EUROPEAN COMMISSION
DG Competition

Case M.10543 - BISCUIT HOLDING / CONTINENTAL BAKERIES HOLDING

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 11/03/2022

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Biscuit Holding S.A.S.
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Paris 75001
France

Subject: **Case M.10543 – BISCUIT HOLDING / CONTINENTAL BAKERIES HOLDING**
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1] and Article 57 of the Agreement on the European Economic Area[2]

Dear Sir or Madam,

(1) On 4 February 2022, the Commission received notification of a concentration pursuant to Article 4 of the Merger Regulation which would result from a proposed transaction by which Biscuit Holding S.A.S. ('Biscuit International' or 'BI', France) intends to acquire within the meaning of Article 3(1)(b) of the Merger Regulation sole control of Continental Bakeries Holding B.V. ('Continental Bakeries' or 'CB', The Netherlands), by way of purchase of shares (the Transaction')[3]. In this Decision, Biscuit International is referred to as the 'the Notifying Party' and together with

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').

3 Publication in the Official Journal of the European Union No C70, 11.02.2022, p. 4.

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Continental Bakeries as ‘the Parties’. The entity that would result from the Transaction is referred to in this Decision as ‘the Combined Entity’.

1. THE PARTIES

(2) **Biscuit International**, headquartered in Paris, France, manufactures principally private label sweet biscuits, although it is also active in co-manufacturing of branded biscuits. It has 20 manufacturing facilities located across France, Germany, the Netherlands, Portugal, Spain and the UK. Biscuit International operates mainly in Europe and has limited sales in the US, Africa, Asia Pacific and Latin America. Biscuits International is controlled by Platinum Equity, a private equity investment firm.[4]

(3) **Continental Bakeries**, headquartered in Dordrecht, the Netherlands, manufactures sweet biscuits, bread replacements and toast. It focuses on private label products, although it also has its own biscuit brands. It operates primarily in Europe from 13 production facilities across the Netherlands, Belgium, Germany, Poland and Sweden. CB has also limited sales in the US, Africa, and Asia Pacific. Continental Bakeries is currently controlled by Goldman Sachs.

2. THE OPERATION

(4) The Transaction is to be achieved through a sale and purchase agreement (the ‘SPA’) concluded on 7 December 2021 by which BI will acquire all the issued and outstanding equity interest of CB. Biscuit International will therefore acquire sole control over Continental Bakeries.

(5) Therefore, the Transaction would result in a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3. UNION DIMENSION

(6) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million[5] (Platinum Equity: EUR […] million; CB: EUR […] million). Each of them has a Union-wide turnover in excess of EUR […] million (Platinum Equity: EUR […] million; CB: EUR […] million), but neither of them achieves more than two-thirds of their aggregate Union-wide turnover within one and the same Member State.

(7) The notified operation therefore has a Union dimension pursuant to Article 1(2) of the Merger Regulation.

[4] Biscuit International is the only portfolio company of Platinum Equity active in the supply of sweet biscuits.

[5] Turnover calculated in accordance with Article 5 of the Merger Regulation.

4. RELEVANT MARKETS

(8) The Parties' activities overlap in the manufacture and supply of sweet biscuits in several EEA countries.

4.1. Relevant Product Market

4.1.1. Previous decisions

(9) In previous decisions,[6] the Commission considered -albeit leaving the product marked definition opened- that biscuits constitute a separate market from waffles and cakes. The Commission also considered the distinction between sweet and savoury biscuit markets. Within the sweet biscuits market, the Commission considered further segmentations (i) between products which are branded ('B') or have a private label ('PL'); (ii) by customer (retailers vs food-service channel – restaurants, hotels, fast-food outlets, schools, hospitals) by category (form – sandwiched/plain; and taste – chocolate coated, filled). The Commission has however left in these previous decisions the precise product market definition open. For instance, the Commission considered a further segmentation by category (form – sandwiched/plain; and taste – chocolate coated, filled) in Case M.4828 - Kraft/Danone Biscuits but eventually came to the conclusion that in that case such a segmentation was not warranted.[7]

4.1.2. The Notifying Party's view

(10) The Notifying Party argues that sweet biscuits, waffles and cakes should be considered part of the same product market. However, as the Parties' activities do not overlap in the production of waffles or cakes, it considers that the exact product market definition can be left open. As the Parties' activities do not overlap on savoury biscuits, the Notifying Party does not give its opinion on this plausible segmentation of the savoury biscuits market. However, the Notifying Party considers that any further segmentation of the sweet biscuit market is not warranted for the following reasons. First, consumers view the various sweet biscuits types, including branded and non-branded, interchangeably. Second, there is no "must-stock" product category from the retailers' perspective. Third, sweet biscuit manufacturers can easily enter new biscuit segments and several already supply both branded and non-branded products.[8]

4.1.3. The Commission's assessment

(11) In this Section, the Commission will analyse in turn the segmentations referred to in paragraph (10).

