



EUROPEAN COMMISSION  
DG Competition

***Case M.10651 - FAERCH / PACCOR***

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 11/08/2022

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## EUROPEAN COMMISSION

Brussels, 11.08.2022  
C(2022) 5950 final

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Faerch A/S  
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Denmark

**Subject: Case M.10651 – FAERCH / PACCOR  
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004<sup>1</sup> and Article 57 of the Agreement on the European Economic Area<sup>2</sup>**

Dear Sir or Madam,

- (1) On 6 July 2022, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Faerch A/S ('Faerch' or the 'Notifying Party', Denmark) acquires within the meaning of Article 3(1)(b) sole control of the whole of PACCOR Holdings GmbH ('Paccor', Germany). The proposed acquisition takes place by way of purchase of shares (the 'Proposed Transaction').<sup>3</sup> Faerch and Paccor are referred to as the 'Parties' and together as the 'Merged Entity'.

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

<sup>2</sup> OJ L 1, 3.1.1994, p. 3 (the 'EEA Agreement').

<sup>3</sup> Publication in the Official Journal of the European Union No C 269, 13.7.2022, p. 30.

## **1. THE PARTIES AND THE OPERATION**

- (2) Faerch, headquartered in Denmark, is a subsidiary of APMH Invest A/S, which is wholly owned and controlled by A.P. Møller Holding A/S ('APMH'), which is wholly owned and controlled by a foundation, A.P. Møller og Hustru Chastine Mc-Kinney Møllers Fond til almene Formaal. Faerch is a European manufacturer and distributor of plastic packaging. It produces rigid plastic packaging by use of all major resins, principally for the food industry in Europe, including namely ready-meals, food-to-go, and fresh meat solutions.
- (3) Paccor is headquartered in Germany, and indirectly wholly owned and controlled by Goldberg Lindsay & Co. via its controlled group companies or related entities Atlas Flexibles Coöperatief U.A., a cooperative with excluded liability incorporated under the laws of the Netherlands, and Lindsay Goldberg Europe GmbH, a limited liability company incorporated under the laws of Germany (together 'the Sellers'). Paccor is a manufacturer and distributor of plastic packaging. It produces rigid plastic packaging by use of all major plastic resins for food, principally Dairy and industrial food, and to a lesser extent non-food applications. PACCOR UK Limited and PACCOR (Mansfield) UK Limited, both wholly owned by Paccor, have been carved out of the Transaction.
- (4) Pursuant to a Share and Loan Purchase Agreement signed by the Parties on 28/29 December 2021, Faerch will acquire 100% of the shares with all rights attaching to them in Paccor from the Sellers.
- (5) It follows that the Proposed Transaction is a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

## **2. UNION DIMENSION**

- (6) The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 000 million (Faerch<sup>4</sup>: EUR [...] in 2020<sup>5</sup>; Paccor: EUR [...] in 2020). Each of them has an EU-wide turnover in excess of EUR 250 million (Faerch: EUR [...] in 2020; Paccor: EUR [...] in 2020). Furthermore, the Parties do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has an EU dimension.

## **3. RELEVANT MARKETS**

- (7) Faerch and Paccor are both active in the manufacture and supply of rigid plastic packaging for food and non-food applications. The Proposed Transaction gives rise to horizontally affected markets in the manufacture and supply of rigid plastic packaging – in particular for food.
- (8) The Proposed Transaction also gives rise to vertical relationships due to Faerch's limited external sales of PET<sup>6</sup> resin and extruded plastic sheets. The manufacture

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<sup>4</sup> The turnover of Faerch includes APMH's group turnover.

<sup>5</sup> The Parties' 2021 turnovers do not differ from 2020 figures in a way to impact the identified EU dimension of the notified operation.

<sup>6</sup> PET - Polyethylene Terephthalate.

and sale of PET resin and extruded plastic sheets are markets upstream of the manufacture and supply of rigid plastic packaging (where Faerch and Paccor are active).

### **3.1. Relevant product markets**

#### *3.1.1. Rigid plastic packaging for food*

##### 3.1.1.1. The Commission's past practice

(9) The Commission in a previous decision considered that rigid plastic packaging constitutes a distinct product market separate from other forms of packaging such as metal, but ultimately left the product market open.<sup>7</sup> In other previous decisions, the Commission considered a further distinction based on production method (Thermoforming and Injection moulding) and resin type (PP, PS and EPS),<sup>8</sup> but left the exact product market definition open.<sup>9</sup> While the Commission has previously not decided on distinctions by end-use applications in relation to rigid plastic packaging, it has noted limits to substitutability between rigid plastic packaging products for food and for non-food applications.<sup>10</sup> Further, in relation to flexible plastic packaging, the Commission considered food separately from other applications.<sup>11</sup>

##### 3.1.1.2. The Notifying Party's view

(10) The Notifying Party submits that there is significant competitive pressure on rigid plastic packaging by non-plastic packaging materials and flexible plastic packaging.<sup>12</sup> The Notifying Party nevertheless submits that the narrowest plausible product market is that for the manufacture and supply of rigid plastic packaging.<sup>13</sup> No further distinction between rigid plastic packaging for food and non-food is necessary as they are made with the same machinery and resins.<sup>14</sup> Similarly, the Notifying Party argues that any other or further segmentations would be excessively narrow (e.g. by resin type, food type or production method), due to significant supply- and demand-side substitutability.<sup>15</sup>

##### 3.1.1.3. The Commission's assessment

###### 3.1.1.3.1. Rigid plastic packaging is a market distinct from other types of packaging

(11) The market investigation points to the fact that there is limited supply- and demand-side substitutability between rigid plastic packaging and other types of

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<sup>7</sup> Commission decision of 25 March 2011 in Case M.6128 - Blackstone/Mivisa, paras 20-22.

<sup>8</sup> PP – Polypropylene; PS – Polystyrene; XPS/EPS - Expanded polystyrene foam.

<sup>9</sup> Commission decision of 23 September 1999 in Case M.1656 – Huhtamäki Oyj/Royal Packaging Industries Van Leer NV, paras 7-17; Commission decision of 1 February 1999 in Case M.1400 – Rexam/PLM, paras 8-19.

<sup>10</sup> See e.g. Commission decision of 23 September 1999 in Case M.1656 - Huhtamäki Oyj/Royal Packaging Industries Van Leer NV, para. 15.

<sup>11</sup> Commission decision of 29 September 2003 in Case M.3225 - Alcan/Pechiney, para. 128.

<sup>12</sup> Form CO, para 207.

<sup>13</sup> Form CO, para 209.

<sup>14</sup> Form CO, para 210.

