EUROPEAN COMMISSION
DG Competition

Case M.11536 - CONSTANTIA / ALUFLEXPACK

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REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) in conjunction with Art 6(2)
Date: 29/01/2025

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EUROPEAN COMMISSION

Brussels, 29.1.2025
C(2025) 731 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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Constantia Flexibles Group GmbH
Handelskai 92
1200 Vienna
Austria

Subject: **Case M.11536 – CONSTANTIA / ALUFLEXPACK**
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 28 November 2024, the European Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 (the 'Merger Regulation'), by which Constantia Flexibles GmbH ('Constantia' or the 'Notifying Party', Austria) acquires within the meaning of Article 3(1)(b) sole control of the whole of Aluflexpack AG ('AFP' or the 'Target', Switzerland) (the 'Transaction').[3] Constantia and AFP are together referred to as the 'Parties' or the 'Merged Entity'.

1. THE PARTIES

(2) **Constantia**, headquartered in Austria, is a global producer and supplier of flexible packaging solutions, including plastic and aluminium-based products. Constantia's product portfolio includes flexible packaging solutions for everyday use products

1 OJ L 24, 29.1.2004, p. 1 (the 'Merger Regulation'). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ('TFEU') has introduced certain changes, such as the replacement of 'Community' by 'Union' and 'common market' by 'internal market'. The terminology of the TFEU will be used throughout this decision.
2 OJ L 1, 3.1.1994, p. 3 (the 'EEA Agreement').
3 OJ C, C/2024/7394, 5.12.2024.

such as food, dairy, pet food, beverages, household and personal care products, and pharmaceutical and medical products. Since January 2024, Constantia is solely controlled by One Rock Capital Partners, LLC (collectively with its controlled funds and affiliates, 'ORC').

(3) **AFP**, headquartered in Switzerland, is a manufacturer and supplier of flexible packaging solutions for a variety of industries. AFP's packaging solutions are primarily made from aluminium and used for various food, coffee, and pet food, pharmaceutical products and other non-food products.

2. THE CONCENTRATION

(4) Pursuant to the Share Purchase Agreement and the Transaction Agreement entered into on 15 February 2024, Constantia will acquire 56.67% of the share capital of AFP from Montana Tech Components AG and Xoris GmbH (the 'Sellers') (the 'Transaction').[4] By means of this acquisition of shares, Constantia will acquire sole control over AFP. In parallel, Constantia launched an all-cash public tender offer for all publicly held registered shares of the Target and to subsequently take the Target private. The settlement of the offer is subject to certain terms and conditions, including regulatory approvals. The material terms and conditions of the offer are described in the Public Tender Offer published on 2 April 2024.[5]

(5) After the Transaction, Constantia will solely control AFP. The Transaction therefore is a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3. UNION DIMENSION

(6) The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 000 million (Constantia (incl. ORC): EUR [details of the parties' revenues] in 2023; AFP: EUR [details of the parties' revenues] in 2023). Each of them has an EU-wide turnover in excess of EUR 250 million (Constantia: EUR [details of the parties' revenues] in 2023; AFP: EUR [details of the parties' revenues] 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 notified operation therefore has an EU dimension within the meaning of Article 1(2) of the Merger Regulation.

4. INTRODUCTION TO ALUMINIUM FLEXIBLE PACKAGING AND THE PARTIES' ACTIVITIES

(7) Both Constantia and AFP are mainly active in the production and supply of flexible packaging materials. These packaging products are made from non-rigid materials, such as plastic, aluminium foils or cellulose (paper) films.

4 Form CO, paragraph 2.

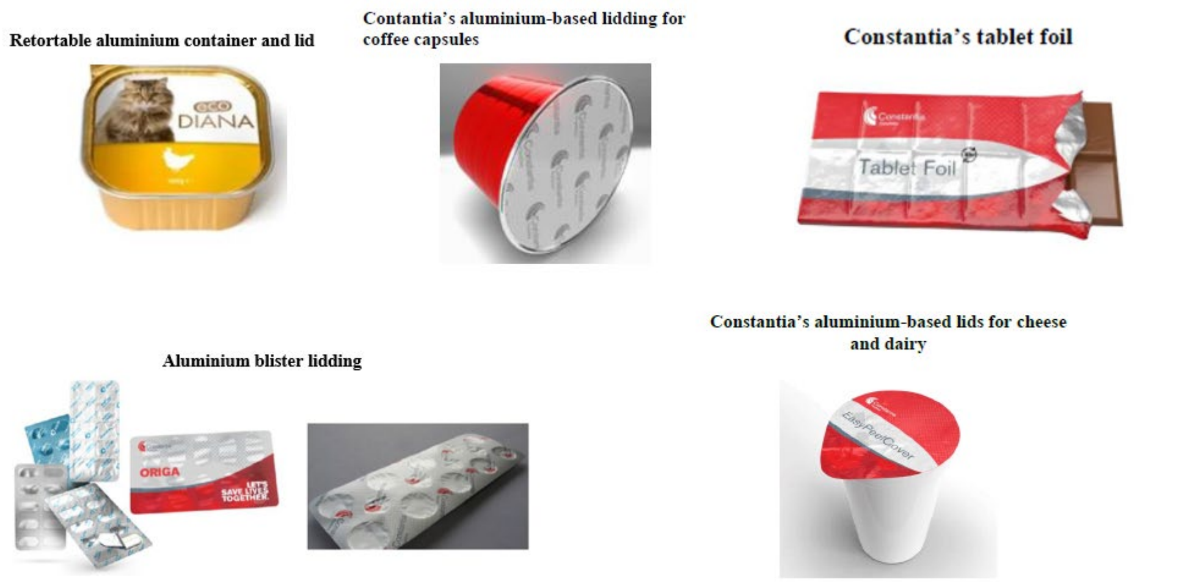
5 https://afp-tender-offer.com/download/companies/ma3014/3014_01offer/Offer_Prospectus_E_20240328_FINAL.pdf, accessed on 27 January 2025.

(8) The Parties explain, that the Transaction occurs within the context of the new EU Regulation on packaging and packaging waste (‘PPWR’),[6] which will require more packaging to be recyclable. This is for example to be ensured by limiting the types of packaging that can be technically non-recyclable. According to the Parties’ commissioned studies, the recyclability targets set by the PPWR have incentivized the uptake of a so-called mono-material approach in the flexible packaging industry across applications and customers – this means that less and less packaging materials are a combination of different substrate materials (e.g. plastic plus paper), but rather consist of a single material. In this regard, aluminium as a packaging material is particularly well-positioned to meet the recyclability standards as it can in principle be recycled infinitely. Therefore, aluminium packaging will continue to play an important role in the future of (food) packaging in Europe.

(9) While Constantia is active in flexible packaging across several materials, AFP is principally active in aluminium flexible packaging. The horizontal overlaps and vertical links between the Parties’ activities therefore arise with respect to different types of aluminium flexible packaging. Further, both Parties also have certain activities in the production of pre-treated aluminium foil, which is then transformed into the final aluminium flexible packaging products.

(10) Figure 1 below provides an overview of illustrations of some of the Parties’ flexible aluminium packaging products.

Figure 1 – Examples of the Parties’ flexible aluminium packaging products



Source: Form CO.

6 OJ L/2025/40, 22.1.2025. To enter into force on 11 February 2025.

(11) The Parties' activities in flexible aluminium packaging give rise to the following horizontally affected markets:

(a) Retortable[7] aluminium containers and lids for wet pet food in the EEA and in the EEA and Switzerland,

(b) Retortable aluminium containers and lids for human food in the EEA and in the EEA and Switzerland,

(c) Aluminium lidding foil for dairy in the EEA and in the EEA and Switzerland,

(d) Aluminium foil for confectionery in the EEA and in the EEA and Switzerland, and

(e) Aluminium blister lidding for pharmaceutical applications in the EEA and in the EEA and Switzerland.

(12) Further, the Parties' activities give rise to the following vertically affected markets:

(a) Constantia's upstream supply of unprinted blister lidding and the Parties' downstream supply of printed aluminium blister lidding;

(b) The Parties' upstream supply of pre-treated foil for food end-use applications and the Parties' downstream supply in (i) retortable aluminium containers and lids for wet pet food, (ii) retortable aluminium containers and lids for human food, and (iii) aluminium foil for confectionery.

(13) In addition, while not giving rise to a vertically affected market, the Parties' upstream activities in the supply of pre-treated aluminium foil for coffee capsules and downstream activities in aluminium coffee capsules and lids will be discussed as a market participant raised concerns.

5. MARKET DEFINITION

5.1. Product market definition

5.1.1. Production and supply of pre-treated aluminium foil for flexible aluminium packaging for food end-uses

5.1.1.1. The Commission's past practice

(14) The Commission has not previously defined a market for the production and supply of pre-treated aluminium foil for flexible aluminium packaging.

5.1.1.2. The Notifying Party's view

(15) The Notifying Party considers that the relevant product market definition is that for the supply of pre-treated aluminium foil, irrespective of the downstream end-use.[8]

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7 Retortable or retort food packaging (such as these containers and lids) is a particular type of packaging which allows the food to be cooked inside the packaging material (the retort process). See Form CO, paragraph 199.

8 Form CO, Annex 36, paragraph 12.

5.1.1.3. The Commission's assessment

(16) The Commission's market investigation has revealed that it is likely that the market for the production and supply of pre-treated aluminium foil should be further sub-segmented according to the end-use it is required for.

(17) Indeed, market participants have highlighted that there exist differences between pre-treated aluminium foil according to the end-use it is destined for. For example, pre-treated aluminium foil destined for food end-uses needs to satisfy certain regulations: one market participant explained that '*aluminium packaging must be aligned with the high production standards for food quality and safety in the European Union. For example, inks and lacquering* [i.e. the pre-treatment of the foil] *must be food safe. Certification of a new supplier may take from 6 to 12 months as there are many steps and procedures to be tested*'.[9] Another market participant explained that the pharmaceutical sector (i.e. non-food) also has strict requirements for its pre-treated aluminium foil: '*it is common that pharmaceutical customers tell the Company which aluminium foil supplier to use for their products, since the raw material needs to be certified as it is in direct contact with the pharmaceutical product*'.[10] Another market participant pointed to the need for a new supplier to be qualified by regulatory bodies for pharmaceutical products, a requirement that does not apply to pre-treated foil for food end-uses: '*qualifying a new supplier for unprinted aluminium foil for pharmaceutical applications takes some time, depending on the medicine. If it is a generic medicine, the tests can take three to twelve months and the filing another three months.* […] *A big advantage of* [suppliers] *is that they already got approved by the relevant regulatory bodies, whereas a new supplier would need to go through all the process*'.[11]

(18) With regards to pre-treated aluminium foil for food uses, the Commission's market investigation has revealed that it is possible that this product market should be further sub-segmented by the type of end-use (i.e. retort wet pet food, retort human food, coffee, dairy, and confectionery). Indeed, it appears that customers in each end-use qualify the pre-treated aluminium foil that is used for the packaging they purchase, and that each end-use has some particular requirements. For example, one coffee supplier explained that '*coated (eg. co-extruded foil) for the pet food segment has different requirements than coated (eg. co-extruded) foil for coffee capsules. The Company concludes that there are specific requirements for coated (eg. co-extruded) foil used for different end-uses*'.[12]

(19) Therefore, and in light of the results of the market investigation, the Commission overall considers that, for the purposes of this Decision, the relevant market for pre-treated aluminium foil is that for the production and supply of pre-treated aluminium foil for food uses, on the one hand, and for non-food uses, on the other hand. While pre-treated aluminium foil for food could be further sub-segmented according to end-use, this can ultimately be left open, given that the Transaction does not raise serious doubts as to its compatibility with the internal market under any of these plausible market definitions.

9 Minutes of a call with a customer of 11 July 2024, paragraph 12.
10 Minutes of a call with a competitor of 29 August 2024, paragraph 3.
11 Minutes of a call with a customer of 20 August 2024, paragraph 8.
12 Minutes of a call with a competitor of 12 December 2024, paragraph 6.

5.1.2. Production and supply of flexible aluminium packaging

5.1.2.1. The Commission's past practice

(20) The Commission has analysed flexible packaging in prior decisions and considered flexible packaging as a distinct market from rigid packaging on the basis of significant switching costs and limited demand-side substitutability.[13] The Commission also previously found that the market for flexible packaging could be segmented further on the basis of end-use applications and considered the following five segments: food, pharmaceutical, medical, household products, and other non-food products.[14]

(21) The Commission has previously analysed, although ultimately left open, whether some specific flexible packaging end-uses should be further segmented by material type.[15]

(22) With regards to aluminium flexible packaging for pharmaceutical products, the Commission has previously considered, but ultimately left open, a narrower segmentation into: (i) laminated sachets, (ii) cold form (aluminium) blister bases, (iii) plastic-based blister bases and (iv) blister lidding.[16]

5.1.2.2. The Notifying Party's view

(23) The Notifying Party considers that the relevant product market should be flexible packaging overall irrespective of end-use, sector or packaging type.[17]

(24) According to the Notifying Party (i) suppliers of flexible packaging typically produce and market products for a diverse range of end-uses; (ii) the same materials are used to manufacture flexible packaging for different end-uses; and (iii) nearly all manufacturing equipment (and workforce) can be used to manufacture products for different end-uses allowing suppliers to shift production capacity easily across them.[18] The Notifying Party in particular claimed that (i) retort wet pet food and retort human food form part of the same product market, given that the machines and the product are essentially the same;[19] (ii) aluminium lidding for coffee applications is substitutable with aluminium lidding for beverage or for dairy applications;[20] and (iii) the same foil used in confectionery applications is also used across multiple other food end-use applications.[21] Therefore, the Notifying Party does not consider that a further segmentation according to end-use or sector would be appropriate.

(25) According to the Notifying Party, a segmentation of the flexible packaging market by input material would similarly not be appropriate.[22] The Notifying Party submits

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13 Case No COMP/M.5599 – Amcor/Alcan, paras. 7-38; Case No COMP/M.3225 - Alcan/Pechiney, paras. 126-131; Case No COMP/M.3049 – Alcan/Flexpack, paras. 8-13.

14 Case No COMP/M.9094 – Amcor/Bemis, para.14; Case No COMP/M.5599 – Amcor/Alcan, para. 15.

15 Case No COMP/M.9094 – Amcor/Bemis, para 58; Case No COMP/M.5599 – Amcor/Alcan, para. 34.

16 Case No COMP/M.10247 - CVC/Cooper, para 118; Case No COMP/M.8107 – CVC/AR Packaging, para. 12; Case No COMP/M.5599 – Amcor/Alcan, paras. 28-38.

17 Form CO, paragraph 182.

18 Form CO, paragraphs 183-186.

19 Form CO, paragraph 514.

20 Form CO, Annex 33, paragraph 68.

21 Form CO, paragraph 681.

22 Form CO, paragraph 216.

that (i) customers purchase packaging for the same end-use applications, made of different materials; (ii) a large portion of the Parties' sales comes from multi-material solutions; and (iii) all main suppliers of aluminium flexible packaging are active across materials.[23] The Notifying Party in particular claimed that other materials (e.g. plastic, film, paper) were part of the same product market for the following end-uses: coffee, dairy, confectionery, and pharmaceutical.[24]

(26) With regards to flexible aluminium packaging for pharmaceutical products, the Notifying Party considers that there is a degree of substitutability across the different pharmaceutical segments but do not consider that it is necessary to reach a definitive view in this case because the Transaction does not lead to competition concerns irrespective of the precise market delineation.[25]

5.1.2.3. The Commission's assessment

5.1.2.3.1. Flexible packaging is distinct from rigid packaging

(27) The distinction between rigid and flexible packaging is well-established in the Commission's decisional practice.[26] There have been no indications in the Commission's market investigation that the Commission should diverge from these precedents.

5.1.2.3.2. Flexible aluminium packaging is distinct from other types of flexible packaging

(28) The Commission's market investigation has shown that flexible aluminium packaging is distinct from other types of flexible packaging.

(29) Indeed, market participants highlighted that there exist significant differences across material types with regards to customer preferences, sustainability, and food safety requirements. For example, one competitor of the Parties explained that aluminium '*provides best* [protection] *of filling goods and can be recycled well/ is available as recycled content material. Can be well designed on outside and is food safe*', plastic '*tends to be cost-effective as packaging material, providing less of a barrier/ protection for filling goods*', and paper '*is regarded by customers as environmentally friendly and may be* [recyclable]' and '*tends to be more expensive than plastic materials*'.[27] Another customer of the Parties explained that paper had the '*best perception of this material from sustainability pov* [point-of-view]', plastic was a '*cheap material,* [with] *short lead times, stable for production process*', and that aluminium was a '*very stable material from production process point of view* […] *highest barrier properties for a product*'.[28]

(30) Furthermore, the Commission's market investigation showed limited demand-side substitutability across flexible packaging materials. Indeed, a majority of customers having expressed an opinion explained that they would not be able to switch their current purchases of flexible aluminium packaging to other flexible packaging

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23 Form CO, paragraph 219.

24 Form CO, Annex 33, paragraph 44; Form CO, paragraphs 738, 672-679, 390-392.

25 Form CO, paragraph 203.

26 See for example Case No COMP/M.5599 – Amcor/Alcan, paras. 7-38; Case No COMP/M.3225 - Alcan/Pechiney, paras. 126-131; Case No COMP/M.3049 – Alcan/Flexpack, paras. 8-13.

27 Questionnaire to customers, question B.A.2.

28 Questionnaire to customers, question B.A.2.

materials without incurring significant costs.[29] One customer in the pharma sector, for example, outlined that '*the packaging material is included in the dossier and approved on the basis of stability studies; a change in packaging material requires new studies and new approval by the regulatory authorities*'.[30] Another customer explained that changing the packaging material would require investments in new production lines: '*substitution would require quality tests and, depending on the substitute, adaptation of the production lines with high capex involved and leadtimes etc.*'.[31] One competitor similarly explained that customers would likely not switch across materials, given that '*it is no easy as their filling lines are used to work with Alu, so most probably some changes must be made in their packing lines*'.[32]

(31) On the supply side, similarly, a majority of market participants explained that they could not quickly and without incurring significant costs switch their production of flexible aluminium packaging to flexible packaging of another material.[33] One competitor explained that '*the material processing machines would have to be readjusted for the new material used and the coatings applied to the surface of the material would have to be* [redeveloped] […] *this switch of coating formulations would entail a full review of the compliance versus food contact regulation involving extensive tests to validate no unwanted substance can migrate through the coating applied. Both these tests have also to be validated by the customer* […] *such development takes at least one year if the coating development leads quickly to a compliant solution*'.[34]

(32) The Notifying Party claimed particular substitutability across materials for certain specific end-uses (see paragraph (25)). The market investigation however similarly confirmed the limited substitutability between aluminium and other materials also for these end-uses.

(33) **Coffee**. With regards to whether aluminium and plastic capsules and lids form part of the same market or not, it appears that aluminium capsules and lids are not substitutable with plastic capsules and lids. Indeed, a majority of customers having expressed their opinion would not be able to switch their purchases to another material in response to a small but significant price increase.[35] One customer explained that this is due to the high costs of switching, as well as compatibility issues with coffee machines: '*It takes time to develop a capsule from* [another] *material* […] *also the current filling lines at the coffee roasters have to be modified to be able to fill and seal the capsules, since they are now equipped for aluminium. For the aluminium top lid we need to validate a material which is working in the Nespresso system and can be processed on the filling line. This takes time for development and investment*'.[36] Competitors generally confirmed these barriers to switching, with one competitor explaining that '*packing machines for coffee capsules and lids are set up to work with Alu at very productive speeds, so changing the capsule and lids is real challenge for the customer. It means that*

29 Questionnaire to customers, question B.A.3.
30 Questionnaire to customers, question B.A.3.1.
31 Questionnaire to customers, question B.A.3.1.
32 Questionnaire to competitors, question B.A.4.1.
33 Questionnaire to competitors, question B.A.3.
34 Questionnaire to competitors, question B.A.3.1.]
35 Questionnaire to customers, question B.D.2.
36 Questionnaire to customers, question B.D.2.1.

they will need to modify almost all parameters of their lines, including certain Capex to make it running at an acceptable [productivity] *and also keeping the barrier properties that Alu gives to the packaging like* [oxygen] *and moisture barrier, which are crucial for this product*'.[37]

(34) Similarly, a majority of competitors having expressed their opinion explained that they would not easily be able to switch their production from aluminium to plastic in response to a price increase.[38] As one competitor explained, '*the production of aluminium capsules is carried out by the aluminium industry while the plastic capsules are produced by the plastic industry. The 2 activities are specific and the switch would require enormous costs as they are 2 completely different supply chains*'.[39]

(35) **Dairy**. On the demand side, there appears to be very limited substitutability across materials, including between aluminium and other materials. Indeed, a majority of customers having expressed their opinion explained that they would not easily be able to switch their purchases of aluminium dairy lids to lids of another material in the event of a small but significant price increase.[40] One customer explained: '*We use the aluminium as a lid for our yoghurt pots. All filling systems are designed for this material. Tests with plastic blanks on polypropylene have shown that these cannot be processed with the current technology. We also do not yet have a technical solution on the market that enables processing on Log 6 yoghurt machines. The subsequent costs of switching would be significantly higher than the 5% price increase*'.[41] On the supply side, a majority of competitors having expressed their opinion similarly explained that they would not be able to switch their production to that of other materials.[42]

(36) **Confectionery**. With regards to confectionery foil, a majority of customers having expressed their opinion considered that they would not be able to substitute their purchases of aluminium confectionery foil to another material.[43] One large confectionery customer stated that '*some properties/characteristics as described above are unique for aluminium and can't be replaced by another product (paper or plastic) the same way; if we e.g. want to pack a Chocolate Bunny in plastic we must fill the naked bunny in a plastic bag but* [cannot] *smoothly wrap the aluminium around the chocolate, which changes the entire consumer perception of the product (e.g. premium quality perception, recognizability etc.) or even changes the product itself (including the IP-protected design of the product and trademarks of the products). For applications where it may be technically feasible, we would still need to run intense production trials to ensure line speed and process security* […] *we must conduct shelf life tests, which requires min. 12 month of quality testing*'. [44] with regards to competitors, a majority of competitors having expressed their opinion considered that they would not be able to switch their production to other flexible packaging materials in response to a price increase.[45]

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37 Questionnaire to competitors, question B.D.2.
38 Questionnaire to competitors, question B.D.3.
39 Questionnaire to competitors, question B.D.4.
40 Questionnaire to competitors, question B.E.2.
41 Questionnaire to customers, question B.E.2.1.
42 Questionnaire to competitors, question B..3.
43 Questionnaire to customers, question B.F.2.
44 Questionnaire to customers, question B.F.2.1.
45 Questionnaire to competitors, question B.F.3.

(37) **Pharmaceutical**. With regards to pharmaceutical applications, a majority of customers having expressed their opinion considered that they would not be able to substitute their purchases of aluminium foil to another material.[46] Indeed, customers generally explained that changing the type of packaging for pharmaceutical applications is a very time-consuming process, given the stringent regulatory requirements: '[there are] *relatively high regulatory requirements and standards we need to comply with for the manufacturing of our products. If we want to switch to other packaging materials, we need to go through various steps to validate the regulatory requirements which will take significant amount of time and cost* […] *it will require extensive resource allocation* […] *which is not practical from operation and business perspective*'.[47] On the supply side, while there appears to be a higher level of substitutability, it appears to be a question of whether the competitor in question already has the relevant machinery installed. For example, one competitor explained that '*our production/storage capabilities are mostly suited for both aluminium and paper and paper complex substrate processing without major modifications and therefore costs*',[48] but another stated that '*our current equipment do not allow production of material other than aluminium*'.[49] Ultimately, while competitors may be able to switch their production between materials to a certain extent in response to price/demand fluctuations, on the demand side substitutability appears to be very limited. As one competitor explained, '*we* […] *have solutions* [in other materials] *but the customers might [incur] significant cost on their machinery and they need to certify the new products*'.[50]

(38) Therefore, and in light of the results of the market investigation, the Commission overall considers that, for the purposes of this Decision, flexible aluminium packaging constitutes a product market distinct from that of other types of flexible packaging.

5.1.2.3.3. Different end-use segments constitute distinct product markets.

(39) The Commission's market investigation has shown that flexible aluminium packaging should be further sub-segmented by end-use.

