



EUROPEAN COMMISSION  
DG Competition

***Case M.11043 - NOVOZYMES /  
CHR HANSEN HOLDING***

Only the English text is available and authentic.

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

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Purchaser approval  
Date: 26/01/2024





## EUROPEAN COMMISSION

Brussels, 26.1.2024  
C(2024) 637 final

### PUBLIC VERSION

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

Novozymes A/S  
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Denmark

Chr. Hansen Holding A/S  
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Denmark

Dear Sir or Madam,

**Subject: Case M.11043 – NOVOZYMES / CHR. HANSEN HOLDING**  
**Approval of Kerry Group PLC as purchaser of the Divestment Business**  
**following your submission of 12 January 2024 and the Trustee's opinion of**  
**16 January 2024**

#### 1. FACTS AND PROCEDURE

- (1) By decision of 12 December 2023 (the “**Decision**”) based on Article 6(1)(b) and Article 6(2) of Council Regulation (EC) 139/2004,<sup>1</sup> the Commission declared the operation by which Novozymes A/S (“**Novozymes**” Denmark) will acquire sole control of Chr. Hansen Holding A/S (“**Chr. Hansen**”, Denmark) (together the “**Parties**”) to be compatible with the internal market and with the functioning of the EEA Agreement, subject to conditions and obligations (the “**Commitments**”).<sup>2</sup>

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<sup>1</sup> OJ L 24, 29.1.2004, p. 1 (the “**Merger Regulation**”).

<sup>2</sup> All defined terms in this decision shall have the same meaning as in the Commitments unless otherwise defined herein.



- (2) The Commitments consist of the divestment of Chr. Hansen's lactase market entry project (the "**G2 Project**") and its lactase distribution business, together with Novozymes' lactase production facility where [proportion] of Novozymes and Chr. Hansen's GM-produced lactase products are currently produced, and the staff needed to run both the NZ production and the CH distribution business (the "**Divestment Business**").
- (3) The Parties proposed Kerry Group PLC ("**Kerry**", Ireland), for approval by the Commission as the purchaser of the Divestment Business by submission of 12 January 2024. The Parties also submitted a copy of the master transfer agreement entered into with Kerry on 19 October 2023, as amended and restated on 16 November 2023 and 12 January 2024 (the "**MTA**").
- (4) The MTA sets out the Parties' intention to transfer the Divestment Business to Kerry. The MTA is conditional on the Commission's approval of a purchaser for the Divestment Business and certain merger control and regulatory clearances.<sup>3</sup> The MTA further foresees the execution of certain related ancillary agreements including a technology transfer agreement, a number of local transfer agreements, the novation of the collaboration agreement with a third party relating to the G2Project, a lease-back and supply agreement and a number of transitional and long-term services agreements (together the "**Transaction Documents**").
- (5) In accordance with the Commitments, and following the Commission's approval, on 16 December 2023 the Parties appointed Monitoring Trustee Partners B.V (the "**Trustee**") as the monitoring trustee for the sale of the Divestment Business.
- (6) On 16 January 2024, the Trustee submitted an assessment of Kerry's suitability as a purchaser and, in particular, indicated that it considers that it fulfils the purchaser requirements set out in paragraph 16 of the Commitments (the "**Reasoned Opinion**"). The Trustee confirmed that the Transaction Documents are in agreed form and that no material changes are expected<sup>4</sup> and that these would enable the Divestment Business to be sold in accordance with paragraph 17 of the Commitments.
- (7) Pursuant to paragraph 17 of the Commitments, the Commission must verify that the remedy-taker fulfils the purchaser criteria and that the Divestment Business is being sold in a manner consistent with the Commission's Decision and the Commitments.<sup>5</sup>

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<sup>3</sup> The purchase of the Divestment Business does not require any foreign direct investment approvals.

<sup>4</sup> Reasoned Opinion, Section 5.1.

<sup>5</sup> See paragraphs 101 and seq. 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**").



