



EUROPEAN COMMISSION
DG Competition

***Case M.10783 - EQT FUTURE /
AM FRESH / SNFL / IFG***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 02/06/2023

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EUROPEAN COMMISSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

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**Subject: Case M.10783 – EQT FUTURE / AM FRESH / SNFL / IFG
Commission decision pursuant to Article 6(1)(b) of Council Regulation
No 139/2004¹ and Article 57 of the Agreement on the European Economic
Area²**

Dear Sir or Madam,

- (1) On 21 April 2023, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which EQT Future SCSp ('EQT Future'), a Luxembourg based investment fund controlled by EQT AB ('EQT') of Sweden, and AM Fresh Group UK Limited ('AM Fresh') of the United Kingdom will first acquire within the meaning of Articles 3(1)(b) and 3(4) of the Merger Regulation joint control of the whole of Special New Fruit

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').

Licensing Holding Company, S.L. ('SNFL') of Spain. EQT Future and AM Fresh will then acquire, indirectly via SNFL, and within the meaning of Article 3(1)(b) of the Merger Regulation, joint control of the US based International Fruit Genetics LLP ('IFG')'s assets (the 'Transaction')³. AM Fresh and EQT Future are designated hereinafter as the 'Notifying Parties' or 'Parties to the proposed transaction'.

1. THE PARTIES

- (2) EQT Fund Management S.à.r.l. ('EFMS') of Luxembourg has been appointed as the alternative investment fund manager of EQT Future, which is an EQT investment fund.
- (3) AM Fresh is active in growing of vegetables and fruits (including table grapes), the wholesale commercialisation of chilled fruits and the production and commercialisation of juices, smoothies, and healthy drinks for distributor own brand.
- (4) SNFL is a table grape R&D company active in breeding, developing, and licensing of table grape vine varieties. SNFL is particularly focused on the innovation in mainstream, specialty flavoured, disease resistant and high-antioxidant table grape varieties. SNFL is active worldwide, including in the European Union where it has licensed its table grape vines in Spain and Italy and, to a lesser extent, France and Portugal.
- (5) IFG is internationally active in breeding, developing and licensing table grape, cherry, and raisin fruit varieties. In the European Union, IFG licenses its vines in Greece, Italy, Portugal, and Spain, where it aims to improve customer experience through unique flavours, sizes, and shapes.

2. THE OPERATION AND CONCENTRATION

2.1. Acquisition of control

- (6) The concentration consists of two simultaneous interrelated/interdependent transactions within the meaning of paragraph 39 of the Consolidated Jurisdictional Notice and should therefore be considered as a single concentration. Both transactions are linked by legal condition and by a common economic background in such a way that one will not take place without the other.
- (7) The first operation is accomplished by way of purchase of shares. Consequently, post-Transaction EQT Future will hold a [<50]% stake in the shareholding of SNFL and AM Fresh will hold the remaining [>50]%. Prior to the Transaction, the shareholders of SNFL were AM Fresh (holding [the majority] of the issued and outstanding shares in the capital of SNFL) and Paine Schwartz Partners UK Holdings V, LTD. EQT Future and AM Fresh will exercise joint control over SNFL given that their respective prior approvals are necessary to decide on SNFL's key strategic competitive matters (i.e., business plan, annual budget, appointment of senior management and important investments).

³ Publication in the Official Journal of the European Union No C 154, 2.5.2023, p. 50.

- (8) The second operation is accomplished by way of purchase of assets. Through SNFL Investment LLC (SNFL US), SNFL's fully owned subsidiary, SNFL will obtain ownership of IFG's assets. This means that AM Fresh and EQT Future will acquire, indirectly *via* SNFL, joint control over IFG's assets.
- (9) According to the Notifying Parties, the Transaction will lead to a greater selection of table grape varieties available on the market, satisfying more preferences. In this respect, the Notifying Parties explain that the Transaction would elevate the research and development capabilities of the Parties, as the combination of the research teams of SNFL and IFG will promote the development of new table grape varieties.
- (10) Following the Transaction, EQT Future and AM Fresh will therefore acquire joint control over SNFL and indirect control over IFG's assets (the 'Targets').

2.2. Full-functionality

- (11) The first operation, described above, affects SNFL which is a private limited liability company incorporated and existing under the laws of Spain. Post-Transaction, SNFL will fulfil the full-functionality criterion. Already pre-Transaction, SNFL has its own management and staff⁴, financial resources⁵ and access to a market other than the markets in which AM Fresh operates.⁶ It therefore constitutes a business with a market presence to which market turnover can be clearly attributed and hence an undertaking within the meaning of the Merger Regulation.
- (12) The Transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the EU Merger Regulation.
- (13) The second operation, described above, consists of the acquisition of joint control, indirectly *via* SNFL, over all the productive and commercial assets of IFG (including real estate), its staff, all Industrial and Intellectual Property rights relevant for the development of the breeding and licensing activities of IFG, contracts, etc. previously not controlled by the Notifying Parties. As IFG's assets will be integrated into SNFL, the abovementioned full-functionality assessment of SNFL is applicable also to this second transaction.

3. UNION DIMENSION

- (14) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million⁷ (EUR [...] million). Two of them have a Union-wide turnover in excess of EUR 250 million (EQT Future EUR [...] million and AM Fresh EUR [...] million⁸), and they do not achieve more than two-thirds of

⁴ Form CO, Annex 8.9.4, page 12.

⁵ Form CO, Annex 8.9.1.

⁶ Form CO, paragraphs 22-24 and paragraphs 28-31.

⁷ 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).

⁸ AM Fresh's turnover information corresponds to the 2020 financial year, which is the most recent available audited turnover. It has been unable to provide turnover information for [strategic decision of the AMC's Group].

their aggregate Union-wide turnover within one and the same Member State. The notified operation therefore has a Union dimension.

4. INTRODUCTION TO THE TABLE GRAPES BREEDING AND LICENSING INDUSTRY

- (15) The table grape production chain is characterized by its long life-cycle and multiple layers of actors.
- (16) Table grape varieties are first developed by breeders⁹ who identify advantageous genes to accentuate or minimize specific traits. The improvements usually concern yield, shelf life, disease resistance, new flavours, grape dimensions/shapes, and crunchiness. The R&D process can take several years due to the successive cross-breeding and the time needed for vines to grow and develop. Breeders may protect new table grape vine varieties through a plant variety protection or patent a biotechnological invention (e.g. production process or plant product), whether it be at national level or an EU-wide protection.
- (17) Breeders generally outsource the production of plant material to nurseries, specialised in reproducing vine varieties, as part of a service contract. Their goal is to provide ready-to-plant vines to local growers in exchange of a service/reproduction fee. In the case of protected varieties, the growers are subsequently in charge of planting and harvesting such vines, after paying a planting/technology fee to the breeder, with continuing annual royalty payments following the licensing agreement.
- (18) Growers typically multisource, and their selection usually includes vines from both private breeders as well as public breeders. Some growers can also collaborate and breed their own varieties. Depending on regions, growers also plant unprotected table grapes varieties. The first commercial production of table grapes from the vines occurs after three years.
- (19) As regards the downstream activities of the commercialisation of table grapes, retail chains are the main commercialisation channel of table grapes. After harvesting the vines, growers will thus sell their table grapes to marketers or directly to wholesalers and retailers. The marketers then package, distribute, and sell the growers' table grapes on commission to wholesalers and retailers for sale to the end consumer. If the growers are selling directly to retailers, they take care of the packaging and delivery.

5. RELEVANT MARKETS

- (20) The Targets' activities overlap horizontally in the breeding and licencing of table grapes vine varieties.
- (21) In addition to the horizontal overlaps, the Targets' activities are vertically linked to AM Fresh's activities of production and distribution of fresh fruits (including table grapes). Vine varieties developed and licensed by the Targets upstream are inputs for the downstream production and distribution of table grapes by AM Fresh.

⁹ Breeders can be public institutions (e.g., agricultural ministries, public research entities, universities, etc.), private companies or a combination of both.

5.1. Product market definition

5.1.1. Breeding and licensing of table grapes vine varieties

(22) There are no Commission precedents which analyse activities related to table grape vines. In the past, the Commission assessed breeding, licensing and commercialisation activities linked to plant propagation of different plants in different ways. For sunflower seeds the Commission found that licensing and commercialisation are two separate product markets.¹⁰ For pea seeds and onion seeds the Commission found that breeding and commercialisation activities could be included in one single relevant product market.¹¹ In other even earlier decisions concerning different conventional open field seed markets, the Commission considered that licensing and commercialisation in the seed industry are included in one single relevant product market.¹² In addition, the Commission considered a segmentation of the vegetable seeds according to the type of crop (e.g. pea seeds constitute a product market separate from those for other seeds) and consistently considered that the various kinds of seeds are not mutually substitutable.¹³ Further segmentations by variety (e.g. dark or light green peas) were ultimately left open.¹⁴

5.1.1.1. The Notifying Parties' views

(23) The Parties argue that (i) breeding, licensing and commercialisation of table grape vines should be part of a single market, as all three activities are done by the same firms at the same level of the supply chain; (ii) table and wine grape vines should be considered as different markets¹⁵; (iii) no other further segmentations for table grape varieties are warranted (e.g. seeded vs seedless¹⁶; public vs protected¹⁷; per season¹⁸; per colour¹⁹). Therefore, the Parties submit that the appropriate product

¹⁰ Commission Decision in Case M.5675 – Syngenta/Monsanto’s sunflower seeds business (2010), recitals 76-89.

¹¹ Commission Decision in Case M.3506 – Fox Paine/Advanta (2004), recital 12.

¹² Commission Decisions in Case M.3465 – Syngenta CP/Advanta (2004), recital 12; Case M.1512 – DuPont/Pioneer Hi-Bred International Commission (1999), recital 7; Case M.1497 – Novartis/Maïsadour (1999), recital 7; Case M.556 – Zeneca/Vanderhave (1996), recitals 12 and 13.

¹³ Commission Decision in Case M.8084 Bayer / Monsanto (2018), recital 291.

¹⁴ Commission Decision in Case M.3506 – Fox Paine/Advanta (2004), recital 21.

¹⁵ Form CO, paragraphs 111-114. Table grapes and wine grapes are completely different products that have different characteristics and that are used for different purposes. They have different climate requirements, requirements as regards seeds, sweetness, skin thickness, size, vines’ level of production, and yield.

¹⁶ Form CO, paragraphs 115-126. The Parties argue that: (i) consumers will buy whichever grape is available; (ii) while the seeded table grapes are cheaper than seedless, the price difference would not materially affect purchasing decisions; (iii) growers plant a mix of seeded and seedless vines; (iv) following a SSNIP test, growers could switch to seeded vines.

¹⁷ Form CO, paragraphs 127-148. The Parties argue that: (i) growers consider public varieties as a substitute for protected varieties when choosing what to plant, and would be willing to switch from protected to public varieties in case of price increases, quality reduction or slower development pace of proprietary varieties; (ii) breeders see non-protected vines as legitimate substitutes, and thus competitors which exert a significant competitive pressure.

¹⁸ Season refers to the harvesting season of each table grape variety. Each climatic zone has certain productive months, and within these, varieties can be divided into early, mid and late. In Europe, the harvesting season approximately starts around early July until late November. In the Form CO, paragraphs 149-154, the Parties argue that a distinction based on seasonality is not warranted as the distinction between seasons is fuzzy, because: (i) there are not established, commonly accepted divisions between what varieties are early, mid and late season; (ii) the different varieties overlap as the months go by; (iii) growers can advance or delay the harvesting moment through agronomic

market definition should be the breeding and commercialisation of table grape vines.

5.1.1.2. The Commission's assessment

5.1.1.2.1. Commercial activity

- (24) Given that in past decisions the Commission has considered breeding, licensing and commercialisation activities linked to plant propagation as either separate product markets or as a single product market depending on how the market players operate²⁰, the specific activities related to table grape vines conducted by the market players described in paragraphs (16) to (18), above, have been assessed.
- (25) The Commission considers that breeding grape vine varieties does not constitute a separate commercial activity from licensing grape vine varieties. However, commercialisation of grape vine varieties is a separate commercial activity.
- (26) As acknowledged by the Parties and market participants, some public institutions may breed new vine varieties, but they would either (i) make them widely available to the public not seeking protection²¹ or (ii) protect and license new vine varieties for free.²² Conversely, public institutions licensing new vine varieties at a price and private breeders ranging from international breeders, like the Targets, to local cooperatives of growers, typically conduct breeding together with the commercial activity of licensing. Neither public institutions nor private breeders that license vine varieties do, strictly speaking, commercialize them (as they do not transfer the property of the licensed vines to growers nor sell public vine varieties).²³ Nurseries commercialise public vine varieties along with varieties for which the protection has expired. However, they do not commercialize protected vine varieties either, as they merely reproduce plant material, they do not own for a reproduction fee paid by growers.²⁴
- (27) In light of the above, the Commission takes the view that breeding and licensing of table grape vines should be part of a single relevant market, whereas commercialisation is a separate commercial activity.

techniques; (iv) there are growers with limited planting space that might not have enough land to plant a mix of early, mid and late season varieties.

