EUROPEAN COMMISSION
DG Competition

Case M.10860 - ADVENT / GFK

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REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) in conjunction with Art 6(2)
Date: 04/07/2023

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EUROPEAN COMMISSION

Brussels, 4.7.2023
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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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Advent / NielsenIQ
200 West Jackson Boulevard
Chicago, Illinois 60606
United States of America

Subject: **Case M.10860 – ADVENT / GFK**
Commission decision pursuant to Article 6(1)(b) in conjunction with Article 6(2) 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 11 May 2023, the European Commission (the 'Commission') received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which NielsenIQ ('NIQ' or 'Acquirer', United States) intends to acquire, within the meaning of Article 3(1)(b) of the Merger Regulation, sole control of the whole of GfK SE ('GfK', Germany) (the 'Transaction').[3] NIQ and GfK together are designated hereinafter as the 'Parties'. The Parties together post-Transaction are designated hereinafter as the 'Merged Entity'.

(2) The Commission received an initial notification on 20 March 2023. The Parties withdrew their initial notification on 20 April 2023.

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 C 178, 22.5.2023, p.5.

1. THE PARTIES

(3) **NIQ** is headquartered in the United States and is active in the provision of market research services. NIQ is controlled by Advent International ('Advent'), an investment fund.

(4) **GfK** is headquartered in Germany and is also active in the provision of market research services.

2. THE CONCENTRATION

(5) The Transaction consists of the acquisition by NIQ of all of the issued equity interests of GfK. Post-Transaction, GfK will be fully owned and solely controlled by NIQ.

(6) Therefore, the Transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3. UNION DIMENSION

(7) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (Advent: EUR […], GfK: EUR […])[4]. Each of them has a Union-wide turnover in excess of EUR 250 million (Advent: EUR […], GfK: EUR […]), and they do not each achieve more than two-thirds of their aggregate Union-wide turnover within one and the same Member State.

(8) The notified operation therefore has a Union dimension within the meaning of Article 1(2) of the Merger Regulation.

4. MARKET DEFINITION

4.1. Relevant product market

(9) The Parties' activities overlap in the supply of market research services in the EEA.[5]

4.1.1. Sub-segmentation of market research services into retail measurement services, consumer panel services and customized market research

(10) Market research services refer to a wide variety of services and products related to the tracking and analysis of commercial markets. In previous cases, the Commission has considered but eventually left open a possible sub-segmentation of the product market for market research services into separate markets for (i) Consumer Panel Services ('CPS'), (ii) Retail Measurement Services ('RMS') and (iii) Customized Market Research ('CMR').[6] CPS refers to the gathering of data through consumer panels, which involve the collection of information from a representative group of households that periodically report on their purchases. RMS refers to the tracking of consumer

4 Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.4.2008, p. 1).

5 Other than NIQ, Advent does not control companies that are active in market research services, or markets that are vertically related thereto. See Form CO, paragraph 14.

6 M.5232 – WPP/TNS, paragraph 13; M.2291 – VNU/ACNielsen; paragraphs 10-12 and Annex 1

purchases by collecting point of sale data ('POS' data) from retailers, which permits customers to track qualitative data such as sales volumes, market shares and retail prices over time. CMR refers to market research conducted on an exclusive basis for a client and typically seeks to answer specific questions and provides tailor-made marketing solutions for that client.[7]

(11) The Commission's market investigation has confirmed that market research services should be segmented into separate markets for RMS, CPS and CMR. This is for the following three reasons.

(12) First, a majority of customers that have expressed a view have stated that they consider RMS, CPS and CMR to constitute separate products, belonging to separate markets.[8] This is due to the fact that each of those services has different characteristics and serves different functions. As one market participant explained, '*[a]ll three services serve different purposes, use different type of data in order to answer different market / consumer related questions.*'[9] Another market participant noted '[*e]ach of them provides different answers in terms of Insights. They are not substitute of each other.*'[10] Indeed, a majority of customers expressing a view indicated that RMS, CPS and CMR serve different functions, with RMS continuously tracking POS data, CPS continuously operating a consumer panel and CMR constituting targeted research performed on a variety of datasets.[11]

(13) Second, on the supply-side, suppliers differ for each service. For instance, as will be further explained in Sections 5.1.1 to 5.1.3 below, Kantar, one of the main providers of CPS in the EEA, is not active in RMS. Likewise, IRI, now renamed Circana, one of the main providers of RMS in the EEA, is not active in CPS. This is mainly due to the fact that providers of RMS and CPS require different inputs of data that come from different sources. In particular, providing RMS requires POS data acquired by retailers, whereas CPS requires data sourced from consumer panels.[12] Both the acquisition of POS data and the recruitment of consumer panels require significant up-front costs.[13] As one market participant explained in this regard, '*[…]providers of RMS, for example, cannot easily switch to providing CPS as the need for establishment of a national consumer panel is a high barrier to entry*'.[14]

(14) Even those suppliers who are present in more than one of the RMS, CPS and CMR markets, have a varying degree of success in each of these markets. Concretely, whereas both Parties have high market shares in several national RMS and CPS markets,[15] this is not the case for CMR markets.[16]

(15) Third, as regards the demand-side, RMS, CPS and CMR provide different information and insights to customers. Whereas RMS data shows whether the sales of a given

7 M.5232 – WPP/TNS, footnote 5.
8 Questionnaire 01 to Customers, question C.A.2-1.
9 Questionnaire 01 to Customers, question C.A.2-2.
10 *Ibid.*
11 *Ibid.*
12 See Form CO, Chapter II, paragraph 584; Chapter III Table 9.
13 *Ibid.*
14 Questionnaire 01 to Customers, question C.A.2-2.
15 Form CO, Chapter II, Annex 3.1; Chapter III, Annex 3.1.
16 Form CO, Chapter IV, Annex 2.1.

product have increased or decreased over a particular period, CPS data shows which consumers have been buying more or less of which product, and CMR shows the underlying causes of the trend.[17] As one customer explained, *'[a]ll 3 methodologies collect data on markets and are complementary. Producers usually work with all of them to get the full picture*',[18] while another customer noted that they '*consider these services not to be substitutable from a customer's perspective.* [Customer] *needs RMS and CPS separately'.*[19]

4.1.2. Sub-segmentation of RMS for fast-moving consumer goods and non-fast moving consumer goods

(16) In previous cases, the Commission has considered sub-segmenting the product market for RMS according to the types of goods or business area, such as health products or automotive research, but left the market definition open.[20]

(17) NIQ provides RMS to manufacturers and retailers of fast-moving consumer goods ('FMCG'). FMCG are non-durable products that are sold quickly at a relatively low cost and purchased frequently. Such products typically include consumer goods such as groceries (food and beverages), household products and personal care products.

(18) GfK provides RMS to manufacturers and retailers on the non-FMCG market ('NFMCG'), mainly durable products such as consumer appliances and consumer electronics.

(19) The Commission considers that RMS for FMCG and RMS for NFMCG belong to separate product markets. This is for the following four reasons.

(20) First, there is no supply-side substitutability between RMS for FMCG and NFMCG, because providers of RMS in these two markets rely upon different inputs of data that come from different sources. While the data-collection methodology for both types of RMS is similar, namely tracking of POS data, such POS data is provided by different retailers, as there is little overlap between retailers for FMCG and for NFMCG so that entry into the provision of FMCG RMS from NFMCG RMS and *vice versa* is not easy.

(21) The majority of customers who expressed a view confirmed the absence of supply-side substitutability between FMCG RMS and NFMCG RMS.[21] Several of them pointed to the significant barriers to entry between these two markets.[22] As one customer explained, '*[w]e do not assume that the move to non-FMCG would be easy for the subject already providing FMCG RMS as it does not have business relationships with the data sources to get the relevant data*'.[23] The absence of supply-side substitutability

[17] Form CO, Chapter II, paragraph 106.
[18] Questionnaire 01 to Customers, question C.A.2-2.
[19] *Ibid.*
[20] M.5232 – WPP/TNS, paragraph 13.
[21] Questionnaire to customers, C.A.3-1.
[22] Questionnaire to customers, C.A.3-2.
[23] *Ibid.*

between FMCG RMS and NFMCG RMS was also confirmed by the competitors who expressed a view in the Commission's market investigation.[24]

(22) Second, there is no demand-side substitutability between RMS for FMCG and NFMCG because they are procured by largely different customers. Indeed, the results of the Commission's market investigation indicate that only a small minority of customers procures both NFMCG RMS and FMCG RMS.[25] The fact that the customer base procuring both FMCG RMS and NFMCG RMS is very small is also confirmed by the data provided by the Parties. Such data indicate that among the top fifty RMS customers of each of NIQ and GfK, representing [50-60]% and [50-60]% of their RMS sales respectively, only […] purchase both FMCG RMS and NFMCG RMS.[26] These […] customers represent [5-10]% of NIQ's RMS sales and [0-5]% of GfK's RMS sales.[27]

(23) Third, competitive conditions in the RMS markets for FMCG and NMCG are, to some extent, different. This is evidenced by the fact that the main suppliers providing these two services are different. NIQ, the market leader in the EEA in FMCG RMS, is not active in NFMCG RMS. Similarly, GfK, the market leader in the EEA in NFMCG RMS, is not active in FMCG RMS.

(24) Fourth, those suppliers which are in fact active in both markets have a very different degree of success in them. Circana, while being a considerable player in FMCG RMS with an EEA share of [20-30]%, has a smaller presence in NFMCG RMS, with an EEA share of only [5-10]%. Likewise, IQVIA, a specialized player which is also the second largest NFMCG RMS provider in the EEA with a share of [30-40]%, only has an EEA share of [0-5]% in FMCG RMS.

4.1.3. Potential market for multi-country market research services provided to multinational customers

(25) The Commission has previously considered a potential sub-segment for multi-country services to multinational customers within each market for market research services.[28] In contrast to customers who procure market research services on a national basis, multinational customers procure market research services across several countries, typically through multinational contracts or framework agreements. Such multinational customers include for example [the Parties' customers] .[29] The Commission found that, while these services are broadly similar to those conducted on a national basis, they entail a higher level of complexity when offered on a multi-country basis. Ultimately, however, the Commission left the exact product market definition open.

(26) According to the Notifying Party, the only core differences between multi-country agreements and one-country agreements pertain to the geographic scope of these agreements and certain customers that request a degree of data harmonisation across the

24 See non-confidential minutes of a conference call with a competitor, 27 January 2023; confidential submission of a competitor, 21 March 2023.
25 Questionnaire to customers, B.1.
26 See Form CO, Chapter II, paragraph 279.
27 See Annex 2.9, Form CO, Chapter II.
28 Case M.5232 – *WPP/TNS,* Commission decision of 23 September 2008, paragraph 15.
29 Form CO, Chapter II, Annex 2.6.

different countries that are covered by a multi-country agreement. Beyond that, each service offered in a multi-country agreement can be and is offered by the Parties in one-country agreements.[30]

(27) The Parties overlap to a substantial degree in the provision of services on a multi-country level only with regard to CPS.

(28) The market investigation brought up evidence suggesting that distinguishing a market for the provision of multi-country CPS to multinational customers, which is separate from the overall market for CPS,[31] is appropriate.[32]

(29) First, there is a sizeable share of demand for multi-country CPS. Customers procuring batches of country-specific CPS on a multi-country basis through multinational agreements represent [50-60]% of NIQ's total CPS revenues and [20-30]% of GfK's total CPS revenues.[33]

(30) Second, several large multinational customers indicated that they have a preference for receiving CPS data across countries in a harmonised manner from a single provider for reasons of data homogeneity.[34] Such data homogeneity is particularly valuable for multinational CPS customers, as it allows for CPS data sourced across various EEA Member States to be compared and analysed at an aggregated level to conduct analysis for regions or multiple countries. Such multi-country data can be utilised in optimising the client's business performance.[35] As one customer explains, '*[w]hen client company is operating in several countries across Europe, it's convenient to have one source of data to be able to easily compare developments in different countries. Data will come from provider in same format. Having one provider in Europe or even globally also simplifies contract work and payments*'.[36] Similarly, another customer indicated that '*[w]hen buying data we usually buy data from different regions from the same supplier to be able to compare. We therefore think it is hard to assess on a purely national level*'.[37]

(31) From the supply side, the CPS suppliers do not have a sufficient cross-country footprint that enables them to fully meet the needs of multi-country CPS to multinational customers. This is evidenced by the fact that GfK and Kantar, the two main CPS providers in the EEA, have formed Europanel,[38] a cooperation that allows them to combine their complementary footprints and offer multi-country CPS to multinational customers in a harmonised manner.

(32) In any case, for the purposes of this case, it can be left open whether CPS provided on a multi-country level for multinational customers represents a separate market from the overall market for CPS, as the remedy offered by the Acquirer addresses any concerns

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30 Form CO, Chapter II, paragraph 418.
31 The overall market for CPS being national, as will be explained below.
32 Questionnaire to Customers, question C.B.2-2.
33 Form CO, Chapter II, footnotes 108 and 115.
34 Non-confidential minutes from a call with a market participant from 12 December 2022. See also responses to Questionnaire to Customers, question C.B.3-3.
35 Questionnaire to Customers, question C.B.3-3.
36 Questionnaire to Customers, question C.B.2-2.
37 *Ibid.*
38 See paragraph 53 below, for more information on Europanel.

relating to this potential market. The Commission will, for completeness, assess the effects of the Transaction both on the overall CPS market, as well as on the potential market for multi-country CPS for multinational customers.

4.2. Relevant geographic market

(33) In previous decisions, the Commission has left open whether the geographic market for market research services (or any sub-segmentation thereof) is national or EEA-wide.[39] The Commission has not previously taken a view in relation to the geographic scope of the potential for multi-country CPS to multinational customers.

(34) The Notifying Party submits that, in line with the Commissions' precedents, the geographic markets for RMS, CPS and CMR are national in scope.[40]

(35) For the purpose of this decision and the assessment of the Transaction, in line with the Notifying Party's views, the Commission considers that the RMS, CPS and CMR markets are national in scope. This is for the following reasons.

(36) First, on the supply-side, suppliers of RMS, CPS and CMR differ across Member States, while no supplier is active in all EEA Member States.[41]

(37) As regards FMCG RMS, NIQ is active in 24 Member States, in 5 of which it is the sole provider.[42] In the Netherlands NIQ faces competition only from Circana, while in 9 Member States NIQ faces competition only from IQVIA.[43] In France, Germany, Greece, Italy and Spain NIQ, Circana and IQVIA are active.[44] NIQ faces competition from additional, smaller FMCG RMS providers, such as CMR[45] and Retail Zoom, in Poland, Romania and Slovakia.[46] In addition, FMCG RMS providers who are active across multiple Member States do not have the same rate of success across those Member States. For instance, Circana is the market leader in Italy, while it is second to NIQ in France, Germany, Greece, the Netherlands and Spain. Of those markets, NIQ faces closer competition by Circana and IQVIA in France, Germany and Greece, while it has a market share of above 75% in Spain.[47]

(38) Similarly, GfK provides CPS in 14 Member States, in 11 of which it is the sole provider.[48] In Denmark and Germany GfK faces competition from Kantar and NIQ respectively, but is the clear market leader with a market share of at least seven times higher than its competitor. In Italy, GfK faces closer competition from NIQ, where GfK leads the market by [10-20]%. Kantar is the sole CPS provider in Greece and Ireland,

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39 M.2291 – VNU/ACNielsen, paragraph 31, M.5232 – WPP/TNS, paragraph 23.

40 Form CO, Chapter III, paragraph 110.

41 Form CO, Chapter II, Annex 3.1; Chapter III, Annex 3.1; Chapter IV, Annex 2.1.

42 NIQ does not provide FMCG RMS in the following EEA Member States: Cyprus, Finland, Iceland, Liechtenstein, Luxembourg, Malta. NIQ is the sole FMCG RMS provider in Belgium, Denmark, Norway, Portugal and Sweden. See Annex 3.1, Form CO, Chapter II.

43 See Annex 3.1, Form CO, Chapter II. IQVIA is the sole competitor of NIQ in Austria, Bulgaria, Croatia, Czechia, Estonia, Hungary, Latvia and Slovenia. In Ireland and Lithuania, in addition to NIQ and IQVIA, there are also smaller FMCG RMS providers accounting for a total market share of up to [0-5]%.

44 See Annex 3.1, Form CO, Chapter II.

45 CMR here refers to an FMCG RMS provider active in Poland.

46 See Annex 3.1, Form CO, Chapter II.

47 *Ibid.*

48 Annex 3.1, Form CO, Chapter III.

while it is the market leader in France, Portugal and Spain, where it leads against NIQ by at least 40%. GfK is not present in France, Greece, Ireland, Portugal and Spain.[49]

(39) Similar observations as to the varying providers amongst Member States can be made also with regard to NFMCG RMS. GfK is active in 21 Member States, in 10 of which it is the market leader. GfK does not provide NFMCG RMS in Bulgaria, Cyprus, Estonia, Iceland, Liechtenstein, Luxembourg and Malta. IQVIA, the second largest FMCG RMS provider across all EEA Member States is the market leader in 12 EEA Member States but has no activities in 9 EEA Member States, including Belgium, Denmark, Finland, the Netherlands, Norway and Portugal. Circana provides NFMCG RMS in 7 EEA Member States, including France, Germany, Italy and the Netherlands, while there are several smaller providers, such as Context, Counterpoint and New Line active sporadically in certain EEA Member States.[50]

(40) As regards CMR, the national markets are highly fragmented. Although Ipsos and Kantar, the two most important CMR providers are active across most EEA Member States,[51] together they account for not more than roughly [20-30]% in any EEA Member State. The rest of the market is addressed by a large number of smaller CMR providers, including NIQ and GfK, that are active sporadically in certain EEA Member States. For instance, NIQ is active in 15 Member States, while GfK is active in only 10 Member States.[52]

(41) Second, inputs for RMS, CPS and CMR are country-specific and cannot be substituted by inputs sourced in other countries. This is due to differences in consumer behaviour between different Member States.[53] As is confirmed also by the market investigation (see paragraph (43) below), customers of market research services have demand for data on a national basis. It follows that an RMS provider cannot use POS collected by retailers in one Member State in order to provide RMS in another Member State.[54] As regards CPS, providers must operate panels comprised of consumers in a specific Member State, in order to provide data that is relevant to that Member State.[55] For the same reasons, a CMR provider cannot conduct a survey in one Member State in order to provide insights on the views of consumers in another Member State.

(42) Second, there are significant barriers for suppliers of CPS and RMS to offer their services in new Member States, where they are currently not active. As regards RMS, a new entrant in a Member State would have to secure the cooperation of a sufficiently large proportion of the retail market for the product categories they intend to cover, so that they can obtain a representative sample of POS data and produce meaningful RMS.[56] With regard to CPS, a new entrant in a Member State would have to identify and recruit a new consumer panel comprised of a representative household sample. It would then require a significant period of time of collecting data from such panel,

49 *Ibid.*
50 See Annex 3.2, Form CO, Chapter II.
51 With the exception of Iceland, Liechtenstein, Luxembourg and Malta.
52 Annex 2.1, Form CO, Chapter IV.
53 Form CO, Chapter IV, paragraph 48.
54 Form CO, Chapter II, paragraph 183.
55 Form CO, Chapter III, paragraph 122.
56 Form CO, Chapter II, paragraph 584.

before the new entrant is able to start offering CPS.[57] As confirmed by a respondent to the market investigation, '*it seems difficult for a national service provider to enter into a new country*'.[58]

(43) Third, the majority of respondents that expressed a view indicated that the markets for RMS (FMCG and NFMCG), CPS are national in scope.[59] Moreover, the market investigation confirmed that there is no demand-side substitutability between market research services between countries, as RMS and CPS services for one country cannot be used (directly or as a proxy) for other countries.[60] This is because retail and consumption trends vary among Member States, due to differences in consumer habits and preferences. As one customer explained, '*[w]e consider that each market research services from each Member State demonstrates separate characteristics from another Member State geographic market. Accordingly, the results of each research are highly possible to differ significantly*'.[61]

(44) On the basis of the above, the Commission considers that the markets for CPS and RMS are national in scope. With regard to CMR, the exact market definition can be left open, as the Transaction does in any case not give rise to affected markets in relation to CMR.

(45) With regard to a potential market for the provision of multi-country CPS to multinational customers, that is separate from the overall, national market for CPS, the data provided by the Parties shows that their multinational customers procure CPS data on a wider-than-national basis.[62] The exact geographic perimeter of such multi-country contracts and framework agreements concluded between multinational customers and CPS providers varies and depends on the specific needs of each customer. However, according to the data provided by the Parties, a significant part of CPS customers, both in terms of numbers and revenues generated, purchase CPS data across multiple EEA Member States, typically including at least the largest EEA markets, namely France, Germany, Italy and Spain.[63] In fact, about [20-30]% of NIQ's top 38 CPS customers, representing approximately [20-30]% of its total CPS revenues,[64] and about [30-40]% of GfK's CPS top 50 customers, representing approximately [30-40]% of its total CPS revenues,[65] procure CPS in at least each of the largest CPS markets, namely Germany, France, Italy and Spain.

(46) From a supply-side, both multi-country CPS providers in the EEA, namely NIQ and Europanel,[66] are present in Germany, France, Italy and Spain.[67]

57 Form CO, Chapter III, paragraph 339.
58 Questionnaire to Customers, question C.B.2-2.
59 Questionnaire to Customers, question C.B.2.
60 Questionnaire to Customers, question C.B.4.
61 Questionnaire to Customers, question C.B.4-2.
62 See Form Co, Chapter II, Tables 29 and 35.
63 See also non-confidential minutes from a call with a market participant from 31 October 2022.
64 See Annex 3.1, QP3; Annex 6.1, QP3.
65 See Annex 6.2, QP3; Annex 2.14(a) Form CO, Chapter II.
66 Europanel is a partnership between GfK and Kantar, which offers multi-country CPS in the EEA. See paragraph 45 below.
67 See Table 2 below.

(47) In any case, for the purposes of this case, the exact geographic scope of a potential market for multi-country CPS to multinational customers can be left open, as the Commission's assessment would not change, even if the market were considered to comprise at a minimum further EEA Member States in addition to Germany, France, Italy and Spain. Moreover, the remedy offered by the Acquirer addresses any concerns relating to this potential market. For the purposes of this decision the Commission will consider that this potential market covers CPS contracts that cover at least Germany, France, Italy and Spain.

5. COMPETITIVE ASSESSMENT

(48) In this Section, the Commission will assess the possible effects of the Transaction on the affected markets, and in particular:

(a) The horizontal overlaps in the markets for

– CPS in Germany and Italy;

– Multi-country CPS for multinational customers, covering at least Germany, France, Italy and Spain;

– FMCG RMS in France; and

– NFMCG RMS in Italy and Spain.

(b) The vertical relationship between GfK's CPS activities upstream and NIQ's FMCG RMS activities downstream in Germany, Italy and the Netherlands;

(c) The conglomerate relationship between GfK's and NIQ's activities in CPS across Member States, and in particular the Merged Entity's ability and incentive post-Transaction to foreclose its sole competitor (Kantar) in the CPS markets in Denmark, France, Portugal, and Spain, by leveraging its monopoly position in the CPS markets in Austria, Belgium, Bulgaria, Croatia, Czechia, Finland, Germany, Hungary, Italy, the Netherlands, Poland, Romania, Slovakia, and Sweden.

(d) The conglomerate relationship between NIQ's activities in FMCG RMS across Member States on the one side, and NIQ's and GfK's activities in CPS across Member States on the other side, and in particular the Merged Entity's ability and incentive post-Transaction to foreclose its main rivals in the markets for FMCG RMS and CPS (Circana and Kantar) in Denmark, France, Germany, Greece, Italy, the Netherlands, Portugal and Spain, by bundling FMCG RMS and CPS within one Member State and across Member States.