<sup>15</sup> Form CO, paras 211-225.

packaging. The majority of respondents, both customers and competitors, stated that they would not easily be able to switch their purchases or production of rigid plastic packaging to that of other types of packaging.<sup>16</sup>

- (12) In particular, customers explained that, from a technical standpoint, it would be difficult to switch their packaging lines from rigid plastic packaging to other types of packaging.<sup>17</sup> One customer stated that such a change ‘[...] *would imply heavy investment in new and different packaging lines for many of our food producing customers*’.<sup>18</sup> Some customers expressed the view that such a switch would degrade the quality of the final product, with one stating that ‘[d]airy products require barrier packaging to keep product safe’,<sup>19</sup> and another that ‘[...] *product shelflife will be much shorter*’.<sup>20</sup> Competitors expressed similar views, stating that their production technologies cannot be used with materials other than rigid plastic packaging, with one competitor stating that ‘[o]ur production capacities are specific for plastic extrusion, and can only be conditioned to work to other polymers. But never for paper, glass or aluminium. These are other technologies’.<sup>21</sup> Another competitor submitted that ‘[a] switch to different packaging materials would involve quite extensive costs for new machinery, and extensive training of personnel’.<sup>22</sup>
- (13) Therefore, the Commission considers rigid plastic packaging to be a market distinct from other types of packaging.

3.1.1.3.2. Rigid plastic packaging for food is a market distinct from rigid plastic packaging for non-food

- (14) The Commission has investigated whether rigid plastic packaging should be further segmented between food and non-food applications. In a related product market, the Commission found that flexible plastic packaging for food applications and for non-food applications constituted separate product markets.<sup>23</sup> In the present case, the evidence also supports such a distinction. Indeed, a majority of both customers and competitors expressing their view indicated that there exist significant differences between rigid plastic packaging for food and for non-food applications.<sup>24</sup>
- (15) Market participants pointed in particular to stricter regulatory standards for rigid plastic packaging for food applications, with one customer citing ‘[c]onformity with the complex and severe European direct food contact legislation to be respected and declared, for food applications, which does not apply to non-food applications’<sup>25</sup> as a key difference. Competitors have expressed similar views with

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<sup>16</sup> Responses to Questionnaires to Customers, question 9; Responses to Questionnaires to Competitors, question 7.

<sup>17</sup> Responses to Questionnaire to Customers, question 9.1.

<sup>18</sup> Responses to Questionnaires to Customers, question 9.1.

<sup>19</sup> Responses to Questionnaires to Customers, question 9.1.

<sup>20</sup> Responses to Questionnaires to Customers, question 9.1.

<sup>21</sup> Responses to Questionnaires to Competitors, question 7.1.

<sup>22</sup> Responses to Questionnaires to Competitors, question 7.1.

<sup>23</sup> Commission decision of 29 September 2003 in Case M.3225 - Alcan/Pechiney, para. 128.

<sup>24</sup> Responses to Questionnaires to Customers, question 10; responses to Questionnaires to Competitors, question 9.

<sup>25</sup> Responses to Questionnaires to Customers, question 10.1.

regards to stricter regulatory requirements, with one competitor pointing out that *‘[w]hile food approved A-pet sheet can be used for [n]on-food applications, A-pet sheet which is not food approved [cannot] be used for food applications’*.<sup>26</sup> Another has stated that *‘[requirements] for food safety imposed by EFSA and the Quality norms are much more strict’*.<sup>27</sup>

- (16) Therefore, the Commission considers rigid plastic packaging for food to be a market distinct from rigid plastic packaging for non-food applications.
- (17) The Commission has also investigated whether it would be appropriate to further sub-segment rigid plastic packaging for food applications alternatively by end-use (i.e. Dairy, Ready Meals (microwaveable), Ready Meals (oven heatable), Food-To-Go, Fresh Meat, Food Service, others),<sup>28</sup> resin type (i.e. APET, CPET, PP, PS, XPS/EPS, PVC and others),<sup>29</sup> and production method (i.e. Thermoforming, Injection moulding, Form, Fill, and Seal, and other technologies).

#### 3.1.1.3.3. Further segmentation of rigid plastic packaging for food by end-use

- (18) There are factors that point to some supply- and demand-side substitutability with regards to end-use. In particular, for a specific end-use, in the majority of cases, customers indicated that, for a given end-use, they would be able to purchase rigid plastic packaging made with at least two different production technologies, and produced from at least two different resin types (the exception would be for Ready-Meals (oven heatable), as this end-use heavily relies on CPET).<sup>30</sup>
- (19) Nevertheless, there are clear limitations on the demand-side substitutability with regards to a further segmentation by end-use. For example, only certain resins may be used in a microwave or in the oven, due to higher temperature requirements. Some types of food similarly require specific resins. Furthermore, a majority of customers submit that, in the process of their procurement of rigid plastic packaging for food applications, the intended end-use of the packaged product features in their discussions with their suppliers, as the end-use is relevant for the formulation (i.e. technology and resin type) of the rigid plastic packaging.<sup>31</sup> In this context, a customer submits that *‘[...] every food needs suitable packaging based on intrinsic peculiarities of the product that must be preserved [...]’*.<sup>32</sup> Another customer submits that *‘[e]nd use is normally commented because a supplier may be able to supply [useful] information for production process, shelf life, cost reduction, etc’*.<sup>33</sup> Competitors have broadly expressed similar views.<sup>34</sup>
- (20) Similarly, a majority of competitors indicated they could in a short matter of time and without incurring significant costs switch their production lines from one type of end-use to another type of end-use. For a given end-use, competitors have

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<sup>26</sup> Responses to Questionnaires to Competitors, question 9.2.

<sup>27</sup> Responses to Questionnaires to Competitors, question 9.1.

<sup>28</sup> This is Faerch’s internal end-use classification.

<sup>29</sup> APET - Amorphous Polyethylene Terephthalate; CPET - Crystalline Polyethylene Terephthalate; PVC - Polyvinyl Chloride.

<sup>30</sup> Responses to Questionnaires to Customers, questions 15 and 16.

<sup>31</sup> Responses to Questionnaires to Customers, question 11, question 11.1.

<sup>32</sup> Responses to Questionnaires to Customers, question 11.1.

<sup>33</sup> Responses to Questionnaires to Customers, question 11.1.

<sup>34</sup> Responses to Questionnaires to Competitors, question 10.1.

indicated that they can supply packaging made from at least two different resins.<sup>35</sup> However, there are also limitations on the supply-side substitutability with regards to end-use. Some competitors submit that switching a production line from one type of end-use to another one requires changing the tool and depending on the specific application, it could lead to significant costs.<sup>36</sup>

- (21) It is therefore the case that, while there is some demand-and-supply-side substitutability between rigid plastic packaging segmented by end-use, there are clear limitations to this substitutability, which could support the definition of separate product markets.
- (22) In any event, for the purposes of this decision the question whether a definition of separate product markets by end-use is appropriate can be left open, since in all plausible market definitions considered, the Proposed Transaction does not raise concerns as to its compatibility with the internal market or any part thereof.

