Business:
 - Varta® trademarks [Detailed description of Annex 6] A complete list these trademarks is included in **Annex 6**.
 - Other IP rights and Information. The Divestment Business will also include Information, IP Rights necessary for use by the Divestment Business [Information on IP Rights and Information included in the Divestment]. These patents are listed in **Annex 7**.
 - Data, books and records. All relevant data, books and records, including but not limited to business records, personnel records, supplier and customer records pertaining to the Divestment Business (in full or in part, but excluding all information in relation to activities not included in the Divestment Business).
 - Customers. A list of the EEA customers of the Divestment Business for FY2017 [Information on contractual relations with third parties] is provided in **Annex 8**.

- Personnel / Key Personnel. A breakdown of the headcount of the Divestment Business is provided in **Annex 9** and a list of the key personnel of the Divestment Business [Information on strategy] is provided in **Annex 10**.
- Government licenses/permits/authorisations. All governmental licenses, permits and authorisations related to the Divestment Business, including but not limited to marketing authorisations and manufacturing licenses.
- Supply contracts. The finished products and raw material supply contracts shall be transferred to the Divested Business by way of partial or complete assignment (as applicable) or back-to-back arrangements as set out in Section 5(c) of the Commitments.
 - A list of all **finished products** supply arrangements of the Divestment Business is provided in **Annex 11**.
 - A list of the **raw material** supply arrangements of the Divestment Business [Information on contractual relations with third parties] is provided in **Annex 12**.
- Distribution agreements. A list of the distribution arrangements of the Divestment Business is provided in **Annex 13**.
- IT applications. All the IT applications / software tools listed in **Annex 5** (already provided above in connection with the IT organisation/infrastructure) or alternatively a non-exclusive, perpetual, irrevocable, royalty-free (sub)license to use the software tools that are currently in use by the Divestment Business. In the event that materials to be transferred contain information that is confidential to any retained business and not relevant for the Divestment Business, this information shall be redacted as appropriate.
- R&D. The tangible and intangible assets used in the R&D function of Spectrum's global battery business, [Localisation of Spectrum's global battery business]. An overview of the R&D costs and the R&D equipment of the Divestment Business is provided in **Annex 14**.

With respect to R&D, Energizer commits to grant the Divestment Business access to the same capabilities that it currently enjoys. [Detailed description of the commitment].

- A list of the R&D projects of the Divestment Business is provided in **Appendix 14.1**.
- A list of the R&D personnel with responsibilities to the Divestment Business [Detailed description of Appendix 14.2], as well as the percentage of time they spend on Varta® Europe projects is provided as **Appendix 14.2**. [Information on R&D]¹;
- Customer contracts. All customer contracts, framework agreements and orders pertaining to the Divestment Business.
- Insurance policies. The Divestment Business will include insurance policies primarily related to the business.

¹ [Information on R&D]

- 4.3 If there is any tangible or intangible asset or personnel which is not covered by paragraphs 4.1 and 4.2 of this Schedule but which is (i) used by the Divestment Business; and (ii) contributes to the continued viability and competitiveness of the Divestment Business, that asset or adequate substitute shall be transferred to the Purchaser. This includes all the R&D personnel that is deemed necessary to the Divestment Business, under the supervision of the Monitoring Trustee with the support of the R&D Technical Expert.
- 5 With respect to Spectrum's hearing aid batteries business, Energizer commits to enter into an exclusive supply agreement with the Divestment Business for Rayovac®-branded hearing aid batteries [Information on contractual terms]. The purpose of the Supply Agreement is to allow the Purchaser to continue to supply Rayovac® branded hearing aid batteries to the Non-Audiologist Retail Channel in EMEA, on an exclusive basis. **Annex 15** provides a list of the relevant customers in relation to the proposed remedy in the Non-Audiologist Retail Channel in EMEA.
- 6 Where requested by the Purchaser and needed for the operation of the Divestment Business, Energizer will provide for appropriate transitional service or supply arrangements ("TSAs"), [Information on duration and contractual terms] A non-exhaustive list of possible TSAs is provided in **Annex 17**.

Annex 1
Legal ownership structure and organisational structure chart of the Divestment Business
[Confidential]

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Annex 2
Functional Structure Charts of Divestment Business
[Confidential]

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Annex 3
Description of the Dischingen manufacturing facility
[Confidential]

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Annex 4
List of Facilities
[Confidential]

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Annex 5
IT Organisation / IT applications / IT Infrastructure
[Confidential]

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Annex 6
List of Trademarks used by the Divestment Business
[Confidential]

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Annex 7
List of Consumer Battery Patents to be Assigned to the Divestment Business
[Confidential]

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Annex 8
List of customers of the Divestment Business in the EEA
[Confidential]

List of customers of the Divestment Business in the EMEA region (excluding the EEA)
[Confidential]

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Annex 9
Headcount of the Divestment Business
[Confidential]

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Annex 10
Key Personnel of the Divestment Business
[Confidential]

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Annex 11
List of all finished products supply arrangements of the Divestment Business
[Confidential]

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Annex 12
List of raw material supply arrangements of the Divestment Business
[Confidential]

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Annex 13
List of Distribution arrangements of Divestment Business
[Confidential]

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Annex 14
R&D of the Divestment Business
[Confidential]

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Appendix 14.1
[Confidential]

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Appendix 14.2
[Confidential]

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Annex 15
List of the relevant customers in the Non-Audiologist Retail Channel in EMEA
[Confidential]

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Annex 16
Countries included in EMEA
[Confidential]

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Annex 17
List of TSAs
[Confidential]