(12) <u>First, as regards the distinction between B and PL sweet biscuits</u>, the market investigation has shown that retailers and competitors do not consider branded and private label sweet biscuits interchangeably. For retailers there is a considerable

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6 See, e.g., Case M.6430 – Oaktree / Panrico, (2011), paras 14-17; Case M.5644 – Kraft Foods/Cadbury, (2010), paras. 30 – 31; and Case M.4828 - Kraft/Danone Biscuits, (2007), paras 13. Case M.1920 – Nabisco / United Biscuits, (2000), para. 8.

7 Case M.4828 - Kraft/Danone Biscuits, (2007), paras 14.

8 Form CO, paragraphs 75-95.

difference in the margins made with one or the other product[9] and confronted with a price increase in a private label product, the majority of respondents said they would not switch to a branded product[10]. Although some sweet biscuit suppliers are active in both private label and branded products, they usually focus on one of these activities and not seldom, their presence in the branded products is via co-manufacturing arrangements with the brand holder. The majority of respondents to our market investigation that supply both private label and branded products, consider that it is difficult to switch from private label to branded products as this requires significant investments in the product lines but also in advertising (if they were to build a new brand and not enter into a co-manufacturing arrangement).[11]

(13) Second, as regards the distinction between the retailer channel and the food-service channel, the majority of competitors consider that different capabilities are required to serve each channel, namely different packaging capabilities and different sales teams.[12]

(14) Third, as regards a further segmentation by sweet biscuit categories, the results of the market investigation were not conclusive, or at least not uniform for all potential sweet biscuits categories. In particular, the delineation of the categories themselves (per format, size, texture, taste) is fluid and as a retailer explained '*the market for sweet biscuits is diverse and can be segregated into a number of categories and sub-categories*'.[13]

(15) From the demand perspective, retailers need to have an assortment of sweet biscuits on offer, which does not cover every category of sweet biscuits. However, some categories are considered "must-stock" products. For a retailer a "must-stock" category of biscuits is not substitutable or interchangeable with other categories of sweet biscuits or other sweet products, as they must have this product on their shelves and cannot delist them.[14] Based on the results of the market investigation, the following categories of sweet biscuits were consistently considered 'must-stock': sandwich biscuits, plain biscuits and cookies by the majority of retailers[15]. Other categories were generally considered 'must-stock' but only in certain countries, such as barquettes in France, sprits in Belgium or stroopwafel in The Netherlands, or coffee assortments in Spain. On the other hand, there are categories of sweet biscuits, such as chocolate kisses, that are characteristic of a certain tradition/season. They are procured for promotional and/or seasonal activities, retailers do not necessarily stock them, have delisted them in the past, and can substitute them by other products.[16]

9 Responses to Q1 – Questionnaire to customers, questions 5 and 6.

10 Responses to Q1 – Questionnaire to customers, question 4.

11 Responses to Q2 – Questionnaire to competitors, question 6, question 6.2, question 7 and question 7.1.

12 Responses to Q2 – Questionnaire to competitors, question 8.2.

13 Agreed Minutes of a call with a retailer on 14 January.

14 Faced with a 5% price increase the retailers that participated in the market investigation explain that would not be sufficient to delist a product, other factors affecting the demand for that product would need to be considered before making such decision -Responses to Q1 – Questionnaire to customers, question 31.

15 Responses to Q1 – Questionnaire to customers, question 29 and 29.1.

16 Response to RFI I-5; Response to Q1 – Questionnaire to customers, question 29.1 and retailer's response to a few follow-up questions on 24.02.2022.

(16) From the suppliers' perspective, biscuit manufacturers generally offer several categories of biscuits. Whereas a majority of respondents said switching production to a new category of biscuits would imply significant investments,[17] there was no clear majority on the need to have a dedicated production line for each category of biscuits. Some categories of biscuits can be manufactured on the same production line.[18] In addition, suppliers also seem to distinguish the categories perceived by retailers as must-stock biscuits[19] from what they perceive as 'a residual' category named as 'specialties' where they include those biscuits that are specific to a certain tradition/season and are only procured for promotional and/or seasonal activities. This category usually includes the biscuits with lower sales, for which there is a relatively small demand.[20] For BI, this category includes [details of sales].[21]

4.1.4. Conclusion

(17) For the purpose of assessing the present Transaction, the precise product market definition can be left open as even under the narrowest possible market definition for the manufacture and supply of sweet biscuits no serious concerns arise as to the compatibility of the concentration with internal market as regards the overlapping activities of the Parties. For the purposes of this Decision and under a conservative approach, the Commission will factor into its assessment of the Transaction possible distinctions based on (i) retail channel (ii) private label products, (iii) categories of biscuits.

