

***Case No COMP/M.6722 - FRIESLANDCAMPINA/
ZIJERVELD & VELDHUYZEN AND DEN HOLLANDER***

Only the English text is available and authentic.

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

Article 6(1)(b) in conjunction with Art 6(2)
Date: 12/04/2013

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EUROPEAN COMMISSION

Brussels, 12.4.2013
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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 Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE

ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Sir/Madam,

Subject: Case No COMP/M.6722 – FrieslandCampina/ Zijerveld & Veldhuyzen and Den Hollander
Commission decision pursuant to Article 6(1)(b) in conjunction with Article 6(2) of Council Regulation No 139/2004¹

1. On 19 February 2013, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertaking FrieslandCampina Nederland Holding B.V. ("FrieslandCampina", the Netherlands) acquires within the meaning of Article 3(1)(b) of the Merger Regulation, sole control of the undertakings Zijerveld & Veldhuyzen B.V. ("Z&V", the Netherlands) and Den Hollander Food B.V. ("Den Hollander", the Netherlands) by way of purchase of shares.² FrieslandCampina is designated hereinafter as "the Notifying Party". Zijerveld & Veldhuyzen and Den Hollander are designated hereinafter as "the Target". FrieslandCampina and the Target are designated hereinafter as "the Parties".

I. THE PARTIES

2. FrieslandCampina develops, produces and sells dairy products (primarily milk, yoghurt, cream, cheese, butter and desserts) for consumers across Europe, Asia, Africa, the Middle East and Australia. The company also produces non-dairy

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 Publication in the Official Journal of the European Union No C 56, of 26.2.2013, p. 20.

products, predominantly fruit beverages as well as ingredients for professional and industrial customers worldwide.³

3. Z&V is a specialised cheese wholesaler providing value-added services such as category consultancy in both the retail segment and in other sales channels, storing and maturing, distribution to different downstream channels and other tailor-made packaging services. Z&V's main focus is in the Netherlands but it also has some activities abroad, mainly in Germany, Belgium and North-European countries.
4. Den Hollander is active at the wholesale level providing services such as the cutting, slicing, grating and packaging of cheese.⁴

II. THE OPERATION

5. On 7 January 2013, the Parties signed a share purchase agreement by which FrieslandCampina intends to acquire all the shares of the Target, provided that certain shareholdings of the Target in other undertakings will not be affected by the proposed concentration.⁵

III. CONCENTRATION

6. In view of the above, the proposed transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

IV. EU DIMENSION

7. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million⁶ (FrieslandCampina: EUR 9 626 million; Target: EUR [...]). Each of them has an EU-wide turnover in excess of EUR 250 million (FrieslandCampina: EUR [...]; Target: EUR [...]). Only the Target achieves more than two-thirds of its aggregate EU-wide turnover in one Member State.
8. The notified operation therefore has an EU dimension within the meaning of Article 1(2) of the Merger Regulation.

V. COMPETITIVE ASSESSMENT

9. The proposed concentration concerns the dairy product sector and it gives rise to both horizontal overlaps and vertical relationships. The Parties overlap in the sale of a

³ FrieslandCampina is wholly owned by the dairy co-operative Zuivelcoöperatie FrieslandCampina U.A., whose dairy farmers are in the Netherlands, Germany and Belgium. These dairy farmers are obliged to deliver all milk produced to FrieslandCampina, which in turn is obliged to acquire and process all the milk that is produced by the members.

⁴ Z&V and Den Hollander are subsidiaries of Mijwo Beheer B.V. ("Mijwo").

⁵ The transaction also includes the activities (but not the company) of Boering Melkblok B.V. ("Boering Melkblok") which will be transferred to a subsidiary of Z&V. Boering Melkblok is a subsidiary of Grobel, a Mijwo subsidiary which is not part of the proposed transaction. Zimik International B.V. (currently a subsidiary of Z&V), Fresh Holding B.V. (wholly owned by Den Hollander) and Vika B.V. (a Mijwo subsidiary) are also not part of the proposed transaction.

⁶ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C 95, 16.4.2008, p. 1).

number of types of cheese to various downstream channels, primarily in the Netherlands and to a lesser extent in Belgium and Germany.

10. Furthermore, the Parties' activities in cheese are vertically related since FrieslandCampina is a cheese producer and the Target is active downstream as a wholesaler and in the packaging market. In addition, the Parties overlap in the supply of other dairy products (value-added yoghurt/quark, portion pack dairy desserts, and packet butter with additives) to the downstream channels, again primarily in the Netherlands.

A. Relevant market definitions

(i) Dutch-type cheese

1. Introduction

11. The proposed transaction gives rise to horizontal overlaps and vertical relationships as regards the market for the sale of Dutch-type cheese in the Netherlands and other Member States.
12. The Commission dealt specifically with Dutch-type cheese in the case *Friesland Foods/Campina*.⁷ In its decision in that case, the Commission referred to Dutch-type cheese as a category comprising Gouda, Maasdam and Edam cheeses. Gouda, Maasdam and Edam are made of cow's milk and have a fat content of 48%, 45% and 40% respectively.⁸
13. Dutch-type cheese can be produced as nature or rindless cheese. Nature cheese has a rind and is capable of maturing for up to one year and longer. Rindless cheese is wrapped in plastic foil when it is young and does not mature any further.⁹
14. Despite such differences, the beginning of the production process for both nature and rindless cheese is very similar: raw milk is pre-treated (standardised or pasteurised) and the water in the milk is partly removed to increase the proportion of dry matter in the milk. The milk is thickened with the help of rennet, and a starter culture is added to help shape the flavour of the milk. The process produces curds and a mass of solid cheese lumps with whey as by-product. After processing, the cheese is put into a brine bath.¹⁰
15. After the cheese is removed from the brine bath, however, the production processes of nature and rindless cheese differ considerably.¹¹
16. The last stage of production of nature cheese entails coating of the rind, where it is dipped in paraffin to ripen it after it has left the brine bath.¹² Nature cheese can be

⁷ Case COMP/M.5046 – *Friesland Foods/Campina*.

⁸ Ibid., recital 482.

⁹ Ibid., recital 490.

¹⁰ Ibid., recital 492.

¹¹ Ibid., recital 493.

¹² Ibid., recital 495.

moved from the production location at the earliest 15 days after production.¹³ It is then normally matured by cheese producers or wholesalers in special maturing facilities where temperature and handling are carefully monitored and the cheese needs to be turned regularly and recoated.¹⁴

17. In contrast, at the last stage of production rindless cheese is packed in plastic bags (foil) immediately after it has left the brine bath and it is stored in a temperature regular controlled environment (4-6 degrees Celsius) for about 4 weeks. It is normally made available to the consumers at 28 days maturity.¹⁵
18. All Dutch-type nature cheese produced in the Netherlands is matured for at least four weeks before it is ready for consumption; often, it is matured for significantly longer periods. A significant proportion of Dutch-type cheese purchased by Dutch consumers is matured nature cheese of different ages.¹⁶
19. While all Dutch-type nature cheeses have their own traditional shapes (Gouda: round wheel shape, Maasdam: round bold shape and Edam: ball shape), they can also be produced as rectangular blocks (also referred to as "Euro shape cheese"). These blocks are easier to handle in the supply chain and are better suited for cutting/slicing and pre-packing equipment. Rindless cheese in the Netherlands is always produced in the form of rectangular blocks.¹⁷

2. Relevant product market

20. In previous decisions,¹⁸ the Commission considered segmenting the cheese market according to cheese categories: (i) spreadable cheese; (ii) fresh cheese; (iii) soft cheese; (iv) semi-hard cheese; and (v) hard cheese. The Commission also considered segmenting the cheese market according to certain narrower cheese types (e.g. mozzarella), the type of presentation (slice, fixed weight, variable weight), type of milk used (e.g. mozzarella using different milks) and protected geographical status (e.g. "*appellations d'origine contrôlée*").
21. As far as Dutch-type cheese is concerned, in *Friesland Foods/Campina* the Commission concluded that:
 - a) Dutch-type cheese forms part of a separate market from other hard/semi-hard cheeses;
 - b) The main varieties of Dutch-type cheese (namely Gouda, Maasdam and Edam) are likely to constitute separate markets, though ultimately the relevant product market definition was left open;

¹³ Ibid, recitals 486 and 522.

¹⁴ Ibid., recitals 486 and 495.

¹⁵ Ibid., recital 494.

¹⁶ Ibid., recital 496.

¹⁷ Ibid., recital 497.

¹⁸ Case COMP/M.4135 – *Lactalis/Galbani*, recitals 8-15; Case COMP/M.5046 – *Friesland Foods/Campina*, recital 559; and Case COMP/M.6242 – *Lactalis/Parmalat*, recitals 51-53.

- c) Nature and rindless cheeses are likely to constitute separate markets, though ultimately this point was also left open;
 - d) Branded and private label/unbranded cheeses belong to the same relevant product market;
 - e) There is a separate market for the supply to specialised cheese wholesalers;
 - f) There is a possible distinction between the supply to specialised cheese wholesalers of 15-day-old nature cheese and other nature cheese, although also this question was left open;
 - g) The supply to retail needs to be distinguished from the supply to out-of-home ("OOH") wholesalers and industrial customers. In addition, the supply to retail has to be segmented between modern types of retail (supermarkets) on the one hand and specialised cheese shops, open markets and other small retail outlets ("classic retail") on the other.
22. Each of these possible segmentations will be discussed below.
- a) Dutch-type cheese vs. other hard/semi-hard cheeses
23. In *Friesland Foods/Campina*, the Commission concluded that Dutch-type cheese forms part of a separate market from other hard/semi-hard cheeses.¹⁹ On the demand side, the Commission found that Dutch-type cheese is not in competition with other hard/semi-hard cheeses in the Netherlands in particular due to consumer preferences for Dutch-type cheeses and strong differences in taste and price. This was also evidenced by the fact that the consumption of other hard/semi-hard cheeses such as Emmenthal and Cheddar in the Netherlands is very low. On the supply side, the Commission found that a switch from the production of Dutch-type cheese to non-Dutch-type cheese would not have been sufficiently immediate and effective.
24. The Notifying Party does not explicitly object to the existence of a separate market for Dutch-type cheese.
25. As far as the Netherlands are concerned, the Commission considers in light of the market investigation that a separate market for Dutch-type cheese exists. In particular, a large majority of respondents stated that Dutch-type cheese would not be substitutable with non-Dutch type cheese from the Dutch consumers' point of view.²⁰ In addition, a clear majority of customers stated that Dutch consumers do not consider Dutch-type cheese produced outside the Netherlands as competing with Dutch-type cheese produced in the Netherlands.²¹ In addition, it appears that at present only one customer in the modern retail segment purchases significant volumes of Dutch-type

¹⁹ Case COMP/M.5046 – *Friesland Foods/Campina*, recitals 500-504.

²⁰ Replies to questions 13, 9 and 8 of the Commission's requests for information pursuant to Article 11 of Merger Regulation respectively addressed to Cheese Producers (Q1), Cheese Wholesalers (Q2), Cheese Customers Modern Retail (Q3a) and Classical Retail (Q3b), dated on 22 February 2013.

²¹ Replies to question 52 of the Commission's requests for information pursuant to Article 11 of Merger Regulation addressed to Cheese Customers Modern Retail (Q3a), dated 22 February 2013.

cheese from non-Dutch suppliers.²² Dutch customers' preference for Dutch-type cheese produced in the Netherlands could even become more significant given the increased popularity of protected designations of origins such as Gouda Holland (GH) or Noord-Hollandse Gouda (NHG) in the Netherlands.²³

26. As regards supply-side substitutability, almost the entire output of Dutch cheese producers consists of Dutch-type cheese.²⁴ As a result, any possible switch in the production of non-Dutch type cheese in the Netherlands to Dutch-type cheese would be unlikely to have any effect, even without concluding on the technical feasibility of such switch and on the economic incentives to switch production.
27. As regards other geographic areas, the market investigation has been inconclusive as to whether the preferences of German and Belgian customers would lead to the existence of a separate market for Dutch-type cheese.²⁵
28. In view of the above, the Commission concludes that there is a separate market for the supply of Dutch-type cheese in the Netherlands. As regards other Member States, the market definition can be left open, given that serious doubts would not arise even under the narrowest market definition.

b) Gouda vs. Maasdam vs. Edam

29. In *Friesland Foods/Campina*, the Commission found that consumers would not switch easily between Gouda, Maasdam and Edam due to differences in taste and consumption patterns. In addition, the Commission found that that supply-side substitution between Gouda, Maasdam and Edam in the Netherlands would be unlikely to be sufficiently immediate and effective. Nevertheless, the Commission left open the precise market definition as it did not have any material impact on the competitive assessment.²⁶
30. The Notifying Party argues that there is only one single market for Dutch-type cheese in the Netherlands and that no further segmentation between Gouda, Maasdam and Edam is warranted. On the one hand, the Notifying Party contends that the argument that consumers would not switch between Gouda, Maasdam and Edam in the *Friesland Foods/Campina* decision was not substantiated. On the other hand, the Notifying Party submits that significant supply side substitutability between these types of cheese exists, mainly because the same production lines can be used to produce all the varieties of Dutch-type cheese.
31. The market investigation has been inconclusive as regards the existence of possible markets for Gouda, Maasdam and Edam cheeses. On the one hand, most respondents to the Commission's requests for information confirmed that customers do not see

²² Replies to question 52 of the Commission's requests for information pursuant to Article 11 of Merger Regulation addressed to Cheese Customers Modern Retail (Q3a), dated 22 February 2013.

²³ Ibid.

²⁴ For example, FrieslandCampina produced some [...] tonnes of Dutch-type cheese in 2011 but only [...] tonnes of other cheese varieties.

²⁵ Replies to question 64 of the Commission's requests for information pursuant to Article 11 of Merger Regulation addressed to Customers Belgium and Germany (Q5), dated 22 February 2013.

²⁶ Case COMP/M.5046 – *Friesland Foods/Campina*, recitals 505-507.

Gouda, Maasdam and Edam as substitutes.²⁷ On the other hand, however, most of the respondents stated that change in the price of one of these cheese varieties would have an impact on the others though it was also acknowledged that this could be due to the commonality of costs as all varieties are produced from the same primary raw material (cow milk).²⁸ As regards supply-side substitutability, half of the producers stated that they use the same lines to produce the three varieties of Dutch-type cheese.

32. In any event, the question as to whether separate markets exist for Gouda, Maasdam and Edam can be left open as no serious doubts would arise even under the narrowest market definition.

c) Nature vs. Rindless

33. In *Friesland Foods/Campina*, the Commission found that a clear majority of specialised cheese wholesalers in the Netherlands considers rindless cheese to be of a lower quality than nature cheese, due to differences in taste, structure and colour. In addition, the Commission considered it unlikely that a possible supply-side substitution effect in the Netherlands would be sufficiently immediate and effective.²⁹
34. The Notifying Party submits that nature and rindless cheese form part of the same market for Dutch-type cheese. It considers that any alleged difference in the perceived quality of the two varieties is more one of perception that is not justified by market trends. In this respect, it notes that increasing volumes of cheese are sold to final consumers in the Netherlands as pre-packed cheese, whereby customers often do not even notice whether the cheese they are buying is nature or rindless. In addition, FrieslandCampina and many of its large competitors are able to switch production between nature and rindless without incurring any additional cost.
35. A clear majority of the replies to the Commission's requests for information confirmed that nature and rindless cheese have different characteristics in terms of taste, quality and price.³⁰ From a supply-side perspective, however, approximately one third of the Dutch-type cheese producers responding to the Commission's requests for information stated that they produce nature and rindless cheese on the same production lines. Another producer which currently uses different equipment stated that it would not be particularly expensive to switch from the production of nature to rindless and vice-versa.³¹

²⁷ Replies to questions 14, 11 and 10 of the Commission's requests for information pursuant to Article 11 of Merger Regulation respectively addressed to Cheese Producers (Q1), Cheese Wholesalers (Q2), Cheese Customers Modern Retail (Q3a) and Classical Retail (Q3b), dated 22 February 2013.

²⁸ Replies to questions 18, 12 and 9 of the Commission's requests for information pursuant to Article 11 of Merger Regulation respectively addressed to Cheese Producers (Q1), Cheese Wholesalers (Q2), Cheese Customers Modern Retail (Q3a) and Classical Retail (Q3b), dated 22 February 2013.

²⁹ Case COMP/M.5046 – *Friesland Foods/Campina*, recitals 508-523.

³⁰ Replies to questions 19, 15 and 14 of the Commission's requests for information pursuant to Article 11 of Merger Regulation respectively addressed to Cheese Producers (Q1), Cheese Wholesalers (Q2), Cheese Customers Modern Retail (Q3a) and Classical Retail (Q3b), dated 22 February 2013.

³¹ Replies to questions 20 and 21 of the Commission's requests for information pursuant to Article 11 of Merger Regulation addressed to Cheese Producers (Q1), dated 22 February 2013.

36. In any event, the question as to whether separate markets exist for nature and rindless Dutch-type cheese can be left open as no serious doubts would arise even under the narrowest market definition.

d) Branded vs. private label/unbranded

37. In *Friesland Foods/Campina*, the Commission found that only a small part of all sales of Dutch-type cheeses at retail level are producer-branded or wholesaler-branded while producers and specialised cheese wholesalers often focus both on the branded and on the private label/unbranded segment. Many of the same players offer both branded and private label/unbranded products. In addition, most companies active in modern types of retail in the Netherlands participating in the market investigation agreed that branded products and private label products compete on the shelves. Although differences at procurement level indicate different competition conditions for branded products and private label products as the latter are typically procured following a call for tenders, supermarket chains in the Netherlands also procure private label/unbranded cheese on the basis of bilateral negotiations. On these grounds, the Commission concluded that branded, private label and unbranded Dutch-type cheese belong to the same product market.³²
38. The Notifying Party submits that producer brands play a very limited role in the market for Dutch-type cheese as more than 80% of the cheese is sold under private label or unbranded. For this reason marketing, promotion and brand related costs only play a very limited role in the cheese business and are hence not relevant to the assessment of supply-side substitutability. As such, the Notifying Party submits that branded and private label/unbranded Dutch-type cheese form part of the same market.
39. The market investigation revealed that a number of suppliers are active only or predominantly in the branded or private label/unbranded segments. In addition, a majority of customers responded that customers do not see branded and private label/unbranded Dutch-type cheese as substitutable because of brand loyalty or differences in taste and quality.³³
40. In any event, the question as to whether separate markets exist for branded Dutch-type cheese and private label/unbranded Dutch-type cheese can be left open as no serious doubts would arise even under the narrowest market definition.

e) Specialised cheese wholesalers

41. In *Friesland Foods/Campina*, the Commission noted that specialised cheese wholesalers form an intermediate level between the production and downstream levels. Specialised cheese wholesalers do not sell cheese directly to the final consumer level. This clearly distinguishes them from the players active at the downstream level (retailers, OOH wholesalers, industrial users). In addition, specialised cheese wholesalers often buy 15-day-old nature cheese, a semi-finished product which is not yet ready for consumption but is further ripened by them for periods up to one year or longer. Accordingly, in view of this intermediary position of specialised cheese wholesalers between the production level and the downstream level, the Commission

³² Case COMP/M.5046 – *Friesland Foods/Campina*, recitals 524-529.