#### 3.1.1.3.4. Further segmentation of rigid plastic packaging for food by resin type

- (23) With regards to a possible further segmentation of rigid plastic packaging by resin type, there is a degree of demand-side substitutability. On the demand-side, the market investigation points to the fact that customers generally source more than one type of resin for a given end-use, and that they would be able in some cases to switch a product with a given resin-type to another.<sup>37</sup> In particular, one customer explained that it is *'[m]ost of the times substitutable by at least one other resin type'*.<sup>38</sup> Competitors have similarly indicated that, for a given end-use, it is possible in some or most cases, to substitute one type of resin for another.<sup>39</sup>
- (24) Nevertheless, this substitutability is limited. On the demand side, for example, only certain types of resins can be used in a microwave or in the oven. In this context, one customer submitted that *'[t]his is all depending on the properties needed for micro and oven'*.<sup>40</sup> A competitor has stated that *'[i]t depends on the end-use (cold use, hot use, sealable, [...]'*.<sup>41</sup> Furthermore, different resins present different characteristics in terms of price, recyclability, technical characteristics such as heat resistance, and so on.<sup>42</sup>
- (25) On the supply side, manufacturers of rigid plastic packaging have some ability to switch between different resins, but have differing levels of expertise and are limited by having to avoid cross-contamination across production lines.<sup>43</sup> In this context, one competitor stated that *'[d]ifferent resins require different types of molds and production processes'*.<sup>44</sup> Another competitor similarly stated that *'[t]o switch to another resin only involves using a different roll of sheet. However many*

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<sup>35</sup> Responses to Questionnaires to Competitors, questions 14 and 15.

<sup>36</sup> Responses to Questionnaires to Competitors, questions 12.1 and 12.1.1.

<sup>37</sup> Responses to Questionnaires to Customers, questions 13 and 15.

<sup>38</sup> Responses to Questionnaires to Customers, question 13.1.

<sup>39</sup> Responses to Questionnaires to Competitors, question 13.

<sup>40</sup> Responses to Questionnaires to Customers, question 13.1.

<sup>41</sup> Responses to Questionnaires to Competitors, question 13.1.

<sup>42</sup> Responses to Questionnaires to Customers, question 17; responses to Questionnaires to Competitors, question 17.

<sup>43</sup> Responses to Questionnaires to Competitors, question 12.2.1; Form CO, para 129.

<sup>44</sup> Responses to Questionnaires to Competitors, question 12.2.1.

*tools are specific to a certain type of resin. Some resins behave differently when heated, and therefore sheets of different resins are not always interchangeable’.*<sup>45</sup>

- (26) It is therefore the case that, while there is some demand-side substitutability between rigid plastic packaging segmented by resin type, there are clear limitations to this substitutability, which could lead to a separate product market definition.
- (27) In any event, for the purposes of this decision the question whether a definition of separate product markets by resin type is appropriate can be left open, since in all plausible market definitions considered, the Proposed Transaction does not raise concerns as to its compatibility with the internal market or any part thereof.

3.1.1.3.5. Further segmentation of rigid plastic packaging for food by production method

- (28) With regards to a possible further segmentation of rigid plastic packaging by production method, the market investigation indicates that there exists some demand-side substitutability. On the demand side, a majority of customers have indicated that it is sometimes possible to switch from a rigid plastic packaging product produced with one production method to another.<sup>46</sup> In this context, a customer submits that *‘[m]ethod - different methods, different possibilities to get shape of packaging’*.<sup>47</sup>
- (29) However, market participants have indicated that there exist different characteristics per technology. For example, Thermoforming is generally cheaper than Injection moulding: one customer stated that *‘[y]ou can change but thermoforming is most of the time the cheapest, so if [Thermoforming] fits for your application, you will not change to another one’*.<sup>48</sup> Injection moulding, on the other hand, is better suited to large production runs, and, allows for a greater range of decoration methods.<sup>49</sup>
- (30) With regards to supply-side substitutability, a majority of competitors have stated that they would not be able to rapidly adapt their production lines from one technology to the other. Indeed, one competitor stated that such a move would require *‘[...] new machines and time to obtain them’*,<sup>50</sup> and another that *‘[...] if you don’t have available capacities it means investments and this takes between 6 and 12 months’*.<sup>51</sup>
- (31) It is therefore the case that, while there is some demand- and supply-side substitutability between rigid plastic packaging segmented by production method, there are clear limitations to this substitutability, which could lead to a separate product market definition.

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<sup>45</sup> Responses to Questionnaires to Competitors, question 12.2.1.

<sup>46</sup> Responses to Questionnaires to Customers, question 14.

<sup>47</sup> Responses to Questionnaires to Customers, question 12.1.

<sup>48</sup> Responses to Questionnaires to Customers, question 14.1.

<sup>49</sup> Responses to Questionnaires to Customers, question 18.

<sup>50</sup> Responses to Questionnaires to Competitors, question 12.3.1.

<sup>51</sup> Responses to Questionnaires to Competitors, question 12.3.1.

- (32) In any event, for the purposes of this decision the question of whether a definition of separate product markets by production method is appropriate can be left open, since in all plausible market definitions considered, the Proposed Transaction does not raise concerns as to its compatibility with the internal market or any part thereof.

#### 3.1.1.3.6. Conclusion

- (33) In view of the considerations outlined in Section 3.1.1, it appears that the market for the production and supply of rigid plastic packaging for food could be further sub-segmented by resin type, production method, and intended end-use. Nevertheless, this question can be left open, as regardless the Proposed Transaction does not raise concerns as to its compatibility with the internal market or any part thereof.

#### 3.1.2. *PET resin*

- (34) In previous decisions, the Commission has considered PET resin to be a separate product market, which could potentially be sub-segmented into bottle grade, fibre grade and film grade, but ultimately left the exact product market definition open.<sup>52</sup>
- (35) The question whether the relevant market comprises any type of PET resin or a distinction should be made between bottle grade, fibre grade and film grade can be left open in the present case because the Proposed Transaction does not raise concerns as to its compatibility with the internal market or any part thereof, regardless of the answer to that question.

#### 3.1.3. *Extruded plastic sheets*

- (36) In relation to food, extruded plastic sheets are used in the Thermoforming or Form, Fill and Seal process of producing rigid plastic packaging products. [Non-public strategic decision]. The Commission has not considered extruded plastic sheets in any previous decisions. [Faerch's internal classification].
- (37) For the purpose of this decision, the question whether the relevant market comprises all extruded plastic sheets or a distinction should be made between different types of extruded plastic sheets, can be left open because the Proposed Transaction does not raise concerns as to its compatibility with the internal market or any part thereof, regardless of the answer to that question.

### **3.2. Relevant geographic markets**

#### 3.2.1. *Rigid plastic packaging*

##### 3.2.1.1. The Commission's past practice

- (38) In previous decisions the Commission has generally considered the relevant geographic market for (plastic) packaging to be EEA-wide or wider.<sup>53</sup>

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<sup>52</sup> Commission decisions of 18 March 2016 in case M.7918 - Indorama Netherlands/Guadarranque Polyester, paras. 29-33, and of 11 June 2015 in case M.7484 - Plastipak/APPE, paras. 12-15.

