EUROPEAN COMMISSION
DG Competition

Case M.11204 - BUNGE / VITERRA

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: 01/08/2024

In electronic form on the EUR-Lex website under document number 32024M11204

Brussels, 1.8.2024
C(2024) 5708 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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Bunge Global SA
Route de Florissant 13
1206 Geneva
Switzerland

Subject: **Case M.11204 – BUNGE / VITERRA**
Commission decision pursuant to Article 6(1)(b) in conjunction with Article 6(2) of Council Regulation No 139/2004[1] and Article 57 of the Agreement on the European Economic Area[2]

Dear Sir or Madam,

(1) On 13 June 2024 the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 (the 'Merger Regulation') by which Bunge Global SA ('Bunge' or the 'Notifying Party', USA) will acquire within the meaning of Article 3(1)(b) of the Merger Regulation sole control of the whole of Viterra Limited ('Viterra', the Netherlands) by way of purchase of shares (the 'Transaction').[3] Bunge and Viterra are jointly designated hereinafter as the 'Parties'.

1. THE PARTIES AND THE CONCENTRATION

(2) **Bunge** is an agribusiness company listed on the New York Stock Exchange. Bunge is mainly active in the processing, sale and trading of oilseed meals and oils. Bunge also sells grains, including corn, wheat, barley and milled products, such as wheat flour, as well as unprocessed oilseeds and other products like sugar.

1 OJ L 24, 29.1.2004 p. 1. With effect from 1 December 2009, the Treaty on the Functioning of the European Union ('TFEU') has introduced certain changes, such as the replacement of 'Community' by 'Union' and 'common market' by 'internal market'. The terminology of the TFEU will be used throughout this decision.
2 OJ L 1, 3.1.1994, p. 3 (the 'EEA Agreement').
3 OJ C, C/2024/3968, 21.6.2024.

(3) **Viterra** is currently owned by Glencore Plc ('Glencore'), Canada Pension Plan Investment Board ('CPP Investments'), British Columbia Investment Management Corporation ('BCI') and Viterra Employee Benefit Trust ('VEBT'). Viterra trades commodity crops, in particular grains and oilseeds, as well as other unprocessed products (e.g. cotton) and milled products (e.g., wheat flour). Viterra also processes, sells and trades oilseed-based products (e.g., meal and oil).

(4) Bunge intends to acquire 100% of the issued and outstanding share capital of Viterra. Therefore, post-Transaction, Viterra will be solely controlled by Bunge. It follows that the proposed Transaction is a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

2. UNION DIMENSION

(5) The combined worldwide turnover of the Parties exceeds EUR 5 000 million (Bunge: EUR 54 800 million in 2023; Viterra: EUR 52 100 million in 2023). Each of them has an EU-wide turnover in excess of EUR 250 million (Bunge: EUR […] in 2023; Viterra: EUR […] in 2023). Furthermore, the Parties do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The Transaction therefore has an EU dimension within the meaning of Article 1(2) of the Merger Regulation.

3. OVERVIEW OF THE OILSEEDS INDUSTRY

(6) The Transaction mainly relates to the sector for the origination, trading and processing of agricultural commodities and products thereof.

3.1. Oilseeds and other agricultural commodities

(7) **Arable crops** account for the large majority of agricultural commodities produced worldwide. They are used as animal feed in the production of other agricultural commodities (such as meat or dairy products), as food for human consumption or as input in the production of biofuel.

(8) Arable crops are generally classified in the following broad categories, based on their nutritional profile.

(a) **Cereals** are starchy grains having a relatively high content of carbs. They include rice, wheat, rye, oats, barley, millet, and maize.

(b) **Oilseeds** are primarily grown for oil extraction and have a relatively high fat content. They include rapeseed, soybeans and sunflower seeds.

(c) **Pulses**, also known as legumes, have a relatively high protein content. They include peas, chickpeas, beans and lentils.

(d) Other arable crops include forage crops for animal feed, fibre crops (such as cotton or jute) and tubers.

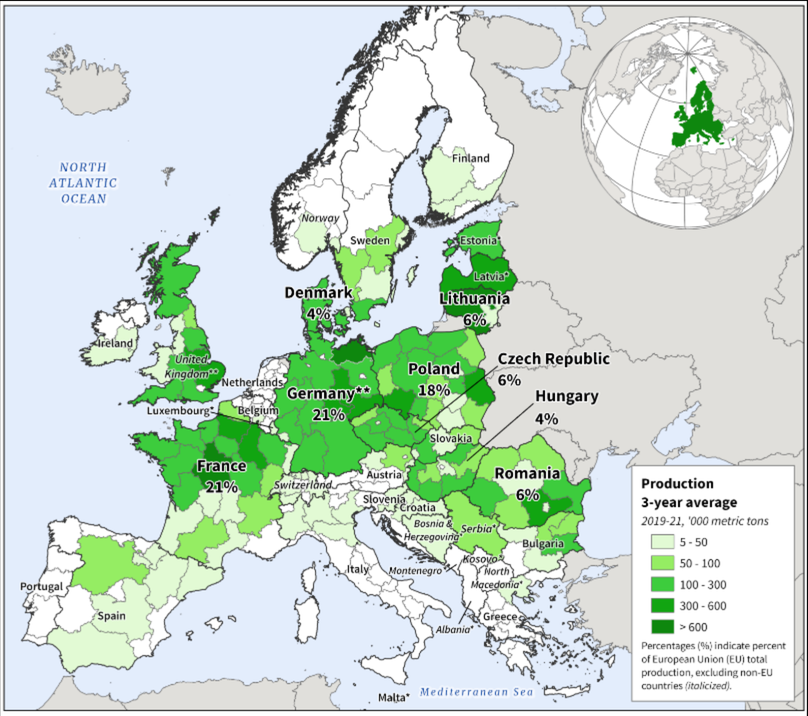
(9) The overlap between the Parties' activities is most significant in the trade and processing of oilseeds.

3.2. Specific features of each type of oilseeds

(10) Rapeseed, soybeans and sunflower seeds are all used to produce vegetable oils (for human consumption or for biofuel production) and meal (for animal feed). However each of these three species have certain specific features, which have important ramifications in terms of availability, prices and market dynamics.

(11) *First*, each type of oilseed requires different soil and weather conditions for optimal growth and is therefore grown in different regions. Rapeseed is grown across the Northern European Plain extending from France to the Baltic countries, as well as in the Danube Basin beyond the Carpathian Mountains.

Figure 1 Rapeseed production in Europe

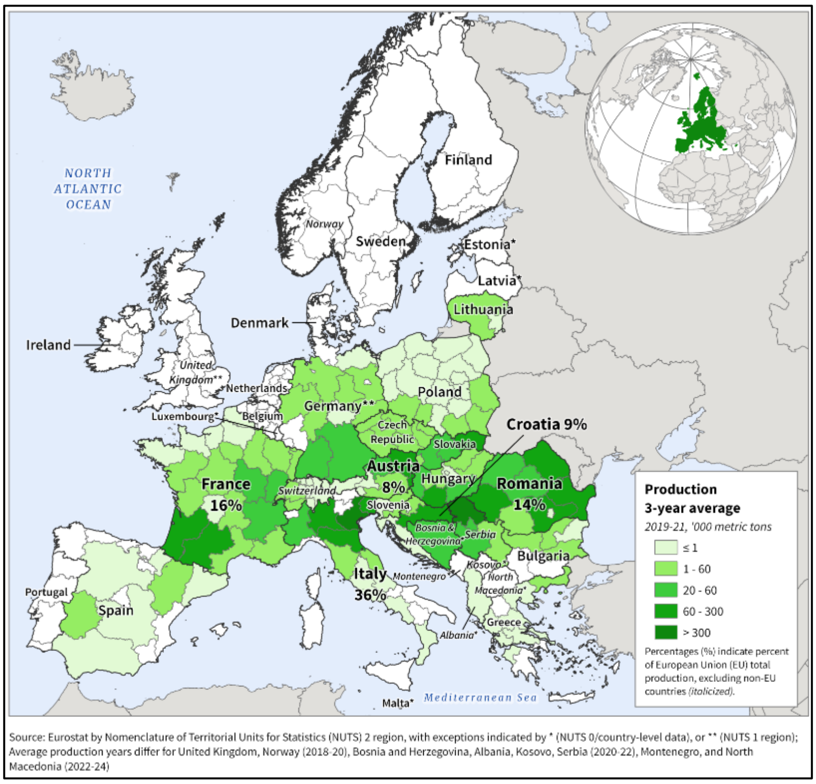


Source: Eurostat by Nomenclature of Territorial Units for Statistics (NUTS) 2 region, with exceptions indicated by * (NUTS 0/country-level data), or ** (NUTS 1 region); Average production years differ for United Kingdom (2017-19), Norway (2015-18), Bosnia and Herzegovina (2020-22), Montenegro, North Macedonia, Albania (2021-23), Serbia, and Kosovo (2020-22)

Source: USDA Foreign Agricultural Service

(12) Soybeans require hot and humid conditions to maximise harvest yields. As a result, production of soybeans in the EEA is very limited, and mostly concentrated in the southernmost areas of arable land, particularly in France, Italy and the Danube Basin along the Black Sea coast.

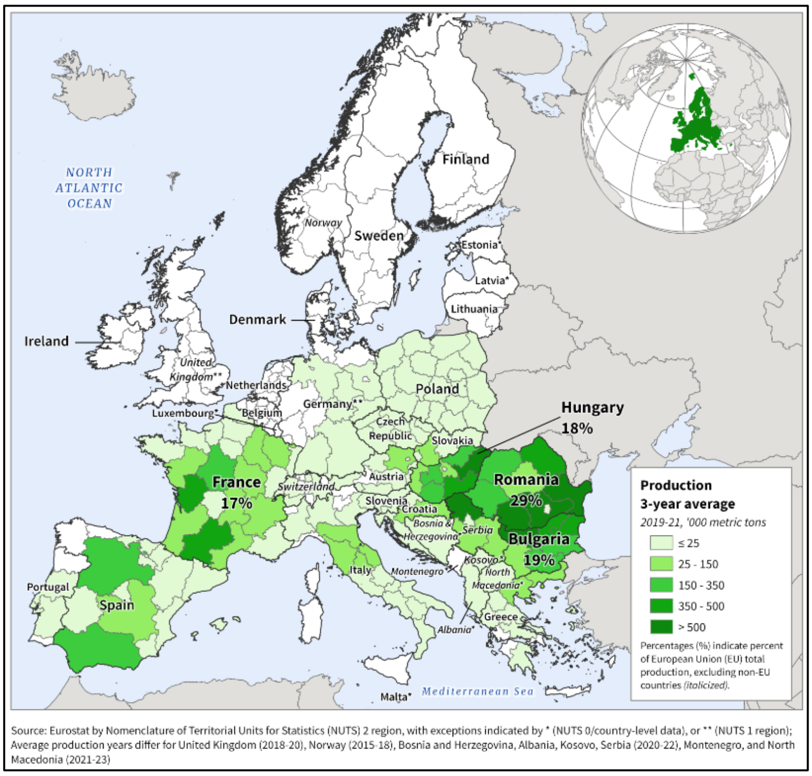
Figure 2 Soybeans production in Europe



Source: USDA Foreign Agricultural Service

(13) Finally, sunflower seeds tend to grow particularly well in regions that are less hot and humid. In the EEA, the largest sunflower seed producing areas are in France, Spain and in the Danube basin stretching across Hungary, Romania and Bulgaria.

Figure 3 Sunflower production in Europe



Source: USDA Foreign Agricultural Service

(14) *Second*, these different growing patterns have an impact on the international trade flows of these products, both within the EEA and with extra-EEA countries.

(a) Rapeseed is available domestically in great quantity across the EEA (19.3 million t) and to a lesser extent it is imported from outside the EEA, particularly from Australia (3.6 million t) and Ukraine (2.3 million t).

(b) Conversely, European production of soybean is very limited (2.5 million t). Most of the soybeans consumed in Europe are imported (14.8 million t), particularly from Brazil (7.1 million t) and the United States (4.8 million t).

(c) Finally, European sunflower seed (9.4 million t) is mostly grown in the Danube Basin and from there it is distributed to other European countries, as well as being imported from outside the EEA (2.4 million t), mainly from Ukraine.[4]

(15) Thus, Central and Eastern Europe ('CEE') is a crucial region for the production of both rapeseeds and sunflower seeds in the EEA. Soybeans, instead, are mostly imported from across the Atlantic.

(16) *Third,* each type of oilseed has a different nutritional profile, which is reflected in the partially different applications of these products. For instance, soybeans have a higher protein content compared to rapeseed and sunflower seed. Therefore, soybean meal is particularly indicated for the production of animal feed requiring a high content of proteins. Instead, because of its high fibre content, sunflower meal can be fed to ruminants but it is less appropriate for pigs and poultry.

(17) Finally, the Commission notes that during the time period under consideration in the assessment of the Transaction below, market flows of cereals, oilseeds and oilseed-related products have been impacted due to Russia's full-scale invasion of Ukraine and its consequences, leading to a surge in imports of oilseeds and oilseed products from Ukraine into the EEA.[5]

3.3. The oilseeds value chain

(18) The oilseeds value chain includes the following main categories of players.

(a) **Producers** (i.e. farmers) work the soil to grow and harvest oilseeds. They are often organized in cooperatives, particularly in Western Europe.

(b) **Originators** acquire harvested crops from farmers and perform some preliminary activities allowing the introduction of these products on the market (e.g. quality control, cleaning, drying, subdivision in uniform batches, etc.). They generally operate storage facilities and other logistical assets.

(c) **Processors** (or 'crushers') operate crushing plants to extract crude oil from oilseeds. The byproduct of this process is meal, that is the solid portion of the crushed oilseed resulting from the extraction of oil.

(d) **Feed producers** mix meals with other nutritional ingredients to produce animal feed.

(e) **Refineries** are industrial plants processing crude oil into refined oil for human consumption and/or biodiesel for engines.

(f) **Food companies** use refined oil for the production of food items, particularly solid fats (e.g. margarine).

---

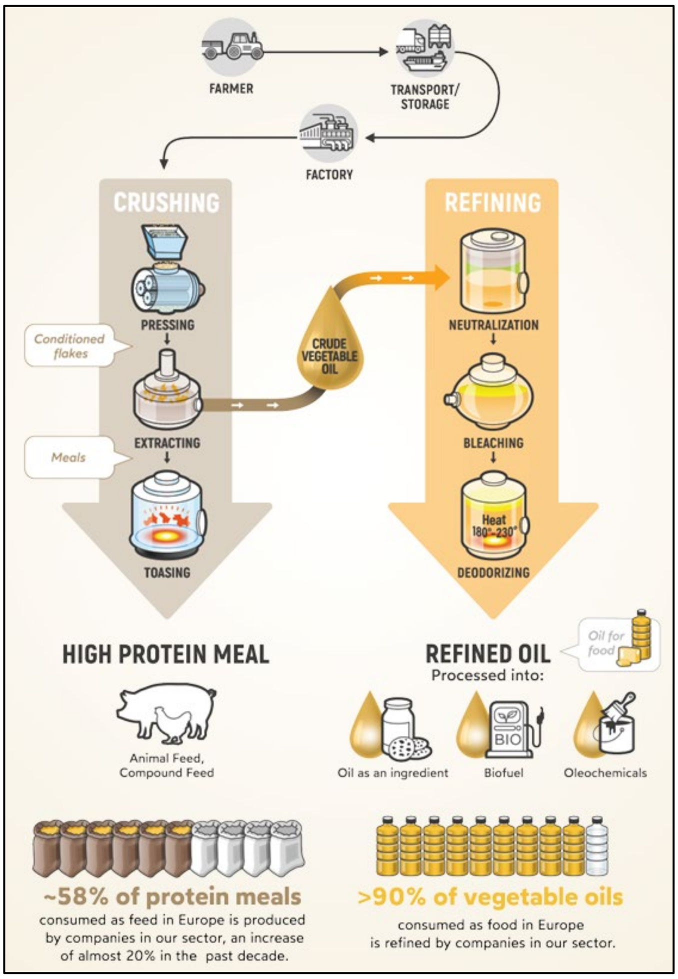
[4] 2022 figures from the Parties' response to QP 7, Annex Q3+4, and World Bank data on imports.

[5] European Commission, DG AGRI, Interservice consultation (COMP/PH/E-4/M.11204-ICC).

(g) **Fuel producers** blend biodiesel with conventional hydrocarbon-based diesel to obtain biofuel for distribution and use in the retail marketplace.

(h) **Traders** buy and resell any of the abovementioned products, without performing any processing activity. They vary significantly in size from small local elevators aggregating crops from nearby producers to large multinational corporations trading sizeable volumes across the globe (such as the Parties).

Figure 4 The oilseeds value chain



Source: FEDIOL

(19) While some companies are only active at one level of the value chain, others are vertically integrated across different levels. For instance, the Parties are active in the origination of crops, processing of oilseeds, refining of oils, as well as trading of these products. Bunge is also active in the downstream production of solid fats.

3.4. The hourglass-shaped market

(20) Market concentration is very uneven across the different levels of the value chain listed above. In particular, the levels of upstream suppliers (i.e. farmers and originators) and downstream customers (i.e. food and feed companies) are highly fragmented across a very broad range of market players. But at the bottleneck between these two levels, a highly concentrated group of processors and international traders act as gatekeepers of the value chain. This has been described as "*the classic "hourglass" model of market power in food* [involving] *a vast*

number of producers supplying a similarly huge number of consumers, via a tight group of processors and traders."[6]

(21) This concentrated group of processors and traders is traditionally known as the ABCD+ Group, from the initials of its main members: ADM, Bunge, Cargill, Dreyfus. Viterra and COFCO are considered up-and-coming "*new kids on the block*."[7] The Transaction would further consolidate Bunge and Viterra's position in this small group of market leaders.

3.5. The Parties' business model

(22) The business model of the Parties (and of other members of the ABCD+ Group) essentially consists of arbitraging between agricultural products having variable price differentials. Those price differentials mainly exist along three dimensions, each requiring a specific type of assets to secure a profitable arbitrage.[8] In particular:

(a) Price differentials exist across periods in time. For instance, a company can buy oilseeds during harvest time and then resell them during the low season, when the price is higher. This type of arbitrage requires storage facilities (such as elevators, silos and warehouses) to stock the products until their price increases.

(b) Price differentials exist across geographic areas. For instance, a company can buy oilseeds in Brazil and resell them in Europe, where the price is higher. This type of arbitrage requires transport facilities (such as terminals, ships, barges, trains and trucks) to move the products across long distances.

(c) Price differentials exist across processing stages. For instance, a company can decide to sell oilseeds or crush them depending on the relative price of oilseeds, meals and oils. This type of arbitrage requires processing facilities (such as crushers and refineries) to produce added value products from commodity inputs.

(23) A given company may own the abovementioned facilities, or lease them on a temporary basis (particularly logistical facilities for storage and transportation), or even rely on external contractors (such as freight forwarders).

(24) This segment of the market is particularly concentrated because of the significant economies of scale and scope characterizing these businesses, which also raise significant barriers to entry for smaller competitors.

(25) In terms of economies of scale, achieving high trading and production volumes unlocks several efficiencies. For instance, suppliers of crops generally prefer and prioritize companies that are able to purchase high volumes of products.[9] High production volumes also allow processors to run crushers at full capacity and minimize the considerable fixed costs. Certain transportation channels are only accessible to companies that can generate enough trade to fill up the required vessel (e.g. oversea shipping on Panamax vessels). And high and stable volumes also allow traders to secure better conditions for the leasing of train or truck fleets and the booking of capacity at port terminals.[10]

---

6 Financial Times, "Murky world of global food trading is too important to ignore," 21.6.2023.
7 Jonathan Kingsman, "Out Of The Shadows, The New Merchants Of Grain," page 9.
8 Jonathan Kingsman, "Out Of The Shadows, The New Merchants Of Grain," page 78.
9 Responses to eRFI on oilseeds, questions C.C.1.
10 Minutes of calls on 25.4.2024 and 17.6.2024.

(26) In terms of economies of scope, companies active across a broad range of different products and geographies are able to maximize arbitrage opportunities, because they can leverage more price differentials between those products and geographies. Involvement in different segments of the value chain also enable companies to obtain detailed insights on market dynamics and leverage information asymmetries against other companies.[11]

4. MARKET SHARE METHODOLOGY

(27) Before moving to the assessment of the Transaction, the present section illustrates the approach used by the Commission to calculate market share estimates in support of its analysis.

4.1. The Parties' approach

4.1.1. Consumption shares on national or EEA level

(28) To have a first indication on the market structure and the competitive strength of the Parties, the Commission typically uses "merchant" market shares, namely market shares based on sales to third parties.

(29) In this regard, the Parties argue that traditional merchant market shares cannot be computed in this case, as the only market size metrics available are metrics based on *total consumption* (i.e. total volume processed by crushers and refiners). The Parties state not to be aware of any publicly available estimates on the *total sales* carried out in a given geography nor can they reliably derive such estimates based on assumptions.[12] Instead, the Parties proposed consumption shares which correspond to the sum of the Parties' consumptive sales (i.e., volumes sold to third-party end users) over the total consumption in the geography.

4.1.2. Capacity shares on catchment area level

(30) The Parties further argue that geographic markets are wider than national level as evidenced by the distance shipments travel across borders, defined by so called catchment areas. However, since consumption data are not available at the catchment area level, they cannot precisely map consumption shares to their respective catchment areas. Thus, all catchment area analysis is performed using capacity shares for which all plants of both the Parties and its competitors can be reliably located. The Parties submit two different catchment area analyses using both a counterparty-centric and a plant-centric approach.

4.1.2.1. Counterparty-centric approach

(31) In the counterparty-centric approach, the Parties use data on the transportation of products that they organized in 2022, to determine the maximum distance that they travelled in 2022 to pick up (in the case of procurement of oilseeds) or deliver (in the case of marketing of meal, crude oil and refined oil) 90% of the volume that they transported to or from each of their plants.[13] The analysis covers all plants in Central and Eastern Europe.

(32) Subsequently, the Parties identify the competitors' crush/refining plants that are located within a reasonable distance of each of the suppliers and customers identified as defined by the 90th percentile described above and, thus, constitute

---

[11] SOMO, "Hungry for profit," page 15.
[12] Reply to QP1, paragraph 25.
[13] Annex 1 - Compass Lexecon Analysis of Competition in Central and Eastern Europe - 1 May 2024.

viable competitive alternatives to the Parties' plants for such suppliers and customers.

(33) The Parties then assess the extent of competition faced by the Parties for each of the counterparties by calculating, for each counterparty, the Parties' joint share of the total crushing capacity.

4.1.2.2. Plant-centric approach

(34) In the plant-centric approach, the Parties' capacity shares are computed within a geographic market defined by a specific radius around the Parties' plants.[14] For the crushing of oilseeds, the Parties consider a radius of 500km or 1000km around each plant, while they consider 750km or 1500km as the relevant radii for the refining plants. Capacity shares based on both working and installed capacity are provided. The analysis covers all plants in Central and Eastern Europe.

4.2. The Commission approach

(35) The Commission combines two approaches to measure market power of the Parties for all markets. First, different types of market share proxies based on consumption and capacity approximate market power of both the Parties and their competitors on national level. Second, capacity shares on catchment area level approximate market power across national borders based on the maximum distance shipments typically travel.

4.2.1. Market power proxies on national level

(36) In its first approach, the Commission relies on the narrowest geographic market definition for which market size estimates are available for 2022,[15] that is on the national level. Although those estimates may not accurately reflect the precise geographic scope of each relevant market, they still provide a sufficiently clear picture of the geographic areas with significant overlap. The Commission constructs market share proxies based on both consumption and capacity data.

4.2.1.1. Proxies based on consumption data

(37) Consumptions shares alone, as suggested by the Parties, provide misleading results, as the Parties only compare their sales to third-party end-users with the total consumption in the country, that is the sum of the internal consumption of all the market players in the country. The Parties, hence, left out from their market share estimate their own internal consumption, a figure which is nonetheless included in the total market size. As this underestimates the Parties' market position, the Commission computes alternative market power proxies.

(38) *First*, to assess the Parties' market power on the *purchasing side*, the Commission relies on metrics measuring the Parties demand in the market. Demand corresponds to volumes that are purchased by the Parties and (i) consumed in the country or (ii) exported to another country. **Demand shares** are therefore calculated as *(Party's consumption + Party's net exports) / total national production*.

(39) This approach excludes products purchased and then resold by the Party in the same country. In fact, the inclusion of these volumes would result in double counting of those volumes in the market share estimates, because the products are first purchased by the Party and then by another company in the same country.

[14] Annex RFI11 - Catchment area shares.

[15] The Parties also provided data for 2020 and 2021 which was broadly aligned with the 2022 data which the Commission used as a reference point for the purposes of assessing the Transaction.

Moreover, volumes purchased and resold by the Party in the same country are not a reliable proxy of the Party's purchasing power, because they are only temporarily held by the Party before being resold to another company at a short distance. It is more appropriate to calculate the demand shares with reference to the main drivers of demand in these markets, namely (i) the operation of processing plants, i.e. consumption and (ii) the operation of long distance transportation channels, i.e. exports.

(40) *Second*, to assess the Parties' market power on the *selling side*, the Commission relies on metrics measuring the Parties supply in the market. Supply corresponds to volumes that are sold by the Parties after having been (i) originated in the country (in the case of oilseeds) or produced in the country (in the case of meals or oils) or (ii) imported from another country. **Supply shares** are therefore calculated as:

(a) Supply share of oilseeds: (Party's origination + Party's net imports) / total national consumption

(b) Supply share of oilseed oil and oilseed meal: *(Party's production + Party's net imports) / total national consumption*

(41) By analogy to the reasons explained in paragraph (39) above, this approach excludes products sold by the Party after having been purchased by the Party in the same country.

(42) This proxy measures the Parties' market power taking into consideration the Parties' captive volumes. This approach is necessary because the Parties could not estimate (and the Commission could not survey) captive consumption for all market participants, and therefore accurate market shares limited to merchant supply could not computed.[16] For this reason, while relying on market share estimates computed as described above, in this Decision the Commission will acknowledge and take into account the instances in which those shares overestimate the Parties' position in the merchant market because they are mostly or entirely reflective of captive supply.

(43) *Third*, to assess the market power of the Parties on the *selling side*, the Commission also relies on trading shares. Trading shares are similar to supply shares, but also include the volumes purchased by the Party in the country, other than originated/produced volumes (i.e., volumes purchased from intermediaries instead of producers).

[16] Reply to QP1, paragraph 70.

(44) There are certain limitations to the significance and robustness of trading shares as a proxy for market power. As explained above, this approach would double count volumes that are sold and purchased multiple times within the same country. In fact, a given product can be sold and purchased several times in the same country, while it is originated, produced, consumed, imported or exported only once. Because of this double counting, if trading shares were computed for all players in the market, the total shares would exceed 100%. Nonetheless, the Commission considers that this metric is still informative because it quantifies the overall volumes that have been handled by the Party at any point in time (either at the origination/production level, or at the consumption level, or at the intermediate trading level) compared to the total market consumption. **Trading shares** are therefore calculated as:

(a) Trading share of oilseeds: *(Party's origination + Party's purchases + Party's net imports) / total national consumption*

(b) Trading share of oilseed oil and oilseed meal: *(Party's production + Party's purchases + Party's net imports) / total national consumption*

(45) This proxy does not only focus on sales to third parties but measures the position of the Parties in further processing their inputs and supplying the processed output volumes onto the downstream markets as well. As the Parties might not sell a given product in a country to third parties but might instead process some volumes of that product locally, high consumption volumes will give market power to the Parties in supplying the processed volumes to the downstream markets. Therefore, this trading share proxy is used to identify any potential strength held by the Parties in the value chain and is subject to further qualitative and quantitative insights.

(46) To avoid any double counting between Bunge's and Viterra's shares, the Commission removed from Bunge's purchases any of Viterra's sales to Bunge and from Viterra's purchases any of Bunge's sales to Viterra.

(47) The Parties argue that none of these proxies are an appropriate metric for assessing the Parties' market position in sales to third parties. They claim that these shares rather reflect the extent of their processing activities, and thus the volumes that the Parties use captively. In some cases, the Parties are not selling any volumes at all, in a given country, but still have significant shares based on this methodology due to their captive processing activities. The Parties insist that the first sales shares, despite their shortcomings, might provide a more accurate picture of the Parties' market position as suppliers of oilseeds and grains as well as their derivative downstream products than these alternative shares[17].

(48) The Commission considers it appropriate to rely on the more conservative approach on market shares to define the scope of its assessment, and then discuss the limitations of that approach – which are easily detectable based on the available data on the Parties' captive consumption – as part of that assessment. Conversely, if the Commission were to define the scope of its assessment based on the approach suggested by the Parties, this would lead to 'false negatives' and gaps in the assessment itself. In fact the approach suggested by the Parties systematically underestimates their position by including captive consumption in the market size but completely ignoring it in calculating the Parties' shares.

(49) Moreover, the Commission notes that its market share methodology is in line with previous decisions in multi-level value chains, in which supply shares were

[17] Form CO, paragraph 585.

calculated as the sum of local production and net imports.[18] Furthermore, the same approach is also used in the Parties' own internal documents to calculate the market shares of several companies.[19]

4.2.1.2. Proxies based on capacity data

(50) The Commission further relies on capacity shares to assess the Parties' market power. Processing capacities for oilseed crushing and oil refining at plant-level are tracked by the Parties in the ordinary course of business and provide a view of the currently available processing capacity around the world, for the Parties' plants as well as for third party plants. Bunge continuously updates these capacity estimates, which are based on publicly available information on third party plants such as known plant openings, closures, or changes in capacity, as well as Bunge's business judgment[20].

(51) Capacity shares provide information about the processing capacities that the Parties control compared to the overall processing capacity available in a given country. Although not market shares, capacity shares capture the structure of the market and are an indicator of the capabilities of an integrated firm also at further levels of the supply chain as these shares provide an indication about the extent of an integrated firm's structural power to supply their processed outputs in the downstream markets. Therefore, the Commission regards capacity shares as an important driver of competitive dynamics, as they constitute a more structural metric of market power than sales shares.[21]

(52) To complement the Parties' dataset, the Commission carried out a market reconstruction and asked crushers and refiners in the EEA to provide their processing capacities of each plant for crushing as well as refining.[22] Moreover, the Commission asked for total volumes crushed or refined for each type of oilseed (i.e. rapeseeds, soybeans, sunflower seeds).[23] In contrast to the Parties' dataset, the Commission's dataset has two advantages. First, it allows to reliably calculate capacities for each plant and seed type by allocating total plant capacities to specific seed types according to their volume share within a plant. Second, it allows to calculate spare capacity of each plant and seed type via the difference between capacity and volume.[24] The Commission then replaces the Parties' capacity data from 2022 with the Commission's capacity data from 2023 in case a plant is observed in both datasets (**"adjusted capacity data"**).

4.2.2. Catchment area analysis

(53) The Commission uses both a plant-centric and a mid-point centric approach to define catchment areas in the relevant markets described below.

4.2.2.1. Plant-centric approach

(54) Comparable to the Parties' approach described in Section 4.1.2.2, the Commission performs a plant-centric catchment area analysis around the Parties' plants using the adjusted capacity described in Section 4.1.2.2. Based on the feedback from the

---

18 Commission decision in case M.8444 *ArcelorMittal/Ilva*, 7.5.2018, para. 459.

19 Response to QP4, Annex Q30+31.1.44.

20 Form CO, paragraph 27.

21 Commission decision in case M.8674 – *BASF/Solvay's Polyamide Business*, 18/01/2019, para 460.

22 The questionnaire was sent to 126 customers and competitors out of which 29 responded or 23%.

23 Moreover, the dataset contains further information including volumes consumed internally, countries where the production is internally consumed, and countries where the production is sold to third parties if any.

24 Few observations with reported negative spare capacity are set to missing.

market investigation, a 500km circle is drawn around each of the plants active in the market for both rapeseed and sunflower seed crude oil, while a 750km circle is drawn around the plants active in the market for rapeseed and sunflower seed refined oil. This in line with the feedback from the market investigation, which roughly suggest a radius of 500km around a production plant for crude oil and rapeseed meals and a radius of 750km for refined oil, and of at least 750km for sunflower meals.[25] In each market, competitors with less than 1% capacity share are grouped together in a single firm "other".

(55) Based on the distance of each competitor to the plant centre, only those competitor plants with a plant centre inside of each geographic market are kept. The capacity share of each plant is then calculated as the total plant capacity divided by the total capacity over all players in each geographic and product market.[26]

4.2.2.2. Mid-point-centric approach

(56) As an alternative to the plant-centric approach, the Commission defines the centre of each geographic market as the mid-point between any possible pair of Bunge and Viterra plants. The Commission then repeats the same steps as for the plant-centric analysis, only now with different centres.

5. LEGAL FRAMEWORK

(57) Under Articles 2(2) and (3) of the Merger Regulation, the Commission must assess whether a proposed concentration would significantly impede effective competition in the internal market or in a substantial part of it, in particular as a result of the creation or strengthening of a dominant position.[27]

(58) In this respect, a merger may entail horizontal and/or non-horizontal effects. Non-horizontal effects are those deriving from a concentration where the undertakings concerned are active in different relevant markets.

(59) As regards the assessment of horizontal effects, the Horizontal Merger Guidelines distinguish, in addition to the creation or strengthening of a dominant position, between two main ways in which mergers between actual or potential competitors on the same relevant market may significantly impede effective competition, namely non-coordinated and coordinated effects. Non-coordinated effects may significantly impede effective competition if a merger weakens important competitive constraints between rival firms in the market, who consequently would have increased market power, without resorting to coordinated behaviour. In that regard, the Horizontal Merger Guidelines consider not only the direct loss of competition between the merging firms, but also the reduction in competitive pressure on non-merging firms in the same market that could be brought about by a merger.

(60) The Horizontal Merger Guidelines list a number of factors, which may influence whether or not significant non-coordinated effects are likely to result from a merger. For instance, these include (but are not limited to) large market shares of the merging firms, the fact that the merging firms may be close competitors,

---

25 Market investigation questionnaire 5 on capacity data.

26 As a robustness check, the Commission allocated only a share of capacity of each plant to a geographic based on the geographic overlap of two plants. The results were comparable with this adjustment.

27 To the extent that the EEA Agreement applies in this case, Annex XIV to the EEA Agreement contains specific rules supplementing the Merger Regulation.

limited possibilities for customers to switch suppliers, the existence of capacity constraints, or the fact that a merger may eliminate an important competitive force. Not all of the factors indicated in the Horizontal Merger Guidelines as potentially relevant to the analysis of non-coordinated effects need to be present to make significant non-coordinated effects likely. Moreover, the list of factors is not exhaustive.

(61) The Horizontal Merger Guidelines describe the creation or the strengthening of a dominant position as a primary form of competitive harm. Further, reference is drawn in the Horizontal Merger Guidelines to Council Regulation No 4064/89, defining dominance as '*a situation where one or more undertakings wield economic power which would enable them to prevent effective competition from being maintained in the relevant market by giving them the opportunity to act to a considerable extent independently of their competitors, their customers and, ultimately, of consumers*'.[28]

(62) Very large market shares – 50 % or more – may in themselves be evidence of the existence of a dominant market position. However, smaller competitors may act as a sufficient constraining influence if, for example, they have the ability and incentive to increase their supplies. A merger involving a firm whose market share will remain below 50 % after the merger may also raise competition concerns in view of other factors such as the strength and number of competitors, the presence of capacity constraints or the extent to which the products of the merging parties are close substitutes.[29]

(63) A merger giving rise to non-coordinated effects, such as to the removal of an important competitive constraint on a seller,[30] would significantly impede effective competition by creating or strengthening the dominant position of a single firm. This firm would typically have an appreciably larger market share than the next competitor post-merger.[31]

(64) As regards the assessment of vertical effects, according to the Non-Horizontal Guidelines, non-coordinated effects may significantly impede effective competition as a result of a vertical merger if such merger gives rise to foreclosure. Foreclosure occurs where actual or potential competitors' access to supplies or markets is hampered or eliminated as a result of the merger, thereby reducing those companies' ability and/or incentive to compete.[32] Such foreclosure may discourage entry or expansion of competitors or encourage their exit.[33]

(65) The Non-Horizontal Guidelines distinguish between two forms of foreclosure. Input foreclosure occurs where the merger is likely to raise the costs of downstream competitors by restricting their access to an important input. Customer foreclosure occurs where the merger is likely to foreclose upstream competitors by restricting their access to a sufficient customer base.[34]

---

28 Horizontal Merger Guidelines, paragraph 2.
29 Horizontal Merger Guidelines, paragraph 17.
30 Horizontal Merger Guidelines, paragraph 24.
31 Horizontal Merger Guidelines, paragraph 25.
32 Non-Horizontal Guidelines, paragraph 18.
33 Non-Horizontal Guidelines, paragraph 29.
34 Non-Horizontal Guidelines, paragraph 30.

(66) Foreclosure may also take more subtle forms, such as the degradation of the quality of inputs supplied. In its assessment, the Commission may consider a series of alternative or complementary possible strategies.[35]

(67) In assessing the likelihood of an anticompetitive foreclosure scenario, the Commission examines, first, whether the merged entity would have, post-merger, the ability to substantially foreclose access to inputs or customers, second, whether it would have the incentive to do so, and third, whether a foreclosure strategy would have a significant detrimental effect on competition. In practice, these factors are often examined together as they are closely intertwined.[36]

6. APPROACH TO THE COMPETITIVE ASSESSMENT

(68) As a general introduction to the competitive assessment, it is appropriate to outline the approach the Commission followed in identifying the markets where the transaction may raise serious doubts.

(69) Such an assessment is run on the basis of plausible markets for which the Parties provide data, on which basis, and with the support of its market investigation, the Commission will identify the relevant markets for the assessment of the likely effects of the current transaction.

(70) Based on the competitive assessment that will be detailed for each of the products that follow, the Commission found that the geographic scope of the relevant markets for the product sections that follow corresponds to catchment areas, the size of which varies depending on the relevant products.

(71) As highlighted in the section on Market share methodology, however, the only accurate consumption information available relates to national markets. As concluded in that section, the Commission considers that while those estimates may not accurately reflect the precise geographic scope of each relevant market, they still provide a sufficiently clear picture of the geographic areas with significant overlap. The Commission will thus, in a first step, carry out an assessment at the national level, and set out *interim conclusions* on serious doubts at such a level.

(72) In a second step, however, the Commission will rely on the most accurate information available, as defined at section 4.2.2. above, regarding catchment areas comprising such markets where it identified serious doubts *on an interim basis,* to verify whether its finding of serious doubts would also stand on the basis of a catchment area analysis, and would thus stand irrespective of whether the assessment is carried out on the national or catchment area level.

7. OILSEEDS

(73) Oilseeds are plant seeds characterized by their high content of fat and are therefore used as a source of vegetable oil. Their nutritional profile distinguishes them from other agricultural commodities, such as grains having high content of carbs (wheat, barley, corn, etc.) and pulses having high content of proteins (peas, beans, lentils, etc.).

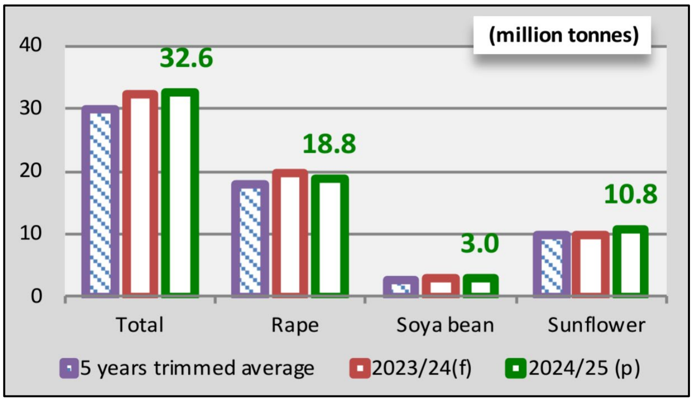
(74) Oilseeds of three different species are produced and processed in Europe. The most common one is <u>rapeseed</u>, also known as canola, which is grown in several annual

[35] Non-Horizontal Guidelines, paragraph 33.

[36] Non-Horizontal Guidelines, paragraph 32.

rotations across the European Plain. Seeds of sunflower, characterized by the high fibre content of their hull, are mostly grown in Eastern Europe. Soybeans, characterized by their relatively high protein content, are instead grown in limited amounts due to the unfavourable climate conditions in most European countries.

Figure 5 EU Oilseeds Production



Source: European Commission

7.1. Product market definition

(75) In its precedents, the Commission considered a segmentation of the oilseeds markets based on the commercial activity (origination or commercialization) and based on the type of oilseed (rapeseed, soybeans or sunflower).[37]

7.1.1. Distinction by commercial activity

(76) In the Commission's case practice, the product markets for oilseeds have traditionally been divided into the following categories:

(a) 'Origination' is defined as the market for purchasing oilseed crops directly from farmers or cooperatives;

(b) 'Marketing' comprises the sale by wholesalers of oilseeds to third parties.[38]

(77) This distinction is due to the fact that the direct origination of crops from farmers requires certain specific resources and expertise, which may not be available to all companies purchasing crops from wholesalers. In particular, as noted by the French National Competition Authority, the originators' mission is to condition the product collected from the farmer via platforms or storage silos, to clean the grains, to carry out quality control of the goods, to prepare homogeneous batches of products (for example in terms of humidity or protein level) and to constitute sufficient volumes to satisfy customer demand. Because farmers may not have the capabilities to carry out these activities in-house, they often rely on originations to serve as a key link between the production of crops and their commercialization on the market.[39]

---

[37] Commission decision in case M.10251 *Invivo Group / Etablissements J Soufflet*, 19.11.2021, para. 259.

[38] Commission decisions in cases M.6740 *BayWa / Cefetra*, 19.12.2012, para. 9; M.1376 *Cargill Continental Grain*, 3.2.1999, para. 7; M.10251 *Invivo Group / Etablissements J Soufflet*, 19.11.2021, para. 549.

[39] French National Competition Authority, Decision 20-DCC-82, 30.6.2020, para. 8. Several respondents to the market investigation also indicated that the direct origination from farmers requires some specific expertise and resources, particularly to clean and dry the crops and ensure quality controls. See responses to eRFI 1, questions D.C.5 and E.C.3.

(78) By reference to this precedent, the Parties argue that the oilseeds market should be segmented between origination and marketing of oilseeds.[40]

(79) However, the market investigation in this case showed that an analysis limited to origination activities would not be sufficient to properly assess the Parties' purchasing power. This is due to the following reasons.

(80) *First*, in the EEA the Parties purchase considerable volumes of oilseeds from intermediaries, rather than farmers. In particular, in 2023 Bunge and Viterra respectively acquired […]% and […]% of their total purchased oilseed volumes in the EEA from intermediaries.[41] Therefore, an assessment of market power limited to direct origination from farmers would completely disregard a sizeable share of the volumes acquired by the Parties and greatly underestimate their combined market position.

(81) *Second*, even when crops are originated by intermediaries before being resold to the Parties, it would be misleading to allocate those purchases to the intermediaries' purchasing shares rather than the Parties'. This is because the Parties, rather than the intermediaries, hold a higher degree of purchasing power.

(82) In fact, those intermediaries often have a small size, and typically collect crops grown in the short proximity of their storage facility. A majority of them trade oilseeds at the local level, mostly within the same country.[42] On average, they trade 41% of their oilseeds within a radius of just 100Km from their facilities and only 14% beyond 500Km.[43] They mostly rely on trucks to trade their products, with just 36% of them relying on railway transport, 16% on inland waterways and 10% on sea transport.[44] They are heavily reliant on the oilseeds demand of Bunge and Viterra, who they generally consider to be their preferred customers, even more important than other large trading companies (e.g. ADM, Cargill, Dreyfus, etc) and significantly more important than independent processing plants or other pure traders.[45] In fact 41% of them indicated that they would not be able to replace the Parties with any other suitable buyer.[46] Most importantly, these intermediaries are price takers. Local originators are considered to be the category of market players with the least pricing power in this sector.[47] In fact 38% of them only procure oilseeds after having secured a buyer for those volumes, thereby acting as matchmakers between the prices offered by producers on one side and final customers on the other.[48] In sum, even when they directly buy from the farmers, these intermediaries do not have strong purchasing power because they simply act as local aggregators of volumes to be resold to larger and stronger players, such as the Parties. An analysis of purchasing power limited to origination activities would therefore overestimate the market position of those intermediaries.

(83) Instead, it is more accurate to allocate these purchases to the Parties' purchasing shares, even when they do not directly originate crops from farmers. This is because the Parties have strong positions in the processing and long distance

40 Form CO, pages 97 and 115.
41 Response to QP 11, Annex Q1.4.
42 Responses to eRFI on oilseeds, question D.B.1.
43 Responses to eRFI on oilseeds, question D.B.2.
44 Responses to eRFI on oilseeds, question D.B.3.
45 Responses to eRFI on oilseeds, question D.C.6.
46 Responses to eRFI on oilseeds, question G.2.
47 Responses to eRFI on oilseeds, question H.3.
48 Responses to eRFI on oilseeds, question D.C.1.

transportation of oilseeds, which are the bottlenecks of the oilseeds value chain and significantly drive demand of these products.

(a) The **processing** of oilseeds requires the operation of dedicated plants, called 'crushers.' These are considered as bottlenecks in the value chain because there are often just a handful of crushers in any given country, while there can be hundreds or thousands of oilseed producers and traders. Given the significant transportation costs for oilseeds, only the closest crushers in any given production area may be viable buyers for the oilseed grown there. Moreover, while there are a number of individual 'independent' crushers, the segment is characterized by the presence of large multinational players operating several crushers in different countries. In particular Bunge and Viterra, but also ADM and Cargill, operate considerable crushing capacity across Europe.