³³ Replies to question 21 of the Commission's requests for information pursuant to Article 11 of Merger Regulation addressed to Cheese Customers Modern Retail (Q3-a), dated 22 February 2013.

found it appropriate to define a separate market for the sale of Dutch-type cheese to specialised cheese wholesalers.³⁴

42. The Notifying Party submits that the sales and sourcing market to and by wholesalers should comprise all hard/semi-hard cheese varieties. This is because wholesalers typically offer a whole assortment of cheeses or alternatively may specialise in certain types of cheeses.
43. The Commission considers in light of the market investigation that unlike downstream customers, many specialised wholesalers purchase 15-day-old nature Dutch-type cheese from producers.³⁵ In addition, based on the market investigation, the Commission considers that specialised wholesalers in the Netherlands play an important role. These wholesalers purchase from producers and sell to final customers, often adding value to the final product by means of services such as packaging, ripening, cutting and slicing.
44. In view of the above, the Commission concludes that a separate market exists for sales of Dutch-type cheese to specialised cheese wholesalers.

f) 15-day-old nature Dutch-type cheese vs. other nature Dutch-type cheese

45. In *Friesland Foods/Campina*, the Commission noted that 15-day-old nature Dutch-type cheese is a semi-finished product whose maturing is a fundamental part of the commercial activity of specialised cheese wholesalers and does therefore not satisfy the same demand as matured cheese. Furthermore, Dutch producers would need sufficient ripening capacities to significantly increase their production of 15-day-old cheese.³⁶
46. According to the Notifying Party, the difference between 15-day-old nature Dutch-type cheese and other nature Dutch-type cheese consists merely of the fact that the latter has matured in (the producer's or subcontracted) ripening facilities for a longer period of time. Questions of supply-side substitutability are not applicable since 15-day-old nature Dutch-type cheese and other nature Dutch-type cheese are in essence one and the same product. If one were to consider supply-side substitutability, it would in this case amount to 100%. Accordingly, the Notifying Party maintains there is no separate market for sales of 15-day-old nature Dutch-type cheese.
47. A clear majority of the specialised wholesalers responding to the Commission's requests for information stated that they cannot switch their purchases between 15-day-old and older than 15 days nature cheese. This is mainly because specialised wholesalers appear to focus on purchasing and ripening 15-day-old nature cheese, while customers not operating ripening facilities cannot purchase this type of cheese.³⁷

³⁴ Case COMP/M.5046 – *Friesland Foods/Campina*, recitals 530-534.

³⁵ Replies to question 16 of the Commission's requests for information pursuant to Article 11 of Merger Regulation addressed to Cheese Wholesalers (Q2), dated 22 February 2013.

³⁶ Case COMP/M.5046 – *Friesland Foods/Campina*, recitals 535-539.

³⁷ Replies to question 16 of the Commission's requests for information pursuant to Article 11 of Merger Regulation addressed to Cheese Wholesalers (Q2), dated 22 February 2013.

48. In any event, the question as to whether separate markets exist for 15-day-old nature Dutch-type cheese and other nature Dutch-type cheese can be left open as no serious doubts would arise even under the narrowest market definition.

g) Modern retail vs. classic retail vs. OOH vs. industry

49. In *Friesland Foods/Campina*, the Commission found that the sale of Dutch-type cheese at the retail level on the one hand and the sale of Dutch-type cheese at the OOH and industry levels on the other hand fall within different product markets. This is because of differences in packaging, prices and business models.³⁸
50. In addition, in *Friesland Foods/Campina* the Commission found important differences in offerings, supply structures, know-how and logistics between modern retail on the one hand and other types of retail outlets (such as specialised cheese shops, open markets, ambulant stands) on the other hand. Accordingly, the Commission found it appropriate to define a separate market for the sale of Dutch-type cheese to modern types of retail.³⁹
51. The Notifying Party considers that all the segments above are served by specialised wholesalers whose core business is to accommodate demand from customers in all segments. On the other hand, the Notifying Party acknowledges that there are differences in the distribution of the cheese between the various segments mainly linked to the procurement strategies of downstream customers.
52. The Commission concludes in light of the market investigation that customers in retail, OOH and industry are different and that the suppliers are often active only in one or two segments.⁴⁰ In addition, entry does not appear to be straightforward, given that many customers pointed at large investments (up to EUR 10 million) and significant time (up to 8 years) required to move from one segment to the other, and particularly to enter the modern retail segment, where the barriers appear to be particularly high, inter alia for the presence of branded products and the need to supply very large volumes of cheese.⁴¹
53. In addition, as regards the modern retail private label segment, which constitutes the largest part of the sales in the channel, it appears that it is particularly important for customers to have access to a number of additional services, such as packaging, slicing, cutting, ripening, etc. Suppliers active in this segment therefore need to have captive capacity for these services or procure these services from third parties.⁴² Retailers have no visibility as regards the price of these associated services given that suppliers charge one single price for the final offer. As such, packaging and related services (e.g. slicing and cutting) used exclusively for captive purposes do not appear

³⁸ Case COMP/M.5046 – *Friesland Foods/Campina*, recitals 540-549.

³⁹ Case COMP/M.5046 – *Friesland Foods/Campina*, recitals 550-558.

⁴⁰ Replies to questions 20 and 23 of the Commission's requests for information pursuant to Article 11 of Merger Regulation respectively addressed to Cheese Producers (Q1) and Cheese Wholesalers (Q2), dated 22 February 2013.

⁴¹ Replies to questions 34 and 24 of the Commission's requests for information pursuant to Article 11 of Merger Regulation respectively addressed to Cheese Producers (Q1) and Cheese Wholesalers (Q2), dated 22 February 2013.

⁴² The Target, for instance, has an agreement with [...] for the ripening of Dutch-type cheese.

to constitute separate markets but rather be an important part of the activities of cheese suppliers to the modern retail channel.

54. In view of the above, the Commission concludes that a separate market exists for sales of Dutch-type cheese to modern retail. In addition, for the purposes of this decision the Commission will also look at possible markets for classic retail, OOH and industry, although the market definition in this respect can be left open, given that no serious doubts would arise even under the narrowest market definition.

3. Relevant geographic market

3.1. Introduction

55. In *Friesland Foods/Campina* the Commission's assessment focused on the supply of Dutch-type cheese to specialised cheese wholesalers and modern retailers in the Netherlands. In addition to these segments considered in *Friesland Foods/Campina*, the proposed transaction leads to horizontally affected markets regarding the supply to the OOH and industry segments in the Netherlands, as well as in the supply to customers based outside the Netherlands (in particular in Germany and Belgium).

3.2. Supply to specialised cheese wholesalers and modern retailers in the Netherlands

56. In *Friesland Foods/Campina* the Commission concluded that the markets for the sale of Dutch-type cheese (comprising both nature and rindless cheese) and the markets for the sale of nature Dutch-type cheese to specialised cheese wholesalers and modern types of retail were national in scope. The Commission based its conclusion on the importance of ingredients originating from the Netherlands, consumer preferences, consumption patterns, the absence of significant imports and the presence of specialised cheese wholesalers in the Netherlands.⁴³
57. On the other hand, the Commission concluded that the markets for the sale of rindless Dutch-type cheese to specialised cheese wholesalers and modern types of retail were wider than national and included at least the Netherlands and Germany. In this regard, the Commission found that quality, taste and consumer preferences played a less important role, modern types of retail sourced almost 50% of their rindless cheese from abroad and many wholesalers indicated that they could source rindless cheese from abroad, in particular from Germany.
58. Despite the conclusion that a separate market for rindless Dutch-type cheese would be wider than national in scope, the Commission also concluded in *Friesland Foods/Campina* that the markets for the sale of Dutch-type cheese (comprising both nature and rindless cheese) were national in scope given the predominance of nature cheese over rindless cheese,⁴⁴ the existence of differences in quality and taste between rindless cheese produced in the Netherlands and abroad (albeit lower than in the case of nature cheese), the insignificant level of imports when considering rindless and nature cheese together and the limited competitive pressure exerted by rindless cheese upon nature cheese.

⁴³ As explained, the Commission's assessment regarding the markets whose geographic scope was found to be national focused on the supply to customers based in the Netherlands.

⁴⁴ 93% of all sales of Dutch-type cheese to modern types of retail and 68% of sales of Dutch-type cheese to specialised cheese wholesalers were nature Dutch-type cheese.

59. Furthermore, the Commission reached the same conclusions regarding potential narrower definitions of these markets only comprising Gouda, Maasdam or 15-day-old cheese.
60. The Notifying Party submits that the geographic markets for the sale of all Dutch-type cheese to specialised cheese wholesalers are at least EEA-wide in scope, while the markets for the sale to retailers comprise at least the Netherlands, Germany and Belgium.
61. The Notifying Party argues that rindless cheese of for instance German origin is in direct competition with Dutch-type nature cheese produced in the Netherlands. In addition, the Notifying Party submits that there are no specific consumer preferences regarding the origin of Dutch-type cheese particularly as the origin of Dutch-type cheese is often unknown to the consumer. With respect to the specific taste and quality of Dutch-type cheese, the Notifying Party notes that such finding would be inconsistent with concluding that the geographic scope of nature Dutch-type cheese is national while the geographic scope of rindless Dutch-type cheese is wider than national given that the quality of the raw milk and the production processes used in both types of cheese are the same.
62. Furthermore, the Notifying Party argues that since imports of Dutch-type nature cheese (mainly by specialised cheese wholesalers and predominantly from Germany) have grown considerably since 2007,⁴⁵ the Commission's statement in *Friesland Foods/Campina* that imports would be "virtually non-existent" and that wholesalers would barely be able to source nature Dutch-type cheese from abroad is no longer sustainable. In addition, transport costs are not an obstacle. Therefore, the Notifying Party submits that wholesalers would switch away to producers abroad should Dutch producers increase their prices by 5-10%.
63. The Commission considers based on the results of the market investigation that the findings of the Commission in *Friesland Foods/Campina* with respect to the supply of Dutch-type cheese (and potential narrower product segments) to specialised cheese wholesalers and modern retailers remain valid. In particular, a strong majority of the respondents indicated that Dutch consumers have specific preferences regarding the Dutch origin of Dutch-type cheese, Dutch-type cheese produced in the Netherlands has a specific taste and higher quality, and consumption habits in the Netherlands are also different.⁴⁶ Furthermore, the replies to the market investigation from modern retail customers indicate that imports are still very low, with the exception of one retailer.⁴⁷ To the extent that some Dutch-type cheese is imported into the Netherlands, it seems that this is not directly sold to retailers but it is transformed first by Dutch wholesalers (through maturing, packaging etc.) into the final product. In addition, many respondents indicated that the creation of protected designations of origin ("PDOs") and protected geographical indications ("PGIs") and the investment on these

⁴⁵ The transaction between Friesland Foods and Campina was assessed by the Commission in 2008.

⁴⁶ Replies to questions 52, 53 and 54 of the Commission's requests for information pursuant to Article 11 of Merger Regulation addressed to Cheese Customers Modern Retail (Q3a) and Classical Retail (Q3b), dated 22 February 2013. Replies to question 35 of the Commission's requests for information pursuant to Article 11 of Merger Regulation addressed to Cheese Wholesalers (Q2), dated 22 February 2013.

⁴⁷ Replies to question 48 of the Commission's requests for information pursuant to Article 11 of Merger Regulation addressed to Cheese Customers Modern Retail (Q3a), dated 22 February 2013.

geographic designations made by suppliers have reinforced the importance of the Dutch origin of the cheese.⁴⁸

64. On the basis of the above, the Commission concludes that, as regards the supply of Dutch-type cheese to customers based in the Netherlands, the markets for the sale of Dutch-type cheese (comprising both nature and rindless cheese) and the markets for the sale of nature Dutch-type cheese to specialised cheese wholesalers and modern types of retail are national in scope. On the other hand, the markets for the sale of rindless Dutch-type cheese to specialised cheese wholesalers and modern types of retail are wider than national and include at least suppliers based in the Netherlands and Germany, and most likely Belgium, although the market definition in this respect can be left open, given that no serious doubts would arise even under the narrowest market definition. The same conclusions apply regarding potential narrower definitions of these markets only comprising Gouda, Maasdam, Edam or 15-day-old cheese.

3.3. Supply to the OOH and industry channels in the Netherlands

65. As regards the OOH and industry channels, which were not assessed in detail in *Friesland Foods/Campina* given that the merging parties stated that they were not active in those channels,⁴⁹ the Notifying Party submits that the geographic markets for the sale of all Dutch-type cheese to the industry channel are at least EEA-wide in scope, while the markets for the sale of all Dutch-type cheese to the OOH channel at least comprise the Netherlands, Germany and Belgium. In particular, the Notifying Party argues that transport costs are not an issue and that industrial customers often have only one or a few production sites to serve the entire European market and typically source their ingredients at a European level.
66. The market investigation has been inconclusive as regards the exact geographic scope of the markets for the supply of Dutch-type cheese (and potential narrower product segments) to the OOH and industry channels. In any event, the question as to whether the markets for the supply of Dutch-type cheese (and potential narrower product segments) to the OOH and industry channels are national in scope or wider can be left open as no serious doubts would arise even under the narrowest market definition.

3.4. Supply to customers based in Germany and Belgium

67. Regarding the supply to customers based in Germany and Belgium, which was not dealt with in *Friesland Foods/Campina*, the Notifying Party submits that there is not a distinct relevant market for the supply of Dutch-type cheese in any possible geographic market outside the Netherlands.
68. The market investigation indicated that the origin of the Dutch-type cheese (and potential narrower product segments), in particular whether it is produced in the Netherlands, is not important for German and Belgian consumers. Most of the Dutch-type cheese sold by the majority of the German and Belgian customers which responded to the market investigation is not sourced from the Netherlands, but from

⁴⁸ Replies to questions 52, 53 and 54 of the Commission's requests for information pursuant to Article 11 of Merger Regulation addressed Cheese Customers Modern Retail (Q3a) and Classical Retail (Q3b), dated 22 February 2013.

⁴⁹ Case COMP/M.5046 – *Friesland Foods/Campina*, recitals 547-548.

Germany (for Belgian and German customers) and from Belgium (for Belgian customers).⁵⁰ Furthermore, almost all German and Belgian customers have confirmed that Dutch-type cheese produced in the Netherlands and Dutch-type cheese produced outside the Netherlands compete on the shelves.⁵¹

69. In light of the above, the Commission concludes that the relevant geographic market for the supply of Dutch-type cheese (and potential narrower product segments) to Belgian and German customers includes volumes sold in these countries by at least German, Belgian and Dutch producers. In any event, the relevant geographic scope of the markets for the supply of Dutch-type cheese (and potential narrower segments) can be left open as no serious doubts would arise even under the narrowest market definition.

(ii) Semi-hard goat cheese

1. Relevant product market

1.1. Semi-hard goat cheese vs Dutch-type cheese

70. The Commission has not dealt explicitly with semi-hard goat cheese in previous decisions, though the Commission has considered splitting the relevant product markets for cheese according to the different types of milk used.⁵²
71. According to the Notifying Party, semi-hard goat cheese is made from raw goat milk and can be distinguished from soft goat cheese mainly due to differences in consumption patterns, texture, taste and maturing process. In addition, the Notifying Party submits that semi-hard goat cheese is part of the overall Dutch-type cheese product market since it is consumed for the same purposes and often positioned on supermarket shelves alongside other Dutch-type cheeses. The Notifying Party also argues that it would be very easy to switch from producing cow milk cheese to goat milk cheese and vice-versa as both varieties are produced on the same production lines and the production method is known and easily accessible.
72. The Commission considers that, in light of the market investigation in the present case, contrary to Parties' view semi-hard goat cheese does not form part of the wider Dutch-type cheese market.
73. From the demand-side, all respondents to the market investigation indicated that semi-hard goat cheese is perceived by consumers as a different product. First, goat milk is totally different from cow milk. Second, there are differences in taste, colour and consumer preference between goat cheese and Dutch-type cheese. Whilst Dutch-type cheeses are a product for every day and mainly for mass consumption, goat cheese is a product for special occasions and thus consumers view goat cheese as a specialty cheese. Third, the price of semi-hard goat cheese is typically higher than that

⁵⁰ Replies to question 34 of the Commission's requests for information pursuant to Article 11 of Merger Regulation addressed to Customers Belgium and Germany (Q5), dated 22 February 2013.

⁵¹ Replies to question 38 of the Commission's requests for information pursuant to Article 11 of Merger Regulation addressed to Customers Belgium and Germany (Q5), dated 22 February 2013.

⁵² Case COMP/M.4135 – *Lactalis/Galbani*, recitals 8-15; and Case COMP/M.6242 – *Lactalis/Parmalat*, recitals 51-53.

of Dutch-type cheese.⁵³ These factors indicate that from the demand-side perspective semi-hard goat cheese does not form part of the broader market of Dutch-type cheese.

74. According to the Commission notice on the definition of relevant market for the purposes of Community competition law, supply side substitutability may also be taken into account for the purpose of defining relevant markets in those situations in which its effects are equivalent to those of demand substitution in terms of effectiveness and immediacy.⁵⁴ That is, if “*suppliers are able to switch their production to the relevant products and market them in the short term without incurring significant additional costs or risks in response to small and permanent price changes*”, the resulting “*disciplinary impact on the competitive behaviour of the companies involved*” is regarded as equivalent to the restraining effects of demand substitutability. In these specific situations only supply side substitutability can constitute a basis for delineating the relevant product market.
75. From the supply-side, although it appears that the current producers of semi-hard goat cheese can produce semi-hard goat cheese and Dutch-type cheese using the same lines and production process, different storage tanks seems to be needed for the different origin of the milk.⁵⁵ The Commission considers in light of the market investigation that producers of Dutch-type cheese who are not currently active in semi-hard goat cheese would require a reliable flow of goat milk, a separate production line and milk tanks and new recipes to start to produce semi-hard goat cheese. Moreover, based on the market investigation the Commission found that these producers would not be interested in starting to produce semi-hard goat cheese due to the small scale of this market and the requirements needed.⁵⁶
76. In light of the above, the Commission concludes that semi-hard goat cheese is not part of the market for Dutch-type cheese but constitutes a distinct product market in its own right.

1.2. Possible further segmentation

77. In light of the market investigation the Commission found that like most of the markets for cheese, also the semi-hard goat cheese market can be segmented according to different types of distributions channels. This is in line with the submission of the Notifying Party, which assuming that the market for semi-hard goat

⁵³ Replies to question 35 of the Commission’s request for information pursuant to Article 11 of Merger Regulation addressed to Cheese Producers in the Netherlands (Q1), dated on 21 February 2013. Replies to question 26 of the Commission’s request for information pursuant to Article 11 of Merger Regulation addressed to Wholesalers in the Netherlands (Q2), dated on 21 February 2013. Replies to question 26 of the Commission’s request for information pursuant to Article 11 of Merger Regulation addressed to Cheese Customers Modern Retail, Classical Retail and Industrial (Q3a, Q3b and Q3c), dated on 22 February 2013. Replies to question 39 of the Commission’s request for information pursuant to Article 11 of Merger Regulation addressed to Cheese Producers in Germany and Belgium (Q4), dated on 22 February 2013.

⁵⁴ OJ C 372, 9.12.1997, p. 5 (“Relevant Market notice”).

⁵⁵ Non-confidential minutes of conference call with Henry Willig on 12 March 2013.

⁵⁶ Replies to question 41 of the Commission’s request for information pursuant to Article 11 of Merger Regulation addressed to Cheese Producers in the Netherlands (Q1), dated on 21 February 2013. Replies to question 39 of the Commission’s request for information pursuant to Article 11 of Merger Regulation addressed to Cheese Producers in Germany and Belgium (Q4), dated 22 February 2013.

cheese formed part of a wider market for Dutch-type cheese has implicitly confirmed that the same distinction by sales channels apply.

78. Therefore, for the purposes of this decision, different markets for the sale of semi-hard goat cheese to wholesalers,⁵⁷ modern retail, classic retail, OOH and industry will be considered.

2. Relevant geographic market

79. The Notifying Party argues that the geographic market for the sale of semi-hard goat cheese is the same as that for Dutch-type cheese, that is to say (i) at least EEA-wide for the sale to specialised cheese wholesalers and industry and (ii) comprising at least the Netherlands, Germany and Belgium for the sale to retailers and OOH.
80. The market investigation has not confirmed the geographic market definition proposed by the Notifying Party.
81. Based on the market investigation the Commission found that there are no or very limited imports into the Netherlands of semi-hard goat cheese. Most of the customers of semi-hard goat cheese indicated that they source all their semi-hard goat cheese from the Netherlands and many customers are not aware of suppliers of semi-hard goat cheese located elsewhere.⁵⁸ Moreover, most of the customers indicated that they would not switch to purchasing semi-hard goat cheese from non-Dutch producers if a definitive price increase of 5-10% was imposed by Dutch producers.⁵⁹
82. In addition, the vast majority of wholesalers in the market investigation indicated that Dutch customers show a clear preference for cheese produced from Dutch milk and produced in the Netherlands.⁶⁰
83. In light of the above, the Commission concludes that the market for semi-hard goat cheese is no wider than the Netherlands.