¹⁹ The colours of table grapes are red, white/green and black. In the Form CO, paragraphs 155-157, the Parties argue that: (i) growers tend to plant a variety of colours to satisfy retailer and consumer demand, but, while they value colour as any other characteristic (such as durability, size, and flavour) it is not a factor that by its own determines grower's choice; (ii) breeders offer table grape varieties of all colours, not distinguishing in licensing structure based on colour.

²⁰ See paragraph (22) above.

²¹ Form CO, paragraphs 586-588; non-confidential minutes of a call with a grower, 4 November 2022, paragraph 18.

²² Form CO, paragraphs 586-588; non-confidential minutes of a call with a grower, 4 November 2022, paragraph 18.

²³ Decision n. 29679 of the Italian Competition Authority of 25 May 2021, paragraph 35.

²⁴ Form CO, paragraph 108; non-confidential minutes of calls with nurseries, 9 December 2022, paragraphs 4-9; 5 January 2023, paragraphs 15-16; 25 November 2022, paragraph 6.

5.1.1.2.2. Final use (table grape vines / wine grape vines)

- (28) In commercial viticulture, grape vines are mainly used to produce grapes for wine or to produce table grapes ready for consumption. The Targets breed and license only table grape vine varieties.²⁵
- (29) The Commission considers that table grape vines and wine grape vines belong to two separate product markets.
- (30) From the demand side perspective, as highlighted by the Parties, the product characteristics are materially different between table and wine grape vines in respect to: (i) growing climate conditions (wine grape vines are more resistant to different climate conditions whereas table grape vines are suited for warm and dry climates only); (ii) sweetness (wine grape vines need to produce grapes containing more sugar which is used for the creation of alcohol whereas table grapes with high level of sugar may deteriorate faster); (iii) presence of seeds, thick skin and size (wine grape vines should produce grapes with seeds, thick skin and small size; all characteristics valued in the production of wine whereas customers of table grapes value the opposite characteristics, i.e. seedless, thin skin and big size); (iv) yield and revenue (wine grape vines normally produce around half the volume of grapes which are sold at a lower price in comparison to table grape vines).
- (31) The strong differences highlighted above are already an indication that table and wine grape vines have limited demand-side substitutability. The market investigation supported this finding, as customers indicated that distributors and retailers aim to offer to final consumers grapes that have long shelf life, are seedless, with thin skin and of big as well as uniform size²⁶, namely characteristics that correspond to grapes produced by table grape vines. In addition, customers confirmed that climate conditions suitable for table grape vines are not the same as those for wine grape vines.²⁷ This is why French wine grapes production is comparable to that of Italy and Spain, whereas French table grapes production is one order of magnitude smaller.²⁸ Furthermore, data from independent public entities (e.g. ISMEA²⁹) confirms the Parties' claims on differences in terms of yield between table and wine grape vines.³⁰
- (32) From a supply side perspective as well, all differences discussed above imply a limited supply-side substitutability. Breeders cannot promptly and effectively use wine grape vine varieties to produce grape vine varieties with the specific characteristics demanded by downstream customers. This is confirmed by more than one breeder that have either tried and abandoned the use of wine grape vine

²⁵ Form CO, paragraphs 11, 103.

²⁶ Market investigation Q(C.A1).

²⁷ Non-confidential minutes of a call with a grower, 28 November 2022, paragraphs 19-20.

²⁸ Eurostat data for harvested grapes production in EU shows that in 2022 wine grapes production in France was equal to 6.1 Million tonnes, in Italy it was equal to 7.4 Million tonnes and in Spain it was equal to 5.6 Million tonnes. In 2022, table grapes production in France was equal to 45 thousand tonnes, in Italy it was equal to 966 thousand tonnes and in Spain it was equal to 292 thousand tonnes.

²⁹ ISMEA or Istituto di servizi per il mercato agricolo alimentare is an Italian public undertaking part of the Italian national statistical system.

³⁰ For instance, according to data from ISMEA, in both 2021 and 2022 table grape vines in Italy had an average yield of 22 tonnes per hectare, whereas wine grape vines had an average yield of 10 tonnes per hectare.

varieties in their table grape program³¹, or have been trying for more than 8 years to develop a variety that combines one characteristic of wine grape vines (i.e. its antioxidant properties) with the desired characteristics for table grapes³². The market investigation supported this finding as breeders confirmed that traits characteristic of table grape vines and opposite to those of wine grape vines (e.g. production of grapes that are crunchy, seedless, with thin skin, and long shelf life) are the traits of their most successful grape varieties with table grape growers as well as the targeted traits in their breeding activities targeting these customers.³³

- (33) The fact that competitive dynamics are specific to each of these products is also reflected by internal documents. The Parties in the ordinary course of business monitor how traits specific to table grape vines and not relevant for wine grape vines are reflected in recent product launches by their competitors.³⁴

5.1.1.2.3. Presence of seeds (seedless table grape vines / seeded table grape vines)

- (34) Although both Targets currently license almost exclusively seedless table grape vine varieties³⁵, the Commission assessed whether the product market includes both seeded and seedless table grape vines.

- (35) On the demand side, growers' decision on whether to plant seeded or seedless table grape vines is primarily driven by the preferences of the final consumers downstream who value the different organoleptic characteristics of seedless grapes. The consumers' preference for seedless grapes has increased over time and is expected to increase further resulting in a clear market trend towards the progressive replacement of seeded varieties with seedless varieties and pointing towards the limited substitutability between seedless and seeded table grape vine varieties.

- (36) The market investigation supports this finding as the majority of growers consider the consumers' preference for seedless grapes as the main differentiating factor between seedless and seeded table grape vine varieties.³⁶ In addition, the Parties' estimates of new hectares planted in the EEA show the already small [5-10]% share of seeded varieties in 2020 drop to [0-5]% in 2022.³⁷ Furthermore, the overwhelming majority of market players interviewed expect the consumers' demand for seedless grapes to grow further.³⁸

³¹ Form CO, paragraph 925 and 928.

³² Prevor, J. "FROM THE GROUND UP: How ITUM Drives Grape Innovation In Spain And Beyond", Perishable Pundit, 3 October 2022.

³³ PN RFI to Breeders, Q(1)(a) and Q(2)(f).

³⁴ Annex 5.4.3 to the Form CO, Slide 25.

³⁵ Annexes 7.1a) and Annex 7.1b) to the Form CO. IFG has one seeded variety in its EEA portfolio which in 2021 produced approximately [...] tonnes of grapes (based on Annex 7.8 to the Form CO) out of [...] tonnes of grapes from varieties in the IFG portfolio (based on Annex 7.2.2 to the Form CO).

³⁶ Market investigation Q(C.A1).

³⁷ Annex 7.3 to the Form CO.

³⁸ Non-confidential minutes of calls with a growers, 28 November 2022, paragraph 9; 30 November 2022, paragraphs 6-7; 30 November 2022, paragraphs 6-7, 1 August 2022, paragraphs 4-5; 1 December 2022, paragraphs 2-5; 23 November 2022, paragraph 19; 12 December 2022, paragraphs, 4-6; 25 November 2022, paragraphs 18, 20; 11 November 2022, paragraph 8.

- (37) However, should the shift in consumers' preference for seedless grapes stop in the future or point towards seeded grapes, there are no other intrinsic differences between seedless and seeded vine grape varieties that would limit demand-side substitutability.
- (38) One grower noted that the recent trend towards seedless varieties, *“does not mean that seeded varieties (private/public) will not become popular again. Given challenges posed by sustainability and climate change they may propose in the future better profitability than the present seedless varieties”*.
- (39) The vast majority of respondents to the market investigation noted that growers can easily switch between new plantings of seedless and of seeded table grape vines.³⁹ In addition, according to the majority of the growers, in general, seedless and seeded vines can be very similar in terms of yield, costs, stability, durability and difficulty to grow.⁴⁰
- (40) On the supply side, substitutability is limited because breeders willing to start providing seedless varieties would need to undergo a lengthy process. Creating a seedless variety can take several years due to the required successive cross-breeding and the time needed for vines to grow and develop⁴¹, while it is not technically possible to speed up breeding cycles.⁴² However, it is worth noting that due to the consumers' preference for seedless grapes (making seedless varieties an economically attractive growth opportunity) both public institutions and private breeders (from international breeders like the Targets, to local cooperatives of growers) either are already breeding and licensing seedless varieties or are ready to enter the market in the near future with new seedless varieties.
- (41) Competitors noted that it takes between eight and 15 years to create a new variety.⁴³ However, they also clarified that their current most successful varieties are seedless⁴⁴ and that they have on average five other varieties under development that they expect to commercialize within the next five to ten years⁴⁵. In this industry such timeframe can still be considered reasonable given that grape vines are expected to begin yielding fruit in two to three years after they are planted and then be productive for an additional 22 to 23 years.⁴⁶
- (42) Although the market investigation indicated that seedless table grape vine varieties are differentiated from seeded table grape vine varieties, for the purpose of this Decision, it can be left open whether the product market includes both seeded and seedless table grape vine varieties since the Transaction would not raise serious doubts as to its compatibility with the internal market even under the narrowest plausible market definition, i.e. breeding and licensing of seedless table grape vine varieties.

³⁹ Market investigation Q(C.A2) and Q(C.A3).

⁴⁰ Market investigation Q(C.A1).

⁴¹ Form CO, paragraph 447.

⁴² Form CO, paragraph 745.

⁴³ PN RFI to Breeders, Q(1)(c).

⁴⁴ PN RFI to Breeders, Q(1)(a).

⁴⁵ PN RFI to Breeders, Q(2)(b) and Q(2)(e).

⁴⁶ Form CO, paragraph 349.

5.1.1.2.4. Plant variety protection (protected table grape vines / public table grape vines)

- (43) Although both Targets currently license almost exclusively seedless protected table grape vine varieties⁴⁷, the Commission assessed whether the product market includes both protected and public table grape vines.
- (44) On the demand side, growers' decision on whether to plant protected or public table grape vines is driven by both product differences valued by growers as well as the preferences of the final consumers downstream. This is because, in order to obtain a return on their investment through plant variety protection, private breeders and public institutions invest in R&D aiming to enhance certain grape vine varieties for characteristics that are preferred by growers (e.g. yield, durability, stability) and organoleptic characteristics of grapes preferred by final consumers (e.g. flavour, crunchiness, uniformity, size). Although these differences seem to indicate a limited demand-side substitutability between protected and public grape vine varieties, this is mitigated by public varieties' lower prices and wider accessibility as well as by the growers' ability to switch.
- (45) The market investigation supported this finding as the majority of growers consider that public grape vine varieties have, in general, lower yield, lower stability and durability⁴⁸. The majority of respondents also acknowledge that final customers prefer protected varieties.⁴⁹
- (46) However, respondents to the market investigation noted that growers can easily switch between new plantings of protected and of public table grape vines.⁵⁰ In addition, according to the majority of the growers, in general, protected varieties have higher yield and durability whereas public varieties cost less and are more easily accessible.⁵¹
- (47) On the supply side, substitutability is limited because a currently public variety cannot be protected and because breeders willing to provide protected varieties would need to undergo a lengthy process. Given that breeders can apply for protection only for new varieties, creating a new variety that can be protected takes several years due to the required successive cross-breeding and the time needed for vines to grow and develop⁵², while it is not technically possible to speed up breeding cycles.⁵³ However, it is worth noting that, due to the consumers' preference for grapes from protected varieties as well as the current market trend pushing growers to value and pay for protected varieties, public institutions that used to create new varieties and make them public are starting to protect their new varieties or are partnering with private entities (cooperatives of growers or companies), blurring the line between public and private breeders.

⁴⁷ Annexes 7.1a) and Annex 7.1b) to the Form CO. IFG has one seeded protected variety in its EEA portfolio which in 2021 produced approximately [...] tonnes of grapes (based on Annex 7.8 to the Form CO) out of [...] tonnes of grapes from varieties in the IFG portfolio (based on Annex 7.2.2 to the Form CO).

⁴⁸ Market investigation Q(C.B1).

⁴⁹ Market investigation Q(C.B1).

⁵⁰ Market investigation Q(C.B2) and Q(C.B3).

⁵¹ Market investigation Q(C.B1).

⁵² Form CO, paragraph 447.

⁵³ Form CO, paragraph 745.

- (48) This is acknowledged by the Parties, for several public institutions who have recently been active with licensing of protected varieties⁵⁴, and confirmed by the market investigation. Competitors noted that it takes between eight and 15 years to create a new variety⁵⁵. Historically public institutions that could have developed public varieties noted that they have on average five other varieties under development for which they expect to apply for EU-wide protection with the Community Plant Variety Office (CPVO) within the next five to ten years⁵⁶. In this industry such timeframe can still be considered reasonable given that grape vines are expected to begin yielding fruit in two to three years after they are planted and then be productive for an additional 22 to 23 years⁵⁷.
- (49) Although there are indications that protected table grape vine varieties are differentiated from public table grape vine varieties, the Commission considers that for the purpose of this Decision, it can be left open whether the product market includes both protected and public table grape vine varieties since the Transaction would not raise serious doubts as to its compatibility with the internal market even under the narrowest plausible market definition, i.e. breeding and licensing of seedless protected table grape vine varieties.