- (39) In relation to rigid plastic packaging specifically, the Commission in a previous decision noted that while there is a trend towards pan-European sourcing, *‘the markets are presently largely national or regional’* (due to importance of local presence and supply reliability).<sup>54</sup> The exact geographic market definition was left open. In another previous decision related to rigid plastic packaging, the Commission found a *‘strong indication that the geographic market is not European-wide’* but rather narrower, due to significant transport costs and the *‘economical transportation distance [being] max. 1000 km within Western Europe’*.<sup>55</sup> The exact geographic market definition was also left open.

#### 3.2.1.2. The Notifying Party’s view

- (40) The Notifying Party puts forward the argument that the relevant geographic market (for the whole packaging industry and for rigid plastic packaging in particular) is EEA-wide. The Notifying Party in this context submits that there are no significant barriers for cross-border sales within the EEA (harmonized regulatory framework, low transport costs) and that the Parties serve customers across borders. Further, there are no appreciable national or local customer preferences which can impede a manufacturer’s ability to compete for customers in other member states. In fact, it is often feasible to supply rigid plastic packaging even beyond distances of 1000 km. Generally, the production sites of the Notifying Parties supply both customers in the country in which they are located, and customers in other European countries – customers therefore source rigid plastic packaging across borders.

#### 3.2.1.3. The Commission’s assessment

- (41) Based on the market investigation, it appears that in line with the considerations from preceding decisions, the relevant geographic market is likely narrower than EEA-wide, but wider than national. Both customers and competitors describe a number of factors that limit their ability to source or supply rigid plastic packaging for food over very long distances in the EEA. Nevertheless, market participants consider the relevant geographic scope for sourcing or supplying rigid plastic packaging for food to be wider than national.

##### 3.2.1.3.1. Factors that determine the transport distance of rigid plastic packaging

- (42) Considering which factors are important in determining the distance at which they can procure rigid plastic packaging, customers name security of supply as the most important, followed by transport costs and environmental considerations. The proximity of suppliers for aftersales services and national customer preferences play less important roles.<sup>56</sup> One customer explains in this context that *‘[s]ecurity of fast enough supply at an affordable transport cost is essential for our competitiveness’*.<sup>57</sup> Another customer submits: *‘Our factory stops if we do not have*

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<sup>53</sup> See Commission’s decision of 25 March 2011 in Case M.6128 - Blackstone/Mivisa, paras. 20-22; of 11 February 2019 in Case M.9094 - Amcor/Bemis, paras. 68-70; of 25 August 2016 in Case M.8107 - CVC/AR Packaging, para. 14; of 14 December 2009 in Case M.5599 - Amcor/Alcan, para. 47; and of 29 August 2012 in Case M.6668 – Mondi/Nordenia, paras. 20-21.

<sup>54</sup> Commission decision of 23 September 1999 in Case M.1656 - Huhtamäki Oyj/Royal Packaging Industries Van Leer NV, paras. 21-23.

<sup>55</sup> Commission decision of 1 February 1999 in Case M.1400 - Rexam/PLM, paras. 20-22.

<sup>56</sup> Responses to Questionnaire to Customers, question 27.

<sup>57</sup> Response to Questionnaire to Customers, question 27.1.

*trays in time. We can't have huge stocks, so fluent incoming flow of trays is vital. Environmental issues are [be]coming more important and usage of gas trucks etc. methods that are better for environment is rising*'.<sup>58</sup> A further customer explains that *'transport is important as price is. But environmental considerations are also crucial to our customers and us'*.<sup>59</sup>

- (43) Suppliers provide a similar ranking of factors that determine the distance at which they are able to sell rigid plastic packaging.<sup>60</sup> A competitor to the Parties explains that as it works *'for the foods industry it is always essential to secure supply but transport costs are also very crucial in such a price sensitive market'*.<sup>61</sup> Another supplier explains that the reason why it does *'not [...] ship products for a distance longer than 500 km is that although the packaging products are quite lightweight, they take a lot of space in a truck. The products have to be stacked one on top of the other and always to have distance between them because otherwise it would not be convenient and easy for the customer to unstack them. Customers order these products in quantities of millions of units, so [the Company] has to hire many trucks for their transportation. In addition, climate conditions can affect the quality of the products, since high temperatures in the truck for long hours can alter the composition of the plastic product'*.<sup>62</sup>
- (44) These considerations show that transport distance is clearly a factor of importance for market participants. The need to ensure a steady and secure supply of rigid plastic packaging for food for example limits customer's options in terms of the distance from which they source.
- (45) While transport costs are not very high, they are nevertheless a relevant consideration of market participants. Transport costs are estimated by market participants expressing a view to be in the range of 4-10% on average.<sup>63</sup> However, transport costs vary. As one customer explains: *'Prices are varying a lot based on how many trays go for a pallet. We pay transportation based per pallet quantity. Only full trucks, 50 pallets on each trailer'*.<sup>64</sup> Another customer explains that transport costs *'depend [...] on weight, # products per shipment, # shipments / year, distance between sites'*.<sup>65</sup>

#### 3.2.1.3.2. Typical geographic scope of rigid plastic packaging sales and purchases

- (46) A majority of customers expressing their view submits that the average transport distance of rigid plastic packaging is 500 km or less.<sup>66</sup> One customer in this context explains that it has *'2 suppling factories quite close by and one is far from us, so the average would be 500 or less'*.<sup>67</sup> Similarly, a majority of competitors expressing their view submits that the distance at which their factories deliver 80%

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<sup>58</sup> Response to Questionnaire to Customers, question 27.1.

<sup>59</sup> Response to Questionnaire to Customers, question 27.1.

<sup>60</sup> Responses to Questionnaire to Competitors, question 31.

<sup>61</sup> Response to Questionnaire to Competitors, question 31.1.

<sup>62</sup> Minutes of a call with a competitor, 2 June 2022.

<sup>63</sup> Responses to Questionnaire to Customers, question 26, and responses to Questionnaire to Competitors, question 30.

<sup>64</sup> Response to Questionnaire to Customers, question 26.1.

<sup>65</sup> Response to Questionnaire to Customers, question 26.1.

<sup>66</sup> Responses to Questionnaire to Customers, question 23.