5.1. Market structure of market research services

5.1.1. RMS

(49) Both the FMCG and NFMCG RMS markets are highly concentrated at the national level in the EEA. There are two main suppliers of FMCG RMS (EEA market size ~ EUR 600 million) in the EEA: NIQ and Circana.[68] NIQ is the biggest player with a [70-

[68] The Parties argue that a third player (IQVIA with a [0-5]% EEA share) is also present, however the pre-notification market investigation indicated that it is a specialized player in the health sector and does not compete with NIQ. Furthermore, the Parties argue that other suppliers of FMCG RMG account for [0-5]% of the market, at EEA level.

80]% share at EEA level while Circana's market share reaches only [20-30]%. At national level NIQ holds market shares above [70-80]% in 14 Member States and a monopoly position in five. Circana is present in six EEA Member States and holds a market share greater than 50% in Italy.

(50) GfK is the EEA's biggest player for the supply of NFMCG RMS (EEA market size ~ EUR 380 million), with [50-60]% of the EEA's business. GfK's main competitor in this market is Circana ([5-10]%). IQVIA ([30-40]%) is also present in this market but focuses on the medical sector and is not a close competitor to GfK in the national markets where they are both present, as GfK does not focus on the medical sector.[69] GfK holds market shares above 70% in 8 Member States.

5.1.2. CPS

(51) GfK ([60-70]%), Kantar ([20-30]%) and NIQ ([10-20]%) are the only three CPS (EEA market size ~ EUR 210 million) suppliers in the EEA.

(52) GfK and Kantar have a largely complementary footprint so that their activities only overlap in Denmark. GfK is present in CPS in 14 Member States, mainly in Eastern Europe, and is the sole supplier in 11 Member States. Kantar is mainly present in Western Europe where it overlaps with NIQ in 3 Member States (France, Portugal, Spain).

(53) GfK and Kantar are currently participating in Europanel, a long-standing cooperation through which GfK and Kantar can respond to multinational customers' demand of multi-country CPS data, covering most of the EEA countries, including the largest national CPS markets in the EEA, namely France, Germany, Italy, and Spain.[70] The Commission further addresses the relevance of Europanel for the present decision in Section 5.2.2.4. *et seq* below.

5.1.3. CMR

(54) The EEA CMR markets (EEA market size ~ EUR 3.6 billion) are highly fragmented. The main EEA CMR providers include Ipsos ([10-20]%), Kantar ([10-20]%), GfK ([0-5]%) and NIQ ([0-5]%). The market shares of the Parties in each EEA Member State where they are active are indicated in the table below.

Table 1: CMR market shares of the Parties within the EEA (2021)

Country	NIQ	GfK	Merged Entity
Austria	[0-5]%	[0-5]%	[0-5]%
Belgium	[0-5]%	[5-10]%	[5-10]%
Bulgaria	[0-5]%	[0-5]%	[0-5]%
Croatia	[0-5]%	[0-5]%	[0-5]%

69 Non-confidential minutes of a call with a market participant of 22 February 2023.
70 Form CO, Chapter III, para. 12.

Country	**NIQ**	**GfK**	**Merged Entity**
Cyprus	[0-5]%	[0-5]%	[0-5]%
Czech Republic	[0-5]%	[0-5]%	[0-5]%
Denmark	[0-5]%	[0-5]%	[0-5]%
Estonia	[0-5]%	[0-5]%	[0-5]%
Finland	[0-5]%	[0-5]%	[0-5]%
France	[0-5]%	[0-5]%	[0-5]%
Germany	[0-5]%	[0-5]%	[0-5]%
Greece	[5-10]%	[0-5]%	[5-10]%
Hungary	[0-5]%	[0-5]%	[0-5]%
Iceland	-	-	-
Ireland	[0-5]%	[0-5]%	[0-5]%
Italy	[0-5]%	[0-5]%	[5-10]%
Latvia	[5-10]%	[0-5]%	[5-10]%
Liechtenstein	-	-	-
Lithuania	[0-5]%	[0-5]%	[0-5]%
Luxembourg	-	-	-
Malta	-	-	-
Netherlands	[0-5]%	[0-5]%	[0-5]%
Norway	[0-5]%	[0-5]%	[0-5]%
Poland	[0-5]%	[0-5]%	[5-10]%
Portugal	[0-5]%	[10-20]%	[10-20]%
Romania	[0-5]%	[0-5]%	[0-5]%

Country	NIQ	GfK	Merged Entity
Slovakia	[0-5]%	[0-5]%	[0-5]%
Slovenia	[0-5]%	[0-5]%	[0-5]%
Spain	[0-5]%	[10-20]%	[10-20]%
Sweden	[0-5]%	[0-5]%	[0-5]%
EEA total	**[0-5]%**	**[0-5]%**	**[0-5]%**

Source: Form CO, Chapter IV, Annex 2.1

(55) Based on the above, no vertically or horizontally affected markets arise within CMR.

(56) The market investigation did further not indicate that there is either a vertical or conglomerate relation between CMR on one side and either CPS, FMCG RMS or NFMCG RMS on the other side.

(57) In any case, even if there was a vertical or conglomerate relation between CMR and CPS, any potential effects would be addressed by the proposed remedy, following which the Parties' position in CPS will not change in any Member State, as will be explained below, while any increment in their position in CMR will not be material.

(58) As regards FMCG RMS and NFMCG RMS, any potential vertical or conglomerate relations to CMR would not bring about any merger-specific effects. This is because, as will be explained below, the Transaction will not change the Parties' position in either FMCG RMS or NFMCG RMS,[71] and any increment in their position in CMR will not be material.

(59) Moreover, the Commission has not received any information from the Parties or during the market investigation, which would indicate that competition concerns could arise in relation to the CMR markets within the EEA. The clear majority of the respondents to the market investigation confirmed that they did not expect any negative effects of the Transaction in relation to CMR.[72]

(60) On the basis of the above, the Commission will now further assess the markets for CMR in this decision.

5.2. Horizontal overlaps

(61) In this Section, the Commission will assess the horizontally affected markets brought about by the Transaction, namely:

(a) CPS in Germany and Italy;

[71] As will be further explained below, any increment brought about by the Transaction in FMCG RMS in France and NFMCG RMS in Italy and Spain is below 1%.

[72] Questionnaire to Customers, question G.B.1.

(b) Multi-country CPS to multinational customers, covering at least Germany, France, Italy and Spain;

(c) FMCG RMS in France;

(d) NFMCG RMS in Italy and Spain.

5.2.1. *Legal framework*

(62) The Commission's Guidelines on the assessment of horizontal mergers under the Merger Regulation (the 'Horizontal Merger Guidelines') distinguish two main ways in which mergers between actual or potential competitors on the same relevant market may significantly impede effective competition, namely non-coordinated effects and coordinated effects.[73]

(63) Non-coordinated effects may significantly impede effective competition by eliminating the competitive constraint imposed by one merging party on the other, as a result of which the Merged Entity would have increased market power without resorting to coordinated behaviour. According to recital 25 of the Merger Regulation, a significant impediment to effective competition can result from the anticompetitive effects of a concentration even if the Merged Entity would not have a dominant position on the market concerned. In this 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.[74]

(64) The Horizontal Merger Guidelines list a number of factors, which may influence the rise of substantial non-coordinated effects from a merger, such as: the large market shares of the merging firms; the fact that the merging firms are close competitors; the limited possibilities for customers to switch suppliers; or the fact that the merger would eliminate an important competitive force. The list of factors applies equally if a merger would create or strengthen a dominant position or would otherwise significantly impede effective competition due to non-coordinated effects. Furthermore, not all of those factors need to be present to make significant non-coordinated effects likely and the list itself is not an exhaustive list.[75]

5.2.2. *Horizontal overlaps in relation to CPS*

5.2.2.1. Overview of (national) CPS markets

(65) The Parties' activities are largely complementary and horizontally affected markets arise only with respect to the provision of CPS in Germany and Italy where the Parties are the only two active suppliers.

73 OJ C 31, 5.2.2004, p. 5. The remainder of this Decision focuses on non-coordinated effects.
74 Horizontal Merger Guidelines, paragraphs 24-38.
75 Horizontal Merger Guidelines, paragraphs 24-38.

Table 2 – CPS market shares in Germany and Italy (2021)

	Germany	**Italy**
NIQ	[5-10]%	[40-50]%
GfK	[90-100]%	[50-60]%
Total	**100%**	**100%**

Source: Form CO, Chapter III, Annex 3.1

5.2.2.2. The Parties' views

(66) The Parties consider that any loss of competition in CPS in Germany and Italy would be replaced by new entry by Kantar as a result of the Transaction, in a timely and effective way. According to the Parties, Kantar has a strong incentive to enter these markets as a result of the Transaction, [Parties' view of potential response by Kantar to the Transaction]. The Parties argue that there is still potential for growth for CPS in Germany and Italy, and Kantar may see opportunities to enter and expand the markets by targeting new customers.[76]

5.2.2.3. Commission's assessment

(67) The Commission considers that the Transaction would give rise to serious doubts as to its compatibility with the internal market as a result of the potential elimination of competitive constraints between the Parties in the markets for CPS in Germany and Italy, which are the only two horizontally affected national CPS markets.

(68) First, the Merged Entity would be in a monopoly position post-Transaction in both Italy and Germany. The Transaction would remove the only actual competitor for CPS in these two countries. Customers would therefore be left with no alternatives to the Merged Entity post-Transaction.

(69) Second, a majority of customers responding to the market investigation indicated that NIQ and GfK are each other's closest competitor for CPS in Germany and Italy.[77]

(70) Third, a majority of customers responding to the market investigation considered that the Transaction would have an overall negative impact on CPS in Germany and Italy, including potential price increases.[78] For instance, one customer pointed out that, post-Transaction, '*NIQ will want to reset completely the pricing strategy and make more profit with GfK tools which will drive further price increase*'.[79]

(71) In addition, some customers expressed concerns about a possible negative impact of the Transaction on the quality of service and innovation in CPS in Germany and Italy. One

[76] Form CO, Chapter III, Section 2.5, paragraphs 134 and 139.
[77] Questionnaire 01 to Customers, questions F.B.B.3 and F.B.B.4.
[78] Questionnaire 01 to Customers, questions F.C.1-1 and F.C.1-2.
[79] Response of a customer to question F.C.2 of Questionnaire 01 to Customers.

customer indicated that '*service quality will depend on the focus that NIQ will put on the transition and the new set up* (…). *Historically, Europanel has been more proactive than Nielsen in the development of new services and tech solutions'*.[80] This is in line with the feedback received in response to the market investigation, pursuant to which NIQ is consistently ranked lower than GfK and Kantar for all parameters of competition in CPS markets, namely (i) price, (ii) size of consumer panels, (iii) quality of the delivered CPS data, (iv) support from teams of CPS provider, (v) ability to provide CPS data in multiple EEA countries and (vi) reputation of CPS provider.[81] In this respect, one customer stressed that '*NIQ provides only one panel in Germany. We tested it but quality, service and data providing platform do not meet our expectations'*.[82] Another customer indicated that '*Kantar is way above NIQ – not talking about the same level of service*'.[83]

(72) Lastly, the market investigation did not confirm the Parties' claim that entry in CPS in Germany and Italy is likely, timely and sufficient.[84] A majority of respondents to the market investigation identified a wide range of high barriers to entry in CPS markets in Germany and Italy, including the investment needed to recruit a sizeable panel, to set up the data management and the need for historic data. One customer referred to the fact that any new entrant must '*build a history of at least 1 year before commercializing the panel*' and estimated that the '*cost in the first year should be at least 5-10 million Euro before starting to commercialize'*.[85]

5.2.2.4. Potential market for multi-country CPS to multinational customers

(73) As discussed at paragraph (28) above, the market investigation indicated that there is potentially a distinct market for the provision of multi-country CPS to customers that operate across several countries within the EEA, covering CPS in at least Germany, France, Italy and Spain.

(74) Currently, there are two providers that can offer multi-country CPS covering at least Germany, France, Italy and Spain, namely NIQ and Europanel. As discussed at paragraph (53) above, Europanel is a partnership between GfK and Kantar, set up to address the demand of large multinational customers for harmonised CPS data they source across countries in the EEA.[86]

(75) The market shares of NIQ and Europanel across EEA Member States are indicated in Table 3 below. While the below market shares refer to NIQ's and Europanel's overall CPS sales, as opposed to sales to multinational customers only, the Commission considers that Table 3 offers a good proxy for their position in the market for multi-country CPS to multinational customers. This is because it indicates the geographic footprint of each competitor across EEA Member States, which is considered key by multinational CPS customers.[87] In any case, as will be explained below, the Transaction

80 Response of a customer to question F.C.1-5 of Questionnaire 01 to Customers.
81 Questionnaire 01 to Customers, question F.B.B.2.
82 Response of a customer to question F.B.B.2-8 of Questionnaire 01 to Customers.
83 Response of a customer to question F.B.B.3-2 of Questionnaire 01 to Customers.
84 Non-confidential minutes of a call with a market participant of 27 October 2022.
85 Response of a customer to question F.B.C.2 of Questionnaire 01 to Customers.
86 Form CO, Chapter III, paragraphs 210 *et seq.*
87 Questionnaire to Customers, question C.B.2-2; Questionnaire to Customers, question F.B.B.1.

will not result merely in the increase of NIQ's shares in this market, but will grant NIQ the possibility to become the sole provider of multi-country CPS to multinational customers.

Table 3: NIQ's and Europanel's market shares across EEA Member States, 2021.

2021	**NIQ**	GfK	Kantar	**Europanel (GfK and Kantar Combined)**
Austria	-	[90-100]%	-	[90-100]%
Belgium	-	[90-100]%	-	[90-100]%
Bulgaria	-	[90-100]%	-	[90-100]%
Croatia	-	[90-100]%	-	[90-100]%
Czechia	-	[90-100]%	-	[90-100]%
Denmark	-	[80-90]%	-	[80-90]%
Finland	[90-100]%	-	-	-
France	[10-20]%	-	[80-90]%	[80-90]%
Germany	[5-10]%	[90-100]%	-	[90-100]%
Greece	-	-	[90-100]%	[90-100]%
Hungary	-	[90-100]%	-	[90-100]%
Ireland	-	-	[90-100]%	[90-100]%
Italy	[40-50]%	[50-60]%	-	[50-60]%
Netherlands	-	[90-100]%	-	[90-100]%
Poland	-	[90-100]%	-	[90-100]%
Portugal	[30-40]%	-	[70-80]%	[70-80]%
Romania	-	[90-100]%	-	[90-100]%
Slovakia	-	[90-100]%	-	[90-100]%
Spain	[10-20]%	-	[80-90]%	[80-90]%
Sweden	-	[90-100]%	-	[90-100]%

Source: Form CO, Chapter III, Annex 3.1.

(76) The Commission considers that the Transaction could potentially raise serious doubts as to its compatibility with the internal market with respect to the potential market for multi-country CPS to multinational customers for the following reasons.

(77) First, currently a customer wanting to source CPS across multiple countries and interested in a provider that can cover at least Germany, France, Italy and Spain has only two potential suppliers: NIQ and Europanel.

(78) As shown in Table 3 above, NIQ currently offers CPS in 6 Member States, including Germany, France, Italy and Spain. Europanel covers 19 Member States, including Germany, France, Italy and Spain, thanks to the complementary presence of either GfK or Kantar in each of the relevant Member States.

(79) In fact, GfK and Kantar currently are mutually dependent for the provision of multi-country CPS through Europanel, as neither of them covers Germany, France, Italy and Spain on their own: GfK covers Germany and Italy, while Kantar covers France and Spain.

(80) Due to NIQ's presence in France and Spain, post-Transaction, the Merged Entity would cover all Member States currently covered by Europanel, with the exception of Greece and Ireland. There will therefore no longer be a dependency on Kantar's CPS data in France and Spain for the Merged Entity to offer multi-country CPS. The Merged Entity could therefore have an interest to terminate the Europanel cooperation, to avoid competing with Kantar for the provision of multi-country CPS to multinational customers. To date, Kantar's existing footprint across EEA Member States has been supplemented by the Europanel agreement with GfK. As explained above, as Kantar is itself not active in Germany and Italy, it is through the Europanel agreement that Kantar can currently compete for CPS contracts that cover at least Germany, France, Italy and Spain. Post-Transaction, the Merged Entity will be in competition with Kantar, whereas currently GfK and Kantar do not provide CPS in any overlapping Member States. Considering the change brought about by the Transaction in the competitive dynamics between GfK and Kantar, the Commission considers that the Merged Entity will post-Transaction not have an interest to sustain the competitiveness of its sole competitor in the market for multi-country CPS to multinational companies, by sustaining the Europanel cooperation with Kantar, and thereby granting Kantar CPS coverage in Germany and Italy. [Information not submitted in the final Form CO.].[88]

(81) The majority of customers who expressed an opinion, indicated that the Merged Entity could post-Transaction replace Europanel, despite not being active in Greece and Ireland.[89] As one customer explained, the Transaction '*would give NIQ a competitive advantage and stronghold over CPS services in Europe as a region and would quickly push Kantar to the side given its limited national coverage. While NIQ could then manage as one CPS provider it would likely mean higher prices, less innovation in market, lower data quality and servicing[...]*.'[90]

(82) Even in case the Europanel cooperation were not terminated, Kantar would be dependent on the contribution of CPS data by NIQ to Europanel in the Member States where Kantar itself is not present, notably Germany and Italy, which could impact Kantar's ability to compete with NIQ for the provision of multi-country CPS to multinational customers.

(83) If the competitiveness of Europanel were to be compromised, the Merged Entity would be the only CPS provider able to cover all of Germany, France, Italy and Spain – countries where coverage is critical to provide multi-country CPS to multinational

88 See initial Form CO submitted on 20 March 2023, Chapter III, paragraph 140.

89 Responses to question F.B.D.4-1 of Questionnaire 01 to Customers.

90 Responses to question F.B.D.4-2 of Questionnaire 01 to Customers.

customers. Kantar would still be able to provide CPS to multinational customers interested in CPS data in France, Greece, Ireland, Portugal and Spain. However, Kantar would not be able to offer a credible one-stop-shop for multi-country CPS to multinational customers on its own, as it lacks sufficient coverage, including at least in Germany and Italy.

(84) Post-Transaction, multinational customers would have the option to either purchase from the Merged Entity harmonised CPS across multiple countries, including all of Germany, France, Italy and Spain, or to purchase in an unharmonised manner CPS from Kantar in individual countries and complement those with CPS from the Merged Entity for the remaining countries of interest. One respondent to the market investigation illustrated this dilemma, explaining that *'[...]service providers do work across countries and can leverage that knowledge, expertise, deliver multi-country and cross country insight. Currently we work with Europanel who leverage the best of all of the above form both Kantar and GfK - breaking this partnership would mean we lose our harmonised cross-country reporting and analysis tools, a single point of contact for the EU region, and best practice across the region - then being limited to just one agency OR two separate agencies'.*[91]

(85) Second, several respondents to the market investigation explained that Kantar's multi-country CPS offering would be impaired post-Transaction in case Europanel ceased to exist or became uncompetitive, as in this case Kantar would not be able to offer coverage of Germany and Italy, which is considered critical by multinational customers.[92] One customer explained that "*Kantar's coverage is relatively limited in Europe, the vast majority of the countries within the Europanel comes from GfK. They would need to massively invest in adding more countries (in particular Germany as one of the biggest in the EEA, but also other members states) to their portfolio. Basically, they would have to add all those countries where there is GfK at the moment*."[93] Several other customers indicated that, were Europanel to cease to exist post-Transaction, Kantar would need to cover at least Italy and Germany in order for such customers to continue working with Kantar. One customer noted that *'[w]e would need Kantar to be active in Germany, Italy as priority 1'*,[94] while another customer explained that they would need Kantar to be active in '*[a]t a minimum, we would say Germany and Italy*'.[95]

(86) Third, considering that multinational customers value harmonised CPS data sourced across countries from a single provider, it is likely that Kantar's multinational customers will switch their demand towards the Merged Entity, in particular those customers that demand CPS data across sizeable CPS markets, including Germany, France, Italy and Spain.[96]

(87) Lastly, the findings from the market investigation discussed at paragraphs (71) and (72) above, in relation to the expected negative impact of the Transaction on the quality of

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91 Response of a customer to question C.B.2-2 of Questionnaire 01 to Customers.

92 Responses to question F.B.D.2 of Questionnaire 01 to Customers.

93 *Ibid.*

94 *Ibid.*

95 *Ibid.*

96 See paragraph 29 above.

service and innovation in CPS[97], as well as the existence of high barriers for new market entrants described at paragraph (42) above also apply in relation to the market for multi-country CPS to multinational customers.

5.2.2.5. Conclusion on Horizontal effects in relation to CPS

(88) Based on the above considerations, and in light of all evidence available to it, the Commission considers that the Transaction raises serious doubts as to its compatibility with the internal market with respect to the horizontal overlaps in the CPS markets in Germany and Italy.

(89) Furthermore, the Commission considers that, in case a distinct market for the provision of multi-country CPS to multinational customers were to be considered, the Transaction could potentially raise serious doubts as to its compatibility with the internal market also with respect to this market. However, as the proposed remedy would in any case address such serious doubts, there is no need for the Commission to take a definitive view on this.

5.2.3. Horizontal overlaps in relation to FMCG RMS

5.2.3.1. Overview of the horizontally affected markets in RMS

(90) As regards RMS, the Parties' activities are largely complementary in the EEA, with NIQ active in FMCG RMS and GfK mainly active in NFMCG RMS. However, the Parties' activities give rise to some limited overlaps in FMCG RMS in France.

Table 4: FMCG RMS market shares in France (2021)

FMCG RMS provider	**Market share**
NIQ	[60-70]%
GfK	[0-5]%
Total NIQ + GfK	**[60-70]%**
Circana	[30-40]%
IQVIA	[0-5]%
Others	[0-5]%

Source: Form CO, Chapter II, Annex 3.1

5.2.3.2. The Parties' views

(91) The Parties submit that GfK collects POS data on pet care products in France from DIY and agricultural stores, as a legacy business from GfK's acquisition of a market research company in the farming sector. GfK subsequently sold the farming market

97 Questionnaire 01 to Customers, questions F.C.1-1 and F.C.1-2.

research business but retained the pet care RMS business as the purchaser did not want to acquire it. GfK's French pet care business generated net sales of EUR […] in 2021.[98]

(92) The Parties further indicate that NIQ's FMCG RMS business also covers pet care, including in France. However, it tracks sales in different retail channels to GfK. NIQ does not collect data from DIY and agricultural stores, which are GfK's only sources of FMCG RMS data for pet care, and principally collects data from mass retail channels such as supermarkets. NIQ's FMCG RMS business in pet care in France generated net sales of EUR […] in 2021.[99]

(93) As a result, the Parties argue that NIQ and GfK do not compete in the pet care category in France since they each provide FMCG RMS data based on sales in different retail channels. The Parties submit that the Transaction will potentially benefit customers by amalgamating two adjacent and non-competing sources of data, both of which are independently necessary for complete coverage of the retail market.

5.2.3.3. Commission's assessment

(94) The Transaction would lead to a horizontal overlap between the Parties' activities in FMCG RMS in France. However, for the reasons explained below, the Commission considers that this horizontal overlap is unproblematic.

(95) The Parties' combined market share would be [60-70]% for FMCG RMS in France. However, this relates to GfK's provision of FMCG RMS data only for one specific product category, namely pet care. Apart from this product category, GfK is only active in the provision of NFMCG RMS data in France and the EEA, while NIQ covers a broad range of products in FMCG RMS. Therefore, GfK is not a close competitor to NIQ for FMCG RMS in France.