## **2. ASSESSMENT OF THE PROPOSED PURCHASER**

- (8) Paragraph 16 of the Commitments states that the Purchaser must fulfil the following criteria:
- (a) *The Purchaser shall be independent of and unconnected to the Parties and their Affiliated Undertakings (this being assessed having regard to the situation following the divestiture);*
  - (b) *The Purchaser shall have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors. The Purchaser shall have expertise in the food and beverage industry, including the development, manufacture and commercialization of food and beverage enzymes and expertise in dairy applications as well as expertise in bringing new products to market;*
  - (c) *The acquisition of the Divestment Business by the Purchaser must neither be likely to create, in light of the information available to the Commission, prima facie competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed. In particular, the Purchaser must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business.*

### **2.1. Description of proposed purchaser**

- (9) Kerry was founded in 1972 and is headquartered in Tralee, County Kerry, Ireland. Kerry's business is divided into two divisions: (i) Taste & Nutrition which provides food, beverage and pharmaceutical solutions; and (ii) Dairy Ireland which provides dairy ingredients and consumer products, including functional proteins and nutritional bases.
- (10) Kerry is active in over 180 countries and is present throughout the EU as well as in the Americas, Asia Pacific region, the Middle East and Africa. Kerry employs over 23,000 staff globally, including more than 1,100 scientists within its R&D division.
- (11) Kerry's largest shareholder, with an 11.18% shareholding, is Kerry Co-operative Creameries Limited, the agricultural society that founded Kerry. Kerry's other shareholders are mainly institutional investors, with the largest being the asset manager Blackrock Inc, which has a shareholding of 5.02%.

### **2.2. Independence from the Parties**

- (12) Pursuant to paragraph 16(a) of the Commitments, in order to be approved by the Commission, a suitable purchaser must be independent from and unconnected to the Parties and their Affiliated Undertakings.



### *2.2.1. Pre-existing links between the Parties and Kerry*

- (13) According to the Reasoned Opinion, none of Kerry's board members have any links with the Parties.<sup>6</sup> Kerry does not hold shares in either of the Parties and neither of the Parties has any investments in Kerry. However, the Trustee notes that Kerry and the Parties do have a number of common shareholders. These are asset managers holding shareholdings of 5% or less which do not typically steer the corporate strategy of the companies they invest in.<sup>7</sup>
- (14) The Reasoned Opinion notes that there are also a number of commercial links between the Parties and Kerry.
- (15) First, the Trustee notes that Novozymes and Kerry are part of an industry consortium agreement which provides for [information on commercial agreements between the Parties and Kerry].<sup>8</sup>
- (16) Second, [information on agreements between the Parties and Kerry]. However, the Trustee notes that these do not amount to collaborations, joint ventures, licensing agreements or acquisitions and divestitures that could be considered to compromise Kerry's independence from the Parties. [information on the existence of agreements between the Parties and Kerry].
- (17) Third, Kerry sources [information about sales by each of Novozymes and Chr. Hansen to Kerry]. Kerry notes that alternative suppliers are available for each of the products purchased from the Parties.
- (18) The Trustee considers that these relationships are all at arms' length, in the ordinary course of business and are of limited scope. For these reasons, the Trustee finds that they do not therefore affect the independence of the Purchaser.<sup>9</sup>
- (19) The Commission has reviewed the information provided by the Parties and Kerry and the Reasoned Opinion. The Commission agrees that the pre-existing relationships between the Parties are not likely to affect the independence of the Purchaser given the limited relevance of these to Kerry's business.

### *2.2.2. Links between the Parties and Kerry created by the divestment*

- (20) According to paragraph 16(a) of the Commitments, the independence of the Purchaser is also to be assessed having regard to the situation following the divestiture. It is therefore important to consider the links created between Kerry and the Parties by the Transaction Documents. The paragraphs below examine the links created by the temporary and transitional services and the long-term services to be provided through the Transaction Documents.

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<sup>6</sup> Reasoned Opinion, Section 4.2.2.

<sup>7</sup> Reasoned Opinion, Section 4.2.3.

<sup>8</sup> Reasoned Opinion, Section 4.3.

<sup>9</sup> Reasoned Opinion, Section 4.3.