5.1.1.2.5. Grapes colours (sub-segmentation based on colour)

- (50) The Targets breed and license to growers seedless protected table grape vine varieties producing grapes of a number of colours (red, white/green and black).⁵⁸
- (51) The Commission considers that it is appropriate in this case to carry out the assessment of seedless protected table grape vine varieties without sub-segmenting by colours.
- (52) From the demand side perspective, the objective and visible difference in properties between white/green and black grapes can be appreciated by consumers. This is acknowledged by the Parties⁵⁹, and confirmed by the market investigation.⁶⁰
- (53) However, the differences between these varieties appear as a factor of differentiation rather than exhibiting the characteristics of separate product market as growers themselves tend to be colour agnostic. The vast majority of respondents to the market investigation confirmed that: (i) there is no material difference in product characteristics among varieties of different colours (including yield, stability, costs, difficulty to grow)⁶¹, (ii) growers can easily switch between new plantings of different colours⁶², (iii) growers' decision of what variety to plant is primarily driven by factors other than colour of the grapes.⁶³

⁵⁴ Form CO, paragraphs 415-427.

⁵⁵ PN RFI to Breeders, Q(1)(c).

⁵⁶ PN RFI to Breeders, Q(2)(b) and Q(2)(d).

⁵⁷ Form CO, paragraph 349.

⁵⁸ Form CO, paragraphs 882, 883.

⁵⁹ Form CO, paragraph 115.

⁶⁰ Market investigation Q(C.C1).

⁶¹ Market investigation Q(C.C1).

⁶² Market investigation Q(C.C2) and Q(C.C4).

⁶³ Market investigation Q(C.C12).

- (54) From the supply side perspective, substitutability is not limited. Although creating a new variety of a specific colour to satisfy growers' need to have varieties of different colours and meet the preferences of a wider pool of final consumers is a lengthy process for breeders, their innovation process does not specifically target certain colours or differ by colours.
- (55) On the contrary, as acknowledged by the Parties⁶⁴ and confirmed by the market investigation, breeders target other characteristics of table grape vines as the main driver of their R&D efforts (e.g. disease resistance, yield), but they do so across the board of grape colours.⁶⁵ This is why already now the majority of respondents to the market investigation have in their portfolio table grape vine varieties of most colours.⁶⁶
- (56) In light of the above, the competitive assessment will be carried out without taking into account the distinction between different colours of seedless protected table grape vine varieties as there is no need to sub-segment based on colours.

5.1.1.2.6. Grapes seasons (sub-segmentation based on seasonality)

- (57) The Targets breed and license to growers seedless protected table grape vine varieties with fruit maturing in different moments of the harvesting season (e.g. early, middle, late).⁶⁷
- (58) The Commission considers that it is appropriate in this case to carry out the assessment of seedless protected table grape vine varieties without sub-segmenting based on timing of the fruit maturity.
- (59) From the demand side perspective, the differences between these varieties appear as a factor of differentiation or a reflection of growers' strategy/resources rather than exhibiting the characteristics of a separate product market. Growers organize their activities so that they can: (i) harvest mature grapes during the entire season, (ii) extend their revenue stream over a longer period of time and (iii) reduce risks related to adverse climate conditions. However, growers' decision on whether to plant table grape vines maturing in different moments of the harvesting season is driven by product characteristics other than timing of fruit maturity.
- (60) This is acknowledged by the vast majority of respondents to the market investigation confirming that although their strategy is to produce mature grapes during the whole season⁶⁸, when replacing vines with fruit maturity in one moment of the season, they consider new vine varieties based on factors other than seasonality.⁶⁹ In addition, the Parties point out that growers can use agronomic techniques (e.g. pruning, nesting the vines, etc.) as well as refrigerators to advance or delay the moment in which they harvest their table grape production.⁷⁰ Moreover, the majority of growers noted that they have switched in the past or plan

⁶⁴ Response to PN RFI7, paragraphs 23-28, 12 April 2023.

⁶⁵ PN RFI to Breeders, Q(1)(a) and Q(2)(f).

⁶⁶ PN RFI to Breeders, Q(1)(g).

⁶⁷ Form CO, paragraphs 882-884.

⁶⁸ Market investigation Q(C.D3).

⁶⁹ Market investigation, Q(C.D4).

⁷⁰ Form CO, paragraph 152.

to switch in the future, except for specific limitations created by local growing conditions (e.g. plot location).⁷¹

- (61) From the supply side perspective, substitutability is not limited. Although creating a new variety maturing at a specific time in the season is a lengthy process for breeders, their innovation process does not target grape maturity at a specific moment in the harvesting season.
- (62) On the contrary, as acknowledged by the Parties⁷² and confirmed by the market investigation, breeders target other characteristics of table grape vines as the main driver of their R&D efforts (e.g. disease resistance, yield).⁷³ For this reason, already now most of the respondents to the market investigation have in their portfolio table grape vine varieties maturing in different moments of the harvesting season.⁷⁴
- (63) In light of the above, the competitive assessment will be carried out without taking into account the distinction between different timing of grape maturity during the harvesting season (e.g. early, middle, late) as there is no need to sub-segment based on the timing of grape maturity.

5.1.1.2.7. Conclusion

- (64) On the basis of the above (63), for the purpose of this Decision, the competitive assessment will be carried out at the narrowest plausible level, i.e. breeding and licensing of seedless protected table grape vine varieties. In any event, for the purpose of the present case, the exact market definition can be left open as the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible market definition.

5.1.2. *Growing of table grapes*

- (65) There are no past decisions of the Commission concerning growing of table grapes.

5.1.2.1. The Notifying Parties' views

- (66) Given that growing of grapes (table and wine grapes) refers to a specific NACE code, the Notifying Parties consider that the latter as an indication of a separate product market with further distinction between table and wine grape production reflecting the arguments of final use of grapes (assessed in 5.1.1.2.2 Final use (table grape vines / wine grape vines)) below.
- (67) The Notifying Parties consider that on one end a distinction should be made between growing of each type of product, and on another end, regarding growing of grapes, a differentiation between wine and table grapes would be necessary.

⁷¹ Market investigation Q(C.D2) and Q(C.D6).

⁷² Response to PN RFI7, paragraphs 23-28, 12 April 2023.

⁷³ PN RFI to Breeders, Q(1)(a) and Q(2)(f).

⁷⁴ PN RFI to Breeders, Q(1)(g).

5.1.2.2. The Commission's assessment

- (68) The results of the market investigation have not revealed any facts or concerns that would counter the proposal of the Notifying Parties. Most of the growers are either specialised table grapes growers or growers of several types of fresh fruit. Growing of table grapes requires specific climatic conditions, technical equipment and knowhow and it proved to be in all cases performed separately from grape vines designated for the wine production.⁷⁵

5.1.2.3. Conclusion

- (69) The precise product market definition can be left open as the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible product market definition. Based on the abovementioned considerations, the competitive assessment of growing of table grapes vines will be carried out at the level of table grape vines. Wholesale distribution and category management of table grapes.

5.1.3. *Wholesale distribution / category management of table grapes*

- (70) With regard to the wholesale distribution of table grapes, the Commission has dealt with activities of wholesale of fresh fruit, which consist in the acquisition of fruit from growers and marketers for its subsequent resale to retailers (i.e., most of the time large supermarket chains). Wholesalers usually sell more than one type of fruit to retailers and do not provide any additional services other than the purchase/sale of the relevant goods. In its previous decisions, the Commission left open the question whether a narrower market definition than wholesale of fresh fruit would be more relevant but mentioned that at least bananas could be considered as part of a distinct product market.⁷⁶

- (71) Commission has not considered category management services in its previous decisions.

5.1.3.1. The Notifying Parties' views

- (72) The Notifying Parties consider the wholesale distribution of fresh fruit as the product market, without being necessary to split fresh fruit into different categories (except for bananas). Therefore, from a product market perspective, the market would be the wholesale distribution of fresh fruit in general, probably only excluding bananas.
- (73) The Notifying Parties also submit that wholesale supply of fresh fruits is not the same as the category management of certain categories of fruits.
- (74) According to the Notifying Parties, category management is a value added service usually provided to supermarket retailers and there are two main business models of category management services:

⁷⁵ Form CO, paragraphs 103-110, 111-113.

⁷⁶ Case M.4216 – CVC/De Weide Blik/Bocchi, recital 15.

- (a) First, the retailer enters into an agreement with a category manager or a wholesaler (such as AM Fresh) and instructs:
- the fruit and variety that they wish to purchase;
 - from which country the fruit should come from;
 - from which grower the fruits must be procured; and
 - other supply aspects including an acceptable purchase price range from the grower and the facility where the fruit should be packed.

Under this type of agreement, the wholesaler/category manager acts as a service provider and acquires the fruit for the retailer taking into account the parameters above. In some cases, the retailers inform category manager/wholesaler of the price they are willing to pay for the fruit and category manager the purchase based on that instruction, adding a margin for its services.

- (b) Secondly, retailers may also opt to purchase fruit directly from growers or from growers/packers without involvement of a category manager/wholesaler.

5.1.3.2. The Commission's assessment

- (75) The results of the market investigation have not revealed any facts or concerns that would counter the proposal of the Notifying Parties.
- (76) In the context of this Decision, it appears appropriate to consider wholesale distribution and category management of table grapes as one product market, since the production of the table grapes growers is marketed similarly by both means from the growers' perspective.

5.1.3.3. Conclusion

- (77) The precise product market definition can be left open as the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible product market definition. Based on the abovementioned considerations, the competitive assessment of the wholesale distribution and category management of table grapes will be carried out as one product market for the purposes of this decision.

5.2. Geographic market definition

5.2.1. *Breeding and licensing of table grape vines*

- (78) There are no Commission precedents which analyse table grapes activities. In its decision in Case M.3506 – Fox Paine/Advanta, the Commission concluded that the market for pea seeds and onion seeds should be viewed as national in scope, mainly because of the existence of national registration and/or national recommendation lists. The market investigation in that case provided some evidence, however, of a certain further 'Europeanization' of the seeds markets.⁷⁷

⁷⁷ Commission Decision in Case M.3506 – Fox Paine/Advanta (2004), recital 26.

(79) In Case M.5675 – Syngenta/Monsanto’s sunflower seed business, the Commission concluded that the geographic scope of the market for licensing (or trading) of sunflower varieties was European wide in scope, and that the market for the commercialisation of sunflower seeds was to be considered national in scope.⁷⁸

5.2.1.1. The Notifying Parties’ arguments

(80) The Notifying Parties argue that the market for breeding and licensing of table grape vines may be of national scope due to the way breeders seek protection of their vine varieties⁷⁹ and the way they license them⁸⁰ both at the national level. In addition, according to the Notifying Parties, growers mostly obtain vines from the closest nurseries; receive on-field services from experts in their local growing conditions; usually operate on a national basis. Finally, breeding programs often start at a national level and pursue national strategies.

5.2.1.2. The Commission’s assessment

(81) Although there is a very different structure of supply and demand across Member States (type of growers, most successful varieties, local players, market shares), which points towards national markets⁸¹, there are other factors which point towards a South European market.

(82) The fact that the European regulatory framework enables to protect a variety in all EU Member States suggests that the market may be broader than national. The Notifying Parties and the majority of competitors that participated in the pre-notification market investigation indicated they currently license (or in one case plan to license from next year onwards) table grape vine varieties in more than one South European Member State.⁸²

(83) There is no quarantine requirement within the EEA of plant material and one nursery is capable of serving multiple countries due to low transportation costs.⁸³

(84) Although growing conditions differ among Member States, some breeders like SNFL can use the same commercial team to cover multiple EU Member states (i.e. France, Italy, Portugal and Spain).⁸⁴

(85) The vast majority of respondents to the market investigation confirm that they source new table grape vine varieties internationally.

(86) In light of the above, although there are factors which suggest that the market might be national, the geographic scope of the market may be broader than national. In the competitive assessment, the Commission will therefore take into

⁷⁸ Commission Decision in Case M.5675 – Syngenta/Monsanto’s sunflower seeds business (2010), recitals 118 and 131.

⁷⁹ Breeders can seek national protection for their vine varieties, but they also seek EU-wide protection through the Community Plant Variety Office (CPVO).

⁸⁰ Varieties of vines are licensed to growers on a national basis (i.e. growers are usually active only their country of origin) and breeding companies often grant licenses attached to specific plots of land.

⁸¹ Form CO, paragraphs 607-611, paragraphs 612-625, paragraphs 626-645.

⁸² Form CO, Annex 7.7 and Annex 7.8; PN RFI to Breeders, Q(2)(g).

⁸³ Form CO, paragraph 166 clarifies that SNFL uses a nursery in [...].

⁸⁴ Form CO, paragraph 176, let (c).

account the broader geographic context in which each national market is included by looking at the overall size and the position of the Parties in a given segment both at national and EEA level.

5.2.1.3. Conclusion

- (87) The precise geographic market definition can be left open as the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible geographic market definition. For the purpose of this decision, the competitive assessment of the breeding and licencing of seedless protected table grape vine varieties will be carried out at the narrowest level, i.e. a national level, as well as at EEA level.