(96) In addition, the increment brought about by GfK is *de minimis*, at less than [0-5]%, with an HHI delta well below 150 at […].[100] According to the Horizontal Merger Guidelines, the Commission is unlikely to identify horizontal competition concerns in a market with a post-merger HHI delta below 150.[101]

(97) Moreover, even for the pet care category in FMCG RMS in France, NIQ and GfK are not close competitors since they track sales in different retail channels. Indeed, GfK only collects POS data on pet care products in France from DIY and agricultural stores, which NIQ does not track.[102]

(98) The Commission also notes that there are several competitors for FMCG RMS in France, including Circana with a market share above 30%. As the Transaction will virtually not add to NIQ's existing position, or impact the competitive constraints exerted by Circana and its ability to compete against the Merged Entity, would remain largely unchanged post-Transaction.

98 Form CO, Chapter II, paragraph 194.
99 Form CO, Chapter II, paragraph 195.
100 Form CO, Chapter II, Annex 2.18.
101 Horizontal Merger Guidelines, paragraph 20.
102 Form CO, Chapter II, footnote 60.

(99) Based on the above considerations and in light of all the evidence available to it, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to FMCG RMS in France.

5.2.4. Horizontal overlaps in relation to NFMCG RMS

(100) As regards RMS, the Parties' activities are largely complementary in the EEA, with NIQ active in FMCG RMS and GfK active in NFMCG RMS. However, the Parties' activities overlap in NFMCG RMS as regards the specific product category of books in Italy and Spain.

Table 5: NFMCG RMS market shares in Italy and Spain (2021)

NFMCG RMS provider	Market share in Italy	Market share in Spain
NIQ	[0-5]%	[0-5]%
GfK	[50-60]%	[30-40]%
Total NIQ + GfK	**[50-60]%**	**[30-40]%**
Circana	[5-10]%	[5-10]%
IQVIA	[20-30]%	[40-50]%
Context	[0-5]%	[0-5]%
Counterpoint	[0-5]%	[0-5]%
New Line	[10-20]%	[0-5]%
Lizeo	[0-5]%	[0-5]%
Others	[0-5]%	[0-5]%

Source: Form CO, Chapter II, Annex 3.2

5.2.4.1. The Parties' views

(101) The Parties submit that GfK tracks retail sales of books in Italy and Spain, and provides sales reports to publishers and retailers. According to the Parties, this is a relatively small business, which generated net sales for GfK in 2021 of EUR […] in Italy and EUR […] in Spain.[103]

(102) The Parties further indicate that NIQ also tracks retail sales of books in Italy and Spain, and its business is extremely limited: in 2021, it generated net sales of EUR […] in Italy and EUR […] in Spain.[104]

[103] Form CO, Chapter II, paragraph 190.
[104] Form CO, Chapter II, paragraph 191.

(103) As regards Italy, the Parties point out that there are three other sources of book retail data: book wholesalers, the association of independent booksellers, and Amazon, which supplies retail data to publishers. Most customers acquire data from all three sources as well as from both GfK and NIQ. In addition, two of the biggest publishers in Italy are also booksellers and have extensive in-house data on the sale of their own books and other publishers' books. Therefore, the Parties argue that the Transaction will not have a negative effect on competition in the books product category in Italy.[105]

(104) As regards Spain, the Parties submit that NIQ is a marginal operator and does not have a cooperation agreement to obtain POS data from Amazon. It is therefore unable to offer publishers or booksellers a view of the whole retail market. For this reason, NIQ's customers in Spain are predominately publishers of specialist titles that tend not to sell through Amazon and are willing to accept market data that excludes the biggest online retailer. GfK does have a cooperation agreement with Amazon and can therefore offer more complete coverage.[106]

5.2.4.2. Commission's assessment

(105) The Parties' combined market share would exceed [50-60]% and [30-40]% for NFMCG RMS in Italy and Spain respectively. However, this relates to NIQ's provision of NFMCG RMS data only for one specific product category, namely books. Apart from this product category, NIQ is only active in the provision of FMCG RMS data in Italy and Spain.

(106) In addition, the increment brought about by NIQ is *de minimis*, at less than [0-5]%, with an HHI delta well below 150 at […] and […] for Italy and Spain respectively.[107] According to the Horizontal Merger Guidelines, the Commission is unlikely to identify horizontal competition concerns in a market with a post-merger HHI delta below 150.[108]

(107) Moreover, the Commission notes that there are several competitors for FMCG RMS in Italy and Spain, including IQVIA with a significant market share above [20-30]% in Italy and above [40-50]% in Spain. Circana also holds a non-negligible market share above 5% in both countries. As the Transaction will virtually not add to GfK's existing position, the competitive constraints exerted by actual competitors for NFMCG RMS in Italy and Spain, and their ability to compete against the Merged Entity, would remain largely unchanged post-Transaction.

(108) Based on the above considerations and in light of all the evidence available to it, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to NFMCG RMS in Italy and Spain.

105 Form CO, Chapter II, paragraph 192.
106 Form CO, Chapter II, paragraph 193.
107 Form CO, Chapter II, Annex 2.18.
108 Horizontal Merger Guidelines, paragraph 20.

5.3. Vertical effects in relation to FMCG RMS

(109) The Transaction gives rise to a vertical link between GfK's activities in the CPS markets (upstream) and NIQ's FMCG RMS business (downstream), as explained at 5.3.2 below.

5.3.1. Legal framework

(110) According to the Non-Horizontal Merger Guidelines,[109] foreclosure occurs when actual or potential rivals' access to markets is hampered, thereby reducing those companies' ability and/or incentive to compete.[110] Such foreclosure can take two forms: (i) input foreclosure, when access of downstream rivals to supplies is hampered;[111] and (ii) customer foreclosure, when access of upstream rivals to a sufficient customer base is hampered.[112]

(111) For input or customer foreclosure to be a concern, three conditions need to be met post-Transaction: (i) the Merged Entity needs to have the ability to foreclose its rivals; (ii) the Merged Entity needs to have the incentive to foreclose its rivals; and (iii) the foreclosure strategy needs to have a significant detrimental effect on competition.[113] In practice, these factors are often examined together since they are closely intertwined.

5.3.2. Overview of the vertically affected markets

(112) One of the key distinctive features of an FMCG RMS provider is the coverage of its data as this drives (i) the reliability of the data and (ii) the likelihood of having statistically relevant observations for less frequently purchased products. While many large supermarket chains – the main sales channel for FMCG – cooperate with market research companies, some other retailers do so only to a limited extent or not at all. FMCG RMS providers therefore use a range of tools to estimate the sales of non-cooperating retailers, including CPS data.[114] In this context, CPS (upstream) is an input for FMCG RMS (downstream).

(113) Circana currently estimates the sales of non-cooperating retailers on the basis of CPS data it sources from GfK in Germany, Italy and the Netherlands.[115] The Transaction therefore brings about a vertical relationship between GfK's CPS activities upstream and FMCG RMS downstream in these three EEA Member States.

(114) In terms of market structure for CPS, in Germany and Italy, NIQ and GfK are the only CPS providers. In the Netherlands, GfK is the sole CPS provider.[116] Therefore, post-Transaction, the Merged Entity would be in a monopoly position as regards the upstream markets for CPS in Germany, Italy and the Netherlands.

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109 Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings, OJ C 265, 18.10.2008, p.7.
110 Non-Horizontal Merger Guidelines, paragraphs 20-29.
111 Non-Horizontal Merger Guidelines, paragraph 31.
112 Non-Horizontal Merger Guidelines, paragraph 58.
113 Non-Horizontal Merger Guidelines, paragraphs 32 and 59.
114 Form CO, Chapter II, paragraph 23.
115 Form CO, Chapter II, paragraph 8.
116 Form CO, Chapter III, Annex 3.1.

(115) NIQ's and its competitors', including Circana's, market shares for FMCG RMS in Germany, Italy and the Netherlands, are presented in Table 3 below.

Table 6: FMCG RMS market shares in Germany, Italy and the Netherlands (2021)

FMCG RMS provider	Market share in Germany	Market share in Italy	Market share in the Netherlands
NIQ	[60-70]%	[30-40]%	[60-70]%
Circana	[20-30]%	[50-60]%	[30-40]%
IQVIA	[0-5]%	[0-5]%	[-]
Others	[0-5]%	[0-5]%	[-]

Source: Form CO, Chapter II, Annex 3.1

5.3.3. *Assessment of the vertically affected markets*

(116) The Commission will assess in this Section whether the Transaction could lead to input foreclosure in one of three ways:

(117) First, whether the Merged Entity could prevent Circana from accessing the CPS data it currently sources from GfK in Germany, Italy and the Netherlands.

(118) Second, whether the Merged Entity could increase the prices of CPS data to Circana.

(119) Third, whether the Merged Entity could render its CPS data inoperable or less easy to use together with RMS data of Circana; or alternatively, whether the Merged Entity could render its CPS data incompatible with the data analytics platform of Circana. Indeed, after obtaining CPS data about non-cooperating retailers' sales, FMCG RMS providers process such data in conjunction with their RMS data and deliver it to their customers through proprietary data analytics platforms. Such analytics platforms offer the ability to integrate diverse types of data (e.g. CPS, RMS) from various sources and analyse it cumulatively in a way that provides various insights that can be utilized in optimising the customer's business performance. In order for data from different sources to be analysed together, such data needs to be compatible by design with each other, as well as with the data analytics platform.

5.3.3.1. Parties' views

(120) The Parties argue that the Merged Entity would have no ability to foreclose Circana by refusing to provide GfK's CPS data, either in new markets or in markets where Circana already offers FMCG RMS. This is mainly because GfK's CPS data could not be used to support entry by Circana into any of the new EEA markets where Circana is not currently present, since GfK's consumer panels in these countries are too small, and the non-cooperating retailers' market shares are too low to allow GfK's CPS data to be used. Also, there are alternative sources of data available post-Transaction in the three EEA markets where Circana uses GfK's CPS data today, such as the receipt collection

method, which NIQ uses today in the Netherlands, as an alternative to using GfK's CPS data.[117]

(121) Moreover, according to the Parties, the Merged Entity would have no incentive to foreclose Circana because NIQ is dependent upon Circana for critical data inputs. The Parties further argue that the value of the data that NIQ receives from Circana greatly exceeds the value of any data that GfK currently supplies to Circana or could supply in the future. Moreover, the markets in which NIQ relies upon inputs from Circana to operate – mainly the US and the UK – are larger, more valuable and much more important strategically than the markets where Circana uses GfK's data today.[118]

5.3.3.2. Commission's assessment

Ability to foreclose

(122) For input foreclosure to be a concern, the vertically integrated firm resulting from the merger must have a significant degree of power in the upstream market. It is only in these circumstances that the merged firm can be expected to have a significant influence on the conditions of competition in the upstream market and this, possibly, on prices and supply conditions in the downstream market.[119]

(123) For the reasons below, the Commission considers that it is likely that the Merged Entity would have the ability to implement a successful input foreclosure strategy post-Transaction.

(124) First, as explained below, the market investigation confirmed that the quality of data, coverage of retailers in a given country and coverage of discounters specifically are the three most important parameters of competition in FMCG RMS.[120] Therefore, CPS data is an important input for downstream FMCG RMS providers in order to estimate the sales in non-cooperating retailers.

(125) Second, as explained above, post-Transaction, the Merged Entity would be in a monopoly position upstream as regards the provision of CPS data. Consequently, post-Transaction, all competing FMCG RMS providers in Germany, the Netherlands, and Italy will be dependent on CPS supply by the Merged Entity.

(126) Third, the non-cooperating retailers in Germany, Italy and the Netherlands hold a significant share of the FMCG retail market as presented below.[121] The fact that the non-cooperating retailers' retail share is high in Germany, Italy and the Netherlands gives the Merged Entity market power as the only source of CPS data – an important input for RMS providers – to estimate the sales in these retailers.

(a) Germany: (i) Aldi ([10-20]%), (ii) Lidl ([10-20]%), and (iii) Norma ([0-5]%);

(b) Italy: (i) Aldi ([0-5]%), (ii) Lidl ([5-10]%), (iii) Eurospin ([5-10]%) and (iv) Tigota ([0-5]%);

[117] Form CO, Appendix A, Vertical Effects Letter, pages 1-2 and Chapter II, paragraph 8.
[118] Form CO, Appendix A, Vertical Effects Letter, page 2.
[119] Non-Horizontal Merger Guidelines, paragraph 35.
[120] Responses to question D.A.B.1-1 of Questionnaire 01 to Customers.
[121] Form CO, Chapter II, Annex 2.15.

(c) The Netherlands: (i) Aldi ([5-10]%) and (ii) Lidl ([10-20]%).

(127) Fourth, the Commission's investigation did not indicate that Circana would be able to gain access to non-cooperating retailers' POS data in Germany, Italy and the Netherlands post-Transaction.

(128) For instance, Lidl explained that, in the past, it did not cooperate with FMCG RMS providers, alongside other discounters such as Aldi, and only relied on CPS data to have insights on the development of its competitive positioning.[122] Lidl indicated that it decided to start cooperating with FMCG RMS providers for several reasons, including the lack of CPS data in some EEA countries or due to the increased granularity or accuracy of FMCG RMS data compared to CMS.[123] However, such cooperation with FMCG RMS providers only covers five EEA countries – excluding Germany and the Netherlands – and it remains uncertain at this stage whether it will be expanded or sustained in the future.[124]

(129) The feedback received from other non-cooperating retailers did not indicate that Circana would receive consistent access in the short-term to the POS data from these retailers in Germany, Italy and the Netherlands. Therefore, Circana would be dependent on GfK post-Transaction to estimate the sales of non-cooperating retailers through CPS data.

(130) Fifth, the Commission's investigation did not confirm the Parties' arguments regarding the existence of viable alternative methods to the use of CPS data to estimate sales in non-cooperating retailers.

(131) The Commission notes that both NIQ and Circana use CPS data (and not any other types of data) in Germany and Italy to estimate the sales of non-cooperating retailers. CPS data therefore appears to be the only way of doing such estimates in these two EEA Member States.

(132) Moreover, it remains unclear whether Circana could viably use another method in the Netherlands, such as the receipt collection method used by NIQ in some EEA Member States.[125]

(133) In this respect, while the Parties refer to receipt collection as the most appropriate method, in particular as regards the Netherlands, customers responding to the market investigation made reference to CPS as being the appropriate alternative way to plug some gaps in the tracking of FMCG sales and pointed to the limits of receipt collection in terms of cost and coverage. For instance, one customer referred to the fact that '*NIQ struggles to obtain POS data from certain retailers in some markets*' and that '*CPS providers (such as GfK) provide a complementary view of retailers in some of the countries*'.[126] Another customer reported that '*when* [customer] *purchases Nielsen RMS data, it includes the volumetric CPS data as basis for the share and market size reporting for Aldi/Lidl. The approach is an industry-wide accepted method (IRI follows*

122 Non-confidential minutes of a conference call with Lidl of 9 February 2023, paragraph 8.
123 Non-confidential minutes of a conference call with Lidl of 9 February 2023, paragraph 11.
124 Non-confidential minutes of a conference call with Lidl of 9 February 2023, paragraphs 14-15.
125 Confidential submission by a market participant of 21 February 2023.
126 Non-confidential minutes of a conference call with a customer of 12 December 2022, paragraph 8.

the same approach) and not specific to [customer]. [Customer] *pays for the Aldi/Lidl data, however the amount paid is below what* [customer] *would normally be asked to pay for retailer provided data'*.[127] The same customer then added that '*another alternative to CPS data for the provision of Aldi/Lidl RMS measurement would be receipt collection from shoppers exiting Aldi and Lidl stores, however this is a costly method, which would need to be set up uniquely for the purpose of RMS measurement'*.[128]

(134) In any event, the Commission notes that, even if an alternative method of estimating the sales of non-cooperating retailers were available in the Netherlands, a switch from CPS-based estimates to receipt collection may have a negative impact on Circana's – or any potential competitor's – ability to compete in the short- to medium-term given its lack of experience with these types of estimates, in a market that is already very concentrated.

(135) Indeed, as shown in Table 3 above, NIQ is already in a strong position in the Dutch market for FMCG RMS, with a market share of [60-70]%. Circana is the only other FMCG RMS provider in the Netherlands, with a significantly lower market share of [30-40]%. Consequently, any potential competitive disadvantage could have a material impact on Circana's ability to compete against NIQ in the Netherlands and could reduce the overall level of competition for FMCG RMS in this country. The negative impact on Circana's ability to compete is all the more likely considering the importance of coverage as a parameter of competition for FMCG RMS providers (see Recital (144) below). Circana, or any potential competitor, would therefore face the risk of foreclosure if an important input, namely CPS data, is controlled by a monopolist post-Transaction.

(136) In light of the above, the Commission considers that, on balance, the Merged Entity would likely have the ability to engage in input foreclosure post-Transaction as regards the provision of CPS data (upstream) to FMCG RMS provider Circana (downstream) in Germany, Italy and the Netherlands.

Incentive to foreclose

(137) The incentive to foreclose depends on the degree to which foreclosure would be profitable. The vertically integrated firm will take into account how its supplies of inputs to competitors downstream will affect not only the profits of its upstream activities, but also of its downstream activities. Essentially, the Merged Entity faces a trade-off between the profit lost in the upstream market due to a reduction of input sales to (actual or potential) rivals and the profit gain, in the short or longer term, from expanding sales downstream or, as the case may be, being able to raise prices to consumers.[129]

(138) For the reasons below, the Commission considers that it is likely that the Merged Entity would have the incentive to implement an input foreclosure strategy post-Transaction because such a foreclosure strategy would likely be profitable.

127 Non-confidential minutes of a conference call with a customer of 31 October 2022, paragraph 23.
128 Non-confidential minutes of a conference call with a customer of 31 October 2022, paragraph 25.
129 Non-Horizontal Merger Guidelines, paragraph 40.

(139) First, the relative value of GfK's sales of CPS data to Circana (approximately EUR […])[130] and of the FMCG RMS markets in Germany, Italy and the Netherlands suggests that a foreclosure strategy would be profitable even if NIQ were to gain only a limited share of Circana's FMCG RMS sales in these three EEA Member States. Indeed, Circana's overall value of sales for FMCG RMS in these three countries amounts to approximately EUR […] ([…]), so the potential gains to be made from a foreclosure strategy downstream far outweigh the profits potentially lost upstream.[131]

(140) In addition, should the Merged Entity engage in an input foreclosure strategy, Circana's coverage of retailers would be reduced as a result and its FMCG RMS offer would become less competitive in three large FMCG RMS markets, namely Germany, Italy and the Netherlands. As explained in Section 4.1.3 above, it is important for any FMCG RMS provider to cover these EEA Member States to be able to compete as regards multinational customers sourcing FMCG RMS data in several EEA countries. Therefore, Circana's overall EEA FMCG RMS offer would become less competitive post-Transaction.

(141) Second, the Commission's investigation did not confirm the Parties' argument that the Merged Entity would not engage in an input foreclosure strategy due to NIQ's fear of losing access to data it sources from Circana, in particular in the US and the UK. While there are data exchanges between NIQ and Circana, the information received by the Commission did not show that the Merged Entity would not refuse to grant access to its CPS data because of fear of retaliation by Circana.[132] Similarly, Circana currently grants access to NIQ to some of the POS data it receives from certain retailers, especially in the US. The information received by the Commission did not provide any indication that Circana would restrict NIQ's access to such data going forward.

Overall effect of input foreclosure

(142) In general, a merger will raise competition concerns because of input foreclosure when it would lead to increased prices in the downstream market thereby significantly impeding effective competition.[133]

(143) If there remain sufficient credible downstream competitors whose costs are not likely to be raised, for example because they are themselves vertically integrated or they are capable of switching to adequate alternative inputs, competition from those firms may constitute a sufficient constraint on the Merged Entity and therefore prevent output prices from rising above pre-merger levels.[134]

(144) First, the market investigation confirmed that the quality of data, coverage of retailers in a given country and coverage of discounters specifically are the three most important parameters of competition in FMCG RMS.[135] For instance, a customer referred to coverage in general as being of '*paramount*' importance.[136] As one respondent

130 Parties' response to QP7 of 3 March 2023.
131 Form CO, Chapter II, Annex 3.1 (updated version of 4 April 2023).
132 Confidential submission by a market participant of 21 February 2023.
133 Non-Horizontal Merger Guidelines, paragraph 47.
134 Non-Horizontal Merger Guidelines, paragraph 50.
135 Responses to question D.A.B.1-1 of Questionnaire 01 to Customers.
136 Response of a customer to question D.A.B.1-2 of Questionnaire 01 to Customers.

explained, '*FMCG RMS* (…) *data are only meaningful if the panel has the highest possible coverage. The lower the coverage, both by weighted and numerical distribution, the higher the probability that the market situation is inaccurately captured'*.[137] Another customer indicated that '*given the importance of discounters* (…), *it is essential from the manufacturer's perspective that discounters and other non-cooperating retailers can also be included in a panel. In view of the fact that this data can only be modelled* (…) *via CPS, it is essential that the providers of FMCG RMS (…) have meaningful CPS data available'*.[138]

(145) In addition, the average coverage percentage of FMCG sales in a given country indicated by customers to be the minimum for them to consider sourcing FMCG RMS data from a given provider in a given country was approximately 80%, with a sizeable minority of responding customers indicating 100%.[139]

(146) Second, based on the information provided by the Parties and feedback received in responses to the market investigation, non-cooperating retailers represent a sizeable share of total FMCG sales in each of Germany, Italy and the Netherlands, with approximately [30-40]%, [10-20]% and [10-20]% respectively.[140] Aldi and Lidl alone account for [20-30]% in Germany, [5-10]% in Italy and [10-20]% in the Netherlands of overall retail sales.[141] In addition, some customers referred to discounters as being a '*growing channel*' for FMCG sales.[142] The Parties also indicated that they expect the market share of discounters to generally increase in the future in most EEA countries, including Germany, Italy and the Netherlands.[143]

(147) Third, the majority of respondents to the market investigation expressing a view indicated that they would be less likely to source FMCG RMS from Circana post-Transaction in case its coverage of discounters would be materially reduced or in case it were unable to cover sales in discounters.[144] One customer considered that '*without discounter data, the data of* [Circana] *would not be interesting anymore. Discounters are a crucial part of FMCG RMS data, so if* [Circana] *does not have that data anymore,* [customer] *would be forced to choose* (…) *Nielsen*'.[145] Another one further indicated that '*If IRI (Circana) would have even less good data on discounters, we would consider stopping* [sourcing FMCG RMS data from Circana]'.[146]

(148) Therefore, it appears likely that Circana's FMCG RMS offer would be put at a material competitive disadvantage post-Transaction should the Merged Entity engage in an input foreclosure strategy aimed at limiting Circana's ability to achieve good sales coverage in non-cooperating retailers. This could in turn limit Circana's ability to win and retain customers and affectively compete against the Merged Entity in Germany, Italy and the Netherlands.

137 Response of a customer to question D.A.B.1-2 of Questionnaire 01 to Customers.
138 Response of a customer to question D.A.B.1-2 of Questionnaire 01 to Customers.
139 Responses to question D.A.B.7 of Questionnaire 01 to Customers.
140 Parties' response to RFI 2 of 31 March 2023, Annex 1.1.
141 Parties' response to RFI 2 of 31 March 2023, Annex 1.1.
142 Response of a customer to question D.A.B.5-2 of Questionnaire 01 to Customers.
143 Parties' response to RFI 2 of 31 March 2023, paragraph 2.1.
144 Responses to questions D.A.B.5 and D.A.B.6 of Questionnaire 01 to Customers.
145 Response of a customer to question D.A.B.5-2 of Questionnaire 01 to Customers.
146 Response of a customer to question D.A.B.5-2 of Questionnaire 01 to Customers.