⁵⁷ As discussed in footnote 132 below, the Target is also active in the purchase of 1 or 2-days-old semi-hard goat cheese from Amalthea. However, the Target is the only wholesaler in the market purchasing this type of cheese, given that other wholesalers appear to source from FrieslandCampina and the Target semi-hard goat cheese which is ready for sales to downstream customers.

⁵⁸ Replies to question 55 of the Commission's request for information pursuant to Article 11 of Merger Regulation addressed to Cheese Customers Modern Retail and Classical Retail in the Netherlands (Q3a and Q3b), dated on 22 February 2013. Replies to question 34 of the Commission's request for information pursuant to Article 11 of Merger Regulation addressed to Customers Germany and Belgium (Q5) dated 22 February 2013.

⁵⁹ Replies to question 58 and 53 of the Commission's request for information pursuant to Article 11 of Merger Regulation addressed to Cheese Customers Modern Retail (Q3a) and Classical Retail (Q3b), dated on 22 February 2013. Replies to question 44 of the Commission's request for information pursuant to Article 11 of Merger Regulation addressed to Customers Germany and Belgium (Q5) dated 22 February 2013.

⁶⁰ Replies to question 54 of the Commission's request for information pursuant to Article 11 of Merger Regulation addressed to Wholesalers in the Netherlands (Q2), dated on 21 February 2013. Replies to question 86 of the Commission's request for information pursuant to Article 11 of Merger Regulation addressed to Cheese Customers Modern Retail and Classical Retail in the Netherlands (Q3a and Q3b), dated 22 February 2013.

(iii) *Cheese packaging*⁶¹

1. Relevant product market

84. While there are no Commission precedents specifically dealing with cheese packaging, in *Alcan / Pechiney (II)* the Commission concluded that the market for the production of flexible packaging could be segmented on the basis of the end-use application, and as such defined flexible packaging markets for products ranging from food to pharmaceuticals.⁶² The Commission ultimately left the market definition open. Moreover, in *Amcor / Alcan* the Commission considered "cheese and dairy" as one of the possible segments of the food packaging activities on the basis of a third party report submitted by the parties to that transaction.⁶³
85. The Notifying Party distinguishes different types of packaging such as fresh-packs, flow-packs and hard-packs. Fresh-pack (or "klappack") displays a great impression of freshness by making use of a special kind of "klappack" foil. Hard-packs (or "pre-packs") use thermoformed trays with rigid bottoms which are formed by moulding foil into a pre-defined dish or tray, using a heating and vacuum technique. A sealing unit extracts the oxygen and adds a protective gas before sealing the packaging. Flowpacks use flexible foil which is sealed in the same way as hardpacks.
86. The Notifying Party argues that packaging services for cheese could constitute a separate relevant product market. However, it submits that a further segmentation according to the different packaging methods should not be necessary since consumers usually do not perceive the differences and competitors would be able to apply all packaging methods.
87. The market investigation confirmed that cheese packaging is carried out by wholesalers and independent packers. The market investigation also pointed to a possible segmentation for each of the three main types of packaging (hard-pack, flow-pack and fresh-pack). The respondents' replies suggest that customers do not see the different types of packaging as substitutes. In addition, there does not appear to be any substitutability from the supply side as the various packaging types require different production lines. In particular, hard packaging is mainly used for branded and private label cheese sold on the self-service shelves of supermarkets. By contrast, fresh packaging is mainly used to give a fresh impression to the cheese sold in the over-the-counter segment. The latter appears to be a relatively sophisticated activity and requires dedicated equipment that is currently not wide-spread among producers.⁶⁴

⁶¹ This section only refers to the provision of packaging services to third parties, given that captive packaging and other related activities (e.g. slicing and cutting) does not constitute a separate market in its own right (see recital 53 above).

⁶² Case COMP/M.3225 - *Alcan / Pechiney (II)*, recitals 124-132.

⁶³ Case COMP/M.5599 – *Amcor / Alcan*, recital 18.

⁶⁴ Replies to questions 44, 45 and 48 of the Commission's request for information pursuant to Article 11 of Merger Regulation addressed to Cheese Producers in the Netherlands (Q1), dated 21 February 2013. Replies to questions 29 and 32 of the Commission's request for information pursuant to Article 11 of Merger Regulation addressed to Wholesalers in the Netherlands (Q2), dated 21 February 2013.

88. For the purposes of the competitive assessment of the notified operation, however, the precise market definition can be left open as no serious doubts would arise even under the narrowest definition.

2. Relevant geographic market

89. In previous cases, the Commission found that the market for flexible packaging was EEA-wide in scope.⁶⁵ Customers indeed sourced at EEA-level and imports played a limited role.
90. The Notifying Party submits that the market for cheese packaging should similarly be considered as being EEA-wide. Companies providing this type of service in different Member States are in direct competition with each other. In addition, cheese is not a perishable good and can be transported easily over great distances without incurring prohibitive transportation costs.
91. The majority of respondents to the market investigation stated that packaging customers normally procure these services only or mostly at national level. This is mainly because of the higher transport cost for the packaged cheese compared to unpackaged cheese, as well as because of possible differences in packaging between Member States, for instance in relation to fresh-pack, which appears to be wide-spread only in the Netherlands and Belgium.⁶⁶
92. For the purpose this decision, and given the peculiarities of packaging services relating to Dutch-type cheese, the packaging market will be assessed at the national level.

(iv) *Value-added yoghurt and quark*

1. Relevant product market

93. In *Friesland Foods/Campina*, the Commission left open the question whether value-added yoghurt and quark form a single relevant product market.⁶⁷ The Commission concluded that the retail and OOH distribution channels constituted separate products markets and left open the question whether the market should be further segmented into (i) health and non-health related segments; and (ii) private label and branded segments.⁶⁸
94. The Notifying Party submits that it is not necessary to reach a view on the precise scope of the product market definition since the type of yoghurt sold by the Target (Greek yoghurt) appears to be a product somewhere between conventional yoghurt and quark, in terms of texture and taste.
95. The results of the market investigation suggested separation between markets of value-added yoghurt and quark. The vast majority of the producers responding to the

⁶⁵ Case COMP/M.3225 - *Alcan / Pechiney (II)*, recital 133, Case COMP/M.5599 – *Amtcor / Alcan*, recital 46-48.

⁶⁶ Replies to question 50 of the Commission's request for information pursuant to Article 11 of Merger Regulation addressed to Cheese Producers in the Netherlands (Q1), dated 21 February 2013.

⁶⁷ Case COMP/M.5046 – *Friesland Foods/Campina*, recital 895.

⁶⁸ Case COMP/M.5046 – *Friesland Foods/Campina*, recitals 926 and 927.

Commission's requests for information pointed to the different tastes, prices and consuming moments between value-added yoghurt and quark from a consumer point of view.⁶⁹ In addition, most of the producers responding to the market investigation stated that they do not produce value-added-yoghurt and quark on the same production line.⁷⁰

96. The majority of the respondents agreed with the previous findings of the Commission distinguishing the market for value-added yoghurt and quark according to distribution channels, pointing to differences in customers, consuming moments, formats and packaging.⁷¹ Moreover, the vast majority of the respondents considered that branded products and private label products constitute different markets as the price for branded products is considerably higher than the price for private label products.⁷²
97. However, the question as to whether the market for value-added yoghurt and quark should be further segmented can be left open, as it does not significantly affect the competitive assessment of the proposed concentration.

2. Relevant geographic market

98. In *Friesland Foods/Campina*, the Commission concluded that the relevant geographic market is national for the upstream market of value-added yoghurt and quark to OOH wholesalers and wider than national for the upstream market of value-added yoghurt and quark to retailers.⁷³
99. Although the Notifying Party considers that the relevant geographic market might be wider than the findings in *Friesland Foods/Campina*, it provides market share estimates for the Netherlands only as the Target only sells Greek yoghurt to customers in the Netherlands.
100. As the transaction does not raise serious doubts as to its compatibility with the internal market under any alternative definition, the geographic scope of the market for value-added yoghurt and quark can be left open.

⁶⁹ Replies to questions 12 and 13 of the Commission's request for information pursuant to Article 11 of the Merger Regulation addressed to producers in other dairy products (butter, yoghurts, desserts) – questionnaire 6.

⁷⁰ Replies to question 16 of the Commission's request for information pursuant to Article 11 of the Merger Regulation addressed to producers in other dairy products (butter, yoghurts, desserts) – questionnaire 6.

⁷¹ Replies to question 14 of the Commission's request for information pursuant to Article 11 of the Merger Regulation addressed to producers in other dairy products (butter, yoghurts, desserts) – questionnaire 6.

⁷² Replies to question 15 of the Commission's request for information pursuant to Article 11 of the Merger Regulation addressed to producers in other dairy products (butter, yoghurts, desserts) – questionnaire 6.

⁷³ Case COMP/M.5046 – *Friesland Foods/Campina*, recital 941.

(v) *Portion pack dairy desserts*

1. Relevant product market

101. In *Friesland Foods/Campina*, the Commission concluded that portion pack dairy desserts (e.g. mousse, puddings and luxury desserts such as crème brûlée or tiramisu) constituted a relevant product market separate from the markets for fresh custard in gable top and porridge.⁷⁴ However, the Commission did not draw further conclusions as to the relevant product market for portion pack dairy desserts given the lack of a horizontal overlap between the activities of the merging parties in that case.
102. The Notifying Party in the present case, whilst not taking a clear position on the relevant product market, acknowledges that the type of desserts sold by the Target might be considered to be part of a wider market for portion pack dairy desserts where FrieslandCampina is also active.
103. The majority of the respondents to the Commission's request for information agreed with the previous Commission's definition of a separate market for (i) portion pack dairy desserts and (ii) fresh custard in gable tops and porridge as they believe consumers, prices, format and packaging are different.⁷⁵
104. The respondents to the Commission's request for information similarly agreed with the Commission's proposed segmentation between distribution channels in OOH and retail relevant for portion pack dairy desserts, as customers and consuming moments as well as packages are often different in each of these channels.⁷⁶ The majority of the respondents do not consider a further segmentation between "basic" products and "luxury" desserts to be relevant and none of the respondents proposed another further segmentation.⁷⁷ All of the respondents reported that private label products are cheaper than brander products.⁷⁸
105. However, the question as to whether the market for portion pack dairy desserts should be further segmented can be left open, as it will not significantly affect the competitive assessment of the proposed concentration.

⁷⁴ Case COMP/M.5046 – *Friesland Foods/Campina*, recital 1240.

⁷⁵ Replies to question 17 of the Commission's request for information pursuant to Article 11 of the Merger Regulation addressed to producers in other dairy products (butter, yoghurts, desserts) – questionnaire 6.

⁷⁶ Replies to question 21 of the Commission's request for information pursuant to Article 11 of the Merger Regulation addressed to producers in other dairy products (butter, yoghurts, desserts) – questionnaire 6.

⁷⁷ Replies to question 18 of the Commission's request for information pursuant to Article 11 of the Merger Regulation addressed to producers in other dairy products (butter, yoghurts, desserts) – questionnaire 6.

⁷⁸ Replies to question 20 of the Commission's request for information pursuant to Article 11 of the Merger Regulation addressed to producers in other dairy products (butter, yoghurts, desserts) – questionnaire 6.

2. Relevant geographic market

106. In *Friesland Foods/Campina*, the Commission concluded that the relevant geographic markets for custard in gable tops and porridge were national in scope⁷⁹ while it did not need to reach a conclusion on portion pack dairy desserts given the absence of any overlaps between the merging parties' activities in that case.
107. The market investigation in the present case has provided some indication that the market for portion pack dairy desserts is wider than national. All of the respondents to the market investigation indicated that Dutch consumers do not show a preference for portion desserts originating in the Netherlands.⁸⁰
108. However, as the transaction does not raise serious doubts as to its compatibility with the internal market even on the basis of a geographic market that is no broader in scope than the Netherlands, the exact geographic scope of the market for portion pack dairy desserts can be left open.

(vi) Packet butter with additives

1. Relevant product market

109. According to previous Commission decisions, the butter market can be split into bulk and packet butter segments.⁸¹ Within packet butter, the Commission concluded that the retail and OOH channels constitute separate product markets and left open the question whether the market should be further segmented into branded and private labels.⁸² However, the Commission has not previously considered specifically herb packet butter or more broadly packet butter with additives.
110. The Notifying Party argues that herb packet butter is a part of a broader segment for butter with additives (e.g. herbs, garlic and salt), which would in turn be part of the relevant product market for packet butter given the existence of supply- and demand-side substitutability. According to the Notifying Party, packet butter with additives only differs from plain packet butter in respect of the additives that are added to the butter. Producers of packet butter with additives procure bulk butter and use the same blending machine to mix all additives. As far as demand-side considerations are concerned, the Notifying Party indicated that these products are all in the same range since consumers can choose between plain butter, salted butter, butter with sea salt or butter with more special additives such as herbs or garlic.
111. The results of the market investigation did not confirm the Notifying Party's submission that packet butter with additives is perceived by consumers as forming part of the packet butter market because the use and the moments of consuming are

⁷⁹ Case COMP/M.5046 – *Friesland Foods/Campina*, recital 1281.

⁸⁰ Replies to question 31 of the Commission's request for information pursuant to Article 11 of the Merger Regulation addressed to producers in other dairy products (butter, yoghurts, desserts) – questionnaire 6.

⁸¹ Case COMP/M.5046 – *Friesland Foods/Campina*, recital 816.

⁸² Case COMP/M.5046 – *Friesland Foods/Campina*, recital 870.

completely different.⁸³ At the same time, however, respondents to the Commission's requests for information did not consider that a further distinction between the various types of butter with additives (for example herbs or garlic) was appropriate since the moment of consuming are the same and customers can substitute herb butter and garlic butter.⁸⁴ From the supply side, it appears that, with the exception of FrieslandCampina, other producers of herb/additive butter in the Netherlands do not produce plain butter.⁸⁵

112. On the basis of these elements, it appears that plain packet butter and packet butter with additives might constitute two separate markets. However, for the purpose of the present case, the exact definition of the relevant product market can be left open as this would not significantly affect the assessment of the proposed concentration.

2. Relevant geographic market

113. In *Friesland Foods/Campina* the Commission concluded that the relevant market for packet butter included at least Belgium, Germany and the Netherlands. The question whether the relevant geographic scope of the packet butter market is EEA-wide was left open.⁸⁶
114. In line with the Commission precedents, the Notifying Party considers that the same approach applies to a market for packet butter with additives, noting that both Dutch and foreign producers of packet butter with additives compete in tenders organised by Dutch modern retail chains.
115. The market investigation has indicated that in the market for packet butter with additives the country of origin is of minor importance. Moreover, the majority of the respondents to the Commission's request for information indicated that Dutch consumers do not show a clear preference for herb butter originating in the Netherlands⁸⁷ and the Dutch origin of the product is not displayed in any special way on the packaging.
116. However, as the transaction does not raise serious doubts as to its compatibility with the internal market under any alternative definition, the geographic scope of the market can be left open.

⁸³ Replies to question 38 of the Commission's request for information pursuant to Article 11 of the Merger Regulation addressed to Cheese Customers Modern Retail (Q3a), dated 22 February 2013.

⁸⁴ Replies to question 38 of the Commission's request for information pursuant to Article 11 of the Merger Regulation addressed to Cheese Customers Modern Retail (Q3a), dated 22 February 2013.

⁸⁵ Replies to question 9 and 10 of the Commission's request for information pursuant to Article 11 of the Merger Regulation addressed to producers in other dairy products (butter, yoghurts, desserts) – questionnaire 6.

⁸⁶ Case COMP/M.5046 – *Friesland Foods/Campina*, recital 874.

⁸⁷ Replies to question 25 of the Commission's request for information pursuant to Article 11 of the Merger Regulation addressed to producers in other dairy products (butter, yoghurts, desserts) – questionnaire 6.

B. Competitive assessment

(i) Dutch-type cheese

117. FrieslandCampina and the Target are both active in the supply of Dutch-type cheese. However, only FrieslandCampina is active in the production of Dutch-type cheese. As such, the overlaps between the Parties only arise at the level of sales to downstream customers.

Horizontally affected markets

1. Supply to modern retailers in the Netherlands

1.1. Introduction

118. The modern retail channel accounts for 53% of the overall Dutch-type cheese sales in the Netherlands.⁸⁸ It is therefore by far the single most important sales channel for Dutch-type cheese in the Netherlands.
119. According to the Notifying Party, the Parties' combined shares of sales in this market would amount to [40-50]%, with an increment of [10-20]% due to the Target.⁸⁹ The Parties' shares in the individual varieties of Dutch-type cheese would be [40-50]% for Gouda (with an increment of [10-20]% due to the Target), [80-90]% for Edam (with an increment of [0-5]% due to the Target) and [10-20]% for Maasdam (with an increment of [0-5]% due to FrieslandCampina).⁹⁰
120. The Notifying Party submits that the merged entity will continue to face competitive pressure from a large number of rivals such as A-ware Food Group ("A-ware") (market share: [10-20]%), De Graafstroom ([5-10]%), Vergeer ([5-10]%), Cheesepartners ([5-10]%), Westland ([0-5]%) and CONO ([0-5]%).
121. From the demand side, the Notifying Party submits that the modern retail market in Netherlands is characterised by the presence of five large customers which account for approximately 99% of total demand: Albert Heijn, Bijeen, Superunie,⁹¹ Aldi and Lidl. According to the Notifying Party, these customers exercise significant buyer power

⁸⁸ Source: Form CO.

⁸⁹ The Notifying Party estimates the total market size for Dutch-type cheese to modern retail at 143 142 tons in 2011 (source: AC Nielsen).

⁹⁰ Gouda cheese accounts for by far the largest part of sales of Dutch-type cheese in the modern retail segment (93%). In possible markets for nature Dutch-type cheese and nature Gouda, the market shares of the Parties would not be appreciably different from the market shares on the overall market for Dutch-type cheese. In addition, no specific concerns were raised in the market investigation with regard to narrow and relatively small segments of the market (Maasdam and Edam). These small segments will therefore not be specifically addressed in this decision, which will rather focus on the market for the supply of all Dutch-type cheese to modern retailers in the Netherlands. The market investigation has not pointed to any possible different outcome of the assessment in relation to narrower segments. As regards a possible market for rindless Dutch-type cheese, see fn. 118.

⁹¹ Superunie is a purchasing organisation representing 13 independent retailers in the Netherlands. These retailers are: Boni-Markten B.V., Boon Beheer B.V., Coop Holding B.V., Deen Supermarkten B.V., Detailresult Groep N.V., Hoogvliet Super B.V., Jan Linders B.V., B.V. Nettorama Distributie, Poiesz Supermarkt B.V., Sligro Food Group Nederland B.V., Spar Holding B.V., B.V. Sperwer Holding and A-C Holding B.V. (source: Superunie's website).

which would be sufficient to offset any potential anticompetitive effect resulting from the proposed transaction.

1.2. Concerns raised in the market investigation by certain players

122. During the course of the market investigation, a number of concerns have been raised by third parties regarding the position that would be acquired by the merged entity. In particular, two of these third parties have submitted formal complaints to the Commission. The main concerns identified by third parties as regards the impact of the proposed transaction on the Dutch-type cheese market are briefly outlined below.
123. First, some respondents to the market investigation submit that the largest alternative supplier listed by the Parties, A-ware, is not active at all in the supply of Dutch-type cheese to the modern retail channel. On the contrary, A-ware only provides logistics and accessory services (e.g. packaging and slicing) to the retailer Albert Heijn under an exclusivity agreement. As such, A-ware does not constitute an alternative to the merged entity for retailers.
124. Second, according to some respondents, Cheesepartners and Vergeer, which are both important players in the wholesale market, would not represent independent alternatives because of the corporate links between them, namely the packaging joint venture (Kraats Kaas) between Vergeer and the cheese producer DOC which owns Cheesepartners.
125. Third, certain respondents submitted that the Parties are particularly close competitors as regards the sale of private label/unbranded Dutch-type cheese to modern retail and the provision of associated services such as packaging.
126. Fourth, it has also been brought to the Commission's attention that access to cheese supply associated services such as cheese cutting, packaging and slicing is not readily available to all suppliers. As such, only a few suppliers are able to provide a comprehensive service to end customers.
127. In view of the elements above, certain market players submit that post-merger the sourcing alternatives for some large retailers may be significantly reduced. According to these market players, the merged entity would achieve a very important position in the market for the supply of Dutch-type cheese to the modern retail in the Netherlands, and this would lead to a significant impediment to effective competition in that market.