4.2. Relevant Geographic Market

4.2.1. Previous decisions

(18) In its prior decisional practice, the Commission concluded that the biscuit markets are national in view of the consumption patterns and established local brands.[22]

4.2.2. The Notifying Party's view

(19) The Notifying Party agrees with the Commission's precedent; it however points to the ability of suppliers to address demand in neighbouring countries and suggests these constraints should be taking into account in the competitive assessment of the Transaction.[23]

4.2.3. The Commission's assessment

(20) In the market investigation, retailers in general consider that consumer preferences and purchasing habits are different between countries however for some category of biscuits the consumer preferences and purchasing habits seem to be common among

17 Responses to Q2 – Questionnaire to competitors, questions 5 and 5.1.
18 Responses to Q2 – Questionnaire to competitors, questions 4 and 4.1.
19 Responses to Q2 – Questionnaire to competitors, question 28.
20 Response to RFI no 7, question 1.
21 *Idem.*
22 Case M.6430 – *Oaktree / Panrico*, (2011), para 22; Case M.4828 - *Kraft/Danone Biscuits*, (2007), para.15; Case M.1920 – *Nabisco / United Biscuits*, (2000), para. 12.
23 Form CO, paragraph 107.

a group of countries, or across the EEA.[24] Although retailers mention that generally they launch tenders for a specific country, when it comes to certain categories of biscuits, a majority of retailers has launched tenders, which covered several countries within the EEA, and sometimes even EEA wide.[25] The competitors that participated in the market investigation are generally of the view that consumer preferences and purchasing habits differ between countries.[26] However, when asked about the scope of the tenders in which they participated, a small majority said the tenders were EEA-wide.[27]

(21) Also the qualification of a given category as a must-stock does not seem uniform across the different countries. For example, barquettes are viewed as a must-stock in France but not in Belgium.[28] Few are the categories of biscuits that are considered a must-stock across different countries, such as sandwich biscuits.[29]

4.2.4. Conclusion

(22) For the purpose of assessing the present Transaction, the precise geographic market definition can be left open as no serious concerns arise as to the compatibility of the concentration with the internal market as regards the overlapping activities of the Parties in the market for the manufacture and supply of sweet biscuits. For the purposes of this Decision and under a conservative approach, the Commission will consider the geographic market to be national since the Parties' market shares would be lower if the geographic market were to be considered regional or EEA-wide.

5. COMPETITIVE ASSESSMENT

5.1. Legal Framework

(23) Under Article 2(2) and (3) of the Merger Regulation, the Commission must assess whether a proposed concentration would significantly impede effective competition in the internal market or in a substantial part of it, in particular through the creation or strengthening of a dominant position. Depending on the position of the Parties in the supply chain, a concentration may entail horizontal and/or non-horizontal effects.

(24) Horizontal effects arise when the parties to a concentration are actual or potential competitors in one or more of the relevant markets concerned. The Commission appraises horizontal effects in accordance with the guidance set out in the Horizontal Merger Guidelines.[30]

(25) Non-horizontal effects arise when the parties to a concentration operate in different levels of the supply chain in certain relevant markets (vertical effects) or when the Parties operate in closely related markets (conglomerate effects). The Commission

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24 Responses to Q1 – Questionnaire to customers, question 9 and 9.1.
25 Responses to Q1 - Questionnaire to customers, question 8 and 8.1.
26 Responses to Q2 – Questionnaire to competitors, question 11 and 11.1.
27 Responses to Q2 – Questionnaire to competitors, question 10 and 10.1.
28 Responses to Q1 – Questionnaire to customers, question 29.
29 *Idem.*
30 Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings ("Horizontal Merger Guidelines"), OJ C 31, 05.02,2014.

appraises non-horizontal effects in accordance with the guidance set out in the Non-Horizontal Merger Guidelines.[31]

(26) Both Horizontal and Non-Horizontal 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.

(27) In horizontal mergers, non-coordinated effects may significantly impede effective competition by eliminating important competitive constraints on one or more firms, which consequently would have increased market power, without resorting to coordinated behaviour. In that regard, the Horizontal Merger Guidelines consider not only the direct loss of competition between the merging firms, but also the reduction in competitive pressure on non-merging firms in the same market that could be brought about by the merger.[32]

(28) The Horizontal Merger Guidelines list a number of factors, which may influence whether, or not, significant non-coordinated effects are likely to result from a merger, such as large market shares of the merging firms, close competition, the limited possibilities for customers to switch suppliers.[33] Furthermore, in accordance with the Horizontal Merger Guidelines, a merger with a potential competitor can also have horizontal anti-competitive effects where the potential competitor constrains the behaviour of firms active in the market.[34]

(29) In non-horizontal mergers, non-coordinated effects may arise when the concentration gives rise to foreclosure. Particularly, conglomerate mergers may lead to the foreclosure of rivals, by allowing the merged entity to leverage a strong market position from one market to another by means of tying, bundling or other exclusionary practice.[35]