#### 2.2.2.1. Temporary and transitional services

- (21) In order to bring about the divestment, the Commitments foresee the need for the Parties to enter into a sale and lease back agreement as well as transitional services agreements and a reverse transitional services agreement with Kerry.
- (22) **Sale and lease back agreement:** The Commitments envisage a two-stage closing process. At Closing, the Divestment Business will transfer to the Purchaser. However, in order to comply with Chinese law, permission must be obtained to transfer the title certificate to the land on which the manufacturing facility in China (“**the Lactase Plant**”) is situated. Further permits must also be obtained by Kerry before they are able to operate the Lactase Plant in their own name. The Parties and Kerry foresee that the process of obtaining the necessary permits will take [information on timing of Deferred Closing]. In order for the Lactase Plant to remain operational during this period, the Parties will enter into a lease-back and supply agreement with Kerry, [information on transitional services arrangements between the Parties and Kerry].
- (23) **Transitional services agreements:** The Commitments foresee that the Parties may provide transitional services to Kerry in areas from HR and IT support to logistics and quality control. The Parties have confirmed that they will enter into transitional services agreements with Kerry to provide support for up to 12 months in the following areas:
1. procurement and supply chain;
  2. production and QC;
  3. facilities;
  4. HR;
  5. regulatory and QA;
  6. ICT; and
  7. finance.
- (24) **Reverse transitional services agreement:** The Commitments foresee that Chr. Hansen’s NOLA® lactase products will form part of the Divestment Business but that Novozymes’ Saphera® lactase products will be retained by the merged entity. [Proportion] of these lactase products are currently manufactured in the Lactase Plant. [information on sources of supply]. In order to ensure continuity of supply of [proportion] of the lactase products [information on sources of supply], the Parties and Kerry have agreed to enter into a reverse transitional services agreement for an interim period.<sup>10</sup> Under the terms of this agreement, Kerry will process lactase to make and bottle the Saphera® products for the merged entity at the Lactase Plant and the merged entity will provide similar processing services for the NOLA® products in Denmark.<sup>11</sup>

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<sup>10</sup> This period is expected to end before Deferred Closing takes place in [time period].

<sup>11</sup> MTA clause 16.1.8.



- (25) The Trustee confirms that each of these agreements are reflected in the Transaction Documents and that the Transaction Documents are in line with the Commitments.<sup>12</sup>
- (26) The Trustee notes that the links between the Parties and Kerry that are created by these agreements are temporary in nature and are designed to ensure the continuity of the Divestment Business. None of these arrangements will enable the Parties to affect Kerry's strategic behaviour, either directly or indirectly. The Trustee also notes that it will monitor the implementation of these agreements in accordance with the Commitments. The Trustee therefore concludes that, following the termination of the transitional services agreements, there will be no lasting contractual links between Kerry and the Parties other than the long-term services agreements referred to below.<sup>13</sup>
- (27) The Commission has reviewed the links that the transitional service agreements will create between the Parties and Kerry and takes the view that these are necessary in order to ensure the sale of a viable Divestment Business to the Purchaser. The Commission is satisfied that these agreements are temporary in nature and that the implementation of these agreements will be monitored by the Trustee to ensure that they do not create links between the Parties which may compromise the independence of the Purchaser.

#### 2.2.2.2. Long-term services agreements

- (28) As the Lactase Plant shares certain services with neighbouring facilities owned by the Parties, the Commitments provide that the Parties and Kerry will also enter into a number of long-term services agreements.
- (29) Annex 12 of the Commitments foresees that the Parties will provide the following long-term services to Kerry under dedicated service level agreements:
1. Firefighting water supply;
  2. Production wastewater treatment;
  3. Cleaning and inactivation of model filters containing waste enzymes;
  4. Biomass treatment; and
  5. Cooling water supply.
- (30) The Trustee confirms that these agreements are reflected in the Transaction Documents and that the Transaction Documents are in line with the Commitments.<sup>14</sup>
- (31) The Trustee notes that these long-term services agreements form an essential part of the transfer of the Divestment Business to Kerry. The Trustee finds that the long-term services agreements create links which are customary in such cases.<sup>15</sup> The Trustee concludes that the long-term services agreements will not enable the Parties to directly or indirectly affect Kerry's strategic

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<sup>12</sup> Reasoned Opinion, Section 5.3.3.