(b) **Long distance transportation** is an alternative outlet for oilseeds that cannot be crushed in the proximity of the production place. However long distance transportation cannot be economically performed with road trucks and relies instead on railway, inland waterways, and sea transport. These transportation channels are also characterized by significant bottlenecks. For instance, capacity constraints exist at port or railway terminals, and navigation on inland waterways can be disrupted by adverse weather conditions.[49] Capacity on the transportation network is often secured by large international players that can guarantee stable volumes along predictable routes. Conversely, minor players trading smaller and less predictable volumes may not be able to economically secure capacity for long distance transport. For these reasons, the segment of long distance transportation of oilseeds is considerably more concentrated that the segment of short distance transportation on roads. In particular Bunge and Viterra, but also other companies of the ABCD+ group, account for a large share of the long distance transportation of oilseeds.

(84) Therefore, processing plants and export channels are the main driver of oilseed demand. The companies operating these assets – such as the Parties – have considerable purchasing power across the value chain. In fact the Parties are considered to be the players having the strongest pricing power in this sector, even more than competing companies in the ABCD+ group.[50] However, an analysis of purchasing power limited to the direct origination would not capture the any position held by the Parties at the level of processing and long distance transportation.

(85) *Third*, the Parties can and do replace their purchases from intermediaries with direct origination from farmers. [Details of the parties business strategy].[51] Those intermediaries therefore cannot be considered to exert significant competitive pressure on the Parties in a hypothetical origination market.

(86) For these reasons, the Commission's assessment of the Parties' purchasing power is not limited to origination shares. Instead, it will also take into account overall demand shares, that is the overall volumes consumed or exported by the Parties in each geographic area compared to the overall production in that area (see Section 4.2.1 above).

49 Minutes of a call on 4 July 2024; minutes of a call on 17 June 2024.
50 Responses to eRFI on oilseeds, question H.3.
51 Form CO, Annex 12.28, page 46.

7.1.2. Distinction by type of oilseeds

(87) In its most recent decision in this sector, the Commission considered that the origination of cereals, oilseeds and pulses comprises one single market. This is because the infrastructure needed to handle grains, oilseeds and protein crops does not materially differ between crops, and that storage facilities are usually multi-purpose and can handle all types of crops[52].

(88) However, when it comes to the marketing of crops, while leaving the exact product market definition open, the Commission's assessment distinguished between the different species of marketed crops and focused specifically on wheat.[53]

(89) In this case, the market investigation showed that the oilseeds market should indeed be segmented by specific type of crop, that is between rapeseed, soybeans and sunflower seed.

(90) *First*, with respect to supply-side substitutability, the large majority (81%) of farmers having responded to the market investigation indicated that they have not switched to the production of a different type of oilseed in the last five years.[54]

(91) *Second*, with respect to demand-side substitutability, an even larger majority of traders (90%) indicated that they have not switched to trading a different type of oilseed in the last five years.[55] These respondents confirmed that – as noted in the Commission's precedent referred to above – the same storage facilities can often be used to handle different types of oilseeds. However, they also indicated that their ability to switch among different oilseeds is constrained by their suppliers' offering, their customers' requirements and the varying availability of the different types of oilseeds in the market.[56]

(92) *Third*, at the processing level, a large majority (85%) of companies operating oilseed crushers indicated that they have not switched to procuring a different type of oilseed in the last five years.[57] Indeed, as explained in Section 8.1.3.3 below, crushers have a limited ability to change the type of oilseeds they are processing.

(93) *Fourth*, a large majority of market respondents (80%) confirmed that price trends are different for each type of oilseeds. This is also confirmed by public price indexes, showing a significant price spread particularly between soybeans and soft seeds (i.e. rapeseed and sunflower seeds).

---

52 Commission decision in case M.10251 *Invivo Group / Etablissements J Soufflet*, 19.11.2021, para. 547.

53 Commission decision in case M.10251 *Invivo Group / Etablissements J Soufflet*, 19.11.2021, para. 259.

54 Responses to eRFI on oilseeds, question C.A.2.

55 Responses to eRFI on oilseeds, question D.A.2.

56 Responses to eRFI on oilseeds, question D.A.3.

57 Responses to eRFI on oilseeds, question D.A.2.

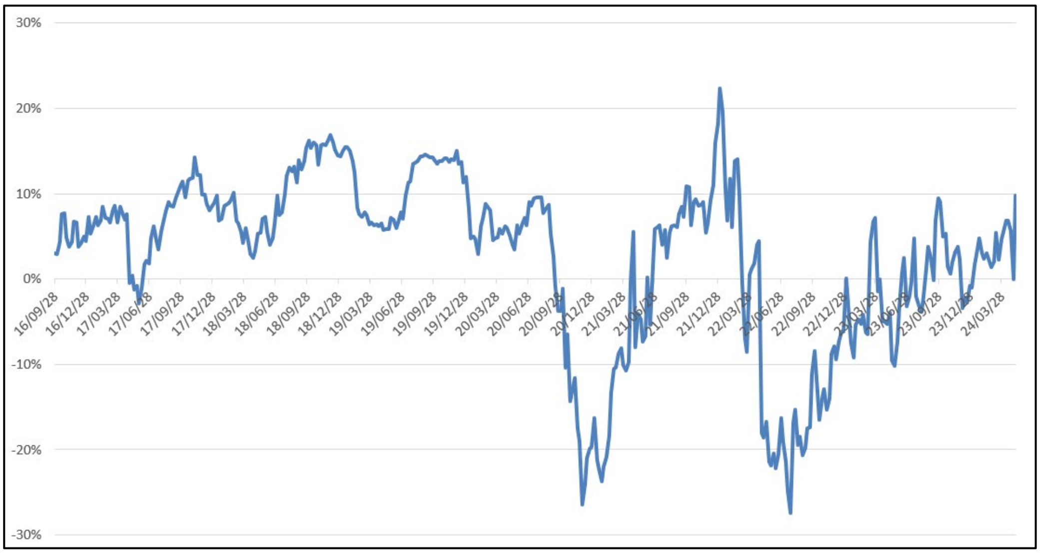
Figure 6 Oilseeds prices in July 2024

Export prices FOB		16 Jul 2024		m/m variation		y/y variation	
		€/t	$/t	€/t	$/t	€/t	$/t
soya beans	Argentina - Up River	383	417	-7%	-5%	-22%	-24%
	Brazil - Paranagua	387	422	-6%	-4%	-17%	-20%
	US Gulf	397	433	-6%	-4%	-24%	-26%
	Ukraine	381	415	-2%	0%	-15%	-17%
rapeseed	Australia	460	501	-2%	0%	-8%	-10%
	Canada	442	482	-3%	-1%	-25%	-27%
	EU (Moselle)	467	509	2%	4%	0%	-3%
	Ukraine	427	465	6%	8%	29%	31%
sunflower	EU (Bordeaux)	443	483	0%	1%	-6%	-8%
	Ukraine	353	385	-2%	0%	15%	12%

Source: International Grains Council

(94) Even if prices of rapeseed and sunflower seeds are generally closer to each other compared to soybeans, their spread is often higher than 10% and sometimes even 20%. In a sector characterized by very slim profit margins, such a wide spread is often a significant obstacle to product substitutability.

Figure 7 Price spread between rapeseed price (Moselle) and sunflower seed price (Bordeaux), as a percentage of rapeseed price (Moselle), between September 2016 and March 2024



Source: International Grains Council

(95) For these reasons, the Commission will subsegment the oilseeds markets based on the specific type of oilseed, that is between rapeseed, soybeans and sunflower seeds.

7.1.3. Conclusion

(96) For the purpose of this Transaction, the Commission will separately consider (i) the marketing (supply) of oilseeds, (ii) the purchasing (demand) of oilseeds and, withing this segment, (iii) the subsegment of direct purchasing of oilseeds from farmers (origination).

(97) Each one of these three markets will be further segmented based on the distinction between (i) rapeseed, (ii) soybeans and (iii) sunflower seeds.

7.2. Geographic market definition

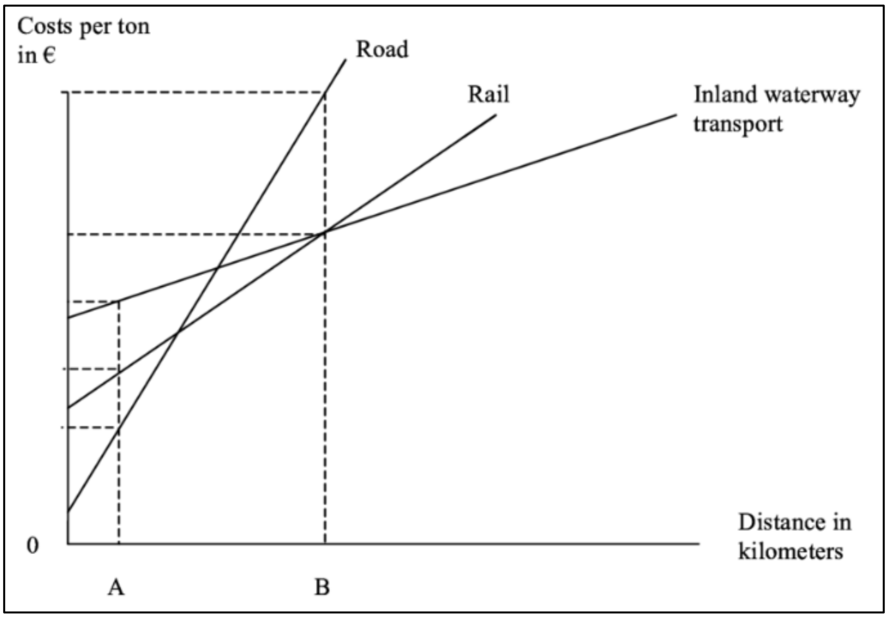
(98) In its most recent decision in this sector, the Commission – while leaving the exact geographic market definition open – considered that the scope of the market for the marketing of oilseeds may be wider than national. However, the Commission was focusing its assessment on Portugal, a country having immediate access to maritime trade lanes with other European and extra-European countries.[58]

(99) The Commission reached a different conclusion with respect to the geographic scope of the origination market. While leaving the exact geographic market definition open, the Commission assessed the transaction based on local, sub-national areas.[59]

(100) In this case, the market investigation confirmed that while crops can be shipped oversea for long distances, inland transportation is much more expensive and often economically viable only within local areas.[60] For this reason, conditions of competition may vary significantly among different countries or even within the same country.

(101) *First*, inland transportation of crops can rely on road trucks only for short distances. Due to the limited capacity of these vehicles and the considerable fuel costs, this means of transportation becomes unprofitable beyond short journeys. Longer distances must be covered on railway, whose transportation costs are considerably lower. When possible, transportation on barges in inland waterways will provide an even less expensive transportation channel.

Figure 8 Transportation costs of road, rail and inland waterway transport



Source: Olaf Jonkeren, Bart Jourquin, "Modal split effects of climate change: the effect of low water levels on the competitive position of inland waterway transport in the river Rhine area."

---

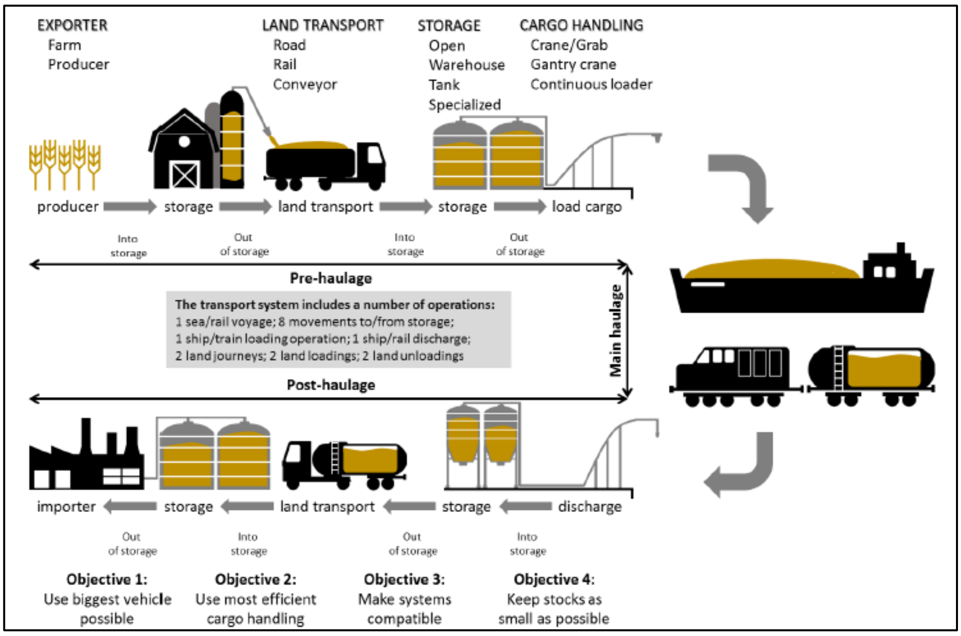
58 Commission decision in case M.10251 *Invivo Group / Etablissements J Soufflet*, 19.11.2021, para. 262.

59 Commission decision in case M.10251 *Invivo Group / Etablissements J Soufflet*, 19.11.2021, para. 553.

60 A similar distinction between global seaborne transportation and infra-EEA landborne transportation has been assessed by the Commission in other decisions relating to commodity products transported in bulk. See for instance Commission decision in case M.6541 *Glencore/Xstrata*, 22.11.2012, para. 407.

(102) This means that companies trading crops will try to rely as much as possible on sea or inland waterways transportation whenever possible, otherwise on railway transport, and on road transportation only when strictly necessary.

Figure 9 Logistics of a classic agricultural supply chain in international trade



Source: adapted from www.skuld.com – Transportation of wheat

(103) *Second*, due to this multi-modal transportation systems, conditions of competition may vary significantly in different local areas and also in time. This is because inland waterways and railways are not equally accessible from different countries (or even from different areas within the same country) and are subject to periodic disruptions or capacity constraints.

(104) For instance, companies located in Austria or Hungary may be able to trade crops over relatively long distances if they are located on the Danube river with immediate access to transportation on barges. Conversely, companies located in the same country but without direct access to the Danube may incur significantly higher transportation costs, due to congestion at key railway hubs and low density of road-to-rail terminals.[61] Moreover, these companies' transportation costs may change in time due to disruption of navigability on the Danube river or congestion of railway and road infrastructure during peak harvest season.[62]

(105) *Third*, the market investigation confirmed that only the largest and most sophisticated international commodity traders are able to transport significant volumes across long distances. This is because the most efficient transportation means – that is sea and inland waterways – are only accessible to companies that can generate sufficient volumes to fill the vessels travelling on those channels (such as Panamax ships or barges). Most of the players active in these markets instead handle much smaller volumes transported on trucks and sometimes on railway. These players therefore operate in much narrower areas with a radius of c. 500 Km, often within the same country.

---

[61] Areté, "Study on storage capacities and logistical infrastructure for EU agricultural commodities trade", page 259.

[62] Minutes of a call on 4 July 2024; minutes of a call on 17 June 2024.

(106) In particular, a majority of **farmers** (59%) responded that they do not usually transport their products at all, and most of their crops are collected by buyers at their premises. Even when they transport their products themselves, farmers generally do this over short distances with road trucks. Only 24% uses railway transport and only 4% uses inland waterways. On average, farmers transport 48% of the products to nearby destinations within 100 Km of their premises and less than 9% beyond 500 Km.[63]

(107) When it comes to **traders**, a majority of them (56%) indicated that they trade oilseeds locally, mostly within the same country. Only 37% of them uses railway transport and only 17% uses inland waterways. On average, traders transport 41% of the products to nearby destinations within 100 Km of their premises and just 14% beyond 500 Km. A majority of respondents (57%) indicated that they would not be able to easily extend their trade od oilseeds into a country where they are not currently active.[64]

(108) When it comes to **processors**, a majority of them (55%) indicated that they do not transport oilseeds at all or they transport it only from nearby facilities located in proximity of their crusher (e.g. local warehouses or elevators). Only 31% of them uses railway transport and only 21% uses inland waterways. On average, processors transport 84% of the oilseeds they crush from within 500 Km of their premises and just 6% beyond 1,000 Km. A majority of respondents (51%) indicated that they would not be able to easily extend their procurement of oilseeds into a country where they are not currently active.[65]

(109) The Parties claim that the oilseeds market are (at least) EEA-wide in scope.

(110) *First*, the Parties argue that their main competitors in the agribusiness industry all originate on a Europe-wide basis.[66] This claim is clearly refuted by the results of the market investigation. As explained above, only a small number of large and sophisticated international traders (including the Parties) is able to transport significant volumes across medium or long distances. The very large majority of companies active in the origination or trading of crops in Europe is only or mostly active at the local level.

(111) *Second*, the Parties claim that transportation costs are low, although they also claim that it is not possible to accurately quantify those costs.[67] They explain that they are able to transport oilseeds at the international levels, but again this analysis is limited to the Parties' own operations and does not reflect the capabilities of a large number of their competitors.[68] The Parties in fact acknowledge that many players active in this market are only active at the local level, but point to the fact that these players also apply EEA-wide pricing mechanism.[69] This argument is not convincing. While oilseeds prices are often defined with reference to price indexes for products sold at major trading hubs (such as the Port of Costanta in Romania or the Six Ports on the Atlantic coast) the premium on the indexed price applied in each given transaction is a function of (among others) the costs for transportation between those hubs and the location of the individual company, which vary greatly depending on the company's location and its logistical resources.

---

63 Responses to eRFI on oilseeds, questions C.B.1, C.B.4, C.B.3.
64 Responses to eRFI on oilseeds, questions D.B.1, D.B.3, D.B.2, D.B.5.
65 Responses to eRFI on oilseeds, questions E.B.1, E.B.3, D.B.2, D.B.5.
66 From CO, para. 242.
67 From CO, para. 242.
68 Form CO, para. 250.
69 Form CO, para. 255.

(112) *Third*, the Parties claim that there are significant import flows of oilseeds from outside the EEA to Viterra's European plants. However, they only refer to flows from countries immediately neighbouring the EEA borders, and sometimes located just a few kilometres away from their own plants (e.g. Ukraine, which is just 70 Km away from Viterra's Polish plant in Bodaczow, and Serbia, which is 57 Km away from its Hungarian plant in Fokto). They also explain that Bunge's Spanish plants crush large volumes of soybeans imported from South America. However, as explained above, seaborne transportation is only accessible to a small number of traders having facilities with a convenient access to sea terminals and generating sufficiently high and stable volumes to use large size vessels.[70]

(113) For the purpose of this decision, the Commission therefore considers that the markets of oilseeds are smaller than EEA-wide in scope and correspond to catchment areas of 500 km as defined above. This applies to each type of oilseed (rapeseed, soybeans and sunflower seeds), since all types are transported in the same way.[71] The competitive assessment will nevertheless be conducted at the national level which is the smallest geographical scope for which consumption data was available and provided by the Parties to compute market shares. National market shares will be used to single out the areas in which the Parties have meaningful overlaps. Within those areas, a further analysis at catchment area level (radius of 500 km) will then be conducted based on the position of the Parties' and their competitors' plants and the flows of products at regional/catchment area level.

7.3. Horizontal effects

7.3.1. Rapeseed

7.3.1.1. Purchasing and origination

(114) When considering the market for the purchasing of rapeseed and its subsegment for the origination of rapeseed, the Parties' combined shares exceed 20% in the following countries.[72]

70 Form CO, para. 256.

71 eRFI on oilseeds, question C.B.6.

72 See point 25(g) of the Introduction to Annex I of Commission Implementing Regulation (EU) 2023/914 of 20 April 2023 and point 5(d)(i)(aa) of the Commission Notice on a simplified treatment for certain concentrations. The market for the purchasing of rapeseed in Austria is not considered affected because – in light of the Parties' shares (Bunge: [20-30]%; Viterra: <[0-5]%) – the HHI delta resulting from the Transaction is less than 150 (see point 5(d)(i)(bb) of the Commission Notice on a simplified treatment for certain concentrations). Nonetheless, it is considered in this section because the analysis based on catchment areas gives rise to an affected market in this country (see Section 7.4 below).

Table 1 Parties' combined shares in the purchasing and origination of rapeseed (2022)

	Purchasing			Origination		
	Bunge	Viterra	Combined	Bunge	Viterra	Combined
Austria	[20-30]%	<[0-5]%	[20-30]%	[0-5]%	<[0-5]%	[0-5]%
Bulgaria	[5-10]%	[20-30]%	[30-40]%	[0-5]%	[0-5]%	[0-5]%
Croatia	[5-10]%	[30-40]%	[40-50]%	[0-5]%	[10-20]%	[10-20]%
Czechia	[0-5]%	[20-30]%	[30-40]%	<[0-5]%	[20-30]%	[20-30]%
Hungary	[40-50]%	[10-20]%	[60-70]%	[10-20]%	[10-20]%	[20-30]%
Poland	[20-30]%	[5-10]%	[20-30]%	[0-5]%	[5-10]%	[5-10]%
Romania	[30-40]%	[30-40]%	[60-70]%	[10-20]%	[10-20]%	[20-30]%

Source: Calculations based on Response to QP 11, Annex Q1.4.

7.3.1.1.1. Bulgaria

(115) The Parties have a moderate combined demand share of [30-40]% in Bulgaria, with an increment of [5-10]%. However, for the following reasons, even this limited combined share may overestimate the Parties' purchasing power.

(116) *First*, none of the Parties operates processing assets in this country. Therefore, they do not have a particular advantage in sourcing rapeseed due to their proximity to the suppliers.

(117) *Second*, [details of the parties purchases]. Viterra is therefore unable to exercise any purchasing power vis-à-vis such a strong supplier based on such a small purchased volume.

(118) *Third*, [details of the parties purchases]. The Parties' combined shares therefore double count these volumes and significantly overestimate the Parties' purchasing power.

(119) In view of the national assessment above, the Commission finds that the Transaction does not raise serious doubts for the purchasing of rapeseed in Bulgaria.

7.3.1.1.2. Croatia

(120) The Parties have considerable purchasing power in this area, as their operations absorb more than [40-50]% of the rapeseed grown in Croatia. They are also particularly close competitors, because a large share of their rapeseed demand in this area originates [details of the parties purchases].

(121) An important independent crusher located in Croatia explained that Bunge/Viterra will be able to obtain better terms for the procurement of oilseeds from supplier thanks to their considerable purchasing power. This disadvantage in the procurement of oilseeds will negatively affect the competing crusher's ability to compete against Bunge/Viterra and may even jeopardize the economic viability of its business.[73]

(122) The Commission also considers that the arguments explained below in relation to Austria also apply to the Hungarian market. This is because most of Croatian arable land is located next to the Hungarian border and is essentially an extension of the Hungarian plain.

[73] Responses to eRFI on oilseeds, questions E.C.7 and E.C.9.

(123) In view of the national assessment above, the Commission preliminarily finds that the Transaction raises serious doubts for the purchasing of rapeseed in Croatia and will therefore further assess this based on the catchment area analysis in Section 7.4 below.

7.3.1.1.3. Czechia

(124) The Parties have a moderate combined demand share of [30-40]% in Czechia, with a small increment of [0-5]%.

(125) The Parties do not appear to be close competitors in this market. Only Viterra operates a crushing plant in the country, located in Usti nad Labem, while Bunge's closest rapeseed plant is located in the Polish city of Brzeg. There are several other rapeseed crushing plants located in closer proximity to Viterra's plant, such as Meulovo's plant in Lovosice (Czechia), Fabio Produkt plant in Stare Misto (Czechia), Cargill's plant in Riesa (Germany) and Dreyfus' plant in Lutherstadt Wittenberg (Germany).

(126) The market investigation confirmed the existence of alternative buyers for suppliers of rapeseed. Among the Czech suppliers selling more than half of their rapeseed to the Parties, 71% indicated that they would be able to replace the Parties with another suitable buyer if they were to offer worse conditions for the purchase of oilseeds.

(127) In view of the national assessment above, the Commission preliminary that the Transaction does not raise serious doubts for the purchasing of rapeseed in Czechia.

7.3.1.1.4. Hungary

(128) The Parties have considerable purchasing power in this area, as their operations absorb more than [60-70]% of the rapeseed grown in Hungary. They are also particularly close competitors, because a large share of their rapeseed demand in this area originates from [details of the parties purchases].

(129) Among the suppliers selling more than half of their rapeseed to the Parties in Hungary, 53% indicated that they would not be able to replace the Parties with another suitable buyer if they were to offer worse conditions for the purchase of oilseeds. 26% indicated that a worsening of the Parties' purchase conditions would negatively affect their business and force them to significantly change their operations, or even jeopardize the economic viability of their business.[74]

(130) The Commission also received strong market feedback about the expected negative impact of the Transaction in this market.

(131) The Hungarian Chamber of Agriculture, the Hungarian Grain Producers' Association and the Association of Hungarian Farmers and Farming Cooperatives submitted a complaint to the Commission, explaining that "*the Bunge and Viterra groups are significant market players even separately in the field of sunflower and rapeseed purchases in Hungary. In Hungary, only these two groups of companies have vegetable oil factories with significant processing capacity. Bunge and the Viterra Group buy approximately 90 percent of the sunflower and rapeseed grown in Hungary. ... It is clear that if the Hungarian companies of Bunge and Viterra merge,* <u>*market competition in the Hungarian market for sunflower and rapeseed*</u>

[74] Responses to eRFI on oilseeds, questions G.2 and G.6.

<u>products would essentially cease and a monopsony would develop</u> in the market due to the development of buyer power."[75]

(132) In view of the national assessment above, the Commission preliminarily finds that the Transaction raises serious doubts for the purchasing of rapeseed in Hungary and will therefore further assess this based on the catchment area analysis in Section 7.4 below.

7.3.1.1.5. Poland

(133) The Parties have a moderate combined demand share of [20-30]% in Poland, with an increment of [5-10]%.

(134) It can be left open whether the Transaction raises concerns in this market, because any such concern would be solved by the remedies offered by the Parties to address the concerns arising in the downstream Polish markets. In particular, the divestment of Viterra's plant in Bodaczow (Poland) will reduce Viterra's demand share to 0%, thereby entirely removing the overlap in the purchasing of rapeseed in Poland.

7.3.1.1.6. Romania

(135) In Romania, the Parties have a significant combined demand share of [60-70]%, with an increment of [30-40]%. However, for the reasons explained below, these market share estimates overestimate the Parties' purchasing power.

(136) *First*, with respect to Bunge, […]% of its purchases of rapeseed in Romania consist of volumes that are originated by third parties, [details on Bunge's procurement in Romania], [who] could easily replace Bunge with any other customer located in Northern Europe, such as the crushers operated by Cargill, ADM, Dreyfus, etc. When limited to purchased volumes that are actually consumed or exported by Bunge from Romania, Bunge's market share is reduced to [10-20]%.

(137) *Second*, the same is true for […]% of Viterra's purchases of rapeseed from Romania. [details of the Parties' purchases]. Also, […]% of Viterra's purchases of rapeseed from Romania are delivered to its plant in Fokto (Hungary), which will be divested to address the concerns raised by the Transaction. When limited to purchased volumes that are actually exported by Viterra from Romania, Viterra's market share is reduced to [10-20]%.

(138) *Third*, Viterra [details of the parties business activities]. Therefore it does not have a particular competitive advantage due to logistical proximity compared to other buyers of rapeseed located outside of the country.

(139) *Fourth*, as shown in the Parties' internal documents, several other competitors own export terminals connected to the railway network at the Costanta port on the Black Sea. These include [details of the parties' assessment of competitors business].[76] Since these port terminals can be used to handle any type of agricultural commodity, those competitors could use them to compete in the purchasing of rapeseed if the merged entity were to decrease its purchasing prices in the future.

(140) In view of the national assessment above, the Commission finds that the Transaction does not raise serious doubts for the purchasing of rapeseed in Romania.

---

75 Complaint submitted on 28 June 2024, emphasis added.

76 Response to QP9, Annex Q2.10.

7.3.1.2. Marketing

(141) When considering the markets for the marketing of rapeseed, the Parties' combined shares exceed 20% in the following countries.[77]

Table 2 Parties' combined shares in the marketing of rapeseed (2022)

	Bunge	Viterra	Combined
Belgium	[0-5]%	[20-30]%	[20-30]%
Germany	[5-10]%	[10-20]%	[20-30]%
Netherlands	[5-10]%	[20-30]%	[30-40]%
Poland	[10-20]%	[10-20]%	[20-30]%

Source: *Calculations based on Response to QP 11, Annex Q1.4.*

(142) The Parties' limited combined shares in Belgium, Germany and Poland do not appear liable to impede effective competition.[78]

(143) In the Netherlands, the Parties have a combined market share of [30-40]%, calculated using total domestic consumption ([volume]) as market size. However, this does not accurately capture the peculiar situation in the Netherlands, which is a country of transit with very significant import ([volume]) that far surpass domestic consumption. Given this sizeable flow of imports, the volumes supplied by the Parties ([volume]) only account for a minor share of the rapeseed transiting in the Netherlands.

(144) In view of the national assessment above, the Commission finds that the Transaction does not raise serious doubts for the marketing of rapeseed.

7.3.2. Soybeans

(145) The Parties' combined shares do not exceed 20% in any market for the purchasing or origination of soybeans in the EEA.[79]

(146) When considering the markets for the marketing of soybeans, the Parties' combined shares exceed 20% in the following countries.

Table 3 Parties' combined shares in the marketing of soybeans (2022)

	Bunge	Viterra	Combined
Italy	[30-40]%	[0-5]%	[30-40]%
Netherlands	[30-40]%	[10-20]%	[40-50]%
Portugal	[50-60]%	[5-10]%	[60-70]%
Spain	[80-90]%	[0-5]%	[90-100]%

Source: *Calculations based on Response to QP 11, Annex Q1.4.*

(147) The Commission considers that, for the reasons explained below, the above market share estimates overstate the Parties' supply power.

(148) *First*, Bunge is not an important supplier of soybeans in the merchant market, [details of the parties purchases and business activities]. In particular, […]% of the

[77] See point 25(g) of Commission Implementing Regulation (EU) 2023/914 of 20 April 2023 and point 5(d)(i)(aa) of the Commission Notice on a simplified treatment for certain concentrations.

[78] Horizontal Merger Guidelines, para. 18.

[79] See point 25(g) of Commission Implementing Regulation (EU) 2023/914 of 20 April 2023 and point 5(d)(i)(aa) of the Commission Notice on a simplified treatment for certain concentrations.

volumes supplied in Italy, […]% of the volumes supplied in the Netherlands, […]% of the volumes supplied in Portugal and […]% of the volumes supplied in Spain [details of the parties business activities].

(149) *Second*, [details of the parties business activities]. However, Viterra's small market position in these markets does not raise concerns:

(a) In Italy, Viterra has a market share of [0-5]%. This means that Viterra supplies c. […]% of the soybeans processed by Bunge's competitors in this country. Those competitors therefore have access to sizeable alternative sources of supply.

(b) All volumes supplied in the Netherlands by Viterra are sold to [customer]. [customer] is one of the largest and most sophisticated commodity traders and processors in the world, and has access to sizeable sources of origination and procurement. Moreover, [customer] participated in the Commission's investigation and did not raise any concerns about the Transaction.[80]

(c) […]% of volumes supplied in Portugal by Viterra are sold to [customer]. The Transaction therefore will not have any meaningful effect on the supply patterns in this market.

(d) All volumes supplied in Spain by Viterra are sold to [customer]. The Transaction therefore will not have any meaningful effect on the supply patterns in this market.

(150) In view of the national assessment above, the Commission finds that the Transaction does not raise serious doubts for the purchasing or marketing of soybeans.

7.3.3. Sunflower seeds

7.3.3.1. Purchasing and origination

(151) When considering the market for the purchasing of sunflower seeds and its subsegment for the origination of rapeseed, the Parties' combined shares exceed 20% in the following countries.[81]

Table 4 Parties' combined shares in the purchasing and origination of sunflower seed (2022)

	Purchasing			Origination		
	Bunge	**Viterra**	**Combined**	**Bunge**	**Viterra**	**Combined**
Hungary	[30-40]%	[30-40]%	[60-70]%	[10-20]%	[10-20]%	[30-40]%
Poland	[0-5]%	[20-30]%	[20-30]%	<[0-5]%	[0-5]%	[0-5]%
Romania	[10-20]%	[5-10]%	[20-30]%	[5-10]%	[5-10]%	[10-20]%
Slovakia	[10-20]%	[5-10]%	[20-30]%	[0-5]%	[0-5]%	[0-5]%

Source: Calculations based on Response to QP 11, Annex Q1.4.

7.3.3.1.1. Hungary

(152) The Parties have considerable purchasing power in Hungary, as their operations absorb [60-70]% of the sunflower grown in the country. They are also particularly

80 Minutes of a call on 17 October 2023.

81 See point 25(g) of Commission Implementing Regulation (EU) 2023/914 of 20 April 2023 and point 5(d)(i)(aa) of the Commission Notice on a simplified treatment for certain concentrations.

close competitors, because a large share of their sunflower seed demand in this area [details of the parties purchases].

(153) Among the suppliers selling more than half of their sunflower seed to the Parties in Hungary, 60% indicated that they would not be able to replace the Parties with another suitable buyer if they were to offer worse conditions for the purchase of oilseeds. 35% indicated that a worsening of the Parties' purchase conditions would negatively affect their business and force them to significantly change their operations, or even jeopardize the economic viability of their business.[82]

(154) An important independent crusher located in Hungary also explained that Bunge/Viterra will be able to obtain better terms for the procurement of oilseeds from supplier thanks to their considerable purchasing power. This disadvantage in the procurement of oilseeds will negatively affect the competing crusher's ability to compete against Bunge/Viterra and may even jeopardize the economic viability of its business.[83]

(155) The Hungarian Chamber of Agriculture, the Hungarian Gran Producers' Association and the Association of Hungarian Farmers and Farming Cooperatives submitted a complaint to the Commission, explaining that "*the Bunge and Viterra groups are significant market players even separately in the field of sunflower and rapeseed purchases in Hungary. In Hungary, only these two groups of companies have vegetable oil factories with significant processing capacity. Bunge and the Viterra Group buy approximately 90 percent of the sunflower and rapeseed grown in Hungary. … It is clear that if the Hungarian companies of Bunge and Viterra merge, <u>market competition in the Hungarian market for sunflower and rapeseed products would essentially cease and a monopsony would develop</u> in the market due to the development of buyer power.*"[84]

(156) Market participants also described how the Parties, thanks to their considerable financial position, are able to impact prices in local markets to the detriment of smaller competitors: "*Due to their size and financial resources, the Parties are less sensitive to prices as they purchase only small quantities of oilseeds in Croatia. They are therefore willing to pay relatively high prices for oilseeds in Croatia. For instance, Viterra only purchases a few thousand tons of sunflower seed in Croatia at a higher price, which has knock on effects for companies like the Company, as farmers expect other companies to pay the same elevated price. In other word, even if they buy limited volumes in the country, the <u>Parties have a price making role that can influence local prices to the detriment of other local crushers</u>.*"[85]

(157) Thanks to their strong purchasing position, the Parties are able to maximize profits by maintaining high prices for downstream products (e.g. oils and meals) even after decreases in oilseeds prices: "*Following the Ukraine war, the Parties (crushers) opted to increase the proportion of sunflowers in their manufacturing processes. In 2022, this was very profitable to the Parties. The price of sunflower crops went up due to supply chain disruptions in Ukraine. Then the crops started to flow again and their prices went down. But the prices of the processed products (e.g. sunflower meal and oil – especially the bottled sunflower oil) stayed relatively high, thereby resulting in considerable profits for processors like the Parties.*"[86]

---

82 Responses to eRFI on oilseeds, questions G.2 and G.4.

83 Responses to eRFI on oilseeds, questions E.C.7 and E.C.9.

84 Complaint submitted on 28 June 2024, emphasis added.

85 Minutes of a call on 2 July 2024, emphasis added.

86 Minutes of a call on 21 November 2023.

(158) Market participants also emphasized the risk of foreclosure of smaller competitors and significant reduction of competitive constraints as a result of the Transaction: "*the transaction mainly influences the sunflower seed market in Eastern Europe, where the Parties' dominance in this sector would be "out of question". As a result of the merger, the Parties would become a very strong buyer of sunflower seeds and a dominant player on the market for processing (crushing) sunflower seeds in Hungary. Their accumulated capacities, common information basis and joint financial resources would further strengthen the Parties' already very strong market presence, which would very likely lower the level of competition on the relevant markets. The transaction is expected to facilitate continuous growth for the Parties each year. Ultimately, the Company foresees the potential for the Parties to expand, leading to a situation where they could eliminate numerous smaller competitors and trading partners from the market, effectively eliminating competition in this sector. Furthermore, the concerns about competition are heightened by the fact that market entry barriers in this sector are relatively high, making it expensive, for instance, to establish a crusher.*"[87]

(159) In view of the national assessment above, the Commission preliminarily finds that the Transaction raises serious doubts for the purchasing of sunflower seed in Hungary and will therefore further assess this based on the catchment area analysis in Section 7.4 below.

7.3.3.1.2. Poland

(160) The Parties have a modest combined demand share of [20-30]% in Poland, with a small increment of [0-5]%. 80% of Polish respondents supplying sunflower seeds to the Parties indicated that they would be able to replace them with other suitable buyers if they were to worsen their purchasing conditions. All of them confirmed that that hypothetical worsening of conditions offered by the Parties would not materially impact their operations.[88]

(161) In light of this, the Transaction does not give raise to serious doubts as to its compatibility with the internal market in relation to the purchasing of sunflower seed in Poland.

(162) In any event, the divestment of Viterra's plant in Fokto (offered to address the concerns raised in relation to Hungary) will reduce Viterra's demand share in Poland from [20-30]% to [20-30]%, further reducing the overlap with Bunge in this market.

7.3.3.1.3. Romania

(163) The Parties have a modest combined demand share of [20-30]% in Romania, with an increment of [5-10]%. 69% of Romanian respondents supplying sunflower seeds to the Parties indicated that they would be able to replace them with other suitable buyers if they were to worsen their purchasing conditions. 77% of them confirmed that that hypothetical worsening of conditions offered by the Parties would not materially impact their operations.[89]

(164) In light of this, the Transaction does not give rise to serious doubts as to its compatibility with the internal market in relation to the purchasing of sunflower seed in Romania.

[87] Minutes of a call on 21 November 2023, emphasis added.

[88] Responses to eRFI on oilseeds, questions G.2 and G.6.

[89] Responses to eRFI on oilseeds, questions G.2 and G.6.

(165) In any event, the divestment of Viterra's plant in Fokto (offered to address the concerns raised in relation to Hungary) will reduce Viterra's demand share in Romania from [5-10]% to [5-10]%, further reducing the overlap with Bunge in this market.

7.3.3.1.4. Slovakia

(166) In Slovakia the Parties have a limited combined share of [20-30]%, with an increment of [5-10]%. This limited combined share does not appear liable to impede effective competition.[90] Therefore the Transaction does not raise serious doubts in this market.

7.3.3.2. Marketing

(167) When considering the markets for the marketing of sunflower seeds, the Parties' combined shares exceed 20% in the following countries.[91]

Table 5 Parties' combined shares in the marketing of sunflower seeds (2022)

	Bunge	Viterra	Combined
Portugal	[0-5]%	[20-30]%	[30-40]%
Hungary	[10-20]%	[30-40]%	[50-60]%

Source: *Calculations based on Response to QP 11, Annex Q1.4.*

7.3.3.2.1. Portugal

(168) Bunge is not active on the merchant market in Portugal, because [details of the parties business activities].

(169) Viterra instead supplies sunflower seed [customer] in Portugal, accounting for [20-30]% of domestic consumption. Moreover, the Commission noted that the Portuguese market has immediate access to global seaborne trade of agricultural commodities.[92]

(170) Therefore, the Transaction does not raise serious doubts for the marketing of sunflower seed in Portugal.

7.3.3.2.2. Hungary

(171) The Parties have no significant activities on the merchant market in Hungary, because more than […]% of their supply of sunflower seeds in this country – originated locally or imported from abroad – [details of the parties business activities].

(172) Therefore, the Transaction does not raise serious doubts for the marketing of sunflower seed in Hungary.

(173) In any event, the divestment of Viterra's plant located in Fokto – offered to address the concerns raised in relation to the Parties' purchasing power in this market – will entirely remove the overlap [details of the parties business activities] between the Parties.

90 Horizontal Merger Guidelines, para. 18.

91 See point 25(g) of Commission Implementing Regulation (EU) 2023/914 of 20 April 2023 and point 5(d)(i)(aa) of the Commission Notice on a simplified treatment for certain concentrations.

92 Commission decision in case M.10251 *Invivo Group / Etablissements J Soufflet*, 19.11.2021, para. 262.

7.4. Catchment area analysis

(174) As explained in Section 7.2 above, most oilseeds (91% for farmers, 86% for traders and 84% for processors) are generally sold or purchased by companies within 500 km from the premises. The Commission therefore calculated crushing capacity shares around each of the Parties' plant with a radius of 500 km.

(175) The Commission identified serious doubts in the purchasing of rapeseed in Croatia and Hungary and in the purchasing of sunflower seeds in Hungary. The Commission finds that the Transaction also raises serious doubts at catchment area level for the following reasons:

(176) First, the analysis as shown in Table 6 confirms that the Parties have particularly high capacity shares around their Hungarian plants in relation to rapeseed and sunflower crushing capacity.

Table 6 Parties' rapeseed crushing capacity shares around their plants (2022)

	Plant	500 Km radius
Hungary	Fokto (Viterra)	[40-50]%
	Martfu (Bunge)	[50-60]%

Source: Parties' capacity data and estimates of competitors' capacity.

Table 7 Parties' sunflower crushing capacity shares around their plants (2022)

	Plant	Bunge	Viterra	Combined
Hungary	Fokto (Viterra)	[10-20]%	[20-30]%	[30-40]%
	Martfu (Bunge)	[10-20]%	[10-20]%	[30-40]%

Source: Parties' capacity data and estimates of competitors' capacity.

(177) Second, the Commission's analysis shows that the Parties would not face any sizeable competitors in each catchment area. In particular, in each of these catchment areas, the market share of the second larger crushing company would not exceed [10-20]% for rapeseed crushing and [10-20]% for sunflower crushing.

(178) Third, the Commission investigation found that in all catchment areas considered the Parties have [details of the parties business activities]. Such withholding of available production capacity is an indication of some form of pivotality of the Parties vis-à-vis the rest of the market.[93]

7.5. Conclusion

(179) In view of the above, the Commission finds that the transaction raises serious doubts as to it compatibility with the internal market for the purchasing of rapeseed and sunflower oil in the catchment areas around the Parties' plants in Hungary.

(180) Section 14 further details how the remedy proposed by the Parties addresses the Commission's concerns in the above identified countries and catchment areas.

93 In economic terms, a reduction of production volume compared to the available production capacity can only be optimal for the Parties if this volume reduction increases the margin on the reduced production volume. In other words, the Parties likely have some form of market power beyond what is captured by simple capacity shares.

8. OILSEED OILS

(181) Oilseeds are processed in crushing assets which produce crude oilseed oil. Crude vegetable oil is the product obtained from the initial extraction of a vegetable source which has undergone no further refining. Crude vegetable oil is typically used to produce refined oil or biodiesel.[94]

(182) Refined oilseed oil is made by refining crude oil and is sold in bulk as bulk refined seed oil ('BRSO'). BRSO can in turn be further refined into vegetable fats, used as input in food manufacturing processes, or packaged and sold as packed refined seed oil ('PRSO'). PRSO is used for direct human consumption and sold to supermarkets and the HoReCa sector (i.e., hotels, restaurants and cafes).[95]

(183) At the first stage of processing, crude oilseed oil is produced alongside oilseed meal. Solvent extraction is used to separate oil from seeds/beans where the principle is to employ a volatile liquid in which the oil is freely soluble. The common solvent used by crushers is hexane. The pre-processed seeds/beans are treated in a multistage counter-current process with solvent until the remaining oil content is reduced to the lowest possible level.

(184) Crude oil (Section 8.3) is subsequently refined into edible oil for human consumption as discussed in Sections 8.4 and 9 or biodiesel to fuel engines as discussed in Section 10 below.

(185) The refining process degums the crude oil to remove compounds and phospholipids. The neutralization step eliminates free fatty acids and other compounds influencing the chemical quality of the oil. The oil is then bleached to further remove residues and reduce the levels of pigments. The final refining step is deodorizing to remove odour and taste-bearing volatiles, reduce colour and remove volatile contaminants.

(186) The refining process is similar for different types of oilseeds. However, for sunflower oil, there is a need for an additional dewaxing step. Given that sunflower oil is high in waxes (which can affect the oil quality, e.g., by giving it a cloudy appearance), the refining process of sunflower seed oil requires dewaxing after bleaching. The dewaxing process is done by storing the oil in a tank and keeping the oil within 30-50 degrees Celsius to make the oil liquid. The oil temperature is then reduced by a heat exchanger and passed into the crystallization tank. The oil is then cooled by cold water coil and the crystallized oil is filtered through a plate to separate the oil from the wax.[96]

8.1. Product market definition

8.1.1. Parties' arguments

(187) The Parties argue that there should be no distinction by type of oilseeds for either crude oilseed oil, BRSO or PRSO due to demand- and supply-side substitutability. The Parties further argue that specifically for soybean oils, a distinction between non-GMO and GMO soybean oils is not warranted.