(40) On the demand side, and for all end-uses that are relevant for the purpose of this Decision[51] (i.e. retort wet pet food, retort human food, dairy, confectionery, and pharmaceutical), a majority of customers having expressed their opinion indicated that they would not switch their purchases from one end-use into another one in response to a small but significant price increase.[52] Customers gave several reasons for this. For example, one pharmaceutical customer explained that '*this use doesn't require same regulatory standards as pharmaceutical products. So, the only aluminium packaging product we can use is foil that expressly intended for pharmaceutical uses*'.[53] Another customer, active in the confectionery sector,

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46 Questionnaire to customers, question B.G.2.
47 Questionnaire to customers, question B.G.2.1.
48 Questionnaire to competitors, question B.G.4.
49 Questionnaire to competitors, question B.G.4.
50 Questionnaire to competitors, question B.G.4.
51 Relevant end-uses refer to end-uses for which an affected market arises and which are assessed in Section 7.
52 Questionnaire to customers, question B.A.4.
53 Questionnaire to customers, question B.A.4.

explained that '*switch to alternative structure will be associated with an investment to equipment which will be more than 5% vs material cost*'.[54]

(41) On the supply side, competitors similarly explained that they do not easily switch their production across end-uses. For almost all end-uses that are relevant for the purposes of this Decision (apart from flexible aluminium foil for confectionery and for pharma applications), a majority of competitors having expressed their opinion stated that they would not reallocate production capacity to this end-use in response to a small but significant price increase.[55] Furthermore, regarding all end-uses mentioned in this Decision, a majority of competitors having expressed their opinion stated that, in the past, they had not switched their production capacity from one end-use into another in response to a small but significant price increase.[56] One competitor active in flexible aluminium packaging for pharmaceutical and dairy uses, for example, explained that entering or expanding into the wet pet food segment was not possible, due to not having the correct machinery.[57]

(42) With regards to aluminium foil for confectionery, only one competitor replied that they would switch their production capacity into this end-use in response to a small but significant price increase. The remaining competitors having expressed their opinion stated that they would not, or that it depended on the situation at hand. One of the competitors who stated that it depended explained that they would only be able to do so if they already had the necessary foil in their product range.[58] Furthermore, some competitors explained that it would take between 6 and 36 months to start producing aluminium packaging for a certain end-use if not already active in this end-use.[59] With regards to aluminium foil for pharmaceutical applications, competitors explained that there were numerous barriers to entry. For example, one competitor stated that '*entering the pharmaceutical sector is also not so easy in terms of validation time, requirements and pricing*'.[60] Another competitor explained that '*it is difficult to enter the pharma packaging […] in part due to the long homologation process that can start only after having completed important investments*'.[61] Finally, when asked how long it would take for a company not active in this end-use to enter, the majority of competitors having expressed their opinion stated that it would take at least one year, with market participants citing a long validation process and capital investments in machinery as the reason for this length of time.[62]

(43) With regards to the Notifying Party's claims that the same machines can be used to produce materials for different end-uses (as outlined in paragraph (24)), and therefore that some end-uses are substitutable with each other, the market investigation revealed that, while in theory there can be some substitution across end-uses on the supply side, in practice substitution is not frequent.

54 Questionnaire to customers, question B.A.4.
55 Questionnaire to competitors, question B.A.5.
56 Questionnaire to competitors, question B.A.6.
57 Questionnaire to competitors, question B.A.5.
58 Questionnaire to competitors, question B.A.5
59 Questionnaire to competitors, question B.F.6
60 Minutes of a call with a competitor of 30 July 2024, paragraph 9.
61 Minutes of a call with a competitor of 30 July 2024, paragraph 14.
62 Questionnaire to competitors, question B.G.6.

(44) **Retort wet pet food and retort human food**. Aluminium containers and lids for retort wet pet food and for retort human food respectively present similar characteristics and there are some synergies between the two production processes,[63] however there is considerable additional qualification required for selling retort wet pet food packaging, even for players that are already active in retort human food. Indeed, one competitor who was already active in retort human food and subsequently entered retort wet pet food explained that '*the qualification process for pet food takes time* […] *it takes longer than the human food qualification procedure. A lot of time-consuming testing is required. For instance, the Company's qualification process to supply one big* [pet food] *company with trays took more than one year*'.[64] Finally, a majority of competitors having expressed their opinion explained that they would not reallocate capacity from containers for human food to containers for wet pet food in response to a small but significant price increase.[65]

(45) **Coffee and dairy lidding**. A majority of competitors who expressed their opinion in the market investigation explained that, in the event of a small but significant price increase, they would not reallocate capacity from coffee lidding to dairy lidding.[66] Indeed, it appears that there are differences between the two lidding materials, notably with respect to customer requirements. One large coffee customer explained that '*coffee lids need a specific treatment (to hold bar pressure in the coffee machine) and therefore they are different from other lids for food use, such as yoghurt lids. Yoghurt lids are not that sophisticated products, their production is less demanding and the market is bigger*'.[67]

(46) **Confectionery**. With regards to the substitutability between confectionery foil and other foil for food, a majority of competitors having expressed their opinion considered that, in the event of a small but significant price increase, they would not reallocate capacity from one product to the other, or that it would depend on the exact situation faced.[68] Indeed, while the machines are in general similar, one customer explained that '*the machinery* [of their suppliers] *in foil production can be modified to produce different kinds of foil, but it is mostly dedicated to the production of a specific product due to the Company's quality requirements (e.g. a major change in the Company's supplier's lines might require a new test of the packaging in the Company's facilities). To the best of Company's knowledge, suppliers tend not to extensively modify lines and/or change the type of product manufactured as it might impact their efficiencies and costs*'.[69]

(47) Therefore, and in light of the results of the market investigation, the Commission overall considers that, for the purposes of this Decision, flexible aluminium packaging should be further segmented based on the following end-uses: retortable packaging for wet pet food, Retortable packaging for human food, coffee, dairy, confectionery, and pharmaceutical.

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63 Minutes of a call with a competitor of 30 July 2024, paragraph 12.
64 Minutes of a call with a competitor of 30 July 2024, paragraph 11.
65 Questionnaire to competitors, question B.C.13.
66 Questionnaire to competitors, question B.D.9.
67 Minutes of a call with a customer of 11 July 2024, paragraph 5.
68 Questionnaire to competitors, question B.F.7.
69 Minutes of a call with a competitor of 27 August 2024, paragraph 10.

5.1.2.3.4. Some end-uses present further differentiation

5.1.2.3.4.1. Retort wet pet food containers and lids

(48) Retort food packaging is a particular type of packaging which allows the food to be cooked inside the packaging material (the retort process). The food is first put into the packaging, closed, and then treated with heat and pressure. Customers require packaging with high barrier post-retort process (barrier required to prevent oxidation and dehydration; ambient shelf-life of 12 months), seal integrity (required to maintain hermetic performance) and convenience and ease of use.[70]

(49) For wet pet food, retort packaging can take the shape of containers and lids, or of film-based pouches. Furthermore, according to the Notifying Party, the suppliers of rigid metal cans (usually made of tin or aluminium) also exert competitive pressure on suppliers of containers and lids, and suppliers of pouches.[71]

(50) With regards to the substitutability between retortable aluminium containers and lids, and other types of wet pet food packaging such as retortable pouches, or cans, a majority of customers having expressed their opinion explained that they would not switch their current purchases of aluminium containers/containers and lids to other types of aluminium packaging for wet pet food in response to a small but significant price increase.[72] According to one pet food customer, '*the qualification of a new type of packaging takes time and may require changing production lines depending on the type of packaging*'.[73] Another pet food customer explained that '*we package pet food in aluminium cups, the whole process was set up with an investment of over EUR 30 million. Changing the process to cans or pouches we need to replace the entire production process. Switching from alu to tin or pouches, which generally consists of several layers of plastic and is difficult to recycle, is impossible*'.[74] Finally, one customer stated that '*our lines are specifically designed for our aluminum trays, we would have to pass an price increase to the consumers, if the consumers* [stop] *buying aluminum trays due to the price, we will have to* [stop] *that business*'. [75]

(51) On the supply side, substitution also appears to be limited. Indeed, one of the Parties' pet food packaging competitors explained that it would not be able to re-allocate production from containers and lids to cans and pouches in the event of a price increase of containers and lids without further investment: '[the company] *would need to invest in pouch making or stamping capacities in order to allocate volume shifts in formats fromother aluminium wet pet food packaging (e.g. pouches and cans for wet pet food) to aluminium containers/trays and lids for wet pet food*'.[76]

(52) Within retort aluminium containers and lids for wet pet food, the Commission's market investigation has revealed that containers and lids are most likely part of the same product market. Indeed, a majority of customers having expressed their

[70] Form CO, paragraph 610.
[71] Form CO, paragraph 556.
[72] Questionnaire to customers, question B.B.3.
[73] Questionnaire to customers, question B.B.4.
[74] Questionnaire to customers, question B.B.4.
[75] Questionnaire to customers, question B.B.4.
[76] Questionnaire to competitors, question B.B.2.

opinion stated that they purchase them both together.[77] Customers generally explained that this was done in order to facilitate exchanges with the supplier in case of quality issues: one stated that '*the interaction between lid and tray needs to be guaranteed. Same producing processes are given better results and reduces waste. In terms of customer complaints it is easier to derive a solution because it is not always clear if the problem is coming from lid or from the tray*'.[78] Furthermore, the four main competitors present in this segment (i.e. Constantia, AFP, Amcor, and Alpack) all produce both containers and lids.[79]

(53) Therefore, and in light of the results of the market investigation, the Commission overall considers that, for the purposes of this Decision, there is a separate product market for retortable aluminium containers and lids for wet pet food.

5.1.2.3.4.2. Retort human food containers and lids

(54) With regards to retortable aluminium containers and lids for human food packaging, the Notifying Party notes that there is very limited demand given the limited types of human food that require such packaging: for example, pâté, fish salad or spread, jams and ready meals.[80]

(55) With regards to the substitutability between retortable aluminium trays and lids, and other types of retort human food packaging such as retortable pouches, or cans, a majority of customers having expressed their opinion explained that they would not switch their current purchases of aluminium containers/trays and lids to other types of aluminium packaging for human food in response to a small but significant price increase.[81] According to one human food customer, '*The lines are speicifcally designed for this packaging, change* [is] *not possible*'.[82]

(56) On the supply side, substitution also appears to be limited. Indeed, one of the Parties' human food packaging competitors explained that it would not be able to re-allocate production from trays and lids to cans and pouches in the event of a price increase of trays and lids without further investment: '[the company] *would need to invest in pouch making or stamping capacities in order to allocate volume shifts in formats from other aluminium human food packaging (e.g. pouches and cans for wet pet food) to <u>aluminium containers/trays and lids for human food'</u>*.[83]

(57) As to whether aluminium containers and lids for human food form part of the same market, or form separate product markets, it appears that they are part of the same market similarly to aluminium containers and lids for retort wet pet food. As regards the customers who expressed their opinion in the market investigation, the number of those who stated that they purchased them together was equal to the number of those who stated that the did not purchase them together.[84] One customer explained that '*container and lids are matched to each* [other's] *specifications and are both offered by the same supplier*'.[85] Another one explained

[77] Questionnaire to customers, question B.B.6.
[78] Questionnaire to customers, question B.B.7.
[79] Form CO, paragraphs 521 and 560.
[80] Form CO, paragraph 519.
[81] Questionnaire to customers, question B.C.3.
[82] Questionnaire to customers, question B.C.3.1.
[83] Questionnaire to competitors, question B.C.3.
[84] Questionnaire to customers, question B.C.7
[85] Questionnaire to customers, question B.C.7.1.

that buying them together guaranteed the quality of the product: '*binding technology is easier and it is easier in terms of handling of complaints*'.[86]

(58) Therefore, and in light of the results of the market investigation, the Commission overall considers that, for the purposes of this Decision, that there is a separate product market for retortable aluminium containers and lids for human food.

5.1.2.3.4.3. Coffee capsules and lids

(59) With regards to whether aluminium capsules for coffee and aluminium lids for coffee form a part of the same market or not, it would appear that they do not. Indeed, a majority of customers having expressed their opinion indicated that they purchase these items separately.[87] The Parties similarly do not necessarily sell these products together. For example, for one large customer, Constantia provides only the lidding, and other suppliers the empty capsules.[88]

(60) Therefore, and in light of the results of the market investigation, the Commission will assess, for the purposes of this Decision, separate product markets for each of aluminium coffee capsules and aluminium coffee lids. In any event, whether aluminium coffee capsules and aluminium coffee lids are separate product markets can be left open, given that the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible product market definition.

5.1.2.3.4.4. Dairy

(61) Within flexible aluminium packaging for dairy applications, there can be two further plausible sub-segments: aluminium lidding for dairy, and aluminium cheese wrapping.[89]

(62) There are indications that these two sub-segments could be separate markets. Indeed, one customer considers that '*the base material for die-cut lids and for processed cheese wrapping is aluminium. Although it is mostly the same base the product* [is] *different because of the shape and the different treatment (lacquering/laminating)*'.[90]

(63) Therefore, and in light of the results of the market investigation, the Commission will, for the purposes of this Decision, assess separate product markets for aluminium lidding for dairy and aluminium cheese wrapping. In any event, whether aluminium lidding for dairy and aluminium cheese wrapping are separate product markets can be left open, given that the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible market definition.[91]

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86 Questionnaire to customers, question B.C.7.1.

87 Questionnaire to customers, question B.D.6.

88 Form CO, Annex 33, paragraph 40.

89 Form CO, paragraph 737.

90 Minutes of a call with a customer of 1 October 2024, paragraph 6.

91 Given that AFP is active only marginally in cheese wrapping, the narrowest plausible market is that of aluminium lidding for dairy (source: form CO, paragraphs 769-770). The competitive assessment in Section 7.3 will therefore be carried out on this conservative basis.

5.1.2.3.4.5. Confectionery

(64) There have been no indications from the market investigation that use of flexible aluminium packaging for confectionery should be further sub-segmented. Therefore, and for the purposes of this Decision, the relevant product market is aluminium foil for confectionery.

5.1.2.3.4.6. Pharmaceutical

(65) Within flexible aluminium packaging for pharmaceutical applications, the sales of two products constitute the vast majority of the market: (i) blister lidding and (ii) cold-form bases.[92]

(66) Unlike Constantia, AFP is only very marginally active in cold-form bases.[93] Since the Transaction does not give rise to an affected market in cold-form blisters, this market will not be further discussed in the Decision.

(67) Blister lidding can be sold to pharmaceutical companies unprinted (i.e., lacquered aluminium-based blister foil) or printed, although the majority of blister lidding sold to pharmaceutical companies in the EEA is printed.[94] The printing process is undertaken by converters/printers, i.e., intermediaries between the supplier of the unprinted blister lidding and the pharmaceutical companies that have printing capabilities. Some pharmaceutical companies also have printing capabilities in-house.

(68) While Constantia supplies both printed and unprinted blister lidding, AFP supplies almost exclusively printed blister lidding to pharmaceutical customers. From a demand-side perspective, as explained in the previous paragraph, pharmaceutical end-users seem to use unprinted and printed blister lidding for the same end-use applications. However, from a supply-side perspective, it appears that suppliers of printed blister lidding require additional printing capabilities. While there are several providers of unprinted blister lidding that are also active in printed blister lidding (e.g. Amcor, Constantia or Aluberg), it seems that no pharmaceutical companies and most converters/printers are only active at the level of printed blister lidding, potentially indicating the existence of separate markets for unprinted and printed blister lidding.

(69) However, for the purposes of this Decision, it can be left open whether the market for blister lidding should be further segmented between unprinted blister lidding and printed blister lidding, given that the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible product market definition.

(70) As explained in paragraphs (11) and (12) above, the Transaction gives rise to a horizontal affected market in relation to blister lidding. Given that AFP only has *de minimis* spot sales in unprinted blister lidding, the Commission's horizontal assessment will assess only the product markets for: (i) aluminium blister lidding

92 Form CO, paragraph 367.
93 Form CO, paragraph 369.
94 The Parties estimate that the market size for blister lidding was EUR 310,555 in 2023, out of which EUR 247,940 were printed blister lidding (i.e. almost 80%). Form CO, Annex 19.

for pharmaceutical applications; and (ii) printed aluminium blister lidding for pharmaceutical applications.

(71) In addition, the Transaction also gives rise to vertically affected markets in relation to unprinted aluminium blister lidding for pharmaceutical applications, upstream, and printed aluminium blister lidding for pharmaceutical applications, downstream. The Commission's vertical assessment will therefore focus on those two potential market definitions.

5.2. Geographic market definition

5.2.1. Production and supply of pre-treated aluminium foil for flexible aluminium packaging

5.2.1.1. The Commission's past practice

(72) The Commission has not previously defined a market for the production and supply of pre-treated foil for flexible aluminium packaging.

5.2.1.2. The Notifying Party's view

(73) The Notifying Party considers that the relevant scope of the market is at least EEA-wide.[95]

5.2.1.3. The Commission's assessment and conclusion

(74) The Commission's market investigation has shown that the geographic scope of the market is at least EEA-wide. According to one producer of pre-treated foil '[the Company] *is export oriented and supplies most of its output across the EU. At the level where the Company is active, proximity to customers is not of significant importance*'.[96]

(75) Furthermore, the scope of the market could be wider, i.e. comprise the entire EEA and Switzerland. There do not appear to be barriers to selling these products to customers in Switzerland. For example, AFP produces pre-treated foil within the EEA which it then at least partly converts into flexible aluminium packaging in its Swiss PPS plant.[97]

(76) For the purposes of this Decision, the Commission considers that the geographic scope of the market is at least EEA-wide, but possibly comprises the EEA and Switzerland. In any event, the exact scope of the geographic market can be left open, given that the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible geographic market definition.

(77) The Parties combined market shares are the same or very similar at the level of the EEA and at the level of the EEA and Switzerland, so the competitive assessment will conservatively focus on the narrowest plausible market, the EEA.[98]

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95 Form CO, Annex 36, paragraph 1.

96 Minutes of a call with a competitor of 31 July 2024, paragraph 5.

97 This is the case for at least AFP's production of aluminium lids for pet food. (Source: Response to RFI 5, table 9.)

98 Notifying Party's reply to RFI 19.

5.2.2. Production and supply of flexible aluminium packaging

5.2.2.1. The Commission's past practice

(78) In previous decisions, the Commission has defined the geographic market for flexible packaging as at least EEA-wide.[99]

5.2.2.2. The Notifying Party's view

(79) The Notifying Party agrees with the Commission's precedents indicating that the geographic market for flexible packaging, including all potential sub-segments, is at least EEA-wide.[100]

5.2.2.3. The Commission's assessment and conclusion

(80) The Commission's market investigation has confirmed that the geographic scope of all relevant product markets related to the production and supply of flexible aluminium packaging are at least EEA wide and possibly wider, comprising the EEA and Switzerland.

(81) For all of the end-uses that are relevant for the purposes of this Decision, the majority of the customers who expressed their opinion explained that they sourced the large majority of their production (80%) at least at regional level (i.e. Northern Europe, Central Europe, Southern Europe, etc.)[101] Furthermore, a majority of customers and competitors who expressed their opinion explained that there were no barriers preventing them from purchasing/selling flexible aluminium packaging across the EEA.[102]

(82) With regards to transport costs, a majority of the customers and competitors who expressed their opinion considered that these did not prevent them from purchasing flexible aluminium packaging products across the EEA.[103] Indeed, according to one customer, '*transport costs represent only about 2-3 percent of total cost*'.[104] A competitor similarly explained that '*container freight costs are relatively low as they stack well and are of high value*'.[105]

(83) Finally, a majority of the customers who expressed their opinion considered that they were generally able to source flexible aluminium packaging from plants located in Switzerland.[106] Similarly, a majority of the competitors who expressed their opinion considered that they or their competitors' Swiss plants could supply customers across the EEA.[107]

(84) Therefore, and in light of the results of the market investigation, the Commission overall considers that, for the purposes of this Decision, the relevant geographic

99 Case No COMP/M.10247 – CVC/Cooper, para. 125; Case No COMP/M.8107 – CVC/AR Packaging, para. 14; Case No COMP/5599 – Amcor/Alcan, para 47; Case No COMP/M.2441 – Amcor/Danisco/Ahlstrom, para 17.

100 Form CO, paragraph 271.

101 Questionnaire to customers, question C.3.

102 Questionnaire to customers, question C.4; questionnaire to competitors, question C.4.

103 Questionnaire to customers, question C.6; questionnaire to competitors, question C.6.

104 Questionnaire to customers, question C.6.1.

105 Questionnaire to competitors, question C.7.

106 Questionnaire to customers, question C.9.

107 Questionnaire to competitors, question C.10.

market for flexible aluminium packaging is at least EEA-wide, and possibly also includes Switzerland. In any event, the exact scope of the geographic market can be left open, given that the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible geographic market definition, since, for all the markets in question, either no competition problems arise under any plausible geographic market definition, or the commitments as outlined in Section 9 address the Commission's competition concerns under any plausible geographic market definition

6. COMPETITIVE ASSESSMENT

(85) The Transaction gives rise to a number of horizontally and vertically affected markets that will be discussed in Sections 7 and 8 below.

(86) The Transaction also results in horizontal overlaps and vertical links that do not give rise to affected markets within the meaning of paragraph 25(g) of Annex I to Commission Implementing Regulation (EU) 2023/914[108] as they meet the conditions for review under point 5 of the Notice on Simplified Procedure or benefit from the flexibility clauses of point 8 of the Notice on Simplified Procedure[109]. In addition, the market investigation did not reveal any competition concerns in relation to these horizontal overlaps and vertical links which will, therefore, not be discussed in this decision, with the exception of the vertical link between the Parties' upstream activities in the supply of aluminium foil and downstream activities in aluminium coffee capsules and lids, which will be briefly analysed in Section 3.

7. HORIZONTAL OVERLAPS

(87) The Transaction gives rise to the following horizontally affected markets:

(a) Retortable aluminium containers and lids for wet pet food in the EEA and in the EEA and Switzerland,

(b) Retortable aluminium containers and lids for human food in the EEA and in the EEA and Switzerland,

(c) Aluminium lidding foil for dairy in the EEA and in the EEA and Switzerland,

(d) Aluminium foil for confectionery in the EEA and in the EEA and Switzerland, and

(e) Aluminium blister lidding for pharmaceutical applications in the EEA and in the EEA and Switzerland.

7.1. Legal framework

(88) The Commission's guidelines on the assessment of horizontal mergers under the Merger Regulation (the 'Horizontal Merger Guidelines') distinguish two main ways in which mergers between actual or potential competitors on the same

108 OJ L 119, 05.05.2023, p. 22.

109 Commission Notice on a simplified treatment of certain concentrations under Council Regulation (EC) No 139/2004, OJ C 160, 5.5.2023, p. 1.

relevant market may significantly impede effective competition, namely non-coordinated effects and coordinated effects.[110]

(89) Non-coordinated effects may significantly impede effective competition by eliminating the competitive constraint imposed by one merging party on the other, as a result of which the merged entity would have increased market power without resorting to coordinated behaviour. According to recital 25 of the Merger Regulation, a significant impediment to effective competition can result from the anticompetitive effects of a concentration even if the merged entity would not have a dominant position on the market concerned. In this regard, the Horizontal Merger Guidelines consider not only the direct loss of competition between the merging firms, but also the reduction in competitive pressure on non-merging firms in the same market that could be brought about by the merger.[111]

(90) The Horizontal Merger Guidelines list a number of factors, which may influence the extent to which horizontal non-coordinated effects arise from a merger, such as the large market shares of the merging firms; the fact that the merging firms are close competitors; the limited possibilities for customers to switch suppliers; or the fact that the merger would eliminate an important competitive force. This list of factors applies if a merger would create or strengthen a dominant position or would otherwise significantly impede effective competition due to non-coordinated effects. Furthermore, not all of those factors need to be present to make significant non-coordinated effects likely and the list itself is not an exhaustive list.[112]

7.2. Retortable aluminium containers and lids for wet pet food

7.2.1. The Parties have a very large combined market share

(91) Constantia and AFP both have a significant presence on the market for retortable aluminium containers and lids for wet pet food in the EEA[113].