<sup>67</sup> Response to Questionnaire to Customers, question 23.1.

of their annual sales of rigid plastic packaging for food is 500 km, while some suppliers also indicate that the respective radius for them is up to 1000 km or even wider.<sup>68</sup> In this context, a competitor explains that it *‘has a local footprint, meaning it supplies customers in a relatively small distance from its production facilities. The reason behind this is the transport cost efficiency. It is not efficient and sustainable for the Company to ship a product for more than 500-600 km. Further shipments would not be efficient because the transport cost would become a too high % of the total product cost’*.<sup>69</sup> Another competitor submits that *‘[t]he average transport distance from plants to customers varies significantly and depends on the packaging format, however it is common to transport rigid plastic packaging over hundreds of km. At the extreme end of the range, the minimum economic transport distance will still be circa 300 km, as plastic packaging is typically a very small component of overall end product cost’*.<sup>70</sup> The Notifying Parties themselves indicate distances at which their plants sell 80% of their rigid plastic packaging output in the EEA of between [ $<500$ ] km and [ $>1000$ ] km, depending on the plant (with the average appearing to be around [500-1000] km).<sup>71</sup>

- (47) The above-mentioned distances appear to indicate that the geographical market may be wider than national, but is likely narrower than EEA-wide. This is further confirmed by the majority of customers and competitors expressing their view indicating that they procure or sell 41% or more of their rigid plastic packaging on a regional level in the EEA (i.e. Northern Europe, Central Europe, etc.). Only very few customers and competitors indicate that they procure or sell meaningful quantities of rigid plastic packaging for food from/to an area that is outside their respective region of the EEA (i.e. Northern Europe, Central Europe, etc.).<sup>72</sup>
- (48) This regional geographic outlook of market participants is further confirmed when they are asked to consider the area in which they are able to replace the loss of a supplier or a customer. A large majority of customers expressing their view submit that if their current source of rigid plastic packaging supply would no longer be available, the geographical area in which they could relatively quickly and without incurring significant costs find a new supplier is the regional level in the EEA (i.e. Northern Europe, Central Europe, etc.).<sup>73</sup> Most suppliers expressing a view on the question in what geographical area they could quickly and without incurring significant costs typically find a new customer if they lose an existing one, submit that they could do so at the national level or the regional level in the EEA (i.e. Northern Europe, Central Europe, etc.).<sup>74</sup>

### 3.2.1.3.3. Conclusion

- (49) Based on the considerations in Section 3.2.1, it appears that a catchment area-based geographic market definition would be most appropriate. Customers clearly regularly consider suppliers that are located outside of the country in which their

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<sup>68</sup> Responses to Questionnaire to Competitors, question 27.

<sup>69</sup> Response to Questionnaire to Competitors, question 27.1.

<sup>70</sup> Minutes of a call with a Competitor, 20 June 2022.

<sup>71</sup> See Form CO, table 13 and Form CO, Annex PRFI4-Q4.ii.

<sup>72</sup> Responses to Questionnaire to Customers, question 24, and responses to Questionnaire to Competitors, question 28.

<sup>73</sup> Responses to Questionnaire to Customers, question 28.

<sup>74</sup> Responses to Questionnaire to Competitors, question 32.

plant is located, while generally being limited (e.g. by considerations of supply security, transport costs and environmental considerations), to sourcing predominantly on a regional basis within the EEA. Similarly, most suppliers indicate that they supply 80% of their output in a radius of up to 500 km, while this radius is somewhat larger for some further suppliers. Both customers and suppliers indicate that the scope of their purchasing/supply is broader than national, but does not cover the whole EEA. Therefore, catchment areas of a size between 500 and 1000 km appear to likely be the most appropriate.

- (50) However, given this relatively large size of the likely catchment areas and the Notifying Party's inability to provide market shares on a catchment area basis, the competitive assessment will be undertaken at national basis as the narrowest plausible level (as these catchment areas would in any case cover entire countries or at the very least very large parts of any concerned country in the EEA). In any case, as the Proposed Transaction does not raise concerns as to its compatibility with the internal market even on the narrowest plausible geographic market definition (national), the exact definition of the relevant geographic market in this case can be left open.

### 3.2.2. *PET resin*

- (51) In previous decisions, the Commission has considered the geographic market for PET resin to be EEA-wide or wider, but ultimately left the exact scope open.<sup>75</sup> Similarly, in the present case, the exact scope of the relevant geographic market can be left open because the Proposed Transaction does not raise concerns as to its compatibility with the internal market regardless of the exact geographic market definition.

### 3.2.3. *Extruded plastic sheets*

- (52) The Commission has not previously considered the relevant geographic market for extruded plastic sheets. The Notifying Party submits that the relevant geographic market is wider than EEA-wide and likely worldwide in scope.<sup>76</sup> In the present case, the exact scope of the relevant geographic market can be left open because the Proposed Transaction does not raise concerns as to its compatibility with the internal market regardless of the exact geographic market definition.

## 4. COMPETITIVE ASSESSMENT

### 4.1. Horizontal affected markets: Rigid plastic packaging for food

#### 4.1.1. *Introduction*

- (53) The Proposed Transaction gives rise to plausible horizontally affected markets in rigid plastic packaging for food.<sup>77</sup> As the Notifying Party was not able to provide

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<sup>75</sup> Commission decisions of 18 March 2016 in case M.7918 - Indorama Netherlands/Guadarranque Polyester, paras. 34-36, and of 11 June 2015 in case M.7484 - Plastipak/APPE, paras. 30-32.

<sup>76</sup> Form CO, para 280.

<sup>77</sup> Generally, no affected plausible markets arise with respect to rigid plastic packaging for non-food, with the exception of one plausible market (rigid plastic packaging for non-food by Thermoforming in France). However, the Notifying Party has confirmed that there are numerous players able to

market shares at catchment area-level, affected markets will be conservatively assessed at national level as the narrowest plausible markets (as explained above, catchment areas in the present case would be relatively large and therefore cover entire countries or at the very least very large parts of any concerned country in the EEA). At national level, the plausible rigid plastic packaging for food markets will be assessed according to (i) end-use application, (ii) production methods, and (iii) resin type.

#### 4.1.2. *Market shares*

- (54) At the EEA-level, combined market shares of the Parties do not give rise to any plausible affected market in rigid plastic packaging for food (the market shares reach only [0-5]%) or in any sub-segment thereof.
- (55) Considering the conservative approach outlined above and the Parties' combined market shares at the narrowest plausible level, i.e. the national level, the only affected national market in rigid plastic packaging for food overall would arise in Denmark ([20-30]% combined market share with a [5-10]%-point increment stemming from Paccor).
- (56) When considering further plausible sub-segments of rigid plastic packaging for food at national level (i.e. by end-use applications, production methods, or resin type), there are 26 additional affected markets based on volume shares and in addition to them four affected markets that are only based on value shares.
- (57) Seven of the 30 plausible affected markets have an increment of below 1%-point. In the 'Fresh Meat' sub-segment of the Danish market for rigid plastic packaging for food, the Parties have a combined share of [40-50]% with an increment from Paccor of below 0.1%-point. In the 'Food Service' sub-segment of the Danish market, the Parties have a combined share of [20-30]% with an increment from Paccor of [<1]%-point. In the 'PP' sub-segment of the Finnish market, the Parties have a combined share of [20-30]% with an increment from Faerch of [<1]%-point. In the 'PS' sub-segment of the Finnish market, the Parties have a combined share of [20-30]% with an increment from Faerch of [<1]%-point (Finland 'PS' is affected only based on value shares). In the 'Ready Meals (micro only)' sub-segment of the Lithuanian market, the Parties have a combined share of [20-30]% with an increment from Faerch of [<1]%-point. In the 'Fresh Meat' sub-segment of the Lithuanian market, the Parties have a combined share of [20-30]% with an increment from Faerch of [<1]%-point. In the 'PP' sub-segment of the Lithuanian market, the Parties have a combined share of [20-30]% with an increment from Faerch of [<1]%-point. All the affected markets in Lithuania are value-based. In relation to these seven plausible affected markets, it appears that