(149) This is all the more likely since the market investigation showed that the ability to cover FMCG sales in Germany, Italy and the Netherlands is an important parameter of competition for any FMCG RMS provider in the EEA, in particular as regards multinational customers sourcing FMCG RMS in multiple countries in the EEA. Since these customers represent the vast majority of the FMCG RMS business in the EEA,[147] the potential impact on Circana's overall competitiveness would be material.

(150) Consequently, the Commission considers than an input foreclosure strategy post-Transaction by the Merged Entity would be likely to have a negative effect on competition. Indeed, since Circana is the only FMCG RMS competitor to NIQ in Germany, Italy and the Netherlands, any foreclosure strategy directed at Circana would most likely lead to increased prices thereby significantly impeding effective competition and deterring new entrants.

Conclusion

(151) Based on the above considerations and all evidence available to it, the Commission concludes that an input foreclosure strategy post-Transaction by the Merged Entity in order to exclude or deteriorate access of Circana to GfK's CPS data in Germany, Italy and the Netherlands is likely.

5.3.4. Conclusion on the vertical effects in relation to FMCG RMS

(152) Based on the above considerations and in light of all the evidence available to it, the Commission concludes that the Transaction raises serious doubts as to its compatibility with the internal market due to the possible foreclosing of the Merged Entity's competitors in the market for FMCG RMS from CPS input in Germany, Italy and the Netherlands.

5.4. Conglomerate Effects

(153) The Transaction involves services that belong to related markets. Notably, RMS (both FMCG and NFMCG) and CPS services are complementary, in that these products are purchased by largely the same group of customers and are used for closely related and often intertwining purposes by these customers. Customers often purchase RMS and CPS data in several national markets within the EEA to understand the distinct behaviour of consumers in each of these Member States and, among others, to devise their national and EEA strategies accordingly.[148]

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147 Form CO, Chapter II.

148 While the Non-Horizontal Merger Guidelines note that 'Conglomerate mergers are mergers between firms that are in a relationship which is neither horizontal (as competitors in the same relevant market) nor vertical (as suppliers or customers', they also clarify in footnote 5 that 'products may be supplied by some companies with the inputs already integrated (vertical relationship), whereas other producers leave it to the customers to select and assemble the inputs themselves (conglomerate relationship'). In the present case CPS may, in certain cases, be utilized as an input in order to complete certain holes in the coverage of retail measurement, however in most cases it constitutes a complementary product which customers purchase separately. Therefore, it is appropriate to analyse the competitive impact of the Transaction both from a vertical and a conglomerate angle.

(154) Conglomerate mergers consist of mergers between companies that are active in closely related markets, for instance suppliers of complementary products or of products which belong to a range of products that is generally purchased by the same set of customers for the same end use.[149]

(155) According to the Non-Horizontal Merger Guidelines, in most circumstances, conglomerate mergers do not lead to any competition problems.[150] However, foreclosure effects may arise when the combination of products in related markets may confer on the merged entity the ability and incentive to leverage a strong market position from one market to another closely related market by means of tying or bundling or other exclusionary practices.[151]

(156) The Non-Horizontal Merger Guidelines distinguish between bundling, which usually refers to the way products are offered and priced by the merged entity[152] and tying, usually referring to situations where customers that purchase one good (the tying good) are required to also purchase another good from the producer (the tied good).[153]

(157) Within bundling practices, the distinction is also made between pure bundling and mixed bundling. In the case of pure bundling the products are only sold jointly in fixed proportions. With mixed bundling the products are also available separately, but the sum of the stand-alone prices is higher than the bundled price.[154]

(158) Tying can take place on a technical or contractual basis. For instance, technical tying occurs when the tying product is designed in such a way that it only works with the tied product (and not with the alternatives offered by competitors).

(159) While tying and bundling have often no anticompetitive consequences, in certain circumstances such practices may lead to a reduction in actual or potential competitors' ability or incentive to compete. This may reduce the competitive pressure on the merged entity allowing it to increase prices.[155]

(160) In assessing the likelihood of such a scenario, the Commission examines, first, whether the merged firm would have the ability to foreclose its rivals,[156] second, whether it would have the economic incentive to do so[157] and, third, whether a foreclosure strategy would have a significant detrimental effects on competition, thus causing harm to consumers.[158] In practice, these factors are often examined together as they are closely intertwined.

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149 Non-Horizontal Merger Guidelines, para. 91.
150 Non-Horizontal Merger Guidelines, para. 92.
151 Non-Horizontal Merger Guidelines, para. 93.
152 Non-Horizontal Merger Guidelines, para. 96.
153 Non-Horizontal Merger Guidelines, para. 97.
154 Non-Horizontal Merger Guidelines, para. 96.
155 Non-Horizontal Merger Guidelines, paras. 91 and 93.
156 Non-Horizontal Merger Guidelines, paras. 95 to 104.
157 Non-Horizontal Merger Guidelines, paras. 105 to 110.
158 Non-Horizontal Merger Guidelines, paras. 111 to 118.

5.4.1. *Conglomerate effects with respect to the provision of CPS*

(161) In line with its Non-Horizontal Merger Guidelines, the Commission will assess in this section (Section 6.1.) whether the Merged Entity would have the ability and incentive to leverage its market power by bundling CPS markets in which it will hold a monopoly position (Austria, Belgium, Bulgaria, Croatia, Czechia, Finland, Germany, Hungary, Italy, the Netherlands, Poland, Romania, Slovakia, and Sweden) with neighbouring CPS markets in which it will continue to face competition from Kantar (Denmark, France, Portugal, and Spain)and the potential adverse effects on competition such practices would have.

5.4.1.1. Market Shares

(162) As further detailed below in Table 7, the Merged Entity would hold a monopoly position in 14 EEA Member States (Austria, Belgium, Bulgaria, Croatia, Czechia, Finland, Germany, Hungary, Italy, the Netherlands, Poland, Romania, Slovakia, and Sweden). It would compete with its only competitor within the EEA, namely Kantar, in Denmark, France, Portugal, and Spain. The Transaction would result in the following market shares in these countries:

i. in Denmark, where the Parties would hold a market share of [80-90]%. Kantar holds a market share of [10-20]%;

ii. in France, where the Parties would hold a market share of [10-20]%. Kantar holds a market share of [80-90]%

iii. in Portugal, where the Parties would hold a market share of [30-40]%. Kantar holds a market share of [70-80]%; and

iv. in Spain, where the Parties would hold a market share of [10-20]%. Kantar holds a market share of [80-90]%.

(163) Table 7 below provides an overview of the Parties' and their main competitors' market shares for the provision of CPS, at the national level for 2021.[159]

[159] The Parties' and their main competitors' market shares in 2020 and 2019 are largely similar to the data provided in Table 7. In Denmark, in 2020 and 2019, GfK held a market share of [90-100]%. In Italy, in 2020 and 2019, NIQ held a market share of [30-40]% and GfK of [60-70]%. In France, in 2020, NIQ held a market share of [10-20]% and Kantar of [80-90]%. In Portugal, NIQ's held a market share of [20-30]% in 2020 and of [20-30]% in 2019, with Kantar holding a market share of [70-80]% in 2020 and [70-80]% in 2019. In Spain, NIQ's market share in 2020 and 2019 equalled [20-30]%, with Kantar holding a market share of [80-90]%. These limited differences do not affect the competitive assessment in a material manner.

Table 7– CPS market shares (2021)

2021	NIQ	GfK	Combined	Kantar	WhatIBuy	Market size (k€)
Austria	-	[90-100]%	[90-100]%	-		[…]
Belgium	-	[90-100]%	[90-100]%	-		[…]
Bulgaria	-	[90-100]%	[90-100]%	-		[…]
Croatia	-	[90-100]%	[90-100]%	-		[…]
Czechia	-	[90-100]%	[90-100]%	-		[…]
Denmark	-	[80-90]%	[80-90]%	-	[10-20]%[160]	[…]
Finland	[90-100]%	-	[90-100]%	-		[…]
France	[10-20]%	-	[10-20]%	[80-90]%		[…]
Germany	[5-10]%	[90-100]%	[90-100]%	-		[…]
Hungary	-	[90-100]%	[90-100]%	-		[…]
Italy	[40-50]%	[50-60]%	[90-100]%	-		[…]
Netherlands	-	[90-100]%	[90-100]%	-		[…]
Poland	-	[90-100]%	[90-100]%	-		[…]
Portugal	[30-40]%	-	[30-40]%	[70-80]%		[…]
Romania	-	[90-100]%	[90-100]%	-		[…]
Slovakia	-	[90-100]%	[90-100]%	-		[…]
Spain	[10-20]%	-	[10-20]%	[80-90]%		[…]
Sweden	-	[90-100]%	[90-100]%	-		[…]
EEA Total	**[10-20]%**	**[60-70]%**	**[70-80]%**	**[20-30]%**		[…]

Source: Form CO, Chapter III, Annex 3.1.

5.4.1.2. The Notifying Party' view

(164) The Notifying Party submits that NIQ would not have the ability nor the incentive to foreclose competition in Denmark, France, Portugal, and /or Spain, in particular in respect to multinational customers with multi-country CPS demand. First, the Notifying Party argues that Kantar's multinational customers in Denmark, France, Portugal, and Spain will likely not shift a significant portion of their demand to NIQ. Second, the Notifying Party claims that is unlikely that a bundling strategy would affect Kantar's non-Europanel customers.[161]

160 According to paras. 168(ii) and 242 of the Form CO, Chapter III, Kantar acquired WhatIBuy in 2022.

161 Form CO, Chapter III, Section 2.5.4.2.

5.4.1.3. Commission's assessment

Ability to foreclose

(165) For the reasons set below, the Commission has reached the preliminary conclusion that NIQ would have the ability to foreclose its only competitor for the provision of CPS in Denmark, France, Spain, and Portugal by selling its CPS in the EEA Member States in which post-Transaction it would hold a monopoly position (Austria, Belgium, Bulgaria, Croatia, Czechia, Finland, Germany, Hungary, Italy, the Netherlands, Poland, Romania, Slovakia, and Sweden) in a bundle with the countries in which it faces competition from Kantar.

(166) First, as set out in Table 7 above, pre-Transaction, GfK holds a monopoly in 11 Member States across the EEA. In addition, GfK is the largest provider in three other Member States, namely, Denmark, Germany and Italy.[162] Furthermore, pre-Transaction, NIQ holds a monopoly position in Finland, being also active in Germany, Italy, where it competes with GfK, and in France, Spain and Portugal, where it competes with Kantar, as its only rival. Thus, post-Transaction, the Merged Entity would hold a monopoly position in 14 EEA Member States.

(167) Out of the 14 monopoly EEA Member States, Germany and Italy represent the first and third largest CPS markets in the EEA,[163] together accounting for approximately [40-50]% of total EEA CPS sales. In addition, the Merged Entity would also be active in the second and fourth largest CPS markets within the EEA, namely France and Spain. In the latter two Member States, the Merged Entity would be competing with Kantar. These four CPS markets together represent approximately [70-80]% of the total EEA CPS sales.

(168) Kantar would likely not be in a position post-Transaction to countervail the Merged Entity's bundling strategy, by offering itself a bundle comprising CPS data in Member States where it holds a monopoly, and CPS in Denmark, France, Spain and Portugal, where it will compete with the Merged Entity. This is because the two Member States where Kantar will have a monopoly, namely Greece and Ireland, are the third smallest and seventh smallest CPS markets in the EEA respectively.[164] In addition, the market investigation did not reveal that customers consider Greece and Ireland as Member States of which coverage is crucial for a CPS provider.[165] Moreover, the market investigation further confirmed that lack of coverage of Greece and Ireland is not sufficient to prevent the Merged Entity from becoming the sole CPS provider able to offer meaningful coverage across EEA Member States.[166] It therefore appears unlikely that Kantar could leverage its CPS monopoly in Greece and Ireland in order to maintain its competitiveness against the Merged Entity in Denmark, France, Spain and Portugal.

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162 In Germany, GfK holds a market share of [90-100]% and remaining [5-10]% being held by NIQ. In Italy, GfK holds a market share of [50-60]%, the remaining [40-50]% being held by NIQ. In Denmark, GfK hold a market share of [80-90]%, the remaining [10-20]% being held by Kantar, through WhatIBuy.

163 Form CO, Annex 3.1.

164 Form CO, Chapter III, Annex 3.1.

165 Responses to question F.B.D.2 of Questionnaire 01 to Customers.

166 Responses to question F.B.D.4 of Questionnaire 01 to Customers.

(169) Second, there is a large pool of multinational customers purchasing CPS in several Member States, including at least one Member State in which GfK pre-Transaction holds a monopoly and the EEA Member States in which Kantar is active, over which the Merged Entity could leverage its market power.

(170) This can be observed through the 2021 Europanel data submitted by GfK, which represents a large fraction of these multinational customers for CPS. In 2021, Europanel's […] multinational customers, which purchased on average CPS data across more than ten EEA countries accounted for approximately [30-40]% of GfK's revenues in CPS across the EEA.[167] Furthermore, […] out of […] Europanel customers ([70-80]%) purchase CPS in at least one of the EEA Member States in which GfK currently holds a monopoly position.[168] Out of these, […] Europanel customers ([70-80]%) purchase CPS data across both Italy and Germany where the Merged Entity would hold a monopoly position post-Transaction.[169] Furthermore, all these customers purchasing CPS in at least one Member State where GfK holds a monopoly position and in Italy and Germany, also purchase CPS in countries where the Merged Entity will face competition from Kantar (Denmark, France, Spain, or Portugal).[170]

(171) The results of the market investigation indicate that a large common pool of multinational CPS customers for CPS in at least one EEA Member State in which NIQ will hold a monopoly position and Denmark, France, Portugal and/or Spain where NIQ will compete only with Kantar.[171] The need of multinational customers to purchase CPS across multiple EEA Member States is further confirmed by the Parties' internal documents in which customers' behaviour is assessed.[172]

(172) Third, as mentioned in Section 4.1.3 above, and confirmed by the market investigation,[173] large multinational customers prefer to receive multi-country data in a harmonised manner and tend to source it from one supplier. Customers consider that it would be difficult to combine and harmonise data for several countries internally.[174] Thus, post-Transaction, multinational customers would have strong incentives to purchase CPS data from the Merged Entity that would be the only CPS supplier that could offer a broad coverage which includes the main markets in the EEA.

(173) Furthermore, the results of the market investigation indicate that coverage across multiple EEA Member States, and in particular France, Germany, Italy, and Spain, would offer the Merged Entity a competitive advantage over Kantar which would be unable to match such offer. During the market investigation, one customer submitted that '*the current geographic footprint of Kantar for CPS data, limited to Western Europe and Greece, is too limited to be a credible alternative to the merged NIQ/GfK entity. Kantar would need to invest in developing its business in Central and Eastern Europe for [a customer] to consider working with Kantar beyond the markets where it*

167 Form CO, Annex 2.14(a).

168 Form CO, Annex 2.14(a).

169 Form CO, Annex 2.14(a).

170 Form CO, Annex 2.14(a).

171 Questionnaire to customers, question F.B.B.1 and non-confidential minutes from a call with a market participant from 27 October 2022 and non-confidential minutes from a call with a customer on 23 November 2022.

172 See for instance: Form CO, 5.4. document 1.006, slide 24 and document 1015, page 84.

173 Non-confidential minutes from a call with a market participant from 12 December 2022.

174 Non-confidential minutes from a call with a market participant from 12 December 2022.

currently does. The reason for this relates to the need to receive a harmonised set of data and analysis, which itself depends on the coverage offered by the […] CPS provider in question. This is all the more relevant in a scenario under which Kantar would no longer work with the merged NIQ/GfK entity under the Europanel cooperation post-Transaction.'[175] Indeed currently Kantar covers only a few national markets within the EEA, notably France, Greece, Ireland, Portugal, and Spain. This coverage not only renders Kantar a primarily Western Europe-oriented player, but also prevents it from engaging in effective package offerings, as it lacks key jurisdictions such as Germany and Italy. Kantar's current competitiveness for large multinational customers stems largely from the Europanel cooperation which NIQ will have the ability to largely replace post-Transaction, as the combination of NIQ's and GfK's current footprint would not only closely match that of Europanel's, but entirely cover the largest EEA Member States, which are often key for large multinational customers. This would in turn significantly decrease the attractiveness and viability of Kantar's offering.

(174) Fourth, the results of the market investigation indicate that barriers to offer CPS in a new EEA Member State are high, in particular due to significant upfront investment costs to set up a panel, the need for historical data and the need to build a complex infrastructure at many levels (such as sample building, data ingestion, data quality check, estimation process, delivery of information to customers, service to customers).[176] The majority of the customers expressing their opinion submitted that there has not been any new entry in the past five years.[177] Furthermore, during the market investigation, one customer submitted that *'[i]n Europe, in certain countries, there are no other alternatives than the Parties. This is due in part of the existing barriers to entry in Europe driven by the few numbers of customers purchasing household data.*'[178] Therefore, entry into EEA Member States where the Merged Entity holds a monopoly position appears unlikely in the foreseeable future.

(175) Fifth, multinational customers currently sourcing harmonized CPS data through Europanel for multiple EEA Member States are likely to transfer, all or in part, to the Merged Entity thus materially reducing Kantar's sales and customer base.

(176) In light of the above, the Commission considers that the NIQ would likely have the ability to foreclose Kantar, its only rival in CPS across the EEA post-Transaction by engaging in bundling practices by which CPS in monopoly Member States would be offered together with Member States in which NIQ would face competition from Kantar.

Incentive to foreclose

(177) For the reasons set out below, the Commission considers that the Merged Entity would likely have the incentive to foreclose Kantar, its only remaining competitor in the EEA which provides CPS in Denmark, France, Spain, and Portugal by engaging in bundling practices.

175 Non-confidential minutes from a call with a market participant from 12 December 2022.
176 Non-confidential minutes from a call with a market participant from 15 March 2023.
177 Questionnaire to customers, question F.B.C.1-1.
178 Non-confidential minutes from a call with a market participant from 25 November 2022.

(178) First, as mentioned above, large multinational customers demand CPS across several EEA Member States. Such customers also need the data to be provided in a harmonised manner in order to be easily comparable across several EEA Member States.[179] Ability to provide data in a harmonised manner is one of the key reasons behind the formation of Europanel. An Advent internal document discussing the Transaction,[180] indicates that [Contents of internal document.]. Based on this internal document, post-Transaction, [Contents of internal document.]. In addition, as explained at paragraph (80) above, in their initial, withdrawn submission, the Parties have submitted that [Information not submitted in the final Form CO.].[181] The results of the market investigation […] point toward the likelihood that Europanel will be terminated, post-Transaction.[182] Moreover, it is likely that Europanel would be terminated, as the market investigation results suggest that it would be profitable for NIQ to cover all the EEA Member States previously covered by Europanel, as the majority of the customers expressing their opinion would replace Europanel with NIQ.[183]

(179) Second, post-Transaction, the Merged Entity would be the only CPS provider capable of covering most of the EEA Member States, including France, Germany, Italy, and Spain. Furthermore, during the market investigation, a sizeable share of customers expressing a view indicated that, should Europanel be terminated, Kantar would have to develop a presence at least in Germany and Italy to be considered as a potential supplier by them and for a relative majority of customers expressing a view the Merged Entity would likely replace Europanel for their CPS requirements.[184] Thus, it is likely that, post-Transaction, Europanel customers would, in particular those which purchase CPS data across the main CPS markets, source CPS solely from the Merged Entity.

(180) Third, by bundling CPS offerings in EEA Member States in which the Merged Entity would have market power with Member States in which it would continue to face competition from Kantar, it is unlikely that the Merged Entity would lose CPS sales to a significant extent. This is because a significant portion of multinational customers demand CPS data for the EEA Member States in which the Merged Entity would have a monopoly. In particular, as mentioned above, Italy and Germany are key markets for a significant portion of multinational customers. Thus, it is unlikely that these customers would switch away, in case the Merged Entity would pursue a bundling strategy. Furthermore, the Commission notes that NIQ's internal documents [Contents of internal document.].[185] For instance, in a document discussing the Transaction, NIQ assumes a "[Contents of internal document.]".

(181) By contrast, it appears likely that a strategy by which NIQ would seek to capture Europanel sales from Kantar would be profitable, considering the significant portion of all CPS sales across the EEA such customers represent. In fact, Europanel customers

179 Non-confidential minutes from a call with a market participant from 12 December 2022.

180 Form CO, 5.4. document 1.006, slide 13.

181 See initial Form CO submitted on 20 March 2023, Chapter III, paragraph 140.

182 Non-confidential minutes from a call with a market participant from 31 October 2022 and non-confidential minutes from a call with a market participant from 12 December 2022.

183 Questionnaire to customers, question F.B.D.4.

184 Questionnaire to customers, questions F.B.D.2 and F.B.D.4.

185 Form CO, 5.4. document,1.002, slide 5; 5.4 document 1.010, slide 11; 5.4 document slide 1.011, slides 2 and 33.

represent about [20-30]% of all CPS sales in the EEA.[186] In 2021, approximately [30-40]% of GfK's revenues in CPS across the EEA were linked to Europanel customers.[187] Furthermore, as mentioned above, in 2021, [60-70]% of Europanel customers ([…] customers out of […]) purchased CPS data across all main CPS markets (France, Germany, Italy, and Spain) in the EEA.[188]

(182) Third, the results of the market investigation indicate that [Details of NIQ's prior commercial strategy as reported in customers' responses to the market investigation.].[189] In addition, during the market investigation, the majority of customers expressing a view submitted that CPS prices within the EEA are higher in the Member States where there is monopoly than in those where there is a certain degree of competition.[190] [Details of NIQ's prior commercial strategy as reported in customers' responses to the market investigation.].[191]

(183) Further, during the market investigation, one customer submitted that coverage by the Merged Entity of all EEA Member States previously covered by Europanel '*[...] would give NIQ a competitive advantage and stronghold over CPS services in Europe as a region and would quickly push Kantar to the side given its limited national coverage. While NIQ could then manage as one CPS provider it would likely mean higher prices, less innovation in market, lower data quality and servicing [...]*.[192]

(184) In light of the above, the Commission considers that the NIQ would likely have the incentive to foreclose Kantar, its only rival in CPS across the EEA post-Transaction by engaging in bundling practices by which CPS in monopoly Member States would be offered together with Member States in which NIQ would face competition from Kantar.

Overall likely impact on effective competition

(185) The Commission considers that a foreclosure strategy to the detriment of Kantar, the Merged Entity's only rival provider of CPS across the EEA, is likely and would have a significant impact on effective competition, by reducing the ability and incentive of Kantar to compete in Denmark, France, Spain, and Portugal.

(186) First, as described above, the Merged Entity will hold a monopoly position in 14 EEA Member States, a significant position in Denmark and it will be the only provider capable of covering all of Germany, France, Italy and Spain. It will face competition only by one rival and only in Denmark, France, Spain, and Portugal.

(187) Second**,** a bundling strategy would likely result in a significant loss of sales for the only other competitor in the CPS market segment across the EEA, namely Kantar. There is a large common pool of customers which purchase CPS both in the markets where NIQ will hold a monopoly position and in those in which it will face competition from

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186 Form CO, Annex 2.14(a), and Annex 1 to Kantar's response to RFI 1.
187 Form CO, Annex 2.14(a).
188 Form CO, Annex 2.14(a).
189 Non-confidential minutes with a market participant from 27 January 2023.
190 Questionnaire to customers, question F.B.C.3.
191 Non-confidential minutes from a call with a market participant from 31 October 2022.
192 Questionnaire to customers, question F.B.D.4.2.