(92) **First**, as shown in Table 1 below, in 2023, Constantia had a [40-50]% market share, and AFP a [20-30]% market share. The Merged Entity therefore would have a very large combined market share of [70-80]%. Such a very large combined market share is an indication that the Transaction will lead to the creation of a dominant position.[114]

110 OJ C 31, 5.2.2004, p. 5. The remainder of this decision focuses on non-coordinated effects.
111 Horizontal Merger Guidelines, paragraphs 24-38.
112 Horizontal Merger Guidelines, paragraphs 24-38. This assessment is without prejudice of the possible application of other legal provisions on unfair termination of an established commercial relationship or other forms of unfair commercial practices which may apply absent any concentration and/or absent any significant impediment to effective competition.
113 [details of the parties' sales]. The Parties' market position in the EEA and Switzerland should therefore not significantly differ from their market position in the EEA and, hence, the following assessment will be carried out at the level of the EEA.
114 Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings, OJ C 31, 5.2.2004, p. 5 – 18 (Horizontal Merger Guidelines'), paragraph 17.

Table 1 – EEA market shares in retortable aluminium containers and lids for wet pet food

Supplier	2023 market shares (value)
Constantia	[40-50]%
AFP	[20-30]%
Combined	[70-80]%
Amcor	[10-20]%
Al Pack	[5-10]%
Laminazione Sottile	[0-5]%
Alibérico Group	[0-5]%
Alucoval	[0-5]%
Alopak	[0-5]%
Others	[0-5]%
Total	**100%**

Source: Form CO, Table 70.

(93) As shown in Table 1 above, the EEA market for retortable aluminium containers and lids for wet pet food is highly concentrated. Constantia and AFP are by far the largest suppliers, and only one other supplier has a market share between [10-20]% (Amcor). A further supplier has a market share between 5% and 10% (Al Pack), and all other suppliers have market shares below 5%.

(94) This very significant concentration is further reflected in the respective HHI values. Pre-Transaction, the HHI level is in the range of ["[2500-3000, 3000-3500]"].[115] Post-Transaction, the HHI level is in the range of ["[5500-6000, 5500-6000]"]. The HHI delta is in the range of ["[2500-3000, 2500-3000]"]. These levels are significantly above those identified in the Horizontal Merger Guidelines as indicative for the absence of concerns.[116] Indeed, these levels show that the market is already concentrated pre-Transaction, and that concentration will significantly increase post-Transaction.

(95) **Second**, the Parties' internal considerations further underline that the Parties have a very strong market position and large market share in retortable aluminium containers and lids for wet pet food in the EEA.

(96) As shown in the internal AFP document captioned below in Figure 2, AFP considers that [details of the parties' internal documents].

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115 Where only a range for the market share value is available, the midpoint of said range is used for the HHI calculation (i.e. for Amcor's [10-20]% market share, [10-20]% has been used). These "midpoint" market shares have been scaled to sum to 100% and the provided HHI ranges indicate the span between the cases of a. "Others" being assumed to be atomistic (as if they had a share of 0%), and b. "Others" being assumed to respectively be of the same size as the smallest firm for which an explicit value has been provided.

116 Horizontal Merger Guidelines, paragraph 20.

Figure 2 – [details of the parties' internal documents]

(97) Further, in the same internal document, AFP describes the rival suppliers it considers to be active in the retortable aluminium containers and lids for wet pet food market in EEA. [details of the parties' internal documents]. Overall, the market is seen to have [details of the parties' internal documents].

Figure 3 – [details of the parties' internal documents]

(98) **Third**, the Commission's market investigation further confirms the strong market position of the Parties.

(99) When asked which suppliers are the largest for retortable aluminium containers and lids for wet pet food in the EEA, most of the customers who expressed a view in the market investigation consider that Constantia, Amcor and AFP are the largest.[117] This corresponds to the information provided by customers on the identity of the suppliers that submitted bids in response to their latest calls for tenders. The suppliers mentioned most frequently are Constantia, Aluflexpack and Amcor; Al Pack is also mentioned by some customers.[118]

(100) In describing the market position of the Merged Entity post-Transaction, customers generally describe a situation similar to that reflected in the market shares described above in Table 1. While a competitor states that '*According to the Company, for the pet food industry there are four main suppliers in Europe: Amcor, Constantia, AFP and the Company, listed in order of size and importance The merged entity would be as big as Amcor*',[119] a customer explains it expects the Merged Entity's market share would be '*min. 75%*',[120] and another customer estimates '*80 %*'.[121]

(101) Another customer explains that from its perspective '[o]*n the market for aluminium trays for wet pet food that can withstand the sterilization process in Europe there are only three players (Amcor, AFP and Constantia)*'.[122] A further customer explains that the Merged Entity '*would be absolutely dominating the market for trays and lids in the wet petfood* […] *in Europe*'.[123] This customer further submits that '[t]*he Parties have a very large market share in aluminium trays/cups for sterilised wet pet food in Europe: around 80-90%. The remainder is essentially accounted for by Amcor*'.[124] Yet another customer explains that post-Transaction '*the choice is limited to Constantia Teich or Amcor which already has limited capacity*'.[125]

(102) A customer further explains '*it can currently source aluminium packaging – in particular aluminium trays - only from AFP and Constantia. Amcor was a possible*

117 Questionnaire to customers, question D.A.6.
118 Questionnaire to customers, question D.A.7.
119 Minutes of a call with a competitor of 30 July 2024, paragraph 10.
120 Questionnaire to customers, question D.A.11.
121 Questionnaire to customers, question D.A.11.
122 Minutes of a call with a customer of 16 July 2024, paragraph 13.
123 Questionnaire to customers, question D.A.11.
124 Minutes of a call with a customer of 1 July 2024, paragraph 20.
125 Questionnaire to customers, question D.A.11.

supplier in the past, but currently the quality and service provision of Amcor has decreased. In general, Amcor has lost many customers in the last years - many other companies have abandoned Amcor as a supplier and have changed to AFP or Constantia. The Company observes that most of its competitors in pet/human food also try to switch to Constantia and AFP'.[126]

(103) Therefore, the Commission considers that the Parties have a very strong market position and will have a very large combined market share post-Transaction on the EEA market for retortable aluminium containers and lids for wet pet food.

7.2.2. Very few alternative suppliers will remain on the market

(104) The Notifying Party submits that '[t]*he segment for the supply of retort flexible packaging for pet food in aluminium containers is competitive despite the niche nature of the retort segment*'. It further submits that '[c]*urrently there are at least four players well-established in the EEA and an additional one in the process of entering this space*'.[127]

(105) In particular, the Notifying Party lists Amcor and Al Pack as players that are currently competing with the Parties in retortable aluminium containers and lids for wet pet food in the EEA. The Notifying Party further explains that Laminazione Sottile is active in retort flexible packaging for human food applications and has decided to enter retort flexible packaging for pet food applications in 2024.[128]

(106) Further, the Notifying Party submits that '*there are at least two additional suppliers that are currently in trials for aluminium containers for pet food and are expected to enter the market in the very near future. These are Alibérico Group, and Alucoval*'.[129]

(107) Based on these submissions by the Notifying Party, there are at present only four active suppliers of retortable aluminium containers and lids for pet food in the EEA:[130] Constantia, Aluflexpack, Amcor and Al Pack. The fact that there are not many credible suppliers active on the market is indeed also reflected in the market shares presented in Table 1 above.

(108) While the subject of potential future entry of new players into the market is dealt with further below in Section 7.2.4, it should be noted that with respect to Laminazione Sottile (which according to the Parties has already entered the market), the company stated that it '*does not produce aluminium containers for pet food and also does not have any plans to enter that sector for the time being (which would be a long process)*'.[131]

(109) Therefore, even based on the list of suppliers currently active in the market according to the Notifying Party, and accounting for the fact that Laminazione Sottile currently is not yet active in the market, the Transaction would lead to a reduction of the number of suppliers from four to three.

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126 Minutes of a call with a customer of 21 August 2024, paragraph 14.
127 Form CO, paragraph 586.
128 Form CO, paragraph 586.
129 Form CO, paragraph 587.
130 Note that there appear to be a few additional players active solely in the supply of lids, e.g. Formika.
131 Minutes of a call with a competitor of 31 July, paragraph 5.

(110) Customers that responded to the Commission's market investigation also noted that there were not many suppliers active in the market.[132] Explaining this, one customer submits that '*within the EEA, you have three suppliers that can produce alu cups and lids, with Amcor only having limited volumes available at the moment. The merger leaves you with only two parties within the EEA*'.[133] Another customer notes with respect to the number of suppliers: '*There are already few in Europe*'.[134]

(111) In addition, the AFP internal document captioned above in Figure 3 shows that AFP [details of the parties' internal documents].

(112) Therefore, the Commission considers that, overall, already pre-Transaction only few suppliers appear to be active on the retortable aluminium containers and lids for wet pet food market in the EEA. Post-Transaction this number will be even further reduced, with essentially only three players with a meaningful market presence: the Merged Entity, Amcor and Al Pack.

7.2.3. The Parties are competing closely

(113) The Notifying Party submits that the Parties '*are not the closest competitor of each other as their business model is differentiated. Constantia and Amcor have been traditionally serving the manufacturers of branded pet food products. At the same time,* […]*, AFP is predominantly serving private label manufacturers*'.[135]

(114) Further, the Notifying Party explains that the top five customers of each Party account for over [volume %] of their total sales of retortable aluminium containers and lids for wet pet food in the EEA.[136] This significant concentration of the customer base compels suppliers '*to offer the most competitive possible terms to retain customers*'.[137]

(115) However, the Commission's investigation shows that the Parties are competing closely in the EEA market for retortable aluminium containers and lids for wet pet food. While the market for retortable aluminium containers and lids for wet pet food indeed is characterised by relatively few large customers, the buyer power of these customers is limited due to the small number of credible suppliers active in the market (as described above).

(116) Indeed, the market investigation shows that customers generally only receive bids from three or four potential suppliers when they launch calls for tender.[138] This in itself limits the buyer power the customers can exert. Among the ten customers providing information on the identity of the suppliers that answered calls for tender, eight received replies from Constantia, eight from Amcor, seven from AFP, and six from Al Pack. Six customers received replies both from Amcor and Constantia, five customers received replies both from Constantia and AFP, and five customers received replies both from Amcor and AFP.[139] This shows that

132 Questionnaire to customers, question D.A.13.
133 Questionnaire to customers, question D.A.13.1.
134 Questionnaire to customers, question D.A.13.1.
135 Form CO, paragraph 588.
136 Form CO, paragraph 589.
137 Form CO, paragraph 591.
138 Questionnaire to customers, question D.A.7.
139 Questionnaire to customers, question D.A.7.

Constantia, AFP and Amcor compete to a similar extent for customers and meet each other in customer tenders at a similar frequency. This suggests that these three players are in close competition with each other.

(117) This head-to-head competition between the Parties in customer tenders applies across the entire market, specifically to both producers of branded and private-label wet pet food products.[140]

(118) The market investigation further confirms that the Parties are considered to be close competitors. Generally, most customers expressing their view in the market investigation consider either AFP or Amcor to be Constantia's closest competitor.[141] Similarly, most customers expressing their view in the market investigation consider either Constantia or Amcor to be AFP's closest competitor.[142]

(119) Some customers expressed concerns that Amcor is less competitive compared to Constantia and AFP. One customer submits that '*Constantia and Aluflexpack are currently the Company's only two suppliers of aluminium trays/cups for wet pet food. Eliminating one of them is not a good thing. A possible alternative supplier in Europe for sterilisation-ready aluminium trays/cups for wet pet food is Amcor which is also active on this market. However, Amcor has very limited free capacity. Further, Amcor is currently producing for branded pet food producers and not really for private labels. The fact that Amcor has no free capacity is an obvious limitation in the ability to work with them. However, prices are also an issue with them (they are so far not competitive on price for the Company), further they are not as strong as the Parties in terms of quality and service. Actually, the Parties do not have real competitors in Europe*'.[143] Another customer states that '*it can currently source aluminium packaging – in particular aluminium trays - only from AFP and Constantia. Amcor was a possible supplier in the past, but currently the quality and service provision of Amcor has decreased. In general, Amcor has lost many customers in the last years - many other companies have abandoned Amcor as a supplier and have changed to AFP or Constantia. The Company observes that most of its competitors in pet/human food also try to switch to Constantia and AFP*'.[144]

(120) Another customer describes AFP to be a particularly price-competitive player on the market, that in particular competes strongly against Constantia on price: '*Within the market for aluminium trays for the packaging of wet pet food, Constantia was dominating the market for years. However, AFP acquired 'Process Point' in Liechtenstein (which was a small, rising competitor), helping it compete against Constantia. This is the plant from which the Company purchases AFP products (including aluminium trays for wet pet food). Process Point had very competitive prices on the market. Constantia also bought Alupack, a Swiss company. Another competitor on the market for aluminium trays for wet pet food is Amcor, however Amcor focuses more on supplying large pet food players like Mars and Nestle. Therefore, today the Parties' main competitor in aluminium trays for*

140 See e.g. Minutes of a call with a customer of 16 July, paragraphs 2 and 6, and Minutes of a call with a customer of 1 July, paragraphs 2 and 5.
141 Questionnaire to customers, question D.A.9.
142 Questionnaire to customers, question D.A.10.
143 Minutes of a call with a customer of 1 July 2024, paragraph 21.
144 Minutes of a call with a customer of 21 August 2024, paragraph 14.

wet pet food is Amcor. Amcor together with the Parties has the highest quality products'.[145]

(121) Therefore, the Commission considers the Parties are competing closely in the market for retortable aluminium containers and lids for wet pet food in the EEA.

7.2.4. Barriers to entry and expansion are significant

(122) The Notifying Party argues that customers of retortable aluminium containers and lids for wet pet food in the EEA have the ability to sponsor the entry of new suppliers, and that generally barriers to entry and expansion in this market are low.[146]

(123) In particular, the Notifying Party submits that '[n]*ew entry into the supply of aluminium containers for pet food does not require high technical requirements or a significant financial investment. The Parties estimate that entry would overall require the sourcing of the raw materials and an investment of around EUR 300,000 for a deep-drawing machine. Depending on the activities of the new entrant they might also need to invest into a machine for the punching of lids which* […] *can cost around EUR 250,000 – 500,000*'.[147] Further, the Notifying Party explains that the required raw materials are widely available on the market, and that equipment and processes required are similar as those used in other markets (e.g. '*retort flexible packaging for human food applications (e.g., ready-made food), coffee capsules, containers used in pharmaceutical applications, or plain containers*').[148]

(124) The Commission's market investigation, however, revealed that barriers to entry for the retortable aluminium containers and lids for wet pet food market in the EEA are significant.

(125) **First**, market participants consider that the EEA is a centre of competence for aluminium packaging generally, and retortable aluminium containers and lids in particular. Supply from other regions is not a credible alternative.

(126) One customer explains that '*Central Europe is the epicentre of aluminium production. Therefore, a lot of knowledge and competence about aluminium production exists among the players in Europe. The company Mars uses aluminium packaging in the US, but similarly as the Company, it sources its feedstock from Europe. The fact that aluminium packaging materials from Europe are considered of superior quality is also born out in the fact that Constantia also exports its packaging material to Australia*'. This customer further states that '[i]*n the United States, there is no manufacturer capable of creating aluminium packaging that can withstand the sterilization process*' and that therefore this customer '*ships aluminium trays/cups from the Parties in Europe to the US in order to use it as packaging there (due to the lack of comparable products being available in the US – while there is aluminium food packaging in the US (e.g. Mac&Cheese in trays), this does not meet the shelf-life and sterilisation requirements that the Company*

145 Minutes of a call with a customer of 16 July 2024, paragraph 12.
146 Form CO, paragraph 598.
147 Form CO, paragraph 599.
148 Form CO, paragraphs 600-601.

requires)'.[149] This customer summarises that the '[c]*ompetence for retortable aluminium packaging is in Europe and not anywhere else*'.[150]

(127) Other customers further explain that due to quality concerns and transportation distance, Asian suppliers do not constitute a credible alternative or likely entrants. One customer in this context explains that '*Asian companies can also supply aluminium tray products, but the products tend to be of a lesser quality, the companies are less flexible in deliveries and the risks of supply shortages are considerably higher due to long transportation routes*'.[151] Another customer submits that '[o]*n the market for aluminium trays for wet pet food that can withstand the sterilization process in Europe there are only three players (Amcor, AFP and Constantia). There are more players on the Chinese and Canadian market. However, the product quality of Chinese aluminium trays is significantly inferior to that of European products. Further, aluminium trays are very delicate and therefore difficult to transport over long distances*'.[152] A further customer adds that it '*cannot source its aluminium packaging from Asia and especially China. Its portfolio is so complex that the supply chains for the packaging have to be short. Furthermore, the Company is afraid of geopolitical disruptions and thus does not want to rely on supplies from China*'.[153]

(128) In light of these submissions, the Commission considers that entry into the EEA market for retortable aluminium containers and lids for wet pet food from outside the EEA is unlikely.

(129) **Second**, market participants responding to the Commission's market investigation describe barriers to entry to be significant.

(130) A large majority of the customers who expressed their view in the market investigation considers that barriers to entry in the retortable aluminium containers and lids for wet pet food market are moderate or high.[154] A majority of the competitors who expressed their view in the market investigation considers the entry barriers to be high.[155]

(131) A competitor explains the reason why so far only few suppliers have entered the market and are at present active is '*that developing production capacity takes time, expertise, and large financial outlays. There are few suppliers and they need to have large capacity to cover demand For this reason, the Company started building capacity, a process that can take between 7 and 9 months*'. This competitor further explains that '[t]*he qualification process for pet food takes time (the Company finished the procedure just now), it takes longer than the human food qualification procedure. A lot of time-consuming testing is required. For instance, the Company's qualification process to supply one big PF company([…])with trays took more than one year*'.[156]

149 Minutes of a call with a customer of 1 July 2024, paragraphs 16-17.
150 Minutes of a call with a customer of 1 July 2024, paragraphs 19.
151 Minutes of a call with a customer of 21 August 2024, paragraph 16.
152 Minutes of a call with a customer of 16 July 2024, paragraph 13.
153 Minutes of a call with a customer of 22 August 2024, paragraph 7.
154 Questionnaire to customers, question E.2.
155 Questionnaire to competitors, question E.2.
156 Minutes of a call with a competitor of 30 July 2024, paragraphs 10-11.

(132) On the subject of qualification time, a customer further explains the following: '*There are only three players on the market for aluminium trays for wet pet food in Europe because the qualification of the supply is a time intensive process. The shelf life of the wet pet food product is two to four years. To produce it, a lot of aging tests have to be done in order to verify the product and see if the demands for quality are met. This represents a high entry barrier, explaining why there are no other players*'.[157] This means that the specific (long) shelf-life requirements for pet food require long testing processes. The resulting lengthy qualification times constitute a key barrier to entry. Another customer further confirms that qualification times can be long, even with customers that are already supplying the market: '*The Company notes that it engaged in a former approval process for Al Pack two years ago but it was not successful due to quality issues*'.[158]

(133) A customer further explains that '[w]*ith respect to new entrants in the market for aluminium trays/cups for wet pet food, the Company notes that Pluspack in Denmark was a new entrant a few years ago – however this company has sold out to Amcor their petfood tooling. Overall, the market has narrowed down significantly in recent years, and less and less suppliers are active. In the US, the Company asked a large US player (-Silgan, active in tinplate cans and plastic cups) whether they could enter the aluminium trays/cups market. However, this company informed the Company that it would be too expensive for them to enter this market (minimum first investment of EUR 15 million for 150 million trays). Barrier of investment cost is very high*'.[159]

(134) A competitor further explains that it '*does not have the thermos-forming capacities to produce flexible aluminium trays*'.[160] As this supplier's strategy does not include the outsourcing of such elementary production steps, this constitutes a key barrier to entry into the retortable aluminium containers and lids for wet pet food market for this player.

(135) In light of these submissions, the Commission considers that barriers to entry are significant, and timely entry is, therefore, unlikely.

(136) **Third**, the Commission's market investigation did not reveal credible entry plans for the retortable aluminium containers and lids for wet pet food in the EEA.

(137) Specifically, when asked whether at present they could enter or expand their supply in retortable aluminium containers and lids for wet pet food, all competitors (i.e. players currently active in some form of flexible aluminium packaging) who expressed a view in the market investigation submitted that they could not do so easily or in a short matter of time.[161]

(138) Asked whether in case of a 5-10% price increase for retortable aluminium containers and lids for wet pet food post-Transaction they would enter into the production and supply of this product, only two suppliers indicated that they would do so. It however has to be noted that one of these suppliers is a company solely

157 Minutes of a call with a customer of 16 July 2024, paragraph 14.
158 Minutes of a call with a customer of 1 July 2024, paragraph 22.
159 Minutes of a call with a customer of 1 July 2024, paragraph 26.
160 Minutes of a call with a competitor of 15 October 2024, paragraph 6.
161 Questionnaire to competitors, question E.4.

supplying lids, whereas the other supplier expects entry to take 18 to 24 months and entail an investment of EUR 10 to 15 million.[162]

(139) Another supplier explained that '[w]*hile similar to Constantia and AFP the Company also sells retort packaging for wet pet food, it does so in reels and pouches. The Company does not offer aluminium retortable containers/trays for wet pet food. The Company has considered entering this segment, but would not do so with an aluminium-based product. In general, the Company does not compete with the Parties in the wet pet food sector*'.[163] This further confirms that entry, even from suppliers already offering certain wet pet food packaging products, is unlikely.

(140) Therefore, the Commission considers that barriers to entry in the retortable aluminium containers and lids for wet pet food market in the EEA are significant, and timely and sufficient entry is unlikely.

7.2.5. Market participants expect the Transaction to likely have a negative impact

(141) According to market participants, the Transaction would likely have a negative impact on competition in the EEA market for retortable aluminium containers and lids for wet pet food. In particular customers (producers of wet pet food) would likely have significantly less choice and face higher prices.

(142) **First**, the large majority of the customers who expressed their view in the market investigation consider that the Transaction will lead to an increase in prices for retortable aluminium containers and lids for wet pet food in the EEA.[164] Further, the large majority of the customers who expressed their view in the market investigation consider that the Transaction would have a negative impact on their own business with respect to retortable aluminium containers and lids for wet pet food.[165]

(143) In this context one customer explains: '*We foresee price increases*'.[166] Another customer submits that the Transaction '*leaves only two suppliers of alu cups and lids for pet food within the EEA*'.[167]

(144) A further customer explains in this context that '*competition for us will be not available in a significant scale, only very* [minimal] *quantities might be subject to competition*'.[168] This customer further submits that it '*is concerned with respect to the Transaction, as it would lead to a monopolistic market structure. The price for aluminium trays/cups for wet pet food would increase as there would basically be no competition left. It would be very challenging for the Company to deal with this as there are no real alternative opportunities/suppliers in the market aside of the Parties that it could realistically turn to – there are no available alternative capacities for aluminium wet food packaging (with sterilisation capability) in the market*'.[169] This customer further adds that '*there would be no alternative*

162 Questionnaire to competitors, question E.7.
163 Minutes of a call with a competitor of 30 September 2024, paragraph 9.
164 Questionnaire to customers, question D.A.20.
165 Questionnaire to customers, question D.A.21.
166 Questionnaire to customers, question D.A.19.
167 Questionnaire to customers, question D.A.19.
168 Questionnaire to customers, question D.A.19.
169 Minutes of a call with a customer of 1 July 2024, paragraph 29.

innovative partners left in the market – the Parties however do have innovative capacities. Another issue could be that the reliability of the supply chain could become challenged, as the current supply base (four plants from the current two suppliers (the Parties)) could be reduced/plants be potentially closed'.[170]

(145) Another customer explains that it '*believes that the transaction will have a negative impact on its business because the parties together will be the only suppliers of aluminium trays (for animal and human feed) to the company*'.[171] It further explains that '[s]*hould the prices for aluminium trays increase after the merger due to the monopolistic pricing power of the merged company, this would represent a competitive disadvantage for the company. Currently both Constantia and AFP are a qualified supplier to the company, this would possibly change after a merger and the Company would no longer be able to have a two-supplier strategy*'.[172]

(146) Yet another customer submits that it '*has concerns with respect to the Transaction. The Company notes that usually when there is such a merger in the industry, the merged entity increases the price for its products immediately afterwards*'.[173] The customer further details this by explaining that '[c]*urrently, AFP and Constantia are independent and offer their products, including aluminium trays for wet food packaging, independently to the Company. The Company has different conditions […]. Post-Transaction the Company therefore expects an increase in the prices, as the market is very concentrated with currently only one competitor to the Parties active in Europe*'.[174]

(147) **Second**, also suppliers active in flexible aluminium packaging indicate that the Transaction is likely to have a negative impact with respect to retortable aluminium containers and lids for wet pet food in the EEA.