5.2.2. *Growing of table grapes*

- (88) The market for growing grapes has not yet been defined. In some precedents related to activities that may resemble the growing of vegetables or fruits, references have been made to the growing region, defined according to growing and climatic conditions.⁸⁵

5.2.2.1. The Notifying Parties' views

- (89) The Notifying Parties consider that the market of growing of grapes could be national in scope or even broader, since in the closest previous decisions on growing vegetables and fruit, references have been made to the growing region, defined according to growing and climatic conditions.⁸⁶

5.2.2.2. The Commission assessment

- (90) The results of the market investigation have not revealed any facts or concerns that would counter the proposal of the Notifying Parties.

5.2.2.3. Conclusion

- (91) The precise geographic market definition can be left open as the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible geographic market definition. For the purposes of this decision, the competitive assessment of the growing of table grapes will be carried out at national level⁸⁷.

5.2.3. *Wholesale distribution/category management of table grapes*

- (92) As regards the potential geographic scope of the wholesale commercialisation of fresh fruit, the Commission indicated in previous cases that these activities could have a national dimension, although a potential broader market could also be

⁸⁵ Case M.8084 – BAYER / MONSANTO, paragraph 331 '*Varieties are then commercialised in different countries, which belong to the same growing region. Growing regions are defined according to growing and climatic conditions*'.

⁸⁶ Ibid.

⁸⁷ A broader geographic market would be EEA. Given the negligible market shares of the Parties on this market, the effects of this Transaction will not be assessed on this market, as the Transaction is unlikely to raise serious doubts with its compatibility with the internal market.

considered.⁸⁸ In fact, in the most recent Commission's precedents, while the geographic market definition was left open, it seems that the geographic scope of the activities of wholesale of fresh fruits could be construed as larger than national.⁸⁹

5.2.3.1. The Notifying Parties' views

- (93) The Notifying Parties agree with the Commission's past practice by recognising national dimension of the wholesale distribution market and category management services.

5.2.3.2. The Commission assessment

- (94) The results of the market investigation have not revealed any facts or concerns that would counter the proposal of the Notifying Parties.

5.2.3.3. Conclusion

- (95) The precise geographic market definition can be left open as the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible geographic market definition. For the purposes of this decision, the competitive assessment of the wholesale distribution/category management of table grapes will be carried out at national level⁹⁰.

6. COMPETITIVE ASSESSMENT

- (96) For the purposes of this Decision, the focus is put on forward-looking market shares of breeders in table grape vines, including what is currently being planted. This is because a key characteristic of this market is its long lifecycles (both in the life-span of vines, in the development cycles involved in breeding, and in the time up until varieties licensed by breeders to growers reach consumers). Market shares from the past may not necessarily reflect future dynamics. These are captured with more forward-looking metrics. Hence the Commission looked not only at affected markets based on past shares, but will place emphasis on new plantings and consequently, forward-looking shares, which appear to be a good metric of forthcoming trends. Moreover, the Commission investigated efforts in innovation and pipelines of the Parties and of a number of their competitors.
- (97) SNFL and IFG horizontally overlap in the breeding and licensing of protected seedless table grape varieties across the EEA (notably, they currently overlap in Spain, Italy and Portugal, and will overlap from 2025 onwards in France and Greece).
- (98) The Transaction gives rise to horizontally affected markets in the narrowest plausible market of the breeding and licensing of protected seedless table grape

⁸⁸ Case M.1409 - Fyffes/Capespan, Case M.4216 - CVC/Bocchi/De Weide Blik, Case M.5201 - Total Produce /Haluco/JV, para 20, Case M.4896 - CVC Capital Partners / Katope International, para 18

⁸⁹ Case M.8829 – Total Produce / Dole Food Company, paras. 213 to 216. In the same sense, see M.4216 – CVC/De Weide Blik/Bocchi, paras. 28 to 29.

⁹⁰ A broader geographic market would be EEA. Given the negligible market shares of the Parties on this market, the effects of this Transaction will not be assessed on this market, as the Transaction is unlikely to raise serious doubts with its compatibility with the internal market.

varieties in the EEA, and (if looking at national level) in Portugal and Spain, and will give rise to an affected market in France from 2025. The Commission will carry out its assessment on the most conservative basis. When looking at an alternative broader market for the supply of seedless table grapes (both public and protected), there would not be affected markets at EEA level, nor in Portugal. When looking at an even broader market for the supply of table grapes (both seeded and seedless), no affected markets would arise.

- (99) The transaction also gives rise to vertical links in so far as AM Fresh, currently owning [the majority] and post-transaction [>50]% of SNFL (upstream), (i) (jointly) controls two Spanish growers of table grapes, which is a downstream business to the table grapes variety breeding and licensing business of SNFL and IFG and further downstream, (ii) it is also active in the wholesale and category management of table grapes for several supermarkets in the EEA.

6.1. Legal framework

- (100) Pursuant to Article 2(2) and (3) of the Merger Regulation, the Commission must assess whether a concentration would significantly impede effective competition in the internal market or in a substantial part of it, in particular through the creation or strengthening of a dominant position. In this respect, a concentration can entail horizontal and/or non-horizontal effects.

6.1.1. Horizontal effects

- (101) The Commission Guidelines on the assessment of horizontal mergers under the Merger Regulation (the ‘Horizontal Merger Guidelines’) distinguish two main ways in which concentrations between actual or potential competitors on the same relevant market may significantly impede effective competition, namely non-coordinated and coordinated effects.⁹¹
- (102) Non-coordinated effects may significantly impede effective competition by eliminating the competitive constraint imposed by one party to the concentration on the other, as a result of which the combined 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 combined 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 parties to the concentration, but also the reduction in competitive pressure on third-parties in the same market that could be brought about by the concentration.⁹²
- (103) The Horizontal Merger Guidelines list a number of factors, which may influence the rise of substantial non-coordinated effects from a concentration, such as: the large market shares of the parties to the concentration; the fact that the parties to the concentration are close competitors; the limited possibilities for customers to switch suppliers; or the fact that the concentration would eliminate an important competitive force. The list of factors applies equally if a concentration would create

⁹¹ OJ C 31, 5.2.2004, p. 5. The remainder of this Decision focuses on non-coordinated effects.

⁹² Horizontal Merger Guidelines, paragraphs 24-48.

or strengthen a dominant position, or would otherwise significantly impede effective competition due to non-coordinated effects. Furthermore, not all those factors need to be present to make significant non-coordinated effects likely and the list itself is not an exhaustive list.⁹³

6.1.2. *Non-horizontal effects*

- (104) A concentration can entail non-horizontal effects when it involves companies operating at different levels of the same value chain or in closely related markets.
- (105) In assessing potential vertical effects of a concentration, the Commission analyses, among other things, whether the concentration results in foreclosure so that actual or potential rivals' access to supplies or markets is hampered or eliminated as a result of the concentration, thereby reducing those companies' ability and/or incentive to compete.⁹⁴ Such foreclosure may discourage entry or expansion of rivals or encourage their exit. Foreclosure thus can be found even if the foreclosed rivals are not forced to exit the market. It is sufficient that the rivals are disadvantaged and consequently led to compete less effectively. Such foreclosure is regarded as anti-competitive where the parties to the concentration – and, possibly, some of their competitors as well – are as a result able to profitably increase the price charged to consumers.
- (106) The Non-Horizontal Merger Guidelines distinguish between two forms of foreclosure: (i) input foreclosure, when access of downstream rivals to supplies is hampered;⁹⁵ and (ii) customer foreclosure, when access of upstream rivals to a sufficient customer base is hampered.⁹⁶
- (107) In assessing both types of foreclosure, the Commission assesses whether the combined entity (i) would have the ability to engage in foreclosure; (ii) whether it would have the incentive to do so; and (iii) what would be the overall impact on effective competition in the affected markets. All these criteria must be cumulatively met for foreclosure concerns to arise.

6.2. **Horizontal effects**

6.2.1. *Breeding and licensing of protected seedless table grape varieties in the EEA*

- (108) In this Section, the Commission will assess the effects of the Transaction in the plausible market for protected seedless table grape varieties in the EEA. The assessment for the alternative plausible national markets will be addressed in Sections 6.2.2 to 6.2.3 below. The position of SNFL, IFG, and their competitors in the forward-looking market shares is as follows:

⁹³ Horizontal Merger Guidelines, paragraphs 24-48.

⁹⁴ Non-Horizontal Merger Guidelines, paragraphs 20-29.

⁹⁵ Non-Horizontal Merger Guidelines, paragraph 31.

⁹⁶ Non-Horizontal Merger Guidelines, paragraph 58.

Figure 1. Forward-looking market shares in breeding and licensing of protected seedless table grapes in the EEA⁹⁷

Breeding program	2023		2024		2025		2026	
	Stock of planted varieties (ha)	Share (%)	Stock of planted varieties (ha)	Share (%)	Stock of planted varieties (ha)	Share (%)	Stock of planted varieties (ha)	Share (%)
IFG	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
SNFL	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
Combined	[...]	[20-30]%	[...]	[20-30]%	[...]	[20-30]%	[...]	[20-30]%
Sunworld	[...]	[20-30]%	[...]	[20-30]%	[...]	[20-30]%	[...]	[20-30]%
ITUM	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%
Grape Evolution	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%
NuVaUT	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[5-10]%
Grapa Varieties	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%
Italian Club Variety	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Grape & Grape	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Polar	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Lombardi	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Other protected seedless (incl. INIA)	[...]	[20-30]%	[...]	[20-30]%	[...]	[20-30]%	[...]	[20-30]%
Total	[...]	100%	[...]	100%	[...]	100%	[...]	100%

Source: Annex 7.2.4.a to the Form CO

6.2.1.1. The Notifying Parties' arguments

(109) The Notifying Parties claim that the combined entity will not have the ability or incentive to increase prices of their royalty fees, decrease output, quality, or innovation because: (i) SNFL and IFG are not one another's closest competitors and their portfolios are largely complementary (SNFL's based on grower-focused characteristics, and IFG's on consumer-focused traits); (ii) they face sufficient and increasing competition in the market from public varieties, private breeders and public institutions; (iii) growers decide what varieties they plant, multisource, can switch, and have several breeders they can turn to; (iv) it is important to continue R&D efforts as it is difficult to know which varieties will succeed and not one variety has all desirable traits.

6.2.1.2. The Commission's assessment

(110) The Transaction does not raise serious doubts in relation to the EEA-wide market for the breeding and licensing of protected seedless table grape varieties for the reasons set out below.

(111) **First**, SNFL and IFG appear to enjoy limited market power.

(112) In the first place, the combined market shares of the combined entity remain moderate (between [20-30]% in 2023-2026 in volume).

(113) In the second place, there is a lack of barriers for growers to switch breeders. The majority of growers who expressed a view are open to switching to other breeders for reasons such as better varieties and features, or a better growing calendar.⁹⁸ Further, the majority of growers who expressed a view do not find it costly to

⁹⁷ The Commission is assessing this Transaction on the basis of volume shares, as value shares (i.e. royalties) are dependent on volumes, and do not vary per variety.

⁹⁸ eRFI to growers, question E.B.9.

switch breeders at the time of the replacement of the vines.⁹⁹ Both retailers and growers are willing to switch breeders in order to get the best quality.¹⁰⁰

- (114) In the third place, growers multisource varieties from several breeders (and public programmes)¹⁰¹ and could turn to other breeders if the conditions for some varieties/breeders deteriorate. In this line, a grower indicated that if royalties were to increase *‘growers would turn to other breeders as the industry is market driven. The breeders are quite conscious of this and will sometimes step outside of the contract to assist the growers’*.¹⁰² The majority of growers who expressed a view multisource from different breeders.¹⁰³ The number of breeders from which growers that multisource license varieties from depends on the grower, and ranges between two and eight, with several growers saying they multisource from between three or four players.¹⁰⁴
- (115) The finding that growers multisource is also evidenced in the Notifying Parties’ and the Targets’ internal documents. For example, an EQT presentation explained that *‘growers tend to plant multiple varieties from a number of different breeders’*.¹⁰⁵ This same document lists as a risk the *‘[...], and the growers financial health, explaining that ‘[...].’*¹⁰⁶
- (116) In the fourth place, as mentioned in paragraph (129), there is a lack of barriers for growers to switch breeders.
- (117) In the fifth place, royalty prices are the same across varieties.¹⁰⁷ The majority of growers who expressed a view explained that royalty fees are always around 5% (annual royalties of FOB prices of fruit sales over the entire lifetime of the vineyard).¹⁰⁸ The Parties’ royalty fees do not appear to change depending on the breeder or on the success of the variety.¹⁰⁹ Further the majority of growers indicated that there has been no royalty increase in the recent past.¹¹⁰ Thus, the Transaction is unlikely to lead neither to cannibalization (which may occur when portfolio products are priced differently) nor to an increase of royalty fees.
- (118) In the sixth place, breeders cannot unilaterally change clauses in ongoing contracts. While the majority of growers who expressed a view indicated that it is possible to change the commercial terms in an existing relationship (and several among them indicated it can happen at any time)¹¹¹ this is in tension with the Parties’ internal

⁹⁹ eRFI to growers, question E.B.11.