1.3. Commission's assessment

128. In order to assess the proposed transaction also in light of the concerns submitted by certain market players, the Commission has carried out a thorough assessment of the impact of the proposed transaction on the market for the supply of Dutch-type cheese to the modern retail in the Netherlands.
129. The Commission's assessment is based on information gathered in the context of its investigation by means of written requests for information, conference calls and meetings with the Parties as well as interested third parties.
130. On the basis of the result of this investigation, the Commission concludes that the proposed transaction does not raise serious doubts as to its compatibility with the

internal market as regards the market for the supply of Dutch-type cheese to the modern retail in the Netherlands.⁹²

1.3.a. The Parties' competitors

131. According to the Notifying Party, the merged entity will continue to face intense competition from a number of players. The most important of these players would be A-ware, De Graafstroom,⁹³ Vergeer and Cheesepartners (DOC).
132. In order to appreciate the competitive pressure that will continue to constrain the merged entity, the Commission has carefully assessed the position of each of the main competitors of the Parties.
133. First, A-ware is active in the market as the main supplier of cheese associated services to the retailer Albert Heijn for cheese purchased from third parties. Albert Heijn is the largest retailer in the Netherlands. A-ware does not supply any cheese or provide any associated service to any other retailer in the Netherlands. Retailers' replies to the market investigation confirm that they do not list A-ware amongst cheese suppliers. As such, it appears that A-ware does not constitute a suitable direct alternative for most of the retailers in the Netherlands.
134. It is however worth noting that A-ware is an important supplier of cheese and associated services such as packaging and ripening to other suppliers. For instance, A-ware provides ripening services to the Target, as well as packaging to the producer De Graafstroom.
135. The Commission therefore considers that A-ware should not be included in the calculation of the market shares in the market for sales of Dutch-type cheese to modern retailers. However, the substantial sales attributed by the Parties to A-ware are reflected in either the sales of other wholesalers (who are the ones who actually sell to retailers and outsource services from A-ware) or in the amount of imported cheese (which is subsequently transformed by A-ware).
136. In view of these factors, the exclusion of A-ware from the market represents in fact a conservative approach, likely to downplay the indirect competitive constraint constituted by the presence of a large player such as A-ware.
137. Second, the Commission concludes in light of the market investigation that the producer De Graafstroom is an active competitive force in the market for Dutch-type cheese and supplies its products to some retailers in the Netherlands.
138. Third, the Commission has not found any clear evidence that Vergeer and Cheesepartners would not be actively competing for customers. On the contrary,

⁹² The Commission has also considered the fact that Friesland Campina is currently supplying some of its horizontal competitors at wholesale level with Dutch-type cheese. Prima facie, this could be an indication that the strength of Friesland Campina in the supply of Dutch-type cheese to modern retail is underestimated by its market share. However, for the reasons explained below in the section regarding vertically related markets, there is no risk of foreclosure and hence the Dutch-type cheese supplied by FrieslandCampina to wholesalers could easily be supplied by a different supplier.

⁹³ De Graafstroom is an independent producer which entered the market as a result of the divestment of part of the merging parties' cheese business upon which conditional clearance was granted in *Friesland Foods / Campina*.

Vergeer and Cheesepartners have participated in tenders for the same customers, clearly competing against each other. In addition, each of the two companies stated that they see the other as a competitor.⁹⁴

139. In view of the above, it appears that at least De Graafstroom, Vergeer and Cheesepartners will continue to exercise competitive pressure on the merged entity. In addition, the Commission considers in light of the market investigation that a number of smaller players such as Uniekaas, Vandersterre and Westland will remain active on the market. The Commission also considers, based on the market investigation, that a number of other large players such as Westland, CONO and Bel Leerdammer will also remain active on the market.

1.3.b. Market reconstruction

140. On the basis of the findings above and the other information gathered in the course of the market investigation, the Commission has reconstructed the position of the competitors in the market for the supply of Dutch-type cheese to modern retailers in the Netherlands.
141. Table 1 below outlines the results of this market reconstruction exercise.⁹⁵

TABLE 1: SUPPLY OF DUTCH-TYPE CHEESE TO MODERN RETAILERS IN THE NETHERLANDS (2011)

Supplier	Dutch-type cheese (Tons)	Dutch-type cheese (%)
FrieslandCampina	[...]	[20-30]%
Target	[...]	[10-20]%
Combined	[...]	[40-50]%
Vergeer	[...]	[10-20%]
Imports ⁹⁶	[...]	[5-10%]
Cheesepartners	[...]	[5-10%]
De Graafstroom	[...]	[5-10%]
Westland	[...]	[0-5%]
Vandersterre	[...]	[0-5%]
Vepo	[...]	[0-5%]
Others	[...]	[10-20%]
Total	143.142	100%

⁹⁴ See Vergeer's reply to the Commission request for information of 20 March; Non- confidential minutes of conference call with Cheesepartners of 21 March 2013.

⁹⁵ With regard to narrower possible segmentations, see fn. 90.

⁹⁶ Even if imported Dutch-type cheese is not currently purchased by most of the Dutch retailers, imports still appear to represent an alternative for at least one of them (Albert Heijn). As such, the inclusion of imports in the market shares reconstruction would seem to be justified. In any event, even if imports were to be excluded, the Parties' market share would not be significantly different and amount to approximately [40-50]%.

142. The Commission agrees with the market size presented by the Notifying Party based on Nielsen data⁹⁷ and hence with the Parties' market shares computed based on their sales. On the basis of the market reconstruction above, it appears that the merged entity would continue to face competition from a number of big established players such as Vergeer, Cheesepartners and De Graafstroom as well as from numerous other smaller competitors.

1.3.c. Complementarity between the Parties' activities

143. The proposed transaction would remove the competitive constraint constituted by each Party on the other. In order to appreciate the magnitude of this competitive constraint, the Commission has assessed whether the Parties could be considered as closest competitors.
144. First, the core activities of the Parties appear to be different.
145. FrieslandCampina is mainly engaged in high volume production and deliveries of Dutch-type cheese. FrieslandCampina focuses on bulk products and cost leadership in production rather than on high quality services on the distribution level.
146. By contrast, the Target offers a comprehensive solution to its customers by combining a complete Dutch and foreign cheese portfolio to all downstream distribution channels, both fresh-pack cheese and pre-packaged cheese with all kinds of high quality services. The Target operates a sophisticated distribution network and provides category consultancy services to individual retailers amongst others with the help of a special tool called "Kaaskompas" (Cheese compass), with which it can develop a tailor-made portfolio proposal for individual retailers based on amongst others the demographic environment in the area the retailer is located.⁹⁸
147. Second, while both FrieslandCampina and the Target supply private label/unbranded Dutch-type cheese, only FrieslandCampina is active to any appreciable extent in the supply of branded Dutch-type cheese.⁹⁹
148. Third, as far as packaging is concerned, both FrieslandCampina and the Target are active in the supply of hard-packed Dutch-type cheese for the self-service shelves. However, only the Target is active in the supply of fresh-packed cheese to modern retailers. This type of cheese is mainly sold as over the counter (OTC) cheese in supermarkets to give customers the impression of fresher and more "natural" cheese.

⁹⁷ AC Nielsen provides the sales made by retailers in a given country and in a given period. The Notifying Party assumed that the sales made by the suppliers to retailers are equal to the sales made by retailers to final customers (which is the data provided by AC Nielsen). The Commission agrees with this approach as well as with the market size, after having verified the reliability of the figures with the original Nielsen dataset.

⁹⁸ Whilst FrieslandCampina is active to a certain extent in category management, its activities are limited to the self-service segment, where the Target is not active in the provision of category management services.

⁹⁹ In 2012, the Target sold only small volumes of branded Dutch-type cheese ([...] tons). Of this volume, [...] tons concerned branded cheese from FrieslandCampina. Only [...] tons concerned branded cheese from other suppliers, notably CONO (the *Beemster* brand), Bel Leerdammer (the *Leerdammer* brand) and Westland (brands as *Old Amsterdam* and *Maaslander*).

149. It follows from the above that within the modern retail channel the only appreciable area of overlap between the Parties is with regard to the supply of private label hard-packed cheese for self-service shelves.¹⁰⁰

1.3.d. Impact of the proposed transaction on the private label hard-packed cheese segment

150. According to data gathered by the Commission in its market investigation,¹⁰¹ the private label hard-packed cheese segment represents less than 50% of the overall market for sales of Dutch-type cheese to the modern retail (i.e. less than 70 000 tons). The Parties' sales in this segment amount to less than [...] tonnes ([...] tons Friesland Campina and [...] tons for the Target). These sales would represent a combined share of the segment of approximately [40-50]%.
151. A number of credible competitors (for instance, Vergeer, Cheesepartners and De Graafstroom) are all offering substantial volumes of private label hard-packed cheese and are competing against each other in the tenders organised by the retailers. Bidding data collected from retailers shows that all these competitors are normally invited to participate in tenders. The bidding data also shows that all the retailers have sourced from two or more other players independent from the Parties in the past three years.
152. Furthermore, the market investigation has revealed that the private label hard-packed cheese segment is a highly competitive market. The product supplied appears to be more commoditized and less sophisticated than other products in the cheese market (such as branded or fresh-packed cheeses). It seems that price is the only factor, or at least a very significant one, which determines the choice of suppliers in the tenders organised by retailers.
153. The findings above are confirmed by the Parties' margins in the sales of private label hard-packed cheese to modern retailers submitted at the request of the Commission. In most years and for the vast majority of the sales, both FrieslandCampina and the Target realised [...]. In this case, low pre-merger margins would seem to be compatible with the existence of strong competition in the segment pre-merger.
154. In markets (or segments) where competition pre-merger is particularly intense, only a significant change in the market structure and dynamics can normally lead to anticompetitive effects. In this case, the increment in the shares brought by the Target to FrieslandCampina does not appear to be particularly large ([5-10]%). Therefore, the proposed transaction would be unlikely to result in anticompetitive effects.
155. In addition, even within the private label hard-packed cheese segment, the Parties' activities appear to remain largely complementary. On the one hand, FrieslandCampina is a large producer of wedges, which are not supplied by the Target. On the other hand, the Target is an important supplier of grated cheese, which is not manufactured and supplied by FrieslandCampina.

¹⁰⁰ The Commission considers that captive packaging services are to be considered as part of the market for supplies of Dutch-type cheese to modern retail (see recital 53 above). As stated in recital 202 below, there are no overlaps between the Parties' activities in relation to the supply of packaging services to third parties in the Netherlands.

¹⁰¹ Source: AC Nielsen.

156. The only area of overlap between the Parties in the private label hard-packed cheese segment arises with regard to sliced cheese.
157. This sub-segment represents less than 20% of the overall market for Dutch-type cheese sold to retailers and the Parties' combined sales of sliced cheese would amount to approximately [30-40] of the sub-segment. The sub-segment for sales of sliced cheese is unlikely to constitute a separate market because of possible demand-side substitutability between slices on the one hand and other shapes such as wedges on the other,¹⁰² as well as prompt availability of slicing capacity which makes entry in the market easy for a company which is already active in the wholesale of other types of cheese.¹⁰³
158. The Parties are not the only suppliers of sliced cheese. Competitors in this sub-segment indeed include Vergeer, Cheesepartners and De Graafstroom. In addition, other players like A-ware or Kraats have sufficient slicing capacity to offer to other wholesalers, who could promptly enter the market in case of a price increase.
159. In view of the above, it appears that the Parties are not the closest competitors even in the narrow segment for sales of private label hard-packed cheese. A number of competitors would remain active in the segment and continue to constrain the behaviour of the merged entity.

1.3.e. Competitors' expansion

160. The Commission has also assessed whether possible expansion from the Parties' rivals would be constrained by a bottleneck at any point of the supply chain.
161. First, as regards expansion at production level, the volume of Dutch-type cheese produced in the Netherlands is significant in relation to the overall size of the national retail market. The total production of Dutch-type cheese in the Netherlands amounts to 756 500 tons, while the size of the overall market for sales of Dutch-type cheese to modern retailers amounts to only 143 142.¹⁰⁴
162. FrieslandCampina is one of the two main producers of Dutch-type cheese, the other one being DOC. The third main supplier of base cheese for private labels is De Graafstroom.¹⁰⁵ In addition, a number of existing suppliers such as CONO, DOC and Bel Leerdammer are currently planning to expand their production capacity.¹⁰⁶ The large wholesaler A-ware is also currently building in cooperation with Fonterra a cheese production factory that will enter in operation as of 2014 with a total production capacity of 60-80 000 tons.¹⁰⁷

¹⁰² No respondents to the Commission's requests for information have raised arguments in relation to a possible preference of Dutch consumers for sliced cheese over other types of cheese.

¹⁰³ See recital 163 below.

¹⁰⁴ On average 70% of production is exported and the rest is sold through other distribution channels.

¹⁰⁵ Internal documents of the Notifying Party mention margins at production level in the range between [...]%, suggesting that the industry can be seen as a very competitive one.

¹⁰⁶ Source: Annex 42 to the Form CO.

¹⁰⁷ Source: Form CO.

163. Second, there appears to be sufficient captive and non-captive packaging capacity available in the market. The Notifying Party estimates capacity utilisation at packaging level at less than 60%. Furthermore, packaging in the only segment where the Parties' activities' overlap (i.e. hard-pack) appears to be relatively common and does not require significant technology or know-how.
164. Based on the market investigation the Commission considers that, apart from the Parties, there are at least three important wholesalers who have significant packaging capacity (Vergeer: 30-45 000 tons, Kraats Kaas: 20 000 tonnes and A-ware: 105 000 tons).¹⁰⁸ These three wholesalers alone represent a packaging capacity which is approximately equivalent to the total size of the market of Dutch-type cheese in the Netherlands.
165. Lastly, there appears to be sufficient slicing capacity in the market to allow the remaining competitors to expand also in this narrow segment. According to the Notifying Party's estimates, the total slicing capacity in the Netherlands would amount to 213 500 tons per year and the slicing capacity utilisation to 59%. Competitors which are currently operating large slicing facilities include A-ware (85 000 tons/year), Vergeer (10 000 tons/year) and Uniekaas (4 000 tons/year).¹⁰⁹
166. In view of the above, the Commission concludes that the merged entity's rivals will not face any significant obstacle to expansion, should they wish to expand output as a reaction to a price increase from the merged entity.

1.3.f. Buyer power

167. In the course of the market investigation, the Notifying Party has not been able to substantiate sufficiently its argument that large retailers exercise buyer power such as to prevent any possible price increase.
168. Nevertheless, in light of the market investigation the Commission considers that large retailers are able to put in place strategies which would appear to be adequate to contribute to offsetting a possible price increase, taken in conjunction with the elements mentioned above.
169. First, Albert Heijn, the largest retailer in the Netherlands, has successfully implemented a procurement strategy that allows the company to source directly from producers, thereby bypassing wholesalers. As discussed above, this strategy is based on a co-operation with A-ware, which provides cheese associated services to Albert Heijn. Also as a result of this strategy, the volumes that Albert Heijn purchases from FrieslandCampina in the past years have been progressively reduced to a significant extent.
170. Second, in light of the market investigation the Commission considers that retailers would try to sponsor entry as a reaction to a price increase and that similar strategies already took place after the 2008 merger between Friesland Foods and Campina.¹¹⁰

¹⁰⁸ Source: Form CO. These figures are consistent with the results of the market investigation and if anything are conservative.

¹⁰⁹ See Notifying Party's reply to Article 11 request for information of 22 March 2013.

¹¹⁰ Non-confidential minutes of conference call with Jumbo (which is part of Bijen) on 6 March 2013.

Given the lack of bottlenecks at the levels of production, packaging and slicing level, it appears that such attempt could be successful even for a player which would source from third parties all of these services, with a view to providing the final product to the retailer.

171. In absence of more convincing evidence of buyer power from the Notifying Party, the elements above do not appear in themselves to be sufficient to fully remove the risk of a price increase caused by the proposed transaction. However, if taken jointly with the other factors discussed above, they further decrease the likelihood for anticompetitive effects to arise.

1.3.g. Conclusion

172. In view of the above, the Commission concludes that the proposed transaction does not raise serious doubts as to its compatibility with the internal market with regard to the sale of Dutch-type cheese to the modern retail in the Netherlands.

2. Supply to classic retailers in the Netherlands

173. The table below provides the Notifying Party's market share estimates for the supply of Dutch-type cheese and Gouda nature cheese to classic retailers in the Netherlands.

TABLE 2: SUPPLY OF DUTCH-TYPE CHEESE TO CLASSIC RETAILERS IN THE NETHERLANDS (2011)

Supplier	Dutch-type cheese (%)
FrieslandCampina	[5-10]%
Target	[5-10]%
COMBINED	[10-20]%
Vandersterre	[20-30]%
Cheesepartners	[5-10]%
Westland	[5-10]%
A-ware	[5-10]%
CONO	[5-10]%
Vergeer	[0-5]%
Uniekaas	[0-5]%
Others	[20-30]%
Total market size	28 257 tons

174. According to the Notifying Party's estimates, post-transaction the merged entity would have relatively low market shares in the supply of Dutch-type cheese ([10-20]%) to classic retailers in the Netherlands.¹¹¹

¹¹¹ Furthermore, the Parties would achieve a combined market share of [10-20]% (FrieslandCampina: [5-10]%, Target: [5-10]%) in the supply of Gouda nature cheese to classic retailers in the Netherlands, as well as a combined market share of [20-30]% (FrieslandCampina: [5-10]%, Target: [10-20]%) in the supply of Maasdam nature cheese to classic retailers in the Netherlands. Competitors' market shares in Gouda nature would be very similar to Dutch-type cheese, while the Notifying Party was not able to

175. The Notifying Party submits that Vandersterre is the Target's closest competitor in the supply to classic retailers and Vandersterre remains even post-transaction the largest supplier of cheese to the classic retail. It also argues that typically in this segment the market is very fragmented with numerous smaller suppliers.
176. The market investigation indicated that there will remain a sufficient number of alternative suppliers to the merged entity for Dutch-type cheese, Gouda nature cheese and Maasdam nature cheese.¹¹² In addition to the suppliers listed by the Notifying Party, the responses from suppliers indicated that for example Bel Leerdammer and CONO are active in the supply of Dutch-type cheese.¹¹³ Moreover, none of the respondents to the Commission's requests for information raised any substantiated concerns with respect to the Parties' overlap in the supply to classic retailers.¹¹⁴
177. In light of the above, the Commission concludes that the proposed transaction does not raise serious doubts as to its compatibility with the internal market with regard to the supply of Dutch-type cheese, Gouda nature cheese and Maasdam nature cheese to classic retailers in the Netherlands.

3. Supply to the industry segment in the Netherlands

178. The table below provides the Notifying Party's market share estimates for the supply of Dutch-type cheese to the industry segment in the Netherlands.

TABLE 3: SUPPLY OF DUTCH-TYPE CHEESE TO THE INDUSTRY SEGMENT IN THE NETHERLANDS (2011)

Supplier	Dutch-type cheese (%)
FrieslandCampina	[10-20]%
Target	[0-5]%
COMBINED	[10-20]%
A-ware	[20-30]%
Poll Food/Vepo	[10-20]%
Cheesepartners	[5-10]%
Imports	[0-5]%
Others	[20-30]%
Total market size	70 150 tons

provide reliable estimates for competitors' market shares in Maasdam nature. The total market sizes for Gouda nature and Maasdam nature were estimated to be 26 033 tons and 588 tons respectively.