<sup>13</sup> Reasoned Opinion, Section 4.4.

<sup>14</sup> Reasoned Opinion, Section 5.3.3.

<sup>15</sup> Reasoned Opinion, Section 4.4.



behaviour, and so will not affect the Purchaser's independence from the Parties.<sup>16</sup> The Commission has reviewed the Transaction Documents and the information provided by the Trustee and is satisfied that these long-term services agreements are limited in scope and are necessary for the timely divestment and effective operation of the Divestment Business. The Commission notes that these services will be [information on terms]. Moreover, the provision of these services will not allow the Parties to gain any competitive insights into the Divestment Business and will not give the Parties the ability to influence the running of the Divestment Business by Kerry or to compromise Kerry's independence.

- (32) Based on the information provided by Kerry and the Parties and taking into account the Reasoned Opinion, the Commission concludes that Kerry is independent from the Parties and their Affiliated Undertakings, having regard to their pre-existing links as well as the links created by the divestment.

### **2.3. Financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitor**

- (33) Paragraph 16(b) of the Commitments states that the Purchaser shall have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors. These criteria are considered in turn under the subheadings below.

#### *2.3.1. Financial resources*

- (34) Paragraph 16(b) of the Commitments requires the proposed purchaser to have the financial resources to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors.
- (35) In 2022, Kerry had revenues of EUR 8.8 billion which represents a year-on-year growth of 19.3% between financial years 2021 and 2022. The company has an EBITDA margin of almost 14%, based on an EBITDA of EUR 1.2 billion. The annual capital expenditures account for 4% to 5% of the company's revenues.<sup>17</sup>
- (36) Kerry has received investment grade credit ratings from Standard & Poor's (BBB/A-2) and Moody's (Baa1).<sup>18</sup> It will pay the purchase price of approximately EUR 149.5 million for the Divestment Business [information about Kerry's financial records].<sup>19</sup>
- (37) Based on its assessment of Kerry's current financial position and its continuing strong financial performance in recent years, in combination with [information about Kerry's financing agreements], the Trustee considers that the company has sufficient financial resources and capabilities to acquire the Divestment Business and to maintain and develop it going forward.<sup>20</sup>

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<sup>16</sup> Reasoned Opinion, Section 4.4.

<sup>17</sup> Reasoned Opinion, Section 3.1.

<sup>18</sup> Reasoned Opinion, Section 6.2.1.

<sup>19</sup> Reasoned Opinion, Section 6.2.1.

<sup>20</sup> Reasoned Opinion, Section 6.2.2.



- (38) The Commission has reviewed Kerry's financial position, taking into account the information provided by Kerry and the Trustee's Reasoned Opinion. The Commission notes that the Transaction will be [information about the financing of the transaction] and that Kerry has strong global revenues and access to sufficient resources to allow it to support any necessary investments in the Divestment Business now and in the future.
- (39) For these reasons, the Commission concludes that Kerry has sufficient financial resources to satisfy the criteria set out in paragraph 16(b) of the Commitments.<sup>21</sup>

### 2.3.2. *Expertise*

- (40) Paragraph 16(b) of the Commitments requires the proposed purchaser to have expertise in the food and beverage industry, including the development, manufacture and commercialisation of food and beverage enzymes, expertise in dairy applications and expertise in bringing new products to market. Each of these criteria are considered under the subheadings below.

#### 2.3.2.1. Expertise in food and beverage industry and the development, manufacture and commercialisation of food and beverage enzymes

- (41) Kerry notes that it has more than 50 years of experience in the food and beverage industry and that it currently sells its portfolio of enzyme solutions for food, beverage and nutritional applications in over 180 countries worldwide.
- (42) In terms of its expertise in enzyme development and manufacturing, Kerry has explained that its manufacturing facilities in Ireland and Mexico have been producing a wide variety of enzymes<sup>22</sup> for use in the food and beverage industry for more than 20 years. These enzymes are produced using [information about Kerry's production activities]. Kerry also states that it has an extensive and fully developed supply chain infrastructure including warehouses, sales offices, and a total sales force of [information about Kerry's distribution activities].