(188) As regards **crude oilseed oils**, the Parties consider that the same types of crude oil can be used for animal feed, industrial applications and to refineries for food and biodiesel/energy applications, and the different types (and blends) of crude oil are substitutable. They also consider that, from the perspective of refineries, the seed

[94] Form CO, paragraph 312.
[95] Form CO, paragraph 313.
[96] Form CO, paragraphs 323-324.

variety of crude oil is not relevant, as their customers often use a mixture of different seed oils in their food and biodiesel/energy applications, and that refineries have the capability to refine all types of seed oils interchangeably.[97] The Parties also consider that production methods and marketing of crude seed oils are comparable because crush plants are generally able to crush different kinds of oilseeds without transforming the tools needed for crushing.[98]

(189) As regards the distinction between **GMO and non-GMO**, the Parties consider that such a distinction is not warranted for crude **rapeseed and sunflower** oils. According to the Parties, all sunflower seeds and the vast majority of rapeseeds crushed in the EEA are non-GM. All crushers of sunflower seeds and rapeseeds in the EEA are focused on the marketing of non-GMO sunflower seed and rapeseed-based products.[99] Therefore, the Parties consider that the competitive dynamics for the supply of crude vegetable oil in the EEA are equally the same for the supply of GMO and non-GMO sunflower and rapeseed crude oils in the EEA. For **crude soybean oil** specifically, the Parties explain that there is no difference between GMO and non-GMO from a product perspective: both products have the same characteristics in terms of protein levels, yields, water content and chemical composition. The Parties further claim that there is no difference in permitted use cases from a legal perspective, as certain GMO products only have a labelling obligation as "GMO", but no limitation in their use-case legally. The distinction between GMO and non-GMO is thus a question of customer preference. The preference for non-GMO products is most prevalent when it comes to products sold for human consumption.[100] In view of this, the Parties claim that given that most crude oil sold in the EEA is GMO and the Parties do not overlap in a hypothetical non-GMO segment, the precise product market definition can be left open.[101]

(190) As regards **BRSO**, the Parties argue that there should be no distinction between different types of seed oil. From a supply-side perspective, modern refineries typically have the capability to refine all types of crude oilseed oils interchangeably. While each type of seed oil requires somewhat different processing equipment and treatment, modern refineries are already installed and set up with the capability to refine multiple different vegetable oils (typically at least soybean, rapeseed, sunflower seed, and corn). From a demand-side perspective, BRSOs are commonly blended together by animal feed manufacturer, as the nutritional value is similar across all seed oils. Therefore, customers select BRSO based on availability and price.[102]

(191) As regards **PRSO**, the Parties referred to a previous market investigation conducted by the Commission in Case COMP/M.8068 – Bunge / Walter Rau Neusser Öl und Fett, where the investigation showed that market participants considered different seed oils to be interchangeable to a large extent. The market investigation also showed that customers are, generally, able to switch different kinds of seed oils easily when faced with a significant, non-transitory increase in prices. Similarly, suppliers are also able to switch production to another seed oil quickly and without incurring significant costs.[103]

97 Form CO, paragraph 317.
98 Form CO, paragraph 318.
99 RFI 2, question 14, paragraph 36.
100 RFI 2, question 3, paragraph 12.
101 RFI 2, question 3, paragraph 12.
102 Form CO, paragraphs 332-334.
103 Form CO, paragraph 337.

8.1.2. *Commission precedents*

(192) In past decisions, the Commission considered that (i) crude oilseed oils, (ii) BRSO, and (iii) PRSO form part of separate markets.[104]

(193) The Commission also envisaged but left open whether separate markets should be considered for each type of crude oilseed oil (e.g. crude rapeseed oil, crude sunflower oil, crude soybean oil etc.) and each type of BRSO and PRSO (e.g. refined rapeseed oil, refined sunflower oil etc.).[105]

8.1.3. *Commission assessment*

8.1.3.1. Distinction between crude oilseed oils and refined oilseed oils

(194) The results of the market investigation have confirmed that crude and refined oilseed oils form part of separate markets.

(195) Indeed, a majority of both customers and competitors have indicated that there are significant differences between crude and refined oilseed oils,[106] namely that they differ in appearance, taste, price, quality and intended use. Customers of the two products are therefore very different, while typical customers of crude are companies which further process and/or refine it, the refined oil is typically sold in bulk or packaged form to the food industry for human consumption. In addition, refining and crushing are two distinct manufacturing processes which are not necessarily conducted at the same plant.[107]

(196) Therefore, the Commission considers for the purpose of assessing the Transaction, that crude and refined oilseed oils form part of separate markets.

8.1.3.2. Distinction between BRSO and PRSO

(197) The results of the market investigation have confirmed that BRSO and PRSO form part of separate markets.

(198) Indeed, a majority of both competitors and customers confirm that there are significant differences between BRSO and PRSO in terms of production processes, assets such as production facilities and know-how needed, and intended applications.[108] To that end, the market participants explained that, while the oil itself is the same product, a specific plant dedicated to bottling is needed for producing PRSO and that there are independent bottling companies which do not produce BRSO but only package it.[109] Moreover, while PRSO is bought by supermarkets and the HoReCa sector, BRSO is bought by food companies (to use as an ingredients) and bottlers (to fill their bottles).[110]

(199) Therefore, the Commission considers for the purpose of assessing the Transaction, that BRSO and PRSO form part of separate markets.

---

104 M.8199 – Bunge / European Oilseed Processing Facilities, para. 24; M.866 Cereol / ÖSAT-Öhlmühle; M.6383 Cargill / Korofrance; M.9495, paragraph 55. M.8068, paras. 7-8; M.8199, paras. 27-28, 32; M.9495, paras. 24, 28-29 and 53-57.

105 M.8199 – Bunge / European Oilseed Processing Facilities, para. 24-26.

106 Q5 – Customers oils, question D.A.2; Q2 – Competitors, meals and oils (rapeseed/sunflower), question D.A.2.

107 Q5 – Customers oils, question D.A.3.

108 Q5 – Customers oils, question D.A.4; Q2 – Competitors, meals and oils (rapeseed/sunflower), question D.A.4.

109 Q5 – Customers oils, question D.A.5 and F.A.1; Q2 – Competitors, meals and oils (rapeseed/sunflower), questions D.A.5 and D.A.6.

110 Q5 – Customers oils, question D.A.5; Q2 – Competitors, meals and oils (rapeseed/sunflower), questions D.A.5 and D.A.6.

8.1.3.3. Distinction by types of oilseed

(200) The results of the Commission's market investigation have confirmed that, for both crude oilseed oils and BRSO, a distinction by type of oilseed (i.e. rapeseed, sunflower, soybean etc.) is warranted.

(201) For **crude oilseed oils**:

(a) From a demand-side perspective, a majority of customers request a specific type of crude oilseed oil when placing an order,[111] as they cannot equally use any type of crude oilseed oil or only to a certain extent due to their respective attributes.[112] In particular, customers from the food industry cannot switch between different types of crude oilseed oil as they need to take into account differences in taste profiles or recipe requirements.[113] As a result, switching to a different type of crude oilseed oil require some reformulation and cannot be done in a short amount of time. Switching is also difficult for biodiesel producers, who predominantly use crude rapeseed oil. As explained by a competitor: "*Rapeseed oil is a key input for the production of biodiesel. While sunflower oil can also be used, it is limited in its application due to its increased sensitivity to temperature. Sunflower oil begins to solidify and crystallize at 4 degrees Celsius, whereas rapeseed oil does not until -20 degree Celsius. As a result, sunflower oil cannot be used during the winter to produce biodiesel.*".[114] As a result, a majority of customers would not switch to another type of crude oilseed oil, or only for limited volumes, if prices were to go up by 5-10%.[115]

(b) From a supply-side perspective, although some assets – like most of the Parties' – are switchable assets, that is not the case of all crushers. In fact, some crushers are designed to crush only one type of oilseed and it would take large investments to start crushing another type of oilseed. Multi-seeds crushers are not necessarily the most common in the industry, and require significant investments upfront and additional logistics, administrative and commercial efforts to be operated viably. Even for multi-seeds crushers, switching requires cleaning of the plant during which the plant is effectively not operating.[116]

(202) Therefore, the Commission considers for the purpose of assessing the Transaction, that each type of crude oil seed (i.e. rapeseed, sunflower and soybean etc.) constitutes a separate product market.

(203) For **BRSO**, from a demand-side perspective, a majority of customers of BRSO request a specific type of BRSO when placing an order[117] and they cannot equally use different types of BRSO for their needs,[118] with several citing customer demand and differences in e.g. nutritional value, taste and lubricity.[119] A majority of customers have not switched from buying one type of BRSO to another type in the past five years,[120] and a majority would not change their purchasing patterns even if the price of the type of BRSO they purchase would increase in price by

111 Q5 – Customers oils, question C.B.1; Q2 – Competitors, meals and oils (rapeseed/sunflower), question C.B.A.2.
112 Q5 – Customers oils, question C.B.3.
113 Q5 – Customers oil, question C.B.4.
114 Non-confidential minutes of a call with a competitor, paragraph 16.
115 Q5 – Customers oil, question C.B.8.
116 Q2 – Competitors, meals and oils (rapeseed/sunflower), question C.A.3.
117 Q5 – Customers oil, question D.A.6.
118 Q5 – Customers oil, question D.A.8.
119 Q5 – Customers oil, question D.A.7.
120 Q5 – Customers oil, question D.A.10.

5-10% on a non-temporary basis while the price of other types remained constant.[121]

(204) From a supply-side perspective, a majority of competitors have not in the past five years switched from refining rapeseed oil to sunflower oil, or vice versa,[122] but a majority stated that, to adapt to market developments such an increase in demand, they would switch some of their production to refining another type of BRSO.[123] Competitors nevertheless explained that there are obstacles to switching, such as the availability of the crops in the country, the need for additional storage (oil tanks) and in some cases different refining equipment/technology.[124]

(205) Therefore, the Commission considers the purpose of assessing the Transaction, that each type of BRSO (i.e. BRSO rapeseed, sunflower and soybean etc.) constitute a separate product market.

(206) For **PRSO**, from a demand-side perspective, the majority of PRSO producers indicated that customers typically demand a specific type of PRSO[125], and that customers cannot or only to some extent use different types of PRSO for the same purposes.[126]

(a) However, from a supply-side perspective, the majority of PRSO producers held that the production processes (i.e. the bottling/packaging) for different types of PRSO (i.e. rapeseed PRSO, sunflower PRSO, etc.) is similar and that they could therefore easily switch between bottling/packaging different oil types.[127]

(b) Ultimately, the market definition for PRSO can be left open, as no competition concerns arise for PRSO regardless of whether segmented by type (e.g. rapeseed oil and sunflower oil) or not. For the purpose of this decision, the Transaction will be assessed at the narrowest plausible level, i.e. rapeseed PRSO and sunflower PRSO, respectively.

8.1.3.4. Distinction between GMO and non-GMO for soybean oils

(207) Within soybean oils specifically, the market investigation has confirmed that a further distinction between GMO and non-GMO soybean oils is also warranted.

(208) In particular, while competitors were equally split as to whether or not switching from GMO to non-GMO crude soybean oil is complex and requires some time,[128] the provided qualitative feedback pointed to the need for specific certification, the risks of contamination in storages and production lines, the large price spread between the two, as well as the lengthy sourcing process of certified non-GMO soybeans which require time and planning well ahead of the harvest season with farmers.[129] The received market feedback also pointed to the fact that the distinction between GMO and non-GMO soybean oils is particularly relevant for products that are destined to human consumption such as oils.[130]

(209) The question of whether GMO and non-GMO crude soybean oils are part of the same product market can remain open for the purpose of this Decision asunder all

121 Q5 – Customers oil, question D.A.11.
122 Q2 – Competitors, meals and oils (rapeseed/sunflower), question D.A.9.
123 Q2 – Competitors, meals and oils (rapeseed/sunflower), question D.A.10.
124 Q2 – Competitors, meals and oils (rapeseed/sunflower), question D.A.11.
125 Q2 – Competitors, meals and oils (rapeseed/sunflower), question F.A.4.
126 Q2 – Competitors, meals and oils (rapeseed/sunflower), question F.A.5.
127 Q2 – Competitors, meals and oils (rapeseed/sunflower), question F.A.2.
128 Q2 – Competitors, meals and oils (soybean), question E.A.4.
129 Q2 – Competitors, meals and oils (soybean), question E.A.5.
130 Q2 – Competitors, meals and oils (soybean), question E.A.8.

alternative market definitions no serious doubts as to the compatibility of the Transaction with the internal market can be identified.[131]

8.1.4. Conclusion

(210) Therefore, the Commission considers for the purpose of assessing the present Transaction, that crude and refined oilseed oils form part of separate markets.

(211) Within crude oil seed, the Commission considers for the purpose of assessing the Transaction, that each type of crude oil seed (i.e. rapeseed, sunflower and soybean etc.) constitute a separate product market.

(212) Regarding BRSO and PRSO, the Commission considers for the purpose of assessing the Transaction, that BRSO and PRSO form part of separate markets. Within BRSO, the Commission considers the purpose of assessing the Transaction, that each type of BRSO (i.e. BRSO rapeseed, sunflower and soybean etc.) constitute a separate product market.

8.2. Geographic market definition

8.2.1. Parties' arguments

(213) The Parties consider that the geographic market for **crude vegetable oil** is at least EEA-wide and possibly global in scope.[132]

(214) The Parties argue that crude oilseed oil is a commodity that is perfectly accustomed for transport on a large scale and that trade flows into and within the EU are significant.[133]

(215) They also contend that a physical local presence (e.g., ports, crush plants, storage facilities or marketing offices) is not necessary to compete in the crude oil space. Agribusinesses often supply crude oils in countries in which they do not have any assets.[134]

(216) Finally, the Parties consider that the fact that these products are traded world-wide and listed on commodity exchanges constitutes the main factor for homogeneous conditions of competition, as a result of demand-side substitutability across any vegetable oil type.[135]

(217) The Parties considered that the geographic market for BRSO to be at least EEA-wide and possibly global in scope, because of the significant global imports and exports into and out of the EEA and trade flows within the EEA. Furthermore, the Parties state that any supplier is able to export BRSO to another country, even if that supplier does not have facilities in the country.

(218) The Parties consider the geographic market of PRSO to be at least EEA-wide and possibly global in scope. In the line with the reasoning for BRSO, the Parties consider significant global imports and internal trade flows to expand the geographic market.

131 [Details of the parties purchases and business activities].
132 Form CO, paragraphs 341-346.
133 Form CO, paragraphs 341-344.
134 Form CO, paragraphs 344-345.
135 Form CO, paragraph 346.

8.2.2. *Commission precedents*

(219) In past decisions, the Commission considered that the market for crude seed oils to be EEA-wide or wider,[136] but in other cases left open whether the market could be national or EEA wide.[137]

(220) In past decisions, the Commission considered the market for BRSO to be both EEA-wide and regional (encompassing several neighbouring countries)[138] but in other cases considered the market to be at least EEA-wide.[139]

(221) In past decisions, the Commission considered the market for PRSO to be national or wider with possible cross-border effects but left open the exact geographic market definition.[140]

8.2.3. *Commission assessment*

(222) Firstly, the results of the Commission's market investigation revealed that the scope of the market for both crude and BRSO is smaller than EEA-wide and likely a catchment area in scope.

(223) As regards **crude oilseed oils**:

(224) <u>First</u>, customers and competitors alike have stressed that although there are no specific characteristic of crude oilseed oil which would limit its transportability,[141] transport cost it is a limited factor to sell/purchase from far away from their locations due to slim margins.[142] According to customers, transport cost is a significant part of the delivered cost which entails a preference to source from suppliers located nearest.[143] For example, a Romanian competitor explained that it was difficult to sell in central and eastern Europe due to long distances, while a customer located in Poland explained that transport costs limit the possibility of making a purchase outside of Poland.

(225) <u>Second</u>, although there are international index prices for crude oilseed oils, average transacted prices do differ by EEA country. Domestic demand varies greatly by country, as there are national preferences[144] with e.g. crude rapeseed oil being consumed in much larger volumes in Poland than in Hungary, and vice versa for crude sunflower oil. Prices differ between EEA countries depending on domestic demand and whether a country is a net importer or a net exporter, and prices in Western European, are typically higher than in Eastern Europe, where are located many of the oilseed growing regions and where availability of oilseeds and crude oilseed oil is higher than the demand.[145] As shown in Viterra's internal document in Figure 10 sunflower seeds are for example migratorily grown in Bulgaria, Romania and Hungary, making crude sunflower oil production cheaper in Eastern Europe than in Western Europe.

---

136 M.6383 – Cargill / Korofrance, paragraphs 26-27; M.1126 – Cargill/Vandemoortele, paragraph 13.
137 M.3039 – Soprol / Cereol Lesieur, paragraphs 31-33.
138 M.7963 – ADM / WILMAR / OLENEX JV, paragraph 43.
139 M.3044 – ADM / PURA, paragraph 15.
140 M.8068 – BUNGE / WALTER RAU NEUSSER ÖL UND FETT, paragraph 24; M.9495 – FORTENOVA GRUPA / POSLOVNI SISTEMI MERCATOR, paragraph 96.
141 Q2 – Competitors, meals and oils (rapeseed/sunflower), question C.B.B.6; Q5 – Customers oils, question C.C.4.
142 Q2 – Competitors, meals and oils (rapeseed/sunflower), question C.B.B.5.
143 Q5 – Customers oils, question C.C.2.
144 Q2 – Competitors oils, question C.B.B.12.
145 Q2 – Competitors oils, question C.B.B.11.

Figure 10 Viterra internal document on sunflower seed and sunflower oil production

[…]

Source: Annex to the Form CO – M.11204 – Bunge_Viterra – QP9 – Annex 3.2 – Viterra.

(226) Third, and as a result, both customers and competitors source/supply a majority of their volumes preferentially from a crusher located in the same country or in neighbouring countries.[146] In fact, a majority of competitors do not sell their crude rapeseed oil production further than 500km away from their crusher, and half of competitors having expressed a view do not ship their crude sunflower oil production further than 500km away from their crushers.[147]

8.2.4. Conclusion

(227) For the purpose of this decision, the Commission considers that the market for crude oilseed oil is smaller than EEA-wide in scope and correspond to catchment areas of 500 km as defined above.[148] The competitive assessment will nevertheless be conducted at the national level which is the smallest geographical scope for which consumption data was available and provided by the Parties to compute market shares. National market shares will be used to single out the areas in which the Parties have meaningful overlaps. Within those areas, a further analysis at catchment area level (radius of 500 km) will then be conducted based on the position of the Parties' and their competitors' plants and the flows of products at regional/catchment area level.

(228) As regards **BRSO**, the Commission's market investigation revealed that the majority of suppliers do not sell their BRSO production further than 750km away from their crusher and, therefore, the market for BRSO is smaller than EEA-wide in scope. This is consistent with the fact that a majority of competitors for BRSO primarily serve customers in the country where their crusher/refinery is located or in neighbouring countries. Similarly, a majority of customers for BRSO purchase from a crusher or refinery located in the country where they are active or in neighbouring countries. This is further in line with the fact that a majority of market participants have indicated that transport costs is an important limiting factor to supply BRSO over long distances in particular as regards crude oilseed oil where margins are very slim.

(229) As a result, and for the purpose of this Decision, the Commission considers that the market for BRSOs is smaller than EEA-wide in scope and correspond to catchment areas of 750 km as defined above. The competitive assessment will nevertheless be conducted at the national level which is the smallest geographical scope for which consumption data was available and provided by the Parties to compute market shares. National market shares will be used to single out the areas in which the Parties have meaningful overlaps. Within those areas, a further analysis at the catchment area level (radius of 750 km) will then be conducted based on the position of the Parties' and their competitors' plants and the flows of products at regional/catchment area level.

---

146 Q2 – Competitors oils and meals (rapeseed/sunflower), question C.B.C.20; Q5 – Customers oils, question C.C.2.

147 Q2 – Competitors oils and meals (rapeseed/sunflower), question C.B.B.1.

148 For soybean oils, given the limited availability of market data for catchment areas, for the purpose of this Decision the Commission will not assess catchment areas further in the rest of the Decision and will assess the effect of the transaction based on a national scope of the market as the closest geographic proxy for which data is available.

(230) Secondly, for **PRSO**, the majority of producers of PRSO conclude contracts with customers for the supply of rapeseed and sunflower PRSO at an EEA-wide level.[149]

(231) However, the exact geographic definition can be left open as no competition concerns arise with regard to rapeseed and sunflower PRSO regardless of whether the geographic scope is defined as EEA-wide or national. For the purpose of this decision, the markets for rapeseed and sunflower PRSO will be assessed at national level.

8.3. Horizontal effects – Crude oilseed oils

8.3.1. The Parties' competitive advantage in Central Eastern Europe

(232) In the EEA, Bunge operates crush plants in Austria, France, Germany, Hungary, Italy, the Netherlands, Poland, Romania and Spain. Viterra operates five crush plants in the EEA, namely in the Czechia, Germany, Hungary, and Poland. Their crushing footprint therefore mainly overlaps in Central Eastern Europe, where they have a very strong position in the production of crude rapeseed and sunflower oils.

(233) <u>First</u>, and as shown in Figure 11 below both Viterra and Bunge operate very competitive crusher due to their location and access to key logistical and transport assets. Indeed, together the Parties have the largest crushing footprint west of Germany, with large crushing plants ideally located close to (i) the key rapeseed growing regions in Poland and (ii) the key sunflower seed growing regions in Romania, Hungary and Bulgaria.

Figure 11 Parties' internal document showing crushing footpring in the EU

[…]

Source: Annex to the Form CO, M.11204 – Bunge_Viterra – Form CO – Annex 11.15 – 4c-15 ESVC – EU Footprint Bunge vs Viterra – Rapeseed Crush_CONF

(234) This has been confirmed by the Commission's market investigation, in the context of which a majority of customers have indicated that both Parties or each of them individually enjoy a competitive advantage connected to the coverage of their crushing footprint in Central Eastern Europe, which gives them pricing power in the region for both crude rapeseed and crude sunflower oil.[150] This competitive advantage and pricing power also derives from the fact that the Parties' plants are conveniently located close to key logistical and transport assets.

(235) <u>Second</u>, Bunge and Viterra both enjoy a scale and verticalization advantage compared to most of their competitors located in Central Eastern Europe. They are both vertically integrated and active from the purchase of oilseeds to the marketing of BRSO and meals. Bunge is additionally active further downstream in PRSO. In addition, both Parties are international agribusiness companies which, as explained in paragraph (234), operate several competitive assets in Central Eastern Europe. Those elements provide them with a competitive advantage as they are able to arbitrage, i.e. take advantage of eventual differences in the price across time (i.e. by storing the product), between geographies (i.e. by shipping the product to another place/country) or between products (i.e. by switching to crushing a different type of oilseed). This has been confirmed by a majority of competitors, which have pointed out that both Bunge and Viterra have assets (offices, logistical assets, production) in different countries, such that they might be more flexible in covering the demand

149 Q2 – Competitors oils and meals (rapeseed/sunflower), question F.B.1.

150 Q5 – Customers oils, question C.D.1.

from different supply points and optimize logistics costs.[151] Conversely, other competitors in Central Eastern Europe are typically much smaller players active with only one or two plants in the area. This is for example the case of Kite/Ökoil, which operates one single plant for sunflower and rapeseed in Hungary, or Komagra which operates only two much smaller plants than the Parties for rapeseed in Poland.

8.3.2. *Crude rapeseed oil*

(236) The Transaction raises serious doubts for crude rapeseed oil in Poland, Hungary and Austria, i.e. in and around countries where they both operate the largest and most competitive crushing assets: Bunge's crushing plants in Martfu (Hungary), Bruck an der Leitha (Austria), Kruszwica and Brzeg (Poland) and Viterra's crushing plants in Fokto (Hungary) and Usti (Czechia).

(237) Conversely, the Transaction does not raise serious doubts in Germany and the Netherlands, where the Parties also operate crushing assets but where other large competitors with spare capacity are also present.

8.3.2.1. Poland

(238) In Poland, both Parties operate the largest and most competitive crushing assets in the country. Bunge operates two crushing plants, in Brzeg and Kruszwica, for a total of […] capacity, while Viterra operates a crushing plant in Bodaczow with a crushing capacity of […]. The Parties' plants are ideally located close to rapeseed growing areas as well as demand in Poland.[152]

(239) Both Parties therefore produce and control large volumes of crude rapeseed oil in Poland, resulting in high combined trading, supply and capacity shares, as detailed in Table 8 below.

Table 8 Parties' supply, trading and allocated capacity shares for crude rapeseed oil in Poland (2022)

	Supply share[153]	**Trading share[154]**	**Allocated capacity share[155]**
Bunge	[20-30]%	[20-30]%	[20-30]%
Viterra	[10-20]%	[10-20]%	[10-20]%
Combined	**[40-50]%**	**[40-50]%**	**[40-50]%**

(240) Other competitors would not be in a position to discipline the Parties post-Transaction. The next biggest competitor, ADM, has a capacity share almost [share details] as small as the combined capacity share of the Parties ([20-30]%). The 4th largest competitor, Komagra, has a capacity share [share details] smaller than that of the Parties ([5-10]%). The market investigation has also confirmed that the Parties' competitors have rather limited available spare capacities. These limited spare capacities have to be read in conjunction with the fact that, for maintenance purposes, a crusher typically never run at 100% capacity, which remains a

151 Q2 – Competitors, meals and oils (rapeseed/sunflower), question C.B.C.13.
152 Q2 – Competitors, meals and oils (rapeseed/sunflower), question C.B.C.1.
153 Form CO, annex 24.
154 Form CO, annex 24.
155 Form CO, annex 25.

theoretical capacity without any interruptions.[156] As a result, the Parties would not be disciplined by existing or future competitors.

(241) The negative impact of the Transaction on the market for crude rapeseed oil in Poland has been confirmed by market participants. A majority of customers have explained that they expect higher prices after the Transaction,[157] and they indicated they would not be able to switch to another supplier in case of a price increase.[158] Competitors similarly raised that they expect the Transaction will have a negative impact on prices and competition for of crude rapeseed oil in Poland.[159]

(242) In view of the national assessment above, the Commission preliminarily finds that the Transaction raises serious doubts for the market of crude rapeseed oil in Poland and will therefore further assess this based on the catchment area analysis in Section 8.3.5 below.

8.3.2.2. Hungary

(243) In Hungary, both Parties operate the largest and most competitive crushing assets in the country. Bunge operate a crushing asset in Martfu, with a crushing capacity of […], while Viterra operates a crushing asset in Fokto, with a crushing capacity of […].

(244) Both Parties therefore produce and control large volumes of crude rapeseed oil in Hungary, resulting in high combined trading, supply and capacity shares, as detailed in Table 9 below.

Table 9 Parties' supply, trading and capacity shares for crude rapeseed oil in Hungary (2022)

	Supply share[160]	**Trading share[161]**	**Allocated capacity share[162]**
Bunge	[60-70]%	[60-70]%	[30-40]%
Viterra	[10-20]%	[10-20]%	[30-40]%
Combined	**[80-90]%**	**[80-90]%**	**[60-70]%**

(245) Other competitors would not be in a position to discipline the Parties post-Transaction. The only other sizeable competitor with a crushing asset in Hungary is Kite/Ökoil, which holds a capacity share more than [share details] smaller than the Parties ([10-20]%). The market investigation has also confirmed that the Parties' competitors have rather limited available spare capacities. Those spare capacities also have to be read in conjunction with the fact that, for maintenance purposes, a crusher typically never run at 100% capacity, which remains a theoretical capacity without any interruptions.[163] As a result, the Parties would not be disciplined by existing or future competitors.

156 Q2 – Competitors, meals and oils (rapeseed/sunflower), question C.A.5.
157 Q5 – Customers oils, question C.D.16.
158 Q5 – Customers oils, question C.D.9.
159 Q2 – Competitors, meals and oils (rapeseed/sunflower), question C.B.C.24.
160 Form CO, annex 24.
161 Form CO, annex 24.
162 Form CO, annex 25.
163 Q2 – Competitors, meals and oils (rapeseed/sunflower), question C.A.5.

(246) The negative impact of the Transaction on the market for crude rapeseed oil in Hungary has been confirmed by market participants. A majority of customers have explained that they expect the Transaction to have a negative impact on competition in Hungary,[164] and they indicated they would not be able to switch to another supplier in case of a price increase.[165] A majority of competitors similarly raised that they expect the Transaction will have a negative impact on prices, and competition for crude rapeseed oil in Hungary.[166]

(247) In view of the national assessment above, the Commission preliminarily finds that the Transaction raises serious doubts for the market of crude rapeseed oil in Hungary and will therefore further assess this based on the catchment area analysis in Section 8.3.5 below.

8.3.2.3. Austria

(248) In Austria, Bunge operates a large and competitive crushing plant in Bruck an der Leitha, which has a crushing capacity of […] which amounts to [80-90]% of capacity share in Austria. Viterra does not operate a crusher in Austria, but is active in this market through imports and sells [volume] of crude rapeseed oil to that market annually. Bunge's Bruck plant is particularly competitive, in particular as it is located close to railway connections.[167]

(249) Together, both Parties therefore control large volumes of crude rapeseed oil in Austria, resulting in high combined trading, supply and capacity shares, as detailed in Table 10 below.

Table 10 Parties' supply, trading and capacity shares for crude rapeseed oil in Austria

	Supply share[168]	**Trading share[169]**	**Allocated capacity share[170]**
Bunge	[40-50]%	[40-50]%	[80-90]%
Viterra	[10-20]%	[10-20]%	[0-5]%
Combined	**[60-70]%**	**[60-70]%**	**[80-90]%**

(250) Other competitors in Austria would not be able to discipline the Parties post-Transaction. Rapso, which is also present with a crusher in Austria, only has a [5-10]% capacity share in the country. The Commission's market investigation has confirmed that crusher active in Austria have rather a limited spare capacity with some of them using the crude rapeseed oil to the market exclusively internally for their own refining and bottling activities.[171] This contrasts with Bunge that crushes [volume] of rapeseed in its Bruck plant annually [details of the parties business activities]. As a result, the Parties would not be disciplined by existing or future competitors.

164 Q5 – Customers oils, question C.D.16.
165 Q5 – Customers oils, question C.D.9.
166 Q2 – Competitors, meals and oils (rapeseed/sunflower), question C.B.C.24.
167 Q2 – Competitors, meals and oil (rapeseed/sunflower), question C.B.C.1.
168 Form CO, annex 24.
169 Form CO, annex 24.
170 Form CO, annex 25.
171 Non-confidential minutes of a call with a competitor, paragraphs 2, 3 and 4.

(251) The negative impact of the Transaction on the market for crude rapeseed oil in Austria has been confirmed by market participants. A majority of customers have explained that they expect the Transaction to lead to higher prices for crude rapeseed oil in Austria,[172] and some of them indicated they would not be able to switch to another supplier in case of a price increase.[173] A majority of competitors consider Austria not to be a very competitive market for crude rapeseed oil,[174] and similarly raised that they expect the Transaction will have a negative impact on prices, competition and available volumes of crude rapeseed oil in Austria.[175]

(252) In view of the national assessment above, the Commission preliminarily finds that the Transaction raises serious doubts for the market of crude rapeseed oil in Austria and will therefore further assess this based on the catchment area analysis in Section 8.3.5 below.

8.3.2.4. Germany

(253) In Germany, both Parties operate crushing assets. Bunge operates a large crushing plant in Mannheim ([…] crushing capacity) while Viterra operates two crushing plants, one in Lubmin ([…] crushing capacity) and one in Magdeburg ([…] crushing capacity).

(254) Although both Parties operate large crushing assets in Germany, they are surrounded in that country by other large players with competitive crushing assets, and as a result do not control a large share of the volumes of crude rapeseed oil, or of the capacity to produce it, in that country, as shown in Table 11 below.

Table 11 Parties' supply, trading and capacity shares for crude rapeseed oil in Germany (2022)

	Supply share[176]	**Trading share[177]**	**Allocated capacity share[178]**
Bunge	[10-20]%	[10-20]%	[10-20]%
Viterra	[0-5]%	[10-20]%	[5-10]%
Combined	**[10-20]%**	**[20-30]%**	**[10-20]%**

(255) As a result, the Parties would not be able to impact prices for crude rapeseed oil in Germany, as other competitors active on the market control larger volumes and/or would be able to discipline any price increase. In particular:

(a) ADM would still hold a larger capacity share than the Parties ([20-30]%) with its four crush plants in Hamburg, Mainz, Kleve and Straubing representing a total capacity of […] according to the Parties' estimates. According to the Parties' estimates, Cargill would still hold an [10-20]% capacity share thanks to its two plants in Riesa and Salzgitter. Power oil operates a very large rapeseed crush plant in Rostock representing a capacity share of [5-10]%. Thywissen would be another competitor remaining on the market, with a [5-10]% capacity share. The market

172 Q5 – Customers oils, question C.D.16.
173 Q5 – Customers oils, question C.D.9.
174 Q2 – Competitors, meals and oils (rapeseed/sunflower), question C.B.C.5.
175 Q2 – Competitors, meals and oils (rapeseed/sunflower), question C.B.C.24.
176 Form CO, annex 24.
177 Form CO, annex 24.
178 Form CO, annex 25.

investigation has further confirmed the existence of large available spare capacity for rapeseed crushing in Germany.[179]

(256) The market investigation also confirmed that the Transaction was unlikely to raise serious doubts for crude rapeseed oil in Germany. A majority of customers and competitors alike consider that the Transaction will not lead to higher prices, less volumes or less competition on the market for crude rapeseed oil in Germany.[180] A majority of customers have also indicated that they would be able to switch to another supplier in Germany in case of a price increase,[181] and competitors have also identified Germany as a very competitive market for crude rapeseed oil.[182]

(257) In view of the above, the Transaction will not raise serious doubts as to it compatibility with the internal market for crude rapeseed oil in Germany. Similarly, the Transaction does not give rise to serious doubts as to it compatibility with the internal market for the supply of crude rapeseed oil when assessed based on a catchment area analysis encompassing Germany.

8.3.2.5. The Netherlands

(258) The Transaction does not raise serious doubts as to its compatibility with the internal market for crude rapeseed oil in the Netherlands.

(259) Although the Parties' combined supply and trading shares are high, none of the Parties operate crushing assets in the Netherlands and the increment brought about by Bunge would remain limited (below [5-10]%), as shown in Table 12 below.

Table 12 Parties' supply, trading and capacity shares for crude rapeseed oil in the Netherlands (2022)

	Supply share[183]	**Trading share[184]**	**Allocated capacity share[185]**
Bunge	[0-5]%	[5-10]%	[0-5]%
Viterra	[70-80]%	[70-80]%	[0-5]%
Combined	**[70-80]%**	**[80-90]%**	**[0-5]%**

(260) Conversely, ADM holds according to the Parties a [90-100]% of the rapeseed crushing capacity in the Netherlands, where it operates an important rapeseed crushing asset. The market investigation has further confirmed the existence of large available spare capacity for rapeseed crushing in the Netherlands.[186]

(261) The market investigation also confirmed that the Transaction was unlikely to generate competition concerns for crude rapeseed oil in the Netherlands. A majority of customers and competitors alike consider that the Transaction will not lead to higher prices, less volumes or less competition on the market for crude

179 Commission's calculation based on the market reconstruction data.
180 Q2 – Competitors, meals and oils (rapeseed/sunflower), question C.B.C.24; Q5 – Customers oils, question C.D.16.
181 Q5 – Customers oils, question C.D.9.
182 Q2 – Competitors, meals and oil (rapeseed/sunflower), question C.B.C.5.
183 Form CO, annex 24.
184 Form CO, annex 24.
185 Form CO, annex 25.
186 Commission's calculation based on the market reconstruction data.

rapeseed oil in the Netherlands.[187] A majority of customers have also indicated that they would be able to switch to another supplier in the Netherlands in case of a price increase,[188] and competitors have identified the Netherlands as a very competitive market for crude rapeseed oil.[189]

(262) In view of the above, the Transaction will not raise serious doubts as to it compatibility with the internal market for crude rapeseed oil in the Netherlands. Similarly, the Transaction does not give rise to serious doubts as to it compatibility with the internal market for the supply of crude rapeseed oil when assessed based on a catchment area analysis encompassing Netherlands.

8.3.3. Crude sunflower oil

8.3.3.1. Hungary

(263) In Hungary, both Parties operate very large and competitive assets for the production of crude sunflower oil. Bunge operates a crushing plant in Martfu, with an […] crushing capacity and which crushed [volume] of sunflower seeds in 2023. Viterra operates a crushing plant in Fokto, with […] crushing capacity and which crushed [volume] of sunflower seeds in 2023.[190] Viterra and Bunge's plants in Hungary are very competitive plants ideally located close to sunflower growing areas (in Bulgaria, Romania and Hungary) and to demand in Hungary and surrounding countries.[191]

(264) As shown in Viterra's internal document in Figure 12 below, Viterra and Bunge's plants in Hungary (located in Fokto and Martfu respectively) are located close to one of the key sunflower seed oil growing regions (which is predominantly grown in Romania, Bulgaria and Hungary) […].

Figure 12 Viterra internal document on Fokto plant

[…]

Source: Annex to the Form CO – M.11204 – Bunge_Viterra – QP9 – Annex Q3.2 – Viterra, slide 10.

(265) The Parties therefore hold large trading, supply and capacity share for crude sunflower oil in Hungary, as shown below.

Table 13 Parties' supply, trading and capacity shares for crude sunflower oil in Hungary (2022)

	Supply share[192]	**Trading share[193]**	**Allocated capacity share[194]**
Bunge	[40-50]%	[40-50]%	[30-40]%
Viterra	[10-20]%	[10-20]%	[30-40]%
Combined	**[60-70]%**	**[60-70]%**	**[70-80]%**

187 Q2 – Competitors, meals and oils (rapeseed/sunflower), question C.B.C.24; Q5 – Customers oils, question C.D.16.
188 Q5 – Customers oils, question C.D.9.
189 Q2 – Competitors, meals and oil (rapeseed/sunflower), question C.B.C.5.
190 Parties' capacity data provided in response to RFI 5.
191 Q2 – Competitors, meals and oils (rapeseed/sunflower), question C.B.C.2.
192 Form CO, annex 24.
193 Form CO, annex 24.
194 Form CO, annex 25.

(266) Other competitors would not be able to discipline a price increase by the Parties post-Transaction. Agrofert is the next best competitor, with its plant located in Kiskunfélegyháza. However, it only holds a capacity share approx. [share details] smaller than that of the Parties. Kite/Ökoil is also present in Hungary with a crushing plant in Sajobabony, however it only has a crushing capacity of […] (compared to the Parties' […] of crushing capacity). The market investigation has further confirmed the existence of limited available spare capacity for sunflower crushing in Hungary when compared to volumes processed by the Parties in the country and [details of the parties business activities].[195] As a result, the Parties would not be disciplined by existing competitors.

(267) The negative impact of the Transaction on the market for crude sunflower oil in Hungary has been confirmed by market participants. A majority of customers have explained that they expect the Transaction to lead to higher prices for crude sunflower oil in Hungary,[196] and a majority also indicated that they would not be able to switch to another supplier in case of a price increase.[197] A majority of competitors do not consider that Hungary is a very competitive market for crude sunflower oil,[198] and similarly raised that they expect the Transaction will have a negative impact on prices and competition for crude sunflower oil in Hungary.[199]

(268) In view of the national assessment above, the Commission preliminarily finds that the Transaction raises serious doubts for the market of crude sunflower oil in Hungary and will therefore further assess this based on the catchment area analysis in Section 8.3.5 below.

8.3.3.2. Germany

(269) The Transaction does not raise serious doubts as to its compatibility with the internal market for crude sunflower oil in Germany.

(270) In Germany, none of the Parties operate a crushing asset which crushed sunflower seeds in [years].[200] They are however both controlling some volumes of crude sunflower oil in Germany, [details of the parties business activities]. This results in the trading and supply shares reproduced below.

Table 14 Parties' supply, trading and capacity shares for crude sunflower oil in Germany (2022)

	Supply share[201]	**Trading share[202]**	**Allocated capacity share[203]**
Bunge	[10-20]%	[20-30]%	[0-5]%
Viterra	[30-40]%	[30-40]%	[0-5]%
Combined	**[40-50]%**	**[50-60]%**	[0-5]%

195 Commission's calculation based on the market reconstruction data.
196 Q5 – Customers oils, question C.D.17.
197 Q5 – Customers oils, question C.D.10.
198 Q2 – Competitors, meals and oils (rapeseed/sunflower), question C.B.C.6.
199 Q2 – Competitors, meals and oils (rapeseed/sunflower), question C.B.C.25.
200 Parties' reply to RFI 5.
201 Form CO, annex 24.
202 Form CO, annex 24.
203 Form CO, annex 25.

(271) Competitors present with a crushing asset in Germany would be in a position to discipline any possible price increase from the Parties. Cargill, in particular, operates a crushing plant in Riesa which crushed sunflower seeds Thywissen also operates a crushing facility in Neuss which crushed sunflower seeds. The market investigation has further confirmed the existence of important available spare capacity for sunflower crushing in Germany in 2023 which would largely exceed the volumes brought about by Viterra's increment in Germany.[204]

(272) The market investigation also confirmed that the Transaction was unlikely to raise serious doubts for crude sunflower oil in Germany. A majority of customers and competitors alike consider that the Transaction will not lead to higher prices or less available volumes for crude sunflower oil in Germany.[205] A majority of customers have also indicated that they would be able to switch to another supplier in Germany in case of a price increase,[206] and competitors have identified Germany as a very or at least somehow competitive market for crude sunflower oil.[207]

(273) In view of the above, the Transaction will not raise serious doubts as to it compatibility with the internal market for crude sunflower oil in Germany. Similarly, the Transaction does not give rise to serious doubts as to it compatibility with the internal market for the supply of crude sunflower oil when assessed based on a catchment area analysis encompassing Germany.

8.3.3.3. The Netherlands

(274) The Transaction does not raise serious doubts as to its compatibility with the internal market in the Netherlands for crude sunflower oil.

(275) In the Netherlands, none of the Parties operate a crushing asset which crushed sunflower seeds in [years].[208] They are however both controlling some volumes of crude sunflower oil in the Netherlands, which they [details of the parties business activities]. This results in the trading and supply shares reproduced below.

Table 15 Parties' trading, supply and capacity shares for crude sunflower oil in the Netherlands (2022)

	Supply share[209]	**Trading share[210]**	**Allocated capacity share[211]**
Bunge	[10-20]%	[20-30]%	[0-5]%
Viterra	[20-30]%	[30-40]%	[0-5]%
Combined	**[30-40]%**	**[50-60]%**	[0-5]%

(276) Competitors present with a crushing asset in the Netherlands would however be in a position to discipline any possible price increase from the Parties. In particular, Cargill holds [90-100]% of the sunflower crushing capacity in the Netherlands.[212]

204 Commission's calculation based on the market reconstruction data.
205 Q2 – Competitors, meals and oils (rapeseed/sunflower), question C.B.C.25; Q5 – Customers oils, question C.D.17.
206 Q5 – Customers oils, question C.D.10.
207 Q2 – Competitors, meals and oil (rapeseed/sunflower), question C.B.C.6.
208 Parties' reply to RFI 5.
209 Form CO, annex 24.
210 Form CO, annex 24.
211 Form CO, annex 25.
212 Form CO, annex 25.

The market investigation has further confirmed the existence of important available spare capacity for sunflower crushing in the Netherlands in 2023 which would largely exceed the volumes brought about by Bunge's increment in the country.[213]

(277) The market investigation also confirmed that the Transaction was unlikely to raise serious doubts for crude sunflower oil in the Netherlands. A majority of customers consider that the Transaction will have no impact on competition and will not lead to higher prices or less available volumes for crude sunflower oil in the Netherlands.[214] A majority of customers have also indicated that they would be able to switch to another supplier in the Netherlands in case of a price increase,[215] and competitors have identified the Netherlands as a very competitive market for crude sunflower oil.[216]

(278) In view of the above, the Transaction will not raise serious doubts as to it compatibility with the internal market for crude sunflower oil in the Netherlands. Similarly, the Transaction does not give rise to serious doubts as to it compatibility with the internal market for the supply of crude sunflower oil when assessed based on a catchment area analysis encompassing the Netherlands.

8.3.3.4. Austria

(279) The Transaction also does not raise serious doubts as to its compatibility with the internal market for crude sunflower oil in Austria.

(280) In Austria, only Bunge operates a crushing asset in Bruck an der Leitha, which has a crushing capacity of […] and crushed [volume] of sunflower seeds in 2023.[217] Viterra is virtually not active in Austria, where it does not have a crushing asset and only imported and sold very marginal volumes ([…] in 2022 and […] in 2023) of crude sunflower oil. This results in the trading, supply and capacity shares as shown below.

Table 16 Parties' supply, trading and capacity shares for crude sunflower oil in Austria (2022)

	Supply share[218]	**Trading share[219]**	**Allocated capacity share[220]**
Bunge	[40-50]%	[40-50]%	[0-5]%
Viterra	[0-5]%	[0-5]%	[0-5]%
Combined	**[40-50]%**	**[40-50]%**	[0-5]%

(281) Given Viterra's very marginal presence in the Austrian market for crude sunflower oil, the Transaction will not raise serious doubts as to it compatibility with the internal market for crude sunflower oil in Austria.