¹¹² Replies to questions 73 and 81 of the Commission's request for information pursuant to Article 11 of Merger Regulation addressed to Cheese Customers Classical Retail (Q3b), dated 22 February 2013. Replies to question 6 of the Commission's request for information pursuant to Article 11 of Merger Regulation addressed to Cheese Wholesalers (Q2), dated 22 February 2013. Replies to question 10 of the Commission's request for information pursuant to Article 11 of Merger Regulation addressed to Cheese Producers (Q1), dated 22 February 2013.

¹¹³ Furthermore, the responses from suppliers indicated that De Goey Kaas, Visser Kaashandel and Vonk are active in the supply of Gouda nature and Maasdam nature cheeses, while a customer also indicated De Jong as an alternative supplier for Gouda nature cheese.

¹¹⁴ Replies to the Commission's request for information pursuant to Article 11 of Merger Regulation addressed to Cheese Customers Classical Retail (Q3b), dated 22 February 2013.

179. According to the Notifying Party's estimates, post-transaction the merged entity would have a relatively low market share ([10-20]%) in the supply of Dutch-type cheese to the industry in the Netherlands.¹¹⁵
180. The Notifying Party submits that the increment ([0-5]%) is very limited and therefore the proposed transaction would not lead to a significant impediment to effective competition.
181. The market investigation confirmed that there will remain a sufficient number of alternative Dutch-type cheese suppliers to the merged entity for the industry segment.¹¹⁶ The replies to the market investigation indicated that CONO, Rouveen, Uniekaas, Vandersterre and Vergeer are also present in the market. Furthermore, none of the respondents to the market investigation raised any substantiated concerns with respect to the Parties' overlap in this segment.¹¹⁷
182. In light of the above, the Commission concludes that the proposed transaction does not raise serious doubts as to its compatibility with the internal market with regard to the supply of Dutch-type cheese to the industry segment in the Netherlands.

¹¹⁵ The market for the supply of nature Dutch-type cheese to the industry segment in the Netherlands is not affected. The proposed transaction would also not lead to affected markets for the supply of rindless cheese to the industry (i) in a market including the Netherlands, Germany and Belgium, and (ii) in a market including the Netherlands and Germany.

¹¹⁶ Replies to questions 73 and 81 of the Commission's requests for information pursuant to Article 11 of Merger Regulation addressed to Cheese Customers Industry (Q3c), dated 22 February 2013. Replies to question 6 of the Commission's request for information pursuant to Article 11 of Merger Regulation addressed to Cheese Wholesalers (Q2), dated 22 February 2013. Replies to question 10 of the Commission's request for information pursuant to Article 11 of Merger Regulation addressed to Cheese Producers (Q1), dated 22 February 2013.

¹¹⁷ Replies to the Commission's requests for information pursuant to Article 11 of Merger Regulation addressed to Cheese Customers Industry (Q3c), dated 22 February 2013.

4. Supply of Dutch-type cheese to modern retailers in Germany¹¹⁸

183. The table below provides the Notifying Party's market share estimates for the supply of Dutch-type cheese to modern retailers in Germany.¹¹⁹

TABLE 4: SUPPLY OF DUTCH-TYPE CHEESE TO MODERN RETAILERS IN GERMANY (2011)¹²⁰

Supplier	Dutch-type cheese (%)
FrieslandCampina	[20-30]%
Target	[0-5]%
Combined	[20-30]%
Total market size	286 479 tons

184. According to the Notifying Party's estimates, post transaction the merged entity would have a market share of [20-30]% (FrieslandCampina: [20-30]%, Target: [0-5]%) in the supply of Dutch-type cheese to modern retailers in Germany.¹²¹
185. The Notifying Party submits that Dutch-type cheese (and potential narrower segments) is not a distinct relevant product market in any possible geographic market outside the Netherlands. Furthermore, it argues that there are sufficient alternative suppliers, such as DMK, Müller, DOC/Cheesepartners, Vergeer and Baackes&Heimes.

¹¹⁸ In Belgium, the Parties' combined market shares for the supply to modern retail would be [20-30]% for Dutch-type cheese (FrieslandCampina: [20-30]%, Target: [0-5]%), [20-30]% for Gouda (FrieslandCampina: [20-30]%, Target: [0-5]%) and [20-30]% for Gouda nature (FrieslandCampina: [20-30]%, Target: [0-5]%). However, the Parties' main overlap in Belgium concerns rindless cheese (the Target's sales of Dutch-type cheese consisted of [...] of Gouda rindless cheese and [...] of Gouda nature cheese), which is a market wider than national. Therefore, the overall and nature markets will not be further addressed. On the other hand, regarding rindless cheese, the proposed transaction would not lead to affected markets for the supply of rindless cheese (i) in a market including the Netherlands, Germany and Belgium, and (ii) in a market including the Netherlands and Germany.

¹¹⁹ The Notifying Party was not able to provide reliable estimates for the competitors' market shares. The total market size was estimate to be 588 tons.

¹²⁰ The market size estimates are derived from AC Nielsen. The Notifying Party submits that for Germany it is known that not all Dutch-type cheese varieties are registered as such in the AC Nielsen database and therefore market size figures would be higher, decreasing the combined market share by [5-10]%. For instance, some Gouda cheese sold by FrieslandCampina in Germany is registered as *Schnittkäse*.

¹²¹ If the narrower segments would be considered the combined market shares would be [50-60]% (FrieslandCampina: [50-60]%, Target: [0-5]%) in the supply of Dutch type nature cheese, [30-40]% (FrieslandCampina: [30-40]%, Target: [0-5]%) in the supply of Gouda cheese, and [60-70]% (FrieslandCampina: [50-60]%, Target: [0-5]%) in the supply of Gouda nature cheese. As regards a possible split between private label and branded, the Notifying Party has not been able to submit reliable market share estimates. However, given the Target's negligible market share for the overall market in Germany, it is unlikely that the assessment of the impact of the transaction would significantly change. Regarding rindless cheese, the proposed transaction would not lead to affected markets for the supply of rindless cheese (i) in a market including the Netherlands, Germany and Belgium, and (ii) in a market including the Netherlands and Germany. However, in *FrieslandFoods/Campina* the Commission did not consider that a separate market for Dutch-type cheese outside the Netherlands existed. In any event, the conclusions reached for the supply of Dutch-type cheese are also applicable to these segments as customers did not raise any substantiated concerns.

186. The Commission considers in light of the market investigation that alternative suppliers exist and that customers are generally not concerned.¹²² While a minority of the customers raised concerns regarding the reduction of available suppliers, these customers did not substantiate these concerns and indicated that there are still a number of current or potential available suppliers, such as Ammerland, DOC, Heinrichstaller or Sachsenmilch. Furthermore, other customers also indicated other current or potential suppliers, such as A-ware, Belgomilk, DMK, Kraats Kaas, PG Kaas, Rücker or Vergeer.
187. The Commission concludes, in light of the above and the other evidence available, that the proposed transaction does not raise serious doubts as to its compatibility with the internal market with regard to the supply of Dutch-type cheese (and potential narrower product segments) in Germany.

Vertically affected markets

1. Production and wholesale of cheese

188. The proposed transaction would lead to vertically affected markets as regards the production and wholesaling of Dutch-type cheese, including a market segment concerning 15-day-old nature cheese. The table below provides the Notifying Party's estimates for (i) FrieslandCampina's and its competitors' market shares in the supply of Dutch-type cheese to specialised cheese wholesalers in the Netherlands; and (ii) the Target's and its competitors' market shares in the sourcing of Dutch-type cheese by specialised cheese wholesalers in the Netherlands.¹²³

TABLE 5: SUPPLY OF DUTCH-TYPE CHEESE TO SPECIALISED CHEESE WHOLESALERS IN THE NETHERLANDS (2011)

Supplier	Dutch-type cheese (%)
FrieslandCampina	[30-40]%
DOC	[20-30]%
Graafstroom	[5-10]%
CONO	[0-5]%
Bel Leerdammer	[0-5]%
Rouveen	[0-5]%
Other producers	[5-10]%
Import	[10-20]%
Total market size	340 350 tons

¹²² Replies to the Commission's requests for information pursuant to Article 11 of Merger Regulation addressed to Customers Belgium and Germany (Q5), dated 22 February 2013. Replies to Questions 7 and 59 of the Commission's requests for information pursuant to Article 11 of Merger Regulation addressed to Producers Belgium and Germany (Q4), dated 22 February 2013.

¹²³ Regarding 15-day-old nature cheese, the Target does not source Edam or Maasdam. With respect to 15-day-old nature Gouda cheese, the Notifying Party was not able to provide reliable estimates for the competitors' market shares. It estimated FrieslandCampina's share in the supply to specialised cheese wholesalers in the Netherlands to be [40-50]% and the Target's share in the sourcing by specialised cheese wholesalers in the Netherlands to be [20-30]%, in a market amounting to 110 204 tons.

TABLE 6: SOURCING OF DUTCH-TYPE CHEESE BY SPECIALISED CHEESE WHOLESALEERS IN THE NETHERLANDS (2011)

Wholesaler	Dutch-type cheese (%)
Target	[10-20]%
A-ware	[20-30]%
Cheesepartners	[10-20]%
Uniekaas	[10-20]%
Poll Food / Vepo	[5-10]%
Westland	[5-10]%
Vergeer	[0-5]%
VanderSterre	[0-5]%
Other wholesalers	[10-20]%
Total market size	340 350 tons

189. In the overall market for the supply of Dutch-type cheese to specialised cheese wholesalers in the Netherlands, FrieslandCampina has a market share of [30-40]%, while the Target's market share in the overall market for the sourcing of Dutch-type cheese is [10-20]%.
190. The Notifying Party submits that FrieslandCampina's estimated market share strongly decreased since 2009 (from [40-50]% to [30-40]%). Furthermore, the Notifying Party argued that the market share estimate for DOC, FrieslandCampina's main competitor, was considered to be conservative, as the Notifying Party estimated DOC's total production capacity at 115 000 - 120 000 tons.
191. Based on the market investigation the Commission found that the estimate of DOC's share of the supply to specialised cheese wholesalers was conservative, as their supply volume to specialised cheese wholesalers in 2011 was 118 500 tons, which increases their market share to [30-40]%, decreasing FrieslandCampina's market share to a similar figure ([30-40]%).
192. Furthermore, as regards a potential input foreclosure scenario, while a number of specialised cheese wholesalers that responded to the Commission's requests for information have raised concerns relating to an alleged lack of alternative suppliers to FrieslandCampina, some of these concerns are not substantiated and others are not merger specific.¹²⁴ In addition, the Commission considers in light of the market investigation that there are alternative suppliers to FrieslandCampina and that wholesalers can easily switch suppliers.
193. In addition, it appears unlikely that FrieslandCampina would be able to channel its current volume supplied to specialised cheese wholesalers only or to a large extent through the Target, as this would mean an increase of [...] kt to [...] kt. Likewise, it appears unlikely that FrieslandCampina would have the incentive to forego the profits

¹²⁴ For example, one wholesaler said that FrieslandCampina is the only producer active in NH Gouda, but the transaction does not change the competitive landscape for NH Gouda given that currently in the Netherlands FrieslandCampina supplies NH Gouda only to Albert Heijn and the Target.

that it makes in the supply of the [...] kt supplied to other specialised cheese wholesalers as it would be difficult to compensate for the sales losses with sales downstream.

194. Moreover, the increment in the market shares at wholesale level brought about by the proposed transaction is relatively low. It follows that the change in incentives for FrieslandCampina to engage in an input foreclosure strategy after the proposed transaction would not change to any significant extent.
195. Regarding a potential customer foreclosure, such a scenario would be highly unlikely since the Target already sources [60-70]% of its volume from FrieslandCampina and the remaining volume ([...] tons) corresponds to only [5-10]% of the total volume supplied to specialised cheese wholesalers. The Target's current suppliers would therefore have the ability to find alternative customers in the event that the merged entity would internalise this volume.
196. The same assessment concerning potential input and customer foreclosure scenarios applies to the supply of 15-day-old nature Gouda cheese, which is the only 15-day-old Dutch-type cheese sourced by the Target.
197. Regarding input foreclosure, such scenario would be highly unlikely for various reasons. First, none of the specialised cheese wholesalers raised concerns specific to 15-day-old cheese. Second, it appears unlikely that FrieslandCampina would be able to channel its current volume of 15-day-old nature Gouda cheese supplied to specialised cheese wholesalers only or to a large extent through the Target, as this would mean an increase of [...] kt to [...] kt. Third, even if FrieslandCampina would channel its entire current volume of 15-day-old nature Gouda cheese through the Target, other specialised cheese wholesalers would still have access alternative suppliers. These alternative suppliers represent around [60-70]% of the total volume of 15-day-old nature Gouda cheese and, as mentioned in recital 162, there are expansion plans. Fourth, it appears unlikely that FrieslandCampina would have the incentive to forego the profits that it makes in the supply of the [...] kt supplied to other specialised cheese wholesalers as it would be difficult to compensate for the sales losses with sales downstream.
198. As regards a potential customer foreclosure of 15-day-old nature Gouda cheese of the other cheese producers, such a scenario would also be highly unlikely since the Target already sources around [70-80]% of its volume from FrieslandCampina and the remaining volume ([...] tons) corresponds to only [5-10]% of the total volume supplied to specialised cheese wholesalers. The Target's current suppliers would therefore have the ability to find alternative customers in the event that the merged entity would internalise this volume.

199. The table below shows the volumes of Dutch-type cheese and 15-day-old nature Gouda cheese sourced by the Target from each of its suppliers.

TABLE 7: SOURCING OF DUTCH-TYPE CHEESE AND 15-DAY-OLD NATURE GOUDA CHEESE BY THE TARGET (2011)

Supplier	Dutch-type cheese (tons)	Percentage of total sourcing represented by supplier	15-day-old Gouda nature cheese (tons)	Percentage of total sourcing represented by supplier
FrieslandCampina	[...]	[60-70]%	[...]	[70-80]%
DOC	[...]	[20-30]%	[...]	[20-30]%
De Graafstroom	[...]	[0-5]%	[...]	[5-10]%
A-ware	[...]	[0-5]%	[...]	[0-5]%
Rouveen	[...]	[0-5]%	[...]	[0-5]%
Others	[...]	[0-5]%	[...]	[0-5]%
Total	46 546	100%	32 523	100%

200. One producer raised concerns relating to the Target's activities as a wholesaler for the classic retail segment and a potential foreclosure to the producer's access downstream. However, as already discussed, these concerns do not appear to be substantiated as there are other wholesalers which are active in the supply to this segment.
201. In light of the above, the Commission concludes that the proposed transaction does not raise serious doubts as to its compatibility with the internal market with regard to the vertical relationship between FrieslandCampina as a supplier of Dutch-type cheese (and other potential narrower product segments such as 15-day-old nature Gouda cheese) to specialised cheese wholesalers in the Netherlands and the Target as a specialised cheese wholesaler in the Netherlands.

2. Supply of Dutch-type cheese to specialised cheese wholesalers and downstream markets in the Netherlands and provision of packaging services for third parties

202. There is no overlap between the Parties' activities with regard to the supply of packaging of Dutch-type cheese to third parties in the Netherlands, given that FrieslandCampina is not active at all in this market.¹²⁵
203. However, the Target provides non-captive packaging services (i.e. without supplying the cheese together with the packaging) to [...].
204. In particular, the Target (through Den Hollander) has packaging lines dedicated exclusively to packaging and cutting services for [...], including slicing for hardpacks, flowpacks (for the OOH segment) and freshpacks. [...].

¹²⁵ In addition to FrieslandCampina's packaging facilities, which do not provide services to third parties, in 2012 FrieslandCampina acquired IDB Belgium N.V., a Belgian company active in cheese packaging. Less than [...] % of its turnover (in 2010) resulted from packaging services provided to third parties as most of its capacity is used for captive purposes (for cheese purchased by IDB Belgium itself and subsequently sliced and packaged and sold on its own account to downstream markets). Furthermore, in 2011 and 2012 IDB supplied third-party packaging services in the Netherlands only to FrieslandCampina and Den Hollander.

205. Furthermore, post-transaction the merged entity would compete with [...] in the supply of Dutch-type cheese in the Netherlands, in particular in the supply to specialised cheese wholesalers (Gouda and Maasdam) and modern retailers (Maasdam). In addition, as already mentioned, the merged entity would have market shares above 25% in these markets.
206. In light of the fact that [...] and the merged entity would be competitors, [...] has indicated that innovations to be developed with Den Hollander would be stopped and, in case new investments would be required, [...] and Den Hollander would need to enter into new mutual commitments.
207. It appears unlikely however that the merged entity will have the ability to foreclose access to the downstream market by interrupting packaging services to [...]. First, the packaging services concerned only represent a limited proportion of [...] total requirements. Second, [...] has indicated that there are alternative providers of these packaging services to which it could switch if necessary within a relatively short period.
208. In any event, the merged entity does not appear to have the incentive to foreclose [...]. This [reference to internal documents].¹²⁶
209. In light of the above, the Commission concludes that the proposed transaction does not raise serious doubts as to its compatibility with the internal market with regard to the vertical relationship between the Target as a provider of packaging services to third parties and FrieslandCampina as a supplier of Dutch-type cheese to specialised cheese wholesalers and downstream markets in the Netherlands.

3. Other vertical issues¹²⁷

210. A number of third parties have raised concerns with respect to the potential increase of cost transparency resulting from the combination of two companies which are essentially active at different levels of the supply chain, given FrieslandCampina's position in the production of Dutch-type cheese in the Netherlands and the Target's presence in cheese wholesaling, packaging and cutting.
211. However, as discussed there exist alternative suppliers of the products and services provided by each party to the proposed transaction. Therefore, any buyer concerned by an increase in its exposure to the merged entity would be able to decrease such exposure by switching at least part of the services or products sourced from the merged entity to another supplier.
212. In addition, FrieslandCampina is already active both at production and wholesale level and Zijerveld is already an important customer of FrieslandCampina. Therefore, FrieslandCampina could already access potentially sensitive information gathered

¹²⁶ Annex 20 to the Form CO [...].

¹²⁷ In addition, some of the respondents raised concerns with respect to FrieslandCampina's influence regarding the milk price in the Netherlands since FrieslandCampina's price would serve as an indicative price for other market players. These concerns have not been substantiated. Furthermore, a supplier argued that FrieslandCampina undercuts the cheese price given that cheese is considered as a "leftover product" since it is less profitable than other dairy products. This concern is not specific to the proposed transaction as the latter would not have a direct impact on such business conduct.

through its activities at all levels of the supply chain. The additional transparency that would be generated by the proposed transaction, if any, is unlikely to create any merger-specific anticompetitive effects.

(ii) *Semi-hard goat cheese*

213. The Parties' activities overlap in the production and sale of semi-hard goat cheese to downstream markets mainly in the Netherlands.¹²⁸

1. Production of semi-hard goat cheese

214. The total production of semi-hard goat cheese in the Netherlands was approximately 12 500 tons in 2011.¹²⁹
215. FrieslandCampina produces semi-hard goat cheese at its production plant in Gerkesklooster (the Netherlands), which also produces cheese from cow milk. In 2011, FrieslandCampina produced approximately [...] tons of semi-hard goat cheese at this facility. In addition, FrieslandCampina also sources semi-hard goat cheese from Amalthea Van Dijk B.V. ("Amalthea") under a toll manufacturing agreement. FrieslandCampina does not have any goat farmer members in its cooperative and therefore has to procure the raw goat milk from third parties. FrieslandCampina procures most of its goat milk requirements from Coöperatie Belangenvereniging Melkgeitenhouderij Midden Nederland U.A. ("CBM"), a cooperative of goat farmers with which it has a long-term contract.
216. Z&V has an exclusive supply agreement with Amalthea. Amalthea is a joint venture between the Cooperative Amalthea, a Dutch co-operative of Dutch and Belgian goat farmers, and Zuidelijke Land- en Tuinbouw Organisatie (ZLTO).¹³⁰ The co-operative's member farmers annually supply approximately [...] kg of raw goat milk. This milk is processed in Amalthea's production plant in Rijen into semi-hard goat cheese. The production facility currently has a production capacity of [...] tons of (brine-dried) semi-hard goat cheese per year.¹³¹
217. According to the terms of their Cooperation Agreement (*Samenwerkingsovereenkomst tussen Zijerveld en Veldhuyzen B.V en Amalthea Van Dijk B.V en Ontwikkelingsbureau Intensieve Veehouderij B.V.*), [...]. In 2011, Amalthea supplied approximately [...] tons of semi-hard goat cheese to Z&V under the terms of the Cooperation Agreement.
218. In addition, as mentioned in recital 215 above, Amalthea's production capacity is also available for the production of semi-hard goat cheese for third parties using goat milk

¹²⁸ The proposed transaction would lead also to a horizontally affected market in the sale of semi-hard goat cheese to modern retail in Germany where the Parties' combined market shares is [20-30]% (FrieslandCampina: [10-20]% and the Target: [5-10]%).