¹⁰⁰ Non-confidential minutes of a call with a retailer, 15 December 2022, paragraph 7.

¹⁰¹ Non-confidential minutes of call with a competitor, 13 July 2022, paragraph 11; Non-confidential minutes of call with a customer, 4 November 2022, paragraph 14; Non-confidential minutes of a call with a customer, 23 November 2022, paragraph 3.

¹⁰² Non-confidential minutes of a call with a customer, 11 November 2022, paragraph 29.

¹⁰³ eRFI to growers, question E.B.3.

¹⁰⁴ eRFI to growers, question E.B.4.

¹⁰⁵ Annex 5.4.1 to the Form CO – [...], slide 27.

¹⁰⁶ Annex 5.4.1 to the Form CO – [...], slide 14.

¹⁰⁷ There was only one royalty fee that growers identified had increased, from 5% to 6%, and it was not a variety from either IFG or SNFL.

¹⁰⁸ eRFI to growers, question E.B.17.

¹⁰⁹ Annexes 8.1.a and 8.1.b to the Form CO and response to P1 RFI2 of 10 May 2023.

¹¹⁰ eRFI to growers, question E.B.18.

¹¹¹ eRFI to growers, question E.B.14.

documents, including both SNFL's and IFG's licensing contracts.¹¹² As the Notifying Parties explain, as a general principle of civil or common law, parties to a contract cannot unilaterally change its terms.¹¹³ Termination causes in licensing agreements are limited to those provided in the licensing agreements (*numerus clausus*).¹¹⁴ These generally relate to material or repeated breaches that cannot be remedied or failed to be remedied, insolvency, not complying with growing instructions leading to death of the plant material, or infringement of IP rights, among others. This list does not include the possibility to uproot or destroy vines for a commercial disagreement between a breeder and a grower.¹¹⁵ Therefore, breeders could not attempt a price increase during an ongoing contract, and if they attempted this increase with a new contract, growers could switch to other breeders.

- (119) **Second**, there are several international and regional competitors currently active (or that will enter the market soon) in the developing and licensing of table grape varieties.
- (120) In the first place, there are a number of competitors that currently are active in the EEA. These include Sunworld, ITUM, Grape Evolution and Grapa Varieties, as well as smaller breeders such as Grape and Grape, INIA, USDA, Polar, or Lombardi, who each own at least one to three licensed seedless protected varieties.¹¹⁶ The results of the market investigation point at a relatively large number of competitors that the majority of growers who expressed a view are aware of and find credible (including Grapa Varieties, Grape Evolution, INIA, ITUM, Polar, Ralli & Sons, Sunworld, USDA, IFG, and SNFL).¹¹⁷
- (121) In the second place, there are a number of breeders that will enter the market soon. These include Italian Club Variety and NuVaUt, which are both consortia of growers who pull resources and integrated vertically to sponsor entry.¹¹⁸ Entry of credible breeders is in line with the results of the market investigation. The majority of respondents who expressed a view are aware of breeders that have entered the market in the past 10 years.¹¹⁹
- (122) In the third place, smaller breeders appear to be credible alternatives to larger ones. While the majority of growers who expressed a view consider that scale is either important or very important for breeders to be successful, the majority of growers who expressed a view would consider a small breeder's variety if they need to plant a new variety.¹²⁰ In this line, growers indicated that the most important criteria when selecting a breeder and/or a variety are (in order of most importance) yield, flavour/taste, pest/disease resistance, crunchiness, and brand/variety

¹¹² Annexes 8.1.a and 8.1.b to the Form CO.

¹¹³ Response to P1 RFI2 of 10 May 2023.

¹¹⁴ Response to P1 RFI2 of 10 May 2023.

¹¹⁵ Annexes 8.1.a and 8.1.b to the Form CO and response to P1 RFI2 of 10 May 2023.

¹¹⁶ Non-confidential minutes of call with a competitor, 25 July 2022; Non-confidential minutes of call with a nursery, 25 November 2022, paragraph 13; Non-confidential minutes of a call with a customer, 27 July 2022, paragraph 24; Non-confidential minutes of a call with a retailer, 15 December 2022, paragraph 6.

¹¹⁷ eRFI to growers, question E.A.1.

¹¹⁸ Non-confidential minutes of a call with a customer, 23 November 2022, paragraph 3.

¹¹⁹ eRFI to growers, question E.E.1.

¹²⁰ eRFI to growers, questions E.E.7 and E.E.9.

reputation.¹²¹ Therefore, growers appear to look for specific characteristics in a variety, and not check the size of the breeder that is licensing it.

- (123) **Third**, competitors are also very active in their innovation efforts. This is also supported by the Parties' internal documents, that show that SNFL and IFG look closely at their competitors' innovation efforts.¹²²
- (124) In the first place, competing breeders indicated that they are all expecting to commercialise several new varieties in the coming years (between one and 25 in the next five to ten years, depending on the competitor).¹²³ During the market investigation, the Commission identified at least 9 breeders with varieties in their pipelines. In this line, the majority of growers who expressed a view are aware of promising pipelines in other breeders' pipelines, including Sunworld, Grapa, Italian Club Variety, NuVaUt, and Grape Evolution.¹²⁴ A nursery also indicated that breeders are very active in investing and developing new varieties, and they cite examples that include relatively new entrants, such as ITUM and Italian Club Variety.¹²⁵
- (125) In the second place, the majority of growers who expressed a view are aware of and consider credible innovators many breeders, such as Sunworld, Grapa Varieties, Grape Evolution, INIA, ITUM, Polar, USDA, SNFL, and IFG.¹²⁶
- (126) In the third place, even smaller companies with smaller market shares may be important competitive forces if they have promising pipeline products. This is because breeders submitted that they are focusing on the same traits as SNFL and IFG, which include disease resistance, and new flavour profiles.¹²⁷
- (127) **Fourth**, there does not appear to be an incentive for SNFL and IFG to discontinue either their currently marketed varieties or their R&D efforts, given their complementary portfolios and the specific characteristics of the industry. Nurseries and growers alike explain that it is important for SNFL and IFG to find new and better varieties, and therefore the incentive to continue innovating will still be there, at the risk of losing market share otherwise.¹²⁸
- (128) In the first place, SNFL and IFG appear to have complementary portfolios. The market investigation supports the finding that SNFL focuses on grower-centred traits and IFG focuses on consumer-centred traits.¹²⁹ Even while the majority of growers who expressed a view consider that SNFL and IFG compete closely, they acknowledge that their research pipelines are complementary, meaning that they

¹²¹ eRFI to growers, question E.B.1.

¹²² Annex 5.4.1 to the Form CO – [...], slide 22.

¹²³ Non-confidential replies to the RFI on innovation sent to competitors on 2 March 2023.

¹²⁴ eRFI to growers, questions E.D.5 and E.D.6.

¹²⁵ Non-confidential minutes of call with a nursery, 25 November 2022, paragraph 22.

¹²⁶ eRFI to growers, question E.D.1.

¹²⁷ Non-confidential replies to the RFI on innovation sent to competitors on 2 March 2023.

¹²⁸ Non-confidential minutes of a call with a customer, 22 November 2022, paragraph 29; Non-confidential minutes of a call with a nursery, 5 January 2023, paragraph 5.

¹²⁹ Non-confidential minutes of call with a customer, 4 November 2022, paragraph 6; Non-confidential minutes of a call with a customer, 12 December 2022, paragraph 12; Non-confidential minutes of call with a customer, 27 July 2022, paragraph 8; Non-confidential minutes of a call with a customer, 15 July 2022, paragraph 7; Non-confidential minutes of a call with a customer, 11 November 2022, paragraph 35.

focus on different aspects.¹³⁰ In addition, the market investigation has evidenced that other breeders (such as Grapa Varieties or Sunworld) have strong varieties focused on grower-centred traits, as SNFL does (for example, rain and disease resistance).¹³¹ Further, the fact that market participants consider SNFL and IFG to be close is more true for certain segments than for others. In this line, if the harvesting season is used as a differentiating factor, the Parties' portfolios appear complementary. SNFL is relatively stronger in early and late season than IFG (in 2023 in early season in harvesting volume SNFL had [10-20]% and IFG [0-5]%, and in late season [10-20]% SNFL and [5-10]% IFG). IFG is stronger than SNFL in mid-season (in 2023 in harvesting volume IFG had [20-30]% and SNFL had [10-20]%).

- (129) The complementarity of SNFL's and IFG's portfolio is also echoed in the Parties' internal documents.¹³² For example, Figure 2 below shows SNFL's and IFG's portfolio complementarity in terms of customer preferences, grower criteria and seasonal coverage. Further, in their internal documents, the Parties also benchmark their varieties against different competitors. For example, an internal document provided by IFG shows pictures of two new varieties for Grapa Varieties and ITUM (taken at a fresh produce fair) that present flavours similar to IFG's Cotton Candy and could be considered as close competitors.¹³³
- (130) As a result, the Commission considers that SNFL and IFG do not have an incentive to discontinue their currently marketed varieties. Indeed, all the investments are already undertaken and discontinuing the currently marketed varieties would be a loss of revenue for the Targets they could not recoup, given the different traits of their varieties. A discontinuation would also push growers to different breeders. Likewise, SNFL and IFG have no incentive to discontinue their R&D efforts, as they focus on different traits, and no variety is currently capable of addressing all of growers' and consumers' needs. It is important to innovate for different traits to cater to various growers and consumers.

Figure 2. Evidence in internal documents on the complementarity of SNFL's and IFG's portfolios

[Figure contains business secrets from an Internal Document of the notifying parties]

Source: Annex 5.4.1 to the Form CO – [...]

- (131) In the second place, the importance of continuing R&D efforts (both in the short and in the long term) is also confirmed by the Parties' internal documents. For example, an EQT presentation about the Transaction mentions benefitting from accelerated R&D through data analytics and new breeding methods, and it points to the importance of achieving disease resistant varieties to decrease the use of fungicides by 70%. It also indicates as a strength of the merger that '*both companies have a strong breeding program and have not slowed down or become complacent*'.¹³⁴ This same presentation points at the broader pipeline and gene pool

¹³⁰ eRFI to growers, questions E.C.1 and E.D.3.

¹³¹ Non-confidential minutes of call with a competitor, 25 July 2022. Non-confidential minutes of a call with a customer, 11 November 2022, paragraph 22.

¹³² Annex 5.4.1 to the Form CO – [...], slides 9, 13, 14, 18, 24, 25.

¹³³ Annex 7.10 to the Form CO.

¹³⁴ Annex 5.4.1 to the Form CO – [...], slides 9 and 14;

post-merger, therefore hinting that there is no interest at shutting down pipelines.¹³⁵ Further, it cites a number of key R&D optimization levers:

Figure 3. Internal document reflecting R&D and innovation synergies as a result of the Transaction

[Figure contains business secrets from an Internal Document of the notifying parties]

Source: Annex 5.4.1 to the Form CO – [...]

- (132) **Fifth**, market participants consider that the Transaction will have either a neutral or a positive impact.¹³⁶ On the impact on their own companies and on innovation in the shorter term, market participants who expressed a view were split between a neutral and a positive impact of the Transaction.¹³⁷ On innovation in the longer term and on the impact on the market for breeding of table grape varieties as a whole, the majority of market participants who expressed a view considered that the Transaction would have a positive impact.¹³⁸
- (133) While a few market participants have raised some concerns, these appear not to be merger specific, or the Parties would have no incentive to engage in them. For example, there was a concern voiced that SNFL and IFG could refuse or limit the supply of new varieties.¹³⁹ However, if the Parties engaged in such a strategy, they would lose revenues from the royalties lost that they would not be able to recoup. Another concern voiced referred to bundling strategic varieties with weaker ones.¹⁴⁰ However, this concern does not appear to be warranted given that: (i) SNFL and IFG could have already engaged in this strategy and have not; (ii) there are several credible alternatives in the market growers could turn to if the Parties tried to force bundling on them, and as the market investigation has evidenced, growers are not afraid of switching breeders.

6.2.2. *Countries with currently affected markets*

6.2.2.1. Spain

- (134) In this Section, the Commission will assess the effects of the Transaction in the narrowest plausible market for the breeding and licensing of protected seedless table grape varieties in Spain. The position of SNFL, IFG, and their competitors in the forward-looking market shares is as follows:

¹³⁵ Annex 5.4.1 to the Form CO – [...], slide 22.

¹³⁶ Non-confidential minutes of a call with a retailer, 10 January 2023, paragraphs 23 and 24.

¹³⁷ eRFI to growers, question F.1.

¹³⁸ eRFI to growers, question F.1.

¹³⁹ Non-confidential minutes of a call with a grower, 1 August 2023, paragraph 7.

¹⁴⁰ Non-confidential minutes of a call with a grower, 1 August 2023, paragraph 7.