213 Commission's calculation based on the market reconstruction data.
214 Q2 – Competitors, meals and oils (rapeseed/sunflower), question C.B.C.25; Q5 – Customers oils, question C.D.17.
215 Q5 – Customers oils, question C.D.10.
216 Q2 – Competitors, meals and oil (rapeseed/sunflower), question C.B.C.6.
217 Parties' response to RFI 5.
218 Form CO, annex 24.
219 Form CO, annex 24.
220 Form CO, annex 25.

(282) In view of the above, the Transaction will not raise serious doubts as to it compatibility with the internal market for crude sunflower oil in Austria. Similarly, the Transaction does not give rise to serious doubts as to it compatibility with the internal market for the supply of crude sunflower oil when assessed based on a catchment area analysis encompassing Austria.[221]

8.3.3.5. Italy

(283) The Transaction also does not raise serious doubts as to its compatibility with the internal market for crude sunflower oil in Italy.

(284) In Italy, none of the Parties operate a crushing asset which crushed sunflower seeds in [years]. They however control some volumes of crude sunflower oil in Italy, [details of the parties business activities related to crush, imports and sales]. Those however result in limited trading and supply shares, as shown below.

(285) In view of the above, the Transaction will not raise serious doubts as to it compatibility with the internal market for crude sunflower oil in Italy. Similarly, the Transaction does not give rise to serious doubts as to it compatibility with the internal market for the supply of crude sunflower oil when assessed based on a catchment area analysis encompassing Italy.

Table 17 Parties' supply, trading and capacity shares for crude sunflower oil in Italy (2022)

	Supply share[222]	**Trading share[223]**	**Allocated capacity share[224]**
Bunge	[10-20]%	[10-20]%	[0-5]%
Viterra	[10-20]%	[10-20]%	[0-5]%
Combined	**[20-30]%**	**[20-30]%**	[0-5]%

(286) Other players operating a crushing plant in Italy control much larger volumes of crude sunflower oil than the Parties. Competitors operating a crushing asset in Italy include Tampieri, which holds a [60-70]% capacity share. Other players include Italco ([20-30]% capacity share), Cereal Docks ([10-20]% capacity share) and Oleificio ([0-5]% capacity share). The market investigation has further confirmed the existence of important available spare capacity for sunflower crushing in Italy in 2023.[225]

(287) The market investigation also confirmed that the Transaction was unlikely to raise serious doubts for crude sunflower oil in Italy. Customers do not consider that the Transaction will have impact on competition or lead to higher prices or less available volumes for crude sunflower oil in Italy.[226] A majority of customers have also indicated that they would be able to switch to another supplier in Italy in case

221 In any event, the divestment of the Fokto plant removes the entirety of the overlap between the Parties in the catchment area around the only plant of the Parties in Austria (Bruck owned by Bunge).
222 Form CO, annex 24.
223 Form CO, annex 24.
224 Form CO, annex 25.
225 Commission's calculation based on the market reconstruction data.
226 Q2 – Competitors, meals and oils (rapeseed/sunflower), question C.B.C.25; Q5 – Customers oils, question C.D.17.

of a price increase,[227] and competitors have identified Italy as a very competitive or at least somehow competitive market for crude sunflower oil.[228]

8.3.3.6. Spain

(288) The Transaction also does not raise serious doubts as to its compatibility with the internal market for crude sunflower oil in Spain.

(289) In Spain, none of the Parties operate a crushing asset which crushed sunflower seeds in [years]. They however control some volumes of crude sunflower oil in Spain, Bunge through [details of the parties business activities related to crush, imports and sales]. Those however result in limited trading and supply shares, as shown below.

Table 18 Parties' trading, supply and capacity shares for crude sunflower oil in Spain (2022)

	Supply share[229]	**Trading share[230]**	**Allocated capacity share[231]**
Bunge	[10-20]%	[10-20]%	[0-5]%
Viterra	[5-10]%	[5-10]%	[0-5]%
Combined	**[20-30]%**	**[20-30]%**	[0-5]%

(290) Other players operating a crushing plant in Spain control much larger volumes of crude sunflower oil than the Parties. Sovena holds a [30-40]% capacity share in Spain. Cargill holds [10-20]% of capacity. Migasa also holds a [10-20]% capacity share in Spain.[232] The market investigation has further confirmed the existence of some available spare capacity for sunflower crushing in Spain in 2023.[233]

(291) The market investigation also confirmed that the Transaction was unlikely to raise serious doubts for crude sunflower oil in Spain. Customers and competitors alike do not consider that the Transaction will have impact on competition or lead to higher prices or less available volumes for crude sunflower oil in Spain.[234] A majority of customers have also indicated that they would be able to switch to another supplier in Spain in case of a price increase,[235] and competitors have identified Spain as a very competitive or at least somehow competitive market for crude sunflower oil.[236]

(292) In view of the above, the Transaction will not raise serious doubts as to it compatibility with the internal market for crude sunflower oil in Spain. Similarly, the Transaction does not give rise to serious doubts as to it compatibility with the internal market for the supply of crude sunflower oil when assessed based on a catchment area analysis encompassing Spain.

227 Q5 – Customers oils, question C.D.10.
228 Q2 – Competitors, meals and oil (rapeseed/sunflower), question C.B.C.6.
229 Form CO, annex 24.
230 Form CO, annex 24.
231 Form CO, annex 25.
232 Commission's calculation based on the market reconstruction data.
233 Commission's calculation based on the market reconstruction data.
234 Q2 – Competitors, meals and oils (rapeseed/sunflower), question C.B.C.25; Q5 – Customers oils, question C.D.17.
235 Q5 – Customers oils, question C.D.10.
236 Q2 – Competitors, meals and oil (rapeseed/sunflower), question C.B.C.6.

8.3.4. Crude soybean oil

(293) In spite of the Transaction resulting in affected markets in Italy, the Netherlands, Spain, it does not raise serious doubts in these three member states, where Viterra's position is often limited, almost exclusively driven by imports and with no soybean crushing assets or control over key or critical assets for crude soybean oil imports into the EEA or into Italy, the Netherlands and/or Spain.

Table 19 Parties' supply, trading and allocated capacity shares for crude soybean oil in Italy, the Netherlands, Spain (2022)

		Supply share[237]	**Trading share[238]**	**Allocated capacity share[239]**
Italy	Bunge	[60-70]%	[60-70]%	[30-40]%
	Viterra	[0-5]%	[0-5]%	[0-5]%
	Combined	**[60-70]%**	**[60-70]%**	[30-40]%
Netherlands	Bunge	[40-50]%	[50-60]%	**[40-50]%**
	Viterra	[10-20]%	[10-20]%	[0-5]%
	Combined	**[50-60]%**	**[60-70]%**	**[40-50]%**
Spain	Bunge	[80-90]%	[80-90]%	[70-80]%
	Viterra	[0-5]%	[0-5]%	[0-5]%
	Combined	**[80-90]%**	**[80-90]%**	**[70-80]%**

8.3.4.1. Italy

(294) The Transaction does not raise serious doubts as to its compatibility with the internal market for crude soybean oil in Italy.

(295) Although the Parties' combined supply and trading shares are high, the increment brought about by Viterra would remain extremely limited ([0-5]%) and only one of the Parties operate crushing assets in Italy.

(296) Only Bunge operates a crushing asset crushing soybean in Italy in [years]. Viterra controls some marginal volume of crude soybean oil [details of the parties business activities]. These volumes which are sold to third Parties amounted to only […] tons in 2022 whereas the total consumption of crude soybean oil in Italy was of […]. This results in the trading and supply shares reproduced below.

237 Form CO, annex 24.
238 Form CO, annex 24.
239 Form CO, annex 25.

Table 20 Parties' supply, trading and allocated capacity shares for crude soybean oil in Italy (2022)

		Supply share[240]	Trading share[241]	Allocated capacity share[242]
Italy	Bunge	[60-70]%	[60-70]%	[30-40]%
	Viterra	[0-5]%	[0-5]%	[0-5]%
	Combined	**[60-70]%**	**[60-70]%**	[30-40]%

(297) Given Viterra's very marginal presence in the Italian market for crude soybean oil, the Transaction will not raise serious doubts as to it compatibility with the internal market for crude soybean oil in Italy.

8.3.4.2. The Netherlands

(298) The Transaction also does not raise serious doubts as to its compatibility with the internal market for crude soybean oil in the Netherlands.

(299) Although the Parties' combined supply and trading shares are high, only one of the Parties operates crushing assets in the Netherlands and the increment brought about by Viterra would remain moderate.

(300) Only Bunge operates a crushing asset crushing soybean in the Netherlands in 2022 and 2023. Viterra controls some moderate volume of crude soybean oil [details of the parties strategy and business activities related to crush, sales and local presence]. This results in the trading and supply shares reproduced below.

Table 21 Parties' supply, trading and allocated capacity shares for crude soybean oil in Italy, the Netherlands, Spain (2022)

		Supply share[243]	Trading share[244]	Allocated capacity share[245]
Netherlands	Bunge	[40-50]%	[50-60]%	**[40-50]%**
	Viterra	[10-20]%	[10-20]%	[0-5]%
	Combined	**[50-60]%**	**[60-70]%**	**[40-50]%**

(301) Competitors present with a crushing asset in Netherlands would however be in a position to discipline any possible price increase from the Parties. ADM, in particular, operates a crushing plant in Rotterdam which crushed soybeans and control approx. [50-60]% of the soybean crushing capacity in the country.[246] The market investigation has further confirmed the existence of important available spare capacity for soybean crushing in the Netherlands in 2023.[247]

240 Form CO, annex 24.
241 Form CO, annex 24.
242 Form CO, annex 25.
243 Form CO, annex 24.
244 Form CO, annex 24.
245 Form CO, annex 25.
246 Q5 – Competitors, meals and oils (Soybean), question E.C.A.4.
247 Commission's calculation based on the market reconstruction data.

(302) The market investigation also confirmed that the Transaction was unlikely to raise serious doubts for crude soybean oil in the Netherlands. A majority of customers and competitors alike consider that the Netherlands will not lead to higher prices or less available volumes for crude soybean oil in the Netherlands.[248] A majority of customers have also indicated that they would be able to switch to another supplier in the Netherlands in case of a price increase,[249] and competitors have identified the Netherlands as a very competitive market for crude soybean oil.[250]

(303) In view of the above, the Transaction will not raise serious doubts as to it compatibility with the internal market for crude soybean oil in the Netherlands.

8.3.4.3. Spain

(304) The Transaction also does not raise serious doubts as to its compatibility with the internal market for crude soybean oil in Spain.

(305) Although the Parties' combined supply and trading shares are high, the increment brought about by Viterra would remain extremely limited (at or below [0-5]%) and only one of the Parties operate crushing assets in Spain.

(306) Only Bunge operates a crushing asset crushing soybean in Spain in 2022 and 2023. Viterra controls some marginal volume of crude soybean oil [details of the parties business activities]. These volumes which are sold to third Parties amounted to only […] in 2022, including […] of imports, whereas the total consumption of crude soybean oil in Spain was of […]. This results in the trading and supply shares reproduced below.

Table 22 Parties' supply, trading and allocated capacity shares for crude soybean oil in Spain (2022)

		Supply share[251]	**Trading share[252]**	**Allocated capacity share[253]**
Spain	Bunge	[80-90]%	[80-90]%	[70-80]%
	Viterra	[0-5]%	[0-5]%	[0-5]%
	Combined	**[80-90]%**	**[80-90]%**	**[70-80]%**

(307) Given Viterra's very marginal presence in the Spanish market for crude soybean oil, the Transaction will not raise serious doubts as to it compatibility with the internal market for crude soybean oil in Spain.

8.3.5. Catchment area analysis

(308) As explained in Section 8.2.3, crude oils are generally sold by companies within 500 km from the premises. The Commission therefore calculated crushing capacity shares around each of the Parties' plant with a radius of 500 km.

248 Q5 – Competitors, meals and oils (Soybean), question E.D.1; Q5 – Customers oils, question C.D.18.
249 Q5 – Customers oils, question C.D.11.
250 Q5 – Competitors, meals and oils (Soybean), question E.C.A.4.
251 Form CO, annex 24.
252 Form CO, annex 24.
253 Form CO, annex 25.

8.3.5.1. Crude rapeseed oil

(309) Regarding crude rapeseed oil, the Commission found that the Transaction could possibly raise serious doubts in Hungary, Poland and Austria. The Commission finds that the Transaction also raises serious at catchment area level for the following reasons:

(310) First, the analysis as shown in Table 23 confirms that the Parties have high capacity shares around their Hungarian, Polish and Austrian plants in relation to rapeseed crushing capacity.

Table 23 Parties' rapeseed crushing capacity shares around their plants (2022)

	Plant	500 Km radius
Hungary	Fokto (Viterra)	[40-50]%
	Martfu (Bunge)	[50-60]%
Poland	Bodaczow (Viterra)	[20-30]%
	Brzeg (Bunge)	[30-40]%
	Kruszwica (Bunge)	[20-30]%
Austria	Bruck (Bunge)	[30-40]%

Source: Parties' capacity data and estimates of competitors' capacity.

(311) Second, the Commission's analysis shows that the Parties would not face any sizeable competitors in each catchment area. In particular, in each of these catchment areas, the Parties would face one single EEA based competitor[254] with a capacity share above 10%. All other competitors have a capacity share below 10%.

(312) Third, the Commission investigation found that in all catchment areas considered [details of the parties business activities]. Such withholding of available production capacity is an indication of some form of pivotality of the Parties vis-à-vis the rest of the market.[255]

(313) In view of the above, the Commission finds that the Transaction raises serious doubts as to its compatibility with the internal market for crude rapeseed oil in the catchment areas around the Parties plants in Hungary, Poland and Austria.

8.3.5.2. Crude sunflower oil

(314) As regards crude sunflower oil, the Commission found that the Transaction could possibly serious doubts in Hungary. The Commission finds that the Transaction also raises serious at catchment area level for the following reasons:

(315) First, the analysis as shown in Table 24 confirms the fact that the Parties have high capacity shares around their Hungarian plants in relation to sunflower crushing capacity.

---

254 In the Bodaczow catchment area, another competitor with 10%capacity share is active. However, this competitor is based outside of the EEA.

255 In economic terms, a reduction of production volume compared to the available production capacity can only be optimal for the Parties if this volume reduction increases the margin on the reduced production volume. In other words, the Parties likely have some form of market power beyond what is captured by simple capacity shares.

Table 24 Parties' sunflower crushing capacity shares around their plants (2022)

	Plant	500 Km radius
Hungary	Fokto (Viterra)	[30-40]%
	Martfu (Bunge)	[30-40]%

Source: Parties' capacity data and estimates of competitors' capacity.

(316) Second, the Commission's analysis shows that the Parties would not face any sizeable competitors in each catchment area. In the Martfu catchment area, the Parties would face one single competitor with a capacity share of [10-20]% while all other competitors have capacity shares below 10%. In the Fokto catchment area, the Parties would face two main competitors with capacity shares of [10-20]% and [10-20]% while all the other competitors have capacity shares smaller than this.

(317) Third, the Commission investigation found that in all catchment areas considered [details of the parties business activities]. Such withholding of available production capacity is an indication of some form of pivotality of the Parties vis-à-vis the rest of the market.[256]

(318) In view of the above, the Commission finds that the Transaction raises serious doubts as to its compatibility with the internal market for crude sunflower oil in the catchment areas around the Parties plants in Hungary.

8.4. Horizontal effects – BRSO

(319) Refined seed oil is sold in bulk, i.e. bulk refined seed oil ('BRSO'). BRSO can be further refined into vegetable fats, used as input in food manufacturing processes, or packaged and sold as packed refined oil ('PRSO'). PRSO is used for direct human consumption. BRSO is supplied in large quantities as opposed to PRSO which is packaged in smaller containers that satisfy the typical needs of end-consumers.

(320) The Parties' activities only overlap in the production, supply and marketing of BRSO, while only Bunge is active further downstream in the value chain in PRSO and margarine.

(321) The Transaction gives rise to affected horizontal overlaps in rapeseed BRSO in Austria, Czechia, Hungary and Poland, as well as in sunflower BRSO in Austria, Hungary and Poland.[257]

8.4.1. The Parties' competitive advantage in Central Eastern Europe

(322) In the EEA, Bunge has refineries in Austria, Germany, Hungary, Italy, the Netherlands, Poland, Romania, and Spain, while Viterra has refineries in Czechia, Hungary and Poland.[258] Just as with their crushing plants, their refining footprint thus mainly overlaps in CEE where they have a very strong position in the production of rapeseed BRSO in Poland and sunflower BRSO in Hungary.

(323) First, the Parties operate very competitive refineries due to their location and access to key logistical and transport assets as explained in Viterra's internal document

[256] In economic terms, a reduction of production volume compared to the available production capacity can only be optimal for the Parties if this volume reduction increases the margin on the reduced production volume. In other words, the Parties likely have some form of market power beyond what is captured by simple capacity shares.

[257] The Parties activities do not overlap with respect to refined soybean oil as Viterra does not refine soybean oil in the EEA nor does import such an oil into the EEA.

[258] Reply to QP9, Annex Q1.5 and Annex Q1.6.

captioned in Figure 10 above. The Parties have large refineries in CEE that are connected to their crushing plants, ideally located close to (i) the key rapeseed growing regions in Poland and (ii) the key sunflower seed growing regions in Romania, Hungary and Bulgaria. A majority of customers have indicated in the context of the Commission's market investigation that both Parties or each of them individually enjoy a competitive advantage in BRSO,[259] with several referencing their large capacity to source seeds, favourable locations and logistic possibilities, giving them pricing power for BRSO.[260] This competitive advantage and pricing power also derives from the fact that the Parties' plants are conveniently located close to key logistical and transport assets, as further detailed in the relevant country sections below.

(324) Second, the Parties both enjoy a scale and verticalization advantage compared to most of their competitors located in CEE. They are both vertically integrated, as they are active in the purchase of oilseeds, crushing, refining, and the marketing of crude refined oil, BRSO and meals. Bunge is additionally active further downstream in PRSO and margarine. In addition, both Parties are international agribusiness companies which, as explained in paragraph (234), have a large asset footprint in CEE. Those elements provide them with a competitive advantage as they are able to arbitrage. A majority of competitors explained that such logistical and footprint advantage enable large companies like the Parties to arbitrage, i.e. take advantage of eventual differences in the price across time (i.e. by storing the product), between geographies (i.e. by shipping the product to another place/country) or between products (i.e. by switching to refining a different type of crude oilseed oil).[261]

(325) For the reasons set out above, the Parties enjoy high supply, trading and capacity shares across Austria, Czechia, Hungary, and Poland.

8.4.2. Rapeseed BRSO

8.4.2.1. Poland

(326) In **Poland**, Bunge operates two refineries, in Brzeg and Kruszwica, while Viterra operates a refinery in Bodaczow.[262] The Parties have high trading and supply shares of [60-70]%. The Parties both have refining assets in Poland and high combined capacity shares of [40-50]%, as shown below in Table 25. Similarly, the Parties have high marketing shares of [50-60]% (excluding sales to traders [40-50]%).

259 Q5 – Customers oils, question D.C.5.
260 Q5 – Customers oils, question D.C.6.
261 Q3 – Competitors, Meals and oils (Rapeseed/Sunflower), D.C.6.
262 Reply to RFI 2, Annex Q21.

Table 25 Parties' supply, trading and allocated capacity shares for Rapeseed BRSO in Poland (2022)

		Supply share[263]	Trading share[264]	Allocated capacity share[265]
Poland	Bunge	[50-60]%	[50-60]%	[30-40]%
	Viterra	[10-20]%	[10-20]%	[5-10]%
	Combined	**[60-70]%**	**[60-70]%**	**[40-50]%**

(327) The Parties control the largest rapeseed refining capacity in Poland followed by ADM which holds a capacity share of [30-40]%, followed by Upfield with [10-20]% and Komagra with [5-10]%. In Poland, [details of the parties business activities] (Bunge approximately [volume] and Viterra approximately [volume]), [details of the parties business activities].[266]

(328) Furthermore, a majority of customer stressed either the absence of alternative suppliers to switch to or that they would have to incur significant costs and time when attempting to do so.[267] In the same line, the market investigation confirmed the existence of high barriers to expansion and entry for rapeseed BRSO in Poland. Entry or expansion into this market requires substantial investments with long lead times of one to three years.[268] As a result, there have been no new market entrants in the past five years.[269]

(329) Consequently, the Parties would not be disciplined by existing or future competitors.

(330) The negative impact of the Transaction on the market for rapeseed BRSO in Poland has been confirmed by market participants. A majority of competitors to the Parties consider the Transaction would likely lead to higher prices for rapeseed BRSO in Poland.[270] Similarly, a larger number of customers expect increases in prices, resulting from the Transaction.[271]

(331) In view of the national assessment above, the Commission preliminarily finds that the Transaction raises serious doubts for the market of rapeseed BRSO in Poland and will therefore further assess this based on the catchment area analysis in Section 8.4.4 below.

8.4.2.2. Hungary

(332) With regard to **Hungary**, Bunge operates a refinery in Martfu, while Viterra operates a refinery in Fokto. The Parties control the entire production and flow of rapeseed BRSO, with trading and supply shares of [80-90]% as well as capacity shares of [90-100]%, as shown below in Table 26.

263 Reply to QP11 – Annex Q2.1 updated version 10 June 2024.
264 Ibid.
265 Form CO, annex 25.
266 Commission's calculation based on market reconstruction data.
267 Q5 – Customers, Oils, question D.C.12.
268 Q3 – Competitors, Meals and oils (Rapeseed/Sunflower), D.C.14; Q5 – Customers, Oils, question D.C.10.
269 Q5 – Customers, Oils, question D.C.10.
270 Q3 – Competitors, Meals and oils (Rapeseed/Sunflower), D.C.20.
271 Q5 – Customers, Oils, question D.C. 16.

Table 26 Parties' supply, trading and allocated capacity shares for Rapeseed BRSO in Hungary (2022)

		Supply share[272]	Trading share[273]	Allocated capacity share[274]
Hungary	Bunge	[70-80]%	[70-80]%	[70-80]%
	Viterra	[0-5]%	[0-5]%	[20-30]%
	Combined	**[80-90]%**	**[80-90]%**	**[90-100]%**

(333) First, the Parties have large combined market shares and control a significant volume of rapeseed BRSO that is almost equal to the entire consumption in Hungary. This is evidenced by the fact that [details of the parties business activities related to sales, exports and processing]. Viterra sells domestically [volume] and exports [volume] out of its [volume] production[275].

(334) The Parties' large rapeseed BRSO production in Hungary is in line with the fact that they control [details of the parties capacity shares] . The results of the market investigation confirmed that not only do the Parties control [90-100]% of the rapeseed refining capacity in Hungary, but also that barriers for expansion and entry are high. Indeed, Hungary has not seen any market entrants over the past five years.[276]

(335) As a result, the Parties would not be disciplined by existing competitors or future competitors.

(336) The negative impact of the Transaction on the market for rapeseed BRSO in Hungary has been confirmed by market participants. A majority of competitors to the Parties consider the Transaction would likely lead to higher prices for rapeseed BRSO in Hungary.[277] Similarly, a larger number of customers expect increases in prices, resulting from the Transaction.[278]

(337) In view of the national assessment above, the Commission preliminarily finds that the Transaction raises serious doubts for the market of rapeseed BRSO in Hungary and will therefore further assess this based on the catchment area analysis in Section 8.4.4 below.

8.4.2.3. Austria

(338) In **Austria**, the Parties have high supply and trading shares of [50-60]% and Bunge has high a capacity share of [70-80]%, as shown below in Table 27. Bunge has a high marketing share of [60-70]% ([60-70]% including sales to traders).[279]

272 Reply to QP11 – Annex Q2.1 updated version 10 June 2024.
273 Reply to QP11 – Annex Q2.1 updated version 10 June 2024.
274 Form CO, annex 25.
275 Reply to QP11 – Annex Q2.1 updated version 10 June 2024.
276 Q3 – Competitors, Meals and oils (Rapeseed/Sunflower), D.C.14; Q5 – Customers, Oils, question D.C.10.
277 Q5 – Customers, Oils, question D.C. 16; Q3 – Competitors, Meals and oils (Rapeseed/Sunflower), D.C.20.
278 Q5 – Customers, Oils, question D.C. 16; Q3 – Competitors, Meals and oils (Rapeseed/Sunflower), D.C.20.
279 Reply to QP11 – Annex Q27.

Table 27 Parties' supply, trading and allocated capacity shares for Rapeseed BRSO in Austria (2022)

		Supply share[280]	Trading share[281]	Allocated capacity share[282]
Austria	Bunge	[30-40]%	[30-40]%	[70-80]%
	Viterra	[10-20]%	[10-20]%	-
	Combined	**[50-60]%**	**[50-60]%**	**[70-80]%**

(339) While the combined market shares of the Parties are high, there is no overlap in terms of rapeseed BRSO assets in Austria. Bunge operates a refinery in Bruck, whereas [details of the parties strategy and business activities related to sales and local presence]. [Details of the parties strategy and business activities related to sales and local presence] of rapeseed BRSO, which were entirely sold to the merchant market[283], representing a small increment to Bunge's production of [volume]. [Details of the parties strategy and business activities related to sales and local presence]. In this respect, only [details of the parties strategy and business activities related to sales and local presence](().[284]

(340) The important excess production of Bunge is also to be read in conjunction with the fact that the market investigation has confirmed that competitors have important available spare capacity that exceeds the increment brought by Viterra.[285]

(341) In addition, the market investigation indicated that a majority of customers are able to switch to alternative suppliers of rapeseed BRSO, in the event of price increases. Alternative suppliers include large agribusinesses such as Cargill, ADM and VFI[286].

(342) The market investigation also confirmed that the Transaction was unlikely to raise serious doubts for rapeseed BRSO in Austria. A majority of customers and competitors alike consider that the Transaction will not lead to higher prices, less volumes or less competition on the market for rapeseed BRSO in Austria.[287]

(343) In view of the above, the Transaction will not raise serious doubts as to it compatibility with the internal market for rapeseed BRSO in Austria. Similarly, the Transaction does not give rise to serious doubts as to it compatibility with the internal market for the supply of rapeseed BRSO when assessed based on a catchment area analysis encompassing Austria.

280 Reply to QP11 – Annex Q2.1 updated version 10 June 2024.
281 Reply to QP11 – Annex Q2.1 updated version 10 June 2024.
282 Form CO, annex 25.
283 Reply to QP11 – Annex Q2.1 updated version 10 June 2024.
284 Reply to QP11 – Annex Q2.1 updated version 10 June 2024.
285 Commission's calculation based on the market reconstruction.
286 Q5 – Customers, Oils, question D.C.12.
287 Q5 – Customers, Oils, question D.C. 16; Q3 – Competitors, Meals and oils (Rapeseed/Sunflower), D.C.20.

8.4.2.4. Czechia

(344) In **Czechia**, the Parties have high supply and trading shares of [60-70]% and Viterra has high a capacity share of [50-60]%, as shown below in Table 28. Viterra has a high marketing share of [90-100]% ([90-100]% including sales to traders).[288]

Table 28 Parties' supply, trading and allocated capacity shares for Rapeseed BRSO in Czechia (2022)

		Supply share[289]	Trading share[290]	Allocated capacity share[291]
Czechia	Bunge	[10-20]%	[10-20]%	[0-5]%
	Viterra	[50-60]%	[50-60]%	[50-60]%
	Combined	**[60-70]%**	**[60-70]%**	**[50-60]%**

(345) While the combined market shares of the Parties are high, there is no overlap in terms of rapeseed BRSO assets in Czechia. Viterra operates a refinery in Usti, whereas [details of the parties strategy and business activities related to sales and local presence][292], representing a small increment to Viterra's production of [volume]. Viterra's production of rapeseed BRSO covers on its own [details of the parties business activities]. In this respect, around [details of the parties business activities] of Viterra's production of rapeseed BRSO was [details of the parties business activities].[293]

(346) The important excess production of Viterra is also to be read in conjunction with the fact that the market investigation has confirmed that competitors have important available spare capacity that exceeds the increment brought by Bunge.[294]

(347) In addition, the market investigation indicated that a majority of customers are able to switch to alternative suppliers of rapeseed BRSO, in the event of price increases. Alternative suppliers include large agribusinesses such as Cargill, ADM, Olenex, and Preol (subsidiary of Agrofert).

(348) The market investigation also confirmed that the Transaction was unlikely to raise serious doubts for rapeseed BRSO in Czechia. A majority of customers and competitors alike consider that the Transaction will not lead to higher prices, less volumes or less competition on the market for rapeseed BRSO in Czechia.[295]

(349) In view of the above, the Transaction will not raise serious doubts as to it compatibility with the internal market for rapeseed BRSO in Czechia. Similarly, the Transaction does not give rise to serious doubts as to it compatibility with the internal market for the supply of rapeseed BRSO when assessed based on a catchment area analysis encompassing Czechia.

---

288 Reply to QP11 – Annex Q27.
289 Reply to QP11 – Annex Q2.1 updated version 10 June 2024.
290 Reply to QP11 – Annex Q2.1 updated version 10 June 2024.
291 Form CO, annex 25.
292 Reply to QP11 – Annex Q2.1 updated version 10 June 2024.
293 Reply to QP11 – Annex Q2.1 updated version 10 June 2024.
294 Commission's calculation based on the market reconstruction.
295 Q5 – Customers, Oils, question D.C. 16; Q3 – Competitors, Meals and oils (Rapeseed/Sunflower), D.C.20.

8.4.3. *Sunflower BRSO*

8.4.3.1. Hungary

(350) In **Hungary**, Bunge operates a refinery in Martfu, while Viterra operates a refinery in Fokto. The Parties have high combined supply shares of [60-70]%, trading shares of [70-80]% and high capacity shares of [70-80]%, as shown below in Table 29.[296]

Table 29 Parties' supply, trading and allocated capacity shares for Sunflower Seed BRSO in Hungary (2022)

		Supply share[297]	**Trading share[298]**	**Allocated capacity share[299]**
Hungary	Bunge	[60-70]%	[60-70]%	[40-50]%
	Viterra	[0-5]%	[5-10]%	[20-30]%
	Combined	**[60-70]%**	**[70-80]%**	**[70-80]%**

(351) The Parties control the largest sunflower refining capacity in Hungary with a combined capacity share of [70-80]%. Only one competitor NT (Agrofert Group) is also active in Hungary with sunflower refining capacity and a capacity share of approx. [20-30]%. The market investigation has not only revealed that the Parties' sunflower refining capacity is [0-5] times higher than that of NT but also that [details of the parties business activites] is significantly higher compared to that of NT.

(352) Furthermore, a majority of customer stressed either the absence of alternative suppliers to switch to or that they would have to incur significant costs and time when attempting to do so.[300] In the same line, the market investigation confirmed the existence of high barriers to expansion and entry for sunflower BRSO which imply additional requirements compared to rapeseed BRSO, such as winterisation plants[301]. Entry or expansion into this market requires substantial investments with long lead times of one to three years.[302] As a result, there have been no new market entrants to the market for sunflower BRSO in the past five years, save for the Fokto refinery owned by Viterra.[303]

(353) Consequently, the Parties would be able to distort competition for rapeseed BRSO in Poland in Poland by increasing prices and/or limiting output without being disciplined by existing or future competitors.

(354) The negative impact of the Transaction on the market for sunflower BRSO in Hungary has been confirmed by market participants. A majority of competitors to the Parties consider the Transaction would likely lead to higher prices for

[296] Reply to QP11 – Annex Q2.1.
[297] Reply to QP11 – Annex Q2.1 updated version 10 June 2024.
[298] Ibid.
[299] Form CO, annex 25.
[300] Q5 – Customers, Oils, question D.C.12.
[301] Winterisation is a process primarily removes components that crystallize at low temperatures and causes oil turbidity.
[302] Q3 – Competitors, Meals and oils (Rapeseed/Sunflower), D.C.14; Q5 – Customers, Oils, question D.C.10.
[303] Q5 – Customers, Oils, question D.C.10.

sunflower BRSO in Hungary.[304] Similarly, a larger number of customers expect increases in prices, resulting from the Transaction.[305]

(355) In view of the national assessment above, the Commission preliminarily finds that the Transaction raises serious doubts for the market of sunflower BRSO in Hungary and will therefore further assess this based on the catchment area analysis in Section 8.4.4 below.

8.4.3.2. Austria

(356) In **Austria**, the Parties have moderate supply shares of [30-40]%, trading shares of [30-40]% and high capacity shares of [90-100]%, as shown below in Table 30.

Table 30 Parties' supply, trading and allocated capacity shares for Sunflower Seed BRSO in Austria (2022)

		Supply share[306]	**Trading share[307]**	**Allocated capacity share[308]**
Hungary	Bunge	[30-40]%	[30-40]%	[90-100]%
	Viterra	[0-5]%	[0-5]%	[0-5]%
	Combined	**[30-40]%**	**[30-40]%**	**[90-100]%**

(357) First, while Bunge's sunflower BRSO capacity share in Austria is high, the Transaction does not lead to any overlap in terms of capacity in this market, as Viterra has no refining or crushing assets in Austria.

(358) Viterra is active solely through [details of the parties strategy and business activities related to sales and local presence] in 2022, representing a very marginal volume compared to domestic consumption of approx. […].[309] As such, Viterra's import represents a small increment of [0-5]%.

(359) In addition to Viterra, various other market players are active in the country via imports. imports reached approximately [volume] of sunflower BRSO in 2022, covering over half of the country's domestic total consumption.[310] Thus, imports provide significant competitive restraints on the Parties' supply and trading sunflower BRSO activities in Austria. This is in line with the market investigation's findings that the majority of customers are able to switch to alternative suppliers.[311]

(360) The market investigation also confirmed that the Transaction was unlikely to raise serious doubts for sunflower BRSO in Austria. A majority of customers and

304 Q5 – Customers, Oils, question D.C.16; Q3 – Competitors, Meals and oils (Rapeseed/Sunflower), D.C.20.
305 Q5 – Customers, Oils, question D.C.16; Q3 – Competitors, Meals and oils (Rapeseed/Sunflower), D.C.20.
306 Reply to QP11 – Annex Q2.1 updated version 10 June 2024.
307 Reply to QP11 – Annex Q2.1 updated version 10 June 2024.
308 Form CO, annex 25.
309 Form CO, annex 25.
310 Form CO, annex 25.
311 Q5 – Customers, Oils, question D.C.12.

competitors alike consider that the Transaction will not lead to higher prices, less volumes or less competition on the market for rapeseed BRSO in Austria.[312]

(361) Based on the above, the Transaction will not raise serious doubts as to its compatibility with the internal market for sunflower BRSO in Austria. Similarly, the Transaction does not give rise to serious doubts as to it compatibility with the internal market for the supply of sunflower BRSO when assessed based on a catchment area analysis encompassing Austria.

8.4.3.3. Poland

(362) In **Poland**, the Parties have low supply shares and trading shares of [20-30]%. As Bunge was the only refinery in 2022, the capacity share is [90-100]%, as shown in Table 31.

Table 31 Parties' supply, trading and allocated capacity shares for Sunflower Seed BRSO in Poland (2022)

		Supply share[313]	**Trading share[314]**	**Allocated capacity share[315]**
Hungary	Bunge	[20-30]%	[20-30]%	[90-100]%
	Viterra	[0-5]%	[0-5]%	[0-5]%
	Combined	**[20-30]%**	**[20-30]%**	**[90-100]%**

(363) While both Parties have refining assets in Poland, Viterra does not refine crude sunflower seed oil. As such, the Transaction does not lead to any capacity overlap for sunflower BRSO in Poland.

(364) The increment brought by Viterra is marginal (approx. [0-5]%). This increment is [details of the parties strategy and business activities related to sales and local presence] compared to domestic consumption in Poland of [volume] in 2022. This leads to an overall limited combined supply and trading share that only slightly exceeds the 20% threshold.

(365) Given Viterra's very marginal presence on the Polish market for sunflower BRSO, the Transaction will not raise serious doubts as to it compatibility with the internal market for sunflower BRSO in Poland. Similarly, the Transaction does not give rise to serious doubts as to it compatibility with the internal market for the supply of sunflower BRSO when assessed based on a catchment area analysis encompassing Poland.

8.4.4. Catchment area analysis

(366) As explained in Section 8.2.3, sunflower and rapeseed BRSOs are generally sold by companies within 750 km from the premises. The Commission therefore calculated crushing capacity shares around each of the Parties' plant with a radius of 750 km.

---

312 Q5 – Customers, Oils, question D.C.16; Q3 – Competitors, Meals and oils (Rapeseed/Sunflower), D.C.20; Q5 – Customers, Oils, question D.C.12.

313 Reply to QP11 – Annex Q2.1 updated version 10 June 2024.

314 Reply to QP11 – Annex Q2.1 updated version 10 June 2024.

315 Form CO, annex 25.

8.4.4.1. Rapeseed BRSO

(367) Regarding rapeseed BRSO, the Commission found that the Transaction could possibly raise serious doubts in Hungary and Poland. The Commission finds that the Transaction also raises serious at catchment area level for the following reasons:

(368) First, the analysis as shown in Table 32 confirms that the Parties have high capacity shares around their Hungarian and Polish plants in relation to rapeseed refining capacity.

Table 32 Parties' rapeseed refining capacity shares around their refineries (2022)

	Plant	750 Km radius
Hungary	Fokto (Viterra)	[30-40]%
	Martfu (Bunge)	[30-40]%
Poland	Bodaczow (Viterra)	[20-30]%
	Brzeg (Bunge)	[20-30]%
	Kruszwica (Bunge)	[20-30]%

Source: Parties' capacity data and estimates of competitors' capacity. Plants to be divested as part of the proposed remedies are highlighted in yellow.

(369) Second, the Commission's analysis shows that the Parties would not face any sizeable competitors in each catchment area. In particular, in the catchment area around the Hungarian plant (i.e., Fokto and Martfu), the Parties would face in each of these catchment areas one single competitor a capacity share above 10% (approx. [10-20]% in each of them) while all other competitors have a capacity share below 10%. Similarly, in the catchment areas around the Polish plants, the Parties would face again one single competitor with a capacity share at or above 10% ([10-20]% in Bodaczow, [10-20]% in Brzeg and [10-20]% in Kruszwica) while all other competitors have a capacity share below 10%. Furthermore, in Poland, the Parties capacity shares are conservatively computed (i.e., underestimated) as these estimates include also non-EEA based refining capacity in Ukraine and Belarus.

(370) Third, the Commission investigation found that in all catchment areas considered [details of the parties business activities]. Such withholding of available production capacity is an indication of some form of pivotality of the Parties vis-à-vis the rest of the market.[316]

(371) In view of the above, the Commission finds that the Transaction raises serious doubts as to its compatibility with the internal market for rapeseed BRSO in the catchment areas around the Parties plants in Hungary and Poland.

8.4.4.2. Sunflower BRSO

(372) Regarding sunflower BRSO, the Commission found that the Transaction could possibly raise serious doubts in Hungary. The Commission finds that the Transaction also raises serious at catchment area level for the following reasons:

[316] In economic terms, a reduction of production volume compared to the available production capacity can only be optimal for the Parties if this volume reduction increases the margin on the reduced production volume. In other words, the Parties likely have some form of market power beyond what is captured by simple capacity shares.

(373) First, the analysis as shown in Table 33 confirms that, compared to their competitors (next closest at [10-20]%), the Parties have high capacity shares around their Hungarian plants in relation to sunflower refining capacity.

(374) Second and in line with this, the Commission's analysis shows that the Parties would not face any sizeable competitors in each catchment area. In the catchment area around the Martfu plant, no competitor has a capacity share of more than 10%. In the catchment area around Fokto, the Parties would face one single competitor with a capacity share above 10% (approx. [10-20]%) while all other competitors have a capacity share below 10%.

Table 33 Parties' sunflower refining capacity shares around their refineries (2022)

	Plant	750 Km radius
Hungary	Fokto (Viterra)	[20-30]%
	Martfu (Bunge)	[20-30]%

Source: Parties' capacity data and estimates of competitors' capacity. Plants to be divested as part of the proposed remedies are highlighted in yellow.

(375) Third, the Commission investigation found that in all catchment areas considered [details of the parties business activities]. Such withholding of available production capacity is an indication of some form of pivotality of the Parties vis-à-vis the rest of the market.[317]

(376) In view of the above, the Commission finds that the Transaction raises serious doubts as to its compatibility with the internal market for sunflower BRSO in the catchment areas around the Parties plants in Hungary.

8.5. Vertical effects – Upstream supply of oilseeds and downstream supply of crude oil

(377) Both Parties are active in the upstream supply of oilseeds and in the downstream production of crude oils and meals, which requires oilseeds as an input.

8.5.1. Rapeseed value chain

8.5.1.1. Input foreclosure

(378) In the upstream markets for the marketing of rapeseed, the Parties' combined shares exceed 30% only in the Netherlands.

Table 34 Parties' combined shares in the marketing of rapeseed (2022)

	Bunge	Viterra	Combined
Rapeseed, Netherlands	[5-10]%	[20-30]%	[30-40]%

Source: Calculations based on Response to QP 11, Annex Q1.4.

(379) However, these market share estimates are calculated using domestic consumption as total market size. Therefore, they underestimate total supply in the market in the Netherlands, where imports ([volume]) far surpass domestic consumption ([volume]). The volumes supplied by the Parties ([volume]) in fact only account for a small share ([10-20]%) of the volumes being imported in the country. Therefore,

[317] In economic terms, a reduction of production volume compared to the available production capacity can only be optimal for the Parties if this volume reduction increases the margin on the reduced production volume. In other words, the Parties likely have some form of market power beyond what is captured by simple capacity shares.

the combined entity will not be in a position to engage in an input foreclosure strategy post-Transaction.

8.5.1.2. Customer foreclosure

(380) In the downstream markets for the marketing of rapeseed crude oil and meal, the Parties' combined shares exceed 30% in the following countries.

Table 35 Parties' combined shares in the marketing of rapeseed crude oil and meal (2022)

	Bunge	Viterra	Combined
Rapeseed crude oil, Poland	[20-30]%	[10-20]%	[40-50]%
Rapeseed meal, Poland	[20-30]%	[10-20]%	[40-50]%
Rapeseed crude oil, Hungary	[60-70]%	[10-20]%	[80-90]%
Rapeseed meal, Hungary	[40-50]%	[30-40]%	[70-80]%
Rapeseed crude oil, Austria	[40-50]%	[10-20]%	[60-70]%
Rapeseed meal, Austria	[50-60]%	[5-10]%	[60-70]%
Rapeseed crude oil, Netherlands	[0-5]%	[70-80]%	[70-80]%
Rapeseed meal, Czechia	[10-20]%	[40-50]%	[50-60]%
Rapeseed meal, Slovenia	[50-60]%	[0-5]%	[50-60]%

(381) The Transaction does not raise concerns in relation to customer foreclosure for the following reasons.

(382) *First*, in order to address the horizontal concerns in the markets of crude oil and meal, the Parties have offered the divestment of Viterra's rapeseed crushing plants in Bodaczow (Poland) and Fokto (Hungary). At the same time, this divestment will also address any customer foreclosure concerns relating to the procurement of oilseeds by those divested assets.

(383) *Second*, any hypothetical customer foreclosure concerns would therefore relate to the rapeseed crushing plants retained by Viterra in Germany (Madgeburg and Lubmin) and Czechia (Usti nad Labem). In other words, the hypothetical customer foreclosure strategy resulting from the Transaction would consist in a reduction of customer access in Germany and Czechia.

(384) However, such a strategy would be unsuccessful because the Parties only control a limited share of processing capacity. In Czechia, Bunge has no processing capacity at all and Viterra operates only [30-40]% of domestic processing capacity. Suppliers will continue to have access to several comparable customers, including Agrofert's plant in Lovosice, which is located just 15 km away from Viterra's plant and directly compete against it in the procurement of rapeseed. Other alternative buyers in the country include ADM's plant in Olomouc and and Fabio Produkt plant in Jicin. In Germany, the Parties will only control [20-30]% of domestic capacity. They also do not compete closely in the procurement of rapeseed, because Bunge only has one plant in the south-western part of the country (Mannheim), while Viterra's two plants are located in the north-eastern regions (Magdeburg and Lubmin) and are surrounded by several competing purchasers of rapeseed with considerable processing capacity, such as Dreyfus' plant in Lutherstadt and Cargill's plants in Salzgitter and Riesa.

(385) Therefore, the combined entity will not be in a position to foreclose customer access to upstream competing suppliers.

8.5.2. Soybean value chain

8.5.2.1. Input foreclosure

(386) In the upstream markets for the marketing of soybeans, the Parties' combined shares exceed 30% in the following markets.

Table 36 Parties' combined shares in the marketing of soybeans (2022)

	Bunge	Viterra	Combined
Soybeans, Italy	[30-40]%	[0-5]%	[30-40]%
Soybeans, Netherlands	[30-40]%	[10-20]%	[40-50]%
Soybeans, Portugal	[50-60]%	[5-10]%	[60-70]%
Soybeans, Spain	[80-90]%	[0-5]%	[90-100]%

(387) The Transaction does not raise concerns in relation to input foreclosure for the following reasons.

(388) *First*, as explained above, Bunge is not an important supplier of soybeans in the merchant market, because [details of the parties business activities]. In particular, [90-100]% of the volumes supplied in Italy, [90-100]% of the volumes supplied in the Netherlands, [90-100]% of the volumes supplied in Portugal and [90-100]% of the volumes supplied in Spain [details of the parties business activities]. Bunge therefore does not supply any meaningful share of the input used by downstream competitors in the production of soybean crude oil and meals.

(389) *Second*, as explained above, none of the companies acquiring soybeans from Viterra would be vulnerable to an input foreclosure strategy from the Parties.