Kantar (Denmark, France, Portugal, and Spain). These multinational customers represent a significant part of the Parties' revenues and, similarly, of Europanel's revenues. As mentioned above, the results of the market investigation indicate that Kantar will likely become less competitive, as it will have limited coverage across the EEA.[193]. A material loss in revenues would likely limit Kantar's ability and incentive to compete for the provision of CPS across the EEA.

(188) Third**,** countervailing factors, such as buyer power and likelihood of new entry are not likely material in the CPS markets.

(189) In the first place, the results of the market investigation indicate that, post-Transaction, customers' bargaining power would likely decrease due to lack of alternatives. As one customer submitted '*[...] accumulating more data and gaining control over different sources of data could raise the risk of weakening its bargaining power in negotiations due to the lack of alternatives to the merged NIQ/GfK entity*.'[194] One other customer submitted that '[…] *the Transaction directly contributes to the complete erosion of* […] *buyer power against Nielsen and the lack of potential alternatives*.'[195].

(190) In the second place, the results of the market investigation indicate that barriers to entry a new EEA Member State are high and this would be augmented by the Transaction.[196] For instance, one customer submitted that '*The actual players are too big and they might prevent smaller companies to enter into the market due to their capability of being cheaper than new players since they have a scale economy. There might also be a technological barrier for the new players*'.[197] One other customer submitted that '*Kantar will not be able to enter the markets of GfK, since the entry barriers are extremely difficult to overcome. The same applies to IRI and other competitors in the RMS and CPS markets*.'[198]

(191) In the third place, post-Transaction, only two providers will remain active in the CPS market, namely Kantar and NIQ. Kantar will cover only six EEA Member States, competing with NIQ in four out of the six. On the other hand, NIQ will enjoy a monopoly position in 14 EEA Member States, a significant position on Denmark, where is competes with Kantar and a unique position being the only remaining company able to provide CPS across all of Germany, France, Italy and Spain.[199]

(192) In light of the above, the Commission considers that it is likely that a foreclosure strategy against the only other remaining provider of CPS across the EEA by engaging in bundling practices across several EEA Member States, including Germany, France, Italy and Spain would have significant detrimental effects on competition within the EEA.

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193 Questionnaire to customers, question F.B.D. 4-2.
194 Non-confidential minutes of a call with a market participant from 12 December 2022.
195 Non-confidential minutes of a call with a market participant from 28 November 2022.
196 Questionnaire to customers, question F.B.C.2.
197 *Ibid.*
198 Non-confidential minutes from a call with a market participant from 28 November 2022.
199 No provider currently offers CPS in Cyprus, Estonia, Iceland, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Norway and Slovenia.

5.4.1.4. Conclusion

(193) Based on the above considerations and in light of all the evidence available to it, the Commission concludes that the Transaction raises serious doubts as to its compatibility with the internal market due to conglomerate effects, in particular by granting the Merged Entity the possibility to foreclose Kantar, its sole competitor in the CPS markets in Denmark, France, Portugal, and Spain, by leveraging its monopoly position in the CPS markets in Austria, Belgium, Bulgaria, Croatia, Czechia, Finland, Germany, Hungary, Italy, the Netherlands, Poland, Romania, Slovakia, and Sweden.

5.4.2. Potential bundling of FMCG RMS and CPS within one Member State and across Member States

(194) The Commission will assess in this Section whether the Parties would have the ability and incentive post-Transaction to bundle FMCG RMS and CPS within one Member State and across Member States, as well as the potential effects such practices would have on competition in the Member States where the Parties and their competitors are active within the EEA.

5.4.2.1. Market shares

(195) In the EEA, NIQ is currently active in the supply of FMCG RMS in 24 Member States, while GfK is active in the supply of CPS in 14 Member States. The Member States in which the Parties are active are described in Table 4 below, together with the market share data of the Parties and their competitors.

Table 8: The Parties' and their competitors' market shares in FMCG RMS and CPS, at a national level in 2021[200]

2021	**FMCG RMS**						**CPS**	
Member State	**NIQ**	**Circana**	**IQVIA**	**CMR**	**Retail Zoom**	**Other**	**NIQ/ GfK**	**Kantar**
Austria	[90-100]%	[0-5]%	[5-10]%	[0-5]%	[0-5]%	[0-5]%	[90-100]%	[0-5]%
Belgium	[90-100]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[90-100]%	[0-5]%
Bulgaria	[90-100]%	[0-5]%	[5-10]%	[0-5]%	[0-5]%	[0-5]%	[90-100]%	[0-5]%
Croatia	[80-90]%	[0-5]%	[10-20]%	[0-5]%	[0-5]%	[0-5]%	[90-100]%	[0-5]%
Czech Republic	[80-90]%	[0-5]%	[5-10]%	[0-5]%	[5-10]%	[0-5]%	[90-100]%	[0-5]%
Denmark	[90-100]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[80-90]%	[10-20]%[201]
Estonia	[80-90]%	[0-5]%	[10-20]%	[0-5]%	[0-5]%	[0-5]%	-	-
Finland	-	-	-	-	-	-	[90-100]%	[0-5]%
France	[60-70]%	[30-40]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[10-20]%	[80-90]%

200 The cells marked with '-' in Table 4 above signify that the services are not provided by the market participant indicated in the second row of the table. Moreover, there are EEA Member States (not included in this table) where no undertakings provide FMCG RMS and CPS services.

201 Market share of WhatIBuy, which has been acquired by Kantar in 2022.

2021	FMCG RMS						CPS	
Member State	**NIQ**	**Circana**	**IQVIA**	**CMR**	**Retail Zoom**	**Other**	**NIQ/ GfK**	**Kantar**
Germany	[60-70]%	[20-30]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[90-100]%	[0-5]%
Greece	[50-60]%	[30-40]%	[5-10]%	[0-5]%	[0-5]%	[0-5]%	-	[90-100]%
Hungary	[90-100]%	[0-5]%	[5-10]%	[0-5]%	[0-5]%	[0-5]%	[90-100]%	[0-5]%
Ireland	[90-100]%	[0-5]%	[5-10]%	[0-5]%	[0-5]%	[0-5]%	-	[90-100]%
Italy	[30-40]%	[50-60]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[90-100]%	[0-5]%
Latvia	[80-90]%	[0-5]%	[10-20]%	[0-5]%	[0-5]%	[0-5]%	-	-
Lithuania	[80-90]%	[0-5]%	[10-20]%	[0-5]%	[0-5]%	[0-5]%	-	-
Netherlands	[60-70]%	[30-40%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[90-100]%	[0-5]%
Norway	[90-100]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	-	-
Poland	[80-90]%	[0-5]%	[5-10]%	[5-10]%	[0-5]%	[0-5]%	[90-100]%	[0-5]%
Portugal	[90-100]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[30-40]%	[70-80]%
Romania	[80-90]%	[0-5]%	[5-10]%	[0-5]%	[0-5]%	[0-5]%	[90-100]%	[0-5]%
Slovakia	[80-90]%	[0-5]%	[5-10]%	[0-5]%	[5-10]%	[0-5]%	[90-100]%	[0-5]%
Slovenia	[80-90]%	[0-5]%	[10-20]%	[0-5]%	[0-5]%	[0-5]%	-	-
Spain	[70-80]%	[10-20]%	[10-20]%	[0-5]%	[0-5]%	[0-5]%	[10-20]%	[80-90]%
Sweden	[90-100]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[90-100]%	[0-5]%
EEA Total	**[70-80]%**	**[20-30]%**	**[0-5]%**	**[0-5]%**	**[0-5]%**	**[0-5]%**	**[70-80]%**	**[20-30]%**

Source: Form CO - Ch. II - Annex 3.1 and Form CO - Ch. III - Annex 3.1.

5.4.2.2. The Notifying Party's view

(196) The Parties take the view that combining NIQ's FMCG RMS business with GfK's CPS business would not create a risk of conglomerate effects. In particular, the Parties refer to the example of the Italian market, where NIQ is already active in both FMCG RMS and CPS. Circana is currently the market leader in Italy with a share of approx. [50-60]% and NIQ has not been able to challenge Circana's position through offers combining CPS and FMCG RMS.

(197) The Parties also argue that there is an insufficiently large pool of common customers purchasing both FMCG RMS and CPS and this limits the ability and incentive to bundle. Moreover, such a bundling strategy would be 'very weak' considering the need to offer tailored discounts and the small pool of common customers.

(198) The Parties also argue in general that, while NIQ currently offers FMCG RMS as well as CPS in the EEA, there is no evidence that this enables NIQ to foreclose Circana in the FMCG RMS segment. In addition, a bundling theory of harm would only apply to Member States where GfK offers CPS, NIQ offers FMCG RMS, and there is an FMCG RMS competitor that could hypothetically be foreclosed, of which Member States there are only seven. Of these seven Member States, the Parties argue that bundling is highly unlikely to lead to anticompetitive effects in Germany, Italy, and the Netherlands,

where CPS could be leveraged to foreclose Circana. Regarding other FMCG RMS providers active in the other four Member States, namely the Czech Republic, Slovakia, Romania and Poland, the Parties argue that the Transaction would not impact them negatively, as the majority of FMCG RMS customers do not purchase CPS from GfK in these Member States, and therefore they could not be targeted with a foreclosure strategy. Moreover, in any case there would remain a large customer base which could not be targeted by a foreclosure strategy.[202]

5.4.2.3. Commission's assessment

(199) In order to assess the likelihood of an anticompetitive foreclosure strategy due to conglomerate links, the Commission will examine whether the Parties would have (i) the ability and (ii) the incentive to foreclose their competitors through the bundling of FMCG-RMS and CPS within one Member State and across Member States. The Commission will also assess whether such practices may have a material adverse effect on competition and customers.[203]

Ability

(200) The most immediate way in which the Merged Entity may be able to leverage its market power in some EEA Member States into other EEA Member States or within one Member State from one product market to another to foreclose competitors is by bundling FMCG RMS and CPS sales[204] within one EEA Member State and across EEA Member States such that the bundled price (and package) is cheaper than the stand-alone price. This may, in turn, shift significant demand from large multinational customers away from the Parties' single-product competitors and lead to detrimental effects on competition. This behaviour and its effects may cover each of the countries where the Parties are active as part of the bundling package and through the significant increase of entry barriers. More specifically, the Parties would have the possibility to foreclose their main competitors (Circana and Kantar) post-Transaction in Denmark, France, Germany, Greece, Italy, the Netherlands, Portugal and Spain.

(201) First, to be able to foreclose competitors, the Parties must at least have a significant degree of market power, which does not necessarily amount to dominance, in one of the markets concerned.[205] Following the Transaction, the Merged Entity would be by far the leading player in the EEA both in FMCG RMS and CPS. Indeed, the transaction combines the market leader in FMCG RMS with the market leader in CPS.

(202) In FMCG RMS within the EEA NIQ has (i) a monopoly position in Denmark, Norway, Portugal and Sweden, (ii) a market share above 60% in Estonia, France, Germany, Greece, Hungary, Ireland, Latvia, Lithuania, the Netherlands, Poland, Romania, Slovakia, Slovenia, Spain. In fact, the only country where a competitor's FMCG RMS market share is above NIQ's is Italy, where NIQ's share amounts to [30-40]% against Circana's [50-60]% market share.

[202] Form CO, Chapter 2, paragraphs 300 *et seq*.
[203] Non-Horizontal Merger Guidelines, paragraph 94.
[204] Non-Horizontal Merger Guidelines, paragraph 95.
[205] Non-Horizontal Merger Guidelines, paragraph 99.

(203) In turn, GfK has a monopoly position in the CPS market within 11 EEA Member States. In addition, it has a market shares of [80-90]% in Denmark and [90-100]% in Germany. There is only one EEA Member State where GfK is both active and substantially challenged by a competitor, which is Italy. Here GfK has a [50-60]% market shares, however its only challenger is currently NIQ. In fact, since NIQ is also active in CPS within the EEA Member States, the Transaction would combine the already strong market position of GfK with that of NIQ's, which is active in Finland, France, Germany, Italy, Portugal and Spain. NIQ is active in all of these markets with a significant market share, moreover, as both parties are present in Germany and Italy, the Transaction would establish NIQ as a monopolist in CPS in these two Member States, which are both of key importance to customers due to their size and economic significance. In addition, NIQ's presence in Western Europe is complementary to that of GfK's current EEA market presence.

(204) The Parties' pre-Transaction market positions are described in detail in the below tables.

Table 9: The Parties' and their competitors' market shares in FMCG RMS at a national level in 2021[206]

2021	FMCG RMS					
Member State	NIQ	Circana	IQVIA	CMR	Retail Zoom	Other
Austria	[90-100]%	[0-5]%	[5-10]%	[0-5]%	[0-5]%	[0-5]%
Belgium	[90-100]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Bulgaria	[90-100]%	[0-5]%	[5-10]%	[0-5]%	[0-5]%	[0-5]%
Croatia	[80-90]%	[0-5]%	[10-20]%	[0-5]%	[0-5]%	[0-5]%
Czech Republic	[80-90]%	[0-5]%	[5-10]%	[0-5]%	[5-10]%	[0-5]%
Denmark	[90-100]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Estonia	[80-90]%	[0-5]%	[10-20]%	[0-5]%	[0-5]%	[0-5]%
Finland	-	-	-	-	-	-
France	[60-70]%	[30-40]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Germany	[60-70]%	[20-30]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Greece	[50-60]%	[30-40]%	[5-10]%	[0-5]%	[0-5]%	[0-5]%
Hungary	[90-100]%	[0-5]%	[5-10]%	[0-5]%	[0-5]%	[0-5]%
Ireland	[90-100]%	[0-5]%	[5-10]%	[0-5]%	[0-5]%	[0-5]%
Italy	[30-40]%	[50-60]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Latvia	[80-90]%	[0-5]%	[10-20]%	[0-5]%	[0-5]%	[0-5]%
Lithuania	[80-90]%	[0-5]%	[10-20]%	[0-5]%	[0-5]%	[0-5]%
Netherlands	[60-70]%	[30-40]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Norway	[90-100]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Poland	[80-90]%	[0-5]%	[5-10]%	[5-10]%	[0-5]%	[0-5]%

206 The cells marked with '-' in Table 4 above signify that the services are not provided by the market participant indicated in the second row of the table. Moreover, there are EEA Member States (not included in this table) where no undertakings provide FMCG RMS and CPS services.

2021	FMCG RMS					
Portugal	[90-100]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Romania	[80-90]%	[0-5]%	[5-10]%	[0-5]%	[0-5]%	[0-5]%
Slovakia	[80-90]%	[0-5]%	[5-10]%	[0-5]%	[5-10]%	[0-5]%
Slovenia	[80-90]%	[0-5]%	[10-20]%	[0-5]%	[0-5]%	[0-5]%
Spain	[70-80]%	[10-20]%	[10-20]%	[0-5]%	[0-5]%	[0-5]%
Sweden	[90-100]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
EEA Total	**[70-80]%**	**[20-30]%**	**[0-5]%**	**[0-5]%**	**[0-5]%**	**[0-5]%**

Source: Form CO - Ch. II - Annex 3.1 and Form CO - Ch. III - Annex 3.1.

Table 10: The Parties' and their competitors' market shares in CPS, at a national level in 2021[207]

2021	CPS		
Member State	**GfK**	**NIQ**	**Kantar**
Austria	[90-100]%	[0-5]%	[0-5]%
Belgium	[90-100]%	[0-5]%	[0-5]%
Bulgaria	[90-100]%	[0-5]%	[0-5]%
Croatia	[90-100]%	[0-5]%	[0-5]%
Czech Republic	[90-100]%	[0-5]%	[0-5]%
Denmark	[80-90]%	[0-5]%	[10-20]%[208]
Finland	[0-5]%	[90-100]%	[0-5]%
France	[0-5]%	[10-20]%	[80-90]%
Germany	[90-100]%	[5-10]%	[0-5]%
Greece	-	-	[90-100]%
Hungary	[90-100]%	[0-5]%	[0-5]%
Ireland	-	-	[90-100]%
Italy	[50-60]%	[40-50]%	[0-5]%
Netherlands	[90-100]%	[0-5]%	[0-5]%
Poland	[90-100]%	[0-5]%	[0-5]%
Portugal	[0-5]%	[30-40]%	[70-80]%
Romania	[90-100]%	[0-5]%	[0-5]%
Slovakia	[90-100]%	[0-5]%	[0-5]%
Spain	[0-5]%	[10-20]%	[80-90]%
Sweden	[90-100]%	[0-5]%	[0-5]%
EEA Total	**[60-70]%**	**[10-20]%**	**[20-30]%**

207 The cells marked with '-' in Table 4 above signify that the services are not provided by the market participant indicated in the second row of the table. Moreover, there are EEA Member States (not included in this table) where no undertakings provide FMCG RMS and CPS services.

208 Market share of WhatIBuy, which has been acquired by Kantar in 2022.

(205) The above shows that post-Transaction NIQ could leverage its FMCG RMS or CPS capabilities in a number of Member States, both individually (key Member States such as Germany, which is highly important for customers) or in combination (e.g. several Eastern European or Northern European Member States) to establish bundled deals which would be compelling to customers due to the lack of availability of alternative service providers in several Member States where customers would require FMCG RMS and/or CPS services. NIQ would, in addition, have the possibility to increase prices for FMCG RMS and CPS services in individual Member State to an extent where these purchases could become unviable for customers in order to ensure that customers opt exclusively for bundled deals thereby securing demand and foreclosing competitors.

(206) Second, on the demand side, large multinational companies are the main customers for FMCG RMS and CPS. These customers require market research services in several EEA jurisdictions and consider them particularly important.[209] They often purchase both FMCG RMS and CPS services within one Member State but also in several Member States across the EEA.

(207) Large multinational customers who purchase FMCG RMS services from NIQ within the EEA also often purchase CPS services from GfK. More specifically, at the EEA level, [20-30]% of NIQ's FMCG RMS customers, representing [80-90]% of NIQ entire FMCG RMS turnover in the EEA, also purchase CPS from NIQ and GfK, these customers. In turn, [40-50]% of the Parties' CPS customers purchase also FMCG RMS from NIQ. This [40-50]% of the customers represent [80-90]% of the Parties' overall CPS turnover in the EEA. Therefore, there is a common pool of customers between the Parties, largely consisting of large multinational customers which purchase both FMCG RMS and CPS in one Member State but also is several Member States across the EEA and represent high-revenue sales opportunities compared to medium or small ('long-tail') customers.[210]

(208) These market characteristics and overlaps between the customers of the Parties also appear within national markets. For instance:

- [30-40]% of the Parties' CPS customers in Germany are also buying FMCG RMS from NIQ in Germany.
- [50-60]% of the Parties' CPS customers in Italy are also buying FMCG RMS from NIQ.
- [80-90]% of the Parties' CPS customers in France are also buying FMCG RMS from NIQ.
- In each of these Member States these common customers buying CPS and FMCG RMS represent between 70-98% of the Parties' CPS turnover.

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209 See e.g. para. 7 and 20 of non-confidential minutes of a conference call with a market participant on 12 December 2022, para 3 of non-confidential minutes of a conference call with a market participant on 14 March 2023, para 14 of non-confidential minutes of a conference call with a market participant on 15 March 2023, moreover questionnaire to customers, questions D.A.B.3, F.B.B.3 and F.B.B.4.

210 *See* the Parties response to QP 7, Annex 10.2 and para. 559 *et seq* of the Form CO.

(209) Therefore, post-Transaction the Parties would have a large pool of multinational customers representing a significant share of the demand for FMCG RMS and CPS services by value, and who may be affected by a bundling strategy within Member States and across Member States within the EEA.

(210) Third, the majority of the respondents to the market investigation noted that they do not currently source both FMCG RMS and CPS from a single provider within the EEA. This likely results from the limited scope to do so pre-Transaction, since the only market player which could currently provide these services is NIQ with only a limited number of Member States covered. However, they also confirmed that they would be interested in a combined offering.[211] Therefore, based on the fact that there already exists a pool of overlapping high-value customers and the results of the market investigation, the Parties would have the ability to significantly expand their customer base post-Transaction by relying on the combination of their offering.

(211) In addition, one-fifth of respondents to the market investigation submitted that [Details of NIQ's prior commercial strategy as reported in customers' responses to the market investigation.].[212] [Details of NIQ's prior commercial strategy as reported in customers' responses to the market investigation.].

(212) Fourth, a majority of the respondents expressing an opinion in the market investigation confirmed that post-Transaction, NIQ would have the ability to leverage its combined FMCG RMS and CPS offer to force and/or encourage customers (through discounts/more attractive prices) to purchase FMCG RMS and CPS for additional EEA countries compared to the situation before.[213] For instance, post-Transaction NIQ would have the possibility to combine CPS and FMCG-RMS services in Germany and Italy thereby compelling those customers who require for their strategic decisions the data provided through CPS services to purchase the entire bundled package and possibly switch from Circana to NIQ. NIQ may also have the possibility to deploy bundles encompassing several EEA Member States, thereby making the supply of certain key country data conditional on the purchase of such bundles.

(213) Based on the above, the Merged Entity could deploy bundling strategies to capture a significant portion of the demand throughout the FMCG RMS and CPS markets within the EEA, and thereby significantly reduce the sales and expansion possibilities of its main competitors, which, in turn, would not have the ability to deploy effective counter strategies due to the single-product nature of their offering and their limited size compared to that of the Parties post-Transaction.

(214) In addition, large multinational customers would be particularly exposed to bundling practices, due to the Parties' monopoly position in both FMCG RMS and CPS in several Member States. To illustrate from the customers' perspective, post-Transaction NIQ could offer individual services falling under monopoly on significantly less advantageous terms compared to bundles of both FMCG RMS and CPS within one Member State or across multiple Member States. In the same vein, the Merged Entity is unlikely to suffer significant losses of customers, as its monopoly position in several

211 Questionnaire to customers, question H.3 and H.5.
212 Questionnaire to customers, question H.4.
213 Questionnaire to customers, question H.15.

Member States renders it, as a market participant noted during the market investigation: an '*unavoidable partner*'[214], especially for large multinational customers.

(215) In light of the above, the Commission concludes that the Merged Entity would likely have the ability post-Transaction to engage in a mixed bundling strategy targeting large multinational customers who procure FMCG RMS and CPS services throughout the EEA.

Incentive

(216) The incentives to foreclose rivals depend on the degree to which such a practice would be profitable, considering the possible trade-off between the costs of bundling products and the possible gains from expanding market shares.[215]

(217) Large multinational customers often require[216] both FMCG RMS and CPS services across the EEA in order to have the data to underpin strategic decisions, KPIs and other internal processes. These large multinational customers represent a significant portion of the revenues of both Parties. The largest customers for both FMCG RMS and CPS account for a significant share of the Parties' sales. NIQ's top 20 FMCG RMS customers within the EEA represent [30-40]% of its overall FMCG RMS revenues within the EEA. Similarly, the Parties' top 20 CPS customers within the EEA represent [40-50]% of their CPS revenues within the EEA. [217]

(218) Therefore, capturing further demand from these customers or acquiring additional multinational customers from competitors such as Circana or Kantar (especially if Europanel were to be discontinued or made less attractive) would result in significant gains on the Merged Entity's side, and respectively significant losses on competitors' side. Notably, the captured demand would remain significant and stable as the Commission's market investigation has shown that customers require these services throughout the EEA in order to render strategic decisions and underpin various processes and KPIs. In fact, the market investigation has shown that both RMS and CPS are, as one customer noted, '*essential*' services for business decisions.[218]

(219) Circana is NIQ's main competitor in the FMCG RMS markets, is active in six EEA Member States and realised revenues of more than EUR 125 million in 2021 within the EEA, which is more than one-third of NIQ's FMCG RMS revenues in 2021. In Italy, Circana achieved a significantly higher 2021 turnover compared to that of NIQ in FMCG RMS due to its higher market share in FMCG RMS in this national market.[219] Considering the fact that within the market research industry large multinational

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214 Non-confidential minutes from a call with a market participant from 28 November 2022.