(148) One supplier in this context notes with respect to the Transaction that '[t]*he segment that the Company expects an impact on is aluminium trays for pet food, where Constantia is perceived by the Company as the market leader which will grow further by acquiring AFP*'.[175] Another supplier notes that the Transaction will lead to increased concentration in the pet food segment.[176] A further supplier explains that with respect to pet food, this is a '*market segment where Constantia and AFP have capacity that other players cannot match*'.[177]

(149) Therefore, market participants consider that the Transaction is likely to have a negative impact on competition with respect to retortable aluminium containers and lids for wet pet food in the EEA – in particular in the form of price increases for customers.

7.2.6. Conclusion

(150) Therefore, based on the findings described in this Section, the Commission concludes that the concentration raises serious doubts as to its compatibility with

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170 Minutes of a call with a customer of 1 July 2024, paragraph 30.
171 Minutes of a call with a customer of 21 August 2024, paragraph 18.
172 Minutes of a call with a customer of 21 August 2024, paragraph 19.
173 Minutes of a call with a customer of 16 July 2024, paragraph 17.
174 Minutes of a call with a customer of 16 July 2024, paragraph 18.
175 Minutes of a call with a competitor of 31 July 2024, paragraph 19.
176 Minutes of a call with a competitor of 16 October 2024, paragraph 16.
177 Minutes of a call with a competitor of 15 October 2024, paragraph 17.

the internal market with regard to aluminium retortable containers and lids for wet pet food in the EEA.

7.3. Retortable aluminium containers and lids for human food

7.3.1. The Parties have a very large combined market share

(151) Constantia and AFP both have a significant presence on the market for retortable aluminium containers and lids for human food in the EEA[178].

(152) **First**, as shown in Table 2 below, in 2023, Constantia had a [30-40]% market share, and AFP a [20-30]% market share. The Merged Entity therefore would have a very large combined market share of [50-60]%. Such a very large market share is an indication that the Transaction will lead to the creation of a dominant position.[179]

Table 2 – EEA market shares in retortable aluminium containers and lids for human food

Supplier	2023 market shares (value)
Constantia	[30-40]%
AFP	[20-30] %
Combined	[50-60]%
Amcor	[0-5]%
Al Pack	[0-5]%
Laminazione Sottile	[0-5]%
Plus Pack	[0-5]%
Alopak	[0-5]%
Formika	[0-5]%
Etimark	[0-5]%
Others	[0-15]%
Total	**100%**

Source: Form CO, Table 53.

(153) As shown in Table 2 above, the EEA market for retortable aluminium containers and lids for human food is highly concentrated. Constantia and AFP are by far the largest suppliers and their combination would be at least ten times larger than any other supplier active in the market. All other suppliers have market shares below 5%.

178 [details of the parties' sales]. The Parties' market position in the EEA and Switzerland should therefore not significantly differ from their market position in the EEA and, hence, the following assessment will be carried out at the level of the EEA.

179 Horizontal Merger Guidelines, paragraph 17.

(154) This very significant concentration is further reflected in the respective HHI values. Pre-Transaction, the HHI level is in the range of ["[2000-2500, 2500-3000]"].[180] Post-Transaction, the HHI level is in the range of ["[4500-5000, 5500-6000]"]. The HHI delta is in the range of ["[2000-2500, 2500-3000]"]. These levels are significantly above those identified in the Horizontal Merger Guidelines as indicative for the absence of concerns.[181] Indeed, these levels show that the market is already concentrated pre-Transaction, and that concentration will significantly increase post-Transaction.

(155) **Second**, AFP's internal documents describing its rival suppliers for retortable aluminium containers and lids for human food market in EEA confirms that [details of the parties' internal documents].[182]

(156) **Third**, the Commission's market investigation further confirms the strong market position of the Parties.

(157) When asked which suppliers are the largest for retortable aluminium containers and lids for human food in the EEA most of the customers who expressed a view in the market investigation consider that Constantia, Amcor and AFP are the largest.[183] Formika, Etimark, Alpack, Huhtamaki were mentioned to a lesser extent. This corresponds to the information provided by customers on the identify of the suppliers that submitted bids in response to their latest calls for tenders. The suppliers mentioned most frequently are Constantia, AFP and Formika; Al Pack is also mentioned by some customers, whereas other competitors are only mentioned once.[184]

(158) In describing the market position the Merged Entity would obtain post-Transaction, customers generally describe a situation similar to that reflected in the market shares described above in Table 2. While a competitor states that, through the Merged Entity, the Parties '*get very big and dominant*',[185] a customer explains that '[…] *the combined Constantia-Aluflexpack is very* [dangerous because] *a dominant entity on the market will be established and competitiveness will disappear*'.[186]

(159) Another customer states that '*Constantia-Aluflexpack* [would] *mean a very* [dominant position], *especially in our region*'.[187] Similarly, another customer notes that '*Constantia-Aluflexpack would be the* [main supplier] *in our* [category]. [I'm] *not aware of the* [proportion]. *For our very specific product a change to another supplier involves a lot of effort, so our goal was always and will be the long-term*

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180 Where only a range for the market share value is available, the midpoint of said range is used for the HHI calculation (i.e. for Amcor's [10-20]% market share, [10-20]% has been used). These "midpoint" market shares have been scaled to sum to 100% and the provided HHI ranges indicate the span between the cases of a. "Others" being assumed to be atomistic (as if they had a share of 0%), and b. "Others" being assumed to respectively be of the same size as the smallest firm for which an explicit value has been provided.

181 Horizontal Merger Guidelines, paragraph 20.

182 Form CO, Annex 16.2, slide 65.

183 Questionnaire to customers, question D.B.6.

184 Questionnaire to customers, question D.B.7.

185 Questionnaire to competitors, question D.B.11.

186 Questionnaire to customers, question D.B.11.

187 Questionnaire to customers, questions D.B.11 and D.B.12.

cooperation.'[188] A further customer refers to the Merged Entity as '[q]*uite dominant, but uncertain of the %*'.[189]

(160) Therefore, the Commission considers that the Parties have a very strong market position and a very large combined market share on the EEA market for retortable aluminium containers and lids for human food.

7.3.2. No alternative credible suppliers will remain on the market

(161) The Notifying Party submits that the segment for the supply of retortable aluminium containers and lids for human food is highly fragmented, with 13 other competitors present in this segment.[190] The Notifying Party particularly highlights Amcor, Al Pack, Laminazione Sottile, Plus Pack, Alopak, Formika and Etimark as significant competitors to the Parties on retortable aluminium containers and lids for human food, although with an estimated market share below 5% in all cases.[191] Other smaller competitors include, in the Notifying Party's view, Alibérico Group and Alucoval.[192]

(162) Based on these submissions by the Notifying Party, none of the companies currently active in the supply of retortable aluminium containers and lids for human food have a significant presence in this market and all of them are, in any event, more than ten times smaller than the Merged Entity post-Transaction.

(163) The lack of sizeable alternative competitors is also evident from the views of numerous customers responding to the Commission's market investigation, which consider that the number of suppliers of retortable aluminium containers and lids for human food in the EEA will not be sufficient post-Transaction.[193]

(164) Further, the fact that only few suppliers will be available on the market post-Transaction is also confirmed by the AFP internal document referred to in paragraph (155) above. That document shows that AFP [details of the parties' internal documents].

(165) Therefore, overall, already pre-Transaction no supplier other than the Parties appear to have sizeable activities on the retortable aluminium containers and lids for human food in the EEA. The Transaction will create a Merged Entity more than ten times larger than any other supplier in the EEA.

(166) Moreover, even if in the EEA there are alternative suppliers, they would not be able to switch to rival suppliers of aluminium containers/trays and lids for human food in case of a price increase post-Transaction, or would only be able to do so with difficulty (i.e. would take several months and/or entail significant costs).[194] For instance, a customer noted that '*any switch of supplier in packaging material needs to be going through a evaluation process (quality and line testing) and can take several months*'.[195]

188 Questionnaire to customers, question D.B.11 and D.B.12.
189 Questionnaire to customers, question D.B.11 and D.B.12.
190 Form CO, Table 51.
191 Form CO, paragraph 521 and Table 53.
192 Form CO, paragraph 522.
193 Questionnaire to customers, question D.B.13.
194 Questionnaire to customers, question D.B.14.
195 Questionnaire to customers, question D.B.15.

(167) Therefore, the Commission considers that there are no credible alternative suppliers of retortable aluminium containers and lids for human food in the EEA.

7.3.3. The Parties are competing closely

(168) The Notifying Party submits that '*the Parties are not close competitors. Among the Parties' top 20 customers for retortable human food containers and lids, which represent* [volume %] *and* [volume %] *of Constantia's and AFP's sales, respectively, there were only [details of the parties' sales]*.[196]

(169) However, the Commission's investigation shows that the Parties are competing closely in the EEA market for retortable aluminium containers and lids for human food.

(170) Indeed, the market investigation shows that customers generally only receive bids from a handful of potential suppliers when they launch calls for tenders and that Constantia and AFP are, together with Formika, the most active bidders in the EEA for retortable aluminium containers and lids for human food.[197] The Parties' internal documents also confirm strong competition between them in this segment. For instance, an internal document from AFP discussing market information for human food containers identifies '[details of the parties' internal documents] as a business opportunity.[198]

(171) The market investigation further confirms that the Parties are considered to be close competitors. Generally, most customers who expressed their view in the market investigation consider AFP to be Constantia's closest competitor.[199] Similarly, most customers who expressed their view in the market investigation consider Constantia to be AFP's closest competitor.[200]

(172) Therefore, the Commission considers that the Parties are competing closely in the market for retortable aluminium containers and lids for human food in the EEA.

7.3.4. Barriers to entry and expansion are significant

(173) The Notifying Party argues that companies active in the supply of retortable aluminium containers and lids for wet pet food can easily start supplying retortable aluminium containers and lids for human food.

(174) In particular, the Notifying Party submits that '*as explained in more detail below, the manufacturing equipment and process for retort flexible packaging for pet food is the same as for other food applications (e.g., retort flexible packaging for human food, coffee capsules, etc.). Suppliers can thus easily shift capacity to the production of retort flexible packaging for pet food without the need to purchase new equipment. On several occasions both Constantia and AFP have used the same machines for e.g., retort human food, pet food and coffee capsules'*.[201] Further, the Notifying Party explains that *'players who are already active in retort flexible packaging for human food applications (e.g., ready-made food) can easily*

[196] Form CO, paragraph 523.
[197] Questionnaire to customers, question D.B.7.
[198] Form CO, Annex 16.2, page 64.
[199] Questionnaire to customers, question D.B.9.
[200] Questionnaire to customers, question D.B.10.
[201] Form CO, paragraph 579.

shift capacity to the production of retort flexible packaging for pet food without the need to purchase new equipment'.[202]

(175) The Commission's market investigation, however, revealed that barriers to entry in the retortable aluminium containers and lids for human food market in the EEA are significant.

(176) **First**, as explained in paragraphs (125) to (128) above, market participants describe a situation where EEA is a centre of competence for aluminium packaging generally, and retortable aluminium containers and lids in particular. Supply from other regions is not a credible alternative. In light of these submissions, it appears that entry into the EEA market for retortable aluminium containers and lids for human food from outside the EEA is unlikely.

(177) **Second**, market participants responding to the Commission's market investigation describe barriers to entry to be significant, making timely entry unlikely.

(178) A majority of the competitors who expressed their view in the market investigation considers that barriers to entry in the retortable aluminium containers and lids for human food market are moderate or high.[203] A majority of the customers who expressed their opinion also share this view.[204]

(179) **Third**, the Commission's market investigation did not reveal any entry plans into this segment. None of the suppliers of aluminium flexible packaging that responded to the market investigation and which are not currently active in retortable aluminium containers and lids for human food indicated that it would enter this segment in a short matter of time.[205] The majority of competitors of the Parties that expressed an opinion could not enter or expand their supply in retortable aluminium containers and lids for human food easily or in a short matter of time.[206] Only two competitors of the Parties already active in this segment responded that they could expand their supply easily and in a short matter of time. Customers also confirm that suppliers of retort aluminium containers/trays and/or lids for human food in the EEA could not easily or in a short matter of time significantly increase their supply, if at all.[207]

(180) Asked whether in case of a 5-10% price increase for retortable aluminium containers and lids for human food post-Transaction they would enter into the production and supply of this product, only one supplier indicated that it would do so. It however has to be noted that this supplier expects entry to take 18 to 24 months and entail an investment of EUR 10 to 15 million.[208]

(181) Therefore, the Commission considers that barriers to entry for the retortable aluminium containers and lids for human food market in the EEA are significant, and timely and sufficient entry is unlikely.

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202 Form CO, paragraph 555.
203 Questionnaire to competitors, question E.2.
204 Questionnaire to customers, question E.2.
205 Questionnaire to competitors, question E.4.
206 Questionnaire to competitors, question E.4.
207 Questionnaire to competitors, question D.B.15.
208 Questionnaire to competitors, question E.7.

7.3.5. Market participants expect the Transaction to likely have a negative impact

(182) According to several market participants, the Transaction would likely have a negative impact on competition in the EEA market for retortable aluminium containers and lids for human food. In particular customers (producers of human food) would likely have significantly less choice and face higher prices.

(183) **First**, several customers have indicated that, post-Transaction, their choice of suppliers will be substantially reduced. In this respect, a customer notes that following the Transaction there will be '[l]*ess competition on aluminum containers and they will benefit from a dominant position'*.[209] Another customer notes that, post-Transaction, it will only be able to supply from the Merged Entity: '[t]*he company believes that the transaction will have a negative impact on its business because the parties together will be the only suppliers of aluminium trays (for animal and human feed) to the company.* […] *Currently both Constantia and AFP are a qualified supplier to the company, this would possibly change after a merger and the Company would no longer be able to have a two-supplier strategy'*.[210] Similarly, a competitor notes that the Transaction will give rise to '[l]*ess competition and* [it will be] *more difficult for customers to find alternatives'*.[211]

(184) **Second,** several customers of retortable aluminium containers and lids for human food that expressed a view expect the Transaction to have a negative impact on their businesses.[212]

(185) **Third**, the views of customers that expressed an opinion are not conclusive with respect to the impact of the Transaction on prices, but a slight majority expects it to lead to price increases.[213] For instance, a customer submits that '[a]*n increase of prices would be probable*' post-Transaction.[214]

(186) Therefore, several market participants consider that the Transaction is likely to have a negative impact on competition with respect to the market for retortable aluminium containers and lids for human food in the EEA.

7.3.6. Conclusion

(187) Therefore, based on the findings described in this Section, the Commission concludes that the concentration raises serious doubts as to its compatibility with the internal market with regard to aluminium retortable containers and lids for human food in the EEA.

7.4. Aluminium lidding foil for dairy

7.4.1. The Parties have a moderate combined market share

(188) The Notifying Party submits that the Parties hold a moderate combined market share below 30% in a very fragmented market.

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209 Questionnaire to customers, question D.B.19.
210 Minutes of a call with a customer of 21 August 2024, paragraphs 18 and 19.
211 Questionnaire to competitors, question D.B.20.
212 Questionnaire to customers, question D.B.21.
213 Questionnaire to customers, question D.B.20.
214 Questionnaire to customers, question D.B.19.

(189) As shown in Table 3 below, in 2023, Constantia had a [20-30]% market share in the EEA and AFP a [5-10]% market share in the EEA. The Merged Entity therefore would have a moderate combined EEA market share of [20-30]%, with a modest increment of [5-10]%.[215]

Table 3 – EEA market shares in aluminium lidding foil for dairy

Supplier	2023 market shares (value)
Constantia	[20-30]%
AFP	[5-10]%
Combined	[20-30]%
Formika	[10-20]%
Al Pack	[5-10]%
Amcor	[5-10]%
Clondalkin Group	[0-5]%
Danapak Flexibles (adapa)	[0-5]%
Pyroll	[0-5]%
Rattpack	[0-5]%
NYCO	[0-5]%
Alinvest/Metalimex	[0-5]%
Symetal	[0-5]%
Derschlag	[0-5]%
Ballerstaedt & Co. OHG	[0-5]%
Etimark	[0-5]%
Others	[0-5]%
Total	**100%**

Source: Form CO Table 84.

(190) For the following reasons, the Commission considers that the Parties have a moderate presence in the EEA for aluminium lidding foil for dairy products.

(191) **First**, the combined market share of the Parties in the EEA ([20-30]%) is moderate and remains well below the indicative thresholds of dominance in the Guidelines.[216] The increment brought by AFP is also moderate ([5-10]%). In addition, while the Merged Entity will be the market leader post-Transaction, sizeable competitors of a bigger or of a similar size to AFP will remain active on the market.

[215] The Parties combined market shares are almost identical at the level of the EEA ([20-30]%) and at the level of the EEA and Switzerland ([20-30]%), so this section will conservatively focus on the narrowest plausible market, the EEA.

[216] Horizontal Merger Guidelines, paragraph 17.

(192) **Second**, internal documents confirm that the market is not concentrated [details of the parties' internal documents].[217]

(193) **Third**, the market investigation confirmed that the combined market position of the Parties on the market for aluminium lidding foil for dairy in the EEA is as described in Table 3.[218] It also appears from the market investigation that many large competitors will remain active in the market for aluminium lidding foil for dairy post-Transaction.[219] As explained by a competitor in the market investigation, '*There will be sufficient number of big relevant suppliers however less than before transaction'*.[220]

(194) Therefore, the Commission considers that the Parties have a moderate market position and will have a moderate combined market share on the EEA market for aluminium lidding foil for dairy post-Transaction.

7.4.2. Sufficient alternative suppliers remain on the market post-Transaction

(195) The Notifying Party submits that a large number of strong competitors included in Table 3 above will continue to exert competitive pressure over the Merged Entity post-Transaction. Many of these competitors are supplying already some of the Parties' customers.[221]

(196) The Commission considers that sufficient alternative suppliers of aluminium lidding foil for dairy will remain on the market for the following reasons.

(197) **First**, while market participants submitted that Constantia and AFP are both important suppliers of aluminium flexible packaging for dairy, they confirmed the presence of multiple competitors on the market that could challenge the Parties post-Transaction.[222] A competitor described the competition on the market for dairy lidding as follows: '*there are five to six large competitors on the market including the Company itself, Amcor and the Parties. Other players include Alpack in Serbia, Nyco in Switzerland, Delta Packaging, Aurika in Lithuania and Rotaprint in Romania, Chadwicks in UK, Jaszplastic, Radaflex, Allinvest, Pyroll Finland*.'.[223] Besides the Parties, the market participants named in particular Amcor and Formika as the two other main suppliers of aluminium flexible packaging for aluminium lidding foil for dairy.[224] One customer for example noted that '*[The] Polish company Formika – is well known for its dairy lids and products*'.[225] A competitor also mentioned Aluberg as one of the most important players in the production of aluminium lidding foil for dairy.[226] In addition to the companies listed in Table 3, it appears from the market investigation that Alu-Lids, Carcano, and Laminazione Sottile also compete with the parties on the market for aluminium lids and lidding foil for dairy.[227]

217 Form CO, Annex 16.2, page 35.
218 Questionnaire to competitors, question D.D.7. Questionnaire to customers, question D.D.5.
219 Questionnaire to competitors, question D.D.7. Questionnaire to customers, question D.D.5.
220 Questionnaire to competitors, question D.D.12.1.
221 Form CO, paragraphs 754 and 756.
222 Questionnaire to customers, question D.D.5. Questionnaire to competitors, question D.D.7.
223 Minutes of a call with a competitor of 16 October 2024, paragraph 8.
224 Questionnaire to customers, question D.D.5. Questionnaire to competitors, question D.D.7.
225 Minutes of a call with a customer of 1 July 2024, paragraph 23.
226 Minutes of a call with a competitor of 15 October 2024, paragraph 11.
227 Questionnaire to competitors, question A.1.

(198) **Second**, customers listed numerous companies other than the Parties that submitted bids in response to their latest call for tenders demonstrating that the Parties will continue to face competition from numerous rivals post-Transaction such as: Amcor, Print and Packaging, Vedreine, Aluberg, Huhtamaki, Seda, Deltaplast, DerSchlag, Formika, Alpack, Ballerstaedt, Etimark, EMSUR, Instituto Stampa, Alucart, Italcoat, Ecorproduct, and the Pyroll Group. Alpack, Amcor, DerSchlag, Etimark, and Formika are important competitors of the Parties because they are particularly present in tenders. [228]

(199) **Third**, all competitors, not only the large suppliers, will continue to constrain the Parties post-Transaction. The majority of customers consider that, in principle, they can purchase aluminium lidding foil for dairy products from any type of supplier in the EEA.[229] One customer noted that '*We can purchase from any type of supplier in the EEA, from certified and financially sound players*'. The majority of the competitors who expressed their opinion also confirmed that they could supply any type of customer.[230] One competitor explained that *'dairy customers do not take into account the size of their supplier and that sometimes they even prefer smaller players as they can usually deliver faster. The Company concludes that SMEs are all able to penetrate the market and thus to compete and that the market is quite fragmented*'.[231]

(200) **Fourth**, the majority of the customers and competitors who expressed their opinion consider that the number of suppliers of aluminium lidding foil for dairy will remain sufficient post-Transaction.[232] One customer who indicated that there will be many suppliers left, clarifies that '[t]*he merger of two major players (Constantia and Aluflexpack) may reduce the overall number of key suppliers, but this does not necessarily mean there will be a lack of supply*'.[233] Another customer for example mentions that '*in our opinion there are various suppliers of aluminium lids/lidding foil for dairy products in the EEA*'.[234] A competitor of the Parties further explains that the '[c]*ombined position will be relatively strong however there are many other players and even more smaller local players on EEA market*'.[235] Likewise, another customer submits that '[i]*n the Company's view, there are alternatives to the Parties. There are sufficiently qualified suppliers to satisfy its demand'*.[236]

(201) **Finally**, all competitors and the vast majority of customers who expressed their opinion indicate that there is spare capacity in the market.[237] Two competitors, for instance, confirmed that they have spare capacity of up to 5% and 5-10% respectively.[238] This was also confirmed by a customer noting that: '[s]*pare capacity should not be an issue, the alternative suppliers of aluminium lids for dairy mentioned above have sufficient spare capacity*'.[239]

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[228] Questionnaire to customers, question D.D.6.
[229] Questionnaire to customers, question D.D.3.
[230] Questionnaire to competitors, question D.D.4.
[231] Minutes of a call with a competitor of 16 October 2024, paragraph 5.
[232] Questionnaire to customers, question D.D.11. Questionnaire to competitors, question D.D.12.
[233] Questionnaire to customers, question D.D.11.1.
[234] Questionnaire to customers, question D.D.11.1.
[235] Questionnaire to competitors, question D.D.11.
[236] Minutes of a call with a customer of 27 September 2024, paragraph 16.
[237] Questionnaire to customers, question D.D.14. Questionnaire to competitors, question D.D.18.
[238] Questionnaire to competitors, question D.D.16.
[239] Minutes of a call with a customer of 27 September 2024, paragraph 15.

(202) Therefore the Commission concludes that sufficient alternative suppliers of aluminium lidding foil for dairy will remain on the market for aluminium lidding foil for dairy in the EEA post-Transaction.

7.4.3. Switching is possible and barriers to entry and expansion are not significant

(203) The Notifying Party submits that customers can easily switch to other suppliers. In particular, the Notifying Party submits that '[d]*airy suppliers multi-source aluminium lidding from several suppliers. The same holds true for the Parties' common customers which have at least two other qualified suppliers to which they can easily switch in the case of a price increase by the Parties post-Transaction.*'[240]

(204) The Commission's market investigation shows that switching suppliers is possible and that barriers to entry and expansion are not significant.