#### 2.3.2.2. Expertise in dairy applications

- (43) Kerry has more than 50 years' experience in the dairy industry and the company has a dedicated dairy division, which generated revenues of EUR 1.5 billion in 2022. Kerry explains that this division sells a broad portfolio of chilled dairy products and dairy ingredients.

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<sup>21</sup> Reasoned Opinion, Section 6.2.2.

<sup>22</sup> Such as proteases, amylases, cellulases, xylanases, oxidases, glucanases, alpha-galactosidase and lipase



### 2.3.2.3. Expertise in bringing new products to market

- (44) Kerry is active in research and development. It spends more than [information on the Purchaser's R&D spend] a year on research and development and currently employs 1,100 R&D scientists. Kerry has historically been active in developing and commercialising natural extracts & botanicals, dairy flavours, sweet flavours, savoury flavours and texturants. This includes a variety of enzymes, proteins, probiotics, bioactives and lipids used for health and nutrition, functional foods and pharmaceuticals.
- (45) In 2022, Kerry acquired c-LEcta GmbH ("**c-LEcta**"), a global biotechnology company specialising in the development, production and distribution of enzyme products. Since this acquisition, Kerry has brought a number of key enzyme products and technologies to market, such as:
- DENARASE®, an endonuclease enzyme used for industrial processes of vaccine, gene and cell therapy.
  - Plug & play Biocats®, which are enzymes used for the synthesis of chiral compounds for pharma APIs.
  - [Natural Sweetener], which are enzymes to produce sweeteners from the Stevia plant.
  - NuCLEANase®, a Nuclease enzyme for applications in food, feed and other markets.<sup>23</sup>

### 2.3.2.4. Other relevant experience

- (46) Kerry has informed the Commission and the Trustee that it has significant experience of acquisitions, [information on Kerry's previous acquisitions]. A number of these acquisitions have involved either the sale or purchase of carved-out businesses, giving Kerry valuable experience of managing the integration process.
- (47) Furthermore, Kerry notes that it has experience of operating in China as it currently runs [number] manufacturing facilities there<sup>24</sup> and has acquired two Chinese businesses since 2020. Kerry is therefore familiar with integrating businesses in China into its group and of obtaining the permits required to operate facilities such as the Lactase Plant.

### 2.3.2.5. Assessment

- (48) The Trustee has assessed Kerry's expertise in the food and beverage industry, including its experience with the development, manufacture and commercialisation of food and beverage enzyme, expertise in dairy applications and expertise in bringing new products to market. The Trustee is satisfied that Kerry meets the purchaser criteria set out in the Commitments.<sup>25</sup>
- (49) The Commission has reviewed the information provided by Kerry regarding its expertise and experience as well as the Trustee's Reasoned Opinion. The Commission notes that Kerry has a long history in the dairy and food enzyme

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<sup>23</sup> Reasoned Opinion, Section 6.3.2.

<sup>24</sup> Reasoned Opinion, Section 3.1.

<sup>25</sup> Reasoned Opinion, Section 2.3.5.



businesses and has significant experience of bringing new products to market. In particular, the Commission notes that Kerry has successfully brought a number of food and beverage enzymes to market since the acquisition of c-LEcta which should help Kerry to finish the G2 Project included in the Divestment Business and launch a new lactase within a short period of time. [information on Kerry's collaboration agreements and R&D activities].

- (50) For these reasons, the Commission concludes that Kerry has sufficient expertise to satisfy the requirements of paragraph 16(b) of the Commitments.