215 Non-Horizontal Merger Guidelines, paragraph 105 *et seq*.

216 See e.g. para. 14 of non-confidential minutes of a conference call with a market participant on 15 March 2023 ('*[customer] further submits that both RMS and CPS are essential services*') , para. 2 of non-confidential minutes of a conference call with a market participant on 12 December 2022 ('*[customer] needs information from external service providers to be able to define its corporate strategy for the EEA*') and para. 20 (c) of non-confidential minutes of a conference call with a market participant on 31 October 2022 ('*[stopping RMS purchases] would result in significant risks for [customer]'s operations*').

217 See the Parties' response to the case team's QP3 – Annex 6.2.

218 See para. 14 of non-confidential minutes of a conference call with a market participant on 15 March 2023.

219 *See* Annex Ch. II – Annex 3.1 of the Form CO. The revenues and market share of Circana are based on the Parties estimates.

customers account for a significant portion of revenue[220] and that post-Transaction the Parties could capture a significant portion of the demand currently served by their competitors[221], it is likely that the bundling of FMCG RMS and CPS would lead to a shift of customers *inter alia* from Circana to NIQ throughout the EEA.

(220) In addition, as outlined above in Section 6.2.3.2, Kantar realises significant revenues in countries where it would compete with the Parties post-Transaction in CPS.

(221) In conclusion, post-Transaction, by leveraging the monopoly positions it would hold in the CPS and FMCG RMS markets NIQ could implement a bundling strategy which would allow it to win significant sales from its competitors, including Circana and Kantar with limited risks of incurring in losses of sales due to its monopoly position in several EEA Member States. This would incentivise NIQ to engage in bundling and thereby foreclose its competitors in the FMCG RMS and CPS markets post-Transaction.

(222) In light of the above, the Commission concludes that post-Transaction NIQ would have the incentive to capture a significant additional portion of the demand represented by large multinational customers which are currently purchasing FMCG RMS and CPS services from its competitors through the bundling of FMCG RMS and CPS services in a Member State or across multiple Member States in the EEA.

Overall effect on competition

(223) The Transaction combines the leading providers of FMCG RMS and CPS within the already highly concentrated markets of the EEA Member States where the Parties are active. Both NIQ and GfK are already monopolists in FMCG RMS and CPS respectively in several Member States.

(224) *First*, as shown above in Section 6.3.3.1., FMCG-RMS and CPS are both 'top-heavy' businesses with a relatively small number of large multinational customers accounting for a large portion of the revenues. This segment of the demand is therefore vital for both the Parties and their competitors. These customers, however, are also sensitive to, and would be most affected by a potential FMCG RMS and CPS bundling strategy deployed by NIQ post-Transaction. These customers purchase both FMCG RMS and CPS within the same Member State and across several Member States within the EEA, therefore the Parties would have the possibility post-Transaction to leverage their geographical coverage and shift the demand of these customers in non-monopoly countries through the bundling of FMCG RMS and CPS.[222]

(225) Several of these large multinational customers are also customers of the Parties' main competitors, namely Kantar and Circana, purchasing CPS and FMCG RMS services respectively. To illustrate, [the Parties' customers] are not only some of the most important FMCG RMS and CPS customers of NIQ and GfK, but also top customers of

220 *See inter alia* above in Section 6.3.3.1 and para. 558 *et seq* of the Form CO.
221 By combining their FMCG-RMS and CPS business (including a strong position on Italy in both FMCG RMS and CPS and a monopoly position in CPS in various Member States)
222 *See* e.g. Annexes 3.1 and 5.2 to the Parties response to QP3 and non-confidential responses to questions H.1 of the market investigation.

both Circana and Kantar within the EEA.[223] Therefore, the Parties could cause a significant reduction in competitors' market shares, which would decrease the rivals' ability and incentive to compete. This may allow the Parties to subsequently acquire an even stronger position and market power in both the FMCG RMS and CPS markets where they do not yet possess a monopoly position, which would be difficult or impossible to challenge or counterweigh by competitors and customers.

(226) Importantly, a potential combination of the offerings of Kantar and Circana would not constitute an effective counterstrategy against the potential bundling practices of the Merger Entity. Even a combined offer from Kantar and Circana would lack CPS coverage in Germany and Italy which are considered key markets by large multinational customers[224] and FMCG RMS coverage in several Member States.

(227) Second, the European Commission has received numerous comments throughout the investigation which indicate or directly reference potential conglomerate effects arising from the Transaction which would, in turn, negatively affect competition within the EEA. For instance, a market participant noted that '[Details of NIQ's prior commercial strategy as reported in customers' responses to the market investigation.]', while another market participant indicated that '*post-Transaction, Nielsen will gain and - where it already has a monopoly position - further strengthen its position in several markets, becoming an unavoidable partner for market research services. Market participants requiring market data will have little to no leverage against Nielsen and no buyer power in negotiations with Nielsen.*'. [225]

(228) Third, the ability of the Merger Entity to capture the demand of large multinational customers is likely to render any entry by potential competitors unlikely. Considering the importance of large multinational customers and their tendency to purchase both FMCG RMS and CPS services throughout the EEA, current and potential competitors would be forced to consider entering potentially both product markets, possibly in several geographies at the EEA at the same time rather than planning a sequential, and thereby less costly, entry process. These conditions would aggravate the current situation, which, based on the findings of the Commission's market investigation and the Parties' submissions, is already characterized by significant barriers to entry in FMCG RMS and CPS.[226] It is unlikely that post-Transaction the entry barriers could be overcome by the Parties' current and potential rivals in a timely and efficient manner in the near future.

(229) Fourth, while the most important customers of the Parties are large multinational customers, it is unclear whether these customers wield significant buyer power, which

223 *See* non-confidential responses to questions H.1 and H.2 of the market investigation. Most of these customers are both within the 'G13 and IV25' groups of customers of NIQ, which represent the largest global customers of NIQ (*see* QP3 Annex 3.1.) and also within the top 50 GfK CPS customers within the EEA (*see* QP3 Annex 6.2.).

224 Substantiated *inter alia* by the significantly higher turnover of the Parties (see Ch. I Annex 4.1.) and para. 18 of non-confidential minutes of a conference call with a market participant on 31 October 2022.

225 See e.g. para. 14 of non-confidential minutes of a conference call with a market participant on 12 December 2022, paras. 29 and 30 of non-confidential minutes of a conference call with a market participant on 28 November 2022, para. 32. of non-confidential minutes of a conference call with a market participant on 31 October 2022.

226 Form Co, Chapter II, para 584 *et seq* and Chapter III, para. 314 *et seq*. Moreover, see responses to questionnaire to customers, questions D.A.C.1.-D.A.C.4.

could countervail the Parties' combined market power post-Transaction. Notably, a number of customers have noted during the market investigation that they have only a limited level of transparency or ability to affect the pricing decisions of the Parties.[227] In addition, within the framework of the market investigation, 45% of the respondents confirmed that they would either not be able to significantly reduce and/or stop FMCG RMS purchases if faced by unfavourable conditions from NIQ or, at least, that it would depend on certain factors. In comparison 37% of the respondents consider that they would have this ability.[228] This result is put in context by the comments of the respondents, several of which note that while stopping or reducing purchases may be technically possible, it would result in significant disadvantages and potential losses.[229] To the same questions regarding CPS purchases from GfK, 35% of the respondents answered with 'no' or 'it depends' while 46% of the respondents confirmed that it would be possible to reduce and/or stop CPS purchases.[230] However, the comments of the customers show that while CPS data is less critical compared to FMCG RMS, at least for some of the multinational customers it remains a valuable insight, the loss of which would be highly undesirable.[231] Therefore, the Commission's market investigation shows that already now, even large and sophisticated customers have only limited countervailing buyer power[232], which is likely to further diminish against the Parties post-Transaction.

(230) Based on the above the market dynamics within FMCG RMS and CPS would change significantly post-Transaction in a direction potentially detrimental to competition. Notably, NIQ, having a combined FMCG RMS and CPS portfolio throughout the EEA, could become a player largely unavoidable for large multinational customer requiring both of these services in EEA Member States and throughout the EEA. Due to their increasingly eroding negotiation powers, these customers would be susceptible to price increases and bundled offers by NIQ. Bundles, in turn, would allow NIQ to shift significant demand away from its competitors, thereby weakening their position, preventing market entry, artificially promoting potential market exits and ultimately opening further possibilities for price increases and bundled offers.

5.4.2.4. Conclusion

5.4.3. Based on the above considerations and in light of all the evidence available to it, the Commission concludes that the Transaction raises serious doubts as to its compatibility with the internal market due to conglomerate effects, as NIQ will have the ability and incentive post-Transaction, to bundle FMCG RMS and CPS within one Member State and across Member States, which would lead to the foreclosure of its main rivals in the markets for FMCG RMS and CPS (Circana and Kantar) in Denmark, France, Germany, Greece, Italy, the Netherlands, Portugal and Spain and thereby have

227 See e.g. para. 11 of non-confidential minutes of a conference call with market participant on 23 November 2022, para. 7-9 of non-confidential minutes of a conference call with market participant on 28 November 2022, para. 20 of non-confidential minutes of a conference call with market participant on 31 October 2022

228 Questionnaire to customers, question H.9.

229 See e.g. non-confidential response from [the Parties' customers], and many other respondents.

230 Questionnaire to customers, question H.11.

231 See e.g. non-confidential response from [the Parties' customers], etc.

232 Questionnaire to customers, questions H.9 and H.11., moreover non-confidential minutes from a call with a market participant from 23 November 2022, 28 November 2022, 31 October 2022, etc.

detrimental effects on competition within the EEA. Potential bundling between RMS NFMCG and RMS FMCG

5.4.3.1. Market shares

(231) As mentioned at paragraph (195) above, the Merged Entity will hold a monopoly position in FMCG RMS in Belgium, Denmark, Norway, Portugal and Sweden. In addition, the Merged Entity will have a market share above 80% in most of the other countries where NIQ is currently active in FMCG RMS, and will have a share below 50% only in Italy.

(232) Moreover, the Merged Entity will be present in NFMCG RMS in most countries in the EEA, with market shares of above 80% in Denmark, Finland, Norway and Sweden. The Merged Entity will moreover have market shares of above 50% in NFMCG RMS in Belgium, France, Germany, Italy, the Netherlands and Portugal.

(233) The detailed market share data of the Merged Entity and its main competitors in FMCG RMS and NFMCG RMS is shown in Table 11 below.

Table 11– The Parties' and their competitors' market shares in FMCG RMS and NFMCG RMS, at a national level in 2021

2021	**FMCG RMS**				**NFMCG RMS**			
Country	**NIQ/ GfK**	**Circana**	**IQVIA**	**Other**	**NIQ/ GfK**	**IQVIA**	**Circana**	**Other**
Austria	[90-100]%	[0-5]%	[5-10]%	[0-5]%	[30-40]%	[50-60]%	[5-10]%	[5-10]%
Belgium	[90-100]%	[0-5]%	[0-5]%	[0-5]%	[70-80]%	[0-5]%	[10-20]%	[10-20]%
Bulgaria	[90-100]%	[0-5]%	[5-10]%	[0-5]%	[0-5]%	[80-90]%	[0-5]%	[10-20]%
Croatia	[80-90]%	[0-5]%	[10-20]%	[0-5]%	[10-20]%	[80-90]%	[0-5]%	[0-5]%
Czech Republic	[80-90]%	[0-5]%	[5-10]%	[5-10]%	[30-40]%	[60-70]%	[0-5]%	[0-5]%
Denmark	[90-100]%	[0-5]%	[0-5]%	[0-5]%	[80-90]%	[0-5]%	[0-5]%	[10-20]%
Estonia	[80-90]%	[0-5]%	[10-20]%	[0-5]%	[0-5]%	[70-80]%	[0-5]%	[20-30]%
Finland	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[80-90]%	[0-5]%	[0-5]%	[10-20]%
France	[60-70]%	[30-40]%	[0-5]%	[0-5]%	[50-60]%	[20-30]%	[5-10]%	[10-20]%
Germany	[60-70]%	[20-30]%	[0-5]%	[0-5]%	[70-80]%	[10-20]%	[5-10]%	[90-100]%
Greece	[50-60]%	[30-40]%	[5-10]%	[0-5]%	[40-50]%	[50-60]%	[0-5]%	[0-5]%
Hungary	[90-100]%	[0-5]%	[5-10]%	[0-5]%	[40-50]%	[50-60]%	[0-5]%	[0-5]%
Ireland	[90-100]%	[0-5]%	[5-10]%	[0-5]%	[5-10]%	[70-80]%	[0-5]%	[20-30]%
Italy	[30-40]%	[50-60]%	[0-5]%	[0-5]%	[50-60]%	[20-30]%	[5-10]%	[10-20]%
Latvia	[80-90]%	[0-5]%	[10-20]%	[0-5]%	[0-5]%	[80-90]%	[0-5]%	[10-20]%
Lithuania	[80-90]%	[0-5]%	[10-20]%	[0-5]%	[0-5]%	[60-70]%	[0-5]%	[30-40]%

2021	FMCG RMS				NFMCG RMS			
Netherlands	[60-70]%	[30-40]%	[0-5]%	[0-5]%	[70-80]%	[0-5]%	[10-20]%	[10-20]%
Norway	[90-100]%	[0-5]%	[0-5]%	[0-5]%	[80-90]%	[0-5]%	[0-5]%	[10-20]%
Poland	[80-90]%	[0-5]%	[5-10]%	[5-10]%	[40-50]%	[50-60]%	[0-5]%	[5-10]%
Portugal	[90-100]%	[0-5]%	[0-5]%	[0-5]%	[70-80]%	[0-5]%	[0-5]%	[20-30]%
Romania	[80-90]%	[0-5]%	[5-10]%	[0-5]%	[20-30]%	[60-70]%	[0-5]%	[0-5]%
Slovakia	[80-90]%	[0-5]%	[5-10]%	[5-10]%	[30-40]%	[60-70]%	[0-5]%	[0-5]%
Slovenia	[80-90]%	[0-5]%	[10-20]%	[0-5]%	[10-20]%	[80-90]%	[0-5]%	[5-10]%
Spain	[70-80]%	[10-20]%	[10-20]%	[0-5]%	[30-40]%	[40-50]%	[5-10]%	[5-10]%
Sweden	[90-100]%	[0-5]%	[0-5]%	[0-5]%	[80-90]%	[0-5]%	[0-5]%	[10-20]%
EEA Total	**[70-80]%**	**[20-30]%**	**[0-5]%**	**[0-5]%**	**[50-60]%**	**[30-40]%**	**[5-10]%**	**[10-20]%**

Source: Form CO, Chapter II, Annexes 3.1 and 3.2.

5.4.3.2. The Notifying Party's view

(234) The Notifying Party submits that the Merged Entity will not have the ability nor the incentive to foreclose competition in the markets for NFMCG RMS or FMCG RMS, by offering its services in the two markets as a bundle. According to the Notifying Party, this is mainly due to the fact that NFMCG RMS and FMCG RMS are typically not purchased by the same customers. In relation to the small number of customers that buy both types of services, the Notifying Party submits that they will continue doing so, given their buyer power and in order to generate more competition between RMS providers. As regards its incentives, the Notifying Party submits that engaging in a bundling strategy would result in it losing sales to Circana, which would not be offset by any profits generated by the bundling strategy.[233]

5.4.3.3. Commission's assessment

(235) As explained above, in order to assess the likelihood of an anticompetitive foreclosure strategy pertaining to bundling of NFMCG RMS and FMCG RMS, the Commission will examine whether the Merged Entity has (i) the ability to foreclose and (ii) the incentives to foreclose in either of the two markets, by leveraging its position in the other market. Lastly, the Commission will assess whether such practices may have a significant negative impact on competition and consumers.[234]

Ability

(236) Following the Transaction, the Commission considers that the Merged Entity will not have the ability to foreclose its competitors in the NFMCG RMS market or the FMCG

[233] Form CO, Chapter II, paragraphs 278 *et seq*.
[234] Non-Horizontal Merger Guidelines, paragraph 94.

RMS market by engaging in a strategy of tying or bundling within a Member State the service in which the Merged Entity will hold a dominant position with the service in which it will still face competition.

(237) For foreclosure to be a potential concern in the case of a conglomerate merger, there must be a large common pool of customers for the individual products concerned.[235] This is not the case considering the provision of NFMCG RMS and FMCG RMS.

(238) First, FMCG and NFMCG RMS are provided to largely different types of customers. As explained at paragraphs (17) *et seq.*, FMCG RMS is procured mainly by manufacturers and also retailers of FMCG, meaning non-durable products that are sold quickly at a relatively low cost and purchased frequently. Such products typically include consumer goods such as groceries (food and beverages), household products and personal care products. NFMCG RMS is procured mainly by manufacturers and also retailers of NFMCG, which refers to durable products such as consumer appliances and consumer electronics. It follows that FMCG RMS is irrelevant to a manufacturer or retailer of NFMCG, and *vice versa*. This is with the exception of only a limited number of retailers that sell both FMCG and NFMCG.[236]

(239) Second, the market investigation confirmed that there is only a limited number of customers who purchase both FMCG RMS and NFMCG RMS. Notably, less than 10% of the respondents to the market investigation indicated that they procure both NFMCG RMS and FMCG RMS.[237] Similarly, less than 10% of the customers who responded to the market investigation, also responded to the section pertaining to a potential tying or bundling strategy between FMCG RMS and NFCMG RMS, indicating the small number of customers considering both services as relevant to them.[238]

(240) The fact that the customer base to which both FMCG RMS and NFMCG RMS are relevant is very small is also confirmed by the data provided by the Notifying Party. Such data indicate that among the top fifty RMS customers of NIQ and GfK in terms of sales, only […] customers purchase both FMCG RMS and NFMCG RMS and are thus common customers to the Parties.[239] These […] customers represent [5-10]% of NIQ's RMS sales and [0-5]% of GfK's RMS sales.[240]

(241) Third, even when considering the small pool of customers to whom both FMCG and NFMCG RMS are relevant, a clear majority indicated that they do not typically source FMCG RMS and NFMCG RMS together.[241] This is despite the fact that customers currently do have the option of procuring FMCG and NFMCG RMS from the same provider, as both IQVIA and Circana offer both types of RMS within the same Member States.[242]

235 Non-Horizontal Merger Guidelines, paragraph 100.
236 Form CO, Chapter II, paragraphs 146 *et seqq.*
237 Questionnaire to customers, B.1.
238 Questionnaire to customers, Section I.
239 See Form CO, Chapter II, paragraph 224.
240 See Annex 2.9, Form CO, Chapter II.
241 Questionnaire to customers, question I.2.
242 See Table 7 above.

(242) Fourth, the clear majority of customers who source both FMCG and NFMCG RMS responded in the market investigation that they do not source both types of services from a single provider,[243] even where there are suppliers able to provide both types of RMS. Such customers are more likely to choose their FMCG and FMCG RMS providers separately, based the quality of each provider's offering. As one customer explained in this regard, '*[w]hile there are advantages to having a single reporting solution covering the entire ticket, certain providers are more adapt at offering a particular category of RMS service and are therefore usually preferred, resulting in different sources*'.[244] Moreover, the market investigation confirmed that the Merged Entity would not have the ability to impose to the limited pool of common FMCG and NFMCG RMS customers a bundled offer of the two services. The majority of customers who responded to the market investigation confirmed that, if faced with unfavourable conditions in the supply of such services, they would be able to significantly reduce or stop sourcing RMS data from both NIQ and GfK. [245]

(243) Lastly, even when procuring both FMCG RMS and NFMCG RMS, the clear majority of respondents indicated that they do so through separate negotiations with market research providers.[246], although there are currently providers offering both FMCG and NFMCG RMS, such as IQVIA and Circana, as shown in Table 11 above. This is likely to continue being the case post-Transaction, as customers will typically procure FMCG RMS independently from NFCMG RMS, based on the quality of each provider's offering, as explained at paragraph (242).

Incentives

(244) Absent the ability to foreclose its rivals in the markets for FMCG RMS and NFMCG RMS, via tying or bundling practices, a detailed assessment of the Merged Entity's' incentives to do so is not necessary. The Commission nonetheless considers that the Merged Entity will not have the incentives to engage into a strategy by which it would tie or bundle its FMCG RMS and NFMCG RMS offerings.

(245) The incentive to foreclose rivals through bundling or tying strategies depends on the degree to which this strategy would be profitable.[247] Such profit may occur through capturing part of the sales of the foreclosed rivals in the leveraged market.[248] However, as explained at paragraphs (238) *et seq.,* there is only a very small pool of customers to which both FMCG RMS and NFMCG RMS are relevant.

(246) Even if the Merged Entity had the ability to foreclose its rivals through bundling its FMCG and NFMCG RMS, it is unlikely that such strategy would be profitable due to the very small customer base that could be targeted by such strategy. Bundling the two types of RMS in a way that forces customers to buy both or makes the standalone service more expensive in comparison to a bundled offer, would risk losing customers among the large pool of the Merged Entity's customers who do not require both FMCG and NFMCG RMS. This pool of customers represents [90-100]% of NIQ's RMS sales

243 Questionnaire to customers, questions I.3.
244 Questionnaire to customers, question I.2-2.
245 Questionnaire to customers, question I.8; I.10.
246 Questionnaire to customers, question I.6.
247 Non-Horizontal Merger Guidelines, paragraph 105.
248 Non-Horizontal Merger Guidelines, paragraph 111.

and [90-100]% of GfK's RMS sales.[249] Such customers could switch to the Merged Entity's competitors, such as IQVIA and Circana, and procure either FMCG or NFMCG RMS on a standalone basis. The loss of such customers would translate to lower margins for the Merged Entity, which would unlikely be offset by any margin gains from the small pool of customers targeted by the bundling strategy, which represents [5-10]% of NIQ's RMS sales and [0-5]% of GfK's RMS sales.[250]

(247) As discussed at paragraph (241) *et seqq*. the market investigation indicated that customers prefer procuring the two types of RMS independently. The majority of customers who responded to the market investigation moreover confirmed that they would be able to significantly reduce or stop sourcing RMS data from both NIQ and GfK, if faced with unfavourable conditions in the supply of such services.[251] It is therefore likely that customers would react to the Merged Entity's attempt to impose a bundle of FMCG and NFMCG RMS, disincentivising the Merged Entity to engage in such a practice in the first place.

(248) The responses to the market investigation were inconclusive with regard to whether the Parties would post-Transaction have the incentive to offer FMCG RMS and NFMCG RMS in a bundled manner. Most respondents appeared unsure or expressed a negative opinion as to the existence of such incentives.[252]

Overall effect on competition

(249) Absent the ability and incentive of the Merged Entity to foreclose its rivals in the markets for FMCG RMS and NFMCG RMS via tying or bundling practices, a detailed assessment of the overall effect on competition of such practices is not necessary.

(250) In any case, given that a strategy of tying or bundling of FMCG RMS and NFMCG RMS would not possibly lead to a foreclosure of the Parties' rivals, as explained at (246) *et seq.,* such strategy would not likely result in a negative impact with regard to prices and choice in the relevant markets.

5.4.3.4. Conclusion

(251) Based on the above considerations and in light of all the evidence available to it, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to conglomerate effects between FMCG RMS and NFMCG RMS.

6. COMMITMENTS

(252) In order to remove serious doubts arising from the Transaction described in Section 5, the Notifying Party submitted commitments modifying the Transaction on 7 June 2023 (the 'Initial Commitments').

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249 See Annex 2.9, Form CO, Chapter II.