(205) **First**, the Commission considers that customers will still be able to switch to alternative suppliers of aluminium lidding foil for dairy post-Transaction. All but one of the market participants who expressed their opinion consider that switching to rival suppliers is possible, although a majority of the customers indicate that they could only do so with difficulty, mostly due to the need to requalify the new material.[241] One customer who considers switching to rival suppliers to be easy explains that '*We could switch to other suppliers relatively fast (i.e. 6 months maximum)*'.[242] The Parties' competitors share this view.[243] For example, a competitor notes that '*there is relatively high bargaining power of customers and switch to different supplier does not require more than 6months, usually 3months if prioritized*'.[244] Another competitor noted that dairy customers are already looking to switch to them: '*Actually, now customers turn to the Company in order to have an alternative supplier to the potential merged entity. When a customer is supplied from two suppliers that merging now, the customer really wants and needs to have another new supplier*'.[245]

(206) **Second**, barriers to expansion are limited as competitors indicate they could easily and significantly increase supply. Indeed, all competitors already active in the dairy segment submitted that they could significantly increase supply.[246] A majority of them indicates that they could do so easily and in a short matter of time.[247] One competitor for instance is considering to expand its dairy business: '*The Company is a small to middle supplier, for now, it is bigger in Germany but wants to enter Italy and France in the next couple of years (although Constantia and AFP are quite competitive in those countries)*'.[248]

(207) **Third**, it appears from the market investigation that barriers to entry are not significant. Customers and competitors indicate that the barriers to entry are moderate while a sizeable minority of competitors even considers them to be

240 Form CO, paragraph 761.
241 Questionnaire to customers, question D.D.12. Questionnaire to competitors, question D.D.14.
242 Questionnaire to customers, question D.D.12.1.
243 Questionnaire to competitors, question D.D.14.
244 Questionnaire to competitors, question D.D.13.
245 Minutes of a call with a competitor of 30 July 2024, paragraph 15.
246 Questionnaire to competitors, question D.D.15.
247 Questionnaire to competitors, question E.4.
248 Minutes of a call with a competitor of 30 July 2024, paragraph 13.

low.[249] One customer explained that: '*With the continued demand for dairy products and packaging solutions, suppliers are likely to keep entering the market or expanding their operations, ensuring that supply remains competitive and diverse*'.[250]

(208) For the reasons above, the Commission concludes that customers can switch sufficiently to a number of alternative suppliers of aluminium lidding foil for dairy post-Transaction and that the barriers to entry and expansion are not significant.

7.4.4. The Transaction is not likely to have a negative impact

(209) The Notifying Party submits that the Transaction cannot lead to anti-competitive effects with respect to aluminium lidding for dairy for the following four reasons. First, the Parties' combined market share in the EEA is modest. Second, a large number of strong competitors will continue to exert competitive pressure over the Merged Entity post-Transaction. Third, customers (dairy companies) have substantial buyer power. Fourth, suppliers of lidding for all food end-use applications exert competitive pressure.[251]

(210) The Commission considers that the Transaction is not likely to have a negative impact on the EEA market for aluminium lidding foil for dairy. The majority of the customers and competitors who expressed an opinion attested that they do not expect the Transaction to have a negative impact on competition in relation to prices, quality, innovation, sustainability, product offering, lead time, supply resilience, or customer service on aluminium lidding foil for dairy.[252] One customer of aluminium lidding foil for dairy, for example, describes how '*The combined company might have more resources to invest in sustainable practices, including eco-friendly materials and more efficient production processes. This could drive a positive impact on sustainability standards in the market'*.[253] Moreover, the majority of competitors that expressed an opinion do not foresee any negative impact on their company arising from the Transaction.[254] One competitor in aluminium lidding foil for dairy described the impact of the Transaction as follows: '*the Transaction would not have a negative impact on its business [...]. The Company considers that the only impact of the transaction could be that the Parties' customers could face a situation where the Parties do not supply them anymore but* [the Company] *expects that those customers would be able to ask other large players to supply instead.* […] *The Company suspects that customers have a supplier base for flexible packaging in the dairy industry of between twenty to forty companies.* [The Company] *considers the market too big for them to be concerned'*.[255] For customers the results were not conclusive but a slim majority of them still considers the Transaction will have either no impact on them or that it could even have a positive impact.[256]

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249 Questionnaire to customers, question E.2. Questionnaire to competitors, question E.2.
250 Questionnaire to customers, question D.D.11.
251 Form CO, paragraph 764.
252 Questionnaire to customers, question D.D.18. Questionnaire to competitors, question D.D.22.
253 Questionnaire to customers, question D.D.18.
254 Questionnaire to competitors, question D.D.23.
255 Minutes of a call with a customer of 16 October 2024, paragraph 15.
256 Questionnaire to customers, question D.D.19.

(211) Some market participants even expect the Transaction to have a positive impact on their company.[257] A competitor in aluminium lidding foil for dairy for instance remarked that: '*the Transaction may result in a potential positive impact on its activities. It may be a good opportunity for further growth as customers would like to have a new supplier not to depend on the merged entity'*.[258] Two customers procuring aluminium lidding foil for dairy also consider that the Merged Entity will be able to better compete against the market leader Amcor.[259]

(212) Therefore, the Commission concludes that the Transaction is not likely to have a negative impact on the market for aluminium lidding foil for dairy in the EEA.

7.4.5. Conclusion

(213) Therefore, the Commission concludes that the concentration does not raise serious doubts as to its compatibility with the internal market with regard to the supply of aluminium lidding foil for dairy in the EEA.

7.5. Aluminium foil for confectionery

7.5.1. The Parties have a moderate combined market share

(214) The Notifying Party submits that the Parties have a moderate combined market share of [30-40]% in the EEA.

(215) As shown in Table 4 below, in 2023, Constantia had a [20-30]% market share in the EEA and AFP a [10-20]% market share in the EEA. The Merged Entity therefore would have a moderate combined EEA market share of [30-40]%, with a modest increment of [10-20]%.[260]

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257 Questionnaire to customers, question D.D.19.

258 Minutes of a call with a competitor of 30 July 2024, paragraph 17.

259 Questionnaire to customers, question D.D.17.

260 The Parties combined market shares are very similar at the level of the EEA ([30-40]%) and at the level of the EEA and Switzerland ([30-40]%), so this section will conservatively focus on the narrowest plausible market, the EEA.

Table 4 – EEA market shares in aluminium foil for confectionery

Supplier	2023 market shares (value)
Constantia	[20-30]%
AFP	[10-20]%
Combined	[30-40]%
Carcano	[10-20]%
Symetal	[10-20]%
Amcor	[5-10]%
Adapa	[5-10]%
WZ Packaging	[0-5]%
Ispak	[0-5]%
CySa-Pak	[0-5]%
Leeb Folien	[0-5]%
Others	[0-5]%
Total	**100%**

Source: Form CO, Table 75.

(216) For the following reasons, the Commission considers that the Parties have a moderate presence in the EEA for aluminium foil for confectionery.

(217) **First**, the combined market share of the Parties in the EEA ([30-40]%) is moderate and remains below the indicative thresholds of dominance in the Guidelines.[261] The increment brought by AFP is also moderate ([10-20]%). In addition, while the Merged Entity will be the market leader, numerous will remain active on the market, some of them bigger or of a similar size to AFP.

(218) **Second**, internal documents confirm that the market is highly fragmented and that there are strong players such as [details of the parties' internal documents] active in this market, which offer high quality aluminium foil for confectionery in competition with the Parties.[262]

(219) **Third**, the market investigation confirmed that, in general, the combined market position of the Parties on the market for aluminium foil for confectionery in the EEA will remain as described in Table 4. The Transaction does not appear to change significantly the market position of Constantia.[263] It also appears from the market investigation that several large competitors (e.g. Amcor, Symetal, Carcano) will remain active in the market for aluminium foil for confectionery post-Transaction.[264] A competitor described the market position of the Merged Entity

261 Horizontal Merger Guidelines, paragraph 17.
262 Form CO, Annex 16.2, page 27.
263 Questionnaire to competitors, question D.E.5-1. Questionnaire to customers, question D.E.5-1.
264 Questionnaire to competitors, question D.E.5-1. Questionnaire to customers, question D.E.5-1.

post-Transaction as follows: '*strong position with other strong relevant players on the market – sufficient[ly] competitive market environment*'[265].

7.5.2. Sufficient alternative suppliers remain on the market post-Transaction

(220) The Notifying Party submits that a large number of strong competitors included in Table 4 above will continue to exert competitive pressure over the Merged Entity post-Transaction. Many of these competitors are already supplying some of the Parties' customers.[266]

(221) The Commission considers that sufficient alternative suppliers of aluminium foil for confectionery will remain on the EEA market for the following reasons.

(222) **First**, while market participants submitted that Constantia and AFP are both important suppliers of aluminium foil for confectionery, they confirmed the presence of multiple competitors on the market that could challenge the Merged Entity post-Transaction.[267] Besides the Parties, market participants named in particular Amcor, Carcano, and Symetal as the other main suppliers of aluminium flexible packaging for confectionery.[268] One customer considers that '*Carcano is capable of delivering the same or comparable technical characteristics for aluminium foil packaging as the Parties and passed the extensive quality and efficiency checks*'.[269] The same customer noted that *'other potential large suppliers for confectionery foil in Europe are Elval (part of Viohalco)'*.[270] In addition to the companies listed in Table 5, it appears from the market investigation that Laminazione Sottile and Alu-Lids also compete with the Parties on the market for aluminium foil for confectionery.[271]

(223) **Second**, customers listed numerous companies other than the Parties that submitted bids in response to their latest call for tenders demonstrating that the Merged Entity will continue to face competition from numerous rivals post-Transaction. The Companies listed by the customers include the following: Amcor, Carcano, Ispak, Metalimex, Symetal, and WZ Packaging. Amcor, Carcano, and Symetal are important competitors of the Parties because they are particularly active in tendering.[272]

(224) **Third**, the majority of the customers and competitors who expressed an opinion consider that, post-Transaction, the number of suppliers of aluminium foil for confectionery will remain sufficient.[273] One customer explained that '*there are several smaller players still operating in the market*'.[274] Another customer explained that '[f]*or now, the Company can source unprinted aluminium foil for confectionary applications from up to six companies (Amcor, Constantia, Symetal, Carcano, Metalimex and AFP) and printed aluminium foil for confectionary*

265 Questionnaire to competitors, question D.E.9-1.
266 Form CO, paragraphs 683 and 686.
267 Questionnaire to customers, question D.E.5-1. Questionnaire to competitors, question D.E.5-1.
268 Questionnaire to customers, question D.E.5-1. Questionnaire to competitors, question D.E.5-1.
269 Minutes of a call with a customer of 27 August 2024, paragraph 18.
270 Minutes of a call with a customer of 27 August 2024, paragraph 20.
271 Questionnaire to competitors, question A.1.
272 Questionnaire to customers, question D.E.6.
273 Questionnaire to customers, question D.E.11.1. Questionnaire to competitors D.E.10.1.
274 Questionnaire to customers, question D.E.11.1.

applications from up to six companies (Amcor, Constantia, Carcano, Metalimex, AFP and CysaPak).'[275]

(225) **Finally**, all market participants who expressed an opinion indicate that there is spare capacity on the market.[276] One competitor confirmed that it has 10% spare capacity whereas another competitor indicated that it has a spare capacity of 6.000 tons.[277]

(226) Therefore, the Commission concludes that sufficient alternative suppliers will remain on the market for aluminium foil for confectionery in the EEA post-Transaction.

7.5.3. Switching is possible and barriers to entry and expansion are not significant

(227) The Notifying Party submits that there are multiple alternative suppliers to which customers will be able to switch post-Transaction. The ease with which customers can switch to alternative suppliers is evidenced by the fact that many of the top confectionery suppliers in the EEA have several active suppliers of confectionery foil. For example, [details of the parties' customers].[278] The Notifying Party also submits that entry or expansion in the supply of confectionery foil is easy because of the simplicity of the production process.[279] The Notifying Party further argues that a new entrant is not required to be vertically integrated into rolling or lacquering to start supplying confectionery foil.[280] Similarly, the purchase of a lacquering machinery is not required for the successful entry into the segment for the supply of confectionery foil.[281] Last, many flexible packaging suppliers already have the required printing and embossing capabilities.[282]

(228) The Commission's market investigation shows that switching suppliers is possible and that barriers to entry and expansion are not significant.

(229) **First**, the Commission considers that post-Transaction, customers will still be able to switch to alternative suppliers of aluminium foil for confectionery. All but one of the market participants who expressed their opinion consider that switching to rival suppliers of aluminium foil for confectionery is possible, although half of the customers indicate that they could only do so with difficulty.[283] One customer explains that they consider switching to be easy as '[w]*e have other suppliers in our pool who are delivering aluminium structures and* [who are] *qualified for deliveries to our company, so we can relatively fast switch to a* [competitor].'[284] This is confirmed by another customer who submitted that they recently and successfully started a new cooperation with Carcano.[285]

(230) **Second**, barriers to expansion are limited as competitors indicate they could increase supply. Indeed, all but one of the competitors already active in the

[275] Minutes of a call with a customer of 8 August 2024, paragraph 8.
[276] Questionnaire to customers, question D.E.14. Questionnaire to competitors, question D.E.14.
[277] Questionnaire to competitors, question D.E.14.
[278] Form CO, paragraph 688.
[279] Form CO, paragraph 693.
[280] Form CO, paragraph 694.
[281] Form CO, paragraph 695.
[282] Form CO, paragraph 696.
[283] Questionnaire to customers, question D.E.12. Questionnaire to competitors, question D.E.11.
[284] Questionnaire to customers, question D.E.12.1.
[285] Minutes of a call with a customer of 27 August, paragraph 18.

confectionery segment submitted that they could significantly increase supply.[286] Half of the competitors that could increase supply indicate that they could do so easily and in a short time.[287] One competitor who could easily and in a of time increase its supply notes that: '[n]*o significant barriers would be faced'*.[288]

(231) **Third**, it appears from the market investigation that barriers to entry are not significant. The majority of competitors consider barriers to entry to be moderate and half of the customers perceive barriers to entry as moderate or low.[289] One customer explained that: '[r]*equirements and barriers for confectionary are not significant and common for any industry: quality and supply requirements; long qualification timings on the production lines of customers for new commers*'.[290]

(232) For the reasons above, the Commission concludes that customers can switch to a sufficient number of alternative suppliers of aluminium foil for confectionary post-Transaction and that the barriers to entry and expansion are not significant.

7.5.4. The Transaction is not likely to have a negative impact

(233) The Notifying Party submits that the Transaction does not give rise to competitive concerns, given the Parties' moderate combined market share in the EEA and the large number of strong competitors which will continue to exert competitive pressure over the Merged Entity post-Transaction.[291]

(234) The Commission considers that the Transaction is not likely to have a negative impact on the EEA market for aluminium foil for confectionery. The majority of the market participants that expressed an opinion attested that they do not expect the Transaction to have a negative impact on competition in relation to prices, quality, innovation, sustainability, product offering, lead time, supply resilience, or customer service of aluminium foil for confectionary.[292] Moreover, the majority of the market participants that expressed an opinion do not foresee any negative impact on their company arising from the Transaction.[293] A customer of confectionery foil for instance explained that '[t]*he Company does not expect the Transaction to have a big impact on its business and its aluminium packaging procurement.*'[294]

(235) Some market participants even expect a positive impact on their company.[295] One customer of confectionery foil for instance notes that the Transaction '*could lead to a stronger financial base and more resources for research and development. This could encourage innovation and improvements in product quality*.'.[296] A customer of confectionery foil for instance explained that '*It also sees a potential positive*

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286 Questionnaire to competitors, question D.E.12.
287 Questionnaire to competitors, question E.4.
288 Questionnaire to competitors, question D.E.12.1.
289 Questionnaire to competitors, question E.2. Questionnaire to customers, question E.2.
290 Questionnaire to customers, question E.3.
291 Form CO, paragraph 683.
292 Questionnaire to customers, question D.E.18. Questionnaire to competitors, question D.E.18.
293 Questionnaire to customers, question D.E.19. Questionnaire to competitors, question D.E.19.
294 Minutes of a call with a customer of 27 August 2024, paragraph 27.
295 Questionnaire to customers, question D.E.19. Questionnaire to competitors, question D.E.19.
296 Questionnaire to customers, question D.E.17. Courtesy translation from the original German: '*Auf der positiven Seite könnte die Übernahme zu einer stärkeren finanziellen Basis und mehr Ressourcen für Forschung und Entwicklung führen. Dies könnte Innovationen und Verbesserungen in der Produktqualität fördern*'.

outcome as the Company would be able to optimize the location of their supplies' sites.'[297]

(236) Therefore, the Commission concludes that the Transaction is not likely to have a negative impact on the market for aluminium foil for confectionary in the EEA.

7.5.5. Conclusion

(237) Therefore, the Commission concludes that the concentration does not raise serious doubts as to its compatibility with the internal market with regard to the supply of aluminium foil for confectionary in the EEA.

7.6. Aluminium blister lidding for pharmaceutical applications

(238) Both Parties are active in the supply of aluminium printed blister lidding in the EEA and, to a very limited extent, in Switzerland. For completeness, AFP made some *de minimis* spot sales of unprinted blister lidding for pharmaceutical applications in 2023,[298] [details of the parties' sales]. These *de minimis,* exceptional sales give rise to a negligeable increment of [0-5]% in a hypothetical market for unprinted blister lidding and, hence, do not significantly alter Constantia's market position pre-Transaction. For these reasons, this Section will not assess the overlap between the Parties' activities in unprinted aluminium blister lidding.[299]

(239) From a geographical point of view, the conditions of competition and the Parties' combined market shares are almost identical at the level of the EEA ([30-40]%) and at the level of the EEA and Switzerland ([30-40]%). Hence, this Section will conservatively focus on the narrowest plausible market, the EEA.

7.6.1. The Parties have a moderate combined market share

(240) The Parties have a moderate combined market share in the EEA for the supply of aluminium blister lidding for pharmaceutical applications, in general, and printed, specifically.

(241) **First**, as seen in Table 5 below, in 2023 Constantia had a [30-40]% market share, and AFP a [0-5]% market share in blister lidding for pharmaceutical applications. The Merged Entity therefore would have a moderate combined market share of [30-40]%. The Parties' combined market share for printed blister lidding for pharmaceutical applications is even more modest. In 2023, Constantia had a [20-30]% market share, and AFP a [0-5]% market share in this segment. Therefore, the Merged Entity would have a moderate combined market share of [30-40]%. It follows that the combined market share post-Transaction would be below the indicative thresholds in the Guidelines indicating significant market power in both cases.[300] Moreover, the increment brought by AFP is also very limited for both potential markets. In addition, while the Merged Entity will become the market leader, sizeable competitors of a bigger or of a similar size to AFP will remain active on the market, for both blister lidding and printed blister lidding as shown in the Table below.

297 Minutes of a call with a customer of 27 August 2024, paragraph 27.

298 Response to RFI 18, question 4: In 2024, AFP also had *de minims* spot sales (approx. EUR [details of the parties' sales]) of unprinted blister lidding mainly [details of the parties' customers]

299 Form CO, paragraph 420 and Table 45.

300 Horizontal Merger Guidelines, paragraph 17.

Table 5 – Market shares in aluminium blister lidding in the EEA for 2023 (value).

Supplier	Blister lidding	Printed blister lidding[301]
Constantia	[30-40]%	[20-30]%
AFP	[0-5]%	[0-5]%
Combined	[30-40]%	[30-40]%
Amcor	[20-30]%	[10-20]%
Aluberg	[5-10]%	[0-5]%
Carcano	[0-5]%	[0-5]%
Symetal	[0-5]%	[0-5]%
MTC Polska	[0-5]%	[5-10]%
EURPACK GRAFIFARMA PRAFIFLEX	[0-5]%	[5-10]%
Schulz Flexgroup	[0-5]%	[0-5]%
Formika	[0-5]%	[0-5]%
PRINTFA	[0-5]%	[0-5]%
Others	[20-30]%[302]	[20-30]%
Total	**100%**	**100%**

Source: Form CO, Table 47 and Annex 19.

(242) **Second**, internal documents confirm that the blister lidding market for pharmaceutical applications is not concentrated in the EEA and that there are strong players, such as [details of parties' internal documents].[303] [Details of parties' internal documents].[304]

(243) **Third**, the Commission's market investigation confirmed that in general the combined market position of the Merged Entity on the EEA market for blister lidding will remain moderate due to the small increment brought by AFP, and that the Merged Entity will be challenged by numerous competitors. The majority of customers who expressed their opinion consider Amcor to be the strongest supplier of blister lidding in the EEA. AFP, on the other hand, is only ranked by one customer among the top five EEA suppliers of blister lidding for pharmaceutical applications, confirming its limited presence in this market.[305]

301 Response to RFI 18, question 5: Updated table 47 including competitors' shares in the EEA for 2023

302 Others include Laminazione Sottile, Enteco, Al Pack, Flexsotisk Logar, Essentra (Mayr Melnhof), Schluelter Print Pharma, Modulgrafica Pharma, Pharmalabel, Vandeweghe, Litobalkan, Sofprint, Demax, Livcer, Tilwel, Lysipack, Trewe Print, Drucktechnik Weinstadt GbR, Druckerei Bremberger, TS Converting Ltd, ETPA, Morfi Ltd, Japiva Nyomdaipari KFT, Katai Press KFT, Vorumerking, Paxxus Teo, Conter (Di Mauro), Print & Packaging (Gualapack), Palladio Zannini, Drukarnia Millenium, Alulids, S,C. ABC-Impex S.R.L., Deico Tipografia S.R.L. and Rotorprint.

303 Form CO, Annex 16.2, pages 52 and 53.

304 Form CO, Annex 16.2, pages 52 and 53.

305 Questionnaire to customers, question DF5.

(244) In relation to printed blister lidding, as explained in paragraphs (246) to (258) below, the market investigation confirms that this potential market is not concentrated with strong players like Amcor active in it.

(245) Therefore, the Commission concludes that the Parties have a moderate combined market share with a small increment in the market for aluminium blister lidding for pharmaceutical applications in the EEA, as well as on a potential market for printed aluminium blister lidding for pharmaceutical applications in the EEA.

7.6.2. Sufficient alternative suppliers remain on the market post-Transaction.

(246) The Notifying Party argues that post-Transaction, a large number of players will continue exerting significant competitive pressure over the Merged Entity irrespective of the precise market definition, including vertically integrated players like Amcor, Aluberg or Carcano, converters like Enteco or Eurpack,[306] and printers like MTC Polska.[307]

(247) The Commission considers that sufficient alternative suppliers of blister lidding for pharmaceutical applications, in general, and printed in particular, will remain in the market post-Transaction for the following reasons.

(248) **First**, the majority of market participants who expressed their opinion confirmed that the number of suppliers of aluminium blister lidding would be sufficient in the EEA post-Transaction.[308] Some competitors and customers even consider that there will be many suppliers available post-Transaction.[309] In this regard, one customer stated that: '[i]*n Pharma business companies always have a couple rival suppliers already registered in aluminium components industry'*.[310] Another customer highlighted the limited position of AFP in this market by submitted that the Transaction would have no impact on the number of suppliers of blister lidding for pharmaceutical applications available in the EEA market: '[w]*e don't think this specific Transaction will change the numbers of the existing suppliers in the market'*.[311] Another customer also notes that '[t]*here are several companies in the EEA competing with Constantia providing good quality films to the pharmaceutical industry'*.[312] A third customer points out that '*[t]he market for printed blister material is very fragmented with a lot of suppliers*.' [313] Competitors share this view. For instance, one competitor stated that: '[e]*nough other suppliers exist to allow for competition*'.[314] Another competitor noted that, in relation to blister lidding for pharmaceutical applications: '*[t]here are enough suppliers for semi-finished and finished products*',[315] and another competitor stated that [I]*t is necessary for the pharma players to have at least two active suppliers. A backup*

306 Converters purchase unprinted pre-treated aluminium foils from third parties and then carry out the printing, finishing, packaging, and shipping steps in-house.
307 Form CO, paragraphs 375 to 380.
308 Questionnaire to customers, question D.F.9. and Questionnaire to competitors, question D.F.13.
309 Questionnaire to customers, question DF9 and Questionnaire to competitors, question D.F.13.
310 Questionnaire to customers, question D.F.9.
311 Questionnaire to customers, question D.F.9
312 Questionnaire to customers, question D.F.9
313 Minutes of a call with a customer of 5 July 2024, paragraph 7
314 Questionnaire to competitors, question D.F.14.
315 Questionnaire to competitors, question D.F.14.

supplier is mandatory in the industry. Even better for pharma players if to have four to five suppliers'. [316]

(249) The same holds true with respect to printed aluminium blister lidding for pharmaceutical applications, in particular. For instance, a customer points out that '*[t]he market for printed blister material is very fragmented with a lot of suppliers*.' [317] A competitor of the Parties also confirmed that '[i]*n the space of printers and converters, there are many different companies active, spread out over different end-use segments'*. [318]

(250) **Second**, while market participants submitted that Constantia is an important supplier of aluminium blister lidding for pharmaceutical applications, they confirmed the presence of multiple competitors on the market that could challenge the Merged Entity post-Transaction.[319] Besides the Parties, the market participants named in particular Amcor as the current market leader and a very strong competitor post-Transaction.[320]

(251) In addition to the numerous companies listed in Table 5 above, it appears from the market investigation that other competitors like Feron, Sarong, Paxxus Deico Ts Converting etc[321] and Enteco, Bilcare, Gallazi, Novelis, Tekni-Plex, Huhtamaki, ACG or Packtime [322] also compete on the market for aluminium blister lidding for pharmaceutical applications.