(30) In assessing the likelihood of such foreclosure scenario, the Commission assesses whether the merged entity would have the (i) ability and (ii) the economic incentive to foreclose its rivals, as well as (iii) whether such foreclosure strategy would have a detrimental effect on competition, causing harm to consumers.[36]

5.2. Horizontal Non-Coordinated Effects

5.2.1. Overview of the horizontally affected markets

(31) The Transaction does not give rise to any horizontally affected market in the overall sweet biscuit market (branded and private label together, or branded sweet biscuits only), nor in the food-service channel (irrespective of the possible distinctions between private label and branded, and by sweet biscuit categories), for all potential geographic markets, i.e. national, regional or EEA wide. The Transaction however

31 Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings ("Non-Horizontal Merger Guidelines") (2008/C 265/07).

32 Horizontal Merger Guidelines, paragraph 24.

33 Horizontal Merger Guidelines, paragraph 26.

34 Horizontal Merger Guidelines, paragraph 59.

35 Non-Horizontal Merger Guidelines, para 93.

36 Non-Horizontal Merger Guidelines, paras 32 and 94.

does give rise to affected markets comprising the supply to retailers of specific categories of private label sweet biscuits at the national level (in Belgium, France, Germany and The Netherlands), as well as the supply to retailers of all private label sweet biscuit in France and in The Netherlands.[37]

(32) The tables below present a summary of all affected markets by the Transaction, based on 2021 data.

Table 1: Private Label Sweet Biscuits for Retailer Channel – Belgium

Product segment	Suppliers	Market shares		
		2019	2020	2021
Sandwich Biscuits	BI	[0-5]%	[5-10]%	[0-5]%
	CB	[20-30]%	[20-30]%	[20-30]%
	COMBINED	[20-30]%	[20-30]%	[20-30]%
	BISCUIT BOUVARD	[30-40]%	[30-40]%	[30-40]%
	HELLEMA	[20-30]%	[20-30]%	[20-30]%
	GRIESSON DE BEUKELAER	[10-20]%	[10-20]%	[10-20]%
	Market size €M	[…]	[…]	[…]

Source: Form CO, Annex 13.

37 Form CO, paragraphs 108, 109 and Annex 13.

Table 2: Private Label Sweet Biscuits for Retailer Channel – France

Product segment	Suppliers	Market shares		
		2019	2020	2021
Sweet Biscuits Overall	BI	[20-30]%	[20-30]%	[20-30]%
	CB	[0-5]%	[0-5]%	[0-5]%
	COMBINED	[30-40]%	[30-40]%	[30-40]%
	BISCUIT BOUVARD	[30-40]%	[30-40]%	[30-40]%
	ST MICHEL	[10-15]%	[10-15]%	[10-15]%
	FILET BLEU	[5-10]%	[5-10]%	[5-10]%
	GRIESSON DE BEUKELAER	[5-10]%	[5-10]%	[5-10]%
	Market size €M	[…]	[…]	[…]
Plain Biscuits	BI	[10-20]%	[10-20]%	[20-30]%
	CB	[0-5]%	[0-5]%	[0-5]%
	COMBINED	[10-20]%	[10-20]%	[20-30]%
	BISCUIT BOUVARD	[30-40]%	[30-40]%	[30-40]%
	ST MICHEL	[20-30]%	[20-30]%	[20-30]%
	FILET BLEU	[5-10]%	[5-10]%	[5-10]%
	LOCMARIA	[5-10]%	[5-10]%	[5-10]%
	Market size €M	[…]	[…]	[…]
Sandwich Biscuits	BI	[20-30]%	[20-30]%	[20-30]%
	CB	[10-20]%	[10-20]%	[10-20]%
	COMBINED	[30-40]%	[30-40]%	[30-40]%
	BISCUIT BOUVARD	[20-30]%	[20-30]%	[20-30]%
	GRIESSON DE BEUKELAER	[20-30]%	[20-30]%	[20-30]%
	GULLON	[5-10]%	[5-10]%	[5-10]%
	Market size €M	[…]	[…]	[…]

Source: Form CO, Annex 13.