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supply Thermoformed products into France at similar conditions to the Parties (Reply to RFI 7, question 8). Within France, there are numerous competitors' production plants, and large parts of France can plausibly be supplied by competitors located in neighbouring countries near the border (for each of the Parties' plants located in France, assuming a conservative catchment area of 500 km, there are at least 50 competitors' plants within the catchment area – Annex RFI 8-Q1.ii & Annex RFI 8-Q1.i). This is further supported by competitors: of those competitors responding to the market investigation, six have plants in France, a majority compete with the Parties in Thermoforming, (Responses to Questionnaire to Competitors, questions 3 and 35.3), and the Parties' overall share of rigid plastic packaging for non-food in France is below 5%. There are therefore no competition concerns related to this plausible affected market.

the Proposed Transaction is unlikely to have a significant negative impact on competition. This is because the increment created by the Proposed Transaction is very small and in any case, various competitors have rigid plastic packaging production sites in around these countries in question.<sup>78</sup>

- (58) The remaining plausible affected rigid plastic packaging for food markets with an increment of at least 1%-point (all affected by volume) are shown in Table 1 below.

**Table 1 – Plausible horizontally affected markets in rigid plastic packaging for food**

		BE	DK	EE	FI	IE	LV	NL	PL	SE	IS	NO
<b>Food overall</b>			[20-30]% ([10-20]% + [5-10]%) <sup>79</sup>									
<b>End-use application</b>	<b>Ready Meals (micro only)</b>	[20-30]% ([5-10]% + [10-20]%)	-	-	-	-	-	[30-40]% ([30-40]% + [0-5]%)	[20-30]% ([10-20]% + [5-10]%)	-	-	-
	<b>Fresh Meat</b>	-	See para (57)	-	[60-70]% ([0-5]% + [60-70]%)	-	-	-	[20-30]% ([5-10]% + [20-30]%)	[40-50]% ([30-40]% + [0-5]%)	-	-
	<b>Dairy</b>	-	[20-30]% ([0-5]% + [20-30]%)	-	-	-	-	-	-	-	-	-
	<b>Food Service</b>	-	See para (57)	-	-	-	-	-	-	-	[30-40]% ([30-40]% + [0-5]%)	-
<b>Technology</b>	<b>Thermo-forming</b>	[20-30]% ([10-20]% + [10-20]%)	[50-60]% ([50-60]% + [5-10]%)	[20-30]% ([5-10]% + [10-20]%)	[30-40]% ([5-10]% + [30-40]%)	[20-30]% ([20-30]% + [0-5]%)	-	-	-	[20-30]% ([10-20]% + [5-10]%)	[20-30]% ([10-20]% + [0-5]%)	-
<b>Resin type</b>	<b>APET</b>	[20-30]% ([10-20]% + [5-10]%)	[50-60]% ([50-60]% + [0-5]%)	[20-30]% ([10-20]% + [10-20]%)	-	-	[30-40]% ([5-10]% + [20-30]%)	[20-30]% ([5-10]% + [10-20]%)	-	[20-30]% ([20-30]% + [0-5]%)	-	[20-30]% ([10-20]% + [0-5]%)
	<b>PP</b>	-	[30-40]% ([5-10]% + [20-30]%)	-	See para (57)	-	-	-	-	-	-	-

Source: Form CO, Annex 7.A.a.i

<sup>78</sup> See e.g. Form CO, Annexes RF18-Q1.i-ii.

<sup>79</sup> Total (Faerch + Paccor).

(59) The remainder of Section 4.1 will consider the competitive assessment for the plausible affected markets shown in Table 1.

4.1.3. *The Parties' activities in rigid plastic packaging for food are largely complementary*

(60) The Parties' activities in rigid plastic packaging for food are largely complementary, as Faerch and Paccor at present focus their activities on different sub-segments of rigid plastic packaging for food.

(61) As seen in table Table 1 above, in most plausible affected markets, the increment created by the Proposed Transaction is relatively small. In cases where a meaningful increment of more than 5% is created (i.e. in Food overall – Denmark, Ready Meals (micro only) – Belgium, Ready Meals (micro only) – Poland, Fresh Meat – Poland, Thermoforming – Belgium, Thermoforming – Estonia, Thermoforming – Sweden, APET – Belgium, APET – Estonia, APET – Latvia, APET – Netherlands, PP – Denmark) the combined market share of the Parties remains moderate (below 35%).

(62) By contrast, in cases where the combined market share of the Parties is at or above 35% (i.e. in Ready Meals (micro only) – Netherlands, Fresh Meat – Finland, Fresh Meat – Sweden, Thermoforming – Denmark, Thermoforming – Finland, APET – Denmark), the increment created by the Proposed Transaction remains at or below 5%.

(63) This complementarity is mostly due to the Parties' differing focus. The Notifying Party in this context submits that *'the Parties do not meet each other in the day-to-day competition, and they consequently do not consider themselves close competitors'*.<sup>80</sup> As can be seen in Figure 1 and Figure 2 below, the Parties have a different focus both by end-application (Paccor has a significant focus on Dairy, where Faerch currently only has a minor presence) and by resin types ([strategic information on the Parties' respective resin focuses]). Considering production methods, it should be noted that [strategic information on the Parties' available production technologies].

**Figure 1 – Comparison of the Parties' EEA-wide 2021 sales split according to end-use**

[Confidential information on the Parties' allocation of sales and production of rigid plastic packaging]

Source: Form CO, Figure 31.

**Figure 2 – Comparison of the Parties' EEA-wide 2021 sales split according to resin type**

[Confidential information on the Parties' allocation of sales and production of rigid plastic packaging]

Source: Form CO, Figure 32.

(64) Market participants confirm that the Parties are not particularly close competitors. While one customer states that *'[a] few years ago we did a big tender for trays and*

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<sup>80</sup> Form CO, para 367.