(252) Many of the abovementioned companies have printing capabilities and compete in the potential market for printed aluminium blister lidding for pharmaceutical applications.[323]

(253) For instance, a competitor of the Parties notes that there are several suppliers of unprinted aluminium foil in Europe, besides the Parties, such as Carcano, Elval and Aluberg.[324] Concerning printed foil, it submits that 'c*oncerning printed aluminium foil for pharmaceutical products, the Company submits that there are multiple printers in Europe that can deliver this product. Amcor is a very important supplier and Constantia is in the top 3. AFP and the Company are also relevant suppliers. There is also a multitude of local printers'*.[325]

(254) Another competitor submits that '*for blister lidding there are a lot of small printing houses which are located near pharma plants across Europe. The Company explains that the market for blister lidding is narrower as customers need the products immediately and in small quantities (typically 5-10 kg) so that transport over shorter distances is easier'*.[326]

(255) **Third**, many customers also point out that in principle they can purchase aluminium blister lidding for pharmaceutical applications from any type of supplier

316 Minutes of a call with a competitor of 4 July 2024, paragraph 11.
317 Minutes of a call with a customer of 5 July 2024, paragraph 7
318 Minutes of a call with a competitor of 5 July 2024, paragraph 17
319 Questionnaire to customers, question D.F.5. Questionnaire to competitors, question D.F.7.
320 Questionnaire to customers, question D.F.5. Questionnaire to competitors, question D.F.7.
321 Questionnaire to competitors, question A.1.
322 Questionnaire to customers, question D.F.5.
323 Questionnaire to competitors, question D.F.1 and D.F.3.
324 Minutes of a call with a competitor of 29 August 2024, paragraph 7.
325 Minutes of a call with a competitor of 29 August 2024, paragraph 9.
326 Minutes of a call with a competitor of 16 October 2024, paragraph 7.

in the EEA.[327] A majority of the competitors who expressed their opinion, including several with printing capabilities, confirmed that they could supply any type of customer.[328]

(256) The same seems to apply in relation to printed aluminium blister lidding for pharmaceutical applications. For instance, a competitor of the Parties notes that '*all customers use foil we can print*'.[329]

(257) **Fourth,** the market investigation shows that pharmaceutical companies typically qualify and source from several suppliers of aluminium blister lidding, both in general and specifically for printed, further emphasising the non-concentrated and competitive nature of both potential markets. In this regard, pharmaceutical companies are highly sensitive to quality variations in the blister lidding they procure. Also, EU legislation demands suppliers to meet strict regulatory requirements and undergo validation procedures for both the materials and the manufacturing processes.[330] Validated suppliers typically lose their validation approved status if they do not receive any orders from a pharmaceutical company for more than a year. This requirement incentivizes pharmaceutical companies to place orders with all their validated suppliers periodically throughout the year to ensure that these suppliers do not lose their regulatory approvals.[331]

(258) Therefore, the Commission concludes that a sufficient number of suppliers will remain post-Transaction in the market for aluminium blister lidding for pharmaceutical applications in the EEA as well as on a potential market for printed aluminium blister lidding for pharmaceutical applications.

7.6.3. Switching is possible and competitors have spare capacity and are willing to expand their supply.

(259) The Notifying Party argues that customers consistently engage in multi-sourcing for blister lidding to safeguard against future supply uncertainties and, thus, that they can easily switch suppliers without additional lead times or additional costs.[332] The Notifying Party also argues that there is excess capacity in the market,[333] entry of new manufacturing companies to the blister lidding market, is easy and that barriers to entry are low[334] for both totally new entrants and for established suppliers of flexible packaging for other end-applications (e.g., food, non-food,) if they wish to do so.[335]

(260) **First**, the market investigation shows that, indeed, customers of blister lidding for pharmaceutical applications can and do switch suppliers relatively easily. Most competitors and customers responded that if there would be an increase in the price of blister lidding post-Transaction, customers of the Parties could easily switch to rival suppliers.[336] Several customers considered that they could switch relatively

327 Questionnaire to customers, question D.D.3.
328 Questionnaire to competitors, question D.F.5 and D.F.3.
329 Questionnaire to competitors, question D.F.6.
330 Questionnaire to customers, question B.G.4.
331 Form CO, paragraph 408.
332 Form CO, paragraphs 408 and 477.
333 Form CO, paragraph 393.
334 Form CO, paragraph 385.
335 Form CO, paragraph 396.
336 Questionnaire to customers, question D.F.10.

fast and/or at a moderate cost, while others could switch but with greater difficulty. One customer stated: *'[...] we have already registered rival suppliers that could provide such of material*', while another customer noted that: *'we can quickly change suppliers as we have three other qualified suppliers'* [337]

(261) The same applies with regard to printed aluminium blister lidding for pharmaceutical applications. For instance, one competitor stated that: '*for printing is easy to change supplier*'.[338]

(262) **Second**, suppliers of aluminium blister lidding for pharmaceutical applications confirmed that they could expand their supply and would do so in case of a price increase. In this regard, the majority of competitors active in the supply of aluminium blister lidding report that they could expand their supply of this product in the EEA. Five of them could do it easily and in a short matter of time, while for four others it would be more difficult, albeit doable.[339] Numerous of these competitors are also or exclusively active in printing aluminium blister lidding for pharmaceutical applications.[340]

(263) All competitors that expressed an opinion, as well as most customers, consider that there is generally sufficient spare capacity in the market to address any additional demand in the EEA and/or Switzerland for aluminium blister lidding.[341] This coincides with the significant spare capacity reported by market participants in relation to aluminium blister lidding from pharmaceutical products: one reported 'significant capacity', another submits that it has 70% spare capacity after recent investments, another reports 40% spare capacity, another has 20% free capacity, another reported 10% additional capacity, another 25% free capacity and a last competitor submitted that it has 6 000 tons spare capacity.[342] Most of these competitors reporting spare capacity are active in printed aluminium blister lidding for pharmaceutical applications.[343]

(264) In this regard, one customer for blister lidding stated that *'[t]he market appears to have some spare capacity to address additional demand within the EEA and Switzerland'*,[344] Another customer stated that *'[t]here is enough capacity in Europe for unprinted and printed material for the pharmaceutical companies.*'[345] A competitor also confirms that there is spare capacity in the EEA specifically for printed blister lidding: '*in printing there is overcapacity'*.[346]

(265) Therefore, the Commission concludes that in both potential markets of blister lidding and printed blister lidding switching suppliers is possible and competitors have spare capacity and are willing to expand their supply if demand increases.

337 Questionnaire to customers, question D.F.10.
338 Questionnaire to competitors, question D.F.15.
339 Questionnaire to competitors, question E.4.
340 Questionnaire to competitors, questions E.4 and D.F.3.
341 Questionnaire for customers, question D.F.12; Questionnaire for competitors, question D.F.20.
342 Questionnaire to competitors, question D.F.19.
343 Questionnaire to competitors, questions D.F.19 and D.F.3.
344 Questionnaire for customers, question D.F.12.1.
345 Minutes of a call with a customer of 28 August 2024, paragraph 16.
346 Questionnaire to competitors, question D.F.14.

7.6.4. The Parties are not competing closely

(266) The Notifying Party argues that their activities are differentiated in terms of quality and supply capacity. Constantia's blister lidding is of a higher quality and competes mainly with big companies for both the unprinted and printed blister lidding, supplied to large multinational pharmaceutical companies (and various converters/printers). In contrast, AFP supplies blister lidding only in printed form and mainly to (usually smaller) pharmaceutical customers. [347]

(267) The Commission's market investigation confirmed that the Parties are not close competitors in aluminium blister lidding for pharmaceutical applications.

(268) **First**, for the majority of competitors and customers that expressed an opinion, the closest competitor to Constantia for blister lidding is Amcor. None of them identified AFP as Constantia's closest competitor.[348]

(269) **Second**, market participants have also submitted that Constantia's aluminium blister lidding for pharmaceutical applications is generally of better quality, more innovative and more expensive than AFP's. Also, that Constantia has big supplies capabilities. For example, one customer stated that: *'AFP is generally cheaper than Constantia'*. [349] One customer stated that that '[*A]FP would not have the capacity to take on the Company's needs for printed or unprinted aluminium foil in Europe*'.[350] Also, one competitor considers that '[A]*mcor, Constantia, based on their innovations and size of product portfolio'* [351] have capabilities that other suppliers of aluminium blister lidding in the EEA and Switzerland, do not have. No competitor mentioned AFP to have capabilities that other suppliers do not have.

(270) Similarly, a customer of the Parties notes that '[w]*hen it comes to the Company's tenders for blister packaging, the Parties do only rarely compete in the same tenders as they cover different geographic areas, and they have different product portfolios (Constantia has a wider product portfolio). All tenders are differentiated.*'[352] A competitor of the Parties also notes that '*With respect to strengths of both Constantia and AFP, the Company notes that Constantia has a reputation for good quality and for reliability, and that it is focusing on high-end market segments, rather than on commodities. AFP is a company that has grown a lot in recent years and that wants to follow the same path as Constantia. AFP is more competitive on price than Constantia, and is also more flexible vis-à-vis customers, as it is smaller than Constantia'*, '.[353]

(271) Also, customers responded that Constantia and Amcor are the innovative suppliers in the EEA, and no customer replied that AFP is innovative. A customer stated '*[A]mcor and Constantia can be considered equally innovative. They both have alternative and more sustainable solutions (no alu content) recently developed and introduced.'*[354] Another customer stated that [C]onstantia *and Amcor, as per*

347 Form CO, paragraph 381-382.
348 Questionnaire to competitors, question D.F.10.1; Questionnaire to customers, question D.F.6.
349 Questionnaire to customers, question D.F.16.
350 Minutes of a call with a customer of 20 August 2024, paragraph 4.
351 Questionnaire to competitors, question D.F.9.
352 Minutes of a call with a customer of 5 July 2024, paragraph 13.
353 Minutes of a call with a competitor of 31 July 2024, paragraph 23.
354 Questionnaire to customers, question D.F.14.

significant investment in R&D and sustainability'.[355] or even only Amcor as one customer stated*: '[W]e consider Amcor as more innovative as they are investing more into research'*[356]

(272) **Third**, out of the Parties' respective top 15 EEA customers for aluminium blister lidding for pharmaceutical applications, only two overlapped in 2023: [details of the parties' customers].[357] In 2024 [details of the parties' customers] in the EEA was [details of the parties' only one customer].[358] This further indicates that the Parties, are not close competitors.

(273) Therefore, the Commission concludes that for both potential markets of aluminium blister lidding and printed aluminium blister lidding in the EEA the Parties are not competing closely.

7.6.5. The Transaction is not likely to have a negative impact

(274) The Notifying Party argues that the Transaction cannot lead to any non-coordinated competition concerns for the affected market of printed blister lidding, because the structure of the market is not conducive to coordination.[359]

(275) The Commission's market investigation confirmed that the impact of the Transaction is likely to be neutral in relation to aluminium blister lidding and to printed aluminium blister lidding. Most competitors and customers expressing an opinion expect no impact arising from the Transaction both on their own companies[360] and on the market in general.[361] This feedback is also shared by customers and competitors of printed blister lidding material.[362] One customer stated '*[t]his transaction would have neutral impact as for both suppliers (Constantia and AFP) we already have other suppliers registered for supplied the same material for us'*.[363] Another customer of blister lidding stated: *'[w]e have several different suppliers in the EEA which are alternative to Constantia. Generally speaking, we are not concerned that this specific Transaction will harm the competition in the market'*,[364] *'...[c]urrently difficult to indicate the impact of the merger of these companies. I expect it to be positive*'.[365] Also, a competitor of printed blister lidding stated on competition it '[d]*oes not anticipate any significant'*. [366]

(276) The majority of competitors[367] and customers[368] expect a neutral impact on all parameters of competition (quality, innovation, sustainability, product offering,

[355] Questionnaire to customers, question D.F.14.
[356] Questionnaire to customers, question D.F.14
[357] Form CO, paragraph 382, Table 42.
[358] RFI18, question.3; [details of the parties' customers].
[359] Form CO, paragraph 412.
[360] Questionnaire to competitors, question G.1; Questionnaire to customers, question G.1.
[361] Questionnaire to competitors, question G.2; Questionnaire to customers, question G.2.
[362] Questionnaire to competitors, questions G.1, G.2 and D.F.3; Questionnaire to customers, question G.1, G.2 and D.F.1.
[363] Questionnaire to customers, question G.2.
[364] Questionnaire to customers, question G.2.
[365] Questionnaire to customers, question G.2.
[366] Questionnaire to competitors, question D.F.24.
[367] Questionnaire to competitors, question D.F.25.
[368] Questionnaire to customers, question D.F.16.

lead time, supply resilience, or customer service), including those active in printed blister lidding. Some customers even expect a positive impact, for example, on R&D: '*[i]ncreased investment on R&D and combined knowledge'*.[369] On **price,** the views of market participants are divided between a potential price increase or a neutral impact on prices**.**[370]

(277) In this regard, a customer stated that *'[g]iven that AFP is not a main player in aluminium blister material, the impact will be minor for the company's activities and not massive for the overall market'*.[371]. Another customer *'[e]xpects the Transaction to have a neutral impact on its business*' and that '[*e]ssentially the Company considers the Transaction as an acquisition of a 'printing house' by Constantia*'.[372] Likewise, another competitor expects any impact to be '*manageable*'.[373]

(278) Therefore, the Commission concludes that the Transaction is not likely to have a negative impact on the potential markets for aluminium blister lidding and printed aluminium blister lidding in the EEA.

7.6.6. Conclusion

(279) Therefore, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market with regard to the supply of aluminium blister lidding and of printed aluminium blister lidding in the EEA.

8. COMPETITIVE ASSESSMENT - VERTICAL LINKS

(280) The Parties' activities give rise to the following vertically affected markets:

(a) Constantia's upstream supply of unprinted blister lidding and the Parties' downstream supply of printed aluminium blister lidding;

(b) The Parties' upstream supply of pre-treated foil for food end-use applications and the Parties' downstream supply in (i) retortable aluminium containers and lids for wet pet food, (ii) retortable aluminium containers and lids for human food, and (iii) aluminium foil for confectionery.

(281) In addition, during the Commission's market investigation, a customer expressed concerns relating to the Parties being able to foreclose their customers of co-extruded aluminium foil for coffee capsules in the EEA post-Transaction. These concerns resulting from the vertical relationship of the Parties' upstream activities in the supply of pre-treated aluminium foil for coffee capsules and downstream activities in aluminium coffee capsules and lids will be discussed in Section 8.4 below.

369 Questionnaire to customers, question D.F.16.2.
370 Questionnaire to customers, question D.F.16, questionnaire to competitors question D.F.25.
371 Minutes of a call with a customer of 4 July 2024, paragraph 23.
372 Minutes of a call with a customer of 20 August 2024, paragraph 13.
373 Minutes of a call with a customer of 4 July 2024, paragraph 20.

8.1. Legal framework

(282) According to the Non-Horizontal Guidelines,[374] 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.[375] Such foreclosure may discourage entry or expansion of competitors or encourage their exit.[376]

(283) 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.[377] The Commission notes that foreclosure is not limited to 'total foreclosure', i.e., entirely restricting competitors' access of an input or a customer base, but also 'partial foreclosure', i.e., more subtle forms of foreclosure that significantly reduce access to input or customer base, such as the degradation of the quality of input supplied or the purchase from rivals on less favourable terms than absent the merger.[378] In its assessment, the Commission may consider a series of alternative or complementary possible strategies.[379] 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.

8.2. Supply of unprinted aluminium blister lidding (upstream) - supply of printed aluminium blister lidding (downstream)

(284) Constantia supplies lacquered aluminium foil (or as referred to in the pharma industry 'unprinted blister lidding') to converters and pharmaceutical companies for its conversion into printed blister lidding. In 2023, Constantia's sales of unprinted blister lidding to converters amounted to approx. EUR [details of the parties' sales] in the EEA. AFP purchases unprinted blister lidding that it uses to convert into blister lidding. AFP does not purchase such unprinted blister lidding from Constantia.[380] AFP's purchases of unprinted blister lidding amounted to EUR [details of the parties' purchases] in 2023.

(285) The Transaction gives rise to a vertical relationship with respect to the supply of unprinted blister lidding, upstream, for its further conversion into printed blister

374 Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings ('Non-Horizontal Guidelines'), OJ C 265, 18.10.2008, pages 6-25.
375 See Non-Horizontal Guidelines, paragraph 18.
376 See Non-Horizontal Guidelines, paragraph 29.
377 See Non-Horizontal Guidelines, paragraph 30.
378 See Non-Horizontal Guidelines, paragraphs 33 and 60.
379 *Idem.*
380 Form CO, Annex 36, page 8, paragraph 27.

lidding, downstream.[381] Constantia has a market share in the upstream market for the supply of unprinted blister lidding sold to pharmaceutical converters (like AFP) of [10-20]% in the EEA in 2023, in value.[382] Downstream, as seen in Table 5 above, the Parties' combined EEA market share just exceeds 30% with respect to printed blister lidding for pharmaceutical applications ([30-40]%).

(286) This vertical relationship gives rise to a vertically affected market for which the Notifying Party argues that the Merged Entity will not have the ability or incentive to foreclose competitors post-Transaction by limiting their access to unprinted blister lidding material. It also argues that the Transaction cannot lead to customer foreclosure concerns either given that AFP's purchases of unprinted blister lidding material represent a small portion of the total demand.[383]

(287) The market investigation did not reveal competition concerns in relation to this vertically affected market.

(288) **First**, concerning input foreclosure, the Merged Entity would lack the ability or incentive to foreclose downstream competitors for the following reasons.

(289) *In the first place,* Constantia's upstream market share will remain moderate post-Transaction ([10-20]% if only sales to converters are considered, and [30-40]% if sales to converters and pharmaceutical companies with printing capabilities are considered - and in any case below or just above [30-40]% also on narrower segments). It therefore does not appear that Constantia is a particularly important supplier of unprinted blister lidding to converters of blister lidding in the EEA. Moreover, the increment brough about by the Transaction is negligeable. AFP is not active in selling unprinted blister lidding to converters and it only sold very limited amounts of unprinted blister lidding to a pharmaceutical customer upon request, accounting for [a negligible percentage] of all sales of unprinted blister lidding to converters and pharmaceutical companies with printed capabilities in the EEA in 2023.[384]

(290) *In the second place,* the Merged entity will also be constrained by several other suppliers of unprinted blister lidding to pharmaceutical converters, including the market leader, Aluberg, which the Parties estimate to have a very high market share in this segment ([50-60]%), Amcor with an estimated market share of [10-20]%, as well as several other established suppliers that have an estimated market share similar to that of Constantia, such as Carcano or Symetal.[385]

(291) It also appears that several smaller players will also constrain the Merged Entity post-Transaction. For example, a customer of Constantia's unprinted blister lidding explains that: '[t]*he main competitor of Constantia is Amcor for pharmaceutical applications but there also are other players like Aluberg in Italy and other local suppliers in that market. The Company buys the unprinted material from Constantia, Amcor, Aluberg and other smaller local suppliers*.' [386]

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381 The assessment will focus on the supply of unprinted blister lidding only to converters (rather than pharmaceutical companies) given that this is the downstream segment where AFP is active.

382 Form CO, Annex 36.

383 Form CO, Annex 36, paragraph 30.

384 Form CO, Annex 19.

385 Form CO, Annex 36, Table 5.

386 Minutes of a call with a customer of 28 August 2024, paragraph 11.

(292) Another customer of unprinted blister lidding confirms the existence of sufficient alternative suppliers in the EEA: '[i]*f the Company had to find a different supplier of unprinted aluminium foil post-Transaction; it submits that there is available volume in the market to fulfil its need*[s]'.[387]

(293) Further, a competitor of Constantia in unprinted blister lidding also confirms its importance as a supplier of this material to printers and converters: '[w]*ith respect to the unprinted blister foil that the Company sells directly to pharmaceutical customers, it has to be noted that these are only small quantities (around […%] of its sales), as the Company is focused on selling large quantities to printers (remaining […%] of sales), rather than smaller quantities to individual end-customers'*.[388]

(294) *In the third place*, it seems that there is also sufficient spare capacity in the upstream market for unprinted blister lidding to absorb a demand switch, should the Merged Entity decide to engage in an input foreclosure strategy. For example, a customer of Constantia's unprinted blister lidding notes that '*there is enough capacity in Europe for unprinted and printed material for the pharmaceutical companies'*.[389]

(295) *In the fourth place*, in terms of incentives to foreclose, AFP has a very limited market share in purchasing unprinted blister lidding so any loss of revenues upstream will not be compensated by a significant increase in Constantia's sales of printed blister lidding to end-customers downstream.

(296) Therefore, it appears unlikely that the Merged Entity would be able or have the incentive to engage in input foreclosure post-Transaction.

(297) **Second**, concerning customer foreclosure, the Merged Entity would lack the ability to foreclose upstream competitors for the following reasons.

(298) *In the first place,* the Parties' downstream combined EEA market share is just above the 30% indicative threshold in the Simplified Notice ([30-40]%). As explained in Section 7.6, a sufficient customer base will remain in the market post-Transaction, as there are numerous other customers of unprinted blister lidding in the EEA that upstream competitors could turn to in case of a customer foreclosure strategy by the Merged Entity.

(299) *In the second place*, the increment in the share of demand as a consequence of the Transaction will also be low, given that AFP only represents [0-5]% of the printed blister lidding market in the EEA. Therefore, any efforts of the Merged Entity to foreclose post-Transaction are unlikely to have an impact on effective competition on the downstream market.

(300) Therefore, it appears unlikely that the Merged Entity would be able to engage in customer foreclosure post-Transaction.

(301) Hence, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market as a result of the vertical

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387 Minutes of a call with a competitor of 29 August 2024, paragraph 8.
388 Minutes of a call with a competitor of 31 July 2024, paragraph 6.
389 Minutes of a call with a customer of 31 July 2024, paragraph 16.

relationship between supply of unprinted blister lidding and supply of printed aluminium blister lidding.

8.3. Supply of pre-treated aluminium foil for food end-use applications (upstream) – supply of retortable aluminium containers and lids for wet pet food and human food, and aluminium foil for confectionery (downstream)

(302) The Parties' have a combined market share in the upstream market for the supply of pre-treated foil for food end-use applications of [10-20]% in the EEA.[390] The Parties further explain that even on narrower upstream markets (i.e. separate upstream markets for the supply of pre-treated foil per end-application – such as pre-treated foil for confectionery, etc.), the Parties' combined upstream market shares would be below 30%.[391]

(303) Downstream, the Parties' combined EEA market shares exceed 30% with respect to (i) retortable aluminium containers and lids for wet pet food, (ii) retortable aluminium containers and lids for human food, and (iii) aluminium flexible packaging for confectionery. Therefore, these markets are vertically affected.

(304) The market investigation did not reveal any competition concerns arising in relation to these vertically affected markets.

(305) **First**, concerning input foreclosure, the Merged Entity would lack the ability to foreclose downstream competitors for the following reasons.