Table 3: Private Label Sweet Biscuits for Retailer Channel – Netherlands

Product segment	Suppliers	Market shares		
		2019	2020	2021
Sweet Biscuits Overall	BI	[10-20]%	[10-20]%	[10-20]%
	CB	[0-5]%	[0-5]%	[0-5]%
	COMBINED	[20-30]%	[20-30]%	[20-30]%
	DAELMANS	[5-10]%	[5-10]%	[5-10]%
	HELLEMA	[5-10]%	[5-10]%	[5-10]%
	MERBA	[5-10]%	[5-10]%	[5-10]%
	PALLY	[5-10]%	[5-10]%	[5-10]%
	Market size €M	[…]	[…]	[…]
Specialties/Seasonal	BI	[20-30]%	[20-30]%	[20-30]%
	CB	[0-5]%	[0-5]%	[0-5]%
	COMBINED	[20-30]%	[20-30]%	[20-30]%
	VAN DELFT	[20-30]%	[20-30]%	[20-30]%
	BORGGREVE	[5-10]%	[5-10]%	[5-10]%
	HELLEMA	[5-10]%	[5-10]%	[5-10]%
	MERBA	[5-10]%	[5-10]%	[5-10]%
	Market size €M	[…]	[…]	[…]
Sandwich Biscuits	BI	[5-10]%	[10-20]%	[10-20]%
	CB	[30-40]%	[10-20]%	[10-20]%
	COMBINED	[30-40]%	[20-30]%	[20-30]%
	HELLEMA	[20-30]%	[30-40]%	[30-40]%
	GRIESSON DE BEUKELAER	[20-30]%	[20-30]%	[10-20]%
	NORA	[5-10]%	[10-20]%	[10-20]%
	GULLON	[10-20]%	[10-20]%	[5-10]%
	Market size €M	[…]	[…]	[…]

Source: Form CO, Annex 13 and RFI I-7, Annex 1.

Table 4: Private Label Sweet Plain Biscuits for Retailer Channel – Germany

Product segment	Suppliers	Market shares		
		2019	2020	2021
Plain Biscuits	BI	[0-5]%	[0-5]%	[0-5]%
	CB	[30-40]%	[30-40]%	[30-40]%
	COMBINED	[30-40]%	[30-40]%	[30-40]%
	GRIESSON DE BEUKELAER	[60-70]%	[60-70]%	[50-60]%
	THE BAHLSEN FAMILY	[0-5]%	[0-5]%	[0-5]%
	Market size €M	[…]	[…]	[…]

Source: Form CO, Annex 13.

(33) As shown in the tables above, in a number of affected markets, the increment brought by the Transaction is very small ([0-5]%), the combined market shares remains below 25%, and a number of important suppliers remain post-Transaction. In its Decision, the Commission will therefore focus on the other markets in which the combined market share rises above 25% and the increment brought by the Transaction is above [0-5]%, namely (i) the overall market for sweet biscuits in France, (ii) the sandwich biscuits segment in France, Belgium and the Netherlands, and (iii) the plain biscuits segment in Germany.

5.2.2. The Notifying Party's view

(34) The Notifying Party submits that the Transaction does not give rise to competitive concerns in any plausible market or segment, including in the segments assessed below for the following reasons. First, the Notifying Party considers that the Parties have modest market shares, with a combined market share always below 40% and an increment, which can vary small on certain segments.[38] Second, credible alternative suppliers, including large private label sweet biscuits manufacturers, will remain post-Transaction.[39] Third, the Notifying Party also considers that the retailers have significant market power, since the demand-side is concentrated, retailers negotiate prices on annual basis and have countervailing strategies such as delisting the Parties' products as a retaliation to a possible price increase. Fourth, private label production is characterised by excess capacity and entry and expansion barriers are low. Fifth, should branded biscuits not be included in the same relevant markets, they would at least pose a strong out-of-market competitive constraint on private label biscuits.

38 Form CO, section 2.1.

39 Form CO, section 2.2.

5.2.3. The Commission's assessment - General

(35) The Commission notes that the results of the market investigation in this case did not fully support the Notifying Party's arguments as to the existence of strong buyer power from retailers and low barriers to entry. It also did not support the allegation that branded products exert a competitive constraint on private label products. As regards buyer power, the market investigation confirmed that retailers typically negotiate prices for each stock keeping unit ('SKU') on an annual basis.[40] Particularly considering the 'must-stock' nature of some biscuit categories, retailers rather change suppliers than delist the product itself.[41] However, some retailers do consider sponsoring entry in case of a price increase.[42] In sum, the market investigation results are not conclusive on whether retailers would have sufficient countervailing buyer power. As regards barriers to entry and expansion, while the market investigation confirmed there is (some) excess capacity among private label suppliers[43], respondents to the market investigation indicated that switching production requires significant costs, particularly when the creation of a new manufacturing line is needed. In such instance, switching would require an investment of 6 to 8 figures and 1 to 2 years, depending on the product.[44] As regards the alleged competitive constraints from branded sweet biscuits, the majority of respondents did not consider that branded biscuits constitute an alternative to private label products[45] nor a constraint on their price, on the contrary, the majority of respondents consider that private label products exert a constraint on branded products.[46]

(36) Even if some of the Notifying Party's arguments have not been confirmed by the results of the market investigation in this case, for the reasons set out in paragraph (33) as well as in the more detailed assessment presented in the sub-sections below, the Commission considers that the Transaction would not give rise to serious doubts as to its compatibility with the internal market.