### 2.3.3. *Incentive*

- (51) Paragraph 16(b) of the Commitments states that the Purchaser shall have the incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors.
- (52) Kerry states that it is incentivised to develop and maintain the Divestment Business for three main reasons. Firstly, as a listed company, Kerry wishes to maintain its record of providing value to its shareholders through organic growth and acquisitions.<sup>26</sup> This incentivises Kerry to ensure that the Divestment Business is profitable.
- (53) Secondly, the acquisition of the Divestment Business is complementary to its existing dairy portfolio. Expanding its business into lactase manufacturing should allow Kerry to extend its current product offering to its existing customers as well as to attract new dairy customers. The incentive to maintain its leading reputation with its dairy industry clients will ensure that the Divestment Business produces high quality products and can compete effectively against other lactase manufacturers and distributors.
- (54) Thirdly, developing its enzyme and biotechnology business is in line with Kerry's corporate strategy. Examples of Kerry's recent acquisitions in this area include the acquisition and successful integration of Enmex, a Mexican enzyme business in 2021 and c-LEcta, a German enzyme business acquired in 2022. This strategy gives Kerry the incentive to ensure the development of the Divestment Business using effective enzyme technology.<sup>27</sup>
- (55) For these reasons, the Trustee concludes that Kerry has the incentive and objective to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors.<sup>28</sup>
- (56) The Commission has assessed the information provided by Kerry and the Parties and has taken into account the Trustee's Reasoned Opinion. The Commission agrees that Kerry has the incentive and objective to ensure the maintenance and development of the Divestment Business. The Commission notes that the Divestment Business is a profitable stand-alone lactase manufacturing and distribution business that Kerry will be able to integrate

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<sup>26</sup> Reasoned Opinion, Section, Section 6.4

<sup>27</sup> Reasoned Opinion, Section, Section 6.4

<sup>28</sup> Reasoned Opinion, Section 6.4.



efficiently into its existing dairy and enzyme business to become a viable and active competitive force in lactase manufacturing.

- (57) On this basis, the Commission is satisfied that Kerry has sufficient incentives to develop and maintain the Divestment Business and therefore satisfies the criteria set out in paragraph 16(b) of the Commitments.

#### 2.3.4. *Conclusion*

- (58) Following its own assessment and taking into account the information provided by Kerry and the Reasoned Opinion of the Trustee, the Commission concludes that Kerry has the financial resources, proven expertise and incentives to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors.

#### 2.4. **Absence of prima facie competition problems**

- (59) Paragraph 16(c) of the Commitments states that the acquisition of the Divestment Business by the Purchaser must not be likely to create prima facie competition concerns and must not create a risk that the implementation of the Commitments will be delayed. In particular, the Purchaser must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business.
- (60) The Commission does not consider that the acquisition of the Divestment Business by Kerry is likely to create, in light of the information available to it, prima facie competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed.
- (61) The Divestment Business is active on two markets: (i) the market for the manufacture of GM produced lactase; and (ii) the market for the distribution of lactase within the wider market for the distribution of dairy enzymes, and food and beverage enzymes.
- (62) With regard to the market for the manufacture of lactase, there is no overlap as Kerry is not active in the manufacture of lactase.
- (63) With regard to distribution, Kerry is active as a distributor of dairy enzymes including lactase but has a limited market presence. Table 1 below sets out the Parties', the Divestment Business' and Kerry's market shares in the distribution of food & beverages enzymes, dairy enzymes and lactase (F&B). The Commission notes that the horizontal overlap at distribution level would qualify for simplified treatment under point 5(d)(i) of the Commission Notice on a simplified treatment for certain concentrations under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings<sup>29</sup> for any plausible segmentation of the distribution market at EEA and global level.

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<sup>29</sup> Commission Notice on a simplified treatment for certain concentrations under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, OJ C 160, 5.5.2023, p.1 (the "Simplified Notice").