250 *Ibid.*

251 Questionnaire to customers, question I.8; I.10.

252 Questionnaire to customers, questions I.13.

(253) The Commission launched a market test of the Initial Commitments on 9 June 2023, seeking responses from competitors and customers of the Parties. The Commission informed the Notifying Party of the results of the market test on 21 June 2023. Following the feedback received from market participants in the market test, the Notifying Party submitted a revised set of commitments on 23 June 2023 (the 'Final Commitments').

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

6.1. Description of the Initial Commitments

(255) The Initial Commitments[253] consist of the divestment of the global CPS business of GfK, excluding Russia. This includes all CPS personnel, all CPS customer contracts, all CPS vendor contracts, all CPS contracts with panellists, historical data and the rights emanating from the Divestment Business, all core software applications used by GfK in operating its CPS business worldwide and GfK CPS-related trademarks, existing corporate entities in each of Croatia, Serbia and Slovakia, newly incorporated entities in each of Austria, Belgium, Bulgaria, Czechia, Denmark, Germany, Hungary, Italy, the Netherlands, Poland, Romania, Sweden and Ukraine, and all required office space and associated standard office equipment (the 'Divestment Business').

(256) The Divestment Business includes all assets and staff that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business, in particular:

a. all tangible and intangible assets (including intellectual property rights) predominantly or exclusively related to the Divestment Business;

b. all contracts, leases, commitments and customer orders of the Divestment Business;

c. all customer, credit and other records of the Divestment Business; and

d. all personnel required for the operation of the Divestment Business, namely […] employees, including management, commercial roles directly supporting current and prospective new customers and data acquisition.

(257) The Initial Commitments provide that, prior to the transfer of the legal title to the Divestment Business to the purchaser, the totality of the equity interests in GfK's corporate entities, including all assets and liabilities constituting the Divestment Business will be transferred to a newly-formed subsidiary of GfK ('Gold Holdco'). As such, the divestment will be effectuated by way of a single-seller equity sale pursuant to which the Notifying Party will divest, and the purchaser will acquire 100% of the equity of Gold Holdco.

(258) Apart from the personnel required for the operation of the Divestment Business, as described under paragraph d., the Initial Commitments provide for the inclusion, at the option of the purchaser, of additional personnel for the supply of administrative

[253] The general description below appears both in the Initial and Final Commitments. The amendments made in the Final Commitments are explained in detail in Section 7.3.1.

functions, including finance, HR, IT, legal, marketing, procurement and real estate management.

(259) Moreover, the Initial Commitments include the benefit, for a transitional period of 12 months, with two extensions for up to 6 months each, at cost, to the extent required by and at the option of the purchaser, of a transitional service agreement ('TSA'):

a. […];

b. […];

c. […];

d. […];

e. […]; and

f. […].

(260) The Initial Commitments also include a licensing arrangement for the use of the 'GfK' brand for a […]. In addition, the Notifying Party commits not to use the 'GfK' brand for the purposes of the provision of CPS during this period, and for an additional blackout period of […] after the expiration of this period.

(261) In addition, the Initial Commitments provide that the purchaser of the Divestment Business shall be independent of and unconnected to the Parties; have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors; and that the acquisition of the Divestment Business by the purchaser must neither be likely to create, in light of the information available to the Commission, prima facie competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed. In particular, the purchaser must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business.

(262) Finally, the Initial Commitments contain related commitments, including those regarding the separation of the Divestment Business from the businesses retained by NIQ, the preservation of the viability, marketability and competitiveness of the Divestment Business, including the appointment of a monitoring trustee and, if necessary, a divestiture trustee.

6.2. Results of the market test of the Initial Commitments

(263) The results of the market test were generally positive. The majority of respondents who expressed an opinion were of the view that the Initial Commitments will remove the competition concerns raised by the Transaction.[254] In particular, the majority of respondents who expressed an opinion consider that the commitments compensate for the lost competitive constraint the merging parties were exerting on each other pre-

[254] Responses to question E.1, Questionnaire 02 - Remedies Market Test - to customers; Questionnaire 03 – Remedies Market Test - to potential purchasers.

Transaction on the markets for CPS in Germany and Italy.[255] Moreover, the majority of respondents who expressed an opinion consider that the commitments address the vertical and conglomerate effects arising from the acquisition of GfK's CPS business by NIQ.[256] The clear majority of the respondents opined that the provisions of the commitments are sufficiently clear and capable of being implemented.[257] The majority of respondents who expressed an opinion considered that the Divestment Business is viable[258] and includes all necessary tangible and intangible assets for the Purchaser to operate and effectively compete with the combined entity and any other competitor on the market for CPS.[259] The clear majority of respondents who expressed an opinion submitted that the commitments are sufficiently interesting to attract suitable purchasers for the Divestment Business[260] and several expressed interest in buying it.[261]

(264) Respondents to the market test, however, identified some aspects that should be modified in the Initial Commitments, which can be summarized as follows:

(265) First, regarding the TSA, the majority of respondents considered that a […] may not be sufficient to allow the purchaser to fully integrate the Divestment Business, suggesting that a […] may be more appropriate.[262]

(266) Second, as regards the licensing agreement for the use of the 'GfK' brand in relation to the Divestment Business' CPS activities, the majority of respondents considered that a […] might not be sufficient to allow the purchaser to transition to a new brand. Respondents suggested that a […] would be more appropriate.[263]

(267) Lastly, the market test also probed whether the purchaser criteria of the Initial Commitments, stipulating that the purchaser shall have '*proven expertise*' were sufficient, or whether further criteria should be included. The majority of respondents indicated that the purchaser should have proven expertise in the field of market research services specifically.[264]

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255 Responses to question E.3, Questionnaire 02 - Remedies Market Test - to customers; Questionnaire 03 – Remedies Market Test - to potential purchasers.

256 Responses to question E.4, Questionnaire 02 - Remedies Market Test - to customers; Questionnaire 03 – Remedies Market Test - to potential purchasers.

257 Responses to question E.2, Questionnaire 02 - Remedies Market Test - to customers; Questionnaire 03 – Remedies Market Test - to potential purchasers.

258 Responses to question E.6, Questionnaire 02 - Remedies Market Test - to customers; Questionnaire 03 – Remedies Market Test - to potential purchasers.

259 Responses to question E.5, Questionnaire 02 - Remedies Market Test - to customers; Questionnaire 03 – Remedies Market Test - to potential purchasers.

260 Responses to question F.1, Questionnaire 02 - Remedies Market Test - to customers; Questionnaire 03 – Remedies Market Test - to potential purchasers.

261 Responses to question F.5, Questionnaire 03 – Remedies Market Test - to potential purchasers.

262 Responses to question E.8, Questionnaire 02 - Remedies Market Test - to customers; Questionnaire 03 – Remedies Market Test - to potential purchasers.

263 Responses to question E.10, Questionnaire 02 - Remedies Market Test - to customers; Questionnaire 03 – Remedies Market Test - to potential purchasers.

264 Responses to question F.3, Questionnaire 02 - Remedies Market Test - to customers; Questionnaire 03 – Remedies Market Test - to potential purchasers.

6.3. Final Commitments

6.3.1. Description of the Final Commitments

(268) To address the shortcomings of the Initial Commitments, the Notifying Party submitted a revised version of the commitments on 23 June 2023 (the 'Final Commitments'). The main modifications were:

a. the extension of the duration of the TSA to a […]. In particular, the TSA will have an initial […];

b. the extension of the licensing agreement with regard to the use of the 'GfK' brand in relation to the Divestment Business' CPS activities to […], the Notifying Party commits not to use the 'GfK' brand in relation to its CPS business;

c. the specification that the purchaser shall have '*experience in the market research sector, either directly or through current or prior ownership of one or more businesses active in such sector*'.

6.4. Commission's assessment of the Final Commitments

6.4.1. Suitability of the Final Commitments to remove serious doubts

(269) The Divestment Business is a separate business unit within GfK that already pre-divestiture runs as a standalone business with its own dedicated management, CPS-specific personnel and tangible and intangible assets.[265] The Divestment Business is fully dedicated to CPS and is the largest CPS provider active in each of the EEA Member States in which it is present.[266]

(270) The divestment will be effectuated by way of a single-seller equity sale pursuant to which the Notifying Party will divest, and the purchaser will acquire, 100% of the equity of Gold Holdco, including the totality of the equity interests in GfK's corporate entities included in the Divestment Business and all assets and liabilities constituting the Divestment Business. The divestiture of the Divestment Business therefore constitutes a straightforward and clear-cut structural remedy generally suitable to clearly rule out serious doubts within the meaning of Article 6(1)(c) of the Merger Regulation.

(271) The Commission considers that the scope of the Divestment Business is sufficiently comprehensive, as the Final Commitments will entirely remove all of the Commission's serious doubts as to the compatibility of the Transaction with the internal market.

(272) First, through the divestiture of the Divestment Business, the commitments will remove entirely the horizontal overlap between NIQ and GfK in the provision of CPS in Germany and Italy. The commitments will also remove entirely the horizontal overlap between NIQ and GfK in the potential market for the provision of multi-country CPS to multinational customers. The commitments will therefore maintain the situation

265 Form RM, paragraph 60.

266 See Table 3 above.

prevailing pre-Transaction, whereby the Divestment Business and NIQ will continue to compete on the markets for CPS.

(273) Second, the divestiture of the Divestment Business addresses the concern that NIQ could post-Transaction seek to foreclose its competitors in FMCG RMS from CPS input in Germany, Italy and the Netherlands. As a result of the commitments, NIQ's position on these CPS markets will not change, while NIQ's FMCG RMS rivals will continue having access to CPS input by the Divestment Businesses. The commitments therefore eliminate NIQ's ability to foreclose its FMCG RMS rivals in Germany, Italy and Netherlands.

(274) Third, the commitments address the concern that NIQ will post-Transaction seek to foreclose its main competitor (Kantar) in CPS in Denmark, France, Portugal, and Spain, by bundling CPS in those Member States with CPS in Member States where NIQ would post-Transaction be a monopolist (i.e. Austria, Belgium, Bulgaria, Croatia, Czechia, Finland, Germany, Hungary, Italy, the Netherlands, Poland, Romania, Slovakia, and Sweden). By divesting the Divestment Business to an independent third-party purchaser, NIQ's position in the CPS markets will not change by the Transaction and NIQ will post-Transaction not be a monopolist in CPS in any Member State. The Commitments therefore eliminate NIQ's ability to leverage its position in CPS certain Member States, in order to foreclose its CPS rivals in other Member States.

(275) Lastly, the commitments address the concern that NIQ will have the ability and incentive post-Transaction, to bundle FMCG RMS and CPS within one Member State and across Member States, to foreclose its main rivals in the markets for FMCG RMS and CPS (Circana and Kantar) in Denmark, France, Germany, Greece, Italy, the Netherlands, Portugal and Spain. As explained above, by divesting the Divestment Business to an independent third-party purchaser, the commitments ensure that NIQ will not gain additional market positions within CPS in any EEA Member State, therefore it will not be in the position post-Transaction to bundle its own FMCG-RMS and the GfK's CPS services together within one Member State and across Member States in order to compel customers to switch from its main competitors. The commitments therefore eliminate NIQ's ability to leverage its position in FMCG RMS together with GfK's position in CPS in order to foreclose its rivals in FMCG RMS and CPS.

6.4.2. Viability and attractiveness of the business

(276) The Commission considers that, based on the evidence on file and the results of the market test, the Final Commitments are suitable to lead to the divestment of a viable competitive and attractive business.

(277) First, the Divestment Business is financially robust and profitable. In 2022 it generated revenues of about EUR […] with gross profit of EUR […].[267]

(278) Second, the Divestment Business is the largest CPS provider active in the EEA, operating consumer panels in 16 countries (14 of which in the EEA) and consisting

[267] Form RM, paragraph 178.

overall of approximately [100,000-150,000] households. The Divestment Business is the leading (and in many cases sole) CPS provider in all 16 markets where it is present.

(279) Third, the market test has confirmed the viability and competitiveness of the Divestment Business. A clear majority of market test respondents confirmed that the Divestment Business would be viable and would allow a suitable purchaser to compete effectively and on a lasting basis on CPS in the EEA.[268] In addition, the clear majority of respondents expressing a view confirmed that the proposed commitments are sufficiently interesting to attract suitable purchasers for the Divestment Business.[269]

(280) Fourth, the extension of the TSA to up to […] will ensure that the purchaser will have sufficient time to fully integrate the Divestment Business.

(281) Lastly, the extension of the period of the licensing agreement for the use of the 'GfK' brand in relation to the Divestment Business' CPS activities to […] during which the Merged Entity will not use the 'GfK' brand in relation to its own CPS business, will allow the purchaser sufficient time to transition to a new brand.

(282) Based on the results of the market test and following the Notifying Party's amendments in the Final Commitments, the Commission considers that the Divestment Business is a viable, competitive and attractive business. This is further confirmed by the fact that 11 companies, among which at least 4 companies with experience in market research services, have expressed a preliminary interest in acquiring the Divestment Business.[270]

6.4.3. Purchaser criteria and potential buyers

(283) The Initial Commitments contained the standard requirements that the purchaser (i) be independent from the Notifying Party. (ii) has the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force, and (iii) be unlikely to create competition concerns.[271] As described at paragraph (267) above, the Commission's market test indicated that criterion (ii) was not fulfilled by the Initial Commitments.

(284) In order to address those concerns, the Notifying Party amended the Initial Commitments to specify the purchaser criteria requesting that the purchaser has in addition experience in the market research sector.

(285) Consequently, the Commission considers that, as provided in the Final Commitments, the suitable purchaser will need to have proven experience in market research services as well as an incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Merged Entity and other competitors.

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268 Responses to question F.2, Questionnaire 02 - Remedies Market Test - to customers; Questionnaire 03 – Remedies Market Test - to potential purchasers.

269 Responses to question F.1, Questionnaire 02 - Remedies Market Test - to customers; Questionnaire 03 – Remedies Market Test - to potential purchasers.

270 Form RM, paragraph 13; Responses to question F.5, Questionnaire 03 to potential purchasers.

271 Commitments, paragraph 17; See also paragraph 48, Commission notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004.

6.4.4. *Conclusion*

(286) For the reasons outlined above, the Final Commitments entered into by the Notifying Party are sufficient to eliminate the serious doubts as to the compatibility of the Transaction with the internal market and the functioning of the EEA agreement regarding:

(a) the horizontal effects in the CPS markets in Germany and Italy;

(b) the vertical effects in the markets for CPS (upstream) and FMCG RMS (downstream) in Germany, Italy and the Netherlands;

(c) the conglomerate effects in the markets for CPS in Denmark, France, Portugal, and Spain, resulting from GfK's and NIQ's activities in CPS across Member States. In particular, the Final Commitments eliminate the concern that the Merged Entity would post-Transaction be in a position to foreclose its sole competitor (Kantar) in the CPS markets, by leveraging its monopoly position in the CPS markets in Austria, Belgium, Bulgaria, Croatia, Czechia, Finland, Germany, Hungary, Italy, the Netherlands, Poland, Romania, Slovakia, and Sweden;

(d) the conglomerate effects in the markets for CPS and FMCG RMS in Denmark, France, Germany, Greece, Italy, the Netherlands, Portugal and Spain, resulting from NIQ's activities in FMCG RMS across Member States on the one side, and NIQ's and GfK's activities in CPS across Member States on the other side. In particular, the Final Commitments eliminate the concern that the Merged Entity would post-Transaction be in a position to foreclose its main rivals in the markets for FMCG RMS and CPS (Circana and Kantar) by bundling FMCG RMS and CPS within one Member State and across Member States.

Conditions and Obligations

(287) Under the first sentence of the second subparagraph of Article 6(2) of the Merger Regulation, the Commission may attach to its decision conditions and obligations intended to ensure that the undertakings concerned comply with the commitments they have entered into vis-à-vis the Commission with a view to rendering the concentration compatible with the internal market.

(288) The fulfilment of the measure that gives rise to the structural change of the market is a condition, whereas the implementing steps which are necessary to achieve this result are generally obligations on the Parties. Where a condition is not fulfilled, the Commission's decision declaring the concentration compatible with the internal market is no longer applicable. Where the undertakings concerned commit a breach of an obligation, the Commission may revoke the clearance decision in accordance with Article 8(6) of the Merger Regulation. The undertakings concerned may also be subject to fines and periodic penalty payments under Articles 14(2) and 15(1) of the Merger Regulation.

(289) In accordance with the basic distinction described in the Recital above as regards conditions and obligations, this Decision should be made conditional on the full compliance by the Notifying Party with Section B (including the respective Schedule) of the Commitments submitted by the Notifying Party on 23 June 2023 and all other Sections should be obligations within the meaning of Article 8(2) of the Merger

Regulation. The full text of the Commitments is attached in the Annex to this Decision and forms an integral part thereof.

7. CONCLUSION

(290) For the above reasons, the Commission has decided not to oppose the notified operation as modified by the commitments and to declare it compatible with the internal market and with the functioning of the EEA Agreement, subject to full compliance with the conditions in Section B of the commitments annexed to the present decision and with the obligations contained in the other sections of the said commitments. This decision is adopted in application of Article 6(1)(b) in conjunction with Article 6(2) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(Signed)
Margrethe VESTAGER
Executive Vice-President

COMMITMENTS TO THE EUROPEAN COMMISSION

Case M.10860
ADVENT/GfK

23 June 2023

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Case M.10860 – ADVENT/GfK
COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2) of Council Regulation (EC) No 139/2004 (the "***Merger Regulation***"), AI PAVE Dutchco I B.V. hereby enters into the following Commitments (the "***Commitments***") vis-à-vis the European Commission (the "***Commission***") with a view to rendering its proposed acquisition of sole control over GfK SE, which will result in the combination of GfK SE and NielsenIQ (the "***Concentration***"), compatible with the internal market and the functioning of the EEA Agreement.

This text shall be interpreted in light of the Commission's decision pursuant to Article 6(1)(b) of the Merger Regulation to declare the Concentration compatible with the internal market and the functioning of the EEA Agreement (the "***Decision***"), in the general framework of European Union law, in particular in light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (the "***Remedies Notice***").

Section A. Definitions

(1) For the purpose of the Commitments, the following terms shall have the following meaning:

Acquirer: Advent Topco or NIQ, as the case may be.

Advent: Advent International Corporation.

Advent Topco: AI PAVE Dutchco I B.V, a company indirectly controlled by Advent, incorporated under the laws of the Netherlands, with its registered office at Herengracht 450, 1017CA Amsterdam and registered with the Commercial/Company Register at the Netherlands Chamber of Commerce under number 81838441.

Affiliated Undertakings: undertakings controlled by the Parties and/or by the ultimate parents of the Parties, whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in light of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (the "***Consolidated Jurisdictional Notice***").

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

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

Closing Period: the period [period] from the approval of the Purchaser and the terms of sale by the Commission.

Confidential Information: any business secrets, knowhow, commercial information, or any other information of a proprietary nature that is not in the public domain.

Conflict of Interest: any conflict of interest that impairs the Trustee's objectivity and independence in discharging its duties under the Commitments.

CPS: Consumer Panel Services.

CMR: Customized Market Research.

Divestment Business: the global GfK CPS business, as defined in Section B and in the Schedule, which the Acquirer commit to divest.

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

Effective Date: the date of adoption of the Decision.

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

GfK: GfK SE.

GfK Croatia: GfK Centar za istrazivanje trzista d.o.o., incorporated under the laws of Croatia, registered with the Trade Register in Zagreb under number 080316134, and wholly owned by GfK SE.

GfK Serbia: GfK Belgrade d.o.o., incorporated under the laws of Serbia, registered with the Register Court in Belgrade under number 18625500, and wholly owned by GfK SE.

GfK Slovakia: GfK Slovakia, s.r.o., incorporated under the laws of Slovakia, registered with the Register Court Bratislava 1 under number 366/B, and wholly owned by GfK SE.

Gold Holdco: a newly-formed subsidiary of GfK that will indirectly hold all the assets and liabilities of the Divestment Business prior to Closing.

Gold Holdco Subsidiaries: newly-formed subsidiaries of Gold Holdco in each of Austria, Belgium, Bulgaria, Czech Republic, Denmark, Germany, Hungary, Italy, Netherlands, Poland, Romania, Sweden and Ukraine.

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

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

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

NIQ: NielsenIQ, a wholly owned subsidiary of Advent Topco.

Parties: the Acquirer and GfK.

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

Purchaser: the entity approved by the Commission as acquirer of the Divestment Business in accordance with the criteria set out in Section D.

Purchaser Criteria: the criteria laid down in paragraph 17 of these Commitments that the Purchaser must fulfil in order to be approved by the Commission.

Retained Business: any tangible or intangible assets, contracts, records, knowhow or personnel not predominantly or exclusively related to GfK's global CPS business, including, but not limited to GfK's RMS and CMR business.

RMS: Retail Measurement Services.

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

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

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

Section B. The commitment to divest and the Divestment Business

Commitment to divest

(2) In order to maintain effective competition, the Acquirer commits to divest, or procure the divestiture of the global CPS business of GfK, excluding Russia, by the end of the Trustee Divestiture Period as a going concern to a purchaser and on terms of sale approved by the Commission in accordance with the procedure described in paragraph 18 of these Commitments. To carry out the divestiture, the Acquirer commits to find a purchaser and to enter into a final binding sale and purchase agreement for the sale of the Divestment Business within the First Divestiture Period. If the Acquirer has not entered into such an agreement at the end of the First Divestiture Period, the Acquirer shall grant the Divestiture Trustee an exclusive mandate to sell the Divestment Business in accordance with the procedure described in paragraph 30 in the Trustee Divestiture Period.

(3) The Acquirer shall be deemed to have complied with this commitment if:

(a) by the end of the Trustee Divestiture Period, the Acquirer or the Divestiture Trustee has entered into a final binding sale and purchase agreement and the Commission approves the proposed purchaser and the terms of sale as being consistent with the Commitments in accordance with the procedure described in paragraph 18; and

(b) the Closing of the sale of the Divestment Business to the Purchaser takes place within the Closing Period.

(4) In order to maintain the structural effect of the Commitments, the Acquirer shall, for a period of 10 years after Closing, not acquire, whether directly or indirectly, the possibility of exercising influence (as defined in paragraph 43 of the Remedies Notice, footnote 3) over the whole or part of the Divestment Business, unless, following the submission of a reasoned request from the Acquirer showing good cause and accompanied by a report from the Monitoring Trustee (as provided in paragraph 44 of these Commitments), the Commission finds that the structure of the market has changed to such an extent that the absence of influence over the Divestment Business is no longer necessary to render the proposed concentration compatible with the internal market.

Structure and definition of the Divestment Business

(5) The Divestment Business consists of GfK's global CPS business, as defined in the Schedule, including all CPS personnel, all CPS customer contracts, all CPS vendor contracts, all CPS contracts with panelists, historical data and the rights emanating from the Divestment Business, all core software applications used by GfK in operating its CPS business worldwide and GfK CPS-related trademarks, existing corporate entities in each Croatia, Serbia and Slovakia, newly incorporated corporate entities in each of Austria, Belgium, Bulgaria, Czech Republic, Denmark, Germany, Hungary, Italy, Netherlands, Poland, Romania, Sweden and Ukraine, and all required office space and associated standard office equipment.

(6) The legal and functional structure of the Divestment Business as operated to date is described in the Schedule. The Divestment Business, described in more detail in the Schedule, includes all assets and staff that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business, in particular:

(a) all tangible and intangible assets (including intellectual property rights) predominantly or exclusively related to the Divestment Business;

(b) all contracts, leases, commitments and customer orders of the Divestment Business;

(c) all customer, credit and other records of the Divestment Business; and

(d) the Personnel.