5.2.4. The Commission's assessment –national markets and segments

5.2.4.1. Overall sweet biscuit market in France

(37) In France, the Transaction would lead to a combined share of [30-40]% in the overall private label sweet biscuit market with an increment of [0-5]%. The Combined Entity would nonetheless be closely followed by Bouvard with a market share of [30-40]%. Alternative suppliers would also remain post-Transaction, such as St Michel with a market share between 10%-15%; Griesson and Filet Bleu, each with a market share between 5-10% and several other small players.[47]

(38) In the light of the results of the market investigation and of all the evidence available to it, the Commission considers that, while the combined market shares of the Parties

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[40] Responses to Q1- Questionnaire to Customers, questions 13 and 14.
[41] Responses to Q1 – Questionnaire to Customers, question 31.
[42] Responses to Q1 – Questionnaire to Customers, question 32.
[43] Responses to Q2– Questionnaire to Competitors, question 23.
[44] Responses to Q2– Questionnaire to Competitors, question 5, 5.1, 33 and 33.1.
[45] Responses to Q1 – Questionnaire to Customers, questions 4 and 4.2.
[46] Responses to Q2– Questionnaire to Competitors, question 24.
[47] Form CO, Annex 13.

give rise to an affected market in the supply of sweet biscuit market in France, it seems unlikely that the Transaction would give rise to anticompetitive horizontal non-coordinated effects due to the following reasons.

(39) The market investigation has confirmed that there are sufficient alternative suppliers to the Parties.[48] A large retailer has also mentioned the possibility to look for alternative suppliers present in other countries, in particular Germany, in case there were not enough viable suppliers in France.[49] The increment gained with the Transaction would therefore not be sufficient to successfully increase prices or reduce choice.

(40) In light of the above, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to horizontal non-coordinated effects in the overall sweet biscuit market in France.

5.2.4.2. Sandwich biscuit segment in France, The Netherlands and Belgium

(41) First, in France, the Transaction would lead to a large combined share of [30-40]% in the sandwich biscuits segment with a significant increment of [10-20]%. Nevertheless, important alternative suppliers such as Griesson (with a market share of [20-30]%), Bouvard (with a market share of [20-30]%), Gullón (with a market share of [5-10]%), would remain post-Transaction.[50]

(42) Second, in The Netherlands, the Transaction would lead to a combined share of [20-30]% with an increment of [10-20]% in the sandwich biscuit segment. However, the Combined Entity would face strong competition by the market leader Hellema (with a market share of [30-40]%) and other important competitors such as Griesson (with a market share of [20-30]%), Nora ([10-20]%) and Gullón ([5-10]%).[51]

(43) Third, in Belgium, the Transaction would lead to a combined market share of [20-30]% with a [0-5]% increment. The Combined Entity would still face competition from several suppliers, namely form the market leader, Bouvard (with a market share of [30-40]%), Hellema (with a market share of [20-30]%) and Griesson with a market share of [10-20]%).[52]

(44) In light of the results of the market investigations and of all the evidence available to it, the Commission considers that, while the combined market shares of the Parties give rise to plausible affected markets in the sandwich biscuit segment in France, the Netherlands and Belgium, for the reasons below, the Transaction would not give rise to serious doubts as to its compatibility with the internal market in relation to horizontal non-coordinated effects in the sandwich biscuit segment in France, the Netherland and Belgium.

48 Responses to Q1 – Questionnaire to customers, question 12 and 21.

49 Minutes of a call with a customer on 14 January 2022.

50 Form CO, Annex 13.

51 Form CO, Annex 13.

52 Form CO, Annex 13.

(45) First, the market investigation confirmed there are sufficient credible alternative suppliers for sandwich biscuits in those three countries.[53]

(46) With particular regard to Belgium, one retailer considers that the remaining suppliers cannot serve its needs.[54] This is however not supported by the rest of the evidence, in particular by the fact that a majority of retailers consider Hellema a competitor closer to BI than CB, including retailers that belong to the same buying alliance in Belgium.[55]

(47) The Parties have in fact argued that all manufacturers can supply the same quality of sandwich biscuits and that the only differentiator is price.[56] The majority of competitors that responded to the market investigation confirmed that generally they can adapt the recipe to respond to a tender, as there is product differentiation within the categories and retailers ask for "comparable quality" products.[57] The market investigation also confirmed that prices are negotiated on a yearly basis,[58] which suggests that price is the main factor on which suppliers compete.