**Table 1: Downstream market shares and HHI of the proposed merger between CH and NZ with the Divestment Business transferred to Kerry**

Downstream market shares by value in 2022	PRE-MERGER			POST-MERGER <sup>30</sup>			Delta HHI
	CH	NZ	Kerry	Merged entity <sup>31</sup>	Divestment Business	Kerry + Divestment Business	
<b>Distribution of food &amp; beverages enzymes</b>							
Global	[0-5]%	[5-10]%	<b>[0-5]%</b>	[5-10]%	[0-5]%	<b>[0-10]%</b>	[number]
EEA	[0-5]%	[5-10]%	<b>[0-5]%</b>	[5-10]%	[0-5]%	<b>[0-10]%</b>	[number]
<b>Distribution of dairy enzymes</b>							
Global	[10-20]%	[0-5]%	<b>[0-5]%</b>	[10-20]%	[5-10]%	<b>[5-15]%</b>	[number]
EEA	[20-30]%	[0-5]%	<b>[0-5]%</b>	[10-20]%	[10-20]%	<b>[10-20]%</b>	[number]
<b>Distribution of lactase (F&amp;B)</b>							
Global	[10-20]%	[0-5]%	<b>[0-5]%</b>	[0-5]%	[10-20]%	<b>[10-25]%</b>	[number]
EEA	[25-35]%	[0-5]%	<b>[0-5]%</b>	[0-5]%	[25-35]%	<b>[25-40]%</b>	[number]

- (64) Kerry's acquisition of the Divestment Business would also result in vertical relationships given the Divestment Business's upstream activities in the manufacture of lactase and both the Divestment Business and Kerry's activities downstream in the distribution of lactase at EEA and global level. However, those vertical relationships would qualify for simplified treatment under point 5(d)(ii) of the Simplified Notice as the combined market share of Kerry and the Divestment Business for food and beverage enzymes<sup>32</sup> and dairy enzymes<sup>33</sup> is below 30% at both the distribution level and the manufacturing level. Furthermore, when considering lactase, the combined market share of Kerry and the Divestment Business is below 50%, the HHI delta is below 150, and Kerry is the smaller undertaking in terms of market shares, at both the distribution level and the manufacturing level.<sup>34</sup>
- (65) The purchase of the Divestment Business is subject to merger notifications in Brazil and Colombia. The Brazilian competition authority cleared the

<sup>30</sup> The calculations [information on terms of sale of Divestment Business].

<sup>31</sup> The market shares of the merged entity are the sum of the following market shares: CH+NZ-Divestment Business.

<sup>32</sup> Post acquisition of the Divestment Business, Kerry would have a market share for the manufacture of food & beverages enzymes (including direct sales) of [0-5]% (global) and [0-5]% (EEA).

<sup>33</sup> Post acquisition of the Divestment Business, Kerry would have a market share for the manufacture of dairy enzymes (including direct sales) of [0-5]% (global) and [0-5]% (EEA).

<sup>34</sup> Considering the distribution market on a national basis, the acquisition could result in horizontally affected markets on the market for the distribution of lactase (F&B) and vertically affected markets when looking at the market for manufacturing of GM produced lactase upstream and the market for the distribution of lactase (F&B) downstream in Ireland. The Commission does not consider that these result in prima facie competition concerns given that: (i) as stated in the Decision, the downstream market for the distribution of F&B enzymes including lactase is likely EEA wide; (ii) as stated in the Decision (para 70), the downstream product market for the distribution of enzymes is likely not to be limited to a single enzyme such as lactase but to cover all dairy enzymes or even all food and beverage enzymes; and (iii) in any event, Kerry and the Divestment Business are not close competitors [information on the Parties and Kerry's sales breakdown] and would face competition from other strong vertically integrated manufacturers as well as sophisticated distributors.



acquisition unconditionally on 27 December 2023 and the Colombian merger authority confirmed that they had no further questions on 2 January 2024. This means that Kerry would be able to close the acquisition as soon as it is approved as a suitable purchaser by the European Commission.

- (66) Based on the information available, the Trustee considers that the approval of Kerry as the Purchaser of the Divestment Business would not create any prima facie competition concerns, nor would it give rise to a risk that the implementation of the Commitments will be delayed.<sup>35</sup>
- (67) On the basis of the above, the Commission considers that the acquisition of the Divestment Business by Kerry satisfies the criteria set out in paragraph 16(c) of the Commitments.