¹²⁹ Form CO, page 125.

¹³⁰ ZLTO is an independent agricultural organisation representing the interests of 18 000 farmers in the south of the Netherlands.

¹³¹ At the end of the production process, the cheese is put into a brine bath. After a few days, the cheese is taken out of the brine bath and is dried before collection by the Target. This is normally referred to as "semi-hard goat cheese 1 or 2 days old".

supplied by such third parties. On this basis, Amalthea produced [...] tons of semi-hard goat cheese for FrieslandCampina in 2011.

219. The proposed transaction will bring together the production of the two most important producers of semi-hard goat cheese in the Netherlands. The proposed transaction will indeed combine on the one hand FrieslandCampina's own production capacity and Amalthea's production capacity that is currently dedicated to FrieslandCampina, and on the other hand the production capacity that Amalthea uses to supply Z&V under the terms of the Cooperation Agreement.
220. The Cooperation Agreement constitutes a structural link between Z&V and Amalthea's activities, given its exclusive nature and the fact that it will last at least until [...]. In addition, the potential yearly renewal of the contract implies that the Cooperation Agreement may last well beyond its currently foreseen expiry date.
221. In view of the above, even if the Parties' own production activities do not overlap directly at the production level, the effect of the proposed transaction will be equivalent to that of a merger with horizontal overlaps at production level.

2. Sales of semi-hard goat cheese to downstream markets

222. As mentioned above, specialised wholesalers purchase cheese from producers and other wholesalers to resell to final customers and thus the Parties' activities overlap in the sale of semi-hard goat cheese to wholesalers. In 2011, FrieslandCampina sold [...] tons of semi-hard goat cheese to wholesalers whilst the Target sold [...] tons.
223. Furthermore, the Parties' activities also overlap in the sale of semi-hard goat cheese to the classic retail and industry.

3. Assessment

224. Most of the respondents to the market investigation indicated that post-transaction the Parties will acquire a dominant position on the production of semi-hard goat cheese due to the combination of FrieslandCampina's production capacity with the exclusivity agreement between Z&V and Amalthea. Moreover, respondents to the market investigation submitted that the consolidation at the production level leading to a dominant supplier on the market will give rise to increased prices for semi-hard goat cheese. The Commission also considers that in light of the results of the market investigation the consolidation at the production level could eliminate other suppliers of semi-hard goat cheese to the downstream markets.¹³²
225. According to the Notifying Party, the proposed transaction would not give rise to a significant impediment to effective competition in the market for semi-hard goat cheese. The Notifying Party submits that current producers of semi-hard goat cheese (namely Rouveen and Henry Willig) or potential producers, such as DOC, would

¹³² Replies to questions 67 and 68 of the Commission's request for information pursuant to Article 11 of Merger Regulation addressed to Wholesalers in the Netherlands (Q2), dated on 21 February 2013. Replies to questions 103 and 104 of the Commission's request for information pursuant to Article 11 of Merger Regulation addressed to Cheese Customers Modern Retail, Classical Retail and Industrial (Q3a, Q3b and Q3c), dated on 22 February 2013. Replies to questions 71 and 72 of the Commission's request for information pursuant to Article 11 of Merger Regulation addressed to Cheese Producers in Germany and Belgium (Q4), dated 22 February 2013.

readily be able to procure sufficient raw goat milk in case the Parties' customers would want to switch volumes to third parties as there are sufficient quantities of raw goat milk traded domestically in the Netherlands and beyond. In addition, the merged entity will have neither the ability nor the incentive to foreclose other wholesalers since there are enough alternative production sources available for wholesalers and their total sourcing is many times larger than the total domestic demand in the Netherlands given that the majority of semi-hard goat cheese sourced by wholesalers in the Netherlands is exported. Finally, as FrieslandCampina's sales of semi-hard goat cheese to classical retail and industry are *de minimis* ([...] tons and [...] tons respectively), the proposed transaction would not have any significant impact on competition in these markets.

226. In light of the market investigation the Commission considers that the merged entity will achieve a key position both in the production and sale of semi-hard goat cheese in the Netherlands and will face limited competition from existing suppliers.

3.1. Horizontal overlaps

227. The combination of FrieslandCampina's and Amalthea's activities at production level will entail serious consequences on the market structure at horizontal level.
228. Post-transaction, FrieslandCampina and the Target (via Amalthea) would reach a combined market shares of [60-70]% in the production of semi-hard goat cheese. The only remaining producers of semi-hard goat cheese in the Netherlands are Rouveen ([20-30]%) and Henry Willig ([10-20]%).
229. With regard to the market for sales of semi-hard goat cheese to wholesalers, the Parties' combined market share would amount to approximately [60-70]% (FrieslandCampina: [40-50]% and the Target: [10-20]%). The only other suppliers of semi-hard goat cheese to wholesalers would be Rouveen ([10-20]%) and Henri Willig ([10-20]%).¹³³
230. The Parties' activities overlap in the sale of semi-hard goat cheese to classic retail and industry. In particular, the Parties' combined market shares amounts to [30-40]% (FrieslandCampina: [5-10]% and the Target: [30-40]%) at the classic retail level and [90-100]% (FrieslandCampina: [70-80]% and the Target: [20-30]%) at the industry level. However, as submitted by the Notifying Party, the volumes in these segments are very limited and therefore the additional anticompetitive harm brought by these overlap is likely to be small.

3.2. Vertical relationships

231. The Parties' activities do not overlap in the sales of semi-hard goat cheese to modern retail in the Netherlands, which constitutes by far the largest segment among the different downstream channels for the sale of semi-hard goat cheese. While the Target has a very important position as supplier to modern retailers (market share: [60-70]%), FrieslandCampina is not active at all in this segment.
232. In spite of the lack of horizontal overlaps, the concentration brought about by the proposed transaction at the levels of production and wholesale of semi-hard goat cheese, which are upstream to the sales to modern retail, would be likely to have

¹³³ Source: Form CO.

direct repercussions also at modern retail level in terms of possible risks of vertical foreclosure.

233. The merged entity will have a large combined market share both at upstream ([60-70]% in the production semi-hard goat cheese and [60-70]% in sales to wholesalers) and downstream level (the Target has [60-70]% of the sales to modern retailers).
234. The combined entity will be likely to have the ability to foreclose access to semi-hard goat cheese to rival wholesalers by interrupting supplies of semi-hard goat cheese or increasing its price. This is particularly because of the strong position at the level of production and sales to wholesalers, as well as the limited expansion capabilities of its two remaining rivals.¹³⁴
235. The merged entity will also be likely to have the incentives to foreclose access to semi-hard goat cheese to rival wholesalers. The incentive to foreclose actual or potential rivals may also depend on the extent to which the downstream division of the integrated firm can be expected to benefit from higher price levels downstream as a result of a strategy to raise rivals' costs. The greater the market shares of the merged entity downstream, the greater the base of sales on which to enjoy increased margins.¹³⁵
236. The merged entity will have a very strong position in the downstream market (market share: [60-70]%). As such, its incentives to leverage its strong position upstream in order to gain further share downstream would be particularly high. In addition, the attractiveness of a strategy to foreclose the market appears to be increased by the fact that demand for semi-hard goat cheese is expanding and it is expected to grow even further in the next years.

3.3. Alternative suppliers

237. The Notifying Party submits that the main competitors of the Parties in the production of semi-hard goat cheese are Rouveen, Henri Willig, Bettinehoeve and Holland Geiten Melk B.V.¹³⁶ However, the market investigation showed that Bettinehoeve and Holland Geiten Melk B.V do not produce semi-hard goat cheese at all.
238. In addition, a number of respondents to the market investigation indicated that they would not have any alternative to the merged entity since the only two other suppliers of semi-hard goat cheese (Rouveen and Henri Willig) do not have enough production capacity and are in any case too small to supply the volumes they require ¹³⁷.
239. In view of the above, the merging entity would achieve a very strong position at the level of production and sales of semi-hard goat cheese to wholesalers that could not be

¹³⁴ See recitals 228-229.

¹³⁵ See paragraph 43 of Non-Horizontal Merger Guidelines.

¹³⁶ Form CO, page 85.

¹³⁷ Replies to questions 67 and 68 of the Commission's request for information pursuant to Article 11 of Merger Regulation addressed to Wholesalers in the Netherlands (Q2), dated on 21 February 2013. Replies to questions 103 and 104 of the Commission's request for information pursuant to Article 11 of Merger Regulation addressed to Cheese Customers Modern Retail (Q3a), dated 22 February 2013.

matched by its rivals. Given that competitors do not appear to constitute a feasible alternative for many customers because of scarce capacity or limitations in the volumes they can sell, the merged entity will be likely to remain the only or in any event the major sourcing option for customers, and in particular for wholesalers.

3.4. Availability of raw goat milk

240. The Notifying Party submits that there are abundant volumes of raw goat milk traded domestically and abroad that could be acquired by producers of semi-hard goat cheese.¹³⁸
241. However, based on the market investigation the Commission found that most of the sources of the raw goat milk mainly come from Dutch goat farmers with which the producers of semi-hard goat cheese have long exclusive supply contracts.¹³⁹
242. In addition, according to the Notifying Party's replies to the Commission's requests for information, FrieslandCampina also procures most of the raw goat milk it processes from the Dutch Cooperative CBM with which it has a long-term contract. FrieslandCampina's procurement of traded raw goat milk volumes, either domestically or abroad, represents only a minimal volume.¹⁴⁰
243. Further investigation carried out by the Commission with suppliers of raw goat milk on the trade market and the Dutch Goat Dairy Board Nederlandse GeitenZuivel Organisatie (NGZO), showed that the availability of raw goat milk in the Netherlands is currently limited and that it is difficult to obtain access to enough raw goat milk in the Netherlands.¹⁴¹
244. Most of the suppliers of traded raw goat milk indicated that they collect it from the Netherlands and that they are facing a shortage since demand exceeds supply. As a consequence of the Q- fever epidemic¹⁴², the number of goat farmers in the Netherlands has decreased. In addition, important goat cheese producer countries such as France can influence the availability of goat milk in the Netherlands. If the French market, which is much bigger than the Dutch one, is in need of raw goat milk, significant volumes previously destined for the Dutch market would be likely to flow to France, since currently the goat milk price in France can be higher than in the Netherlands.¹⁴³ Therefore, given the limited availability of the raw goat milk in the Netherlands, it seems that the existing and potential competitors of the merging parties do not have sufficient spare capacity to outweigh any price increase of the

¹³⁸ Rebuttal of serious doubts concerning the effects of the concentration on competition with regard to the production and sale of semi-hard goat cheese in the Netherlands submitted by the Notifying Party on 21 March 2013.

¹³⁹ Non-confidential minutes of conference call with Henri Willig on 12 March 2013. Non- confidential minutes of conference call with Rouveen on 11 February 2013.

¹⁴⁰ Replies to the Commission's request for information on 7 March 2013 (question 13 and Annexes 78 and 79) and Replies to the Commission's request for information on 20 March 2013 (question 8).

¹⁴¹ Replies to the Commission's request for information - Suppliers of Raw goat milk, 21 March 2013.

¹⁴² Q-fever is a disease caused by the bacterium (*Coxiella burnetii*) which is found in different types of mammals including goats.

¹⁴³ Non-confidential minutes of conference call with the NGZO on 13 March 2013.

merging parties (as regards the horizontal relationship) or any potential input foreclosure (as regards the vertical relationship).

3.5. Entry

245. Finally, the Commission found, based on the market investigation, that there has not been any entry in the market for the production of semi-hard goat cheese in the Netherlands in recent years and none is expected. In addition, some respondents indicated that they would not consider entering this market since they would not be able to compete with the merged entity.¹⁴⁴ Therefore, the Commission concludes that ready and sufficient market entry is not likely to offset the potential adverse effects resulting from the proposed transaction.

3.6. Conclusion

246. In light of the above, the Commission concludes that the proposed transaction raises serious doubts concerning its compatibility with the internal market as regards the horizontal relationship resulting from the production and sale of semi-hard goat cheese to the wholesalers in the Netherlands.
247. In addition, the Commission concludes that the proposed transaction raises serious doubts concerning its compatibility with the internal market as regards the vertical relationship between the production and sale of semi-hard goat cheese to the wholesalers in the Netherlands and the sales of semi-hard goat cheese to modern retailers.

(iii) *Value-added yoghurt and quark*

248. The Target sells small volumes of Greek yoghurt in the Netherlands and provides logistic services to retailers. The Notifying Party sells a range of products belonging to a wider product market for value-added yoghurts and quark as defined by the Commission in *Friesland Foods/Campina*, which also includes Greek yoghurt.
249. At national level, the proposed transaction would lead to a horizontally affected market in the supply of value-added yoghurt and quark in the retail and OOH channels in the Netherlands. The combined market shares on the market for the sale of value-added yoghurt and quark for the retail distribution channel would be [20-30]%, although with an increment of only [0-5]%. The combined market shares on the market for the sale of value-added yoghurt and quark for the OOH distribution channel would be [40-50]%, although with an increment of only [0-5]%.
250. In both the retail and the OOH distribution channels, the Parties only overlap in the market for branded products, as the Target does not sell any private label products in either of these channels. The combined market shares on the market for the sale of value-added yoghurt and quark for the retail distribution channel in branded products would be [20-30]%, although with an increment of only [0-5]%. The combined market shares on the market for the sale of value-added yoghurt and quark for the OOH distribution channel in branded products would be [40-50]%, although with an

¹⁴⁴ Replies to questions 76 and 77 of the Commission's request for information pursuant to Article 11 of Merger Regulation addressed to Cheese Producers in the Netherlands (Q1), dated 21 February 2013. Replies to questions 59 and 60 of the Commission's request for information pursuant to Article 11 of Merger Regulation addressed to Wholesalers in the Netherlands (Q2), dated 21 February 2013

increment of only [0-5]%. None of the respondents to the Commission's requests for information raised any concerns with regard to value-added yoghurt and quark.¹⁴⁵ Additionally, some producers provided a list of their competitors, besides FrieslandCampina, present in the market of value-added yoghurt and quark, such as Nestlé, Yoplait, Müller, Zott, Arla Foods, Koningszuivel, Novandie and Ehrmann.¹⁴⁶

251. None of the respondents pointed out particular barriers of entry to the market of value-added yoghurt and quark.¹⁴⁷ Furthermore, one producer referred to the possible entry of a new player (Chobani) in the market.¹⁴⁸
252. In light of the relatively limited increment in market share resulting from the proposed transaction, the presence of a number of other competitors and the absence of concerns during the market investigation, the Commission concludes that the proposed transaction does not raise serious doubts as to its compatibility with the internal market as regards the market for value-added yoghurt and quark.

(iv) Portion pack dairy desserts

253. The Target sells some Italian desserts in the Netherlands at the wholesale level. The Notifying Party produces a range of products belonging to a wider market for portion pack dairy desserts, which also includes Italian desserts.
254. At national level, the Parties overlap in the market for portion pack dairy dessert in the retail and OOH channels in the Netherlands. As far as sales to retail are concerned, the Parties' combined market shares would be [50-60]% (with an increment of [0-5]%). In the OOH channel, the merged entity would reach [10-20]% (with an increment of [0-5]%).
255. In the market for portion pack dairy desserts to retail, the Parties overlap both in the branded and in the private label segments. The combined market shares of the Parties in the market for branded products would be [60-70]%, although with an increment of only [0-5]%. With regard to the sale of private label products, the combined market shares would only be [0-5]% with an increment of [0-5]%.
256. In the market for portion pack dairy desserts to OOH, the Parties only overlap in the branded segment. The combined market shares in the market for branded products would be [10-20]%, although with an increment of only [0-5]%. None of the responding producers invited to participate in the market investigation raised any

¹⁴⁵ Replies to question 51 to 54 of the Commission's request for information pursuant to Article 11 of the Merger Regulation addressed to producers in other dairy products (butter, yoghurts, desserts) – questionnaire 6.

¹⁴⁶ Replies to question 42 of the Commission's request for information pursuant to Article 11 of the Merger Regulation addressed to producers in other dairy products (butter, yoghurts, desserts) – questionnaire 6.

¹⁴⁷ Replies to question 44 of the Commission's request for information pursuant to Article 11 of the Merger Regulation addressed to producers in other dairy products (butter, yoghurts, desserts) – questionnaire 6.

¹⁴⁸ Replies to question 45 of the Commission's request for information pursuant to Article 11 of the Merger Regulation addressed to producers in other dairy products (butter, yoghurts, desserts) – questionnaire 6.

concerns with regard to portion packed dairy desserts.¹⁴⁹ Several producers provided lists of numerous competitors, besides FrieslandCampina, present in the market of portion packed dairy desserts, such as Danone, Nestlé, Yoplait, Müller, Zott, Arla Foods, Koningszuivel, Novandie, Ehrmann, Hochwald and Molkerei Gropper.¹⁵⁰ None of the producers pointed out particular barriers to entry to the market of portion pack dairy desserts.¹⁵¹

257. In light of the relatively limited increment in market share resulting from the proposed transaction, the presence of a number of other competitors and the absence of concerns during the market investigation, the Commission concludes that the proposed transaction does not raise serious doubts as to its compatibility with the internal market as regards the market for portion packed dairy desserts.

(v) Packet butter with additives

258. Both Parties sell packet butter with additives (including salted packet butter, packet butter with herbs and packet butter with garlic). However, the Parties' activities only overlap in respect to private label.
259. The proposed transaction would only lead to a horizontally affected market if herb butter were found to constitute a distinct product market that is national in geographic scope.¹⁵² In such a case, the Parties' combined market share of herb butter in the Netherlands would be [30-40]% at retail level (FrieslandCampina: [10-20]%, Target: [20-30]%) and [20-30]% in the OOH channel (FrieslandCampina: [0-5]%, Target: [20-30]%). Other competitors are LaBan Foods ([40-50]%), Jacques Kruidenboter B.V ([10-20]%) and DMK ([0-5]%).
260. The majority of the respondents to the Commission's requests for information do not believe the transaction will have any effect on competition in the market for packet butter with additives. Most of respondent indicated that there are enough alternatives in the market and it is easily to switch between them. One competitor and one customer, however, argued that the combination of FrieslandCampina and the Target would lead to a very strong position in the Netherlands, where sourcing alternatives are lacking.
261. For the following reasons, however, it is considered that these concerns are not substantiated. First, bulk butter, the raw material used for the production of herb butter, is sourced at EEA level. The Commission found, based on the market investigation, that there are number of credible alternative suppliers in this market

¹⁴⁹ Replies to questions 51 to 54 of the Commission's request for information pursuant to Article 11 of the Merger Regulation addressed to producers in other dairy products (butter, yoghurts, desserts) – questionnaire 6.

¹⁵⁰ Replies to question 47 of the Commission's request for information pursuant to Article 11 of the Merger Regulation addressed to producers in other dairy products (butter, yoghurts, desserts) – questionnaire 6.

¹⁵¹ Replies to question 49 of the Commission's request for information pursuant to Article 11 of the Merger Regulation addressed to producers in other dairy products (butter, yoghurts, desserts) – questionnaire 6.