Figure 4. Forward-looking market shares in breeding and licensing of protected seedless table grapes in Spain

Breeding program	2023		2024		2025		2026	
	Stock of planted varieties (ha)	Share (%)	Stock of planted varieties (ha)	Share (%)	Stock of planted varieties (ha)	Share (%)	Stock of planted varieties (ha)	Share (%)
IFG	[...]	[20-30]%	[...]	[20-30]%	[...]	[20-30]%	[...]	[20-30]%
SNFL	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
Combined	[...]	[30-40]%	[...]	[30-40]%	[...]	[30-40]%	[...]	[30-40]%
Sunworld	[...]	[20-30]%	[...]	[20-30]%	[...]	[20-30]%	[...]	[20-30]%
ITUM	[...]	[20-30]%	[...]	[20-30]%	[...]	[20-30]%	[...]	[20-30]%
Polar	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%
Grapa Varieties	[...]	[0-5]%	[...]	[0-5]%	[...]	[5-10]%	[...]	[5-10]%
Grape Evolution	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
INIA	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Total	[...]	100%	[...]	100%	[...]	100%	[...]	100%

Source: Annex 7.2.4.a to the Form CO

6.2.2.1.1. The Notifying Parties' arguments

(135) The Parties argue that the Transaction is not susceptible to raise serious doubts with regards to the plausible Spanish market because: (i) the Parties face strong competition in Spain (including from Sunworld and ITUM); (ii) the Parties are not one another's closest competitors and their varieties are complementary in terms of characteristics; (iii) there are no switching costs; (iv) there are no capacity constraints in terms of input required for innovating; (v) the Parties do not have incentives to discontinue innovation efforts, as growers' preferences cannot all be met by a single variety, and therefore the Parties remain motivated to develop new varieties to reach more growers.¹⁴¹

6.2.2.1.2. The Commission's assessment

(136) The Transaction does not raise serious doubts in relation to the Spanish market for the breeding and licensing of protected seedless table grape varieties for the reasons set out below.

(137) **First**, SNFL and IFG appear to enjoy limited market power.

(138) In the first place, while the combined market shares of the combined entity will be moderately high (between [30-40]% in volume between 2023 and 2026), there are several international and regional competitors that are currently active in the developing and licensing of protected seedless table grape varieties in Spain. These include Sunworld, ITUM, Polar, Grapa, Grape Evolution or INIA. Further, the majority of growers who expressed a view have heard of many breeders and consider them credible, including Grapa, Grape Evolution, INIA, ITUM, Sunworld, USDA, Polar, Ralli & Sons, Lombardi, ARC or Stargrow.¹⁴² In this line, a nursery considers that even relatively new players in the market, such as ITUM, can gain traction and will increase their market share in the future.¹⁴³

(139) In the second place, similarly as at EEA level, Spanish growers believe smaller breeders are credible alternatives to larger ones. In this line, while the majority of

¹⁴¹ Form CO, paragraphs 218-230.

¹⁴² eRFI to growers, question E.A.1.

¹⁴³ Non-confidential minutes of a call with a nursery, 25 November 2022, paragraph 22.

Spanish growers that expressed a view consider it either important or very important for breeders to have a large scale to be successful, they would consider a small breeder's variety if they needed to plant a new variety.¹⁴⁴ Further, a retailer active in Spain indicated that it offers grapes from Polar, which entered into the market recently, and in a short time gained a large share of this retailers' shelves.¹⁴⁵

- (140) In the third place, the majority of Spanish growers multisource varieties from several breeders, and some from public varieties as well;¹⁴⁶ there is a lack of barriers for growers to switch breeders; royalty prices are the same across varieties and the majority of Spanish growers who expressed a view consider that these have not increased in the recent past;¹⁴⁷ and breeders cannot unilaterally change clauses in ongoing contracts.¹⁴⁸
- (141) **Second**, there are a number of findings from the market investigation at EEA level that are similarly applicable in Spain.
- (142) In the first place, as explained in paragraphs (123) to (126) above, competitors are also very active in their innovation efforts. The Commission identified at least six breeders that are currently active in Spain and are active in their innovation efforts, and one other player which may enter the Spanish market in the near future.¹⁴⁹ The majority of Spanish growers who expressed a view are aware of promising pipelines in other breeders' pipelines, including Sunworld, Grapa, and Grape Evolution.¹⁵⁰ Further, the majority of Spanish growers have heard of a large number of breeders that they consider credible innovators, including Stargrow, Sunworld, USDA, Grapa, Grape Evolution, INIA, ITUM, Polar, ARC, Lombardi, and Ralli & Sons.¹⁵¹
- (143) In the second place, as explained in paragraphs (127) to (131) above, there does not appear to be an incentive for SNFL and IFG to discontinue either their currently marketed varieties or their R&D efforts given their complementary portfolios and the specific characteristics of the industry. Spanish growers find the Targets' varieties to have different characteristics (SNFL focusing on consistency and IFG in flavours/taste), which, according to a grower, '*makes them compatible*'.¹⁵² Even while the majority of Spanish growers who expressed a view consider that SNFL and IFG compete closely, they acknowledge that their research pipelines are complementary, meaning that they focus on different aspects.¹⁵³ If the harvesting season is used as a differentiating factor (in a market where products are differentiated), the Parties' portfolios appear complementary. For example, in Spain in 2023 SNFL is relatively stronger in early ([20-30]%) and late season

¹⁴⁴ eRFI to growers, questions E.E.7 and E.E.9.

¹⁴⁵ Non-confidential minutes of a call with a retailer, 15 December 2022, paragraph 6.

¹⁴⁶ eRFI to growers, question E.B.3; Non-confidential minutes of a call with a grower, 27 July 2022, paragraph 3.

¹⁴⁷ eRFI to growers, question E.B.18.

¹⁴⁸ Therefore, breeders could not attempt a price increase during an ongoing contract, and if they attempted this increase with a new contract, growers could switch to other breeders.

¹⁴⁹ Replies to the RFI on innovation sent to competitors on 2 March 2023.

¹⁵⁰ eRFI to growers, questions E.D.5 and E.D.6.

¹⁵¹ eRFI to growers, question E.D.1.

¹⁵² Non-confidential minutes of a call with a grower, 15 July 2022, paragraphs 7 and 15.

¹⁵³ eRFI to growers, questions E.C.1 and E.D.3.

([10-20]%) than IFG ([5-10]% and [5-10]% respectively), whereas IFG ([30-40]%) is stronger than SNFL ([10-20]%) in mid-season.

- (144) Moreover, the lack of barriers for growers to switch breeders is also applicable at Spanish level. The majority of Spanish growers who expressed an opinion switched breeders in the past three occasions when they replanted vines, and do not find it costly to switch breeders at the time of the replacement of the vines. All Spanish growers who expressed a view are open to switching to other breeders.¹⁵⁴ In this line, a Spanish grower indicated that competition is fierce between breeders, and also with public varieties, and that if breeders raise prices, it would switch to another breeder.¹⁵⁵
- (145) **Third**, market participants consider that the Transaction will have either a neutral or a positive impact in Spain. On the impact over their own company, the majority of market participants who expressed a view were neutral. On the impact on innovation in the shorter term, the majority of market participants who expressed a view were split between a neutral and a positive impact. On innovation in the longer term and on the market for the breeding of table grapes as a whole, the majority of market participants who expressed a view were positive.¹⁵⁶ In this line, several market participants (including growers and retailers) consider that the Transaction's impact is positive, and that the Targets will continue to cross-breed their genetics as this will generate more innovation and more and better varieties for growers to pick from.¹⁵⁷

6.2.2.2. Portugal

- (146) In this Section, the Commission will assess the effects of the Transaction in the narrowest plausible market for the breeding and licensing of protected seedless table grape varieties in Portugal. The position of SNFL, IFG, and their competitors in the forward-looking market shares is as follows:

Figure 5. Forward-looking market shares in breeding and licensing of protected seedless table grapes in Portugal

Breeding program	2023		2024		2025		2026	
	Stock of planted varieties (ha)	Share (%)	Stock of planted varieties (ha)	Share (%)	Stock of planted varieties (ha)	Share (%)	Stock of planted varieties (ha)	Share (%)
IFG	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
SNFL	[...]	[20-30]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
Combined	[...]	[30-40]%	[...]	[30-40]%	[...]	[20-30]%	[...]	[20-30]%
Sunworld	[...]	[60-70]%	[...]	[60-70]%	[...]	[70-80]%	[...]	[70-80]%
Grape Evolution	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Other protected seedless	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Total	[...]	100%	[...]	100%	[...]	100%	[...]	100%

Source: Annex 7.2.4.a to the Form CO

¹⁵⁴ eRFI to growers, questions E.B.7, E.B.9, and E.B.11.

¹⁵⁵ Non-confidential minutes of a call with a grower, 27 July 2022, paragraph 21.

¹⁵⁶ eRFI to growers, question F.1.

¹⁵⁷ Non-confidential minutes of a call with a grower, 27 July 2022, paragraph 20; Non-confidential minutes of a call with a grower, 21 November 2023, paragraph 31; Non-confidential minutes of a call with a retailer, 10 January 2023, paragraphs 23 and 24.

6.2.2.2.1. The Notifying Parties' arguments

(147) The Parties argue that the Transaction is not susceptible to raise serious doubts with regards to the plausible Portuguese market because: (i) SNFL and IFG currently have and expect to have moderate presence in Portugal in terms of planted hectares; (ii) they are not one another's closest competitors regarding the development and commercialisation of varieties of table grape vines in Portugal; (iii) they face significant competition in Portugal (including from Grape Evolution and Sunworld); (iv) the Parties' combined share post-transaction would be below 50%.¹⁵⁸

6.2.2.2.2. The Commission's assessment

(148) The Transaction does not raise serious doubts in relation to the Portuguese market for the breeding and licensing of protected seedless table grape varieties for the reasons set out below.

(149) **First**, SNFL and IFG appear to enjoy limited market power.

(150) In the first place, the combined market shares of the combined entity remain moderate (between [20-30]-[30-40]% in 2023-2026), especially as Portugal has less production of table grapes than Spain or Italy, as shown in Figure 5 above and as indicated by market participants.¹⁵⁹

(151) In the second place, royalties appear to be 5% (of FOB prices) across varieties¹⁶⁰, and the majority of Portuguese growers who expressed a view indicated that there have been no royalty increases in the recent past.¹⁶¹ Moreover, Portuguese growers multisource from different breeders (around three).¹⁶²

(152) **Second**, other international and regional competitors are currently active in the developing and licensing of table grape varieties in Portugal, namely Sunworld and Grape Evolution as shown in Figure 5 above.

(153) In the first place, the results of the market investigation point at several competitors that the majority of Portuguese growers who expressed a view are aware of and find credible (including INIA, ITUM, ARC, Polar, Sunworld, IFG and SNFL).¹⁶³

(154) In the second place, the majority of Portuguese growers who expressed a view consider that there are no large barriers to entry to the market for the breeding of table grapes.¹⁶⁴

(155) In the third place, smaller breeders are credible alternatives to larger ones for Portuguese market participants. On top of considering that scale is not particularly important for breeders to be successful, the majority of Portuguese growers who

¹⁵⁸ Form CO, paragraphs 210-215, 432, 439.

¹⁵⁹ Non-confidential minutes of a call with a customer, 1 December 2022, paragraph 5.

¹⁶⁰ eRFI to growers, question E.B.17; Non-confidential minutes of a call with a customer, 1 December 2022, paragraph 6.

¹⁶¹ eRFI to growers, question E.B.18.

¹⁶² eRFI to growers, question E.B.3.

¹⁶³ eRFI to growers, question E.A.1.

¹⁶⁴ eRFI to growers, question E.E.11.

expressed a view would consider a small breeder's variety if they needed to plant a new variety.¹⁶⁵ In this line, Portuguese growers indicated that the most important criteria when selecting a breeder and/or a variety are (in order of most importance) yield, market demand, taste, agricultural adaptation and pest resistance.¹⁶⁶ Therefore, Portuguese growers appear to look for specific characteristics in a variety, and not for a specific size of the breeder that is licensing it.

- (156) **Third**, the considerations that apply at EEA level also apply in Portugal.
- (157) In the first place, similarly as at EEA level, competitors are very active in their innovation efforts. The majority of Portuguese growers who expressed a view are notably aware of and consider credible innovators several breeders, such as Sunworld, ITUM, SNFL and IFG.¹⁶⁷
- (158) In the second place, as mentioned in paragraphs (127) to (131) above, there does not appear to be an incentive for SNFL and IFG to discontinue either their currently marketed varieties or their R&D efforts, given their complementary portfolios and the specific characteristics of the industry. The market investigation has confirmed a lack of barriers for growers to switch breeders, as the majority of Portuguese growers who expressed a view are open to switching to other breeders for reasons such as better varieties and features (e.g., yield, colour, season, flavour).
- (159) **Fourth**, market participants consider that the Transaction will have a rather positive impact in Portugal. While the majority of Portuguese market participants who expressed a view were negative on the impact over their own company, they were positive on the impact on innovation in the shorter term, on innovation in the longer term and on the market for the breeding of table grapes as a whole.¹⁶⁸ One Portuguese customer for instance does not believe "*there is a danger of monopoly or a risk of a dominant position, as there is sufficient competition between breeders*".¹⁶⁹

6.2.2.3. Italy

- (160) In this Section, the Commission will assess the effects of the Transaction in the narrowest plausible market for the breeding and licensing of protected seedless table grapes varieties in Italy in view of high level of differentiation and of some concerns raised by market participants from the Italian market.
- (161) The position of SNFL, IFG, and their competitors in the forward-looking market shares is as follows:

¹⁶⁵ eRFI to growers, question E.E.7.