(306) *In the first place,* the Parties' combined upstream market share will remain low post-Transaction ([10-20]% - and in any case below 30% also on narrower potential segments). It therefore does not appear that the Parties are particularly important suppliers of pre-treated foil for food end-use applications in the EEA. This is even more so as also in absolute terms the sales of the Parties remain small (sales EUR [details of the parties' sales] by Constantia, and EUR [details of the parties' sales] by AFP in 2023 of pre-treated foil for food end-use applications).

(307) This is also confirmed by rivals of the Parties on the downstream markets. These companies either explain that sufficient players will remain active in the upstream supply of pre-treated foil or submit that they have their own inhouse pre-treatment capabilities and therefore produce pre-treated foil for their own needs. For example, a competitor of the Parties in retortable aluminium containers and lids for wet pet food and for human food explains that it '*does not have rolling capabilities*', but that '[t]*he next steps are carried out in house*' and that it '*has inhouse lamination facilities i.e. coating aluminium with PP for sterilisation purposes for the food market*'.[392]

(308) *In the second place*, the Commission has not received any complaints from rivals of the Parties on the aluminium foil for confectionery, retortable aluminium containers and lids for wet pet food, and retortable aluminium containers and lids for human food markets as to the availability of pre-treated foil for these end-use applications post-Transaction.

390 Response to RFI 13, question 1.
391 Response to RFI 17, question 1.
392 Minutes of a call with a competitor of 30 July 2024, paragraph 5.

(309) Therefore, it appears unlikely that the Merged Entity would be able to engage in input foreclosure post-Transaction.

(310) **Second**, concerning customer foreclosure, the Merged Entity would lack the ability to foreclose downstream competitors.

(311) *In the first place,* with respect to aluminium flexible packaging for confectionery, the Parties' downstream combined EEA market share will be moderate at [30-40]%. The Notifying Party further explains that '[n]*either of the Parties is an important customer of pre-treated foil for confectionery foil*' and that '[t]*he Parties' combined share in the downstream demand for pre-treated foil remains below 20%*'.[393] This is in particular also the case as the Parties have in-house pre-treatment capabilities and do not need to source all of their needs for pre-treated foil for confectionery applications on the merchant market. Hence, it follows that upstream competitors would be able to turn to a sufficient customer base post-Transaction, should the Merged Entity engage in a customer foreclosure strategy.

(312) Therefore, it appears unlikely that the Merged Entity would be able to engage in customer foreclosure post-Transaction in relation to pre-treated foil for confectionery applications.

(313) *In the second place,* with respect to retortable aluminium containers and lids for pet and human food, the Parties' downstream combined EEA market share will be very large ([70-80]% and [50-60]% respectively). Nevertheless, it appears unlikely that the Merged Entity would be able to engage in customer foreclosure post-Transaction in relation to pre-treated foil for retortable aluminium containers and lids for pet and human food.

(314) This is in particular because pre-Transaction the Parties do not appear to purchase to a significant extent pre-treated foil that they use for their retortable aluminium containers and lids for wet pet food. The Parties have confirmed that they do not supply pre-treated aluminium foil for wet pet food to the merchant market in the EEA and Switzerland, except for *de minimis* sales by AFP (less than EUR [details of the parties' business activities related to sales and local presence] in 2023).[394] Rather, they use the pre-treated aluminium foil they produce captively, for their own production process of the downstream product, i.e. retortable aluminium containers and lids for wet pet food. AFP for example undertakes the pre-treatment steps for the foil for these products inhouse (e.g. the foil for the retortable containers is pre-treated in the [details of the parties' strategy and business activities related to local presence], and the foil for the retortable lids is pre-treated in the [details of the parties' strategy and business activities related to local presence]).[395] Post-Transaction, there is therefore no demand-delta that the Merged Entity could shift from the merchant market to in-house supply for wet pet food. Concerning pre-treated foil for human food, the Parties have confirmed that AFP does not purchase pre-treated foil for human food containers externally, it uses its own production. While Constantia does purchase pre-treated aluminium foil for human food containers in the merchant market, its purchasing share in the EEA was moderate (below 30%) in 2023.[396]

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393 Response to RFI 17, question 1.
394 Response to RFI 18, question 1.
395 Response to RFI 19, question 1.
396 Response to RFI 18, question 2.

(315) Furthermore, during the Commission's market investigation none of the suppliers of pre-treated aluminium foil that provided feedback to the Commission expressed a concern related to the supply of pre-treated foil for retortable aluminium containers and/or lids for pet and human food.

(316) Hence, it appears unlikely that the Merged Entity would be able to engage in customer foreclosure post-Transaction in relation to pre-treated foil for retortable aluminium containers and lids for pet and human food.

(317) Therefore, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market as a result of the vertically affected markets between the supply of pre-treated aluminium foil for food end-use applications upstream and the supply of (i) retortable aluminium containers and lids for wet pet food, (ii) retortable aluminium containers and lids for human food, and (iii) aluminium foil for confectionery downstream.

8.4. Supply of pre-treated aluminium foil for aluminium coffee capsules and lids (upstream) - supply of aluminium coffee capsules and lids (downstream)

(318) During the market investigation, a customer expressed concerns relating to the Parties being able to foreclose their customers of co-extruded aluminium foil for coffee capsules in the EEA post-Transaction. In particular, this customer submitted that, while aluminium foil for coffee capsules might be produced using a lamination, lacquering or co-extrusion process, co-extrusion was the production method that customers might be turning to in the future because: (i) it did not require the use of glue to bind the aluminium foil and the polypropylene layer (which lamination requires); and (ii) it did not require the use of vinyl chloride (which lacquering requires), therefore avoiding compliance and food safety issues.[397] This customer also submitted that, while co-extruded aluminium foil was not currently used in the coffee capsule industry, this might change in the next five years in light of sustainability trends.[398] In this regard, this customer submitted that there were only two or three players in the EEA supplying co-extruded aluminium foil for coffee capsules in the EEA, the main ones being the Parties.[399] Moreover, it noted that the machinery necessary to co-extrude aluminium foil was different from that used for lamination or lacquering, so that producers of laminated and/or lacquered aluminium foil could not easily start producing co-extruded foil.[400] For these reasons, this customer was concerned that, post-Transaction, the Parties could refuse to supply their downstream competitors with co-extruded foil, increase prices and reduce output.[401]

(319) The market investigation did not reveal any competition concerns arising in relation to this vertical link between the Parties activities in the supply of pre-treated aluminium foil for coffee capsules upstream and aluminium coffee capsules and lids downstream.

(320) **First**, the Transaction does not give rise to vertically affected markets in relation to coffee end-uses. The Parties' combined market share in the upstream supply of pre-

[397] Minutes of a call with a customer on 12 December 2024, paragraphs 10 and 12.
[398] Minutes of a call with a customer on 12 December 2024, paragraph 12.
[399] Minutes of a call with a customer on 12 December 2024, paragraphs 9 and 10.
[400] Minutes of a call with a customer on 12 December 2024, paragraph 14.
[401] Minutes of a call with a customer on 12 December 2024, paragraph 15.

treated foil for coffee capsules in the EEA and Switzerland is limited ([5-10]%, in volume in 2023).[402] Downstream, the Parties also have a limited market share for aluminium coffee capsules in the EEA ([10-20]%, in value in 2023) and in the EEA and Switzerland ([5-10]%, in value, in 2023).[403]

(321) **Second,** even considering upstream the narrower market for the supply of co-extruded aluminium foil for coffee capsules and lids, the market investigation shows that co-extruded aluminium foil is not widely used in the production of coffee capsules and lids in the EEA and Switzerland. Other pretreatment methods (i.e. lacquering and laminating) are used for coffee capsules and lids. Neither the customer expressing concerns around input foreclosure post-Transaction, nor other EEA customers of coffee capsules and lids expressing an opinion, indicated that they use co-extruded aluminium foil for their coffee capsules and lids.[404] For instance, a main EEA customer of aluminium coffee capsules and lids confirms that '*co-extruded aluminium foil is not used to make aluminium coffee capsules in the EEA at the moment'* and it explains that it only uses laminated and lacquered aluminium foil because of '*several factors including the functionality of the packaging, the mechanical properties needed and the interaction with the coffee machine system'*.[405] Competitors of the Parties also confirmed that, even though they supply co-extruded aluminium foil for several other end-uses, there is no demand for co-extruded aluminium foil for aluminium coffee capsules or lids in the EEA and, hence, they do not supply it.[406] [Details of the parties strategy and business activities related to sales and local presence].[407] Moreover, they only produce and supply to the market very limited amounts of coffee capsule lids made out of co-extruded foil, while the majority of the coffee capsule lids they produce and sell in the EEA are made from aluminium foil that is either laminated or lacquered. Namely, AFP only has [details of the parties' strategy and business activities related to customers and sales] co-extruded aluminium lids for coffee capsules. Similarly, Constantia only has [details of the parties' strategy and business activities related to customers and sales], out of a total of [details of the parties' strategy and business activities related to customers and sales], that purchase aluminium lids from coffee capsules made from co-extruded aluminium foil, representing less than [details of the parties' strategy and business activities related to customers and sales] of Constantia's sales of aluminium coffee capsule lids in the EEA.

(322) **Third**, none of the customers that expressed an opinion indicated that it would be willing to shift part or all of their needs for coffee capsules and/or lids to co-extruded aluminium foil in the near future. This is the case even though this technology does not seem to be new and is already used for other end-uses.[408]

402 Response to RFI 10. The Parties do not supply pre-treated aluminium foil for coffee lids in the EEA or Switzerland (Form CO, Annex 33).

403 Response to RFI 10.

404 Minutes of a call with a customer on 12 December 2024; email exchange with a customer on 12 December 2024, Doc ID 1930; RFI 1 to a customer, Doc ID 1964.

405 RFI 1 to a customer, Doc ID 1964.

406 Response to RFI 2 to a competitor, Doc ID 2979.

407 Response to RFI 10.

408 Email exchange with a customer on 12 December 2024, Doc ID 1930.

(323) **Fourth,** there seem to be a number of players in the EEA that have aluminium co-extrusion capabilities, other than the Parties. These include, at least, Amcor and Metalimex.[409]

(324) **Fifth,** co-extruded aluminium foil does not seem to be more suitable than other pre-treated aluminium materials to meet compliance and health standards. In the first place, both lacquered and laminated aluminium foil have been approved by the relevant EU regulatory authorities as food safe. In the second place, a customer of aluminium coffee capsules and lids confirms that lacquered and co-extruded aluminium foil are equally as suitable to comply with sustainability and health requirements in the EEA: '*co-extruded aluminium foil is as suitable as lacquered and aluminum foil to comply with health and sustainability requirements in the EEA*'.[410]

(325) **Sixth**, no other market participants, including the main customers for coffee capsules and lids, have expressed input foreclosure concerns post-Transaction with respect to co-extruded aluminium foil for coffee capsules and lids.

(326) Therefore, it appears unlikely that the Merged Entity would have the ability or incentive to engage in either an input or a customer foreclosure strategy post-Transaction. Therefore, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market as a result of the vertical relationship between the supply of pre-treated aluminium foil for coffee capsules upstream and the supply of aluminium coffee capsules and lids downstream.

9. COMMITMENTS

(327) The Commission considers that the Transaction gives rise to serious doubts as to its compatibility with the internal market and the functioning of EEA agreement concerning the markets for the production and supply of retortable aluminium containers and lids for wet pet food and for human food.

9.1. Framework for the assessment of the commitments

(328) Where a notified concentration raises serious doubts as to its compatibility with the internal market, the parties may undertake to modify the concentration to remove the grounds for the serious doubts identified by the Commission. Pursuant to Article 6(2) of the Merger Regulation, where the Commission finds that, following modification by the undertakings concerned, a notified concentration no longer raises serious doubts, it shall declare the concentration compatible with the internal market pursuant to Article 6(1)(b) of the Merger Regulation.

(329) As set out in the Commission's Remedies Notice,[411] the commitments proposed by the parties have to eliminate the competition concerns entirely, and have to be comprehensive and effective from all points of view.[412] Moreover, commitments in Phase I can only be accepted where the competition problem is readily identifiable

409 Questionnaire to competitors, questions D.A.3, D.B.3, D.C.3, D.D.3, D.E.3 and D.F.3.
410 RFI 1 to a customer, Doc ID 1964.
411 Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (OJ C 267, 22.10.2008, p. 1-27), the 'Remedies Notice'.
412 Remedies Notice, paragraphs 9 and 61.

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.[413]

(330) In assessing whether the proposed commitments will maintain effective competition, the Commission considers all relevant factors, including the type, scale and scope of the proposed commitments with reference to the structure and the particular characteristics of the market in which the competition concerns arise, including the position of the parties and other participants on the market.[414]

(331) In order for the proposed commitments to comply with those principles, they must be capable of being implemented effectively within a short period of time.[415]

(332) Concerning the type of acceptable commitments, the Merger Regulation gives discretion to the Commission as long as the commitments meet the required standards. Structural commitments will meet the conditions set out above only in so far as the Commission is able to conclude with the requisite degree of certainty, at the time of its Decision, that it will be possible to implement them and that it will be likely that the new commercial structures resulting from them will be sufficiently workable and lasting to ensure that effective competition will be maintained.[416] Divestiture commitments are normally the best way to eliminate competition concerns resulting from horizontal overlaps.

(333) The divested activities must consist of a viable business that, if operated by a suitable purchaser, can compete effectively with the merged entity on a lasting basis and that is divested as a going concern. The divested business must include all the assets which contribute to its current operation or which are necessary to ensure its viability and competitiveness and all personnel which are currently employed or which are necessary to ensure the business' viability and competitiveness.[417]

(334) The intended effect from the divestiture will only be achieved if and once the divested 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 commitment.[418]

(335) Even though normally the divestiture of an existing viable stand-alone business is required, the Commission, by observing the principle of proportionality, may also advise the parties to consider the divestiture of businesses which have existing strong links or are partially integrated with businesses retained by the parties and therefore need to be 'carved out' in those respects. Conversely, carving-out a business from the scope of the commitments can only be accepted by the Commission if it can be certain that, at least at the time when the business is transferred to the purchaser, a viable business on a stand-alone basis will be

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413 Remedies Notice, paragraph 81.
414 Remedies Notice, paragraph 12.
415 Remedies Notice, paragraph 9.
416 Remedies Notice, paragraph 10.
417 Remedies Notice, paragraphs 23-25.
418 Remedies Notice, paragraph 47.

divested and the risks for the viability and competitiveness caused by the carve-out will thereby be reduced to a minimum.[419]

9.2. Procedure

(336) On 19 December 2024, the Commission informed the Parties of the serious doubts regarding the markets for the production of retortable aluminium containers and lids for wet pet food and for human food arising from the preliminary assessment of the Transaction during a 'State of Play' meeting.

(337) In order to remove the serious doubts raised by the Transaction and render the concentration compatible with the internal market, on 8 January 2025, the Notifying Party formally submitted a first set of commitments under Article 6(2) of the Merger Regulation (the 'Initial Commitments').

(338) On 9 January 2025, the Commission launched a market test of the Initial Commitments in order to assess whether they were sufficient to remedy the serious doubts identified and described under Section 7.

(339) Following the feedback received through the market test, the Notifying Party formally submitted amended commitments on 22 January 2024 (the 'Final Commitments'). The Final Commitments are annexed to this Decision,[420] and form an integral part thereof.

9.3. The Proposed Commitments

9.3.1. Description of the Initial Commitments

(340) The Initial Commitments consist of the divestiture of the entire EEA retortable aluminium containers and lids for wet pet food and for human food business of AFP, removing the complete overlap between the Parties' activities in these two markets. The assets to be divested under the Commitments are collectively referred to as the 'Divestment Business'. Specifically, the following main assets are included in the Divestment Business:

(a) Omial Novi d.o.o ('Omial Novi'), the legal entity which operates the Omial plant;

(b) All relevant assets, contracts, and personnel related to the entire EEA retortable wet pet and human food containers and lids business of AFP;

(c) A transitional services agreement ('TSA') with respect to current supply relationships with the broader AFP group for a transitional period of [confidential logistic arrangements] after Closing, covering, *inter alia*, the supply of pre-treated aluminium foil for aluminium lids, the supply of printed lids, and of IT related services, at cost basis;

(d) The business covering various other products supplied by the Omial Plant other than the EEA retortable wet pet and human food containers and lids business, namely (i) retortable pet and human food containers and lids to non-EEA customers, (ii) cheese and dairy non-retortable containers, (iii)

[419] Remedies Notice, paragraphs 35-36.
[420] See Annex 1 to the present decision.

other non-retortable human food containers, (iv) injection systems, (v) other non-food packaging and (vi) pre-treated foil.[421]

(341) The Divestment Business includes tangible and intangible assets (including intellectual property rights) and personnel that contribute to its current operation or are necessary to ensure its viability and competitiveness.

(342) It also includes all licences, permits and authorisations issued by any governmental organisation for the benefit of the Divestment Business; these licences, permits and authorisations as well as contracts, leases, commitments and customer orders of the Divestment Business; all customer, credit and other records of the Divestment Business.

(343) The Divestment Business <u>will not</u> include AFP's upstream production assets for pre-treated (co-extruded) aluminium foil which AFP currently uses for the production of retortable aluminium lids for pet and human food, currently located in AFP's [confidential logistic arrangements]. The Divestment Business will not include intangible assets, intellectual property rights and know- how relevant exclusively to the supply of coffee capsules or pre-treated foil for coffee capsules, which will be transferred out of the Omial plant.

(344) The Initial Commitments provide that the purchaser of the Divestment Business will meet the following criteria:

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

(b) The Purchaser shall have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors;

(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.

(345) On 18 December 2024, AFP entered into a share and purchase agreement (the 'SPA') with MTX Group a.s ('MTX') (the 'Purchaser'). MTX is active in packaging via its subsidiary AL INVEST Břidličná, a.s. ('AL Invest'), which produces flexible packaging for food, non-food, animal feed, industry, and household applications.[422]

(346) The Notifying Party submits that MTX, whose revenues in packaging have doubled from 2014 (EUR [details of the purchaser's revenues]) to 2023 (EUR [details of the purchaser's revenues]), has sufficient financial resources to (i) pay the purchase price under the SPA to close the Divestment Transaction pursuant to the terms of

421 The Divestment Business is subject to some limited carve-ins (contracts and assets) from other AFP entities ([details of the parties' divestment strategy and business activities related to local presence]).

422 Response to RFI 1 to MTX.

the SPA and (ii) continue to invest in the Divestment Business to ensure it remains a viable and active competitor following the closing of the Transaction.[423]

9.3.1.1. Summary of the market test

(347) Overall, the replies obtained following the market test were positive. A majority of respondents having expressed an opinion considered that the Commitments were suitable and adequate to eliminate the competition concerns raised by the Proposed Transaction with regards to the production and supply of retortable aluminium containers and lids for human and for wet pet food.[424] The majority of customers indicated being willing to purchase retortable aluminium containers and lids from the Divestment Business (subject to the limitations mentioned in paragraph (372) below).[425]

(348) With regards to the scale and scope of the Divestment Business, a majority of the respondents who expressed their opinion considered that the scale and the scope of the Commitments are sufficient to ensure that MTX can run the Divestment Business immediately as a viable and competitive force.[426]

(349) A majority of the market participants who expressed their opinion considered that MTX had the capacity to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Merged Entity and other competitors, subject to some reserves as discussed in Section 9.3.3.2 below.[427]

(350) Some market participants highlighted risks related to the upstream production of pre-treated foil (for the production of retortable lids) being retained by the Merged Entity. One customer, for example, explained that '*as a manufacturer* [MTX] *must have an independent source of raw materials for production*'.[428] With regards to the duration of the supply agreements as they relate to pre-treated foil for retortable lids, another customer explained that '*in these markets* [confidential logistic arrangements] *are a very short period of time. more so when the potential suppliers are limited in number and have a limited capacity. The period should be longer*'.[429] Another customer explained that '*as far as they are able to build up an own supply chain* [of co-extruded foil] *within [confidential logistic arrangements]* [then yes]. *Without this supply chain, Constantia will have a 100% share for lids in the future due to a lack of competition*'.[430] Finally, a majority of market participants having expressed their opinion considered that MTX would not be able to start producing co-extruded aluminium foil for the production of retortable aluminium lids internally within the [confidential logistic arrangements] initially envisaged by the TSA.[431]

423 Form RM, paragraphs 9-10.
424 Replies to Questionnaire on commitments offered by the Parties, question C.1.
425 Replies to Questionnaire on commitments offered by the Parties, question D.2.
426 Replies to Questionnaire on commitments offered by the Parties, question G.1.
427 Replies to Questionnaire on commitments offered by the Parties, question C.4.
428 Replies to Questionnaire on commitments offered by the Parties, question C.5.
429 Replies to Questionnaire on commitments offered by the Parties, question E.1.1.
430 Replies to Questionnaire on commitments offered by the Parties, question E.3.1.
431 Replies to Questionnaire on commitments offered by the Parties, question E.4.

9.3.1.2. The Commission's assessment of the Initial Commitments

(351) As explained in Section 7, the Commission considers that the Transaction leads to serious doubts with regards to the markets for the production and supply of aluminium containers and lids for wet pet food and for human food in the EEA. The Divestment Business specified in the Initial Commitments consisted of the entire EEA business of AFP for these two markets, and therefore removed the full overlap between the Parties in the markets where the Commission identified serious doubts.

(352) On the basis of the information provided by the Notifying Party and the results of the market test, the Commission considers that the Divestment Business is viable and would allow the purchaser to compete effectively production and supply of aluminium containers and lids for wet pet food and for human food in the EEA.

(353) With regards to the financial viability of the Divestment Business, the Commission notes that, based on information provided by the Parties, the business has been consistently profitable in the past, with an EBITDA margin superior to [details of the parties' sales and commercial performance] in each of 2021, 2022, and 2023.[432] Profits are forecasted to be stable in 2025 and 2026.[433] Furthermore, the majority of respondents to the Commission's market test having expressed an opinion considered that the Commitments are sufficient to allow MTX to run a viable business, able to compete with the Parties on the relevant markets, on a lasting basis.[434]

(354) The Divestment Business is subject to certain carve-ins and carve outs, the financial totals of which are detailed in Figure 4.

Figure 4 – [details of the parties' business/divestment strategy and sales]

(355) The carve-ins concern both physical assets and contracts. The *physical* carve-ins (from AFP's [details of the parties divestment strategy and business activities related to local presence]) concern one punching line (for the production of retortable lids) and certain punching and deep-drawing tools that are used to adjust the punching lines [details of the parties divestment strategy and business activities related to local presence] for the specific formats required by the relevant EEA and non-EEA retort human and pet food lids customers that will be carved-in.[435] According to the Notifying Party, tools can be transferred independently to another plant because they are interchangeable tools designed specifically to fit deep-drawing and punching equipment, rather than being integral parts of the equipment itself. The Omial Plant has compatible deep-drawing and punching machinery.[436] The *contract* carve-ins concern a certain amount of retort pet and human food packaging sales where [details of the parties divestment strategy and business activities related to local presence] is used as the invoicing entity due to historical reasons.[437] [438]

432 Form RM, Annex 22, page 14.
433 Form RM, Annex 22, page 14.
434 Replies to Questionnaire on commitments offered by the Parties, question K.1.
435 Form RM, paragraph 55.
436 Form RM, paragraph 63.
437 Form RM, paragraph 85.