(7) In addition, the Divestment Business includes the benefit, for a transitional period of up to twelve (12) months with three extensions, including a first extension of twelve (12) months and two additional extensions of up to six (6) months each (unless otherwise specified in the Schedule), after Closing and at cost (unless otherwise specified in the Schedule), to the extent required by and at the option of the Purchaser, of certain arrangements under which the Acquirer or its Affiliated Undertakings supply products or services to the Divestment Business, as detailed in the Schedule. Strict firewall procedures will be adopted so as to ensure that any competitively sensitive information related to, or arising from such supply arrangements (for example, product roadmaps) will not be shared with, or passed on to, anyone outside the relevant operations.

Section C. Related commitments

Preservation of viability, marketability and competitiveness

(8) From the Effective Date until Closing, the Acquirer shall preserve or procure the preservation of the economic viability, marketability and competitiveness of the Divestment Business, in accordance with good business practice, and shall minimize as far as possible any risk of loss of competitive potential of the Divestment Business. In particular, the Acquirer undertakes:

(a) not to carry out any action that might have a significant adverse impact on the value, management or competitiveness of the Divestment Business or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the Divestment Business;

(b) to make available, or procure to make available, sufficient resources for the development of the Divestment Business, on the basis and continuation of the existing business plans; and

(c) to take all reasonable steps, or procure that all reasonable steps are being taken, including appropriate incentive schemes (based on industry practice), to encourage all Key Personnel to remain with the Divestment Business, and not to solicit or move any Personnel to the Acquirer's remaining business. Where, nevertheless, individual members of the Key Personnel exceptionally leave the Divestment Business, the Acquirer shall provide a reasoned proposal to replace the person or persons concerned to the Commission and the Monitoring Trustee. The Acquirer must be able to demonstrate to the Commission that the replacement is well suited to carry out the functions exercised by those individual members of the Key Personnel. The replacement shall take place under the supervision of the Monitoring Trustee, who shall report to the Commission.

Hold-separate obligations

(9) The Acquirer commits, from the Effective Date until Closing, to keep the Divestment Business separate from the businesses it is retaining and to ensure that unless explicitly permitted under these Commitments: (i) management and staff of the businesses retained by the Acquirer have no involvement in the Divestment Business; (ii) the Key Personnel and Personnel of the Divestment Business have no involvement in any business retained by the Acquirer and do not report to any individual outside the Divestment Business.

(10) Until Closing, the Acquirer shall assist the Monitoring Trustee in ensuring that the Divestment Business is managed as a distinct and saleable entity separate from the businesses which the Acquirer is retaining. Immediately after the adoption of the Decision, the Acquirer shall appoint a Hold Separate Manager. The Hold Separate Manager, who shall be part of the Key Personnel, shall manage the Divestment Business independently and in the best interest of the business with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from the businesses retained by the Acquirer. The Hold Separate Manager shall closely cooperate with and report to the Monitoring Trustee and, if applicable, the Divestiture Trustee. Any replacement of the Hold Separate Manager shall be subject to the procedure laid down in paragraph 8(c) of these Commitments. The Commission may, after having heard the Acquirer, require the Acquirer to replace the Hold Separate Manager.

(11) To ensure that the Divestment Business is held and managed as a separate entity, the Monitoring Trustee shall exercise the Acquirer's rights as shareholder in the legal entity or entities that constitute the Divestment Business (except for its rights in respect of dividends that are due before Closing), with the aim of acting in the best interest of the business, which shall be determined on a stand-alone basis, as an independent financial investor, and with a view to fulfilling the Acquirer's obligations under the Commitments. Furthermore, the Monitoring Trustee shall have the power to replace members of the supervisory board or non-executive directors of the board of directors, who have been appointed on behalf of the Acquirer. Upon request of the Monitoring Trustee, the Acquirer shall resign as a member of the boards or shall cause such members of the boards to resign.

Ring-fencing

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

Non-solicitation clause

(13) The Acquirer undertakes, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, the Key Personnel transferred with the Divestment Business for a period of two (2) years after Closing.

Due diligence

(14) In order to enable potential purchasers to carry out a reasonable due diligence of the Divestment Business, the Acquirer shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process:

(a) provide to potential purchasers sufficient information as regards the Divestment Business; and

(b) provide to potential purchasers sufficient information relating to the Personnel and allow them reasonable access to the Personnel.

Reporting

(15) The Acquirer shall submit written reports in English on potential purchasers of the Divestment Business and developments in the negotiations with such potential purchasers to the Commission and the Monitoring Trustee no later than 10 days after the end of every month following the Effective Date (or otherwise at the Commission's request). The Acquirer shall submit a list of all potential purchasers having expressed interest in acquiring the Divestment Business to the Commission at each and every stage of the divestiture process, as well as a copy of all the offers made by potential purchasers within five days of their receipt.

(16) The Acquirer shall inform the Commission and the Monitoring Trustee on the preparation of the data room documentation and the due diligence procedure and shall submit a copy of any information memorandum to the Commission and the Monitoring Trustee before sending the memorandum out to potential purchasers.

Section D. The Purchaser

(17) In order to be approved by the Commission, the Purchaser must fulfil the following criteria:

(a) The Purchaser shall be independent of and unconnected to the Acquirer and its Affiliated Undertakings (this being assessed having regard to the situation following the divestiture);

(b) The Purchaser shall have the financial resources, proven expertise, and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors. The Purchaser shall also have experience in the market research sector, either directly or through current or prior ownership of one or more businesses active in such sector; and

(c) The acquisition of the Divestment Business by the Purchaser must neither be likely to create, in light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the

Commitments will be delayed. In particular, the Purchaser must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business.

(18) The final binding sale and purchase agreement (as well as ancillary agreements) relating to the divestment of the Divestment Business shall be conditional on the Commission's approval. When the Acquirer has reached an agreement with a purchaser, it shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), within one week to the Commission and the Monitoring Trustee. The Acquirer must be able to demonstrate to the Commission that the purchaser fulfils the Purchaser Criteria and that the Divestment Business is being sold in a manner consistent with the Commission's Decision and the Commitments. For the approval, the Commission shall verify that the purchaser fulfils the Purchaser Criteria and that the Divestment Business is being sold in a manner consistent with the Commitments including their objective to bring about a lasting structural change in the market. The Commission may approve the sale of the Divestment Business without one or more Assets or parts of the Personnel, or by substituting one or more Assets or parts of the Personnel with one or more different assets or different personnel, if this does not affect the viability and competitiveness of the Divestment Business after the sale, taking account of the proposed purchaser.

Section E. Trustee

I. Appointment procedure

(19) The Acquirer shall appoint a Monitoring Trustee to carry out the functions specified in these Commitments for a Monitoring Trustee. The Acquirer commits not to close the Concentration before the appointment of a Monitoring Trustee.

(20) If the Acquirer has not entered into a binding sale and purchase agreement regarding the Divestment Business [period] before the end of the First Divestiture Period or if the Commission has rejected a purchaser proposed by the Acquirer at that time or thereafter, the Acquirer shall appoint a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Trustee Divestiture Period.

(21) The Trustee shall:

1. at the time of appointment, be independent of the Acquirer and its Affiliated Undertakings;
2. possess the necessary qualifications to carry out its mandate, for example have sufficient relevant experience as an investment banker or consultant or auditor; and
3. neither have nor become exposed to a Conflict of Interest.

(22) The Trustee shall be remunerated by the Acquirer in a way that does not impede the independent and effective fulfilment of its mandate. In particular, where the remuneration package of a Divestiture Trustee includes a success premium linked to the final sale value of the Divestment Business, such success premium may only be earned if the divestiture takes place within the Trustee Divestiture Period.

Proposal by the Acquirer

(23) No later than two weeks after the Effective Date, the Acquirer shall submit the name or names of one or more natural or legal persons whom the Acquirer proposes to appoint as the Monitoring Trustee to the Commission for approval. No later than one month before the end of the First Divestiture Period or on request by the Commission, the Acquirer shall submit a list of one or more persons whom the Acquirer proposes to appoint as Divestiture Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the person or persons proposed as Trustee fulfil the requirements set out in paragraph 21 and shall include:

(a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments;

(b) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks; and

(c) an indication whether the proposed Trustee is to act as both Monitoring Trustee and Divestiture Trustee or whether different trustees are proposed for the two functions.

Approval or rejection by the Commission

(24) The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one name is approved, the Acquirer shall appoint or cause to be appointed the person or persons concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, the Acquirer shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

New proposal by the Acquirer

(25) If all the proposed Trustees are rejected, the Acquirer shall submit the names of at least two more natural or legal persons within one week of being informed of the rejection, in accordance with paragraphs 19 and 24 of these Commitments.

Trustee nominated by the Commission

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

II. Functions of the Trustee

(27) The Trustee shall assume its specified duties and obligations in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or the Acquirer, give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

Duties and obligations of the Monitoring Trustee

(28) The Monitoring Trustee shall:

(i) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision;

(ii) oversee, in close co-operation with the Hold Separate Manager, the on-going management of the Divestment Business with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by the Acquirer with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:

   (a) monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Business, and the keeping separate of the Divestment Business from the business retained by the Parties, in accordance with paragraphs 8 and 9 of these Commitments;

   (b) supervise the management of the Divestment Business as a distinct and saleable entity, in accordance with paragraph 10 of these Commitments;

   (c) with respect to Confidential Information:

      – determine all necessary measures to ensure that the Acquirer does not after the Effective Date obtain any Confidential Information relating to the Divestment Business,

      – in particular strive for the severing of the Divestment Business' participation in a central information technology network to the extent possible, without compromising the viability of the Divestment Business,

      – make sure that any Confidential Information relating to the Divestment Business obtained by the Acquirer before the Effective Date is eliminated and will not be used by the Acquirer, and

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

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

(iii) propose to the Acquirer such measures as the Monitoring Trustee considers necessary to ensure the Acquirer's compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the Divestment Business, the holding separate of the Divestment Business and the non-disclosure of competitively sensitive information;

(iv) review and assess potential purchasers as well as the progress of the divestiture process and verify that, dependent on the stage of the divestiture process:

(a) potential purchasers receive sufficient and correct information relating to the Divestment Business and the Personnel in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process, and

(b) potential purchasers are granted reasonable access to the Personnel;

(v) act as a contact point for any requests by third parties, in particular potential purchasers, in relation to the Commitments;

(vi) provide to the Commission, sending the Acquirer a non-confidential copy at the same time, a written report within 15 days after the end of every month that shall cover the operation and management of the Divestment Business as well as the splitting of assets and the allocation of Personnel so that the Commission can assess whether the business is held in a manner consistent with the Commitments and the progress of the divestiture process as well as potential purchasers;

(vii) promptly report in writing to the Commission, sending the Acquirer a non-confidential copy at the same time, if it concludes on reasonable grounds the Acquirer is failing to comply with these Commitments;

(viii) within one week after receipt of the documented proposal referred to in paragraph 18 of these Commitments, submit to the Commission, sending the Acquirer a non-confidential copy at the same time, a reasoned opinion as to the suitability and independence of the proposed purchaser and the viability of the Divestment Business after the Sale and as to whether the Divestment Business is sold in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the Sale of the Divestment Business without one or more Assets or not all of the Personnel affects the viability of the Divestment Business after the sale, taking account of the proposed purchaser; and

(ix) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision.

(29) If the Monitoring and Divestiture Trustee are not the same legal or natural persons, the Monitoring Trustee and the Divestiture Trustee shall cooperate closely with each other during and for the purpose of the preparation of the Trustee Divestiture Period in order to facilitate each other's tasks.

Duties and obligations of the Divestiture Trustee

(30) Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at no minimum price the Divestment Business to a purchaser, provided that the Commission has approved both the purchaser and the final binding sale and purchase agreement (and ancillary agreements) as in line with the Commission's Decision and the Commitments in accordance with paragraphs 17 and 18 of these Commitments. The Divestiture Trustee shall include in the sale and purchase agreement (as well as in any ancillary agreements) such terms and conditions as it considers appropriate for an expedient sale in the Trustee Divestiture Period. In particular, the Divestiture Trustee may include in the sale and purchase agreement such customary representations and warranties and indemnities as are reasonably required to effect the sale. The Divestiture Trustee shall protect the legitimate financial interests of the Acquirer, subject to the Acquirer’s unconditional obligation to divest at no minimum price

in the Trustee Divestiture Period.

(31) In the Trustee Divestiture Period (or otherwise at the Commission's request), the Divestiture Trustee shall provide the Commission with a comprehensive monthly report written in English on the progress of the divestiture process. Such reports shall be submitted within 15 days after the end of every month with a simultaneous copy to the Monitoring Trustee and a non-confidential copy to the Acquirer.

III. Duties and obligations of the Parties

(32) The Parties shall provide and shall cause its advisors to provide the Trustee with all such co-operation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of the Parties' or the Divestment Business' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments and the Parties and the Divestment Business shall provide the Trustee upon request with copies of any document. The Acquirer and the Divestment Business shall make available to the Trustee one or more offices on their premises and shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.

(33) The Parties shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Divestment Business. This shall include all administrative support functions relating to the Divestment Business which are currently carried out at headquarters level. The Acquirer shall provide and shall cause its advisors to provide the Monitoring Trustee, on request, with the information submitted to potential purchasers, in particular give the Monitoring Trustee access to the data room documentation and all other information granted to potential purchasers in the due diligence procedure. The Acquirer shall inform the Monitoring Trustee on possible purchasers, submit lists of potential purchasers at each stage of the selection process, including the offers made by potential purchasers at those stages, and keep the Monitoring Trustee informed of all developments in the divestiture process.

(34) The Parties shall grant or procure Affiliated Undertakings to grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to effect the sale (including ancillary agreements), the Closing and all actions and declarations which the Divestiture Trustee considers necessary or appropriate to achieve the sale and the Closing, including the appointment of advisors to assist with the sale process. Upon request of the Divestiture Trustee, the Parties shall cause the documents required for effecting the sale and the Closing to be duly executed.

(35) The Parties shall indemnify the Trustee and its employees and agents (each an "***Indemnified Party***") and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to the Parties for, any liabilities arising out of the performance of the Trustee's duties under the Commitments, except to the extent that such liabilities result from the willful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.

(36) At the expense of the Acquirer, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to the Acquirer's approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should

the Acquirer refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard the Acquirer. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 35 of these Commitments shall apply *mutatis mutandis*. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served the Acquirer during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.

(37) The Parties agree that the Commission may share Confidential Information proprietary to each of the Acquirer or GfK with the Trustee. The Trustee shall not disclose such information and the principles contained in Article 17(1) and (2) of the Merger Regulation apply *mutatis mutandis*.

(38) The Acquirer agrees that the contact details of the Monitoring Trustee are published on the website of the Commission's Directorate-General for Competition and they shall inform interested third parties, in particular any potential purchasers, of the identity and the tasks of the Monitoring Trustee.

(39) For a period of 10 years from the Effective Date the Commission may request all information from the Parties that is reasonably necessary to monitor the effective implementation of these Commitments.

IV. <u>Replacement, discharge and reappointment of the Trustee</u>

(40) If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a Conflict of Interest:

(a) the Commission may, after hearing the Trustee and the Acquirer, require the Acquirer to replace the Trustee; or

(b) the Acquirer may, with the prior approval of the Commission, replace the Trustee.

(41) If the Trustee is removed according to paragraph 40 of these Commitments, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 19-26 of these Commitments.

(42) Unless removed according to paragraph 40 of these Commitments, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

Section F. The review clause

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

(44) The Commission may further, in response to a reasoned request from the Acquirer showing good cause waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to the Acquirer. The request shall not have the effect of suspending the application of the undertaking and, in particular, of suspending the expiry of any time period in which the undertaking has to be complied with.

Section G. Entry into force

(45) The Commitments shall take effect upon the date of adoption of the Decision.

[Signature]

……………………………………

duly authorised for and on behalf
of the Acquirer

[Signature]

……………………………………

duly authorised for and on behalf
of GfK

SCHEDULE

1. The Divestment Business consists of the global CPS business of GfK, excluding Russia, together with all associated tangible and intangible assets, contracts, supplier and customer records, knowhow and personnel required by the Divestment Business to continue its current CPS business of providing measurement, data and analytics to customers based on consumer panels worldwide.

2. Prior to Closing, the totality (100%) of the equity interests in GfK's existing CPS-related corporate entities (*i.e.*, GfK Croatia, GfK Serbia and GfK Slovakia) will be transferred to Gold Holdco, and the remaining assets and liabilities of the Divestment Business will be transferred to newly established subsidiaries of Gold Holdco in each of Austria, Belgium, Bulgaria, Czech Republic, Denmark, Germany, Hungary, Italy, Netherlands, Poland, Romania, Sweden and Ukraine. As such, the divestment will be effectuated by way of a single-seller equity sale pursuant to which the Acquirer will divest, and the Purchaser will acquire, 100% of the equity of Gold Holdco.

3. In accordance with paragraph 6 of these Commitments, the Divestment Business includes, but is not limited to:

   (a) all shares in the legal entities listed in **Annex 1**, which operate the Divestment Business;

   (b) the following main tangible assets:

      i. all home scanner devices used by panelists to record purchase data;

      ii. all office equipment;

   (c) the following main intangible assets:

      i. all CPS-related trademarks;

      ii. all core software applications used in operating the Divestment Business;

      iii. all knowhow required for the operation of the Divestment Business;

      iv. all historical data and the rights to future data emanating from the Divestment Business;

   (d) the following main contracts, leases, commitments and understandings:

      i. entire office leases in Belgrade (Serbia), Bratislava (Slovakia), Frankfurt (Germany), Hamburg (Germany) and Zagreb (Croatia) as listed in **Annex 2**;

      ii. office sub-leases in Amstelveen (the Netherlands), Bucharest (Romania), Copenhagen (Denmark), Kyiv (Ukraine), Leuven (Belgium), Milan (Italy), Nuremberg (Germany), Prague (Czech Republic), Sofia (Bulgaria), and Vienna (Austria), as listed in **Annex 3**;

      iii. all CPS contracts with panelists;

iv. all CPS customer contracts;

v. all CPS vendor contracts that are used primarily by the Divestment Business;

(e) all customer records, credit records, books, ledgers, files, documents and reports predominantly or exclusively related to the Divestment Business;

(f) all personnel required for the operation of the Divestment Business, which includes [1,000-1,100] employees and includes management (as listed in **Annex 4**), commercial roles directly supporting current and prospective new customers and data acquisition;

(g) all Key Personnel listed in **Annex 5**;

(h) [scope and duration of transitional arrangements];

(i) [scope and duration of transitional service agreement]:

i. [scope and duration of transitional service agreement];

ii. [scope and duration of transitional service agreement];

iii. [scope and duration of transitional service agreement];

iv. [scope and duration of transitional service agreement]; and

v. [scope and duration of transitional service agreement].

(j) a licensing arrangement for the use of the 'GfK' brand, [scope and duration of 'GfK' brand licensing agreement].

4. The Divestment Business shall not include:

(a) any tangible or intangible assets, contracts, records, knowhow or personnel not predominantly or exclusively related to GfK's global CPS business, including, but not limited to GfK's RMS and CMR businesses;

(b) non-core corporate functions, including Finance, HR, IT, Legal, Marketing, Procurement and Real Estate Management (other than in accordance with paragraph 3(h) of the Schedule);

(c) [product name], a multi-functional software tool for panel management, and [product name], the GfK customer portal (other than in accordance with paragraph 3(i)(ii.) of the Schedule; and

(d) the 'GfK' brand (other than in accordance with paragraph 3(j) of the Schedule).

5. If there is any asset or personnel which is not be covered by paragraph 3 of this Schedule but which is both used (exclusively or not) in the Divestment Business and necessary for the continued viability and competitiveness of the Divestment Business, that asset or adequate substitute will be offered to potential purchasers.

Annex 1

List of legal entities included in the Divestment Business

No.	Name	Country	Commercial Register
1	Gold Holdco[1]	To be determined	To be determined
2	Gold Holdco Subsidiaries[2]	Austria, Belgium, Bulgaria, Czech Republic, Denmark, Germany, Hungary, Italy, Netherlands, Poland, Romania, Sweden and Ukraine	To be determined
3	GfK Centar za istrazivanje trzista d.o.o.	Croatia	080316134 (Trade Register Zagreb)
4	GfK Belgrade d.o.o.	Serbia	18625500 (Register Court Belgrade)
5	GfK Slovakia, s.r.o.	Slovakia	366/B (Register Court Bratislava 1)

1 To be established prior to Closing.
2 To be established prior to Closing.

Annex 2

Entire office leases included in the Divestment Business

No.	Registered address	Country
1	Froudeova 1, 10000, Zagreb	Croatia
2	Lyoner Str. 20, 60528 Frankfurt am Main	Germany
3	ABC-Straße 21, 20354 Hamburg	Germany
4	Milutina Milankovića 1k V/30, Novi Beograd 11070 Belgrade	Serbia
5	Karadžičova 16, 821 08 Bratislava	Slovakia

Annex 3

Office sub-leases included in the Divestment Business

No.	Registered address	Country
1	Erdberger Lände 26A, Top 3.1-3, 1030 Vienna	Austria
2	Arnould Nobelstraat 42, 3000 Leuven	Belgium
3	47A, Tsarigradsko Shosse Blvd, floor 2, Polygraphia Office Center, Sofia city 1124, Sofia	Bulgaria
4	Kavci Hory Office Park, Na Hrebenech II 1718/10, 140 00 Prague 4	Czech Republic
5	Kay Fiskers Pl. 9, 6th floor, 2300 København	Denmark
6	Sophie-Germain-Straße 3-5, 90443 Nuremberg, Germany	Germany
7	Via Tortona 33, 20144 Milan	Italy
8	Dimitrie Pompei Blvd. no. 5-7, Hermes Building, A entrance, 2nd floor, District 2, București 020335	Romania
9	Krijgsman 22-25, 1186 DM Amstelveen	The Netherlands
10	Lesi Ukrainky, 34, ofice 601 Kyiv Kyiv Oblast 01133	Ukraine

Annex 4

GfK Consumer Panel management team[3]

[…]

Annex 5

List of Key Personnel

Business Area	Name	Function	Country
Commercial	[…]	President, Consumer Panel & Media Measurement	Belgium
Commercial	[…]	CFO	Slovakia
Commercial	[…]	VP Consumer Panel, Project Execution Team Global	Germany
Commercial	[…]	VP Consumer Panel, Advanced Solutions Global	Germany
Commercial	[…]	Global Director Retail	Germany
Commercial	[…]	Global Director "Multinational Clients"	Austria
Commercial	[…]	Vice President, Consumer Panels	Germany
Operations	[…]	VP Global Consumer Panel Operations	Germany
Tech	[…]	VP Technology, Consumer Panel	Germany
Commercial	[…]	CP Lead CEE & Global Key Account Manager Nestle, Pepsi & Mars	Austria
Commercial	[…]	Global Director "National Clients"	Poland
Commercial	[…]	CP Country Lead Germany	Germany
Commercial	[…]	CP Country Lead Italy	Italy

[3] This organizational chart is a forward-looking organizational chart reflecting the intended structure of the GfK Consumer Panel Management team for the Divestment Business.

Business Area	Name	Function	Country
Commercial	[…]	CP Country Lead Austria	Austria
Commercial	[…]	CP Country Lead Poland	Poland
Commercial	[…]	CP Country Lead Belgium & Netherlands	Belgium
Commercial	[…]	CP Country Lead Nordics	Denmark
Commercial	[…]	Country Lead, Hungary	Hungary
Commercial	[…]	Country Lead, Romania	Romania
Commercial	[…]	Country Lead, Bulgaria	Bulgaria
Commercial	[…]	CP Country Lead, Ukraine	Ukraine
Commercial	[…]	Country Lead, Czech Rep. & Slovakia	Slovakia
Commercial	[…]	Country Lead, Croatia	Croatia
Commercial	[…]	CP Country Lead Serbia	Serbia