¹⁵² The proposed transaction would not lead to affected markets if (i) wider product market definition (namely packet butter or packet butter with additives) or (ii) wider geographic market (compassing the Netherlands, Germany and Belgium) were considered.

apart from FrieslandCampina meaning that the merged entity would not have the ability to foreclose its rivals' access to bulk butter. Second, there is no overlap in branded herb butter in the modern retail between the Parties' activities since the Parties only overlap in the private label segment in which the product supplied appears to be more commoditized and less sophisticated. Third, even considering the narrowest geographic market definition, producers located in neighbouring countries (Belgium and Germany) could enter or increase their presence in the Netherlands. Although producers located outside the Netherlands would need some time to adjust their recipe to meet Dutch tastes, this would not be an insurmountable barrier and would only take six months.

262. Given that Dutch consumers do not show a clear preference for herb butter originating in the Netherlands, the presence of alternative suppliers on the market and the enough capacity for suppliers, the Commission concludes that the proposed transaction does not raise serious doubts as to its compatibility with the internal market with regard to the herb packet butter market.

VI. PROPOSED REMEDIES

263. In order to render the concentration compatible with the internal market, the undertakings concerned have modified the notified concentration by entering into the following commitments.
264. On 19 March 2013, the Parties submitted a set of commitments in order to remove the serious doubts arising from the proposed transaction in relation to the production and sale of semi-hard goat cheese. The Commission did not market test these commitments as they were considered not to be sufficient to clearly rule out the serious doubts identified by the Commission.
265. On 25 March 2013, the Parties submitted a revised set of commitments in order to remove the serious doubts arising from the proposed transaction in relation to the production and sale of semi-hard goat cheese. In summary, these commitments include: (i) an unconditional and irrevocable mandate to an independent person appointed by the seller of the Target Mijwo to resell to third parties a volume of 1 600 tons of brine-dried semi-hard goat cheese produced under the Cooperation Agreement between Amalthea and Z&V during a transitional period of [...]; (ii) after the end of the transitional period, a commitment to lift the exclusive supply obligation by virtue of which Amalthea is obliged to supply its total production volume of semi-hard goat cheese to Z&V, the option for Amalthea to require FrieslandCampina to keep on purchasing these volumes remaining intact and (iii) a commitment by FrieslandCampina not to outsource the production of any type of cheese (including semi-hard goat cheese) to Amalthea after the expiry of the existing arrangement on 10 December 2013.
266. The Commission market tested these commitments and the Parties were informed of the results of this initial market test. Subsequently, the Parties made certain modifications to the commitments and submitted a set of revised commitments to the Commission on 3 April 2013, which were also market tested.
267. The final commitments are annexed to this decision and form an integral part thereof.

268. The final commitments consist of the following:

(i) During a first Transitional Period,¹⁵³ the Parties will appoint an “Independent Salesperson” who will be responsible for the management of the sales of 1 600 tons of brine-dried goat cheese produced by Amalthea under the operation of the Cooperation Agreement. The Parties will ensure that the Independent Salesperson (a) has the required knowledge and expertise to conduct its tasks and (b) act independently and in the best interest of Amalthea with a view to ensuring the continued economic viability, marketability and competitiveness of the sales of semi-hard goat cheese. In addition, a system of delayed reporting and firewalls is put into place to ensure that no sensitive information regarding the sales of semi-hard goat cheese is transferred between the Independent Salesperson and the merged entity. The Independent Salesperson will report to the Monitoring Trustee.

(ii) Within the Transitional Period, the Parties will enter into a Transfer Agreement to partially transfer and assign Z&V's rights and obligations in and to the Cooperation Agreement to a third party to the effect that the third party will enter into a long-term contract with Amalthea of the same duration as the Cooperation Agreement, on the basis of which the third party will have the right and the obligation to purchase and off-take from Amalthea an annual volume of semi-hard goat cheese within a bandwidth between minimum 35% and maximum 45% of the planned annual output by Amalthea for any given calendar year (“Discontinued Volume”).

(iii) In case FrieslandCampina has not entered into (a) Transfer Agreement(s) before the end of the Transitional Period for the entire Discontinued Volume, FrieslandCampina commits to second the Independent Salesperson to Amalthea at its request and as long as reasonably necessary so as to assist in the sale of the Discontinued Volume by Amalthea itself to third parties. In addition, FrieslandCampina commits to second to Amalthea at its request and if deemed necessary by the Monitoring Trustee up to two additional employees for the purpose of assisting the Independent Salesperson for all the course of the secondment period. Revocation of the secondment of the Independent Salesperson and the additional employee(s) to Amalthea is subject to the prior approval of the Monitoring Trustee. The Discontinued Volume sold by Amalthea may not, directly or indirectly, be purchased by the Parties and the Parties undertake not to purchase the Discontinued Volume from Amalthea after the Transitional Period.

(iv) Lastly, FrieslandCampina commits to discontinue outsourcing the production of any type of cheese to Amalthea with effect as of 10 December 2013 (or at an earlier date if Amalthea requests so). In addition, FrieslandCampina commits to offer for resale an annual amount of 3,500,000 kg of raw goat milk per calendar year for the production of semi-hard goat cheese. This "back to back" supply agreement for raw goat milk will enable one or more third parties to take advantage of Amalthea's released capacity and have the latter toll manufacture semi-hard goat cheese.

¹⁵³ The Transitional Period is defined as a period starting at the date of this decision and terminating [...] from the date of this decision. If the Transfer Agreement (see paragraph 257 (ii)) is concluded and approved within [...] from the date of this decision, the Transitional Period will terminate at the date the Transfer Agreement becomes effective.

VII. ASSESSMENT OF THE PROPOSED REMEDIES

269. Under the Merger Regulation, the Commission has the power to accept commitments that are deemed capable of rendering the concentration compatible with the internal market so that they will prevent a significant impediment of effective competition. As indicated in point 9 of the Commission notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 ("the Remedies Notice")¹⁵⁴ the commitments have to eliminate the competition concerns entirely and have to be comprehensive and effective from all points of view.
270. In the present case, the commitments offered by the Parties are considered to address all the concerns identified regarding semi-hard goat cheese.
271. First, the commitments are of a structural nature as they will ensure that (a) a significant part of the volumes currently sourced by the Target under the Cooperation Agreement is transferred to a third party independent from the Parties;¹⁵⁵ and (b) the toll manufacturing relationship between FrieslandCampina and Amalthea is terminated.¹⁵⁶ In addition, the commitment offered by the Notifying Party to supply a volume of raw goat milk to third parties wishing to take advantage of the toll manufacturing possibility for semi-hard goat cheese, improves the viability of this commitment and addresses comments made by a number of respondents to the market test of the commitments submitted on 25 March 2013.
272. Under the commitments, the Notifying Party undertakes not to re-enter in any agreement with Amalthea which is equivalent to the purchase of the Discontinued Volumes or FrieslandCampina's toll manufacturing agreement with Amalthea for a period of 10 years from the date of this decision. In addition, the Notifying Party commits not to purchase directly or indirectly the Discontinued Volume from third parties.
273. As a result, the commitments will ensure the emergence of one or more alternative supplier of semi-hard goat cheese who will constitute an alternative to the merged entity for sales of semi-hard goat cheese to intermediate and end customers.¹⁵⁷
274. Moreover, the inclusion of the Transitional Period mechanism ensures that after the adoption of the Commission's decision and in any event immediately after closing of the transaction, third parties will have immediate access to a significant volume of semi-hard goat cheese controlled by the Independent Salesperson. The existence of

¹⁵⁴ OJ C 267, 22.10.2008, p. 1.

¹⁵⁵ This effect would be reached also in case a Transfer Agreement is not entered into within the Transitional Period. The Parties will in fact stop sourcing from Amalthea the Discontinued Volume as of the end of the Transitional Period and therefore the volumes will be freed for another purchaser.

¹⁵⁶ Part of the implementation of the commitments would appear to depend on Amalthea's acceptance of the terms of transfer in the agreement. Whilst this decision cannot bind Amalthea insofar as the company is not a notifying party, pursuant to Section H of the commitments FrieslandCampina will be fully responsible for procuring Amalthea to act so as to ensure FrieslandCampina's full and effective compliance with the implementation of the commitments.

¹⁵⁷ This will ultimately depend on whether Amalthea's capacity that will be freed as a result of the interruption of the toll manufacturing agreement with FrieslandCampina will be used for a new toll manufacturing agreement with the purchaser of the Discontinued Volume or with one or more other third parties.

the Transitional Period also ensures that Amalthea will have sufficient time at its disposal to find a new commercial partner that will replace the Target as regards the Discontinued Volume.

275. Although the commitments under the Transitional Period appear to be behavioural in nature, the shortening of the Transitional Period (from [...] to [...]) in the commitments submitted on 3 April 2013 ensures that within [...] a third-party should source a significant part of the volumes currently supplied under the Cooperation Agreement. In addition, the commitments will ensure that third parties have direct access to free production capacity for the production of semi-hard goat cheese. In order to ensure the use of this capacity, the commitments also make available raw goat milk on the same terms and conditions as the raw goat milk currently procured by FrieslandCampina.
276. On this base, the commitments will ensure that a volume of semi-hard goat cheese which is potentially as large as approximately the size of the whole downstream market in the Netherlands will be made available and will not be under the control of the merged entity.
277. Therefore, the Commission considers that the commitments offered will be sufficiently effective to remedy the competition concerns in the semi-hard goat cheese market.
278. The results of the market test in relation to the remedies submitted on 3 April 2013 are broadly positive. The majority of the respondents interviewed by the Commission agreed that the remedies will help to create an additional supplier in order to guarantee that competition will remain in the market. In addition, respondents also submitted that the final remedy package constitutes an improvement in comparison to the previous commitments.
279. A number of players have also showed an interest in purchasing the Discontinued Volume. This confirms that the remedies are likely to result in the creation of a new competitive force in the market that will compete with the merged entity for sales of semi-hard goat cheese to customers. In addition, a number of third parties expressed an interest in taking advantage of the toll manufacturing possibility for semi-hard goat cheese offered by the commitments.
280. [Concerns raised by a third party as regards the viability of the remedy]¹⁵⁸
281. The Commission considers that the arguments brought forward by [...] are not well-grounded. First of all, the commitments will only result in a transfer of 35-45% of the volumes covered by the Cooperation Agreement. The remaining part of the volumes will still be sourced by the Parties from Amalthea, in accordance with the Cooperation Agreement. Second, the commitments aim at finding within the Transitional Period a third party that will purchase the Discontinued Volume. As stated in recital 279 above, many companies have stated that they would have an interest in purchasing these volumes from Amalthea. In addition, a number of respondents have stated that they would be interested in a toll manufacturing relationship with Amalthea for the production of semi-hard goat cheese. Third, even if FrieslandCampina were to fail in finding a buyer for the Discontinued Volume,

¹⁵⁸ [...]

Amalthea will have the opportunity to ask FrieslandCampina for the secondment of the Independent Salesperson and up to two additional salespersons, at the expense of FrieslandCampina. These individuals will assist Amalthea in establishing an independent market presence and will be financially incentivised to do so. For these reasons, it does not appear likely that the impact of the commitments on Amalthea will be such as to result in the bankruptcy of the company.

282. For the reasons outlined above, the commitments entered into by the undertakings concerned are sufficient to eliminate the serious doubts as to the compatibility of the transaction with the internal market.
283. The commitments in Sections B, C and H of the commitments annexed to the present decision constitute conditions attached to this decision, as only through full compliance therewith can the structural changes in the relevant markets be achieved. The other commitments set out in the Annex constitute obligations, as they concern the implementing steps which are necessary to achieve the modifications sought in a manner compatible with the internal market.

VIII. CONCLUSION

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

For the Commission
(signed)
Androulla VASSILIOU
Member of the Commission

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CASE M.6722 – FRIESLANDCAMPINA / ZIJERVELD & VELDHUYZEN AND DEN HOLLANDER

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2) of Council Regulation (EC) No. 139/2004 (the “**Merger Regulation**”), FrieslandCampina Nederland Holding B.V. (“**FrieslandCampina**”) and Zijerveld & Veldhuyzen B.V. (“**Z&V**”) and Den Hollander Food B.V. (“**Den Hollander**”) (Z&V and Den Hollander together referred to as “**Zijerveld**”; the parties to the concentration together referred to as the “**Parties**”) hereby provide the following Commitments (the “**Commitments**”) in order to enable the European Commission (the “**Commission**”) to declare the acquisition of Zijerveld by FrieslandCampina from Mijwo Beheer B.V. (“**Mijwo**”) compatible with the common market and the EEA Agreement by its decision pursuant to Article 6(1)(b) of the Merger Regulation (the “**Decision**”).

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

This text shall be interpreted in the light of the Decision to the extent that the Commitments are attached as conditions and obligations, in the general framework of Union law, in particular in the light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EEC) No. 4064/89 and under Commission Regulation (EC) No. 447/98.

SECTION A. DEFINITIONS

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

Affiliated Undertakings: undertakings controlled by the Parties and/or by the ultimate parents of the Parties, whereby the notion of control shall be interpreted pursuant to Article 3 Merger Regulation and in the light of the Commission Notice on the concept of concentration under Council Regulation (EEC) No 4064/89.

Amalthea: Amalthea van Dijk B.V.

Amalthea Plant: The production facility for semi-hard goat and cow milk cheese in Gilze-Rijen which is owned by Amalthea and ZLTO and operated by Amalthea.

CBM:	Coöperatieve Belangenvereniging Melkgeitenhouderij Midden Nederland U.A.
Discontinued Volume:	Until the Transfer Agreement has become effective, an annual volume of 1,600 tons of brine-dried goat cheese produced by Amalthea under the operation of the Cooperation Agreement, to be increased by 5% at the beginning of each calendar year. When the Transfer Agreement has become effective, the Discontinued Volume will be an annual volume between 35% and 45% of the total volume of brine-dried semi-hard goat cheese produced by Amalthea under the operation of the Cooperation Agreement as further described in under B.2.
Effective Date:	The date of adoption of the Decision.
Cooperation Agreement:	The cooperation agreement entered into by Z&V and Amalthea on 17 December 2009 including all annexes thereto (attached as Annex 1).
Independent Salesperson:	The person to be appointed by FrieslandCampina to sell the Discontinued Volume under the supervision of the Monitoring Trustee. The Independent Salesperson will have an unconditional and irrevocable mandate from Z&V to resell the Discontinued Volume of semi-hard goat cheese on behalf of Z&V during the Transitional Period.
Monitoring Trustee:	one or more natural or legal person(s), independent from the Parties, who is approved by the Commission and appointed by the Parties, and who has the duty to monitor compliance with the conditions and obligations attached to the Decision.
Transitional Period:	A period starting at the Effective Date and terminating [...] from the Effective Date. If the Transfer Agreement is concluded and approved within [...] from the Effective Date, the Transitional Period will terminate at the date the Transfer Agreement becomes effective.
Raw Milk Supply Agreement:	The agreement between CBM and FrieslandCampina entered into on 24 July 2002 (attached as Annex 2).
Supply Agreement:	The supply agreement entered into by Z&V and Amalthea on 4 January 2010 which forms Annex 2 to the Cooperation Agreement (attached as Annex 3).
Transfer Agreement:	Agreement entered into by FrieslandCampina which will partially transfer and assign Z&V's rights and obligations in and to the Cooperation Agreement and all annexes thereto to a third party in respect of the Discontinued Volume.

SECTION B. DESCRIPTION OF THE COMMITMENTS CONCERNING ACCESS TO PRODUCTION CAPACITY FOR SEMI-HARD GOAT CHEESE

- (1) The object of the Commitments is to ensure that post-closing the transaction a significant volume of semi-hard goat cheese produced by Amalthea will become directly available to a third party supplier of semi-hard goat cheese independent of the Parties and that the Parties do not directly or indirectly control this significant part of the output of the Amalthea Plant, while on the other hand preserving the economic viability of Amalthea by ensuring the continuation of the secured offtake of cheese produced using milk produced by its members. This is to improve the overall market structure for the production and sale of semi-hard goat cheese in the Netherlands.
- (2) In order to restore effective competition, FrieslandCampina undertakes to partially transfer and assign Z&V's rights and obligations in and to the Cooperation Agreement to a third party to the effect that the third party will enter into a long-term contract with Amalthea of the same duration as the Cooperation Agreement on the basis of which the third party will have the right and the obligation to purchase and offtake from Amalthea an annual volume of semi-hard goat cheese within a bandwidth between minimum 35% and maximum 45% of the planned annual output by Amalthea for any given calendar year, the exact volume tonnage to be notified by the third party to Amalthea within six weeks after Amalthea has communicated its planned annual output to the third party concerned. If the planned annual output is increased by Amalthea following such communication, the third party will have the right to increase its annual offtake obligation with a volume within a bandwidth between minimum 35% and maximum 45% of the output increase, the exact volume tonnage to be notified by the third party to Amalthea within six weeks after Amalthea has communicated the output increase to the third party.
- (3) Under the terms of the Transfer Agreement, the third party shall assume all of the purchasing rights and obligations of Z&V under the Cooperation Agreement in respect of this Discontinued Volume. Amalthea and such third party are free to agree amendments to the terms of the Cooperation Agreement *inter se*, in particular regarding the selling price for the semi-hard goat cheese. In any event, following the implementation of the Transfer Agreement, the retained rights and obligations of Z&V under the Cooperation Agreement shall relate to a volume of semi-hard goat cheese that is reduced with the Discontinued Volume. FrieslandCampina shall procure Amalthea to agree to fulfil its supply obligations stipulated under the Cooperation Agreement towards such third party in respect of the Discontinued Volume, unless Amalthea and such third party agree otherwise.
- (4) Within the Transitional Period, FrieslandCampina undertakes to use its best efforts to enter into the Transfer Agreement with a third party. A third party must be (a) independent of and unconnected to the Parties and (b) have the financial resources, proven expertise and incentive to maintain and develop to be a viable and active competitive force in competition with the Parties. The Parties will not, directly or indirectly, purchase any volumes of goat cheese from such third party that was produced and supplied to it by Amalthea following the Transfer Agreement.
- (5) The final Transfer Agreement shall be conditional on the Commission's prior approval. When the Parties have reached an agreement with a third party on the Transfer Agreement, a fully documented and reasoned proposal, including a copy of the final agreement, shall be submitted to the Commission and the Monitoring Trustee. FrieslandCampina must be able to demonstrate to the Commission that the respective third party meets the requirements mentioned in B.4 and that the Transfer

Agreement is concluded in a manner consistent with the Commitments, which the Commission shall verify for approval.

- (6) As soon as possible after the Effective Date and in any event within four weeks from the Effective Date and with effect as of the Effective Date, the Parties will give an unconditional, irrevocable mandate to an Independent Salesperson to be appointed by FrieslandCampina to resell evenly spread over the Transitional Period the Discontinued Volume on behalf of Z&V during the Transitional Period. Prior to the appointment of the Independent Salesperson, the Parties will duly inform the Commission and the Monitoring Trustee about the intention to appoint the Independent Salesperson. Replacement of the Independent Salesperson is subject to prior approval of the Monitoring Trustee. The prices, volumes and delivery conditions are to be negotiated freely by the Independent Salesperson with third parties. The Discontinued Volume sold by the Independent Salesperson may not, directly or indirectly, be purchased by the Parties. The Parties will ensure that any volumes of cheese sold by the Independent Salesperson will be delivered directly by Amalthea to points of delivery to be communicated directly to Amalthea by the Independent Salesperson. Any sales by the Independent Salesperson pursuant to the present paragraph will be invoiced by the Independent Salesperson. Revenues generated by the transactions concluded by the Independent Salesperson will be paid periodically on an aggregated basis to Z&V.
- (7) In case FrieslandCampina has not entered into (a) Transfer Agreement(s) before the end of the Transitional Period for the entire Discontinued Volume, FrieslandCampina commits to second the Independent Salesperson to Amalthea at its request and as long as reasonably necessary so as to assist in the sale of the Discontinued Volume by Amalthea itself to third parties. In addition, FrieslandCampina commits to second to Amalthea at its request and if deemed necessary by the Monitoring Trustee up to two additional employees for the purpose of assisting the Independent Salesperson for all the course of the secondment period. Revocation of the secondment of the Independent Salesperson and the additional employee(s) to Amalthea is subject to prior approval of the Monitoring Trustee. The Discontinued Volume sold by Amalthea may not, directly or indirectly, be purchased by the Parties and the Parties undertake not to purchase the Discontinued Volume from Amalthea after the Transitional Period.
- (8) FrieslandCampina shall bear the costs of employment of the Independent Salesperson during both the Transitional Period and the secondment to Amalthea. The remuneration of the Independent Salesperson during the whole employment period will partly be performance-based, in order to incentivise achieving the best possible result for Amalthea. The Independent Salesperson will be able to earn a bonus of 10% of its annual gross income if it sells the entire Discontinued Volume and achieves a net profit margin to be set by Amalthea. FrieslandCampina shall also bear the costs of employment of the additional employees referred to in B.7 for all the course of the secondment period.
- (9) In addition, FrieslandCampina commits to discontinue outsourcing production of any type of cheese to Amalthea. Currently, FrieslandCampina has annual contracts with Amalthea under which it outsources production of certain volumes of semi-hard goat cheese (2011: [400-600] tons; 2012: [300-500] tons) with Amalthea, while supplying the raw goat milk itself. The current contract expires on 10 December 2013 and will not be prolonged. Should Amalthea prefer to discontinue the existing contract prior to

expiration, FrieslandCampina commits to agree to such early termination, without Amalthea incurring any penalty. Such early termination may take effect at the beginning of a calendar month and will be subject to two months' written notice by Amalthea.