*they both Faerch and Paccor did participate, if they go together, that means that there will be less competition*,<sup>81</sup> another customer submits that as far as it knows *'Faerch and Paccor are mainly producing complementary product ranges'*.<sup>82</sup> Yet another customer states that *'they are not competitors for the products we purchase'*.<sup>83</sup> A further customer explains: *'I do not consider them close competitors. They have some overlaps as fresh food and other, but it does not seem as they compete much'*.<sup>84</sup> Another customer states that it does *'not purchase anything from Paccor today, know them only by name, so currently I don't consider them as close competitors'*.<sup>85</sup> A further customer explains that *'Paccor is strong in injection moulding, and in PP-based plastic packaging. Faerch is stronger in PET-packaging'*.<sup>86</sup>

- (65) Similarly, a competitor explains that *'Paccor's production range of rigid plastic packaging for food is wide'*, while *'Faerch is more focused on a narrower range of products compared to Paccor and [the Company]'*.<sup>87</sup> A further competitor *'considers that Faerch, contrary to Paccor, is less focused on dairy packaging. However, Faerch is currently growing the dairy business and the separation between the segments is not so strict. Dairy customers usually have also other products and for example, they buy food-service products as well'*.<sup>88</sup>
- (66) Therefore, based on the generally relatively small market share increments, the different end-use and resin focuses of the Parties, and the views of market participants, it appears that the Parties are not competing particularly closely in rigid plastic packaging for food generally or in any of the plausible affected markets.

#### 4.1.4. Competitors will continue to constrain the Merged Entity

- (67) Post-Transaction, competitors will continue to constrain the Merged Entity, generally in rigid plastic packaging for food, and in all the affected potential markets.
- (68) The Notifying Party submits that the *'EEA rigid plastic packaging market comprises several large pan-European players, in addition to which there are in almost all segments several strong local or regional players present'*.<sup>89</sup> It further states that there are *'(and will remain post-merger) several strong and effective competitors that will act as a competitive restraint to the combined entity'*.<sup>90</sup> According to the Notifying Party, Faerch's and Paccor's main competitors across the EEA are: Linpacc/KP, Guillin, Pluspack, Hordijk, Etimex, Magic Pack (Gruppo Happy), RPC Berry, Nutripack (Impact Group), KGL/Marcato, Quinn/Polycasa/3A

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<sup>81</sup> Response to Questionnaire to Customers, question 37.

<sup>82</sup> Response to Questionnaire to Customers, question 37.

<sup>83</sup> Courtesy translation. The original Dutch reads *'voor de producten die wij aankopen zijn zij geen concurrenten'*. Response to Questionnaire to Customers, question 37.

<sup>84</sup> Response to Questionnaire to Customers, question 37.

<sup>85</sup> Response to Questionnaire to Customers, question 37.

<sup>86</sup> Minutes of a call with a customer, 18 May 2022.

<sup>87</sup> Minutes of a call with a competitor, 20 June 2022.

<sup>88</sup> Minutes of a call with a competitor, 2 June 2022.

<sup>89</sup> Form CO, para 360.

<sup>90</sup> Form CO, para 362.

Composites, Greiner, Arta Plast AB, GIZEH Verpackungen GmbH, Alpla Werke Alwin Lehner GmbH & Co KG, and EstPakPlastik AS.

- (69) The Parties appear to be competing against numerous competitors in all affected potential rigid plastic packaging for food markets. In all plausible affected markets presented above in Table 1, at least three competitors submit that they currently supply the rigid plastic packaging product in question in that country. Further, in all plausible affected markets presented in Table 1, at least three competitors submit that they could easily start supplying the rigid plastic packaging product in question in that country (with the only exceptions being APET – The Netherlands, APET – Norway, and APET – Sweden, where two competitors submit that they could easily start supplying APETs. However, in each of these countries, at least seven competitors of the Parties submit that they currently already supply APET rigid plastic packaging).<sup>91</sup>
- (70) Therefore, the Parties are facing actual and potential competition from a significant number of competitors across all affected potential rigid plastic packaging for food markets.
- (71) Furthermore, a majority of the competitors expressing their view submit that their current production capacity utilisation for rigid plastic packaging for food in the EEA is at 80% or lower.<sup>92</sup> Therefore, competitors in principle also have the ability to address additional demand (e.g. of customers wishing to switch away from the Merged Entity). This is confirmed by a significant number of competitors that state that they could in a short matter of time and without incurring significant costs increase their sales of rigid plastic packaging for food.<sup>93</sup> One competitor explains in this context that *‘[o]nce installed capacity is in place, production can be increased immediately. Only new tooling (i.e. for a new packaging shape) may be required, which can be obtained in a short lead time’*.<sup>94</sup>
- (72) In this context, a majority of competitors expressing their view also indicate that they consider it very easy or somewhat easy for customers to switch their suppliers of rigid plastic packaging for food.<sup>95</sup>
- (73) Therefore, competitors will be able to continue to constrain the Merged Entity post Transaction.
- 4.1.5. *Customers of rigid plastic packaging for food will continue to have sufficient choice*
- (74) Post-Transaction, customers of rigid plastic packaging for food will continue to have sufficient choice and access to a significant number of alternative suppliers.
- (75) The majority of customers expressing a view submit that they have more than three suppliers of rigid plastic packaging materials across the EEA overall.<sup>96</sup>

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<sup>91</sup> Responses to Questionnaire to Competitors, question 36.  
<sup>92</sup> Responses to Questionnaire to Competitors, question 40.  
<sup>93</sup> Responses to Questionnaire to Competitors, question 41.  
<sup>94</sup> Response to Questionnaire to Competitors, question 41.1.  
<sup>95</sup> Responses to Questionnaire to Competitors, question 42.  
<sup>96</sup> Responses to Questionnaire to Customers, question 31.

- (76) Importantly, when considering alternatives (to Faerch and Paccor) that customers have access to in each of the affected plausible markets presented in Table 1, customers generally indicate that there are various alternatives. In most of the affected plausible markets, a majority of customers that are active in the respective markets indicate that they have access to at least two or more alternative suppliers.<sup>97</sup> In the remaining affected plausible markets (where only few customers responded and/or some customers indicated that they only have access to limited alternatives), a significant number of competitors of the Parties indicated that they either presently supply the rigid plastic packaging product in question in the country concerned or could easily start supplying it.<sup>98</sup> Similarly, a large majority of competitors expressing their view submit that customers have sufficient alternative suppliers of rigid plastic packaging for food available to them in all countries/regions of the EEA so that they could switch away from their current suppliers.<sup>99</sup>
- (77) The availability of suppliers alternative to Faerch and Paccor is further confirmed by both customers and competitors indicating - that across the EEA - a significant number of capable suppliers of rigid plastic packaging for food (in all the plausible sub-segments by end-use application, resin type and production method) are active.<sup>100</sup>
- (78) These alternative suppliers appear to constitute a credible alternative to Faerch and Paccor, because customers seem to in principle be able to switch suppliers. While customers generally do not consider switching of suppliers to be particularly easy,<sup>101</sup> most customers report that they have changed supplier of rigid plastic packaging for food in the past five years at least once (with some indicating more frequent supplier changes).<sup>102</sup>
- (79) Therefore, customers of rigid plastic packaging for food will continue to have sufficient choice and access to a significant number of current or potential alternative suppliers across all affected potential markets across the EEA.