(48) Moreover, retailers consider some of the alternative suppliers as close competitors to the Parties, as the Parties are to one another. More specifically, in France, according to a majority of retailers that expressed a view, that would be the case for at least one of the current suppliers of sandwich biscuits, Bouvard. For the majority of the respondents, Bouvard was considered the main competitor to BI and the second main competitor to CB.[59] In The Netherlands, the market investigation has confirmed that other competitors such as Hellema and Griesson are closer to BI than CB.[60] Also in Belgium, as mentioned above, Hellema is consider to be a closer competitor to BI than CB.[61]

(49) Second, the market investigation confirmed that retailers can and do switch suppliers of sweet biscuits, including of sandwich biscuits. Some retailers indicated that they have in the past delisted each of the Parties' sandwich biscuits and changed suppliers as a reaction to price increases.[62] As a Dutch retailer recognised, "[s]*wicthes take place when the new supplier is able to meet our requirements when prices are better*."[63] The vast majority of retailers in France and Belgium also confirmed that they do not seldom switch suppliers.[64]

53 Responses to Q1 – Questionnaire to customers, question 12 and 21.1.
54 Response to Q1- Questionnaire to customers, question 21.1.1.
55 Responses to Q2- Questionnaire to customers, question 18 and 19 and Form CO, paragraph 175 and footnote 135.
56 Form CO, para. 139.
57 Responses to Q2 – Questionnaire to competitors, question 22.1 and 22.1.1.
58 Responses to Q1- Questionnaire to customers, question and Q2 – Questionnaire to competitors, question 19.
59 Responses to Q1 – Questionnaire to customers, question 18 and 19.
60 Responses to Q1 – Questionnaire to customers, question 12.2, question 18 and question 21.
61 Responses to Q2- Questionnaire to customers, question 18 and 19.
62 Form CO, para 139.
63 Responses to Q1 – Questionnaire to customers, question 24.1.
64 Responses to Q1 – Questionnaire to customers, question 24.

(50) Competitors that participated in the market investigation generally agree that suppliers can and do switch suppliers faced with a price increase.[65] One competitor explained, "*[t]his happens frequently. Each tender holds the chance or risk of getting or losing volumes*."[66]

5.2.4.3. Plain biscuits in Germany

(51) In Germany, the Transaction would lead to a combined market share of [30-40]% with an increment of [0-5]% in the plain biscuits segment. The Combined Entity would still face competition from the market leader Griesson (with a market share of [50-60]%) and from a smaller competitor the Balsen Family (with a market share of [0-5]%).[67]

(52) In the market investigation, the majority of retailers consider that Griesson is a closer competitor to either of the Parties than the Parties are to one another.[68] The majority of competitors consider that the Parties do not compete closely with one another.[69] Moreover, the majority of retailers consider that the Transaction will not have an impact on this market segment.[70] Half of the competitors that participate in the market investigation did not express a view; those who have considered that the Transaction will have a negative impact on competition in this segment but they have not substantiated their concerns.[71]

(53) In light of the results of the market investigation and of all the evidence available to it, the Commission considers that, while the combined market shares of the Parties give rise to an affected market with regard to the plain biscuit category in Germany, it seems unlikely that the Transaction would give rise to anticompetitive horizontal non-coordinated effects. Firstly, the changes brought by the Transaction are small, as Biscuit International was hardly present in this segment with a [0-5]% market share and, secondly, there are alternative suppliers, in particular the market leader Griesson.

(54) In light of the above, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to horizontal non-coordinated effects in the plain biscuits segment in Germany.

5.2.5. Conclusion

(55) In light of the above considerations and taking account of the results of the market investigation and of all the evidence available to it, in particular the existence of sufficient alternative suppliers, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to the overall sweet biscuits market in France, as well as in the segment markets of sandwich biscuits in France, Belgium and in The Netherlands, and in the plain biscuits in Germany.

65 Responses to Q2 – Questionnaire to competitors, question 30 and question 22.
66 Responses to Q2 – Questionnaire to competitors, question 22.
67 Form CO, Annex 13.
68 Responses to Q1- Questionnaire to customers, question 18 and 19.
69 Responses to Q2 – Questionnaire to competitors, question 25.
70 Responses to Q1 – Questionnaire to customers, question 34.
71 Responses to Q2 – Questionnaire to competitors, question 35 and 35.1.

5.3. Conglomerate Effects

(56) In view of the complementary of the Parties' product portfolios, the Commission has also analysed possible conglomerate effects of the Transaction, particularly in those segments where at least one of the Parties has already pre-Transaction a market share of at least 30%.

(57) The Combined Entity would have a uniquely large portfolio of sweet biscuits, compared to its competitors.[72] In their internal documents, the Parties [details of commercial or investment strategy].[73] In addition, each of the Parties has pre-Transaction very high market shares in some sweet biscuit categories (e.g. BI has [80-90]% market shares in barquettes biscuits in France and CB has [80-90]% market share in sprit cookies in Belgium)[74]; or is single supplier (e.g. CB is the only supplier of Swedish cookies in France). Moreover post-Transaction the Combined Entity would also acquire an increased market share (above 30% in the Sandwich biscuit segment in France and The Netherlands, as well as plain biscuits in Germany).