¹⁶⁶ eRFI to growers, question E.B.1.

¹⁶⁷ eRFI to growers, question E.D.1.

¹⁶⁸ eRFI to growers, question F.1.

¹⁶⁹ Non-confidential minutes of a call with a customer, 11 November 2022, paragraph 33.

Figure 6. Forward-looking market shares in breeding and licensing of protected seedless table grapes in Italy

Breeding program	2023		2024		2025		2026	
	Stock of planted varieties (ha)	Share (%)	Stock of planted varieties (ha)	Share (%)	Stock of planted varieties (ha)	Share (%)	Stock of planted varieties (ha)	Share (%)
IFG	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%
SNFL	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%
Combined	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
Other	[...]	[40-50]%	[...]	[50-60]%	[...]	[40-50]%	[...]	[30-40]%
Sunworld	[...]	[20-30]%	[...]	[20-30]%	[...]	[20-30]%	[...]	[20-30]%
Nu.Va.Ut	[...]	[0-5]%	[...]	[0-5]%	[...]	[5-10]%	[...]	[10-20]%
Grapa	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%
Italian Club Variety	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[5-10]%
Grape & Grape	[...]	[5-10]%	[...]	[5-10]%	[...]	[0-5]%	[...]	[0-5]%
Grape Evolution	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Lombardi	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Total	[...]	100%	[...]	100%	[...]	100%	[...]	100%

Source: Annex 7.2.4.a to the Form CO

6.2.2.3.1. The Notifying Parties' arguments

(162) The Parties argue that the Transaction is not susceptible to raise serious doubts with regards to the plausible Italian market because: (i) the market shares of SNFL and IFG are *de minimis*; (ii) post-merger increment measured in HHI between 1,000 and 2,000 with delta well below 250; (iii) there is strong competition in the market for development and commercialisation of table grape vines in Italy, including from Sunworld, Grape & Grape, Grapa Varieties, Grape Evolution, Lombardi and many local varieties developed by growers cooperatives; (iv) the Parties expect to see new entries by Nu.Va.UT and Italian Club Variety in particular¹⁷⁰.

6.2.2.3.2. The Commission's assessment

(163) The Transaction does not raise serious doubts in relation to the Italian market, where the Parties overlap in breeding and licensing of protected seedless table grape varieties for the reasons set out below.

(164) **First**, the Parties market shares in Italy in the breeding and licensing of seedless protected table grapes are low ([10-20]%) today and are expected to remain at this level in foreseeable future. Even if the Italian market is constantly moving from non-protected and seeded varieties towards protected seedless varieties, the volumes of all breeders are expected to increase while maintaining similar market shares due to constant competitive pressure of competing breeders.

(165) **Second**, several international competitors are already present on the Italian market, with at least equivalent or even considerably higher market shares than SNFL and IFG respectively (Sunworld, Grapa Varieties, Grape Evolution).

(166) **Third**, the Italian market is characterised by considerable use of local varieties bred and protected by growers or associations thereof (included under OTHER in the table above), typically used internally.

¹⁷⁰ Form CO, paragraphs 196-209.

- (167) **Fourth**, some Italian associations of growers have been preparing to launch their varieties for commercial use in the near future (2-3 years) and are confident in interesting the local growers in their locally more suitable varieties. Once established at national level, they do not exclude international expansion.¹⁷¹
- (168) **Fifth**, the general considerations explained above also apply for the Italian market and they include the complementarity of the Parties' portfolios¹⁷², the lack of incentives to discontinue R&D efforts, and the constraint that non-protected seedless varieties pose on protected (and thus the Parties') varieties, which means that even if the general volume of seedless grapes is growing in Italy, the increase is expected to be shared between the protected and non-protected varieties.
- (169) **Sixth**, market participants consider that the Transaction will have neutral or negative impact on short term innovation, neutral or positive impact on innovation in the long term, neutral impact on breeding of table grapes varieties and on the grower's companies in Italy. The concerns raised by some Italian growers concerning the increased ability of AM Fresh to impose more restrictive licensing conditions on Italian growers are addressed in section 6.3 Vertical effects below.

6.2.3. Countries with future affected markets

6.2.3.1. France

- (170) In this Section, the Commission will assess the effects of the Transaction in the narrowest plausible market for the breeding and licensing of protected seedless table grape varieties in France. The position of SNFL, IFG, and their competitors in the forward-looking market shares is as follows:

Figure 7. Forward-looking market shares in breeding and licensing of protected seedless table grapes in France

Breeding program	2023		2024		2025		2026	
	Stock of planted varieties (ha)	Share (%)	Stock of planted varieties (ha)	Share (%)	Stock of planted varieties (ha)	Share (%)	Stock of planted varieties (ha)	Share (%)
IFG	[...]	[0-5]%	[...]	[0-5]%	[...]	[5-10]%	[...]	[0-5]%
SNFL	[...]	[90-100]%	[...]	[90-100]%	[...]	[80-90]%	[...]	[80-90]%
Combined	[...]	[no overlap]	[...]	[no overlap]	[...]	[80-90]%	[...]	[90-100]%
Sunworld	[...]	[0-5]%	[...]	[0-5]%	[...]	[10-20]%	[...]	[5-10]%
Grapa Varieties	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Total	[...]	100%	[...]	100%	[...]	100%	[...]	100%

Source: Annex 7.2.4.a to the Form CO

6.2.3.1.1. The Notifying Parties' arguments

- (171) The Parties argue that the Transaction is not susceptible to raise serious doubts with regards to the plausible French market because: (i) the penetration of seedless table grapes vines (whether public or proprietary) in France is more limited than in other countries; (ii) IFG is not yet active and SNFL has a limited presence and very few licensing partnerships in France, accounting for a small amount of stock; (iii) there is strong competition in the market for development and commercialisation of table

¹⁷¹ Non-confidential minutes of a call with a breeder of 20 September 2022, Non-confidential minutes of a call with a breeder of 29 November 2022

¹⁷² Non-confidential minutes of a call with a customer, 4 November 2022, paragraph 6.

grape vines in France, including from ITUM, Polar, Sunworld, Grapa Varieties, Grape Evolution and INIA; (iv) the Parties expect to see new entries by Arra/Grapa Varieties, Sunworld, Grape Evolution/Volcani, and Lombardi.¹⁷³

6.2.3.1.2. The Commission's assessment

- (172) The Transaction is unlikely to raise serious doubts in relation to the French market, where the Parties will overlap in the near future, for the breeding and licensing of protected seedless table grape varieties for the reasons set out below.
- (173) **First**, it is true that, while the Parties' activities currently do not overlap in France, both are intending to enter these markets (they will overlap from [...] onwards) and will have very high combined shares (between [80-90]-[90-100]% in 2025-2026).
- (174) However, in the first place, these very high shares may rather reflect the small size of the French market, as shown in Figure 7 above and confirmed by market participants¹⁷⁴, rather than market power. In particular, the market is nascent in France as the production of table grapes continues to be predominantly of traditional seeded public varieties.¹⁷⁵ The shift to seedless grapes thus started later than in Italy, Spain, and Portugal but it is likely that, like in those countries, more competitors will move in soon to profit from this new market, as it will be explained below.
- (175) In the second place, the Targets' first mover status can also explain the high shares. Moreover, these shares are mostly attributable to the expansion projected of SNFL and not primarily the result of the acquisition of IFG, as the increment is very low (around [5-10]% as shown in Figure 7). These high shares will also ultimately decline when new breeders enter the French market as switching costs are low, as explained in paragraph (113) for the EEA level, a finding which also applies for the national level (and therefore in France as well).¹⁷⁶
- (176) **Second**, it is likely that several international and regional competitors will enter the market soon. As more growers shift to seedless varieties¹⁷⁷, both growers and breeders expect breeders to expand their offering into the French market.¹⁷⁸ In France, only a relatively small number of private breeders is indeed currently present, and they produce a small number of protected seedless varieties. Therefore, as explained by a French grower, *'protected varieties constitute a niche market in France that will grow in the future.'*¹⁷⁹ In addition with the further expansion of present market players, the entry by new breeders would be of sufficient scope because, as explained in paragraph (122) above, smaller breeders

¹⁷³ Form CO, paragraphs 186-190, 229, 439.

¹⁷⁴ Non-confidential minutes of a call with a breeder, 13 July 2022, paragraph 9; Non-confidential minutes of a call with a customer, 28 November 2022, paragraphs 19-20; Non-confidential minutes of a call with a customer, 4 November 2022, paragraph 5.

¹⁷⁵ Non-confidential minutes of a call with a customer, 28 November 2022, paragraph 5.

¹⁷⁶ eRFI to growers, questions E.B.9. and E.B.11.

¹⁷⁷ Non-confidential minutes of a call with a customer, 28 November 2022, paragraph 9; Non-confidential minutes of a call with a customer, 4 November 2022, paragraph 21.

¹⁷⁸ Annex 7.2.4.a to the Form CO – Forward looking shares in Hectares; Non-confidential minutes of a call with a customer, 28 November 2022.

¹⁷⁹ Non-confidential minutes of a call with a customer, 28 November 2022, paragraph 10.

are credible alternatives to larger ones.¹⁸⁰ This finding applies both at EEA and national level (and therefore in France as well), since growers have indicated that small players are credible alternatives they could switch to.¹⁸¹ Since the market is characterised by a long life-cycle, entry of new players may take several years, just as the one of IFG, who will only enter from [...] as shown in Figure 7 above.

- (177) **Third**, the considerations that apply in the markets where the Parties currently overlap also apply in the countries where the Parties will soon overlap. These include the complementarity of SNFL and IFG's portfolios,¹⁸² and the lack of incentives to discontinue R&D efforts. Indeed, given the specific characteristics of the industry, the Targets do not innovate focusing on a particular area or country.¹⁸³ Despite markets being considered national, they therefore would have no incentive to discontinue R&D efforts only in France. Moreover, on the lack of barriers to switching, market participants indicated that French growers multisource, including from public programmes (which act as out of market constraints in this narrowest plausible market of the breeding and licensing of protected seedless table grapes varieties) and from proprietary breeders,¹⁸⁴ and they are open to switching to other breeders.¹⁸⁵
- (178) **Fourth**, market participants, including competing breeders of protected seedless grapes, did not express concerns regarding the impact of the Transaction in France. For instance, a French grower is positive and indicated that the merger will lead to more diverse genetics, which in turn means more chances to find well adapted varieties.¹⁸⁶

6.2.4. Conclusion

- (179) In view of the above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market and with the EEA agreement regarding horizontally affected markets in the breeding and licensing of protected seedless table grapes varieties, either at EEA level or at national level in Spain, Portugal, Italy and France.

6.3. Vertical effects

- (180) Two types of vertical links exist in this Transaction due to AM Fresh's current sole and future joint control of SNFL and in the future of IFG's assets (upstream market of breeding and licensing of table grape varieties) and AM Fresh's presence (i) in table grapes growing business (downstream market) and (ii) in wholesale distribution of table grapes (further downstream market).

¹⁸⁰ Non-confidential minutes of a call with a customer, 28 November 2022, paragraph 20; Non-confidential minutes of a call with a breeder, 13 July 2022, paragraph 16; Non-confidential minutes of a call with a customer, 23 November 2022, paragraph 21.

¹⁸¹ eRFI to growers, questions E.E.7.

¹⁸² Non-confidential minutes of a call with a customer, 4 November 2022, paragraph 6.

¹⁸³ Response to PN RFI7, paragraph 37, 12 April 2023.

¹⁸⁴ Non-confidential minutes of a call with a customer, 4 November 2022, paragraph 14.

¹⁸⁵ Non-confidential minutes of a call with a customer, 28 November 2022, paragraph 15.

¹⁸⁶ Non-confidential minutes of call with a customer, 4 November 2022, paragraph 25.

6.3.1. *AM Fresh's table grapes growing business*

6.3.1.1. The Notifying Parties' arguments

- (181) AM Fresh has a [...] % financial interest in a Spanish table grapes grower MM2. The remaining [...] % interest is held by Moyca (a major Spanish table grapes grower) that is also managing MM2. The growing area of MM2 counts [...] hectares. AM Fresh has also recently acquired sole control of UvasDoce, a Spanish table grapes grower with [...] hectares of table grapes planted. The main purpose of acquiring UvasDoce is to showcase table grapes varieties in the fields.
- (182) The aggregate abovementioned area of [...] hectares represents less than [0-5] % of the total surface of table grape vines planted in the EU and approximately [0-5] % of the hectares planted in Spain. With such a small market share in the table grape growing business AM Fresh would have no ability to foreclose other growers. AM Fresh would not have incentive to extend its growing activities by buying or renting additional land, as the investment necessary would probably offset potential benefits it could obtain from ceasing licensing to other growers.
- (183) While the intended Transaction would therefore give rise to a vertical link between AM Fresh's joint control of the upstream table grapes breeding and licensing business (SNFL and IFG) and the downstream table grapes growing business (MM2 and UvasDoce) in the EEA, this vertical link would not be of a nature to allow AM Fresh to effectively foreclose any competing growers.