4.1.6. *The Proposed Transaction is unlikely to have a significant impact*

- (80) The Proposed Transaction is unlikely to have a significant impact on competition in the various plausible affected markets within the EEA.
- (81) The only affected plausible markets presented in Table 1 in which a majority of *competitors* expressing their view submit that they consider the Proposed Transaction to have a negative impact on competition are Thermoforming – Belgium, Dairy – Denmark, and Thermoforming – Denmark.<sup>103</sup> However, in all affected plausible markets presented in Table 1, a majority of *customers* expressing their view consider that the Proposed Transaction will have either

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<sup>97</sup> Responses to Questionnaire to Customers, question 36.

<sup>98</sup> Responses to Questionnaire to Competitors, question 36.

<sup>99</sup> Responses to Questionnaire to Competitors, question 44.

<sup>100</sup> Responses to Questionnaire to Customers, question 35, and responses to Questionnaire to Competitors, question 34.

<sup>101</sup> Responses to Questionnaire to Customer, question 41.

<sup>102</sup> Responses to Questionnaire to Customers, question 40.

<sup>103</sup> Responses to Questionnaire to Competitors, question 45.

a positive or a neutral impact on competition – including in the aforementioned markets for Thermoforming in Belgium, Dairy in Denmark, and Thermoforming in Denmark.<sup>104</sup> In this context, while one customer states that ‘[t]here will be limited competition which is likely to have an impact on cost’,<sup>105</sup> another customer submits: ‘Don’t see negative impact as we have multiple alternatives’.<sup>106</sup> Yet another customer submits: ‘There remain enough other market players, although smaller, to keep the pressure on Faerch / Paccor to keep a competitive price level’.<sup>107</sup>

- (82) When considering the impact of the Proposed Transaction on their own companies, in the different sub-segments of end-use application, resin type and production method, *competitors* offer a mixed view. With respect to end-use application, a majority of competitors expressing their view expects a positive or no impact on their own company for Ready Meals (micro only), Ready Meals (oven heatable), and Other, while a majority expects a negative impact on their own company for Food-To-Go and Food Service (with the results being inconclusive for Fresh Meat and Dairy).<sup>108</sup> With respect to resin type, a majority of competitors expressing their views expect a positive or no impact on their own company for APET, CPET, PS, PVC, XPS/EPS and Other, while the results for PP were inconclusive.<sup>109</sup> With respect to production method, a majority of competitors expressing their view expect a negative impact on their own company only for Thermoforming (the only production method in which Faerch and Paccor overlap).<sup>110</sup>
- (83) Even though a majority of *competitors* claim to expect a negative impact on their company for Food-To-Go, Food Service and Thermoforming, clear majorities of *customers* expressing their view for all plausible sub-segments by end-use application, resin type and production method report that they expect the Proposed Transaction to have a positive or neutral impact on their own company.<sup>111</sup>
- (84) Considering the impact of the Proposed Transaction on the parameter of price for the supply of rigid plastic packaging for food in the EEA, majorities of both customers and competitors expressing their view submit that there will be either no effect or a decrease. Considering the impact on quality and on innovation, majorities of both customers and competitors expressing their view submit that there will be either no effect or an increase. Considering the impact on choice, a majority of competitors expressing their view submit that there will be a decrease, while a majority of customers submit that there will be either no effect or an increase.<sup>112</sup>

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<sup>104</sup> Responses to Questionnaire to Customers, question 43.

<sup>105</sup> Response to Questionnaire to Customers, question 43.1.

<sup>106</sup> Response to Questionnaire to Customers, question 43.1.

<sup>107</sup> Response to Questionnaire to Customers, question 43.1.

<sup>108</sup> Responses to Questionnaire to Competitors, question 46.

<sup>109</sup> Responses to Questionnaire to Competitors, question 47.

<sup>110</sup> Responses to Questionnaire to Competitors, question 48.

<sup>111</sup> Responses to Questionnaire to Customers, questions 44-46.

<sup>112</sup> Responses to Questionnaire to Customers, question 48, and responses to Questionnaire to Competitors, question 50.

(85) The fact that, in any plausible affected market, customers have expressed that the Proposed Transaction will not have a negative impact on their activities, supports the overall findings above that the Proposed Transaction is unlikely to have a significant negative impact on competition in any of the plausible affected markets.

(86) Conclusion

(87) In light of the considerations in Section 4.1, the Commission concludes that the Proposed Transaction does not raise serious doubts as to its compatibility with the internal market in relation to the manufacturing and supply of rigid plastic packaging for food and any plausible sub-segment thereof.

#### **4.2. Vertical links**

(88) In light of the market definitions considered above, the Proposed Transaction gives rise to the following vertical links between the Parties:

- (a) The production and sale of PET resin (upstream), and the production and sale of rigid plastic packaging for food (downstream);
- (b) The production and sale of extruded plastic sheets (upstream), and the production and sale of rigid plastic packaging for food (downstream).

##### *4.2.1. PET resin*

(89) Faerch is active in the production and sale of PET resin, with very limited market shares of <[0-5]% at the EEA level.<sup>113</sup> Both of the parties are active in the production and sale of rigid plastic packaging for food. This vertical relationship may therefore give rise to vertically affected markets.

(90) However, the Notifying Party has explained that, [strategic information regarding Faerch's production and sale of PET resin].<sup>114 115 116 117</sup>

(91) For these reasons, [strategic information regarding Faerch's production and sale of PET resin], the Proposed Transaction will not lead to any vertical competition concerns in the form of either input or customer foreclosure.

##### *4.2.2. Extruded plastic sheets*

(92) The Notifying Party explains that Faerch is active in the production and sale of extruded plastic sheets, with very limited market shares of <[0-5]% at the EEA level.<sup>118</sup> Paccor is active in the production and sale of rigid plastic packaging for food. This vertical relationship may therefore give rise to vertically affected markets.

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<sup>113</sup> Form CO, para 260.

<sup>114</sup> Form CO, para 547.

<sup>115</sup> Form CO, para 261.

<sup>116</sup> Form CO, Annex PRRFI1-Q17-i.

<sup>117</sup> RFI 7 of 25 July 2022, reply to question 3.

<sup>118</sup> Form CO, para 267.

- (93) [Strategic information regarding Faerch's production and sale of extruded plastic sheets].<sup>119 120 121</sup>
- (94) For these reasons, [strategic information regarding Faerch's production and sale of extruded plastic sheets], the Proposed Transaction will not lead to any vertical competition concerns in the form of either input or customer foreclosure.

## **5. CONCLUSION**

- (95) For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation and Article 57 of the EEA Agreement.

*For the Commission*

*(Signed)*  
*Margrethe VESTAGER*  
*Executive Vice-President*

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<sup>119</sup> Form CO, para 268.

<sup>120</sup> Form CO, para 547.

<sup>121</sup> Form CO, para 270; Annex PRFI1-Q17.ii; Annex PRFI1-Q17.iii.