(a) In Italy, Viterra has a market share of [0-5]%. This means that Viterra supplies c. [5-10]% of the soybeans processed by Bunge's competitors in this country. Those competitors therefore have access to sizeable alternative sources of supply.

(b) [Volume] supplied in the Netherlands by Viterra are sold to [customer]. [customer] is one of the largest and most sophisticated commodity traders and processors in the world, and has access to sizeable sources of origination and procurement. Moreover, [customer] participated in the Commission's investigation and did not raise any concerns about the Transaction.[318]

(c) […]% of volumes supplied in Portugal by Viterra are sold to [customer]. The Transaction therefore will not have any meaningful effect on the supply patterns in this market.

(d) [Volume] supplied in Spain by Viterra are sold to [customer]. The Transaction therefore will not have any meaningful effect on the supply patterns in this market.

318 Minutes of a call on 17 October 2023.

8.5.2.2. Customer foreclosure

(390) Viterra is not active in the production of soybeans crude oils or meals in Europe. Therefore, the Transaction will not increase in any way Bunge's position as a customer of soybeans in Europe and its ability to engage in customer foreclosure.

8.5.3. Sunflower value chain

8.5.3.1. Input foreclosure

(391) In the upstream markets for the marketing of sunflower, the Parties' combined shares exceed 30% only in Portugal and Hungary.

Table 37 Parties' combined shares in the marketing of sunflower (2022)

	Bunge	Viterra	Combined
Sunflower seeds, Portugal	[0-5]%	[20-30]%	[30-40]%
Sunflower seeds, Hungary	[10-20]%	[30-40]%	[50-60]%

(392) In Portugal, no vertical relationship exist because the Parties do not have any sunflower processing plant in Portugal or in the Iberian peninsula. The Parties are only active in the processing of sunflower in Eastern Europe (Austria, Hungary and Romania).

(393) In Hungary, the Parties are not active in the supply of sunflower in the merchant market, because [details of the parties strategy and business activities]. Since no downstream competitor relies on the Parties' supply of sunflower seed, no input foreclosure is possible.

8.5.3.2. Customer foreclosure

(394) The Transaction does not raise concerns in relation to customer foreclosure because, in order to address the horizontal concerns in the markets of crude oil and meal, the Parties have offered the divestment of Viterra's rapeseed crushing plants in Bodaczow (Poland) and Fokto (Hungary). Viterra does not produce sunflower crude oil or meal in any other European plant. Any other sunflower crude oil or meal sold by Viterra in Europe is imported from elsewhere. Therefore, the Transaction will not increase in any way Bunge's position as a customer of sunflower seeds in Europe nor its ability to engage in customer foreclosure.

(395) Third, the Commission investigation found that in all catchment areas considered [details of the parties business activities]. Such withholding of available production capacity is an indication of some form of pivotality of the Parties vis-à-vis the rest of the market.[319]

(396) In view of the above, the Commission finds that the Transaction raises serious doubts as to its compatibility with the internal market for crude rapeseed oil in the catchment areas around the Parties plants in Hungary.

8.6. Vertical effects – Upstream crude oil and downstream BRSO

(397) Both Parties are active in the upstream supply of crude oil and in the downstream production of refined oil, which requires crude oil as an input.

[319] In economic terms, a reduction of production volume compared to the available production capacity can only be optimal for the Parties if this volume reduction increases the margin on the reduced production volume. In other words, the Parties likely have some form of market power beyond what is captured by simple capacity shares.

8.6.1. Rapeseed value chain

8.6.1.1. Input foreclosure

(398) In the upstream markets for the supply of rapeseed crude oil, the Parties' combined shares exceed 30% in the following markets.

Table 38 Parties' combined shares in the marketing of rapeseed crude oils (2022)

	Bunge	Viterra	Combined
Rapeseed crude oil, Poland	[20-30]%	[10-20]%	[40-50]%
Rapeseed crude oil, Hungary	[60-70]%	[10-20]%	[80-90]%
Rapeseed crude oil, Austria	[40-50]%	[10-20]%	[60-70]%
Rapeseed crude oil, Netherlands	[0-5]%	[70-80]%	[70-80]%

(399) The Parties have offered the divestment of Viterra's Bodaczow plant in Poland and Fokto plant in Hungary to address the concerns raised in relation to the supply of crude oil. This will effectively remove the overlap with Bunge in the production of rapeseed crude oils in these countries. Therefore, the Transaction will not increase Bunge's ability to engage in input foreclosure in this market.

(400) In Austria, consumption shares overestimate the Parties' supply power, because [details of the parties strategy and business activities]. Viterra also has a limited position as a supplier, selling to only one individual customer.

(401) In the Netherlands, Bunge has a negligible market position, supplying less than [0-5]% of total imported volumes.

(402) For these reasons, the Transaction does not raise customer foreclosure concerns in this market.

8.6.1.2. Customer foreclosure

(403) The Transaction does not raise concerns in relation to customer foreclosure because, in order to address the horizontal concerns in the markets of crude oil and meal, the Parties have offered the divestment of Viterra's plants in Fokto (Hungary) and Bodaczow (Poland). Viterra only produce refined rapeseed oil in one other plant in Europe, located in Usti nad Labem (Czechia). [details of the parties strategy and business activities]. Viterra's merchant purchases of crude oil in Czechia in fact only account of a minimal share ([0-5]%) of all rapeseed crude oil imported or produced by crushers other than Viterra's. Therefore, the Transaction will not meaningfully increase Bunge's position as a customer of rapeseed crude oil in Europe nor its ability to engage in customer foreclosure.

8.6.2. Soybean value chain

8.6.2.1. Input foreclosure

(404) In the upstream markets for the supply of soybean crude oil, the Parties' combined shares exceed 30% only in the Netherlands.

Table 39 Parties' combined shares in the supply of sunflower crude oil (2022)

	Bunge	Viterra	Combined
Netherlands	[40-50]%	[10-20]%	[50-60]%

(405) However, these market share estimates are calculated using domestic consumption as total market size. Therefore, they underestimate total supply in the Dutch market, where production ([volume]) far surpasses domestic consumption ([volume]). Also, the majority of crude oil produced by Bunge in this country is used for [details of the parties strategy and business activities] and it is not sold on the merchant market. The volumes supplied by the Parties on the merchant market ([…]) in fact only account for a small share ([10-20]%) of the volumes being produced in the country. Therefore, the combined entity will not be in a position to engage in an input foreclosure strategy post-Transaction.

8.6.2.2. Customer foreclosure

(406) The Transaction does not raise concerns in relation to customer foreclosure because Viterra does not produce refined soybean oil in any European plant. Therefore the Transaction will not increase in any way Bunge's position as a customer of sunflower crude oil in Europe nor its ability to engage in customer foreclosure.

8.6.3. Sunflower value chain

8.6.3.1. Input foreclosure

(407) In the upstream markets for the supply of sunflower crude oil, the Parties' combined shares exceed 30% in the following markets.

Table 40 Parties' combined shares in the supply of sunflower crude oil (2022)

	Bunge	Viterra	Combined
Hungary	[40-50]%	[10-20]%	[60-70]%
Germany	[10-20]%	[30-40]%	[40-50]%
Netherlands	[10-20]%	[20-30]%	[30-40]%
Austria	[40-50]%	[0-5]%	[40-50]%

8.6.3.1.1. Hungary

(408) The Transaction does not raise concerns in relation to input foreclosure in Hungary for the following reasons.

(409) *First*, Bunge has no meaningful presence in the merchant market of crude oil, because more than [details of the parties strategy and business activities].

(410) *Second*, Viterra also has a very small presence in the merchant market, since it [details of the parties strategy and business activities].

(411) Since no downstream competitors rely on the Parties supplies of sunflower crude oil, no input foreclosure strategy is possible.

8.6.3.1.2. Germany

(412) The Transaction does not raise concerns in relation to input foreclosure in Germany for the following reasons.

(413) *First*, Bunge has no meaningful presence in the merchant market of crude oil, because [details of the parties strategy and business activities].

(414) *Second*, Viterra does supply [volume] of crude oil to competitors in the downstream market of refined oil. This amounts to [40-50]% of the crude oil supplies to downstream competitors in this market, other than Bunge. However, the

combined entity will not be able to engage in an input foreclosure strategy to the detriment of those customer because:

(a) [Volume] were supplied to [customer]. [Customer] is one of the largest and most sophisticated commodity traders and processors in the world, with oilseeds crushing capacity in Europe exceeding 10 million t and a global logistical network. [Customer] is therefore unlikely to suffer any significant repercussion in case the combined entity decided to degrade or discontinue such a limited supply of crude oil. Moreover, [customer] participated in the Commission's investigation and did not raise any concerns about the Transaction.[320]

(b) [Volume] were supplied from Viterra's plant in Fokto. The Parties have offered the divestment of this plant to address the horizontal concerns in the markets of crude oil and meal. Therefore, the combined entity will not be able to engage in input foreclosure with respect to product supplied from this plant.

(c) The remaining volumes were sold to a long tail of customers with an average supply of just […]. Such limited volumes do not seem sufficient to sustain a successful input foreclosure strategy.

8.6.3.1.3. Netherlands

(415) The Parties have a combined market share of [30-40]% in the upstream market of sunflower crude oil. However, these market share estimates are calculated using domestic consumption as total market size. Therefore, they underestimate total supply in the Dutch market, where imports ([volume] far surpass domestic consumption ([volume]). The volumes supplied by the Parties ([…]) in fact only account for a small share ([10-20]%) of the volumes being imported in the country. Therefore, the combined entity will not be in a position to engage in an input foreclosure strategy post-Transaction.

8.6.3.1.4. Austria

(416) Viterra has a negligible position in the upstream supply of sunflower crude oil, limited to just [volume] in 2022. Therefore the Transaction will not affect Bunge's ability to engage in input foreclosure in this market.

8.6.3.2. Customer foreclosure

(417) The Transaction does not raise concerns in relation to customer foreclosure because, in order to address the horizontal concerns in the markets of crude oil and meal, the Parties have offered the divestment of Viterra's plant in Fokto (Hungary). Viterra does not produce refined sunflower oil in any other European plant. Any other refined sunflower oil sold by Viterra in Europe is imported from elsewhere. Therefore the Transaction will not increase in any way Bunge's position as a customer of sunflower crude oil in Europe nor its ability to engage in customer foreclosure.

---

[320] Minutes of a call on 17 October 2023.

8.7. Vertical effects – Upstream BRSO and downstream PRSO

(418) The Transaction gives rise to affected vertical[321] links between:

(a) Viterra's production and supply of rapeseed BRSO upstream and Bunge's downstream production and supply of rapeseed PRSO in Czechia and Poland; and

(b) Viterra's production and supply of sunflower BRSO upstream and Bunge's downstream production and supply of sunflower PRSO in Hungary and Poland. In the EEA, Bunge has bottling plants for producing PRSO in Poland, Romania and Italy.[322]

(419) First, regarding **sunflower PRSO**, while Bunge has a marketing share of [20-30]% in Hungary and [60-70]% in Poland in the downstream sunflower PRSO market,[323] Viterra has, in the upstream sunflower BRSO market, a trading and supply share of only [5-10]% in Hungary and [0-5]% in Poland.[324]

(a) In terms of input foreclosure, given Viterra's limited position upstream ([5-10]% and [0-5]%), the Parties would not have the ability to foreclose PRSO producers from accessing sunflower BRSO in Hungary or Poland. Downstream competitor will still have access to ample alternatives for their sourcing of sunflower BRSO.

(b) In terms of customer foreclosure, the Parties will not have the ability to implement such a scenario, since in Hungary, [volume] in Hungary (less than […]% of its consumption and less than […]% of entire Hungarian consumption) and [volume] in Poland.[325] Bunge relies [details of the parties business activities] on its upstream production of sunflower BRSO such that competing Hungarian and Polish sunflower BRSO producers would not lose any customer in Hungary or Poland due to the Transaction.

(420) Second, regarding **rapeseed PRSO**, Bunge has a marketing share of [60-70]% in Poland and [20-30]% in Czechia in the downstream rapeseed PRSO market.[326] Upstream in rapeseed BRSO, Viterra has a trading and supply share of [10-20]% in Poland and [50-60]% in Czechia.[327]

(a) In terms of input foreclosure, given Viterra's limited position upstream in Poland ([10-20]%), it would not have the ability to foreclose Polish PRSO producers from accessing rapeseed BRSO in Poland. As for Czechia, the Partis' will not have the incentive to foreclose access to rapeseed despite Viterra's significant position upstream ([50-60]%), as Bunge, due to its limited position in the downstream rapeseed PRSO ([20-30]%), would not have the ability to absorb the increased volumes of rapeseed BRSO in

---

321 The Transaction does not give rise to horizontal competition concerns in relation to rapeseed or sunflower PRSO. Also, there is no vertical relationship between the upstream production of soybean BRSO and the downstream production of soybean PRSO because Viterra is not active at either level of the market.

322 Reply to RFI 9, Annex Q1.5.

323 Reply to RFI 2, Annex Q22. NB market shares above 100% come from discrepancies in the Parties' data where their own data are larger than the market size estimate.

324 Reply to QP11, Annex Q2.1.

325 Reply to QP11, Annex Q2.1.

326 Reply to RFI 2, Annex Q22.

327 Reply to QP11, Annex Q2.1.

Czechia that would follow from an input foreclosure strategy.[328] Bunge also does not have any bottling plant in Czechia that could pack/bottle the diverted rapeseed BRSO.[329]

(b) Customer foreclosure is also not likely as Bunge does not purchase any rapeseed BRSO in Poland or Czechia,[330] meaning that Polish and Czech rapeseed BRSO producers would not lose any customer in Poland or Czechia due to the Transaction. In addition, a majority of PRSO producers held that the Transaction would not impact the price of rapeseed PRSO in Poland or Czechia.[331]

(421) In view of the above the Transaction will not raise serious doubts as to it compatibility with the internal market for sunflower PRSO in Hungary and Poland. The Transaction will not raise serious doubts as to it compatibility with the internal market for rapeseed PRSO in Czechia and Poland either.

8.8. Conclusion

(422) In view of the above, the Commission finds that the transaction raises serious doubts as to it compatibility with the internal market for:

(a) Crude rapeseed oil in the catchment areas around the Parties' plants in Hungary, Poland and Austria.

(b) Crude sunflower oil in the catchment areas around the Parties' plants in Hungary.

(c) Rapeseed BRSO in the catchment areas around the Parties' plant in Poland and Hungary.

(d) Sunflower BRSO in the catchment areas around the Parties plant in Hungary.

(423) Section 14 further details how the remedy proposed by the Parties addresses the Commission's concerns in the above identified countries and catchment areas.

9. MARGARINE

(424) BRSO can be further processed into white and yellow fats. Bunge produces the yellow vegetable fat margarine while Viterra is not. Viterra is active in the upstream markets for rapeseed and sunflower BRSOs.

(425) Yellow fats are all spreadable fats ranging from butter blends to pure vegetable-based margarines and spreads with fat content typically ranging from 10% to 90%. They are used in cooking, baking and flavouring. Margarine is a food product made principally from one or more refined vegetable oils (e.g., sunflower seed, soybean, cottonseed, rapeseed, palm and olive oil) or animal fats, containing milk products,

328 One market participant highlighted its dependency on Viterra's supply of rapeseed BRSO in Czechia and that post-Transaction it risks being foreclosed from that input given that it competes with Bunge in rapeseed PRSO. Non-confidential minutes of a call with a customer and a competitor, 16 July 2024, paragraph 6. The Commission finds that in view of Bunge's limited market share in rapeseed PRSO in Czechia ([20-30]%) and the fact that Bunge has not bottling plant in Czechia that could pack/bottle the diverted rapeseed BRSO, the Parties will not have the incentive to implement such a foreclosure scenario.
As regards, sunflower BRSO, the Commission finds that input foreclosure concerns of this market player are addressed by the divestment package in Hungary as this customer sourced this input from the divested Fokto plant and could continue sourcing from that plant.

329 Reply to RFI 9, Annex Q1.5.

330 Reply to QP11, Annex Q2.1.

331 Q5 – Customers oils, question F.C.6.

salt and other ingredients, including flavouring agents, yellow food pigments, emulsifiers, vitamins and butter. Margarine is used as a spread in flavouring, cooking, and baking.[332]

9.1. Product market definition

9.1.1. Parties' arguments

(426) The Parties agree with the Commission's precedent establishing a distinct market for margarine.[333]

9.1.2. Commission precedents

(427) The Commission has previously considered that vegetable fats and refined oilseed oils form part of separate product markets.[334]

(428) Furthermore, with regard to vegetable fats, the Commission has considered that there is a distinct market for margarine.[335]

(429)

9.1.3. Commission's assessment

(430) The results of the market investigation have confirmed that margarine is a distinct product market.

(431) A majority of the companies purchasing BRSO for use in margarine held that there are significant differences between vegetable fats and refined oilseed oil,[336] citing the additional step of processing the oil to produce the fats.[337]

(432) Moreover, a majority of those market participants held that margarine is distinct market separate from other fats,[338] with several referencing the specific characteristics, end-use, and production process for margarine.[339]

(433) In addition, a majority of the market participants held that all types of BRSO (e.g. rapeseed, sunflower and soybean oil) can be used to produce margarine.[340]

9.1.4. Conclusion

(434) Therefore, the Commission considers for the purpose of assessing the Transaction, that margarine forms part of a separate market.

9.2. Geographic market definition

9.2.1. Parties' arguments

(435) The Parties argue that the geographic market for margarine is at least EEA-wide. The Parties submit that the substantial intra-EEA trade of margarine as well as imports and exports to and from the EEA, are evidence of a wider geographic market.[341]

---

332 Form CO, paragraphs 382 and 384.
333 Form CO, paragraph 385.
334 Case COMP/M.9495 – FORTENOVA GRUPA / POSLOVNI SISTEMI MERCATOR, 21 September 2020, paras. 55-56.
335 M.9495, paras 56-57.
336 Q5 – Customers oils, question E.A.1.
337 Q5 – Customers oils, question E.A.2.
338 Q5 – Customers oils, question E.A.5.
339 Q5 – Customers oils, question E.A.6.
340 Q5 – Customers oils, question E.A.7.
341 Form CO, paragraph 388.

9.2.2. Commission precedents

(436) The Commission has previously considered that market for margarine to be national or wider in scope, but ultimately left the question open.[342]

9.2.3. Commission's assessment

(437) While a majority of margarine producers held that they concluded contracts with customers for the supply of margarine at a global level, several held that they conclude such contracts at a national level.[343]

9.2.4. Conclusion

(438) The Commission considers that the geographic market for margarine can be left open, as the Transaction does not give rise to competition concerns in relation to margarine even at the narrowest plausible level, i.e. national.

(439) For the purpose of this decision, national markets will nevertheless be assessed.

9.3. Competitive assessment

(440) The Transaction gives rise to a vertically affected market in Hungary between Viterra's supply of BRSO (upstream), and Bunge's production and supply of margarine (downstream). However, the Transaction does not give rise to competition concerns in this regard for the following reasons.

(441) In Hungary, Viterra has a trading and supply share upstream in BRSO of [5-10]% while Bunge has a marketing share of [40-50]% in the downstream market for margarine. Neither an input foreclosure scenario nor a customer foreclosure scenario can be implemented for the following reasons:

(a) In terms of input foreclosure, the Parties would not have the ability to foreclose margarine producers from accessing BRSO in Hungary Viterra's limited position upstream of only [5-10]%.

(b) In terms of customer foreclosure, Bunge produces and consumes internally [quantity] of its needs of BRSO ([…]%) and […] volume of rapeseed BRSO in Hungary in 2022 and only purchased insignificant volume of sunflower BRSO in the country ([…]) representing less than [0-5]% of its downstream consumption. Given the very marginal volumes of BRSO sourced by Bunge on the Hungarian market, Hungarian BRSO producers would not lose any customer in Hungary due to the Transaction.

(442) In view of the above, the Commission finds that the Transaction will not raise serious doubts as to it compatibility with the internal market for margarine in Hungary.

10. BIODIESEL AND GLYCERINE

(443) Crude oil is not only refined into edible oil for human consumption as discussed above but also into biodiesel to fuel engines.

(444) Both Parties produce biodiesel and crude glycerine.

(445) Biodiesel is used to fuel engines and is produced by further processing crude oil. A by-product to such biodiesel production is glycerine, which, after being further refined, is used by e.g. the pharmaceutical and cosmetics industries.

---

342 M.8068, paras. 22-24.

343 Q5 – Customers oils, question E.B.1.

(446) Glycerine is a water-soluble liquid mix of alcohol and sugar. It is a by-product of the production of biodiesel, fatty free acids and alcohol. Glycerine comes initially in a raw form and needs to be refined for further applications. There are thus two types of glycerine: crude and refined. Crude glycerine can be used for feedstuff. Refined glycerine is marketed to many categories of customers in the pharmaceutical and cosmetic fields.[344]

10.1. Product market definition

10.1.1. Parties' arguments

(447) The Parties agree with the Commission's precedent which considered, and ultimately left open, whether biodiesel and diesel could form part of the same market. The Parties argue that from a technical, economic and demand-side substitution perspective, biodiesel and diesel are interchangeable and used indistinctly by end-consumers.[345]

(448) Regarding the potential to further segment biodiesel types into Fatty Acid Methyl Ester ("FAME") and Hydrotreated Vegetable Oil ("HVO"), the Parties argue that there is full supply-side substitutability between FAME and HVO biodiesel, as biodiesel produced in Europe uses both FAME and HVO. Moreover, the wholesale price of FAME and HVO is closely linked, which allows oil companies and retailers to rapidly switch between FAME and HVO, if one were to increase in price.[346]

(449) In relation to glycerine, the Parties argue that crude and refined glycerine are substitutable from a supply-side perspective. Suppliers of glycerine are often active in both crude and refined glycerine. Moreover, suppliers only active in the production of crude glycerine do not face significant barriers to entry to the market of refined glycerine and are able to enter within a short period of time and without incurring major investments.[347]

10.1.2. Commission precedents

(450) In previous decisions, while leaving it open, the Commission considered that the production and supply of biodiesel could form part of the same market as diesel.[348] Moreover, the Commission has considered that biodiesel could be segmented between FAME and Hydrotreated Vegetable Oil HVO, but this was ultimately left open.[349]

(451) With regard to glycerine, the Commission has previously considered that glycerine can be segmented between crude and refined glycerine.[350]

10.1.3. Commission's assessment

(452) With regard to **biodiesel**, a majority of market participants held that biodiesel and non-bio diesel can be used for the same purposes (fuel).[351] However, a majority of market participants also held that the biodiesel types FAME and HVO can only to a certain extent be used for the same purposes,[352] and that the production processes

344 Form CO, paragraph 375.
345 Form CO, paragraphs 358-361.
346 Form CO, paragraphs 362-365.
347 Form CO, paragraph 377.
348 M.8823, p. 29; M.10372, p. 16; M.4798, p. 25.
349 M.8823, paras. 27 and 30-34.
350 M.5388 Diester Industrie / Oleon Group, paras. 19-20.
351 Q5 – Customers oils, question G.A.1.
352 Q5 – Customers oils, question G.A.3.

for these types are not similar. Accordingly, it would take significant time and/or costs to switch the production from FAME to HVO, and vice versa.[353]

(453) With regard to **glycerine**, a majority of market participants confirmed that crude glycerine and refined glycerine form part of different product markets, given the additional step of refining.[354]

10.1.4. Conclusion

(454) The Commission considers that the exact product market definition for biodiesel can be left open as the Transaction does not give rise to competition concerns under any plausible market definition. For the purpose of this decision, the Transaction will be assessed at the narrowest plausible level, i.e. FAME biodiesel. The Parties do not overlap in HVO biodiesel.

(455) For glycerine, the Commission considers that crude glycerine and refined glycerine form part of different product markets

10.2. Geographic market definition

10.2.1. Parties' arguments

(456) The Parties argue that the geographic market for biodiesel is likely global, as the main suppliers of biodiesel to the EU are from non-EU countries.[355]

10.2.2. Commission precedents

(457) In previous decisions, the biodiesel and glycerine markets have been considered to be at least EEA-wide in scope.[356]

10.2.3. Commission precedents

(458) In its decisional practice, the Commission considered that the market for glycerine was at least EEA-wide but ultimately left the question open.[357]

10.2.4. Commission's assessment

(459) The results of the market investigation are not conclusive as to the geographic scope of FAME biodiesel and crude glycerine.

(460) While a majority of market participants explained that they deliver FAME biodiesel and crude glycerine to customers in neighbouring countries to their production plants, several also deliver across the EEA and even globally.[358]

10.2.5. Conclusion

(461) The Commission considers that for the purpose of the present decision, the exact geographic market definition for FAME biodiesel and crude glycerine can be left open as the Transaction does not give rise to competition concerns. For the purpose of this decision, the markets for FAME biodiesel and crude glycerine will be assessed at EEA level in line with the Commission's previous decisional practice.

---

353 Q5 – Customers oils, question G.A.5.

354 Q5 – Customers oils, questions G.A.7 and G.A.8.

355 Form CO, paragraph 370.

356 M.8823 Neste / Demeter Animal Fats and Proteins, paras. 40-43; M.5388 Diester Industrie / Oleon Group, para. 21.

357 Case COMP/M.3876 – Diester Industrie / Bunge / JV, 30 September 2005 paras. 32-33.

358 Q5 – Customers oils, question G.B.1.

10.3. **Competitive assessment**

(462) The Transaction gives rise to vertically affected markets between the Parties' production and supply of BRSO in Hungary and the Netherlands (upstream), and the Parties' production and supply of FAME biodiesel and crude glycerine in the EEA (downstream). However, the Transaction does not give rise to competition concerns in this regard for the following reasons.

10.3.1. FAME biodiesel

(463) With regard to **FAME biodiesel**, Bunge has a marketing share of [0-5]% and Viterra of [5-10]% in in the EEA.[359]

(464) In Hungary, the Parties' have a combined trading and supply share upstream in BRSO of [60-70]%, of which Viterra has [10-20]% and Bunge [50-60]%.

(465) As for input foreclosure, despite Bunge's significant position upstream in Hungary, input foreclosure is not likely as Viterra would not have the ability to absorb the increased volumes of BRSO that would follow from an input foreclosure strategy due to Viterra's limited position downstream in FAME biodiesel ([5-10]% only at EEA level).

(466) As for customer foreclosure, given Viterra's marginal presence in the downstream market for **FAME biodiesel** of only [5-10]% (and [10-20]% together with Bunge) the Parties will not have the ability to implement any customer foreclosure scenario. This is all the more since out of total production of BRSO (sun and rapeseed combined) of approx. [volume] in Hungary, Viterra only purchases [volume]. Given this marginal purchased volumes of BRSO, other Hungarian producers of BRSO would not be foreclosed from accessing any customer in Hungary due to the Transaction.[360]

(467) In the Netherlands, the Parties' have a combined trading and supply share upstream in BRSO of [60-70]%, of which Viterra has [40-50]% and Bunge [20-30]%.

(468) As for input foreclosure, despite the Parties significant position upstream in the Netherlands (combined [60-70]%), input foreclosure is not likely as Viterra would not have the ability to absorb the increased volumes of BRSO that would follow from an input foreclosure strategy due to Viterra's limited position downstream in FAME biodiesel ([5-10]% only at EEA level).

(469) As for customer foreclosure, given Viterra's marginal presence in the downstream market for **FAME biodiesel** of only [5-10]% (and [10-20]% together with Bunge) the Parties will not have the ability to implement any customer foreclosure scenario. This is all the more since out of total production of BRSO (sun and rapeseed combined) of approx. [volume] in the Netherlands, Viterra [details of the Parties' BRSO purchases]. Given [confidential], other producers of BRSO in the Netherlands would not be foreclosed from accessing any customer in Hungary due to the Transaction.

10.3.2. Crude Glycerine

(470) In **crude glycerine**, Bunge has a marketing share of [10-20]% while Viterra has a marketing share of [5-10]%.[361] Given the lack of concerns for FAME biodiesel, no competition concerns have been identified for the by-product crude glycerine.

---

[359] Reply to QP11, Annex Q35.
[360] Reply to QP11, Annex Q2.1.
[361] Reply to QP11, Annex Q36.

Indeed, a majority of the companies purchasing crude oil for the production of biodiesel and glycerine were of the view that the Transaction would not have any impact on the price or availability of FAME biodiesel or crude glycerine in the EEA.[362]

11. OILSEED MEALS

(471) The Parties' activities overlap horizontally in the supply of sunflower meals, rapeseed meals and soybean meals (together "**oilseed meals**"). The Parties are not active further downstream in the animal feed value chain and this section will therefore focus on the assessment of the impact of the Transaction on a horizontal basis only.

(472) Oilseed meal constitutes raw material for animal feed and it is obtained as a by-product from crushing of oilseeds (mainly soybeans, rapeseeds and sunflower seeds).

(473) Rapeseed and sunflower seed are usually mechanically pressed in expellers after a preheating step in indirectly heated conditioners. The expeller cake (or pressed cake) will then be further treated in the extractor, since it might still content up to 18% of oil, to produce oilseed meal, which usually contains at most less than 10% of oil.

(474) Both sunflower seeds and rapeseeds are mainly crushed in CEE (i.e. Hungary, Poland, Czechia, and Romania), with additional crushing capacities in Western European countries as well (e.g. Germany and Austria).

(475) Soybeans, which naturally have low oil content, are generally thermally treated, mechanically cracked and flaked for further oil extraction. To the difference of sunflower seeds and rapeseeds are mainly crushed in the EEA, a significant portion of the European consumption of soybean meal is imported with significant crushing activity carried outside of the EEA.

11.1. Product market definition

11.1.1. Parties' arguments

(476) The Parties argue that oilseed meals form part of a broader market for the marketing of non-grain feed ingredients ("**NGFI**"), without any need to distinguish oilseed meals from the other types of NGFI, or to distinguish between the different types of oilseed meals.[363] According to the Parties, NGFI include oilseed meals, cottonseed meal, groundnut meal, sesame meal, corn germ meal, corn gluten feed, sugar beet pulp pellets, dry distillers grains with soluble, palm kernel meal, copra meal, linseed meal, and fish meal.[364]

(477) As regards demand-side substitutability, the Parties argue that, while each NGFI has a different protein content[365], all NGFI can meet the protein requirements of livestock diets and are therefore interchangeable. The Parties further note that NGFI with higher protein content are usually more expensive and therefore producers of animal feed compare the prices and the relative protein content of the different ingredients and choose the feed ingredient with the most attractive price-

[362] Q5 – Customers oils.

[363] Form CO, paragraph 299.

[364] Form CO, paragraph 290.

[365] Approx. 44-50% for soybean meals; approx. 34-38% for sunflower seeds that are dehulled before processing; approx. 24-26% for sunflower seeds that are not dehulled before processing; and approx. 32-36% for rapeseed meals (Source: Form CO, Table 19).

protein ratio. Animal feed producers regularly switch between different NGFI, depending on the evolution of the relative prices of the different ingredients. According to the Parties, the fact that all types of oilseed meals have the same singular function (to provide protein content) and, as such, have very similar economic values, indicates that they belong to the same product market.[366]

(478) As regards supply-side substitutability, the Parties explain that the basic crushing technology for the different types of oilseeds is generally similar[367], although the soybean crushing process differs to some extent from sunflower seeds and rapeseeds. The Parties claim that some plants are able to switch between different kinds of oilseeds[368] and both Parties own crushing plants in the EEA which can switch between different types of oilseeds. The Parties further report that [details of the Parties' crushing activities] .[369]

(479) As regards soybean meals specifically, the Parties explain that there is no difference between GMO and non-GMO from a product perspective: both products have the same characteristics in terms of protein levels, yields, water content, and chemical composition. The Parties further claim that there is no difference in permitted use cases from a legal perspective, as certain GMO products only have a labelling obligation as "GMO", but no limitation in their use-case legally. According to the Parties, the distinction between GMO and non-GMO is thus a question of customer preference. The preference for non-GMO products is most prevalent when it comes to products sold for human consumption. Certain animal feed customers also prefer non-GMO products.[370] In view of this, the Parties consider that most soybean meal and crude oil sold in the EEA is GMO and the Parties do not overlap in a hypothetical non-GMO segment. Therefore, the precise product market definition can be left open.[371]

11.1.2. Commission precedents

(480) In past decisions, the Commission considered a distinct market for NGFI (including e.g., oilseed meals, fish meal and by-products of the starch and ethanol industry).[372] The Commission also considered a further segmentation according to the various types of NGFI, including the different types of oilseed meals. More recently, the Commission noted that there were strong indications that within the broader category of NGFI, soybean meal constitutes a distinct product market.[373] However, the Commission ultimately left open the precise market definition.

(481) As regards a distinction between GMO and non-GMO meal products, the Commission contemplated potential markets for GMO and non-GMO NGFI and

366 Form CO, paragraph 294.
367 Form CO, paragraph 298.
368 Form CO, paragraph 296. Soybeans processing lines require greater flaking capacity as compared to the ones crushing rapeseeds and sunflower seeds. Thus, a sunseed/rapeseed crush line will only be able to switch to soybeans, if the plant has a cracking mill (the press can simply be bypassed) and an additional flaking system. Switching from soybeans to rapeseed/sunseed, on the other hand, will only be possible if the plant has a press and an additional flaking system. Source: Form CO, paragraph 298.
369 Form CO, tables 52 and 53.
370 RFI 2, question 3. paragraph 12.
371 RFI 2, question 3, paragraph 12.
372 See e.g. Cases M.7854 Agravis / Wilmar International / H Bögel; M.6573 – Forfarmers / Agricola; M.6383 Cargill / Korofrance; and M.4042 Toepfer / Invivo / Soulès.
373 See Case M.8199 Bunge / European Oilseed Processing Facilities.

soybean meal in *Topefer/InVivo/Soulès*, but ultimately left the product market definition open.[374]

11.1.3. Commission's assessment

(482) The Commission's market investigation in the present case has generally confirmed its past decisional practice. Both from a supply-side and a demand-side perspective, the vast majority of market participants indicated that NGFI were not substitutable with grain feed ingredients,[375] and within NGFI oilseed meals were not substitutable with other NGFIs.[376] The vast majority of market participants, both on the customers and competitors sides, also indicated that price was the most important factor considered for oilseed meal purchases and that price differs per type of meals.[377] Market participants also indicated that the nutritional value (including the protein content) differs per type of meals. Furthermore, while the majority of market participants indicated that the three types of meals could be used for the same species, the provided feedback still showed that certain types of meals are more appropriate for certain species.[378]

(483) As regards the distinction between GMO and non-GMO soybean meals, a majority of suppliers and customers confirmed the relevance of such a distinction, particularly for human application or for labelled non-GM meat.

(484) From a demand side perspective, a majority of customers indicate that non-GMO soybean meal cannot be used interchangeably with GMO soybean meal due to end customers' requirement, in particular in the food sector.[379]

(485) From a supply-side perspective, competitors indicated that switching from the supply of non-GMO soybean meal to GMO soybean meal is very complex and requires a lot of time. This is particularly due to the need for specific certification, the risks of contamination in storage and production lines, the large price spread between the two, as well as the lengthy sourcing process of certified non-GMO soybeans, which require time and planning well ahead of the harvest season with farmers.[380]

11.1.4. Conclusion

(486) In view of the above, the Commission will assess the effects of the Transaction on the markets for the supply of rapeseed meals, soybean meals and sunflower meals separately. The question whether non-GMO and GMO soybean meals are part of the same product market can remain open for the purpose of this decision as, under all alternative market definitions, no competition concerns can be identified.[381]

---

374 M.4042 Toepfer / Invivo / Soulès, paragraph 27.

375 See replies to question C.C.A.1 of Questionnaire Q2 - Competitors, Meals and oils (Rapeseed/Sunflower); question D.A.1 of Questionnaire Q3 - Competitors, Meals and Oils (Soybean), and question C.A.A.1 of Questionnaire Q4 - Customers - Meals.

376 See replies to question C.C.A.3 of Questionnaire Q2 - Competitors, Meals and oils (Rapeseed/Sunflower); question D.A.3 of Questionnaire Q3 - Competitors, Meals and Oils (Soybean), and question C.A.A.3 of Questionnaire Q4 - Customers - Meals.

377 See replies to questions C.C.A.5 and C.C.A.6 of Questionnaire Q2 - Competitors, Meals and oils (Rapeseed/Sunflower); question D.A.5 of Questionnaire Q3 - Competitors, Meals and Oils (Soybean), and questions C.A.A.5 and C.A.A.6 of Questionnaire Q4 - Customers - Meals.

378 Questionnaire Q4 - Customers – Meals, question C.A.A.6.

379 Questionnaire Q4 - Customers – Meals, question C.A.B.2 and C.A.B.3.

380 Questionnaire Q3 – Competitors oils and meals (Soybean) – Meals, question D.A.6 and D.A.7.

381 [Details of the parties purchases and business activities].

11.2. Geographic market definition

11.2.1. Parties' arguments

(487) The Parties submit that the market for the marketing of NGFI should be defined at least at the EEA level. The Parties submit that the substantial proportion of imports of NGFI from outside the EEA and sales across the EEA mean that the market is at least EEA-wide if not global. As regards oilseed meals, the Parties note that imports of meals into individual EEA Member States in 2022 (including from other EEA Member States) accounted for at least 40% of consumption in all Member States (except in Portugal). Agribusinesses often supply NGFI in countries in which they do not have any physical presence and therefore there is no need to have any assets to supply NGFI.[382]

11.2.2. Commission precedents

(488) In past decisions, the Commission considered the market for oilseed meals to be EEA-wide but also left open, in some cases, whether the market could be narrower or national.[383]

11.2.3. Commission's assessment

(489) As regards rapeseed and sunflower meals, the market investigation indicates that markets are smaller than EEA-wide and possibly regional (part of catchment area) or national in scope.

(490) The majority of market respondents both on the demand and the supply side indicated that prices, product availability, available suppliers differ between the EEA and the rest of the world. Product quality is however homogeneous worldwide. In addition, prices differ on a regional basis within the EEA. Within the EEA, a majority of competitors have indicated that they ship a majority of their rapeseed meals below 500km, while a majority of competitors have indicated that they ship a majority of their sunflower meals at least 750km away from their crushing plant(s).

(491) A similar conclusion has been reached for soybean meal markets, the geographic scope of which is smaller than EEA-wide in scope, and likely to be national or limited to catchment areas around crushing plants and ports of entry of soybean meal into the EEA. For soybean meal, the results of the market investigation confirmed that the conditions of competition within and outside of the EEA are not homogenous. In particular, a majority of market participants stressed that prices, product availability, and supplier base differ between the EEA and the rest of the world.

(492) As regards the conditions of competition within the EEA, while suppliers indicated that certain parameters of competition are homogenous throughout the EEA, customers were of a different view. A majority of customers indicated that prices, product availability, number of available suppliers and identify of available suppliers for soybean meal are not homogenous within the EEA.

(493) Finally, within the EEA still, a majority of competitors have indicated that they ship a majority of their soybean meal below 500km and even less.

---

382 Form CO, paragraph 635.

383 See e.g. Cases M.8199 Bunge / European Oilseed Processing Facilities; M.6383 Cargill / Korofrance; M.5550 BP / DUPONT / JV; M.4798 BP / ASSOCIATED BRITISH FOODS / JV; and M.4042 Toepfer / Invivo / Soulès.

11.2.4. Conclusion

(494) For the purpose of this decision, the Commission considers that the market for oilseed meals is smaller than EEA-wide in scope and correspond to catchment areas of 500 km for rapeseed meals and 750 km for sunflower meals as defined above. The competitive assessment will nevertheless be conducted at the national level which is the smallest geographical scope for which consumption data was available and provided by the Parties to compute market shares. National market shares will be used to single out the areas in which the Parties have meaningful overlaps. Within those areas, a further analysis at catchment area level (radius of 500 km or 750km) will then be conducted based on the position of the Parties' and their competitors' plants and the flows of products at regional/catchment area level.

(495) For soybean meals, the Commission considers that in view of the importance given the limited availability of market data for catchment areas, for the purpose of this Decision, the Commission will not assess catchment areas further in the rest of the Decision and will assess the effect of the Transaction based on a national scope of the market as the closest geographic proxy for which data is available.

11.3. Competitive Assessment

(496) As mentioned above, oilseed meal is obtained as a by-product from crushing of oilseeds and the Parties are not active further downstream the feed compound value chain. The conclusions reached under Section 8.3.1 above regarding the Parties' competitive advantages in CEE with respect to their crushing activities are also relevant for the assessment of the impact of the Transaction on oilseed meals and will not be repeated below.

11.3.1. Rapeseed meal

(497) When considering rapeseed meals, the Parties' activities lead to overlaps with a market share exceeding 20% in the following countries.

Table 41 Parties' combined shares in the supply and trading of rapeseed meals (2022)

		Supply share	**Trading share**	**Allocated capacity share[384]**
Austria	Bunge	[50-60]%	[50-60]%	[80-90]%
	Viterra	[5-10]%	[10-20]%	[0-5]%
	Combined	**[60-70]%**	**[70-80]%**	**[80-90]%**
Czechia	Bunge	[10-20]%	[10-20]%	[0-5]%
	Viterra	[40-50]%	[40-50]%	[30-40]%
	Combined	**[50-60]%**	**[50-60]%**	**[30-40]%**
Germany	Bunge	[10-20]%	[10-20]%	[10-20]%
	Viterra	[10-20]%	[10-20]%	[5-10]%
	Combined	**[20-30]%**	**[20-30]%**	**[10-20]%**

384 '/' means that there is no production in the country.

		Supply share	Trading share	Allocated capacity share[384]
Hungary	Bunge	[40-50]%	[40-50]%	[30-40]%
	Viterra	[30-40]%	[30-40]%	[30-40]%
	Combined	**[70-80]%**	**[80-90]%**	**[70-80]%**
Ireland	Bunge	[5-10]%	[5-10]%	[0-5]%
	Viterra	[20-30]%	[20-30]%	[0-5]%
	Combined	**[20-30]%**	**[20-30]%**	[0-5]%
Poland	Bunge	[20-30]%	[20-30]%	[20-30]%
	Viterra	[10-20]%	[10-20]%	[10-20]%
	Combined	**[40-50]%**	**[40-50]%**	**[40-50]%**
Slovenia	Bunge	[50-60]%	[50-60]%	[0-5]%
	Viterra	[0-5]%	[0-5]%	[0-5]%
	Combined	**[50-60]%**	**[50-60]%**	[0-5]%

Source: Form CO, Annex 25

11.3.1.1. Austria

(498) The Transaction leads to an affected market in Austria where the Parties have a [60-70]% combined market share for the supply of rapeseed meals (which increases to [70-80]% when considering additional local trading activities) with an increment of [5-10]% from Viterra. The increment brought by the Transaction is likely to raise concerns as regards rapeseed meals in Austria for the reasons below.

(499) Bunge is the main producer of rapeseed meals in Austria where it crushes rapeseeds in its Bruck plant. Viterra does not operate any crusher in Austria and [its activities derive from […] trading (i.e., based on imports or local purchases). [Details of the Parties' business strategy and activities related to crush and sales].

(500) Austria is a relatively small market with a limited numbers of customers and suppliers, which depends on imports from neighbouring countries to satisfy local demand. Other competitors in Austria would not be able to discipline the Parties post-Transaction. The Commission's market investigation has confirmed that crushers active in Austria have a rather limited spare capacity.[385] [Details of the parties business activities related to crush] Bunge that crushes [volume] of rapeseed in its Bruck plant annually and has [volume] capacity.[386] Bunge's Bruck plant is also particularly competitive, in particular as it is located close to railway connections.[387] As a result, the Parties would be able to distort competition for sunflower meals in Austria by increasing prices and/or limiting output without being disciplined by existing competitors.

(501) The market investigation provided similar feedback than for crude rapeseed oil and also identified concerns with regards rapeseed meals due to the very limited number of alternative crushing suppliers with spare capacity in Austria (only one competitor reported by the Parties in Austria with minimal capacity).

385 Non-confidential minutes of a call with a competitor, paragraphs 2, 3 and 4.
386 Reply to RFI 5.
387 Q2 – Competitors, meals and oil (rapeseed/sunflower), question C.B.C.1.

(502) In view of the national assessment above, the Commission preliminarily finds that the Transaction raises serious doubts in relation to the supply of rapeseed meals in Austria and will therefore further assess this based on the catchment area analysis in Section 11.3.4 below.

11.3.1.2. Czechia

(503) The Transaction leads to an affected market in Czechia where the Parties have a [50-60]% combined market share for the supply of rapeseed meals (which increases to [50-60]% when considering additional local trading activities) with an increment of [10-20]% from Bunge. The increment brought by the Transaction is unlikely to raise any concerns as regards rapeseed meals in Czechia for the reasons below.

(504) First, while Viterra crushes rapeseeds in Czechia in its plant in Usti ([…] capacity and [volume] of rapeseeds crushed in 2023),[388] Bunge does not operate any rapeseed crusher in Czechia and its activities only derive from [details of the Parties' business activities relating to sales] trading (i.e., based on imports or local purchases). Bunge could not identify the origin of the rapeseed meals it sold in Czechia in 2022. Its sales to end customers in Czechia represent approx. [10-20]% of the Czech consumption.

(505) Second, while there are some imports of rapeseed meals - such as Bunge's - into Czechia, this country produces much more rapeseed meals than it consumes internally and actually is net exporter of rapeseed meals (according to data provided by the Parties).[389] In addition, there are at least two competitors' plant in Czechia currently operating with spare capacity and the spare capacity at these two plants would largely cover the increment brought by Bunge's imports. Several other competitors indicated that they import into Czechia from neighbouring countries.