6.3.1.2. The Commission's assessment

6.3.1.2.1. Affected markets

- (184) Post transaction, AM Fresh's market share in licensing of table grapes in Spain will increase from [10-20] % to [30-40] % due to the absorption of IFG assets into SNFL that will be jointly controlled by AM Fresh. This market is upstream to the table grapes growing market where AM Fresh has a (joint) control of two table grapes growers in Spain.
- (185) The Commission therefore assessed whether the increase of AM Fresh's market share on this upstream affected market could provide AM Fresh with the ability to effectively run any foreclosure strategy against other growers competing with AM Fresh's table grapes growing business in Spain.

6.3.1.2.2. Input foreclosure

- (186) The assessment of the overlap described above shows that AM Fresh would gain no ability to foreclose other growers from obtaining access to table grapes varieties due to limited market power of AM Fresh on the breeding and licensing market in Spain, as discussed in section 6.2.2.1 Spain above.
- (187) Some market participants nevertheless voiced concerns about AM Fresh's growing presence in the upstream market of breeding and licensing of table grapes varieties, which, combined with AM Fresh's downstream wholesale, distribution and retail

market of table grapes in Spain (and in the EEA in future), could be used to impose more selective conditions for licensing the SNFL+IFG varieties post transaction¹⁸⁷.

- (188) **First**, IFG uses already today selective conditions when licensing its varieties in order to ensure constant quality of the end-product contributing to positive reputation of the brand. SNLF appears to have a more open approach in licensing its varieties, but it is selective in licencing its varieties in particular to avoid growers breaching intellectual property rights.¹⁸⁸
- (189) **Second**, the market investigation has indicated that growers in Spain (and in the future also in other countries) have access to a sufficient number of table grapes varieties that would be substitutable to SNFL and IFG varieties, should AM Fresh seek to increase prices or deteriorate access conditions to the licensing of SNFL and IFG varieties¹⁸⁹.
- (190) **Third**, the abovementioned argument applies in particular in the context of table grapes that is perceived in general as a commodity at the retail level, where retailers purchase white, red, black table grapes of sufficient quality, without attributing specific market value to particular varieties¹⁹⁰. AM Fresh's attempt to limit the availability of a particular SNFL+IFG variety, either by restricting the licensing conditions or increasing its royalty fees, would have minimum effect on the price of downstream table grapes and would lead growers to choose an equivalent variety currently available on the market. Having also regard to the general practice of the growers to simultaneously grow varieties of different breeders or non-protected varieties, the growers can easily choose other varieties responding to general quality expectations of the retailers.
- (191) **Fourth**, no incentive to pursue any foreclosing strategy of other growers in future appears plausible, as all SNFL's revenues originate in fees paid by the competing table grapes growers and AM Fresh would not be able to recoup these returns by any reasonable increase in price of SNFL's table grapes varieties.
- (192) The results of the market investigation have not revealed any facts or concerns that would lead to a different assessment of this vertical link. AM Fresh would lack the ability and incentive to foreclose other table grapes growers from accessing protected table grapes varieties of SNFL.

6.3.1.2.3. Customer foreclosure

- (193) Having regard to a very small AM Fresh's market share in table grapes growing market ([0-5]% of the total surface of table grape vines planted in the EU and approximately [0-5]% of the hectares planted in Spain), AM Fresh would have no ability to foreclose competing breeders of SNFL from accessing sufficient customer base among table grapes growers.
- (194) The results of the market investigation have not revealed any additional facts or concerns that would lead to a different assessment of this vertical link. AM Fresh

¹⁸⁷ eRFI to growers, question G.1.

¹⁸⁸ Form CO, para. 229.

¹⁸⁹ Paragraphs (138) above (139).

¹⁹⁰ Non-confidential minutes of a call with a retailer, 10 January 2023, paragraph 19.

lacks ability to foreclose other table grapes breeders. Moreover, due to its very small market power in the table grapes growing market, no incentive to pursue any foreclosing strategy of other breeders in future appears plausible.

6.3.1.3. Conclusion

(195) The Commission therefore concludes that due to the lack of the market power of AM Fresh on the upstream table grapes breeding and licensing market and to its very low market share in the downstream market for growing table grapes, the Transaction is unlikely to give rise to any competition concerns arising from vertical link between AM Fresh's joint control of the upstream table grapes breeding and licensing business (SNFL and IFG) and the downstream table grapes growing business (MM2 and UvasDoce) in Spain.

6.3.2. *AM Fresh's wholesale/category management of table grapes*

(196) In this section, the Commission will assess the effects of the Transaction on competition at the upstream licensing level in case of customer foreclosure and at the downstream wholesale level in case of input foreclosure.

6.3.2.1. The Notifying Parties' arguments

(197) According to the Notifying Parties, AM Fresh and its subsidiaries sell, trade, wholesale distribute and manage table grapes category for several supermarket retailers in Spain and in the EEA to an extent that does not give rise to affected markets.

(198) First, AM Fresh and its subsidiaries sell the production of the abovementioned [...] hectares of table grapes vines planted by MM2 and UvasDoce. As explained above, the sale of the table grapes production of approximately [...] tons yearly represents negligible volumes in Spain and in the EEA.

(199) Second, AM Fresh's subsidiary MM Iberia (AM Fresh Iberia) is in charge of the wholesale distribution of table grapes, together with other fruit, in Spain. Its market share including all fruit is estimated by AM Fresh to approximately 10% in Spain.

(200) Third, AM Fresh manages table grapes category for Eroski, El Corte Ingles and to limited extent to Mercadona. It has also sold a small quantity of table grapes to Costco, a Spanish wholesaler, in 2021 amounting to EUR [...].

(201) The turnover of AM Fresh resulting from these activities in 2021 amounted to approximately EUR [...]. Compared to the estimated sales of table grapes in Spain of EUR 893 million, it represents a national market share of [0-5]% and compared to the estimate total sales of table grapes in the four largest EU Member States (France, Germany, Italy and Spain) estimated to EUR 3.92 billion, the EEA market share of AM Fresh would be well below [0-5]% of total sales of table grapes in the EEA.

- (202) Fourth, the Notifying Parties claim that AM Fresh does not sell table grapes in the rest of Europe.¹⁹¹ Some limited sales of table grapes to Tesco Central Europe made by AM Fresh UK in 2020 and 2021 are due to the business decisions of Tesco UK, where AM Fresh has its strongest presence¹⁹².
- (203) Having regard to the abovementioned low market shares of AM Fresh in the sale, wholesale, distribution and trade of table grapes on the national market in Spain and its de minimis quantities in the EEA, the Notifying Parties claim that AM Fresh would have no ability to run any type of foreclosure strategy aimed at influencing retailer's choice towards varieties bred and licensed by SNFL+IFG.
- (204) Moreover, as a major part of AM Fresh's turnover from the wholesale and trade of table grapes originates in its category management services for specific supermarket retailers, AM Fresh would lack incentive to favour SNFL+IFG's varieties, if an objectively more suitable and economically advantageous option would be available on the market. In doing so, AM Fresh would act against the interest of its principal and could threaten its category management contract. Such strategy would not succeed also due to the fact that despite the recommendations made by the category manager, the final instruction to purchase comes in all cases from the retailer.

6.3.2.2. The Commission's assessment

6.3.2.2.1. Affected markets

- (205) Post transaction, AM Fresh's market share in licensing of table grapes in Spain will increase from [10-20]% to [30-40]% due to the absorption of IFG assets into SNFL that will be jointly controlled by AM Fresh. This market is upstream to the AM Fresh's wholesale distribution and category management activities of table grapes in Spain.
- (206) The Commission therefore assesses whether the increase of AM Fresh's market share on this upstream affected market of licensing SNFL+IFG table grapes varieties to growers and AM Fresh's presence in the downstream table grapes wholesale distribution and category management market could provide AM Fresh with the ability to effectively run:
- (a) *an input foreclosure strategy* whereby AM Fresh would restrict access, increase price or impose more restrictive commercial conditions to growers whose production is not sold through the wholesale distribution ran by AM Fresh, or
 - (b) *a customer foreclosure strategy* whereby AM Fresh would favour those growers who grow SNFL+IFG's varieties and seek to exclude growers not growing these varieties when distributing table grapes at the wholesale level or when performing its table grapes category management activities in Spain.

¹⁹¹ Form CO, paragraph 277.

¹⁹² Response to P1 RFI3 of 17 May 2023.

(207) AM Fresh's presence at the intermediate level of table grapes growing can be omitted from this analysis due to AM Fresh's very limited presence in this market, as described above and due to the fact that AM Fresh could run any foreclosure strategy at the wholesale and category management level without being present at all at the grower's level.

6.3.2.2.2. Input foreclosure

(208) The assessment of the overlap described above shows that AM Fresh would gain no ability to foreclose other table grapes/fresh fruit wholesalers/retailers from obtaining access to SNFL+IFG's table grapes varieties due to limited market power of AM Fresh on the breeding and licensing market in Spain, as discussed in section 6.2.2.1 Spain above.

(209) No incentive to pursue any foreclosing strategy of other table grapes/fresh fruit wholesalers/retailers in future appears plausible, as all SNFL and IFG's revenues originate in fees paid by competing table grapes growers who sell their production to all wholesale and retail channels available. AM Fresh would not be able to recoup these revenues by any reasonable increase in price or its own increase in table grapes wholesale or category management services at a realistic scale.

(210) AM Fresh would also not be able to increase the price of SNFL+IFG varieties by limiting their availability/quantity on the wholesale market, as the retailers would easily replace them by equivalent protected or non-protected varieties. At the retail level, varieties do not enjoy sufficient reputation yet to be price setters and table grapes are still perceived as a commodity. Furthermore, having also regard to the general practice of the growers to simultaneously grow varieties of different breeders or non-protected varieties, the growers can easily choose other varieties responding to general quality expectations of the retailers.

(211) The results of the market investigation have not revealed any additional facts or concerns that would lead to a different assessment of this vertical link.

(212) The Commission therefore concludes that AM Fresh's presence in the wholesale distribution and category management of table grapes in Spain (and in the EEA in the future) confers AM Fresh neither the ability nor the incentive to run an input foreclosure strategy aiming at effectively limiting access of wholesalers or retailers to SNFL and IFG's protected seedless table grapes.

6.3.2.2.3. Customer foreclosure

(213) While the market investigation confirmed the contours of AM Fresh's activity in Spain and in the EEA, the overall market feedback was mixed, with a small majority of replies referring to potentially negative impact of the transaction, while others considered no impact, did not know and only in two cases expected better access to a larger portfolio of varieties.

- (214) Some market participants voiced concerns about AM Fresh's growing, non-merger specific, presence in the downstream wholesale, distribution and retail market of table grapes in Spain (and in the EEA in future) which could be used to gear the retailers' choices towards SNFL+IFG varieties.¹⁹³
- (215) Having regard to the concerns expressed and to the abovementioned market share of AM Fresh in the wholesale, distribution, trade and category management of table grapes in Spain (and in the EEA in future), the Commission has not found sufficient evidence of AM Fresh's market share providing it with the ability to pursue any foreclosure strategy at the retail level.
- (216) The highest possible market shares estimates of MM Iberia (AM Fresh Iberia) in wholesale distribution of fruit amounting to [10-20]% combined with AM Fresh's [0-5]% market share in table grapes wholesale thanks to mainly its category management activities in Spain are far from conferring it a market position that would justify its ability to foreclose growers that are not growing table grapes varieties licensed by SNFL+IFG from having access to sufficient downstream retailers output for their production.
- (217) Moreover, it appears unlikely that AM Fresh would have incentive to limit access of any grower to downstream retailers. The currently SNFL+IFG licenced growers have only limited production capacity of table grapes defined by their planting area and climatic conditions of a given season. Should AM Fresh try to limit other growers to access retailers with their table grapes production, AM Fresh would not be able substitute the production of other growers by the production of growers planting SNFL+IFG varieties and would therefore not be able to recoup its potential losses from its wholesale/category management services.
- (218) This applies in particular in the context of table grapes that is perceived in general as a commodity at the retail level, where retailers purchase white, red, black table grapes of sufficient quality, without attributing specific market value to particular varieties¹⁹⁴.
- (219) The Commission therefore concludes that AM Fresh's presence in the wholesale distribution of table grapes in Spain (and in the EEA in future) confers AM Fresh no ability to run a customer foreclosure strategy aiming at effectively limiting access of growers not licensed by SNFL+IFG to wholesalers/retailers.

6.3.3. *Conclusion*

- (220) In view of the above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market and with the EEA agreement regarding vertical links among the activities of AM Fresh in breeding and licensing of table grapes, table grapes production and their wholesale distribution in Spain.

¹⁹³ eRFI to growers, question G.1.

¹⁹⁴ Non-confidential minutes of a call with a retailer, 10 January 2023, paragraph 19.

7. CONCLUSION

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

For the Commission

(Signed)
Margrethe VESTAGER
Executive Vice-President