## 2.5. Transaction Documents

- (68) Paragraph 17 of the Commitments states that:

*The Parties must be able to demonstrate to the Commission that the purchaser fulfils the Purchaser Criteria and that the Divestment Business is being sold in a manner consistent with the Commission's Decision and the Commitments.*
- (69) As indicated in paragraph (4) above, the Transaction Documents consist of the MTA and certain related ancillary agreements needed to create the Divestment Business. These include a technology transfer agreement, as well as a lease-back and supply agreement and a number of transitional and long-term services agreements.
- (70) The Commission has been provided with copies of the Transaction Documents, including the agreed terms of the transitional services and reverse transitional services agreements to be entered into between Kerry and the Parties. The Commission has reviewed these and summarised their provisions in Section 2.2.2 above. The Commission is satisfied that the MTA and the Transaction Documents enable the Divestment Business to be sold in accordance with the Commitments.
- (71) The Trustee has also confirmed that the terms of the Transaction Documents reflect the Parties' obligations as set out in the Commitments.<sup>36</sup> Furthermore, the Trustee notes that [information on agreed terms of Transaction Documents].<sup>37</sup>
- (72) In light of the above, the Commission concludes that the Transaction Documents are consistent with the Commitments and that, accordingly, the Divestment Business is being transferred in a manner consistent with the Commitments.

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<sup>35</sup> Reasoned Opinion, Section 6.5.4.

<sup>36</sup> Reasoned Opinion, Section 5.3.

<sup>37</sup> Reasoned Opinion, Section 5.3.3.



## **2.6. Changes to assets or personnel included in the Divestment Business**

- (73) Paragraph 8 of the Commitments requires the Parties to preserve the viability, marketability and competitiveness of the Divestment Business. As a part of this process, paragraph 8(c) of the Commitments states that the Parties shall take all reasonable steps to encourage the key personnel identified in the Commitments to remain with the Divestment Business.
- (74) Where, nevertheless, individual members of the key personnel exceptionally leave the Divestment Business, paragraph 8(c) of the Commitments provides that the Parties shall provide a reasoned proposal to replace the person or persons concerned to the Commission and the Monitoring Trustee. The Parties must be able to demonstrate to the Commission that the replacement is well suited to carry out the functions exercised by those individual members of the key personnel. The replacement of any key personnel shall take place under the supervision of the Monitoring Trustee, who shall report to the Commission.
- (75) The Parties have informed the Commission and the Trustee that one of the key personnel identified in Annex 5 of the Commitments does not wish to become part of the Divestment Business.
- (76) [Name and role of FTE] included in the list of key personnel, has resigned [information identifying FTE] and will not be employed by the merged entity. The Parties have proposed that [information identifying FTE] be replaced by [name and current role of replacement FTE]. The Parties note that [name of replacement FTE] has significant experience with the lactase business, as [information identifying regarding experience of replacement FTE].
- (77) The Trustee has reviewed the curriculum vitae of [name of replacement FTE] and considers that [identifying information regarding replacement FTE] is a suitable replacement to carry out the functions of [proposed role of replacement FTE]. Furthermore, the Trustee notes that Kerry has not raised any concerns about this appointment.<sup>38</sup>
- (78) Taking into account the Trustee's opinion and the qualifications and experience of the proposed replacement, the Commission considers that the modification to the list of key personnel will not negatively affect the viability of the Divestment Business. The Commission therefore approves the modification of the list of key personnel in Annex 5 of the Commitments by replacing [name of FTE] with [name of replacement FTE].

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<sup>38</sup>

Monitoring Trustee Report, CH First Monthly Report, 15 January 2023, paragraph 2.1.3.



### 3. CONCLUSION

- (79) On the basis of this assessment, the Commission approves Kerry as a suitable purchaser for the above-mentioned reasons.
- (80) The Commission further concludes that the Divestment Business is being sold in a manner consistent with the Commitments, on the basis of the MTA and related Transaction Documents.
- (81) This decision only constitutes approval of the proposed purchaser identified herein and of the MTA. This decision does not constitute a confirmation that the Parties have complied with the Commitments.
- (82) This decision is based on Section D of the Commitments attached to the Commission Decision of 12 December 2023.

*For the Commission*

*(Signed)*  
*Olivier GUERSENT*  
*Director-General*