(506) Finally, respondents to the market investigation did not raise any meaningful concerns as regards the impact of the Transaction on the supply of rapeseed meals in Czechia.

(507) For these reasons, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to the supply of rapeseed meals in Czechia.

11.3.1.3. Germany

(508) The Transaction leads to an affected market in Germany where the Parties have a [20-30]% combined market share for the supply of sunflower meals (which increases to [20-30]% when considering additional local trading activities) with an increment of [10-20]% from Bunge. The Parties also have a combined capacity share for the crushing of rapeseeds of [10-20]%. The increment brought by the Transaction is unlikely to raise any concerns as regards rapeseed meals in Germany for the reasons below.

(509) First, in Germany, both Parties operate crushing assets. Bunge operates a large crushing plant in Mannheim ([…] crushing capacity) while Viterra operates two crushing plants, one in Lubmin ([…] crushing capacity) and one in Magdeburg ([…] crushing capacity). While both Parties operate crushing plants, they are surrounded in that country by other large players with competitive crushing assets and their combined share of capacity for rapeseed crushing remain below 20%. [Details of the parties business strategy].

---

388 Reply to RFI 5.

389 In 2022, Czechia consumes the equivalent of 80% of its national production (Source: Form CO, Annex QP11, Annex Q.1.3).

(510) Second, as a result, the Parties would not be able to impact prices for rapeseed meals in Germany, as other competitors active on the market control larger volumes and/or would be able to discipline any price increase. In particular: ADM would still hold a larger capacity share than the Parties ([20-30]%) with its four crush plants in Hamburg, Mainz, Kleve and Straubing representing a total capacity of […] according to the Parties' estimates. According to the Parties' estimates, Cargill would still hold an [10-20]% capacity share thanks to its two plants in Riesa and Salzgitter. Power oil operates a very large rapeseed crush plant in Rostock representing a capacity share of [5-10]%. Thywissen would be another competitor remaining on the market, with a [5-10]% capacity share. The market investigation has further confirmed the existence of large available spare capacity for rapeseed crushing in Germany.[390]

(511) Third, the market investigation also confirmed that the Transaction was unlikely to raise serious doubts in relation to rapeseed meals in Germany. A very large majority of customers indicated that the Transaction's impact on prices and storage capacity for meals in Germany would be neutral.[391] Similarly the vast majority of competitors who expressed an opinion indicated that the German market for the supply of rapeseed meals was very competitive with a large number of competitors.[392]

(512) In view of the above, the Transaction will not raise serious doubts as to it compatibility with the internal market for rapeseed meals in Germany. Similarly, the Transaction does not give rise to serious doubts as to it compatibility with the internal market for the supply of rapeseed meals when assessed based on a 500km catchment area analysis encompassing Germany.

11.3.1.4. Hungary

(513) The Transaction leads to an affected market in Hungary where the Parties have a [70-80]% combined market share for the supply of rapeseed meals (which increases to [80-90]% when considering additional local trading activities) with an increment of [30-40]% from Viterra. The Parties also have a very large combined capacity share for the crushing of rapeseeds of [70-80]%. The increment brought by the Transaction is likely to raise concerns as regards rapeseed meals in Hungary for the reasons below.

(514) In Hungary, both Parties operate very large and competitive assets for the production of rapeseed meals. Bunge operates crushing plants in Martfu, with an [volume] crushing capacity and which crushed [volume] of rapeseeds in 2023. Viterra operates the largest crushing plant of the country in Fokto, with [volume] crushing capacity and which crushed [volume] of rapeseeds in 2023.[393]

(515) Other competitors would not be able to discipline a price increase by the Parties post-Transaction. The only other sizeable competitor with a crushing asset for rapeseeds in Hungary is Kite/Ökoil, which holds a capacity share more than […] than the Parties. The market investigation has also confirmed that the Parties' competitors have rather limited available spare capacities. Those spare capacities also have to be read in conjunction with the fact that, for maintenance purposes, a

390 Commission's calculation based on the market reconstruction data.
391 Q4 – Customers meals, question H.3.
392 Q2 – Competitors, meals and oils (rapeseed/sunflower), question C.C.C.5.
393 Reply to RFI 5.

crusher typically never run at 100% capacity, which remains a theoretical capacity without any interruptions.[394]

(516) As a result, the Parties would be able to distort competition for rapeseed meals in Hungary by increasing prices and/or limiting output without being disciplined by existing competitors.

(517) The market investigation also confirmed that the Transaction was likely to raise serious doubts in relation to rapeseed meals in Hungary. The majority of competitors who expressed an opinion indicated that the Transaction would have a negative impact in Hungary in relation to the supply, prices and availability of rapeseed meals.[395] Competitors highlighted in particular the limited number of available suppliers in Hungary. Market respondents flagged the Parties' "dominance" with respect to oilseed crushing in Hungary and also indicated that for supplies in Hungary, the Parties also have the ability to import from their processing plants in neighbouring countries. Certain customers indicated that – to some extent – they could also purchase meals from other countries and from companies other than then Parties, but the number of suppliers is limited, therefore, they would not be able to replace the Parties' volume entirely.[396]

(518) In view of the national assessment above, the Commission preliminarily finds that the Transaction raises serious doubts in relation to the supply of rapeseed meals in Hungary and will therefore further assess this based on the catchment area analysis in Section 11.3.4 below.

11.3.1.5. Ireland

(519) The Transaction leads to an affected market in Ireland where the Parties have a [20-30]% combined market share for the supply of rapeseed meals with a small increment of [5-10]% from Bunge. The small increment brought by the Transaction is unlikely to raise any concerns as regards rapeseed meals in Ireland for the reasons below.

(520) First, there is no oilseed crushing plant in Ireland – hence no production of rapeseed meals in this country – and all the rapeseed meals consumed in Ireland are imported.

(521) The Parties' activities in Ireland are based on [details of the Parties' business activities and sales strategy] trading [details of the Parties' business activities and sales strategy] .[397] [Details of the Parties' business activities and sales strategy].[398] [Details of the Parties' business activities and sales strategy].[399] In 2022, the rapeseed meals sold by Bunge in Ireland originated from [countries] while the rapeseed meals sold by Viterra originated from [countries].[400]

(522) Second, for the supply of oilseed meals in Ireland, the Parties generally compete with a variety of local and international suppliers such as R&H Hall, ADM and Cefetra.[401]

394 Q2 – Competitors, meals and oils (rapeseed/sunflower), question C.A.5.
395 Q2 – Competitors, meals and oils (rapeseed/sunflower), question C.C.C.24.
396 Q4 – Customers meals, question H.4.
397 Viterra also reported [volume] purchases of rapeseed meals in 2022.
398 Form CO, footnote 416. [Details of the parties business activities and purchases].
399 Form CO, footnote 416.
400 Form CO, Annex 25.
401 Minutes of a call on 17.06.2024.

(523) In addition, in 2023, the Parties' activities in Ireland were focused on the supply to [customer],[402] which has confirmed not having any concerns with the Transaction.[403]

(524) Third, the market investigation also confirmed that the Transaction was unlikely to raise serious doubts in relation to rapeseed meals in Ireland. A very large majority of customers indicated that the Transaction's impact on prices and storage capacity for meals in Ireland would be neutral.[404] Similarly the vast majority of competitors who expressed an opinion indicated that the Transaction would have no impact in Ireland in relation to the supply, prices and availability of rapeseed meals.[405]

(525) In view of the above, the Transaction will not raise serious doubts as to it compatibility with the internal market for rapeseed meals in Ireland. Similarly, the Transaction does not give rise to serious doubts as to it compatibility with the internal market for the supply of rapeseed meals when assessed based on a 500km catchment area analysis encompassing Ireland.

11.3.1.6. Poland

(526) The Transaction leads to an affected market in Poland where the Parties have a [40-50]% combined market share for the supply of rapeseed meals (which increases to [40-50]% when considering additional local trading activities) with an increment of [10-20]% from Viterra. The Parties also have a large combined capacity share for the crushing of rapeseeds of [40-50]%. The increment brought by the Transaction is likely to raise concerns as regards rapeseed meals in Poland for the reasons below.

(527) In Poland, both Parties operate the largest and most competitive crushing assets in the country. Bunge operates two crushing plants in Brzeg, with a […] crushing capacity for rapeseeds only which crushed [volume] of rapeseeds in 2023, and in Kruszwica with a […] crushing capacity for rapeseeds only which crushed [volume] of rapeseeds in 2023. Viterra operates a crushing plant in Bodaczow with a crushing capacity of […], which crushed [volume] of rapeseeds in 2023.[406] The Parties' plants are ideally located close to rapeseed growing areas as well as demand in Poland.[407]

(528) Other competitors would not be in a position to discipline the Parties post-Transaction as their crushing capacity are much smaller than the Parties'. The market investigation has also confirmed that the Parties' competitors have rather limited available spare capacities. These limited spare capacities have to be read in conjunction with the fact that, for maintenance purposes, a crusher typically never run at 100% capacity, which remains a theoretical capacity without any interruptions.[408]

(529) As a result, the Parties would be able to distort competition for rapeseed meals in Poland by increasing prices and/or limiting output without being disciplined by existing competitors.

---

402 Reply to QP 12, paragraph 44.
403 Minutes of a call on 17.06.2024.
404 Q4 – Customers meals, question H.3.
405 Q2 – Competitors, meals and oils (rapeseed/sunflower), question C.C.C.24.
406 Reply to RFI 5.
407 Q2 – Competitors, meals and oils (rapeseed/sunflower), question C.B.C.1.
408 Q2 – Competitors, meals and oils (rapeseed/sunflower), question C.A.5.

(530) The market investigation also confirmed that the Transaction was likely to raise serious doubts in relation to rapeseed meals in Poland. The majority of competitors who expressed an opinion indicated that the Transaction would have a negative impact in Poland in relation to the supply, prices and availability of rapeseed meals.[409] Certain customers also indicated that the transaction was likely to result in higher prices for rapeseed meals and worsen competition in Poland.[410]

(531) In view of the national assessment above, the Commission preliminarily finds that the Transaction raises serious doubts in relation to the supply of rapeseed meals in Poland and will therefore further assess this based on the catchment area analysis in Section 11.3.4 below.

11.3.1.7. Slovenia

(532) The Transaction leads to an affected market in Slovenia where the Parties have a [50-60]% combined market share for the supply of rapeseed meals with a small increment of [0-5]% from Viterra. The very small increment brought by the Transaction is unlikely to raise any concerns as regards rapeseed meals in Slovenia for the reasons below.

(533) First, there is no oilseed crushing plant in Slovenia – hence no production of rapeseed meals in this country – and the very limited volumes of rapeseed meals consumed in Slovenia are all imported. In addition, about 28% of the volumes imported in Slovenia are exported from the country. Viterra's imports into Slovenia represent [0-5]% of the national consumption of rapeseed meals, and [0-5]% of the volumes imported in the country.

(534) Second, [details of the parties business strategy and activities in Slovenia].[411]

(535) Third, the market investigation confirmed that the Transaction was unlikely to raise serious doubts in relation to rapeseed meals in Slovenia. A very large majority of customers indicated that the Transaction's impact on prices and storage capacity for meals in Slovenia would be neutral.[412] Similarly the majority of competitors who expressed an opinion indicated that the Transaction would have no impact in Slovenia in relation to the supply, prices and availability of rapeseed meals.[413]

(536) In view of the above, the Transaction will not raise serious doubts as to it compatibility with the internal market for rapeseed meals in Slovenia. Similarly, the Transaction does not give rise to serious doubts as to it compatibility with the internal market for the supply of rapeseed meals when assessed based on a 500km catchment area analysis encompassing Slovenia.

11.3.2. Sunflower meal

(537) As regards sunflower meals, the Parties' activities lead to overlaps with a combined share exceeding 20% in the following countries.

---

409 Q2 – Competitors, meals and oils (rapeseed/sunflower), question C.C.C.24.
410 Q4 – Customers meals, question H.4.
411 Reply to QP11, Annexes Q39.1 and Q39.2.
412 Q4 – Customers meals, question H.3.
413 Q2 – Competitors, meals and oils (rapeseed/sunflower), question C.C.C.25.

Table 42 Parties' combined shares in the supply and trading of sunflower meals (2022)

		Supply share	Trading share	Allocated capacity share[414]
Austria	Bunge	[30-40]%	[30-40]%	[80-90]%
	Viterra	[10-20]%	[20-30]%	[0-5]%
	Combined	**[50-60]%**	**[50-60]%**	**[80-90]%**
Croatia	Bunge	[0-5]%	[0-5]%	[0-5]%
	Viterra	[30-40]%	[30-40]%	[0-5]%
	Combined	**[30-40]%**	**[30-40]%**	**[0-5]%**
France	Bunge	[10-20]%	[10-20]%	[0-5]%
	Viterra	[5-10]%	[10-20]%	[0-5]%
	Combined	**[20-30]%**	**[20-30]%**	**[0-5]%**
Germany	Bunge	[20-30]%	[20-30]%	[0-5]%
	Viterra	[20-30]%	[20-30]%	[0-5]%
	Combined	**[40-50]%**	**[40-50]%**	**[0-5]%**
Hungary	Bunge	[20-30]%	[20-30]%	[30-40]%
	Viterra	[10-20]%	[20-30]%	[40-50]%
	Combined	**[30-40]%**	**[40-50]%**	**[70-80]%**
Ireland	Bunge	[20-30]%	[20-30]%	[0-5]%
	Viterra	[10-20]%	[10-20]%	[0-5]%
	Combined	**[30-40]%**	**[30-40]%**	[0-5]%
Italy	Bunge	[0-5]%	[0-5]%	[0-5]%
	Viterra	[10-20]%	[20-30]%	[0-5]%
	Combined	**[20-30]%**	**[20-30]%**	**[0-5]%**
Netherlands	Bunge	[0-5]%	[0-5]%	[0-5]%
	Viterra	[10-20]%	[20-30]%	[0-5]%
	Combined	**[20-30]%**	**[20-30]%**	**[0-5]%**
Slovenia	Bunge	[0-5]%	[0-5]%	[0-5]%
	Viterra	[40-50]%	[40-50]%	[0-5]%
	Combined	**[40-50]%**	**[40-50]%**	[0-5]%
Spain	Bunge	[5-10]%	[5-10]%	[0-5]%
	Viterra	[10-20]%	[10-20]%	[0-5]%
	Combined	**[20-30]%**	**[20-30]%**	**[0-5]%**

Source: Form CO, Annex 25

414 '/' means that there is no production in the country.

11.3.2.1. Austria

(538) The Transaction leads to an affected market in Austria where the Parties have a [50-60]% combined market share for the supply of sunflower meals (which increases to [50-60]% when considering additional local trading activities) with an increment of [10-20]% from Viterra. The increment brought by the Transaction is likely to raise concerns as regards sunflower meals in Austria for the reasons below.

(539) Bunge is the main producer of sunflower meals in Austria where it crushes sunflower seeds in its Bruck plant. Viterra does not operate any crusher in Austria and its activities derive from [details of the Parties' business activities related to sales] trading (i.e., based on imports or local purchases) [details of the Parties' business activities related to crush and purchases] .

(540) Austria is a small market with limited numbers of customers and suppliers, which depends on imports from neighbouring Hungary to satisfy local demand. Other competitors in Austria would not be able to discipline the Parties post-Transaction. The Commission's market investigation has confirmed that crushers active in Austria have rather a limited spare capacity.[415] [Details of the parties business activities related to crush] Bunge that crushes [volume] of sunflower seeds in its Bruck plant annually and has [volume] capacity.[416] Bunge's Bruck plant is also particularly competitive, in particular as it is located close to railway connections.[417] As a result, the Parties would be able to distort competition for sunflower meals in Austria by increasing prices and/or limiting output without being disciplined by existing competitors.

(541) The market investigation identified concerns due to the very limited number of alternative crushing suppliers with spare capacity in Austria (only one competitor reported by the Parties in Austria with minimal capacity) and in the region more generally for sunflower seeds. One customer explained in particular "*The Company considers Austria and Hungary to be a single region, as they are neighbouring countries connected by the Danube. As a result, when the Danube is experiencing periods of drought, the Parties face no competition. Due to the Parties' strength in Austria and Hungary, even during periods when the Danube can carry vessels, competition is limited, as the Parties are the sole suppliers of sunflower seed meal in the region. Thus, farmers in the region have to sell to the Parties and customers, such as the Company, have to buy sunflower seed meal from the Parties.*"[418]

(542) In view of the national assessment above, the Commission preliminarily finds that the Transaction raises serious doubts in relation to the supply of sunflower meals in Austria, in particular as a result of spill-over effects from Viterra's crushing activities in Hungary, and will therefore further assess this based on the catchment area analysis in Section 11.3.4 below.

11.3.2.2. Croatia

(543) The Transaction leads to an affected market in Croatia where the Parties have a [30-40]% combined market share for the supply of sunflower meals with a small increment of [0-5]% from Bunge. The small increment brought by the Transaction

---

415 Non-confidential minutes of a call with a competitor, paragraphs 2, 3 and 4.
416 Reply to RFI 5.
417 Q2 – Competitors, meals and oil (rapeseed/sunflower), question C.B.C.1.
418 Minutes of a call on 04.07.2024.

is unlikely to raise any concerns as regards sunflower meals in Croatia for the reasons below.

(544) First, none of the Parties produces any sunflower meals in Croatia and their activities derived from [details of the Parties' business activities and strategy related to trading] trading (i.e., based on imports or local purchases) [details of the Parties' business activities and strategy] .[419]

(545) [Details of the Parties' purchases][420] Any potential concerns for the supply of sunflower meals in Croatia would thus be removed by the divestments of Viterra's crushing plant in Hungary as per the Proposed Remedies described further below in Section 14.

(546) Second, Bunge is barely active in the supply of sunflower meals in Croatia: [volume] of sunflower meals in Croatia and subsequently sales the same quantity to [customers]. This very limited volumes account for [0-5]% of all sunflower meals consumed in Croatia. The overlap with Viterra's activities is therefore negligible.

(547) Third, the market investigation also confirmed that the Transaction was unlikely to raise serious doubts in relation to sunflower meals in Croatia. A very large majority of customers indicated that the Transaction's impact on prices and storage capacity for meals in Croatia would be neutral.[421] Similarly the majority of competitors who expressed an opinion indicated that the Transaction would have no impact in Croatia in relation to the supply, prices and availability of sunflower meals.[422]

(548) For these reasons, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to the supply of sunflower meals in Croatia. In addition, the Transaction does not give rise to any serious doubts when analysing the impact of the Transaction for the supply of sunflower meals based on a 750km catchment area analysis encompassing Croatia.

11.3.2.3. France

(549) The Transaction leads to an affected market in France where the Parties have a [20-30]% combined market share for the supply of sunflower meals (which increases to [20-30]% when considering additional local trading activities) with a [5-10]% increment from Viterra. The moderate increment brought by the Transaction is unlikely to raise any concerns as regards sunflower meals in Croatia for the reasons below.

(550) First, Viterra does not have any crush plants or other facilities in France. Bunge has one crush plant in the very North-West of the country (Brest), which only crushes soybean and rapeseed,[423] but no other facilities.[424] The parties therefore do not produce any sunflower meals in France and their activities are based on [details of the Parties' crush plants, business activities and trading] trading (i.e., based on imports or local purchases) [details of the Parties' business activities and trading].[425]

419 Reply to QP11, Annexes Q39.1 and Q39.2.
420 Form CO, Annex 25.
421 Q4 – Customers meals, question H.3.
422 Q2 – Competitors, meals and oils (rapeseed/sunflower), question C.C.C.25.
423 Form CO, Table 52.
424 Form CO, paragraph 542.
425 Form CO, Annex 25.

(551) Second, on the customers side the French market and the Parties' customers base appears very fragmented (the Parties identified about […] customers each in 2022). Post-transaction the Parties will also continue to face competition from numerous local and international suppliers, such as ADM, Cargill, LDC, and Group Avril.

(552) Third, in any event, the Parties' limited combined shares which do not exceed 25% as regards sunflower meals do not appear liable to impede effective competition.[426]

(553) For these reasons, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to the supply of sunflower meals in France. In addition, the Transaction does not give rise to any serious doubts when analysing the impact of the Transaction for the supply of sunflower meals based on a 750km catchment area analysis encompassing France.

11.3.2.4. Germany

(554) The Transaction leads to an affected market in Germany where the Parties have a [40-50]% combined market share for the supply of sunflower meals (which increases to [40-50]% when considering additional local trading activities) with an increment of [20-30]% from Bunge. The increment brought by the Transaction is unlikely to raise any concerns as regards sunflower meals in Germany for the reasons below.

(555) First, while both Parties operate crushing plants in Germany, none of them produces sunflower meals in this country (as a reminder, the only plant where Viterra crushes sunflower seeds in the EEA is located in Hungary). Their activities solely derive from [details of the Parties' business activities related to sales] trading (i.e., based on imports or local purchases) [details of the Parties' business activities related to sales].[427]

(556) Second, on the customers side the German market and the Parties' customers base appears relatively fragmented (the Parties identified about […] customers each in 2022). Post-transaction the Parties will also continue to face competition from numerous local and international suppliers, including from competitors which are crushing sunflower seeds in Germany such as Cargill and Thywissen. In addition, as mentioned above, the market investigation has confirmed the existence of important available spare capacity for sunflower crushing in Germany in 2023.

(557) Third, while the results of the market investigation with regards to the supply sunflower meals in Germany are mixed, it appears unlikely that the Parties' activities post-Transaction could materially affect competition for sunflower meals in Germany. A large majority of customers indicated that the Transaction's impact on prices and storage capacity for meals in Germany would be neutral.[428] The majority of competitors who expressed an opinion indicated that the Transaction would have no impact in Germany overall in relation to the prices and availability of sunflower meals.[429] Competitors also identified Germany as a very or somehow competitive market for sunflower meals.[430] However, an even number of competitors indicated that the Transaction would have a negative impact and no impact on the supply of sunflower meals more generally. A small number of market participants also raised concerns about the impact of the Transaction in

426 Horizontal Merger Guidelines, para. 18.
427 Form CO, Annex 25.
428 Q4 – Customers meals, question H.3.
429 Q2 – Competitors, meals and oils (rapeseed/sunflower), question C.C.C.25.
430 Q2 – Competitors, meals and oils (rapeseed/sunflower), question C.C.C.6.

Germany, in light of the Parties' market power in Austria and Hungary.[431] In light of the fact that the Parties have no production capacity of sunflower meals in Germany, that a very large majority of market respondents indicated that the Transaction would have no impact on prices[432] of sunflower meals in Germany, and that the Parties will divest the only Viterra plant that is producing sunflower meals in the EEA, it appears unlikely that the Parties' activities post-Transaction could materially affect competition for sunflower meals in Germany.

(558) For these reasons, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to the supply of sunflower meals in Germany. In addition, the Transaction does not give rise to any serious doubts when analysing the impact of the Transaction for the supply of sunflower meals based on a 750km catchment area analysis encompassing Germany.

11.3.2.5. Hungary

(559) The Transaction leads to an affected market in Hungary where the Parties have a [30-40]% combined market share for the supply of sunflower meals (which increases to [40-50]% when considering additional local trading activities) with an increment of [10-20]% from Viterra. The Parties also have a very large combined capacity share for the crushing of sunflower seeds of [70-80]%. The increment brought by the Transaction is likely to raise concerns as regards sunflower meals in Hungary for the reasons below.

(560) In Hungary, both Parties operate very large and competitive assets for the production of sunflower meals. Bunge operates a crushing plant in Martfu, with an […] crushing capacity and which crushed [volume] of sunflower seeds in 2023. Viterra operates the largest crushing plant of the country in Fokto, with […] crushing capacity and which crushed [volume] of sunflower seeds in 2023.[433] Viterra and Bunge's plants in Hungary are very competitive plants ideally located close to sunflower growing areas (in Bulgaria, Romania and Hungary) and to demand in Hungary and surrounding countries.[434]

(561) Other competitors would not be able to discipline a price increase by the Parties post-Transaction. Agrofert is the next best competitor, with its plant located in Kiskunfélegyháza. However, it only holds a capacity share approx. […] smaller than that of the Parties. Kite/Ökoil is also present in Hungary with a crushing plant in Sajobabony, however it only has a crushing capacity of […] (compared to the Parties' […] of crushing capacity). The market investigation has further confirmed the existence of limited available spare capacity for sunflower crushing in Hungary when compared to volumes processed by the Parties in the country and their own spare capacity in the country (approx. […] for in the Parties in 2023).[435]

(562) As a result, the Parties would be able to distort competition for sunflower meals in Hungary by increasing prices and/or limiting output without being disciplined by existing competitors.

---

431 The Parties' Austrian and Hungarian crushing plants are connected in particular to the Southern part of Germany via the Danube (Source: Minutes of a call on 04.07.2024 and response to Q4 – Customers meals, question H.4). In this region, sourcing from Western Germany, where there is sunflower seed crushing activity, appears less attractive due to transport costs.

432 Price is widely considered as the most important parameter of competition for the supply of oilseed meals (Source: Q4 – Customers meals, question C.A.A.8).

433 Reply to RFI 5.

434 See Figure 11 above.

435 Commission's calculation based on the market reconstruction data.

(563) The market investigation also confirmed that the Transaction was likely to raise serious doubts in relation to sunflower meals in Hungary. The majority of competitors who expressed an opinion indicated that the Transaction would have a negative impact in Hungary in relation to the supply, prices and availability of sunflower meals.[436] Competitors also identified Germany as being not very or somehow competitive market for sunflower meals.[437] Numerous customers raised detailed concerns regarding sunflower meals in Hungary, in particular regarding expected price increases due to limited number of alternative suppliers and the Parties are "*dominant*" as regards sunflower meals and crushing in Hungary.[438]

(564) In view of the national assessment above, the Commission preliminarily finds that the Transaction raises serious doubts in relation to the supply of sunflower meals in Hungary and will therefore further assess this based on the catchment area analysis in Section 11.3.4 below.

11.3.2.6. Ireland

(565) The Transaction leads to an affected market in Ireland where the Parties have a [30-40]% combined market share for the supply of sunflower meals with a [10-20]% increment from Viterra. The increment brought by the Transaction is unlikely to raise any concerns as regards sunflower meals in Ireland for the reasons below.

(566) First, there is no oilseed crushing plant in Ireland – hence no production of sunflower meals in this country – and the limited volumes of sunflower meals consumed in Ireland are all imported.

(567) The Parties' activities in Ireland are thus based on [details of the Parties' strategy and business activities related to sales and local presence] trading […] whereby they […] and sell them […].[439] [Details of the Parties' strategy and business activities related to sales and local presence].[440] [Details of the Parties' strategy and business activities related to sales and local presence].[441]

(568) Second, for the supply of oilseed meals in Ireland, the Parties generally compete with a variety of local and international suppliers such as R&H Hall, ADM and Cefetra.[442]

(569) In addition, in 2023, the Parties' activities in Ireland were focused on the supply to [customer],[443] which has confirmed not having any concerns with the Transaction.[444]

(570) Third, the market investigation also confirmed that the Transaction was unlikely to raise serious doubts in relation to sunflower meals in Ireland. A very large majority of customers indicated that the Transaction's impact on prices and storage capacity for meals in Ireland would be neutral.[445] Similarly the vast majority of competitors

436 Q2 – Competitors, meals and oils (rapeseed/sunflower), question C.C.C.25.
437 Q2 – Competitors, meals and oils (rapeseed/sunflower), question C.C.C.6.
438 Q4 – Customers meals, question H.4.
439 Form CO, footnote 416. [Details of the parties business activities and purchases].
440 Form CO, footnote 416.
441 Form CO, Annex 25.
442 Minutes of a call on 17.06.2024.
443 Reply to QP 12, paragraph 44.
444 Minutes of a call on 17.06.2024.
445 Q4 – Customers meals, question H.3.

who expressed an opinion indicated that the Transaction would have no impact in Ireland in relation to the supply, prices and availability of sunflower meals.[446]

(571) In view of the above, the Transaction will not raise serious doubts as to it compatibility with the internal market for sunflower meals in Ireland. Similarly, the Transaction does not give rise to serious doubts as to it compatibility with the internal market for the supply of sunflower meals when assessed based on a 750km catchment area analysis encompassing Ireland.

11.3.2.7. Italy

(572) The Transaction only leads to an affected market in Italy when considering the Parties' local trading activities on top of their imports of sunflower meals (but their combined market share for the mere supply of sunflower meals is just below 20%) with a small increment of [0-5]% from Bunge.

(573) None of the Parties produces any sunflower meals in Italy and their activities are derived from [details of the Parties' business activities related to processing and purchases] trading (i.e., based on imports or local purchases).

(574) Bunge is barely active in the supply of sunflower meals in Italy: [details of the Parties' trading volumes] of sunflower meals in Italy and subsequently sales the same quantity to [customers]. While the Parties could not confirm whether these volumes were ultimately sold to Italian end-customers, they would in any event account for less than [0-5]% of all sunflower meals consumed in Italy. The overlap with Viterra's activities is therefore negligible. Moreover, the Parties' limited combined shares which do not exceed 25% as regards sunflower meals do not appear liable to impede effective competition.[447]

(575) In view of the above, the Transaction will not raise serious doubts as to it compatibility with the internal market for sunflower meals in Italy. Similarly, the Transaction does not give rise to serious doubts as to it compatibility with the internal market for the supply of sunflower meals when assessed based on a 750km catchment area analysis encompassing Italy.

11.3.2.8. Netherlands

(576) The Transaction leads to an affected market in the Netherlands where the Parties have a [20-30]% combined market share for the supply of sunflower meals (which increases to [20-30]% when considering additional local trading activities) with a small increment of [0-5]% from Bunge.

(577) None of the Parties produces any sunflower meals in the Netherlands and their activities are derived from [details of the Parties' business activities and trading] trading (i.e., based on imports or local purchases).

(578) Bunge is barely active in the supply of sunflower meals in the Netherlands: [details of the Parties' trading volumes] of sunflower meals, [quantity] of which is subsequently sold to [customers] . Bunge's remaining […] volumes are sold to [customers] in the Netherlands. [Details of the Parties' business activities and sales of sunflower meals]. The overlap with Viterra's activities is therefore negligible. Moreover, the Parties' limited combined shares which do not exceed [20-30]% as regards sunflower meals do not appear liable to impede effective competition.[448]

446 Q2 – Competitors, meals and oils (rapeseed/sunflower), question C.C.C.25.
447 Horizontal Merger Guidelines, para. 18.
448 Horizontal Merger Guidelines, para. 18.

(579) In view of the above, the Transaction will not raise serious doubts as to it compatibility with the internal market for sunflower meals in the Netherlands. Similarly, the Transaction does not give rise to serious doubts as to it compatibility with the internal market for the supply of sunflower meals when assessed based on a 750km catchment area analysis encompassing the Netherlands.

11.3.2.9. Slovenia

(580) The Transaction leads to an affected market in Slovenia where the Parties have a [40-50]% combined market share for the supply of sunflower meals with a small increment of [0-5]% from Bunge. The very small increment brought by the Transaction is unlikely to raise any concerns as regards sunflower meals in Slovenia for the reasons below.

(581) First, there is no oilseed crushing plant in Slovenia – hence no production of sunflower meals in this country – and the limited volumes of sunflower meals consumed in Slovenia are [details of the Parties' purchases, sales and business activities] […] derived from […] trading (i.e., based on imports or local purchases)..[449] While Bunge could not identify the origin of the volumes sold in Slovenia in 2022, the volumes sold by Viterra originated from [country].[450]

(582) Second, the vast majority (approx. [70-80]%) of the volumes imported in Slovenia are exported from the country. Therefore, while Bunge's imports into Slovenia represent [0-5]% of the national consumption of sunflower meals, they represent less than [0-5]% of the volumes imported in the country.

(583) Third, the market investigation confirmed that the Transaction was unlikely to raise serious doubts in relation to sunflower meals in Slovenia. A very large majority of customers indicated that the Transaction's impact on prices and storage capacity for meals in Slovenia would be neutral.[451] Similarly the majority of competitors who expressed an opinion indicated that the Transaction would have no impact in Slovenia in relation to the supply, prices and availability of sunflower meals.[452]

(584) In view of the above, the Transaction will not raise serious doubts as to it compatibility with the internal market for sunflower meals in Slovenia. Similarly, the Transaction does not give rise to serious doubts as to it compatibility with the internal market for the supply of sunflower meals when assessed based on a 750km catchment area analysis encompassing Slovenia.

11.3.2.10. Spain

(585) The Transaction leads to an affected market in Spain where the Parties have a [20-30]% combined market share for the supply of sunflower meals (which increases to less than 25% when considering additional local trading activities) with a [5-10]% increment from Bunge.

(586) None of the Parties produces any sunflower meals in the Netherlands and their activities are derived from [details of the parties business activities and trading] trading (i.e., based on imports or local purchases).

449 Reply to QP11, Annexes Q39.1 and Q39.2.

450 Form CO, Annex 25.

451 Q4 – Customers meals, question H.3.

452 Q2 – Competitors, meals and oils (rapeseed/sunflower), question C.C.C.25.

(587) [Details of the Parties' purchases, sales and business activities]. Moreover, the Parties' limited combined shares which do not exceed 25% as regards sunflower meals do not appear liable to impede effective competition.[453]

(588) In view of the above, the Transaction will not raise serious doubts as to it compatibility with the internal market for sunflower meals in Spain. Similarly, the Transaction does not give rise to serious doubts as to it compatibility with the internal market for the supply of sunflower meals when assessed based on a 750km catchment area analysis encompassing Spain.

11.3.3. Soybean meal

(589) The Parties activities with respect to soybean meal overlap horizontally in various EEA member states.

(590) In spite of the Transaction resulting in affected markets in Austria, Belgium, Czechia, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Netherlands, Poland, Portugal, Slovenia, and Spain, it does not raise serious doubts in these 15 Member States, where Viterra's position is often limited and [reasons for the Parties' market position] and with no soybean crushing assets or control over key or critical assets for soybean meal imports into the EEA.

11.3.3.1. Austria

(591) The Transaction does not raise serious doubts as to its compatibility with the internal market for soybean meal in Austria.

(592) The Parties' combined supply and trading shares are limited, the increment brought about by Viterra would remain extremely limited ([0-5]%) and none of the Parties operate soybean crushing assets in Austria.

(593) Viterra controls some marginal volume of soybean meal [details of the Parties' purchases]. These volumes amounted to only […] in 2022 whereas the total consumption of soybean meal in Austria was […]. This results in the trading and supply shares reproduced below in Table 43.

Table 43 Parties' supply, trading and allocated capacity shares for soybean meal in Austria (2022)

		Supply share[454]	**Trading share[455]**	**Allocated capacity share[456]**
Austria	Bunge	[20-30]%	[20-30]%	[0-5]%
	Viterra	<[0-5]%	<[0-5]%	[0-5]%
	Combined	**[20-30]%**	**[20-30]%**	[0-5]%

(594) Given Viterra's very marginal presence on the Austrian market for soybean meal, the Transaction will not raise serious doubts as to it compatibility with the internal market for soybean meal in Austria.

[453] Horizontal Merger Guidelines, para. 18.
[454] Form CO, annex 25.
[455] Form CO, annex 25.
[456] Form CO, annex 25.

11.3.3.2.Belgium

(595) The Parties' combined supply and trading shares are limited (i.e., slightly exceeding the 20% threshold) and none of the Parties operate soybean crushing assets in Belgium.

(596) They are, however, both controlling some volumes of soybean meal in Belgium, which they import and/or occasionally buy from third parties to sell. This results in the trading and supply shares reproduced below in Table 44.

Table 44 Parties' supply, trading and allocated capacity shares for soybean meal in Belgium (2022)

		Supply share[457]	**Trading share[458]**	**Allocated capacity share[459]**
Belgium	Bunge	[10-20]%	[10-20]%	[0-5]%
	Viterra	[5-10]%	[5-10]%	[0-5]%
	Combined	**[20-30]%**	**[20-30]%**	[0-5]%

(597) Other players operating a crushing plant in Belgium control much larger volumes of soybean meal than the Parties. This is for instance the case for Cargill which holds a [90-100]% capacity share in Belgium. The market investigation has further confirmed the existence of large available spare capacity for soybean crushing that exceeds the volumes supplied by Viterra in Belgium.

(598) The market investigation also confirmed that the Transaction was unlikely to raise serious doubts for soybean meal in Belgium. Customers and competitors alike do not consider that the Transaction will have an impact on competition or lead to higher prices or less available volumes for soybean meal in Belgium.[460] A majority of customers have also indicated that they would be able to switch to another supplier in case of a price increase,[461] and competitors have identified Belgium as a very competitive or at least moderately competitive market for soybean meal.[462]

(599) In view of the above, the Transaction will not raise serious doubts as to it compatibility with the internal market for soybean meal in Belgium.

11.3.3.3.Czechia

(600) The Parties' combined supply and trading shares are moderate, the increment brought about by Viterra would remain also limited (at [5-10]%) [details of the Parties' business activities related to crush].

(601) They are, however, both controlling some volumes of soybean meal in Czechia, which they import and/or occasionally buy from third Parties to sell. This results in the trading and supply shares reproduced below in Table 45.

457 Form CO, annex 25.
458 Form CO, annex 25.
459 Form CO, annex 25.
460 Q4 – Customers meals, question H.3 and H.4. Q3 – Competitors, meals (soybean), question D.E.1 and D.E.2.
461 Q4 – Customers meals, question E.4.
462 Q3 – Competitors, meals (soybean), question D.C.A.4

Table 45 Parties' supply, trading and allocated capacity shares for soybean meal in Czechia (2022)

		Supply share[463]	Trading share[464]	Allocated capacity share[465]
Czechia	Bunge	[20-30]%	[20-30]%	[0-5]%
	Viterra	[5-10]%	[5-10]%	[0-5]%
	Combined	**[30-40]%**	**[30-40]%**	[0-5]%

(602) First, other players operate crushing plants in Czechia. Primasoja holds a [90-100]% capacity share in Czechia and operates a soybean crushing facility.

(603) Second, in addition to the existence of competitors with local crushing capacity, the Parties' combined trading and supply shares were less than 20% in 2023 and further demonstrate that the Transaction is unlikely to raise serious doubts for soybean meal in Czechia.

(604) Third, the market investigation also confirmed that the Transaction was unlikely to raise serious doubts for soybean meal in Czechia. Customers and competitors alike do not consider that the Transaction will have an impact on competition or lead to higher prices or less available volumes for soybean meal in Czechia.[466] A majority of customers have also indicated that they would be able to switch to another supplier in case of a price increase,[467] and competitors have identified Czechia as a very competitive or at least moderately competitive market for soybean meal.[468]

(605) In view of the above, the Transaction will not raise serious doubts as to it compatibility with the internal market for soybean meal in Czechia.

11.3.3.4. France

(606) The Parties' combined supply and trading shares are limited, the increment brought about by Viterra would remain extremely limited (at [0-5]%) and only Bunge operates a soybean crush plant in France.

(607) Viterra controls some limited volumes of soybean meal [details of the Parties' business activities]. These volumes amounted to only […] in 2022 whereas the total consumption of soybean meal in France was of [volume]. This results in the trading and supply shares reproduced below in Table 46.

463 Form CO, annex 25.
464 Form CO, annex 25.
465 Form CO, annex 25.
466 Q4 – Customers meals, question H.3 and H.4. Q3 – Competitors, meals (soybean), question D.E.1 and D.E.2.
467 Q4 – Customers meals, question E.4.
468 Q3 – Competitors, meals (soybean), question D.C.A.4

Table 46 Parties' supply, trading and allocated capacity shares for soybean meal in France (2022)

		Supply share[469]	Trading share[470]	Allocated capacity share[471]
France	Bunge	[20-30]%	[30-40]%	[80-90]%
	Viterra	<[0-5]%	[0-5]%	[0-5]%
	Combined	**[20-30]%**	**[30-40]%**	**[80-90]%**

(608) First, the increment brought by Viterra is marginal and at or below [0-5]%. This is without impact on Bunge's market position in France, which was and would stay moderate post-Transaction. At the same time, other market players operate crushing plants in France which account fort approx. [10-20]% of the soybean crushing capacity in the country.

(609) Second, the market investigation also confirmed that the Transaction was unlikely to raise serious doubts for soybean meal in France. Customers and competitors alike do not consider that the Transaction will have an impact on competition or lead to higher prices or less available volumes for soybean meal in France.[472] A majority of customers have also indicated that they would be able to switch to another supplier in case of a price increase,[473] and competitors have identified France as a very competitive or at least moderately competitive market for soybean meal.[474]

(610) In view of the above, the Transaction will not raise serious doubts as to it compatibility with the internal market for soybean meal in France.

11.3.3.5. Germany

(611) The Parties' combined supply and trading shares are limited, the increment brought about by Viterra would remain extremely limited (approx. [0-5]%) and none of the Parties operate a soybean crush plant in Germany.

(612) Viterra controls some limited volumes of soybean meal due to [details of the Parties' business activities]. These volumes amounted to only […] in 2022 whereas the total consumption of soybean meal in Germany was of [volume]. This results in the trading and supply shares reproduced below in Table 47.

469 Form CO, annex 25.
470 Form CO, annex 25.
471 Form CO, annex 25.
472 Q4 – Customers meals, question H.3 and H.4. Q3 – Competitors, meals (soybean), question D.E.1 and D.E.2.
473 Q4 – Customers meals, question E.4.
474 Q3 – Competitors, meals (soybean), question D.C.A.4.

Table 47 Parties' supply, trading and allocated capacity shares for soybean meal in Germany (2022)

		Supply share[475]	Trading share[476]	Allocated capacity share[477]
Germany	Bunge	[20-30]%	[20-30]%	[0-5]%
	Viterra	[0-5]%	[0-5]%	[0-5]%
	Combined	**[20-30]%**	**[20-30]%**	[0-5]%

(613) First, the increment brought by Viterra is marginal and at or below [0-5]%. This is without impact on Bunge's market position in Germany, which was and would stay moderate post-Transaction. At the same time, other market players operate crushing plants in Germany accounting for 100% of the soybean crushing capacity in the country. The market investigation further confirmed the existence of significant readily available soybean crush spare capacity in Germany that significantly exceeds volumes supplied by Viterra in the country.[478]

(614) Second, the market investigation also confirmed that the Transaction was unlikely to raise serious doubts for soybean meal in Germany. Customers and competitors alike do not consider that the Transaction will have an impact on competition or lead to higher prices or less available volumes for soybean meal in Germany.[479] A majority of customers have also indicated that they would be able to switch to another supplier in case of a price increase,[480] and competitors have identified Germany as a very competitive or at least moderately competitive market for soybean meal.[481]

(615) In view of the above, the Transaction will not raise serious doubts as to it compatibility with the internal market for soybean meal in Germany.

11.3.3.6. Greece

(616) The Parties' combined supply and trading shares are moderate, the increment brought about by Bunge would remain extremely limited (approx. [0-5]%) and neither of the Parties operate a soybean crush plant in Greece.

(617) Bunge controls some limited volumes of soybean meal due to [details of the Parties' business activities]. These volumes amounted to only […] in 2022 whereas the total consumption of soybean meal in Greece was [volume]. This results in the trading and supply shares reproduced below in Table 48.

475 Form CO, annex 25.
476 Form CO, annex 25.
477 Form CO, annex 25.
478 Commission's calculation based on the market reconstruction data.
479 Q4 – Customers meals, question H.3 and H.4. Q3 – Competitors, meals (soybean), question D.E.1 and D.E.2.
480 Q4 – Customers meals, question E.4.
481 Q3 – Competitors, meals (soybean), question D.C.A.4.

Table 48 Parties' supply, trading and allocated capacity shares for soybean meal in Greece (2022)

		Supply share[482]	**Trading share**[483]	**Allocated capacity share**[484]
Greece	Bunge	[0-5]%	[0-5]%	[0-5]%
	Viterra	[20-30]%	[20-30]%	[0-5]%
	Combined	**[30-40]%**	**[30-40]%**	[0-5]%

(618) First, the increment brought by Bunge is marginal and at or below [0-5]%. This is without impact on Viterra's market position in Greece, which was and would stay moderate post-Transaction. At the same time, other market players operate crushing plants in Greece and control much larger volumes of soybean meal than the Parties. These are Soya Hellas, Soya Mills and Agro Invest which account together for [90-100]% of the soybean crushing capacity in the country, representing [volume] according to the Parties' estimates.

(619) Second, the market investigation also confirmed that the Transaction was unlikely to raise serious doubts for soybean meal in Greece. Customers and competitors alike do not consider that the Transaction will have an impact on competition or lead to higher prices or less available volumes for soybean meal in Greece.[485] A majority of customers have also indicated that they would be able to switch to another supplier in case of a price increase,[486] and competitors have identified Greece as a very competitive or at least moderately competitive market for soybean meal.[487]

(620) In view of the above, the Transaction will not raise serious doubts as to it compatibility with the internal market for soybean meal in Greece.

11.3.3.7. Hungary

(621) Although the Parties' combined supply and trading shares are high, (i) none of the Parties operate a soybean crushing assets in Hungary while other market players control large soybean crushing capacity both in Hungary and EEA neighbouring countries and (ii) the Parties do not, according to the market investigation, control any assets that could prevent other market players from importing soybean meal into Hungary as done by the Parties.

(622) The Parties are, however, both controlling some volumes of soybean meal in Hungary, [details of the Parties' business strategy, purchases and sales]. This results in the trading and supply shares reproduced below in Table 49.