(58) Moreover, some retailers expressed concerns that due to the Parties' portfolio size, they will lose bargaining power and may face higher prices.[75] Competitors on the other hand, consider that it would be more difficult to compete with the Combined Entity, as the larger portfolio would give it a competitive advantage.[76] One competitor explained, "[*t]he combined portfolio may allow the Parties to better compete and make more comprehensive and expansive offers to the retail trade in tenders, both in respect to product/category and regional/market scope. They may also be able to realize economies of scale due to logistics benefits*."[77] The same competitor later added, "*in view of the broader range of products in the expanded portfolio, the Parties may likely be able to utilize bundling strategies to a greater extent than is currently the case*."[78]

(59) Against this background, the Commission has assessed whether the Combined Entity would have the ability and the incentive to adopt an input foreclosure strategy by bundling or tying its products.

(60) As regards the ability to foreclose, in spite of its large or very large market share in some categories of sweet biscuits, the Combined Entity is unlikely to have the ability to foreclose its competitors through bundling strategies for the following reasons.

(61) First, the market investigation confirmed that retailers typically negotiate prices for each stock keeping unit ('SKU'), albeit they may conclude a contract for several SKUs.[79] A biscuit category may include several SKUs. This prevents the suppliers

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72 Responses to Q1 – Questionnaire to customers, question 30 and Responses to Q2 – Questionnaire to competitors, question 29.

73 Form CO, Annex 11.

74 The Parties activities do not overlap in these segments. Only one of the Parties is active in these segments.

75 Responses to Q1 – Questionnaire to customers, question 30.1.

76 Responses to Q2 – Questionnaire to competitors, question 29.1.

77 *Idem.*

78 Response to Q2 – Questionnaire to competitors, question 37.

79 Responses to Q1 - Questionnaire to customers, question 14 and 14.1.

from creating any commercial tying situation or pure bundling. To participate in the tender, the supplier has to make that specific SKU available on its own and offer a (competitive) price in order to win.

(62) The fact that prices are typically negotiated for each SKU has however not prevented the Parties, nor their competitors,[80] to offer discounts when retailers purchase different categories of biscuits together (as explained by some retailers). Sometimes retailers themselves request this type of discounts.[81] The Combined entity would however not have the ability to adopt a foreclosure strategy by offering this type of discounts. As retailers have different commercial strategies and opt for different assortment of biscuits,[82] suppliers do not necessarily offer the same bundles (discounts) to all retailers. There would not necessarily be a sufficient large common pool of retailers for the individual products concerned (in each bundle) to be able to specifically foreclose competitors from certain market segments.

(63) Second, the majority of retailers that participated in the market investigation said they do not negotiate prices for all categories of biscuits at the same time, which makes it more difficult for the Combined Entity to offer bundles, even in the form of volume discounts.[83] In fact, the majority of retailers that participated in the market investigation said they have not experienced bundling practices whereby the acquisition of one category of biscuit would be conditional on the acquisition of another.[84]

(64) Third, already pre-Transaction each of the Parties have a wide portfolio including with leading position in must-stock categories of biscuits and they have not adopted such anticompetitive strategy. The proposed Transaction does not increase their ability to do so.

(65) Since the Combined Entity does not have ability, it would most likely not have the incentives to foreclose. The incentives to enter in such strategy depends on the profitability of the strategy. If a significant number of retailers are not willing to buy the bundle but only the leveraging product, and have alternative suppliers, sales of this product may also significantly fall if offered in a bundle. It is unlikely that the Combined Entity would forgo sales in a profitable (e.g. must-stock category) to gain market share on a market where it has lower volumes.

(66) Given that the Combined Entity would not have the ability and the incentives to engage in a bundling foreclosure strategy, it is not necessary for the Commission to assess the potential impact of such a strategy on effective competition. Nevertheless, the Commission notes that some competitors did express concerns as regards the ability of the parties to offer lower prices thereby making it more difficult for them to compete. However, the mix bundles that the Combined Entity may continue to offer in the future would not necessarily lead to a foreclosure effect, as suppliers have other alternatives of supply and are therefore not bound to accept such bundles.

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80 The majority of competitors that responded to the questionnaire acknowledged that they have offered bundles of different categories of biscuits – Responses to Q2- Questionnaire to competitors, question 18.

81 Form CO, paragraph 177.

82 Form CO, footnote 5, and Responses to Q2- Questionnaire to customers, question 3.

83 Responses to Q1 – Questionnaire to customers, question 13.2.

84 Responses to Q1 – Questionnaire to customers, question 27.

(67) For the above reasons and in light of the results of the market investigation and of all the evidence available to it, the Commission considers that the Transaction would not give rise to serious doubts about its compatibility with the internal market in relation to potential conglomerate effects in sweet biscuits, more specifically in those segments where at least one of the Parties has pre-transaction a market share of at least 30% at national level.

6. CONCLUSION

(68) For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the 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