- (10) During a period of ten years from the Effective Date, the Parties will not conclude any further contracts with Amalthea for the supply of semi-hard goat cheese outside the Cooperation Agreement. By discontinuing the existing subcontracting arrangements, FrieslandCampina will free up a significant share of the production capacity of the Amalthea Plant that will become entirely available for the supply of semi-hard goat cheese to third parties.
- (11) The commitment set out in B.7-10 will expire ten years from the Effective Date or by the date the Cooperation Agreement expires or otherwise is terminated (without being substituted by an agreement that is similar in nature), whichever is the earlier.
- (12) In the event Amalthea exercises the change of control clause laid down in Article 16.3 of the Cooperation Agreement (without being substituted by an agreement that is similar in nature), the concerns raised by the Commission will be eliminated as a result thereof and all commitments offered by the Parties shall be deemed to have been fulfilled as of the date the termination of the Cooperation Agreement takes effect.

SECTION C. DESCRIPTION OF THE COMMITMENTS CONCERNING ACCESS TO RAW GOAT MILK

- (13) In order to ensure sufficient availability of raw goat milk in the market for the production of semi-hard goat cheese in the Netherlands, FrieslandCampina commits to offer for resale an annual amount of 3,500,000 kgs. raw goat milk per calendar year for the production of semi-hard goat cheese to be used for the production of semi-hard goat cheese in the Netherlands (which is an amount of milk with which more than [300-500] tons of semi-hard goat cheese can be produced). This total annual amount will be resold by FrieslandCampina using the volumes procured by it from CBM pursuant to the Raw Milk Supply Agreement. If FrieslandCampina is (temporarily) unable to supply the annual amount of raw goat milk for reasons outside FrieslandCampina's or CBM's fault or for reasons which cannot legally be attributed to FrieslandCampina or CBM, the annual amount offered for resale by FrieslandCampina may be diminished proportionally.
- (14) The price for the raw goat milk will be equal with the price applied by CBM on the basis of Article 4.2 of the Raw Milk Supply Agreement, first asterisk. Delivery will be at the cheese production facility indicated by the purchaser and at its expense. Deliveries will be based on full truck-loads only. The milk will be delivered directly by CBM. The provisions regarding quality (Article 2 of the Raw Milk Supply Agreement) are equally applicable to the milk resold by FrieslandCampina.
- (15) Interested buyer shall at least six months prior to the commencement of a contract submit unconditional orders for the requested volume of raw goat milk. Unconditional orders will be allocated on a first-come-first-serve basis up to the maximum volume referred to in C.13 per calendar year. Contracts must be for a fixed volume and for a calendar year. A buyer may request a different contract period. In that case, FrieslandCampina will accommodate such request applying a reasonable mark up on

the price. In case of disagreement about the amount of the mark up, the Monitoring Trustee may give binding instructions to FrieslandCampina.

- (16) As to the offtake conditions, Articles 3.5 and 3.6 of the Raw Milk Supply Agreement will apply correspondingly. This implies that the purchaser is obliged to offtake at least 90% of the contracted volume and that offtake will be flat over the year, taking into account seasonal fluctuations as indicated in Article 3.6 of the Raw Milk Supply Agreement, which means that most weekly volumes will be equal to 1/52 part of the annual volume.
- (17) FrieslandCampina will apply in relation to the buyer the same Invoicing and payment conditions as agreed with CBM and laid down in Article 6 of the Raw Milk Supply Agreement. The rules on transfer of risk and ownership will be identical to those set forth in Article 5 of the Raw Milk Supply Agreement. The provisions of the Raw Milk Supply Agreement regarding claims (Article 12), force majeure (Article 13) and obligations relating to claims (Article 14) will apply correspondingly as well.
- (18) If the relevant clauses of the Raw Milk Supply Agreement are amended, FrieslandCampina will amend clauses in supply agreements under this commitment accordingly. If the Raw Milk Supply Agreement is terminated during the term of the present commitment and is not replaced by an agreement between FrieslandCampina and CBM similar in nature, the present commitment will expire as well with effect from the termination date of the Raw Milk Supply Agreement. Supply agreements between FrieslandCampina and a buyer prior to the date of termination of the present commitment, will not be affected by the said termination.
- (19) The commitment set out in C.13-18 will expire ten years from the Effective Date or by the date the Cooperation Agreement expires or otherwise is terminated (without being substituted by an agreement that is similar in nature), whichever is the earlier.

SECTION D. RELATED COMMITMENTS

Hold-separate obligations of Parties

- (20) FrieslandCampina commits to appointing an Independent Salesperson who shall be employed by FrieslandCampina or by Z&V and who shall, under the supervision of the Monitoring Trustee and during the Transitional Period, be responsible for the management of the sales of the Discontinued Volume. The Parties will ensure that the Independent Salesperson to be appointed has the required knowledge and expertise to conduct its tasks, as set out in paragraph 112 of the Remedies Notice. The Independent Salesperson shall act independently and in the best interest of Amalthea with a view to ensuring the continued economic viability, marketability and competitiveness of the sales of semi-hard goat cheese. The Independent Salesperson shall manage the sale of the Discontinued Volume independent from the Parties and shall ensure that he has no involvement in any of The Parties' business and vice versa. The Monitoring Trustee will be able to remove the Independent Salesperson if he or she does not act in line with the commitments or endangers their timely and proper implementation. In case a new Independent Salesperson needs to be appointed, such appointment will afterwards be subject to approval of the Monitoring Trustee, in accordance with paragraph 112 of the Remedies Notice.

Ring-fencing

- (21) The Parties shall implement all necessary safeguards and firewall measures to ensure that the Independent Salesperson, both during and after the Transitional Period and both during and after the secondment to Amalthea, does not report or share with the Parties commercially sensitive or confidential information relating to the sale of semi-hard goat cheese by the Independent Salesperson or by Amalthea, including information regarding transaction prices and volumes, and any customer data but excluding aggregated data on sales revenues generated by the Independent Salesperson for the Discontinued Volume sold during the Transitional Period. Furthermore, the Parties shall ensure that the Independent Salesperson will be enabled to act completely independently from the Parties. Notwithstanding the foregoing, the Independent Salesperson will provide a full account of the execution of his mandate to Z&V six months from the end of the Transitional Period pursuant to B.6.

Non-solicitation clause

- (22) In case the Independent Salesperson will be seconded to Amalthea after the Transitional Period, the Parties undertake, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, the Independent Salesperson for a period of two years after the discharge from his or her duties. The Parties undertake not to employ the additional employees referred to in B.7 in their respective goat cheese businesses for a period of two years after the discharge from their duties.

SECTION E. THE MONITORING TRUSTEE

I. Appointment Procedure

- (23) FrieslandCampina shall appoint a Monitoring Trustee to carry out the functions specified in the Commitments for a Monitoring Trustee.
- (24) The Monitoring Trustee shall be independent of the Parties, possess the necessary qualifications to carry out its mandate, for example as an investment bank or consultant or auditor, and shall neither have nor become exposed to a conflict of interest. The Monitoring Trustee shall be remunerated by FrieslandCampina in a way that does not impede the independent and effective fulfilment of its mandate.

Proposal by the Parties

- (25) No later than one week after the Effective Date, FrieslandCampina shall submit a list of one or more persons whom FrieslandCampina proposes to appoint as the Monitoring Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the proposed Monitoring Trustee fulfils the requirements set out in E.24 and shall include:
- (a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Monitoring Trustee to fulfil its duties under these Commitments;
 - (b) the outline of a work plan which describes how the Monitoring Trustee intends to carry out its assigned tasks.

Approval or rejection by the Commission

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

New proposal by FrieslandCampina

- (27) If all the proposed Monitoring Trustees are rejected, FrieslandCampina shall submit the names of at least two more individuals or institutions within one week of being informed of the rejection, in accordance with the requirements and the procedure set out in E.25.

Monitoring Trustee nominated by the Commission

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

II. Functions of the Monitoring Trustee

- (29) The Monitoring Trustee shall assume its specified duties in order to ensure compliance with the commitments set out in Section B, C, D and H of the present Commitments. The Commission may, on its own initiative or at the request of the Monitoring Trustee or FrieslandCampina give any orders or instructions to the Monitoring Trustee in order to ensure compliance with Section B, C, D and H of the present Commitments.

Duties and obligations of the Monitoring Trustee

- (30) The Monitoring Trustee shall:
- (i) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with Section B, C, D and H of the present Commitments;
 - (ii) oversee and monitor compliance by FrieslandCampina with Section B, C, D and H of the present Commitments;
 - (iii) propose to FrieslandCampina such measures as the Monitoring Trustee considers necessary to ensure FrieslandCampina's compliance with Section B, C, D and H of the present Commitments;
 - (iv) provide to the Commission, sending FrieslandCampina a non-confidential copy at the same time, a written report within 15 days after the end of every month until the end of the Transitional Period and after the end of every semester

thereafter. The report shall enable the Commission to assess whether FrieslandCampina has complied with the commitments set forth in Section B, C, D and H of the present Commitments. In addition to these reports, the Monitoring Trustee shall promptly report in writing to the Commission, sending FrieslandCampina a non-confidential copy at the same time, if it concludes on reasonable grounds that FrieslandCampina is failing to comply with Section B, C, D and H of the present Commitments.

III. Duties and obligations of FrieslandCampina

- (31) FrieslandCampina shall provide and shall cause their advisors to provide the Monitoring Trustee with all such co-operation, assistance and information as the Monitoring Trustee may reasonably require to perform its tasks. The Monitoring Trustee shall have full and complete access to any of FrieslandCampina's books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments and FrieslandCampina shall provide the Monitoring Trustee upon request with copies of any document. FrieslandCampina shall make available to the Monitoring Trustee one or more offices on their premises and shall be available for meetings in order to provide the Monitoring Trustee with all information necessary for the performance of its tasks.
- (32) FrieslandCampina shall indemnify the Monitoring Trustee and its employees and agents (each an “**Indemnified Party**”) and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to FrieslandCampina for any liabilities arising out of the performance of the Monitoring Trustee's duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Monitoring Trustee, its employees, agents or advisors.
- (33) At the expense of FrieslandCampina, the Monitoring Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to FrieslandCampina's approval (this approval not to be unreasonably withheld or delayed) if the Monitoring Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Monitoring Trustee are reasonable. Should FrieslandCampina refuse to approve the advisors proposed by the Monitoring Trustee the Commission may approve the appointment of such advisors instead, after having heard FrieslandCampina. Only the Monitoring Trustee shall be entitled to issue instructions to the advisors. E.32 shall apply mutatis mutandis.

IV. Replacement, discharge and reappointment of the Monitoring Trustee

- (34) If the Monitoring Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Monitoring Trustee to a conflict of interest:
- (a) the Commission may, after hearing the Monitoring Trustee, require FrieslandCampina to replace the Monitoring Trustee; or
 - (b) FrieslandCampina, with the prior approval of the Commission, may replace the Monitoring Trustee.

- (35) If the Monitoring Trustee is removed according to E.34, the Monitoring Trustee may be required to continue in its function until a new Monitoring Trustee is in place to whom the Monitoring Trustee has effected a full hand over of all relevant information. The new Monitoring Trustee shall be appointed in accordance with the procedure referred to in E.23-28.
- (36) Beside the removal according to E.34, the Monitoring Trustee shall cease to act as Monitoring Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Monitoring Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

SECTION F: DISPUTE RESOLUTION

- (37) A dispute settlement mechanism will be implemented. If a conflict concerning compliance with Section B, C, D and H of the present Commitments arises, the Monitoring Trustee will first attempt to resolve the issue by using mediation with FrieslandCampina and the third party concerned. If no agreement is reached, such a conflict shall be finally and exclusively resolved by the fast track dispute resolution procedure as described below.
- (38) Any third party who wishes to avail itself of the fast track dispute resolution procedure mentioned in F.37 (a "Requesting Party") must notify FrieslandCampina in writing specifying the reasons leading that third party to believe that FrieslandCampina is failing to comply with the requirements of the Commitments. The Requesting Party and FrieslandCampina will use their best efforts to resolve all differences of opinion and to settle all disputes within a reasonable period of time not exceeding 15 working days after receipt of the notification of the third party mentioned in the first sentence of this paragraph.
- (39) Should the Requesting Party and FrieslandCampina fail to resolve their differences of opinion, the Requesting Party may serve a notice (the "Notice"), in the sense of a request for arbitration, to the Netherlands Arbitration Institute (the "NAI"), with a copy of such Notice and request for arbitration to the Monitoring Trustee. The Notice shall set out in detail the dispute, difference or claim (the "Dispute") and shall contain, inter alia, all issues of both fact and law, including any suggestions as to the procedure, and all documents relied upon shall be attached, e.g. documents, agreements, expert reports and witnesses statements.
- (40) FrieslandCampina shall, within 10 working days from receipt of the Notice, submit its answer (the "Answer"), which shall provide detailed reasons for its conduct and set out, inter alia, all issues of both fact and law, including any suggestions to the procedure, and all documents relied upon, e.g. documents, agreements, expert reports and witnesses statements. The Answer shall, if appropriate, contain a detailed description of the action, which FrieslandCampina proposes to undertake vis-à-vis the Requesting Party.
- (41) The Requesting Party shall nominate its arbitrator in the Notice; FrieslandCampina shall nominate their arbitrator in the Answer. The arbitrator nominated by the Requesting Party and by FrieslandCampina shall, within five working days of the nomination of the latter, nominate the chairman, making such nomination known to the parties to the arbitration and the NAI, which shall forthwith confirm the

appointment of all three arbitrators (together referred to as the "Arbitral Tribunal"). Should FrieslandCampina fail to nominate an arbitrator, or if the two arbitrators fail to agree on the chairman, the default appointment(s) shall be made by the NAI.

- (42) The Dispute shall be finally resolved by the arbitration under the rules of the NAI with such modifications or adaptations as foreseen herein or necessary under the circumstances (the "Rules"). The arbitration shall be conducted in Rotterdam, the Netherlands and in the Dutch language.
- (43) The procedure shall be a fast-track procedure. For this purpose, the Arbitral Tribunal shall shorten all applicable procedural time-limits under the Rules as far as admissible and appropriate in the circumstances. The parties to the arbitration shall consent to the use of e-mail for the exchange of documents.
- (44) The Arbitral Tribunal shall, as soon as practical after the confirmation of the Arbitral Tribunal, hold an organisational conference to discuss any procedural issues with the parties to the arbitration. Terms of reference shall be drawn up and signed by the parties to the arbitration and the Arbitral Tribunal at the organisational meeting or immediately thereafter and a procedural time-table shall be established by the Arbitral Tribunal. An oral hearing shall, as a rule, be established within three weeks of the confirmation of the Arbitral Tribunal.
- (45) In order to enable the Arbitral Tribunal to reach a decision, it shall be entitled to request any relevant information from the parties to the arbitration. The Arbitral Tribunal is also entitled to ask for assistance by the Trustee in all stages of the procedure if the parties to the arbitration agree.
- (46) The Arbitral Tribunal shall not disclose confidential information and shall apply the standards attributable to confidential information under the Merger Regulation. The Arbitral Tribunal may take measures necessary for protecting confidential information, in particular by restricting access to confidential information to the Arbitral Tribunal, the Trustee and outside counsel and experts of the opposing party.
- (47) The burden of proof in any dispute under these Rules shall be borne as follows: (i) the Requesting Party must produce evidence of a prima facie case and (ii) if the Requesting Party produces evidence of a prima facie case, the Arbitral Tribunal must find in favour of the Requesting Party unless FrieslandCampina can produce evidence of the contrary.
- (48) The Commission shall be allowed and enabled to participate in all stages of the procedure by:
 - Receiving all written submissions (including documents and reports, etc.) made by the parties to the arbitration;
 - Receiving all orders, interim and final awards and other documents exchanged by the Arbitral Tribunal with the parties to the arbitration (including terms of reference and procedural time-table);
 - Giving the Commission the opportunity to file amicus curiae briefs;
And
 - Being present at the hearing(s) and being allowed to ask questions to parties, witnesses and experts.

- (49) The Arbitral Tribunal shall forward, or shall order the parties to the arbitration to forward, the documents mentioned to the Commission without delay. In the event of disagreement between the parties to the arbitration regarding the interpretation of the Commitments, the Arbitral Tribunal may seek the Commission's interpretation of the Commitments before finding in favor of any party to the arbitration and shall be bound by the interpretation.
- (50) The Arbitral Tribunal shall decide the Dispute on the basis of the Commitments and the Decision. Issues not covered by the Commitments and the Decision shall be decided (in the order as stated) by reference to the Merger Regulation, EU law and the laws of the Netherlands without reference to its rules of conflicts of law; and the arbitrators shall not act in amicable composition. The Arbitral Tribunal shall take all decisions by majority vote.
- (51) The Arbitral Tribunal shall in the award specify the action, if any, to be taken by FrieslandCampina in order to comply with the Commitments vis-à-vis the Requesting Party. The award shall be final and binding on the parties to the arbitration and shall resolve the Dispute and determine any and all claims, motions or requests submitted to the Arbitral Tribunal. The costs associated with any arbitration (including arbitration fees and the fees and expenses of counsel to the successful party) will be borne by the losing party, as determined by majority decision or, if there is no majority, by the chairman alone.
- (52) The award shall, as a rule, be rendered within one month after the adoption of the terms of reference, unless both parties to the arbitration agree that the award may be rendered not more than three months thereafter. The time-frame shall, in any case, be extended by the time required for the Commission to submit an interpretation of the Commitments if so requested by the Arbitral Tribunal. The parties to the arbitration shall prepare a non-confidential version of the award, without business secrets. The Commission may publish the non-confidential version of the award. Nothing in the arbitration procedure shall affect the power to the Commission to take decisions in relation to the Commitment in accordance with its powers under the Merger Regulation.

SECTION G: THE REVIEW CLAUSE

- (53) The Commission may, where appropriate, in response to a request from FrieslandCampina showing good cause and accompanied by a report from the Monitoring Trustee:
- (i) Grant an extension of the time periods foreseen in these Commitments, or
 - (ii) Waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments.
- (54) Where FrieslandCampina seeks an extension of a time period, it shall submit a request to the Commission no later than one month before the expiry of that period, showing good cause. Only in exceptional circumstances shall the Parties be entitled to request an extension within the last month of any period.

SECTION H: FRIESLANDCAMPINA'S FULL RESPONSIBILITY REGARDING CONDITIONS AND OBLIGATIONS INVOLVING AMALTHEA

- (55) FrieslandCampina shall be fully responsible for procuring Amalthea to act so as to ensure FrieslandCampina's full and effective compliance with and implementation of these Commitments.

(signed) _____ (signed)

duly authorised for and on behalf of FrieslandCampina Nederland Holding B.V., Zijerveld & Veldhuyzen B.V. and Den Hollander Food B.V.

Annex 1 [...]

Annex 2 [...]

Annex 3 [...]