482 Form CO, annex 25.
483 Form CO, annex 25.
484 Form CO, annex 25.
485 Q4 – Customers meals, question H.3 and H.4. Q3 – Competitors, meals (soybean), question D.E.1 and D.E.2.
486 Q4 – Customers meals, question E.4.
487 Q3 – Competitors, meals (soybean), question D.C.A.4

Table 49 Parties' supply, trading and allocated capacity shares for soybean meal in Hungary (2022)

		Supply share[488]	**Trading share[489]**	**Allocated capacity share[490]**
Hungary	Bunge	[30-40]%	[30-40]%	[0-5]%
	Viterra	[20-30]%	[20-30]%	[0-5]%
	Combined	**[50-60]%**	**[60-70]%**	[0-5]%

(623) First, while none of the Parties operate soybean crushing facilities in Hungary, Vandamme operates a crushing plant, which holds a [90-100]% capacity share in Hungary, controlling a much larger volume of soybean meal than the Parties. The market investigation has further confirmed the existence of important readily available spare capacity for soybean crushing in Hungary.[491]

(624) Second, the market investigation has confirmed that various market players are active in the import of soybean meal across the EEA, including in Hungary, and that these imports do not require specific assets that are controlled by the Parties in Hungary which could make it difficult for other companies to import and compete with the Parties in the supply of soybean meal in Hungary.[492]

(625) Third, the market investigation also confirmed that the Transaction was unlikely to raise serious doubts for soybean meal in Hungary. Customers and competitors alike do not consider that the Transaction will have an impact on competition or lead to higher prices or less available volumes for soybean meal in Hungary.[493] A majority of customers have also indicated that they would be able to switch to another supplier in case of a price increase.[494] For instance, one customer indicated that "*we have other Hungarian and Romanian suppliers. no additional cost and time needed*".[495] Competitors have identified Hungary as a very competitive or moderately competitive market for soybean meal.[496]

(626) In view of the above, the Transaction will not raise serious doubts as to it compatibility with the internal market for soybean meal in Hungary.

11.3.3.8. Ireland

(627) Although the Parties' combined supply and trading shares are high, (i) Viterra does not operate any soybean crushing assets in Ireland [details of the Parties' business activities].

(628) The Parties are, however, both controlling some volumes of soybean meal in Ireland, [details of the Parties' strategy, purchases and sales]. This results in the trading and supply shares reproduced below in Table 50.

488 Form CO, annex 25.
489 Form CO, annex 25.
490 Form CO, annex 25.
491 Commission's calculation based on the market reconstruction data.
492 Q3 – Competitors, meals (soybean), question, D.C.B.2.
493 Q4 – Customers meals, question H.3 and H.4. Q3 – Competitors, meals (soybean), question D.E.1 and D.E.2.
494 Q4 – Customers meals, question E.4.
495 Q4 – Customers meals, question E.4.
496 Q3 – Competitors, meals (soybean), question D.C.A.4.

Table 50 Parties' supply, trading and allocated capacity shares for soybean meal in Italy (2022)

		Supply share[497]	Trading share[498]	Allocated capacity share[499]
Ireland	Bunge	[10-20]%	[10-20]%	[0-5]%
	Viterra	[40-50]%	[40-50]%	[0-5]%
	Combined	**[50-60]%**	**[50-60]%**	[0-5]%

(629) First, while the increment brought by Viterra [details of the Parties' business activities], the market investigation has confirmed that various market players are active in the import of soybean meal across the EEA, including in Ireland. The market investigation further confirmed that these imports do not require specific assets that are controlled by the Parties in Ireland which could make it difficult for other companies to import and compete with the Parties in the supply of soybean meal in Ireland.[500]

(630) For instance, one market player explained that "*in Ireland, there are many ports capable of importing meals and storage is widely available in Ireland as well*".[501] The same customer further explained that "*Viterra has no 'destination business' in Ireland for oilseed meals meaning that Viterra does not sell directly in Ireland*".[502]

(631) Second, this is in line with the feedback provided by both customers and competitors during the market investigation that the Transaction was unlikely to raise serious doubts for soybean meal in Ireland. Customers and competitors alike do not consider that the Transaction will have an impact on competition or lead to higher prices or less available volumes for soybean meal in Ireland.[503] A majority of customers have also indicated that they would be able to switch to another supplier in case of a price increase[504] while competitors have identified Ireland as a very competitive or moderately competitive market for soybean meal.[505]

(632) In view of the above, the Transaction will not raise serious doubts as to it compatibility with the internal market for soybean meal in Ireland.

11.3.3.9. Italy

(633) Although the Parties' combined supply and trading shares are high, only Bunge operates a soybean crushing facility in Italy and the increment brought by Viterra remains moderate (at or below [5-10]%).

(634) The Parties are, however, both controlling some volumes of soybean meal in Italy. This results in the trading and supply shares reproduced below in Table 51.

497 Form CO, annex 25.
498 Form CO, annex 25.
499 Form CO, annex 25.
500 Q3 – Competitors, meals (soybean), question, D.C.B.2.
501 Non-confidential minutes of a call with a competitor, 17 June 2024, paragraph 18.
502 Non-confidential minutes of a call with a competitor, 17 June 2024, paragraph 20.
503 Q4 – Customers meals, question H.3 and H.4. Q3 – Competitors, meals (soybean), question D.E.1 and D.E.2.
504 Q4 – Customers meals, question E.4.
505 Q3 – Competitors, meals (soybean), question D.C.A.4.

Table 51 Parties' supply, trading and allocated capacity shares for soybean meal in Italy (2022)

		Supply share[506]	Trading share[507]	Allocated capacity share[508]
Italy	Bunge	[30-40]%	[30-40]%	[30-40]%
	Viterra	[5-10]%	[5-10]%	[0-5]%
	Combined	**[40-50]%**	**[40-50]%**	**[30-40]%**

(635) First, other market players operating soybean crushing plants in Italy control much larger volumes of soybean meal than the Parties. Cereal Docks and Oleificio Zucchi both hold a capacity share of [50-60]% and [5-10]% respectively. The market investigation has further confirmed the existence of a large readily available spare capacity for soybean crushing in Italy.[509]

(636) Second, while the increment brought by Viterra [details of the Parties' business activities], the market investigation has confirmed that various market players are active in the import of soybean meal across the EEA including in Italy and that these imports do not require specific assets that are controlled by the Parties in Italy, which could make it difficult for other companies to import and compete with the Parties in the supply of soybean meal in Italy.[510]

(637) Third, the market investigation also confirmed that the Transaction was unlikely to raise serious doubts for soybean meal in Italy. Customers and competitors alike do not consider that the Transaction will have an impact on competition or lead to higher prices or less available volumes for soybean meal in Italy.[511] A majority of customers have also indicated that they would be able to switch to another supplier in case of a price increase,[512] and competitors have identified Italy as a very competitive or at least moderately competitive market for soybean meal.[513]

(638) In view of the above, the Transaction will not raise serious doubts as to it compatibility with the internal market for soybean meal in Italy.

11.3.3.10. Latvia

(639) The Parties' combined supply and trading shares are rather limited (i.e., approx. [20-30]%) and none of the Parties operate soybean crushing assets in Latvia.

(640) The Parties are, however, both controlling some volumes of soybean meal in Latvia. This results in the trading and supply shares reproduced below in Table 52.

506 Form CO, annex 25.
507 Form CO, annex 25.
508 Form CO, annex 25.
509 Commission's calculation based on the market reconstruction data.
510 Q3 – Competitors, meals (soybean), question, D.C.B.2.
511 Q4 – Customers meals, question H.3 and H.4. Q3 – Competitors, meals (soybean), question D.E.1 and D.E.2.
512 Q4 – Customers meals, question E.4.
513 Q3 – Competitors, meals (soybean), question D.C.A.4.

Table 52 Parties' supply, trading and allocated capacity shares for soybean meal in Latvia (2022)

		Supply share[514]	Trading share[515]	Allocated capacity share[516]
Latvia	Bunge	[20-30]%	[20-30]%	[0-5]%
	Viterra	[5-10]%	[5-10]%	[0-5]%
	Combined	**[20-30]%**	**[20-30]%**	[0-5]%

(641) First, the Parties combined market shares remain limited with a limited increment of Viterra (below [5-10]%). Therefore, customers will have ample alternatives to turn to for their needs of soybean meal in Latvia.

(642) Second, [details of the Parties' business activities], the market investigation has confirmed that various market players are active in the import of soybean meal across the EEA including in Latvia and that these imports do not require specific assets that are controlled by the Parties in Latvia, which could make it difficult for other companies to import and compete with the Parties in the supply of soybean meal in Latvia.[517]

(643) Third, the market investigation also confirmed that the Transaction was unlikely to raise serious doubts for soybean meal in Latvia. Customers and competitors alike do not consider that the Transaction will have an impact on competition or lead to higher prices or less available volumes for soybean meal in Latvia.[518] A majority of customers have also indicated that they would be able to switch to another supplier in case of a price increase,[519] and competitors have identified Latvia as a very competitive or at least moderately competitive market for soybean meal.[520]

(644) In view of the above, the Transaction will not raise serious doubts as to it compatibility with the internal market for soybean meal in Latvia.

11.3.3.11. The Netherlands

(645) The Transaction also does not raise serious doubts as to its compatibility with the internal market for soybean meal in the Netherlands.

(646) This is because (i) the Parties' combined supply and trading shares are limited (at or below [20-30]%), (ii) the increment brought about by Viterra would remain limited (approx. [5-10]%), (iii) only Bunge operates a soybean crush plant in the Netherlands whereas other market players hold larger soybean crushing capacities, and (iv) the Parties do not, according to the market investigation, control any assets that could prevent other market players from importing soybean meal into the Netherlands as done by the Parties.

514 Form CO, annex 24.
515 Form CO, annex 24.
516 Form CO, annex 25.
517 Q3 – Competitors, meals (soybean), question, D.C.B.2.
518 Q4 – Customers meals, question H.3 and H.4. Q3 – Competitors, meals (soybean), question D.E.1 and D.E.2.
519 Q4 – Customers meals, question E.4.
520 Q3 – Competitors, meals (soybean), question D.C.A.4

(647) The Parties are, however, both controlling some volumes of soybean meal in the Netherlands. This results in the trading and supply shares reproduced below in Table 53.

Table 53 Parties' supply, trading and allocated capacity shares for soybean meal in the Netherlands (2022)

		Supply share[521]	Trading share[522]	Allocated capacity share[523]
The Netherlands	Bunge	[10-20]%	[10-20]%	[40-50]%
	Viterra	[5-10]%	[5-10]%	[0-5]%
	Combined	**[20-30]%**	**[20-30]%**	**[40-50]%**

(648) The Parties have limited combined market shares that only slightly exceed the 20% threshold while at the same time the increment brought by Viterra remain limited. This market structure has been confirmed by competitors in the market investigation describing the Netherlands as a very competitive or at least moderately competitive market for soybean meal.[524]

11.3.3.12. Poland

(649) Although the Parties' combined supply and trading shares are rather high, none of the Parties operates a soybean crushing facility in Poland in 2022. The Parties do not, according to the market investigation, control any assets that could prevent other market players from importing soybean meal into Poland as done by the Parties.

(650) The Parties are, however, both controlling some volumes of soybean meal in Poland. This results in the trading and supply shares reproduced below.

Table 54 Parties' supply, trading and allocated capacity shares for soybean meal in Poland (2022)

		Supply share[525]	Trading share[526]	Allocated capacity share[527]
Poland	Bunge	[10-20]%	[10-20]%	[0-5]%
	Viterra	[20-30]%	[20-30]%	[0-5]%
	Combined	**[40-50]%**	**[40-50]%**	[0-5]%

(651) First, as regards soybean crushing capacity, Agrolok, which holds a crushing capacity of [90-100]% in Poland, controls important volumes of soybean meal.

(652) Second, [details of the Parties' business activities], the market investigation has confirmed that various market players are active in the import of soybean meal

521 Form CO, annex 25.
522 Form CO, annex 25.
523 Form CO, annex 25.
524 Q3 – Competitors, meals (soybean), question D.C.A.4
525 Form CO, annex 25.
526 Form CO, annex 25.
527 Form CO, annex 25.

across the EEA including in Poland and that these imports do not require specific assets that are controlled by the Parties in Poland, which could make it difficult for other companies to import and compete with the Parties in the supply of soybean meal in the country.[528]

(653) Third, the market investigation also confirmed that the Transaction was unlikely to raise serious doubts for soybean meal in Poland. Customers and competitors alike do not consider that the Transaction will have an impact on competition or lead to higher prices or less available volumes for soybean meal in Poland.[529] A majority of customers have also indicated that they would be able to switch to another supplier in case of a price increase[530] and competitors have identified Poland as a very competitive or at least moderately competitive market for soybean meal.[531]

(654) In view of the above, the Transaction will not raise serious doubts as to it compatibility with the internal market for soybean meal in Poland.

11.3.3.13. Portugal

(655) Although the Parties' combined supply and trading shares are rather high, (i) the increment brought by Viterra remains limited [details of the Parties' sales] (ii) only one of the Parties operate a soybean crushing facility in Portugal, with other market players controlling larger crushing capacities, and (iii) the Parties do not, according to the market investigation, control any assets that could prevent other market players from importing soybean meal into Portugal as done by the Parties.

(656) The Parties are, however, both controlling some volumes of soybean meal in Portugal. This results in the trading and supply shares reproduced below in Table 55.

Table 55 Parties' supply, trading and allocated capacity shares for soybean meal in Portugal (2022)

		Supply share[532]	**Trading share[533]**	**Allocated capacity share[534]**
Portugal	Bunge	[50-60]%	[50-60]%	[40-50]%
	Viterra	[5-10]%	[5-10]%	[0-5]%
	Combined	**[60-70]%**	**[60-70]%**	[0-5]%

(657) First, as regards soybean crushing capacity, other players operating a soybean crushing plant in Portugal control much larger volumes of soybean meal than the Parties. This is the case for Iberol and Valouro which hold a capacity share of [30-40]% and [20-30]% respectively. The market investigation has further confirmed the existence of large available spare capacity for soybean crushing that exceeds volumes supplied by Viterra in Portugal.[535]

528 Q3 – Competitors, meals (soybean), question, D.C.B.2 and D.C.B.3.
529 Q4 – Customers meals, question H.3 and H.4. Q3 – Competitors, meals (soybean), question D.E.1 and D.E.2.
530 Q4 – Customers meals, question E.4.
531 Q3 – Competitors, meals (soybean), question D.C.A.4.
532 Form CO, annex 24.
533 Form CO, annex 24.
534 Form CO, annex 25.
535 Commission's calculation based on the market reconstruction data.

(658) Second, the increment brought by Viterra remains limited (approx. [5-10]%), representing approximately [volume] only. A significant part of this increment (approx. [60-70]% of the increment), representing [volume], is made of sales from Viterra to […]. [Details of the Parties' business activities and sales].

(659) Third, [details of the Parties' business activities], the market investigation has confirmed that various market players are active in the import of soybean meal across the EEA including in Portugal and that these imports do not require specific assets that are controlled by the Parties in Portugal, which could make it difficult for other companies to import and compete with the Parties in the supply of soybean meal in the country.[536]

(660) For instance, one competitor stressed that "*the Iberic region has many ports, which are mostly publicly owned*".[537] Similarly another competitor stressed that it is not "*concerned about the Transaction's impact on imports of soybean meal into Spain and Portugal particularly from a port and asset access in Spain and Portugal*".[538]

(661) Finally, the market investigation also confirmed that the Transaction was unlikely to raise serious doubts for soybean meal in Portugal. Customers and competitors alike do not consider that the Transaction will have an impact on competition or lead to higher prices or less available volumes for soybean meal in Portugal.[539] A majority of customers have also indicated that they would be able to switch to another supplier in case of a price increase[540] and competitors have identified Portugal as a very competitive or at least moderately competitive market for soybean meal.[541]

(662) In view of the above, the Transaction will not raise serious doubts as to it compatibility with the internal market for soybean meal in Portugal.

11.3.3.14. Slovenia

(663) Although the Parties' combined supply and trading shares are high, (i) Viterra's presence in the country is extremely limited [details of the Parties' business activities], (ii) none of the Parties operate a soybean crushing facility in Slovenia, and (iii) the Parties do not, according to the market investigation, control any assets that could prevent other market players from importing soybean meal into Slovenia as done by the Parties.

(664) The Parties are, however, both controlling some volumes of soybean meal in Portugal. This results in the trading and supply shares reproduced below in Table 56.

536 Q3 – Competitors, meals (soybean), question, D.C.B.2 and D.C.B.3.

537 Non-confidential minutes of a call with a competitor, 5 July 2024, paragraph 5.

538 Non-confidential minutes of a call with a competitor, 4 July 2024, paragraph 6.

539 Q4 – Customers meals, question H.3 and H.4. Q3 – Competitors, meals (soybean), question D.E.1 and D.E.2.

540 Q4 – Customers meals, question E.4.

541 Q3 – Competitors, meals (soybean), question D.C.A.4.

Table 56 Parties' supply, trading and allocated capacity shares for soybean meal in Slovenia (2022)

		Supply share[542]	Trading share[543]	Allocated capacity share[544]
Slovenia	Bunge	[90-100]%	[90-100]%	[0-5]%
	Viterra	-[40-50]%	[0-5]%	[0-5]%
	Combined	**[50-60]%**	**[90-100]%**	[0-5]%

(665) First, Viterra's presence in Slovenia is mostly driven by [details of the Parties' purchases, sales and business activities].

(666) Second, and in line with the above, the 2023 market shares confirm the marginal presence of Viterra in Slovenia as it did not sell any volume of soybean meals in the country. [Details of the Parties' sales and business activities].

(667) Third, while none of the Parties operates soybean crushers in Slovenia and are only active via imports and/or purchases from third Parties, the market investigation has confirmed that various market players are active in the import of soybean meal across the EEA including in Slovenia and that these imports do not require specific assets that are controlled by the Parties in Slovenia which could make it difficult for other companies to import and compete with the Parties in the supply of soybean meal in the country.[545]

(668) Finally, the market investigation also confirmed that the Transaction was unlikely to raise serious doubts for soybean meal in Slovenia. Customers and competitors alike do not consider that the Transaction will have an impact on competition or lead to higher prices or less available volumes for soybean meal in Slovenia.[546] A majority of customers have also indicated that they would be able to switch to another supplier in case of a price increase[547] and competitors have identified Slovenia as a very competitive or at least moderately competitive market for soybean meal.[548]

(669) In view of the above, the Transaction will not raise serious doubts as to it compatibility with the internal market for soybean meal in Slovenia.

11.3.3.15. Spain

(670) Although the Parties' combined supply and trading shares are high, (i) Viterra does not, according to the market investigation results, control any assets that could prevent other market players from importing soybean meal into Spain as done by the Viterra, (ii) competitors currently active in the import of soybean meal into Spain confirmed the ease of such imports and their ability and incentive to readily increase imports of soybean meal into Spain in case of a price increase post-Transaction, and (iii) only Bunge has soybean crushing capacity in Spain.

542 Form CO, annex 25.
543 Form CO, annex 25.
544 Form CO, annex 25.
545 Q3 – Competitors, meals (soybean), question, D.C.B.2 and D.C.B.3.
546 Q4 – Customers meals, question H.3 and H.4. Q3 – Competitors, meals (soybean), question D.E.1 and D.E.2.
547 Q4 – Customers meals, question E.4.
548 Q3 – Competitors, meals (soybean), question D.C.A.4

(671) The Parties are however both controlling some volumes of soybean meal in Spain. This results in the trading and supply shares reproduced below in Table 57.

Table 57 Parties' supply, trading and allocated capacity shares for soybean meal in Spain (2022)

		Supply share[549]	Trading share[550]	Allocated capacity share[551]
Spain	Bunge	[40-50]%	[40-50]%	[70-80]%
	Viterra	[10-20]%	[10-20]%	[0-5]%
	Combined	**[50-60]%**	**[50-60]%**	**[70-80]%**

(672) First, while Viterra does not operate any soybean crushers in Spain and is only active via imports and/or purchases from third parties, the market investigation has confirmed that various market players are active in the import of soybean meal across the EEA including in Spain and that these imports do not require specific assets that are controlled by the Parties in Spain, which could make it difficult for other companies to import and compete with them in the supply of soybean meal in the country.[552] For instance, one competitor stressed that "*for the purposes of importing soybean meal, no particular assets are needed, apart from access to port terminals, of which there are 8 in Spain for the import of soybean meal with Tarragona being the largest port by far in Spain due to high demand for animal feed in Catalonia, and storage capacity*".[553] This competitor further stressed the importance of access to storage space at ports, which is nevertheless still "*widely available*".[554] Therefore, this competitor "*considers that it is possible for any company to compete with the Parties by importing soybean meal*".[555] This is in line with feedback provided by another competitor stressing that " *access to storage capacity is easy to acquire, as Spain has 9 ports with sufficiently available storage capacity as well*".[556] This competitor also stressed that "*barriers to entry for the supply of soybean meal and crude soybean oil in Spain are low, as the requirement for assets are not high to become active in these markets*".[557] A third competitor to the Parties also explained that "*to import soybean meal in Spain, a company needs to contract with a supplier in Argentina and rent port terminal capacity as well as storage capacity at the port terminal. The Company rents port terminal capacity which is available and not concentrated in the hand of Parties*".[558] Viterra explained that there are several ports used for soybean meal import into Spain and confirmed that "[details of the parties contractual relationship].[559]

(673) Second, while the Transaction does not lead to any soybean crushing asset overlap in Spain, [details of the parties purchases and business activities], there are other

549 Form CO, annex 25.
550 Form CO, annex 25.
551 Form CO, annex 25.
552 Q3 – Competitors, meals (soybean), question, D.C.B.2 and D.C.B.3.
553 Non-confidential minutes of a call with a competitor, 5 July 2024, paragraph 6.
554 Non-confidential minutes of a call with a competitor, 5 July 2024, paragraph 6.
555 Non-confidential minutes of a call with a competitor, 5 July 2024, paragraph 8.
556 Non-confidential minutes of a call with a competitor, 28 June 2024, paragraph 8.
557 Non-confidential minutes of a call with a competitor, 28 June 2024, paragraph 10.
558 Non-confidential minutes of a call with a competitor, 4 July 2024, paragraph 4.
559 Parties' submission, no competition concerns in soybean meal in the Iberian Peninsula, 15 July 2024, paragraph 21. [Details of the parties business activities].

market players active in Spain with soybean crushing facilities. This is the case for Eilan which holds a capacity share of [20-30]% in Spain. The market investigation has confirmed that this market player has some available spare capacity.[560]

(674) Third, the market investigation also confirmed that the Transaction was unlikely to raise serious doubts for soybean meal in Spain. Customers and competitors alike do not consider that the Transaction will have an impact on competition or lead to higher prices or less available volumes for soybean meal in Spain.[561] One competitor explained that "*the Parties would not be able to increase the price for soybean meal and crude oil even by 5%, as it would be easy and quick for competitors to start importing both products into Spain*".[562]

(675) A majority of customers have also indicated that they would be able to switch to another supplier in case of a price increase[563] and competitors have identified Spain as a very competitive or at least moderately competitive market for soybean meal.[564] The same competitor further explains that "*the top 20 largest market players either have or gain easily acquire origination power in Argentina. Therefore, if the Parties decided to increase prices for soybean meal, companies like the Company can import from South America to acquire market share from the Parties*".[565]

(676) In view of the above, the Transaction will not raise serious doubts as to it compatibility with the internal market for soybean meal in Spain.

11.3.4. Catchment area analysis

(677) As explained in Section 11.2.3, meals are generally sold by companies within 500 km from the premises for rapeseed meals and in an area of at least 750 km for sunflower meal. For countries where it identified potential concerns, the Commission therefore conducted a catchment area analysis each of the Parties' plant with a radius of 500 km for rapeseed meals and of 750 Km for sunflower meals.

11.3.4.1. Rapeseed meals

(678) With respect to rapeseed meals, the Commission identified potential serious doubts in Austria, Hungary, and Poland. The Commission finds that the Transaction also raises serious doubts at catchment area level for the following reasons.

(679) First, the analysis as shown in Table 58 confirms that the Parties have particularly high market shares in catchment areas encompassing their Hungarian, Polish and Austrian plants in relation to rapeseed crushing capacity.

560 Commission's calculation based on the market reconstruction data.

561 Q4 – Customers meals, question H.3 and H.4. Q3 – Competitors, meals (soybean), question D.E.1 and D.E.2.

562 Non-confidential minutes of a call with a competitor, 28 June 2024, paragraph 7.

563 Q4 – Customers meals, question E.4.

564 Q3 – Competitors, meals (soybean), question D.C.A.4.

565 Non-confidential minutes of a call with a competitor, 28 June 2024, paragraph 9.

Table 58 Parties' rapeseed crushing capacity shares around their plants (2022, 500km radius)

	Plant	Bunge	Viterra	Combined
Austria	Bruck (Bunge)	[20-30]%	[10-20]%	[30-40]%
Hungary	Fokto (Viterra)	[40-50]%	[0-5]%	[40-50]%
	Martfu (Bunge)	[30-40]%	[20-30]%	[50-60]%
Poland	Bodaczow (Viterra)	[20-30]%	[5-10]%	[20-30]%
	Brzeg (Bunge)	[10-20]%	[20-30]%	[30-40]%
	Kruszwica (Bunge)	[10-20]%	[10-20]%	[20-30]%

Source: Parties' capacity data and estimates of competitors' capacity

(680) Second, the Commission's analysis shows that the Parties would not face any or face only a limited number of sizeable competitors in each catchment area. In particular, in each of these catchment areas, the Parties would face one single EEA based competitor[566] with a capacity share above 10%. All other competitors have a capacity share below 10%.

(681) Third, the Commission investigation found that in all catchment areas considered [details of the parties business activities]. Such withholding of available production capacity is an indication of some form of pivotality of the Parties vis-à-vis the rest of the market.[567]

(682) In view of the above, the Commission finds that the Transaction raises serious doubts as to its compatibility with the internal market for crude rapeseed oil in catchment areas encompassing the Parties' plants in Austria, Hungary, and Poland.

11.3.4.2. Sunflower meals

(683) With respect to sunflower meals, the Commission identified potential serious doubts in Austria, and Hungary. The Commission finds that the Transaction also raises serious doubts at catchment area level.

(684) While the analysis as shown in Table 59 indicate that the Parties may have smaller market shares in catchment areas with a 750km radius encompassing their Austrian and Hungarian plants in relation to rapeseed crushing capacity, the Commission believes that these are not enough to dissipate serious doubts for the reasons explained below.[568]

566 In the Bodaczow catchment area, another competitor with 10% capacity share is active. However, this competitor is based outside of the EEA.

567 In economic terms, a reduction of production volume compared to the available production capacity can only be optimal for the Parties if this volume reduction increases the margin on the reduced production volume. In other words, the Parties likely have some form of market power beyond what is captured by simple capacity shares.

568 The market shares would remain high in lower radii.

Table 59 Parties' sunflower crushing capacity shares around their plants (2022, 750km radius)

	Plant	Bunge	Viterra	Combined
Austria	Bruck (Bunge)	[10-20]%	[10-20]%	[20-30]%
Hungary	Fokto (Viterra)	[10-20]%	[5-10]%	[10-20]%
	Martfu (Bunge)	[5-10]%	[5-10]%	[10-20]%

Source: Parties' capacity data and estimates of competitors' capacity.

(685) First, the Commission's analysis shows that the Parties would not face any or only face a limited number of sizeable competitors in each catchment area. In the Bruck catchment area and the Martfu catchment area, the Parties' competitors all have capacity shares below 10%. In the Fokto catchment area, the Parties would only face one competitor with capacity shares of [10-20]% while all the other competitors have capacity shares below 10%.

(686) Second, the Commission investigation found that in all catchment areas considered [details of the parties business activities]. Such withholding of available production capacity is an indication of some form of pivotality of the Parties vis-à-vis the rest of the market.[569]

(687) In view of the above, the Commission finds that the Transaction raises serious doubts as to its compatibility with the internal market for sunflower meals in catchment areas encompassing the Parties' plants in Austria and Hungary.

11.4. Conclusion

(688) In view of the above the Commission finds that the Transaction raises serious doubts as to it compatibility with the internal market for:

(a) Rapeseed meal in Austria, Hungary and Poland and in catchment areas encompassing the Parties' plants in these countries.

(b) Sunflower meal in Austria and Hungary and in catchment areas encompassing the Parties' plants in these countries.

(689) Section 14 further details how the remedy proposed by the Parties addresses the Commission's serious doubts in the above identified areas.

12. SEAPORT TERMINALS IN POLAND

(690) Viterra operates two port terminals at the Polish port of Szczecin, while Bunge operates one port terminal at the Polish port of Świnoujście. The Parties claim that their combined market share for agribulk handling in a narrow market limited to these two ports would be of [10-20]% only.[570]

(691) Although certain stakeholders raised concerns about the Parties' combined position at these seaports,[571] the Commission finds that the Transaction does not raise serious doubts in this respect.

569 In economic terms, a reduction of production volume compared to the available production capacity can only be optimal for the Parties if this volume reduction increases the margin on the reduced production volume. In other words, the Parties likely have some form of market power beyond what is captured by simple capacity shares.

570 Form CO, paragraph 1033.

571 See stakeholder's submission on 19 July 2024.

(692) *First*, the Transaction does not give rise to any horizontal overlap in the provision of seaport terminal services, because [details of the parties business strategy]. There is therefore no overlap in the provision of port terminal services to third parties.

(693) *Second*, the Parties do not hold significant supply or purchasing power as a result of their [details of the parties business strategy] at these sea terminals. This is because the Parties' trade flows through these terminals do not account for a significant share of domestic supply or demand. In particular, those terminals are mainly used to [details of the parties business strategy] (with a throughput of less than [5-10]% of [details of the parties business strategy]), [details of the parties business strategy] (with a throughput of less than [10-20]% of [details of the parties business strategy]) and [details of the parties business strategy] (with a throughput of less than [20-30]% of [details of the parties business strategy]).

13. PROPOSED REMEDIES

13.1. Introduction

(694) In order to render the Transaction compatible with the internal market, the Notifying Party modified the notified Transaction by entering into commitments that the Notifying Party submitted on 11 July 2024 (the 'Initial Commitments'), pursuant to Article 6(2) of the Merger Regulation.

(695) The Commission launched a market test of the Initial Commitments on 15 July 2024, seeking responses from competitors, customers and industry associations.

(696) Following the feedback received from market participants in the market test and the Commission's initial assessment, the Parties submitted a draft of the revised commitments on 22 July 2024 (the 'Draft Revised Commitments').

(697) The Commission provided feedback to the Parties on the Draft Revised Commitments on 23 July 2024. The Parties submitted further improved commitments on 24 July 2024 (the 'Final Commitments'). The Final Commitments are annexed to this decision and form an integral part thereof.

13.2. Analytical Framework

(698) The following principles from the Merger Regulation and the Commission's Notice on Remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (the 'Remedies Notice')[572] apply where parties to a concentration offer commitments with a view of rendering a concentration compatible with the internal market.

(699) Where, as in this case, a notified concentration raises serious doubts as to its compatibility with the internal market or the functioning of the EEA agreement, the parties may modify the notified concentration so as to remove the grounds for the serious doubts identified by the Commission with a view to having it declared compatible with the internal market pursuant to Article 6(1)(b) in conjunction with Article 6(2) of the Merger Regulation.

(700) As set out in the Remedies Notice,[573] commitments have to eliminate the Commission's competition concerns entirely and they have to be comprehensive and effective from all points of view. In Phase I, commitments offered by the

[572] OJ C 267, 22.10.2008, p. 1.
[573] Remedies Notice, paragraph 9.

parties can only be accepted where the competition problem is readily identifiable and can easily be remedied. The competition problem therefore needs to be so straightforward and the remedies so clear-cut that it is not necessary to enter into an in-depth investigation and that the commitments are sufficient to clearly rule out serious doubts within the meaning of Article 6(1)(c) of the Merger Regulation.

(701) In assessing whether or not the commitments proposed by the parties would restore effective competition, the Commission considers all relevant factors, including inter alia the type, scale and scope of the proposed commitments, judged by reference to the structure and particular characteristics of the market in which the Commission has identified serious doubts as to the compatibility of the notified concentration with the internal market, including the position of the parties and other participants on the market.[574]

(702) In order for the commitments to comply with those principles, they must be capable of being implemented effectively within a short period of time. The Commission must be able to determine with the requisite degree of certainty, at the time of its decision, that they will be fully implemented and that they are likely to ensure maintenance of effective competition in the market.

(703) As regards the type of acceptable commitments, the Merger Regulation leaves discretion to the Commission as long as the commitments meet the requisite standard. Divestiture commitments are often the most effective way to eliminate competition concerns.

(704) The intended effect of the divestiture will only be achieved if and once the business is transferred to a suitable purchaser in whose hands it will become an active competitive force in the market. The potential of a business to attract a suitable purchaser is an important element of the Commission's assessment of the appropriateness of the proposed commitments.[575]

(705) There are cases where only the proposal of an up-front buyer will allow the Commission to conclude with the requisite degree of certainty that the business will be effectively divested to a suitable purchaser. In such case, the parties have to undertake in the commitments that they are not going to complete the notified operation before having entered into a binding agreement with a purchaser for the divested business, approved by the Commission.[576] This concerns cases where there are considerable obstacles for a divestiture, such as third party rights, or uncertainties as to finding a suitable purchaser as well as cases, which cause considerable risks of preserving the competitiveness and saleability of the divestment business in the interim period until divestiture.[577]

14. ASSESSMENT OF THE PROPOSED REMEDIES

14.1. Description of the Initial Commitments

(706) The Initial Commitments consisted of the divestiture of Viterra's entire business in Hungary (the 'Hungarian Divestment Business'), with the exception of some assets, personnel and contracts as specified and of Viterra's entire business in Poland (the 'Polish Divestment Business'), with the exception of some assets,

574 Remedies Notice, paragraph 12.
575 Remedies Notice, paragraph 47.
576 Remedies Notice, paragraph 53.
577 Remedies Notice, paragraphs 54 and 55.

personnel and contracts as specified in the Schedule of the Initial Commitments (the ‘Divestment Business’).

(707) More specifically, the Hungarian Divestment Business would include:

(708) the following three legal entities in Hungary: (i) Viterra Növényolajgyártó Kft (“VVOM”) – responsible for the operation of the Foktő crush and refining plant, (ii) Viterra Hungary Kft (“VIH”) – responsible for origination and marketing, and (iii) Viterra Logisztikai Kft (“VIL”) – responsible for elevators;

(a) the following main tangible assets: the Foktő Plant, the land where the plant is located and all the equipment that is necessary to operate the Hungarian Divestment Business. In terms of assets, the Hungarian Divestment Business includes the crush plant, the refining plant and storage assets, along with all the equipment necessary for the production of the agricultural commodities the plant produces, all the office space and equipment currently used by the divested entities;

(b) the following main intangible assets: primarily software licences;

(c) all licenses, permits and government authorizations that are required for the regular day to day operations, including environmental, operational and water usage permits. These will be valid after the divestment as well;

(d) all land leases, pre-emption rights and easement rights etc. related to the functioning of the Hungarian Divestment Business. This particularly includes [logistic arrangements];

(e) all contracts related to operations of the Hungarian Divestment Business. This particularly relates to [details of the parties contractual relationship];

(f) supplier contracts: should there be any long-term supply contracts relating to inputs for the Hungarian Divestment Business at the time of Closing, these would be transferred;

(g) customer contracts: should there be any long-term customers contracts relating to output of the Hungarian Divestment Business at the time of Closing, these would be transferred;

(h) customer records of the Foktő Plant for 2023;

(i) supplier records of the Foktő Plant for 2023;

(j) all personnel in Hungary, subject to the personnel that will be carved out as detailed in paragraph 4 of the Schedule in the Initial Commitments;

(k) the Key Personnel listed in the Schedule in the Initial Commitments;

(l) at the option of the Purchaser, the Hungarian Divestment Business will benefit from certain transitional service agreements with Viterra in relation to back-office functions that are currently managed centrally by Viterra and provided to its local subsidiaries. These include [details of the parties contractual relationship]. The transitional services will be offered for a term of up to […].

(709) According to the Initial Commitments, the Hungarian Divestment Business would not include the following assets or personnel:

(a) Viterra’s minority share in the Centroport joint venture: Centroport is a joint venture in which Viterra holds a minority share of […]%. […];

(b) all customer and supply contracts, purchase orders, customer records, etc. pertaining exclusively to grains;

(c) […] personnel responsible exclusively for […];

(d) […]% of the personnel of […] that is currently involved in both the oilseeds and the grains business. However, at the option of the purchaser, Bunge would transfer additional shared personnel if and to the extent reasonably required by the Purchaser to successfully continue the Divestment Business, whereby the necessity of such additional transfers shall be assessed by the Commission with the assistance of the Monitoring Trustee.

(710) More specifically, the Polish Divestment Business would include:

(a) the following three legal entities in Poland: (i) Viterra Bodaczów sp. Z o. o. ("Viterra Bodaczów") – responsible for the operation of the Bodaczów crush and refining plant, (ii) Viterra Polska Sp. Z.o.o. ("Viterra Polska") – responsible for origination and marketing and (iii) Viterra Silos sp. z o. o. ("Viterra Silos") – owner of Viterra's elevators in Poland;

(b) the following main tangible assets: the Bodaczów Plant, the land where the plant is located and all the equipment that is necessary to operate the Polish Divestment Business. In terms of assets, the Polish Divestment Business particularly includes the crush plant, the refining plant and storage assets, along with all the equipment necessary for the production of the agricultural commodities the plant produces, all the office space and equipment currently used by Viterra Bodaczów and four of the [number] Polish elevators operated by Viterra Silos;

(c) the following main intangible assets: primarily […];

(d) all licenses, permits and government authorizations that are required for the regular day to day operations of the Polish Divestment Business, including […]. These will be valid after the divestment as well;

(e) land ownership and other rights;

(f) all contracts related to operations of the Polish Divestment Business. This particularly relates to [details of the parties contractual relationship];

(g) supplier contracts: should there be any long-term supply contracts relating to inputs for the Polish Divestment Business at the time of Closing, these would be included;

(h) customer contracts: should there be any long-term supply contracts relating to inputs for the Polish Divestment Business at the time of Closing, these would be included;

(i) all customer records for products of the Bodaczów Plant;

(j) all supplier records for the products processed at the Bodaczów Plant;

(k) all personnel in Poland, subject to the personnel that will be carved out as detailed in paragraph 7 of the Schedule in the Initial Commitments;

(l) the Key Personnel listed in the Schedule in the Initial Commitments;

(m) at the option of the Purchaser, the Polish Divestment Business will benefit from certain transitional service agreements with Viterra in relation to back-office functions that are currently managed centrally by Viterra and provided to its local subsidiaries. These include [details of the parties contractual relationship]. The transitional services will be offered for a term of up to […].

(711) According to the Initial Commitments, the Polish Divestment Business would not include the following assets or personnel:

(a) […]% of Viterra's elevators in Poland;

(b) [remedy arrangements];

(c) the office of Viterra Polska at […]. However, at the option of the Purchaser, Viterra will make office space in […] available to the Purchaser at arm's length;

(d) [remedy arrangements];

(e) [remedy arrangements];

(f) […]% of the personnel of Vitera Polska that is currently involved in both the oilseeds and the grains business. However, at the option of the Purchaser, Bunge would transfer additional shared personnel if and to the extent reasonably required by the Purchaser to successfully continue the Divestment Business, whereby the necessity of such additional transfers shall be assessed by the Commission with the assistance of the Monitoring Trustee.

(g) In addition, the Parties have entered into related commitments, inter alia regarding the separation of the Divestment Business from their retained businesses, the preservation of the viability, marketability and competitiveness of the Divestment Business, including the appointment of a monitoring trustee and, if necessary, a divestiture trustee.

(h) As to the purchaser criteria, the Initial Commitments specified, in addition to the standard criteria, that the purchaser shall have proven expertise in the trading and procurement of agricultural commodities and the operation of crush and refining plants.

14.2. The Notifying Party's arguments

(712) As regards the Polish Divestment Business, the Parties <u>first</u> argue that the commitments entirely remove the Parties' crush capacity and refining overlap in Poland and thereby also significantly reduce overlaps in rapeseed origination/purchasing as well as in the marketing of the downstream rapeseed complex in Poland and the broader CEE/EEA region, including in combination with the Hungarian Divestment Business. While the Parties maintain that the Transaction cannot give rise to rapeseed origination/purchasing concerns under any metric assessed by the Commission in the first place, the Parties note that by way of transfer of the Polish Divestment Business the Parties' combined shares in rapeseed will significantly decrease and the Commitment will also address any hypothetical spillover effects in neighbouring countries and across the EEA. As regards the Hungarian Divestment Business, the Parties argue the commitments would address the perceived competition concerns by divesting all of Viterra's sunflower seed and rapeseed processing activities in Hungary along with the personnel in charge of origination and marketing at the plant and that the commitments will also have spillover effects in neighbouring countries, in particular in Austria, Czechia and Romania, and across the EEA.

(713) <u>Second</u>, the Parties explain that the commitments are comprehensive and effective. Both the Polish and Hungarian Divestment Business are viable and competitive stand-alone agri-businesses that are already active in the market, which will allow the purchaser to compete effectively with the Parties and other competitors on a lasting basis. According to the Parties, these conclusions are supported by the following facts: (i) the Polish and the Hungarian Divestment Businesses are a complete business that is active across the entire value chain, (ii) any purchaser will have immediate access to suppliers and customers, (iii) any purchaser will benefit from experienced staff, (iv) any purchaser will benefit from the Divestment Businesses reputation and thus be perceived as a reliable buyer/supplier, with

proven business practices and product standards and (v) the Divestment Businesses are an attractive business opportunity for many potential purchasers.[578]

(714) Finally, the Parties argue that the commitments are capable of being implemented effectively within a short period of time.

(715) On that basis the Parties conclude that the commitments will fully address the perceived competition concerns thereby rendering the Transaction compatible with the internal market.

14.3. Results of the market test

(716) The results of the market test were overall positive as regards the scope and viability and attractiveness of the Initial Commitments. Nevertheless, the market test did not provide clear feedback on certain elements of the Divestment Business, in particular on the assets and personnel included as the Initial Commitments were not clear enough on these points. In addition, while a number of market participants indicated a potential interest in acquiring the Divestment Business, or part of it, the interest of several of such respondents did not seem sufficiently serious. Moreover, some of the potentially interested market participants may not have the financial means to realistically acquire the Divestment Business, while others may not be considered suitable due to not meeting other purchaser criteria. For instance, the criterium on the purchaser having proven expertise in the trading and procurement of agricultural commodities and the operation of crush and refining plants was not disclosed in the market test, as Bunge marked it as confidential.

14.3.1. Scope of the Divestment Business

(717) The majority of market participants that expressed a view consider the Initial Commitments to be, in principle, suitable to effectively remove the competition concerns for the rapeseed value chain and the sunflower value chain in Central Eastern Europe.[579]

14.3.2. Viability and attractiveness of the Divestment Business

(718) The majority of market participants that expressed a view consider the Initial Commitments to be sufficient to ensure their viability and competitiveness after divestment.[580] While there was positive feedback on the viability of the two Divestment Businesses individually, respondents to the market test highlighted the importance of having scale when operating plants in this industry. This appears to be mainly because of the flexibility in supplying customers in different locations more efficiently from a network of plants, as well as production efficiencies from the potential focus on different crops or different end products.[581] As to the specific assets included in the Initial commitments, the feedback from the market test did not provide a sufficiently clear position as several market participants did not consider themselves to have sufficient knowledge of the Divestment Business to assess if additional assets or safeguards were required for the Divestment Business to be able to operate viably and competitively.[582]

---

578 Form RM Bodaczow, paragraphs 20-25 and Form RM Fokto, paragraphs 17-23.
579 Market Test, questions C.1 and C.2.
580 Market Test, question D.1.
581 Market Test, question D. and D.4.
582 Market test, question E.2 and F.6.

(719) A large majority of the market participants that expressed a view consider that the Polish Divestment Business can operate in a viable and competitive way without the two sea port terminals operated by Viterra in Poland.[583]

14.3.3. Purchaser criteria

(720) The feedback from the majority of market participants confirmed that the purchaser should have experience in the origination of oilseeds, trading of oilseeds, operation of crushing facilities, operation of oil refineries as well as marketing of meals and oils. In addition, a significant number of market participants consider that the purchaser should have a logistical infrastructure already in place. A large majority of market participants that expressed a view do not consider a company without a prior experience in the sector, e.g. a private equity firm, as a suitable potential purchaser for the Divestment Business.[584]

(721) As regards potential interest in acquiring the Divestment Business, the interest for acquiring the Polish Divestment Business on its own was very limited based on the feedback from market participants. The interest for acquiring the entire Divestment Business or the Hungarian Divestment Business was somewhat higher, but nevertheless, it was not clear which of the potentially interested market players would have serious interest as some of them made additional reservations based on assets and carve-outs.[585]

14.4. The Commission's assessment of the Initial Commitments

(722) The Commission assessed whether the Initial Commitments would be suitable to remove its serious doubts in relation to the markets in the EEA in respect of which it identified serious doubts, subject to certain improvements also in light of the market test feedback.

14.4.1. Scope of the Divestment Business and suitability of the Initial Commitments to remove competition concerns

(723) The Initial Commitments consist of Viterra's oilseeds business in Hungary and Poland, covering its activities across the sunflower and rapeseed value chain in Hungary, Poland as well as neighbouring CEE countries. By divesting Viterra's Fokto plant in Hungary and Bodaczow plant in Poland, the Initial Commitments remove the full overlap between the Parties' activities in Poland and Hungary.

14.4.1.1. Assessment of catchment areas

(724) While the Commission used the national shares as a proxy for assessing the impact of the Transaction, the products crushed and refined by the plants included in the Initial Commitments can be transported across borders in the CEE region.

(725) Therefore, the Commission also assessed whether the Initial Commitments would address the Commission's serious doubts in the countries within the respective plant-centric catchment areas.

(726) The Commission considers that the Transaction gives rise to serious doubts on national level in selected countries for purchasing of oilseeds, supply of both crude and refined oil, as well as oilseed meals. To remedy such concerns the Parties have agreed to divest the two plants in Bodaczow and Fokto currently owned by Viterra. The Commission has simulated the divestment of these plants using a catchment

583 Market test, question F.4.
584 Market test, question I.1.
585 Market test, questions H.2, I.4, I.5 and J.

area approach as described in Section 4.2.2 to assess the effectiveness of the Initial Commitments. In this simulation, the Commission uses a plant-centric approach as the baseline, while the mid-point-centric approach serves as a robustness.

(727) The Commission has previously acknowledged that a purely national approach to geographic market definition will likely underestimate the size of the geographic market to a certain degree. This in line with the feedback from the market investigation, which roughly suggest a radius of 500km around a production plant for the purchasing of oilseed and the supply of crude oil and a radius of 750km for refined oil. As regards oilseed meals, the market investigation suggests that a radius of 500km should be used for rapeseed meals and a radius of at least 750km should be used for sunflower meals.[586] For each of the production located in the selection of problematic countries, the implied catchment areas span across borders. For each affected product, the Commission now describes the results of the divestment simulation using its own capacity adjusted with the capacity data from the market investigation. These results are then compared to the Parties' submission using a plant-specific approach where available.[587]

(728) For the purchasing of rapeseed, the problematic countries are Croatia and Hungary, in both cases due to the overlap between the Parties' plants in Hungary. For crude rapeseed oil, the problematic countries are Austria, Poland, and Hungary. Table 60 shows the results of the divestment simulation using both the Parties' and the Commission's approach for all catchment areas defined by the Parties' plants located in the countries above. No data is shown for divested plants and catchment areas with no remaining overlap post divestment.

Table 60 – Parties' combined capacity shares within each plant-centric catchment area (500 km radius) for crude rapeseed oil

	Parties' approach[588]	Commission's approach[589]
Bodaczow	[0-5]%	[0-5]%
Bruck	[30-40]%	[30-40]%
Brzeg	[20-30]%	[30-40]%
Fokto	[0-5]%	[0-5]%
Kruszwica	[20-30]%	[20-30]%
Martfu	[0-5]%	[0-5]%

(729) Comparing across columns, the results show that after incorporating the capacity data from the market investigation, the combined market share of the Parties is higher for some catchment considered, suggesting that some of the product-specific capacities of competitors are overestimated in the Parties' capacity dataset. Still, the results show that after the divestment, the combined market share of the Parties

586 Market investigation questionnaire 5 on capacity data.

587 M.11204 - Bunge_Viterra - Rapeseed complex in Austria and the Czechia - 18 July 2024 - strictly confidential.

588 EC QP12 Q1a - Capacity data for analyses in CEE Paper (Oilseed, 2022).

589 Commission's market reconstruction data.

is [30-40]% or lower in all catchment areas clearing the previous competition concerns.[590]

(730) For the purchasing of sunflower seeds and the supply of crude sunflower oil, the problematic country is Hungary. Table 61 shows that only two of the Parties' plants are located in Hungary of which one is divested and the other shows no overlap.

Table 61 – Parties' combined capacity shares within each plant-centric catchment area (500 km radius) for crude sunflower oil

	Parties' approach[591]	Commission's approach[592]
Fokto	[0-5]%	[0-5]%
Martfu	[0-5]%	[0-5]%

(731) The results show that the divestment of the Divestment Business included in the Initial Commitments completely removes the overlap.

(732) For refined rapeseed oil, the problematic countries are Poland and Hungary. Table 62 shows the results of the divestment simulation using both the Parties' and the Commission's approach for all catchment areas defined by the Parties' plants located in the countries above. No data is shown for divested plants and catchment areas with no remaining overlap post divestment.

Table 62 – Parties' combined capacity shares within each plant-centric catchment area (750 km radius) for refined rapeseed oil

	Parties' approach[593]	Commission's approach[594]
Bodaczow	[0-5]%	[0-5]%
Brzeg	[20-30]%	[20-30]%
Fokto	[0-5]%	[0-5]%
Kruszwica	[10-20]%	[10-20]%
Martfu	[40-50]%	[30-40]%

(733) Comparing across columns, the results show that after incorporating the capacity data from the market investigation, the combined market share of the Parties is higher for Brezg and Kruszwica but lower for Martfu. In any case, the results show that after the divestment, the combined market share of the Parties is [30-40]% or lower in all catchment areas addressing the previous competition concerns.[595]

(734) For refined sunflower oil, the problematic country is Hungary. Table 63 shows the results of the divestment simulation using the Commission's approach for all catchment areas defined by the Parties' plants located in the countries above. No

590 The results are robust using the mid-point-centric approach.
591 EC QP12 Q1a - Capacity data for analyses in CEE Paper (Oilseed, 2022).
592 Commission's market reconstruction data.
593 EC QP12 Q1a - Capacity data for analyses in CEE Paper (Refined oil, 2022).
594 Commission's market reconstruction data.
595 The results are robust using the mid-point-centric approach.

data is shown for divested plants and catchment areas with no remaining overlap post divestment.

Table 63 – Parties' combined capacity shares within each plant-centric catchment area (750 km radius) for refined sunflower oil

	Parties' approach	Commission's approach
Fokto	[0-5]%	[0-5]%
Martfu	[0-5]%	[0-5]%

(735) The results show that the divestment of the Divestment Business included in the Initial Commitments completely removes the overlap between the Parties in the markets for crude and refined rapeseed and sunflower oils.

(736) For rapeseed meals, the problematic countries are Austria, Poland, and Hungary. Table 64 shows the results of the divestment simulation using both the Parties' and the Commission's approach for all catchment areas defined by the Parties' plants located in the countries above. No data is shown for divested plants and catchment areas with no remaining overlap post divestment.

Table 64 – Parties' combined capacity shares within each plant-centric catchment area (500 km radius) for rapeseed meals

	Parties' approach[596]	Commission's approach[597]
Bodaczow	[0-5]%	[0-5]%
Bruck	[30-40]%	[30-40]%
Brzeg	[20-30]%	[30-40]%
Fokto	[0-5]%	[0-5]%
Kruszwica	[20-30]%	[20-30]%
Martfu	[0-5]%	[0-5]%

(737) Comparing across columns, the results show that after incorporating the capacity data from the market investigation, the combined market share of the Parties is higher for some catchment areas considered, suggesting that some of the product-specific capacities of competitors are overestimated in the Parties' capacity dataset. Still, the results show that after the divestment, the combined market share of the Parties is [30-40]% or lower in all catchment areas clearing the previous competition concerns.[598]

(738) For sunflower meals, the problematic countries are Hungary and Austria. Table 65 shows the results of the divestment simulation using both the Parties' and the Commission's approach for all catchment areas defined by the Parties' plants located in the countries above. No data is shown for divested plants and catchment areas with no remaining overlap post divestment.

596 EC QP12 Q1a - Capacity data for analyses in CEE Paper (Oilseed, 2022).
597 Commission's market reconstruction data.
598 The results are robust using the mid-point-centric approach.

Table 65 – Parties' combined capacity shares within each plant-centric catchment area (750 km radius) for sunflower meals

	Parties' approach	Commission's approach
Bruck	[0-5]%	[0-5]%
Fokto	[0-5]%	[0-5]%
Martfu	[0-5]%	[0-5]%

(739) As a reminder, the overlap in Austria is only due to the fact that Bunge produces sunflower meals in its Bruck plant and Viterra imports sunflower meals from Hungary (where Viterra crushes sunflower seeds in Fokto). Therefore, by divesting the Viterra Fokto plant in Hungary the Initial Commitments virtually remove any overlap in the catchment area including Austria as well.[599]

(740) The results show that the divestment of the Divestment Business included in the Initial Commitments completely removes the overlap between the Parties in Austria and Hungary as regards sunflower meals.

(741) The Commission therefore considers that the Initial Commitments are sufficient in scope to entirely remove its serious doubts.

14.4.1.2. Assessment at the national level

(742) In any event, the Initial Commitments also address the concerns raised in the previous sections based on as assessment on market shares at the national level.

(743) In particular, with respect to **purchasing of rapeseed in Croatia and Hungary** (see Section 7.3.1.1.4 above) the divestment of Viterra's Fokto plant in Hungary, which [details of the parties purchases and business activities], will substantially reduce the Parties' combined demand shares. In Croatia, Viterra's demand share will decrease from [30-40]% to [10-20]% and the Parties' combined share will decrease from [40-50]% to [20-30]%. These limited market shares do not appear liable to impede effective competition.[600] In Hungary, the divestment of the Fokto plant would reduce Viterra's demand share to [0-5]%, thereby entirely eliminating the overlap with Bunge.

(744) With respect to **purchasing of sunflower seeds in Hungary** (see Section 7.3.3.1.1 above), the divestment of Viterra's Fokto plant in Hungary, which accounts for [details of the parties shares], will reduce Viterra's demand share to [0-5]% and entirely remove the overlap with Bunge.

(745) With respect to **crude rapeseed oil in Hungary, Poland and Austria** (see Section 8.3.2 above), the divestment of Viterra's Fokto plant in Hungary and Bodaczow plant in Poland, removes entirely the overlap between the Parties' rapeseed crushing assets in both Hungary and Poland. In Austria, the Parties have no overlapping rapeseed crushing assets. Nevertheless, the divestment of Viterra's Fokto plant in Hungary addresses the Commission's concerns in Austria as the Fokto plant is (i) well located geographically to serve the Austrian market (less

[599] The results are robust using the mid-point-centric approach.
[600] Horizontal Merger Guidelines, para. 18.

than 300 km from Bunge's plant in Austria), (ii) [details of the parties business strategy] and (iii) [details of the parties business strategy].

(746) With respect to **crude sunflower oil in Hungary** (see Section 8.3.3.1 above), the divestment of Viterra's Fokto plant entirely removes the overlap between the Parties' sunflower crushing assets in Hungary.

(747) With respect to **rapeseed BRSO in Hungary and Poland** (see Sections 8.4.2.1 and 8.4.2.2 above), the divestment of Viterra's Fokto plant in Hungary and Bodaczow plant in Poland, removes entirely the overlap between the Parties' rapeseed refining assets in both Hungary and Poland.

(748) With respect to **sunflower BRSO in Hungary** (see Section 8.4.3.1 8.3.2above), the divestment of Viterra's Fokto plant entirely removes the overlap between the Parties' sunflower refining assets in Hungary.

(749) With respect to **rapeseed meals in Hungary and Poland** (see Sections 11.3.1.4 and 11.3.1.6 above) the divestment of Viterra's Fokto plant in Hungary and Bodaczow plant in Poland, entirely removes the overlap between the Parties' rapeseed crushing assets - and therefore between their productions of rapeseed meals - in both Hungary and Poland. With respect to **rapeseed meals in Austria** (see Section 11.3.1.1), while the Parties have no overlapping rapeseed crushing assets, the divestment of Viterra's Fokto plant in Hungary also addresses the Commission's concerns in Austria because the Fokto plant is (i) well located geographically to serve the Austrian market (less than 300 km from Bunge's plant in Austria), (ii) [details of the parties business strategy] and (iii) [details of the parties business strategy].

(750) With respect to **sunflower meals in Austria, and Hungary** (see Section 11.3.2.1 and 11.3.2.5) the divestment of Viterra's Fokto plant in Hungary entirely removes the overlap between the Parties' sunflower crushing assets – and therefore between their productions of sunflower meals – in Hungary. In Austria, [details of the parties purchases and business activities]. Therefore, by removing Viterra's crushing capacity in Austria, the divestment of the Fokto plant ([details of the parties business activities]) also removes any overlap in Austria.

14.4.2. Viability and attractiveness of the Divestment Business

(751) The Commission considers that, based on the evidence on file, and the results of the market test, the Initial Commitments are in general suitable to lead to the divestment of a viable and competitive business, which can compete effectively with the merged entity on a lasting basis.

(752) Nevertheless, in order to meet the criteria for an acceptable remedy in Phase I, the divestment business needs to be sufficiently standalone and the remedy clear-cut.

(753) Therefore, as the Divestment Business is composed of assets that are carved out of the wider Viterra business, the Commission considered that certain amendments to the Initial Commitments were necessary in order to ensure that the Divestment Business can be operated as a viable, standalone business by a purchaser and that implementation risks are minimised. In particular:

(a) The Divestment Business should include all assets, contracts and personnel in Hungary, including senior management, to ensure that the Hungarian Divestment Business can be operated viably on a lasting basis. As pre-Transaction the Hungarian Divestment Business was focused on sunflower seeds activities, the commitments should not exclude any part of Viterra's Hungarian business unless there is a specific justified reason and such carve-out is limited;

(b) With respect to the Polish Divestment Business, the Commission takes note of the Parties' view that [details of the parties business activities]. Nevertheless, in order to be sufficiently clear-cut and easy to implement, the perimeter of the Polish Divestment Business should be clearly defined in the commitments and the carved-out parts of Viterra's Polish business precisely specified in the commitments. More specifically, the Polish Divestment Business should have sufficient personnel with the required expertise and an experienced management team as Key Personnel to ensure that the Divestment Business can be operated as a viable competitive force on a lasting basis. In addition, the Polish Divestment Business should have all the assets, including silos with sufficient capacity and at suitable location, contracts that is needs for operating across the rapeseed value chain.

(c) In addition, as Viterra had a number of investment projects planned in Hungary and Poland, which would have an impact on the competitiveness of its business in those countries going forward, the purchaser of the Divestment Business should receive the required CAPEX funding from Bunge in order to pursue such investment projects within a reasonable timeframe.

14.4.3. Purchaser criteria

(754) In view of the potential complexities involved in the separation of the Divestment Business from the rest of the Viterra business, the fact that the purchaser needs to meet the additional purchaser criteria related to expertise and experience in the industry and the feedback on potential purchaser interest received in the market test, the Commission considers that the Initial Commitments raise significant implementation risks as to the likelihood that the Divestment Business could be timely divested to a suitable buyer. Implementation safeguards, and particularly an upfront buyer clause, may reduce the risk of delayed implementation of the commitments and provide the requisite degree of certainty that the Divestment Business will be effectively and timely divested to a suitable purchaser.

14.5. The Draft Revised Commitments

(755) Following the results of the market test and the Commission's own assessment of the Initial Commitments, the Commission provided feedback to the Parties on 19 July 2024. Bunge subsequently submitted the Draft Revised Commitments.

(756) The Draft Revised Commitments modified the Initial Commitments by:

(a) Adding that Bunge undertakes to make available to the Purchaser CAPEX funding to fund investment projects in Hungary and Poland specified in Exhibit 1 provided that: (i) the Purchaser demonstrates that the funds will be used to fund the investment projects mentioned above; and (ii) the Purchaser is in the final stages of implementing the investment projects requiring the funds within […] of the date of Closing;

(b) Adding Viterra's three Hungarian elevators and Viterra's minority share in Centroport (a joint venture that operates a port facility on the Danube River) to the scope of the Divestment Business;

(c) Adding long-term customer contracts to the Hungarian Divestment Business;

(d) Adding that the Parties commit to maintain any current supply relationships with the broader Viterra group for a transitional period of […] after which the contracts shall be phased out under the supervision of the Monitoring Trustee. Existing and future contracts concluded by the Divestment Business with the broader Viterra group will be conducted at arm's length;

(e) Limiting the personnel excluded from the Hungarian Divestment Business to five individuals;

(f) Adding additional personnel as Key Personnel to the Hungarian Divestment Business, in particular Viterra's senior management;

(g) Specifying the four Polish silos of Viterra would be included in the Polish Divestment Business but providing the option to the Purchaser to exclude some or all of these silos from the divestment perimeter;

(h) Adding that the Parties shall use their best efforts to ensure that customers will not exercise any termination rights for contracts, including those arising from change of control provisions;

(i) Adding storage contracts to the Polish Divestment Business;

(j) Revising the list of excluded personnel from the Polish Divestment Business;

(k) Adding additional Key Personnel to the Polish Divestment Business.

14.5.1. The Commission's assessment of the Draft Revised Commitments

(757) The Commission considers that the Draft Revised Commitments include a number of important improvements, but nevertheless, fall short of being acceptable as they do not adequately address some of the shortcomings identified with respect to the Initial Commitments.

(758) In particular, the Draft Revised Commitments have the following shortcomings:

(a) The Draft Revised Commitments need to be submitted and signed by both Parties;

(b) The Draft Revised Commitments do not include an upfront buyer clause;

(c) The Draft Revised Commitments do not include all personnel and Key Personnel that the Divestment Business should include to ensure viability and continunity of operations;

(d) The time limitation in relation to the CAPEX funding commitment is too short in view of the duration of the investment projects;

(e) While four suitable silos in Poland are included, provision that certain silos can be removed at the option of the purchaser can have negative implications for the viability of the Divestment Business;

(f) As several traders are excluded from the Polish Divestment Business and retained by the Parties, the Parties should commit that the retained traders will not solicit the Divestment Business' customers during a reasonable time period in order to ensure that the Divestment Business can be competitive on the market;

(g) Clarification regarding the supplier and customer contracts included in the Divestment Business are necessary to avoid implementation risks.

14.6. The Final Commitments

(759) The Commission provided feedback to the Parties on the Draft Revised Commitments. The Notifying Party subsequently submitted the Final Commitments.

(760) The Final Commitments modify the Draft Revised Commitments as follows:

(a) The Final Commitments are signed by both Parties and both Parties commit to the undertakings and obligations stemming from the Final Commitments;

(b) The Transaction shall not be implemented before the Parties or the Divestiture Trustee has entered into a final binding sale and purchase agreement for the sale of the Divestment Business and the Commission has approved the purchaser and the terms of sale – i.e. an upfront buyer clause has been added;

(c) The CAPEX funding shall be made available if the Purchaser demonstrates that the funds will be used to fund the investment projects mentioned and requests the funds within 5 years of the date of Closing;

(d) The Parties undertake that the Viterra traders in Poland listed in Exhibit 2 that are retained by the Parties will not solicit the customers of the Divestment Business for a period of […] after Closing;

(e) The Parties will use their best efforts to procure third-party consent for any land leases and other rights;

(f) Supplier and customer contracts ongoing at the time of the transfer of the Divestment Business to the Purchaser will be transferred;

(g) All customer and supplier records of the Divestment Business are included;

(h) Additional Key Personnel has been added to the Divestment Business;

(i) The exclusion of certain Polish silos at the option of the Purchaser has been removed from the Final Commitments;

(j) The personnel excluded from the Polish Divestment Business has been further clarified.

(761) The Commission considers that the Final Commitments adequately address the remaining shortcoming of the Draft Revised Commitments.

14.7. Conclusion of the Final Commitments

(762) Based on the results of the market test and the assessment of the Initial Commitments, the Draft Revised Commitments and Final Commitments, the Commission considers that the Final Commitments entirely remove the Commission's serious doubts as to the compatibility of the Transaction with the internal market.

15. CONDITIONS AND OBLIGATIONS

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

(764) The fulfilment of the measure that gives rise to the structural change of the market is a condition, whereas the implementing steps which are necessary to achieve this result are generally obligations on the Parties. Where a condition is not fulfilled, the Commission's decision declaring the concentration compatible with the internal market is no longer applicable. Where the undertakings concerned commit a breach of an obligation, the Commission may revoke the clearance decision in accordance with Article 6(3)(b) of the Merger Regulation. The undertakings concerned may also be subject to fines and periodic penalty payments under Articles 14(2) and 15(1) of the Merger Regulation.

(765) In accordance with the basic distinction described in paragraph (764) as regards conditions and obligations, this Decision should be made conditional, on the one

hand, on the full compliance by the Parties with Section B of the Final Commitments[601] (including the Schedule and exhibits) submitted by the Parties on 24 July 2024. All other Sections of the Final Commitments should be obligations within the meaning of Article 6(2) of the Merger Regulation. The full text of the Commitments is attached as Annex to this Decision and forms an integral part thereof.

16. CONCLUSION

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

For the Commission

(Signed)
Margrethe VESTAGER
Executive Vice-President

[601] Attached to this decision as Annex.

24 July 2024

Case M.11204

ACQUISITION
OF
VITERRA LIMITED
BY
BUNGE GLOBAL SA

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2), of Council Regulation (EC) No 139/2004 (the "***Merger Regulation***"), Bunge Global SA ("***Bunge***") and Viterra Limited ("***Viterra***") (together, the "***Parties***") hereby enter into the following Commitments (the "***Commitments***") vis-à-vis the European Commission (the "***Commission***") with a view to rendering Bunge's acquisition of 100% of the issued and outstanding share capital of Viterra Limited (the "***Concentration***") compatible with the internal market and the functioning of the EEA Agreement.

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

Section A. Definitions

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

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

Assets: the assets that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business as indicated in Section B, paragraph 7 (a), (b) and (c) and described more in detail in the Schedule.

Bodaczów Plant: Viterra's crush and refinery pant located in Bodaczów, 22-460 Szczebrzeszyn, Poland**.**

Bunge: Bunge Global SA, incorporated under the laws of Switzerland, with its registered office at Route de Florissant 13, 1206 Geneva, Switzerland and registered with the Commercial Register of the Canton of Geneva under number CHE-318.451.510.

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

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

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

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

Divestment Business: the Hungarian Divestment Business and the Polish Divestment Business as defined in Section B and in the Schedule which the Parties commit to divest.

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

Effective Date: the date of adoption of the Decision.

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

Foktő Plant: Viterra's crush and refinery plant located in 6331 Foktő, 07/2, Hungary, indirectly owned by Renaisco B.V.

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

Hungarian Divestment Business: consists of Viterra's entire business in Hungary, with the exception some limited personnel, as specified in the Schedule.

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

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

Personnel: all staff currently employed by the Divestment Business, including staff seconded to the Divestment Business, shared personnel, with the exception of the staff identified in the Schedule, as well as the additional personnel listed in the Schedule.

Polish Divestment Business: consists of Viterra's entire business in Poland, with the exception of some assets, personnel and contracts as specified in the Schedule.

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

Purchaser Criteria: the criteria laid down in paragraph 18 of these Commitments that the Purchaser must fulfil in order to be approved by the Commission.

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

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

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

Viterra: Viterra Limited, incorporated under the laws of Jersey, with its registered office at 3rd Floor, 44 Esplanade, St Helier JE4 9WG, Jersey and registered in the Registrar of Companies Jersey under number 119669.

Section B. The commitment to divest and the Divestment Business

Commitment to divest

2. In order to maintain effective competition, the Parties commit to divest, or procure the divestiture of the Divestment Business by the end of the Trustee Divestiture Period as a going concern to a purchaser and on terms of sale approved by the Commission in accordance with the procedure described in paragraph 19 of these Commitments. To carry out the divestiture, the Parties commit to find a purchaser and to enter into a final binding sale and purchase agreement for the sale of the Divestment Business within the First Divestiture Period. If the Parties have not entered into such an agreement at the end of the First Divestiture Period, the Parties shall grant the Divestiture Trustee an exclusive mandate to sell the Divestment Business in accordance with the procedure described in paragraph 31 in the Trustee Divestiture Period.

3. The Concentration shall not be implemented before the Parties or the Divestiture Trustee has entered into a final binding sale and purchase agreement for the sale of the Divestment Business and the Commission has approved the purchaser ([…]) and the terms of sale in accordance with paragraphs 19.

4. The Parties shall be deemed to have complied with this commitment if:

   (a) by the end of the Trustee Divestiture Period, the Parties or the Divestiture Trustee have entered into a final binding sale and purchase agreement and the Commission approves the proposed purchaser and the terms of sale as being consistent with the Commitments in accordance with the procedure described in paragraph 19; and

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

5. In order to maintain the structural effect of the Commitments, the Parties shall, for a period of after Closing, not acquire, whether directly or indirectly, the possibility of exercising influence (as defined in paragraph 43 of the Remedies Notice, footnote 3) over the whole or part of the Divestment Business, unless, following the submission of a reasoned request from Bunge showing good cause and accompanied by a report from the Monitoring Trustee (as provided in paragraph 45 of these Commitments), the Commission finds that the structure of the market has changed to such an extent that the absence of influence over the Divestment Business is no longer necessary to render the proposed concentration compatible with the internal market.

Structure and definition of the Divestment Business

6. The Divestment Business consists of Viterra's entire business in Hungary and Poland with the exception of certain assets, personnel, and contracts that will be carved out of the Divestment Business as specified in the Schedule. In particular, the Divestment Business includes but is not limited to (1) the following legal entities in Hungary: (i) Viterra Növényolajgyártó Kft[1] ("**VVOM**") – responsible for the operation of the Foktő crush and refining plant, (ii) Viterra Hungary Kft[2] ("**VIH**") – responsible for origination and marketing, and (iii) Viterra Logisztikai Kft[3] ("**VIL**") – responsible for elevators; and (2) the following three legal entities in Poland: (i) Viterra Bodaczów sp. z o. o.[4] ("**Viterra Bodaczów**") – responsible for the operation of the Bodaczów crush and refining plant, (ii) Viterra Polska sp. z o.o.[5] ("**Viterra Polska**") – responsible for origination and marketing and (iii) Viterra Silos sp. z o. o.[6] ("**Viterra Silos**") –

1 Company registration no.: 03-09-114954; seat: 6331 Foktő, 07/2. top lot no.
2 Company registration no.: 01-09-468916; seat: 1134 Budapest, Váci út 23-27 H2Offices. b. ép.
3 Company registration no.: 13448545-2-41; seat: 1134 Budapest, Váci út 23-27. (H2Offices B ép.
4 Company registration no.: 0000045433; seat: Aleja Grunwaldzka 472 F, 80-309 Gdańsk, Poland.
5 Company registration no. 0000047875; seat: Aleja Grunwaldzka, 472 F, Gdansk, 80-309, Poland.
6 Company registration no. 0000309333; seat 4, Portowa, Elblag, 82-300, Poland.

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

(a) all tangible and intangible assets (including intellectual property rights);

(b) all licences, permits and authorisations issued by any governmental organisation for the benefit of the Divestment Business;

(c) all contracts, leases, commitments, supplier and customer orders of the Divestment Business; all customer, supplier, credit and other records of the Divestment Business; and

(d) the Personnel.

7. In addition, the Divestment Business includes the benefit, for a transitional period of up to […] after Closing and on terms and conditions equivalent to those at present afforded to the Divestment Business, of all current arrangements under which Viterra or its Affiliated Undertakings supply products or services to the Divestment Business, as detailed in the Schedule, unless otherwise agreed with the Purchaser. Strict firewall procedures will be adopted so as to ensure that any competitively sensitive information related to, or arising from such supply arrangements (for example, product roadmaps) will not be shared with, or passed on to, anyone outside the relevant business unit providing the product and service operations.

Section C. Related commitments

Preservation of viability, marketability and competitiveness

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

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

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

(c) to take all reasonable steps, or procure that all reasonable steps are being taken, including appropriate incentive schemes (based on industry practice), to encourage all Key Personnel to remain with the Divestment Business, and not to solicit or move any Personnel to the Parties remaining business. Where, nevertheless, individual members of the Key Personnel exceptionally leave the Divestment Business, 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 shall take place under the supervision of the Monitoring Trustee, who shall report to the Commission.

(c) Bunge undertakes to make available to the Purchaser CAPEX funding to fund investment projects in Hungary and Poland specified in **Exhibit 1**, provided that: (i) the Purchaser demonstrates that the funds will be used to fund the investment projects mentioned above; and (ii) the Purchaser requests the funds within […] of the date of Closing.

<u>Hold-separate obligations</u>

9. The Parties commit to procure that the Divestment Business is kept separate from the business(es) that the Parties will be retaining and, after closing of the notified transaction, to keep the Divestment Business separate from the business(es) that the Parties are retaining and to ensure that unless explicitly permitted under these Commitments: (i) management and staff of the business retained by the Parties have no involvement in the Divestment Business; (ii) the Key Personnel and Personnel of the Divestment Business have no involvement in any business retained by the Parties and do not report to any individual outside the Divestment Business.

10. Until Closing, the Parties shall assist the Monitoring Trustee in ensuring that the Divestment Business is managed as a distinct and saleable entity separate from the business which the Parties are retaining. Immediately after the adoption of the Decision, the Parties shall appoint a Hold Separate Manager. The Hold Separate Manager, who shall be part of the Key Personnel, shall manage the Divestment Business independently and in the best interest of the business with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from the businesses retained by the Parties. The Hold Separate Manager shall closely cooperate with and report to the Monitoring Trustee and, if applicable, the Divestiture Trustee. Any replacement of the Hold Separate Manager shall be subject to the procedure laid down in paragraph 9 (c) of these Commitments. The Commission may, after having heard the Parties, require the Parties to replace the Hold Separate Manager.

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

<u>Ring-fencing</u>

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

Non-solicitation clause

13. The Parties undertake, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, the Key Personnel transferred with the Divestment Business for a period of 3 years after Closing.

14. The Parties undertake that the Viterra traders in Poland listed in **Exhibit 2** that are retained by the Parties will not solicit the customers of the Divestment Business for a period of 2 years after Closing.

Due diligence

15. In order to enable potential purchasers to carry out a reasonable due diligence of the Divestment Business, the Parties shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process:
    (a) provide to potential purchasers sufficient information as regards the Divestment Business;
    (b) provide to potential purchasers sufficient information relating to the Personnel and allow them reasonable access to the Personnel.

Reporting

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

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

Section D. The Purchaser

18. In order to be approved by the Commission, the Purchaser must fulfil the following criteria:
    (a) The Purchaser shall be independent of and unconnected to the 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 in the trading and procurement of agricultural commodities and the operation of crush and refining plants, and the incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors;
    (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.

19. The final binding sale and purchase agreement (as well as ancillary agreements) relating to the divestment of the Divestment Business shall be conditional on the Commission's approval. When Bunge has reached an agreement with a purchaser, it shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), within one week to the Commission and the Monitoring Trustee. Bunge must be able to demonstrate to the Commission that the purchaser fulfils the Purchaser Criteria and that the Divestment Business is being sold in a manner consistent with the Commission's Decision and the Commitments. For

the approval, the Commission shall verify that the purchaser fulfils the Purchaser Criteria and that the Divestment Business is being sold in a manner consistent with the Commitments including their objective to bring about a lasting structural change in the market. The Commission may approve the sale of the Divestment Business without one or more Assets or parts of the Personnel, or by substituting one or more Assets or parts of the Personnel with one or more different assets or different personnel, if this does not affect the viability and competitiveness of the Divestment Business after the sale, taking account of the proposed purchaser.

Section E. Trustee

I. Appointment procedure

20. Bunge shall appoint a Monitoring Trustee to carry out the functions specified in these Commitments for a Monitoring Trustee. The Parties commit(s) not to close the Concentration before the appointment of a Monitoring Trustee.

21. If Bunge has not entered into a binding sale and purchase agreement regarding the Divestment Business one month before the end of the First Divestiture Period or if the Commission has rejected a purchaser proposed by Bunge at that time or thereafter, Bunge shall appoint a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Trustee Divestiture Period.

22. The Trustee shall:
(i) at the time of appointment, be independent of the Parties and its/their Affiliated Undertakings;
(ii) possess the necessary qualifications to carry out its mandate, for example have sufficient relevant experience as an investment banker or consultant or auditor; and
(iii) neither have nor become exposed to a Conflict of Interest.

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

Proposal by Bunge

24. No later than two weeks after the Effective Date, Bunge shall submit the name or names of three natural or legal persons whom Bunge proposes to appoint as the Monitoring Trustee to the Commission for approval. No later than one month before the end of the First Divestiture Period or on request by the Commission, Bunge shall submit a list of one or more persons whom Bunge proposes to appoint as Divestiture Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the person or persons proposed as Trustee fulfil the requirements set out in paragraph 22 and shall include:

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

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

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

Approval or rejection by the Commission

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

New proposal by Bunge

26. If all the proposed Trustees are rejected, Bunge shall submit the names of at least two more natural or legal persons within one week of being informed of the rejection, in accordance with paragraphs 20 and 25 of these Commitments.

Trustee nominated by the Commission

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

II. Functions of the Trustee

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

Duties and obligations of the Monitoring Trustee

29. The Monitoring Trustee shall:

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

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

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

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

(c) with respect to Confidential Information:

- determine all necessary measures to ensure that the Parties do not after the Effective Date obtain any Confidential Information relating to the Divestment Business,
- in particular strive for the severing of the Divestment Business' participation in a central information technology network to the extent possible, without compromising the viability of the Divestment Business,
- make sure that any Confidential Information relating to the Divestment Business obtained by the Parties before the Effective Date is eliminated and will not be used by the Parties and
- decide whether such information may be disclosed to or kept by the Parties as the disclosure is reasonably necessary to allow the Parties to carry out the divestiture or as the disclosure is required by law;

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

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

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

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

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

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

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

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

(viii) within one week after receipt of the documented proposal referred to in paragraph 19 of these Commitments, submit to the Commission, sending Bunge a non-confidential copy at the same time, a reasoned opinion as to the suitability and independence of the proposed purchaser and the viability of the Divestment Business after the Sale and as to whether the Divestment Business is sold in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the Sale of the Divestment Business without one or more Assets or not all of the Personnel affects the viability of the Divestment Business after the sale, taking account of the proposed purchaser;

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

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

Duties and obligations of the Divestiture Trustee

31. Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at no minimum price the Divestment Business to a purchaser, provided that the Commission has approved both the purchaser and the final binding sale and purchase agreement (and ancillary agreements) as in line with the Commission's Decision and the Commitments in accordance with paragraphs 18 and 19 of these Commitments. The Divestiture Trustee shall include in the sale and purchase agreement (as well as in any ancillary agreements) such terms and conditions as it considers appropriate for an expedient sale in the Trustee Divestiture Period. In particular, the Divestiture Trustee may include in the sale and purchase agreement such customary representations and warranties and indemnities as are reasonably required to effect the sale. The Divestiture Trustee shall protect the legitimate financial interests of Bunge, subject to the Parties' unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.

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

III. Duties and obligations of the Parties

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

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

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

the Parties shall cause the documents required for effecting the sale and the Closing to be duly executed.

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

37. At the expense of Bunge, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to Bunge's approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should Bunge refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard Bunge. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 36 of these Commitments shall apply *mutatis mutandis*. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served Bunge during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.

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

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

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

IV. Replacement, discharge and reappointment of the Trustee

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

(a) the Commission may, after hearing the Trustee and Bunge, require Bunge to replace the Trustee; or
(b) Bunge may, with the prior approval of the Commission, replace the Trustee.

42. If the Trustee is removed according to paragraph 41 of these Commitments, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 20-27 of these Commitments.

43. Unless removed according to paragraph 41 of these Commitments, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

Section F. The review clause

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

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

Section G. Entry into force

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

Duly authorized for and on behalf of Bunge Global SA.
Brussels, 24 July 2024

[signed]

Duly authorized for and on behalf of Viterra Limited
Brussels, 24 July 2024

[signed]

SCHEDULE

1. The Divestment Business is comprised of Viterra's entire businesses in Hungary and Poland, with the exception of certain assets, personnel, and contracts that will be carved out of the Divestment Business as specified in paragraphs 4 and 7 of this Schedule.

The Hungarian Divestment Business

2. In accordance with paragraph 6 of these Commitments, the Hungarian Divestment Business consists of Viterra's entire business in Hungary, including but not limited to the following legal entities in Hungary: (i) Viterra Növényolajgyártó Kft ("**VVOM**") – responsible for the operation of the Foktő plant and logistics, (ii) Viterra Hungary Kft ("**VIH**") – responsible for the origination and marketing as well as back-office functions, and (iii) Viterra Logisztikai Kft ("**VIL**") – responsible for the management of Viterra's elevators in Hungary.

3. In particular, the Hungarian Divestment Business includes, but is not limited to:

   a) the following main tangible assets: the Foktő Plant, the land where the plant is located (which is owned by VIH) and all the equipment that is necessary to operate the Hungarian Divestment Business. In terms of assets, the Hungarian Divestment Business includes the crush plant, the refining plant and storage assets, along with all the equipment necessary for the production of the agricultural commodities the plant produces, all the office space and equipment currently used by the divested entities; Viterra's three Hungarian elevators; Viterra's minority share in Centroport (a joint venture that operates a port facility on the Danube river).

   b) the following main intangible assets:
   - Intangible assets of the Hungarian Divestment Business include primarily […].
   - [Information on IP rights].

   c) the following main licences, permits and authorisations: all licenses, permits and government authorizations that are required for the regular day to day operations, including environmental, operational and water usage permits. These will be valid after the divestment as well.

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

   - **Land leases and other rights.** All land leases, pre-emption rights and easement rights etc. related to the functioning of the Hungarian Divestment Business will be transferred. This particularly includes [description of the land rights]. To the extent any such transfer requires third-party consent, the Parties shall use their best efforts to procure such consent. The Parties shall promptly and diligently communicate with such counterparties to address and resolve any issues that may arise in relation to the transfer and shall take all reasonable actions necessary to maintain the continuity and enforceability of these rights/contracts.
   - **Operations contracts.** All contracts related to operations of the Hungarian Divestment Business will be transferred. This particularly relates to [list of contracts].
   - **Supplier contracts.** The Hungarian Divestment Business does not have any long-term supply contracts, as origination and purchasing of agricultural products are primarily [information on plant procurement]. In any event, any supply contracts that are ongoing at the time of the transfer of the Hungarian Divestment Business to the Purchaser will also transfer.

- **Customer contracts.** Viterra B.V. has some longer-term contracts for the supply of refined oil which are often supplied from Fokto. These contracts will be transferred to VIH and will therefore be included in the Hungarian Divestment Business. To the extent such a transfer requires third-party consent, the Parties will use their best efforts to obtain such consent. Besides these oil contracts, the Hungarian Divestment Business does not have any long-term sales agreements for oilseeds, and oilseed products with its customers. In any event, any customer contracts that are ongoing at the time of the transfer of the Hungarian Divestment Business to the Purchaser will also transfer. . The Parties shall use their best efforts to ensure that customers will not exercise any termination rights, including those arising from change of control provisions. The Parties shall promptly and diligently communicate with the counterparties to address and resolve any issues that may arise in relation to the transfer of such contracts and shall take all reasonable actions necessary to maintain the continuity and enforceability of these contracts.
- **Supply Contracts with the broader Viterra group**. The Parties commit to maintain any current supply relationships with the broader Viterra group for a transitional period of […] after which the contracts shall be phased out under the supervision of the Monitoring Trustee. Existing and future contracts concluded by the Divestment Business with the broader Viterra group will be conducted at arm's length.

e) **the following supplier, customer, credit and other records:**
- **Customer records.** All customer records of the Hungarian Divestment Business.
- **Supplier records.** All supplier records of the Hungarian Divestment Business.

f) **the following Personnel:**

- **All personnel in Hungary** will be transferred, with the exception of five regional managers that will be carved out as detailed in paragraph 4 below. An overview of current personnel of the three Hungarian entities is provided in **Exhibit 3**.
- **The following Key Personnel:** the Key Personnel of the Hungarian Divestment Business includes:
  - […];
  - […]
  - […].

g) **the arrangements for the supply with the following products or services by Viterra or Affiliated Undertakings for a transitional period of up to […] after Closing:** at the option of the Purchaser, the Hungarian Divestment Business will benefit from certain transitional service agreements with Viterra in relation to back-office functions that are currently managed centrally by Viterra and provided to its local subsidiaries. These include [details of the Parties' contractual relationships]. The transitional services will be offered for a term of up to […].

4. The Hungarian Divestment Business shall <u>not</u> include the following personnel:

- […].

<u>The Polish Divestment Business</u>

5. In accordance with paragraph 6 of these Commitments, the Polish Divestment Business consists of Viterra's entire business in Poland, including but not limited to the following legal entities in Poland: (i) Viterra Bodaczów sp. z o. o. ("**Viterra Bodaczów**") – responsible for the operation

of the Bodaczów crush and refining plant, (ii) Viterra Polska sp. z o.o. ("**Viterra Polska**") – responsible for origination and marketing and (iii) Viterra Silos sp. z o. o. ("**Viterra Silos**") – owner of Viterra's elevators in Poland.

6. In particular, the Polish Divestment Business includes, but is not limited to:

   a) **the following main tangible assets:** the Bodaczów Plant, the land where the plant is located and all the equipment that is necessary to operate the Polish Divestment Business. In terms of assets, the Polish Divestment Business particularly includes the crush plant, the refining plant and storage assets, along with all the equipment necessary for the production of the agricultural commodities the plant produces, all the office space and equipment currently used by Viterra Bodaczów and the following four Polish elevators operated by Viterra Silos: Trawniki, Kętrzyn, Szamotuły and Werbkowice.

   b) **the following main intangible assets:**
      - Intangible assets of the Polish Divestment Business include primarily […].
      - [Information on IP rights].

   c) **the following main licences, permits and authorisations:** all licenses, permits and government authorizations that are required for the regular day to day operations of the Polish Divestment Business, including [details of parties permits].

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

      - **Land ownership and other rights**.
      - **Operations contracts:** all contracts related to operations of the Polish Divestment Business. This particularly relates to [details of the parties contractual relationships].
      - **Supplier contracts.** The Polish Divestment Business does not have any long-term supply contracts, as origination and purchasing of agricultural products are primarily [information on plant procurement]. In any event, any supplier contracts that are ongoing at the time of the transfer of the Polish Divestment Business to the Purchaser will also transfer.
      - **Customer contracts.** [Plant logistic]. Any customer contracts that are ongoing at the time of the transfer of the Polish Divestment Business to the Purchaser will also transfer. The Parties shall use their best efforts to ensure that customers will not exercise any termination rights, including those arising from change of control provisions. The Parties shall promptly and diligently communicate with the counterparties to address and resolve any issues that may arise in relation to the transfer of such contracts and shall take all reasonable actions necessary to maintain the continuity and enforceability of these contracts.
      - **Supply Contracts with the broader Viterra group**. The Parties commit to maintain any current supply relationships with the broader Viterra group for a transitional period of […] after which the contracts shall be phased out under the supervision of the Monitoring Trustee. Existing and future contracts concluded by the Divestment Business with the broader Viterra group will be conducted at arm's length.
      - **Storage contracts**. All storage contracts for oilseeds with third-party providers will be transferred alongside Viterra Poland which will ensure that the storage needs of Bodaczów are covered.

e) **the following supplier, customer, credit and other records:**

- **Customer records.** All customer records for products of the Bodaczów Plant.
- **Supplier records.** All supplier records for the products processed at the Bodaczów Plant.

f) **the following Personnel:**

- All personnel in Poland will be transferred, subject to the personnel that will be carved out as detailed in paragraph 7 below. An overview of the envisaged personnel split between the Polish Divestment Business and the retained business is attached as **Exhibit 4**.
- **The following Key Personnel:**
  - […].
  - […].
  - […].

g) **the arrangements for the supply with the following products or services by Viterra or Affiliated Undertakings for a transitional period of up to […] after Closing:** at the option of the Purchaser, the Polish Divestment Business will benefit from certain transitional service agreements with Viterra in relation to back-office functions that are currently managed centrally by Viterra and provided to its local subsidiaries. These include [details of the parties contractual relationships]. The transitional services will be offered for a term of up to […].

7. The Polish Divestment Business shall not include:

a) **the following personnel:** please refer to **Exhibit 4** for an overview of the current personnel of the three Polish entities and personnel that will be retained (retained personnel is highlighted in red)The retained personnel includes:

- […]; and
- **Shared personnel**: a proportionate share of shared personnel as specified in **Exhibit 4**.

The Hold-Separate Manager and the Monitoring Trustee may propose to the Commission changes to the list of personnel included in the Divestment Business if and to the extent (i) these changes are objectively necessary to ensure the continued viability of the Divestment Business, or (ii) the purchaser does not need some of the personnel and the exclusion of this personnel from the divestment perimeter does not impede the viability of the Divestment Business.

b) **the following assets:**

- Silos: The Czarnogłowy, Baborów, Pyrzyce and Elblag silos of Viterra Silos will be carved out from the Divestment Business and retained by Bunge.
- Port terminals: Viterra operates two port terminals in Poland, both of which are located at the Port of Szczecin: (i) EWA Terminal (EWA) operated by Viterra Szczecin sp. z o.o.; and (ii) SBT Terminal (SBT) operated by Szczecin Bulk Terminal sp. z o.o., a joint venture between Viterra and Copenhagen Merchants. Both terminals and the entities that operate these terminals (Viterra Szczecin sp. z o.o. and Szczecin Bulk Terminal sp. z o.o.) will therefore be carved-out prior to the divestment and retained by Bunge.
- Offices: since [information on Viterra's internal organization], the office of Viterra Polska in Gdansk will be retained. However, at the option of the Purchaser, Viterra will make office space in Gdansk available to the Purchaser at arm's length.

- Intangible assets: all customer and supply contracts, purchase orders, customer records, etc. pertaining exclusively to business lines unrelated to the crushing operations of the Bodaczów plant will be carved out and retained.

8. If there is any asset or personnel which is not covered by paragraph 2, 3, 5 or 6 of this Schedule but which is both used (exclusively or not) in the Divestment Business and necessary for the continued viability and competitiveness of the Divestment Business, that asset or adequate substitute will be offered to the Purchaser.

Exhibit 1

[…]

Exhibit 2

[…]

Exhibit 3

[…]

Exhibit 4

[…]