(356) The Omial Plant also includes a number of activities not related to pet and human food, as detailed in Figure 4. These concern customers of flexible packaging for (i) cheese and dairy; (ii) other non-retortable human food; (iii) injection systems; and (iv) pre-treated foil (for end uses other than coffee capsules).[439]

(357) With regards to the limited carve-outs from the Omial Plant, these concern the contracts and production linked to coffee capsules and pre-treated foil for coffee capsules. The 2024 revenues associated to these carve-outs are of EUR [details of the parties business activities and revenues].[440]

(358) The perimeter of the Divestment Business, as outlined above, reduces the risks regarding the viability of the Divestment Business on a standalone basis, from a *financial standpoint*. Indeed, as shown in Figure 4, the Divestment Business will capture around [details of the parties' business/divestment strategy and sales] of the revenues of the Omial Plant today. These revenues will be supplemented with the carve-in of retortable wet pet and human food containers and lids volumes currently produced in [details of the parties' divestment strategy and business activities related to local presence] leading to a total revenue slightly exceeding the current revenue of the Omial Plant. With regards to physical assets, all of the current machinery and equipment in the Omial Plant will remain within the scope of the Divestment Business. With regards to the carve-outs, the business retained by the Notifying Party involves sales to [details of the parties' customers], and no machinery. Furthermore, the impact [details of the parties' customers] have (individually and combined) on the EBITDA and the EBITDA margin of the Omial Plant is minor. In 2023, the Omial Plant would have remained profitable without [details of the parties' customers] which accounted for only [details of the parties' strategy and business activities] of its EBITDA margin.[441]

(359) From an *operational standpoint*, the Commission found that there are some risks associated with the current structure of the Divestment Business. Indeed, the Divestment Business will not include AFP's upstream production of pre-treated (co-extruded) foil for the production of retortable lids for human and for wet pet food, currently sourced by the Omial Plant from AFP's [details of the parties' divestment strategy and business activities related to local presence].

(360) The Parties commit to maintain any current supply relationships with the broader AFP Group for a transitional period of [confidential logistic arrangements]. The Parties further submit that, following this transitional period, the purchaser will be able to easily source pre-treated foil for container lids from a number of third-party suppliers.[442] Nevertheless, the Commission considers that the above-described arrangements would lead to risks for the Divestment Business' viability, for the reasons set out below.

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438 The Notifying Party has indicated that [details of the parties' strategy and business activities related to customers and sales] would need to re-qualify the volumes shifted from [confidential logistic arrangements] to the Divestment Business, and has committed to building up a buffer stock of the products to cover the Divestment Business' production during the requalification period. (Form RM, paragraph 89).

439 Form RM, paragraph 103.

440 Form RM, table 21.

441 Form RM, paragraph 135.

442 Form RM, paragraph 72.

(361) *In the first place*, the Commission's market investigation has revealed that customers of pet and human food generally prefer to source retortable containers and lids from suppliers who are vertically integrated (i.e. produce pre-treated aluminium foil in-house), for both quality and cost reasons. Indeed, a majority of the respondents who expressed their opinion considered that it was important for the competitiveness and viability of the Divestment Business for the purchaser to source co-extruded foil for the production of retortable lids internally.[443] One large pet food customer of AFP explained that '*if sourcing the container and the lid from different suppliers there can be difficult discussions if there is an issue with the integrity of the final product. This is because it is often unclear whether issues in sealing quality comes from the container or from the lid*'.[444] With regards to cost, one competitor explained that sourcing internally is important: '*own foil (co-extruded aluminium foil) production is a competitive advantage. It has a positive impact on the profitability of the business*.[445] Therefore, even if the purchaser were able to eventually source this input on the merchant market, it would be at a competitive disadvantage compared to how AFP operated on the market pre-Transaction.

(362) *In the second place*, the Commission's market investigation has shown that it would not be easy for MTX (or any other purchaser) to begin producing this co-extruded foil internally [confidential logistic arrangements] envisaged by the TSA. MTX explained that, in order to begin producing this co-extruded foil, it would first have to purchase a co-extrusion machine.[446] The manufacturer of the machine explained that ordering and commissioning the machine would take approximately [confidential logistic arrangements].[447] It is only following the commissioning process that the purchaser would be able to begin producing samples for its customers to re-qualify the input material. One large customer of the Divestment Business explained that requalification of the material would take at least one year to requalify the foil.[448] This same customer explained that '*it would take* [MTX] *3-4 years to develop its co-extrusion capabilities for lids for pet food from scratch*'.[449] Therefore, the [confidential logistic arrangements] duration of the TSA does not appear sufficient to allow MTX (or any other purchaser) to build-up its own production of co-extruded foil for retortable aluminium lids.

(363) *In the third place*, it is unlikely that MTX (or any other purchaser) would be able to build up this production internally, without some transfer of know-how from the Notifying Party. Indeed, market participants have highlighted the technical difficulties associated with this production. The manufacturer of the co-extrusion machine explained that '*it is not easy to produce the co-extruded foil and that the process requires complex and expensive machinery* […] [the Company] *clarifies that it can offer support to* [MTX] *when setting up the line but once installation is completed,* [MTX] *will need someone with technologic capabilities to support them with purchasing the right material. According to the Company, this requires a transfer of knowledge which both Constantia and AFP can facilitate*'.[450] One large

[443] Replies to Questionnaire on commitments offered by the Parties, question E.8.
[444] Minutes of a call with a customer of 14 January 2025, paragraph 10.
[445] Replies to Questionnaire on commitments offered by the Parties, question E.8.1.
[446] RFI 1 to MTX, page 32.
[447] Minutes of a call with a market participant of 17 January 2025, paragraph 4.
[448] Minutes of a call with a customer of 14 January 2025, paragraph 9.
[449] Minutes of a call with a customer of 14 January 2025, paragraph 9.
[450] Minutes of a call with a market participant of 17 January 2025, paragraph 6.

customer of the Divestment Business similarly explained that '[the Company] *considers that* [MTX] *could have an advantage in attempting to develop the co-extruded foil for the lids compared to other companies if they have access to the internal knowledge from AFP on how this co-extruded foil is currently produced*'.[451]

(364) Based on the above, the Commission considers that some additional improvements to the Commitments are necessary in order to address the Commission's competition concerns, as outlined in Section 7.

9.3.2. Description of the Final Commitments

(365) Following the result of the market test of the Initial Commitments, the Commission communicated to the Parties a summary of the observations made by respondents. The Commission also informed the Parties that it considers some of the observations justified and amendments to the Initial Commitments necessary in order to remedy the concerns raised.

(366) In order to address the observations made by the Commission as a result of the market test, the Parties formally submitted, on the 22 January 2025, an improved[452] version of the Initial Commitments containing:

(a) An improved TSA commitment with the following amendments:

– An extension of the initial duration of the TSA for the supply of products and services [confidential logistic arrangements];[453] and

– The introduction of the possibility to extend the TSA beyond the initial duration period. Therefore, under the Final Commitments, the TSA can be extended [confidential logistic arrangements] initially, if necessary for the Divestment Business' viability. The TSA can be further extended [confidential logistic arrangements], still at cost to cover for existing customers of the Divestment Business that have not yet been qualified despite the purchaser having committed their reasonable best efforts to qualify such customers.[454]

(b) The introduction of a technology transfer agreement ('TTA')[455] for a period of [confidential logistic arrangements] post-Closing, granting the purchaser access, at no cost, to:

– AFP's specifications for retortable lidding and the accompanying co-extrusion process and homologation records necessary to order the required co-extrusion line and to produce the co-extruded foil. This access can be provided pre-closing subject to appropriate confidentiality safeguards[456]; and

[451] Minutes of a call with a customer of 14 January 2025, paragraph 6.

[452] The Final Commitments also contained a revised CAPEX funding covering most of the investments already planned by the AFP in the Omial plant for 2025. As foreseen in the Final Commitments, the CAPEX funding amount to EUR [details of the parties strategy and business activities] provided for in the Initial Commitments.

[453] Final Commitments, paragraph. 3(g) of the Schedule

[454] Final Commitments, paragraph. 3(g) of the Schedule.

[455] Final Commitments, paragraph 9.

[456] Final Commitments, paragraph 9 and, point 5 of the Schedule.

– AFP’s co-extrusion assets for testing purposes as well as support from AFP's technology team and Constantia's technical experts for the installation and commissioning co-extrusion line.[457]/.[458]

(c) The transfer, subject to suppliers’ consent, of contracts for raw materials used at the AFP’s [confidential logistic arrangements] (i.e. plant supplying the Divestment Business with the pre-treated foil), including the already qualified plain foil, PP/PE and any other raw materials (e.g., solvents, glues, etc.) used by AFP for the production (co- extrusion) of retortable lidding foil at the [confidential logistic arrangements].[459]

(d) A backup production mechanism whereby AFP will provide support to the purchaser in case of unforeseen production issues. Specifically, for a period of [confidential logistic arrangements] after Closing, AFP will use its best efforts to supply pre-treated foil to the Divestment Business at market price until the Purchaser is able to resume its own production.

(e) The transfer [confidential logistic arrangements] from Closing, on either a temporary or permanent basis of certain key employees with relevant know-how and experience in pre-treated foil from AFP's [confidential logistic arrangements] that produces the pre-treated foil. These include [confidential logistic arrangements] which will support the Purchaser with tasks such as co-extrusion machine installation and material testing.[460]

(f) The provision by AFP of a comprehensive training and support to employees located in both the Omial Plant (i.e., the plant to be divested) or in other plants of the purchaser to produce co- extruded lidding foil, covering manufacturing, technological, and technical processes.[461]

(g) Shorter duration for the transfer of the tools and lines[462] ([confidential logistic arrangements])[463] to take into account the feedback of the market test and a commitment to build buffer stock during that transfer period. In particular, the Final Commitments also include a clear provision whereby the Parties commit to manufacture the buffer stock to ensure continuity of supply during the transfer of the line and various tools.[464]

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457 Final Commitments, paragraph 9.

458 Any additional know-how that is required for the production of co-extruded foil used to produce retortable human and pet food lidding to fulfil the orders of the customers of the Divestment Business and/or to order the co-extrusion machine is also covered under the TTA. This TTA can in addition be extended for a period of [confidential logistic arrangements]. Final Commitments, paragraph 9 and, paragraph 5 of the Schedule.

459 Final Commitments, paragraph 9 and paragraph 3(d) of the Schedule.

460 Final Commitments, paragraph. 8.

461 Final Commitments, paragraph. 8.

462 These include : (i) the punching line and the tools used for retortable aluminium human food lids currently located in the [confidential logistic arrangements], (ii) the tools used for retortable aluminium pet food containers and lids at [confidential logistic arrangements], (iii) the equipment used for retortable aluminium pet food lids at the [confidential logistic arrangements]and (iv) the tools used for the production of [confidential logistic arrangements] retortable containers at the [confidential logistic arrangements] which are supposed to be delivered to Omial. See Final Commitments, paragraph 7 (d) to (g) of the Schedule.

463 Final Commitments, paragraph. 3 (c).

464 Final Commitments, paragraph. 3 (c).

9.3.3. The Commission's assessment of the Final Commitments

9.3.3.1. Removal of competition concerns

(367) The Commission considers that, for the reasons set out below, the Final Commitments remove the serious doubts previously identified as to the compatibility of the Transaction with the internal market with respect to the manufacture and supply of (i) retortable aluminium containers and lids for wet pet food and (ii) of retortable aluminium containers and lids for human food in the EEA.

(368) For both retortable aluminium containers and lids for wet pet food and for human food in the EEA, the Final Commitments allow for the removal of all competition concerns identified by the Commission. The Divestment Business specified in the Final Commitments consist of the entire EEA retortable pet and human food containers and lids business of AFP and therefore removes the entire overlap between the Parties in all markets in which serious doubts due to horizontal non-coordinated effects arise (i.e., retortable aluminium containers and lids for wet pet food, and for human food).

(369) The majority of respondents to the market test that expressed a view consider that the Initial Commitments – subject to certain amendments further laid down in paragraph (366) above – are suitable and adequate to effectively remove the competition concerns that may result from the Transaction.[465]

(370) The Commission, also in light of the considerations in Section 9.3.3.2 below, therefore, concludes that the Final Commitments are sufficient to remove entirely the competition concerns identified in the EEA markets for retortable aluminium containers and lids for wet pet food and for human food.

9.3.3.2. Viability and competitiveness of the Divestment Business

(371) The Final Commitments include a number of provisions to ensure that the Divestment Business is able to viably and independently compete on the markets for the manufacturing and supply of (i) retortable aluminium containers and lids for wet pet food and (ii) of retortable aluminium containers and lids for human food in the EEA.

(372) Considering the Initial Commitments, respondents to the market test expressing a view generally consider that the scale and the scope of the Divestment Business is sufficient to ensure its immediate viability and competitiveness – some respondents however make this view subject to certain improvements to the Initial Commitments in particular with respect to the supply agreement of the pre-treated foil and the need to develop internal capabilities for the production of such an input.[466]

(373) Following this feedback, the Parties included several improvements in the Final Commitments. These are mostly improvements to the terms of the TSA and provisions aimed primarily at ensuring that MTX (or any other purchaser) can

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465 Replies to Questionnaire on commitments offered by the Parties, Question C.1

466 Replies to Questionnaire on commitments offered by the Parties, Question E.1.1. Minutes of a call with a customer, 14 January 2025.

replicate AFP's capabilities to internally produce the required co-extruded pre-treated foil for human and wet pet food lids. These capabilities are, pre-Transaction, relied upon by the Divestment Business to obtain the co-extruded pre-treated foil for human and wet pet food lids and are not part of the Divestment Business.

9.3.3.2.1. Access to co-extruded pre-treated foil for retortable aluminum human and pet food lidding

(374) First, in relation to the TSA and access to the needed input (i.e., co-extruded pre-treated foil for human and pet food lidding), the Commission takes the view that the Divestment Business will have access to sufficient volumes of such an input, under competitive conditions and for a sufficient period.

(375) Some market participants highlighted certain limitations as discussed in paragraph (350) above, in particular that the purchaser would not be able to start producing co-extruded aluminium foil for the production of retortable lids internally to cover the needs of the Divestment Business [confidential logistic arrangements] as initially envisaged by the TSA.[467]

(376) Following the results of the market test, the Parties improved the Initial Commitments by extending the initial duration of the TSA covering, among others, the supply of pre-treated foil [confidential logistic arrangements]. The TSA will maintain any current supply relationship the Divestment Business has with the broader AFP group with respect to pre-treated foil. This supply will be done at cost. The Divestment Business will therefore maintain for a sufficient period its current supply relationship with the AFP group as it was pre-transaction.

(377) The Commission further notes that the TSA can be further extended by a [confidential logistic arrangements] at the option of the Purchaser. Further extensions by periods [confidential logistic arrangements] are also possible as long as the purchaser has not managed to qualify existing customers of the Divestment Business' customers that have not yet been qualified despite the Purchaser having committed their reasonable best efforts to qualify such customers.

(378) The longer upfront duration of the TSA combined with the extension possibilities address the concerns raised by some market participants that the possible purchaser (i.e., MTX[468], or any other Purchaser) would not be able to start producing co-extruded aluminium foil for the production of retortable aluminium lids internally [confidential logistic arrangements] TSA duration envisaged in the Initial Commitments.[469]

467 Replies to Questionnaire on commitments offered by the Parties, Question E.4.

468 The Commission notes that any observation of the current capabilities of MTX are without prejudice on the suitability of the purchaser, which will be assessed at a later stage in a separate decision. In the event the Commission does not approve MTX as the Purchaser, the Parties commit to find an alternative purchaser and to enter into a final binding sale and purchase agreement for the sale of the Divestment Business on terms of sale approved by the Commission within the foreseen divestiture period. If the Notifying Party has not entered into such an agreement with a purchaser and on terms of sale approved by the Commission at the end of the foreseen divestiture period, it shall grant the divestiture trustee an exclusive mandate to sell the Divestment Business in accordance with the procedure described in the Final Commitments; see Final Commitments, paragraphs 2 and 3.

469 Replies to Questionnaire on commitments offered by the Parties, Question E.4.

(379) The Commission also observes that, at the request of the Purchaser, the TSA can be terminated earlier if the purchaser no longer requires this transitional supply arrangement.

(380) The possibility to extend or terminate the TSA provides the purchaser of the Divestment Business with a sufficient degree of flexibility in its sourcing strategy to adapt to any change in market conditions or pricing structures on the pre-treated foil market. It also ensures that the purchaser benefits from the necessary time and incentive to develop internally its own co-extrusion capabilities for pre-treated foil.

(381) Furthermore, links between competitors have not been identified as a source of competition concerns as part of the assessment of the Transaction. This is because the Divestment Business will be supplied at cost and the Parties will not have the ability to strategically manipulate the pe-treated foil prices in order to increase the cost base of the Divestment Business.

9.3.3.2.2. Technology transfer agreement and necessary arrangements to develop internal capabilities for co-extruded pre-treated foil for human and wet pet food

(382) In relation to the need for the purchaser of the Divestment Business to develop internal capabilities for co-extruded pre-treated foil, some market participants highlighted that they would not purchase retortable aluminium containers and lids for human and/or pet food from producers such as the Divestment Business that are not vertically integrated.[470] A vast majority of respondents also highlighted that it is important for the competitiveness and viability of the Divestment Business that MTX (or any other Purchaser) source co-extruded aluminium foil for the production of retortable aluminium lids internally, rather than on the merchant market.[471]

(383) In order to address these concerns, the Final Commitments include a technology transfer agreement coupled with various other commitments.

(384) First, the Commission notes that, thanks to TTA as described in further detail in paragraph (366) above, the Divestment Business and the Purchaser will have access to all the necessary know-how of AFP that is relevant for the production co-extruded pre-treated foil, under competitive conditions (i.e., at cost) and for a sufficient period.

(385) In particular, the TTA covers (i) AFP's specifications for retortable lidding and the accompanying co- extrusion process (including the bill of materials, rooting, and technical procedures), (ii) AFP's homologation / qualification records with respect to customers of retortable food lidding and (iii) reasonable access to AFP's co-extrusion assets for the Purchaser to test its own plain foil and related raw materials on AFP's co-extrusion assets. The TTA will also cover any additional know-how and technical documentation that is necessary to either (i) order the co-extrusion line or (ii) to produce co-extruded foil for restorable human and pet food to customers of the divestment business.[472] Therefore, the Purchaser will have access

470 Replies to Questionnaire on commitments offered by the Parties, Question E.7.
471 Replies to Questionnaire on commitments offered by the Parties, Question E.8.
472 Final Commitments, paragraph. 9

to all information that is needed to set up the relevant co-extrusion capabilities and serve customers as it did pre-Transaction.

(386) The Commission further notes that the TTA is provided for a duration of [confidential logistic arrangements] with a possibility for a further extension [confidential logistic arrangements] at the option of the purchaser. This provides the purchaser with a sufficient time and flexibility to obtain, integrate and use the transferred know-how.[473]

(387) Furthermore, the TTA provides for the possibility of know-how as soon as the purchaser has been approved (i.e. prior to closing) in order to allow it to order the co-extrusion line.[474] This allows the purchaser to swiftly proceed with the order of the co-extrusion line and accelerate the timeline for the internalisation of the necessary co-extrusion capabilities for pre-treated foil.

(388) The Commission also considers that TTA is further strengthened with the transfer to the purchaser and at its own request of [confidential logistic arrangements] (either on a permanent or temporary basis). These transferred employees will support the purchaser on the installation and initial testing of a new machinery for the production of co-extruded foil used to produce retortable food lidding. The Purchaser will therefore benefit from skilled workforce to implement the transferred know-how and expertise.[475]

(389) In addition, the Final Commitments include arrangements for the training of, and transfer of skills and knowledge to personnel of the Divestment Business by the Parties. This provision is in particular aimed at ensuring that skills and knowledge related to the production of the co-extruded foil is also shared with personnel already employed by the purchaser and not limited to those that might be transferred from AFP.[476]

9.3.3.2.3. *Customers qualification*

(390) In relation to the need to requalify certain volumes purchased by some customers due, in particular, to lines and/or tools transfers from AFP to the Divestment Business, several customers confirmed that such a requalification process might be required.[477]

(391) First, the Commission notes that, for the requalification of the volume produced in AFP's plant [details of the parties' divestment strategy and business activities related to local presence] as supplied to [details of the parties' customers], the Initial Commitments already contained a provision whereby the Parties committed to build the buffer stock necessary for any period until requalification of [details of the parties' customers] EEA volumes produced in that plant.[478] This will allow the Divestment Business to avoid any disruption to the supply of [details of the parties' customers] pending the requalification process.

473 Final Commitments, paragraph. 5 of the Schedule.
474 This is subject to the necessary confidentiality arrangements. Final Commitments, paragraph. 9.
475 Final Commitments, paragraph. 3(a) of the Schedule.
476 Final Commitments, paragraph. 3(b) of the Schedule.
477 Replies to Questionnaire on commitments offered by the Parties, Question E.7.
478 Final Commitments, paragraph. 3(d) of the Schedule.

(392) Second, the Commission notes that, as regards other possible needed requalification required in the context of the transfer of tools and/line, the Final Commitments contain a provision ensuring that these assets are transferred within a period [confidential logistic arrangements] from closing and that a buffer stock is built by the Parties for that period.[479] The applicable TSA for the supply of pre-treated foil and printing services ensure that supply is not disrupted either beyond the [confidential logistic arrangements] transfer period.[480]

(393) Therefore, overall, the Final Commitments ensure that the Divestment Business will be able to viably and independently compete on the markets for the manufacturing and supply of (i) retortable aluminium containers and lids for wet pet food and (ii) of retortable aluminium containers and lids for human food in the EEA. It includes provisions that further strengthen its viability (such as the technology transfer agreements and the revised TSA for the supply of the necessary pre-treated foil as well as other inputs and services).

(394) The Commission therefore considers that the scale and scope of the Divestment Business is sufficient to ensure its viability, competitiveness and independence.

9.4. Conclusion of the Commitments Assessment

(395) For the reasons outlined above, the commitments entered into by the Parties concerned are sufficient to entirely eliminate the serious doubts as to the compatibility of the Transaction with the internal market.

10. CONDITIONS AND OBLIGATIONS

(396) 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.

(397) The fulfilment of the measures that give 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) 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.

(398) In accordance with the basic distinction between conditions and obligations described in the preceding paragraph, this Decision should be made conditional on full compliance by the Parties with the commitments set forth in Sections B, C and D of the Final Commitments (including the Schedule and its exhibits 1- 4). The requirements set out in Sections E and F of the Final Commitments constitute

479 Final Commitments, paragraph. 3(c)

480 This TSA covers any current supply relationships with the broader AFP group, including the supply of pre-treated aluminium foil for aluminium lids, the supply of printed lids etc. Final Commitments, paragraph. 3(g) of the Schedule.

obligations on the Parties within the meaning of Article 8(2) of the Merger Regulation as they concern the implementing steps which are necessary to achieve the modifications sought in a manner compatible with the internal market.

(399) The commitments in Sections B, C and D of the Final Commitments (including the Schedule and its exhibits 1-4) constitute conditions attached to this decision, as only through full compliance therewith can the structural changes in the relevant markets be achieved. The other commitments set out in the Final Commitments (Annexed to the present decision) constitute obligations, as they concern the implementing steps which are necessary to achieve the modifications sought in a manner compatible with the internal market.

11. CONCLUSION

(400) For the above reasons, the Commission has decided not to oppose the notified operation as modified by the commitments and to declare it compatible with the internal market and with the functioning of the EEA Agreement, subject to full compliance with the conditions by the Parties with the commitments set forth in Sections B, C and D of the Final Commitments (including the Schedule and its exhibits 1-4) 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)
Teresa RIBERA
Executive Vice-President

Case M.11536

ACQUISITION
OF
ALUFLEXPACK AG
BY
ONE ROCK CAPITAL PARTNERS

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2) of Council Regulation (EC) No 139/2004 (the "**Merger Regulation**"), Constantia Flexibles GmbH ("**Constantia**") hereby enters into the following Commitments (the "**Commitments**") vis-à-vis the European Commission (the "**Commission**") with a view to rendering the acquisition of sole control by Constantia, an indirect subsidiary of a fund managed by One Rock Capital Partners, LLC (collectively with its controlled funds and affiliates, "**ORC**") of Aluflexpack AG ("**AFP**") (together with Constantia, the "**Parties**") (the "**Concentration**") compatible with the internal market and the functioning of the EEA Agreement.

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

Section A. Definitions

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

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***").

AFP: Aluflexpack AG, incorporated under the laws of Switzerland, with its registered office at Alte Aarauerstrasse 11, CH-5734 Reinach AG, CH – Switzerland and registered with the Commercial/Company Registry of the Canton of Aargau under number CHE-379.203.800.

AFP Novi: Aluflexpack Novi d.o.o., incorporated under the laws of Croatia, with its registered office at Ulica Dr. F. Tudmana 25, Murvica, 23241 Policnik, Zadar, Croatia and registered with the Commercial/Company Registry of Zadar under number (OIB) 23268154531.

AFP Polska: Aluflexpack Polska Sp.z.o.o., incorporated under the laws of Poland, with its registered office at ul. Trojpole 7, 61-693, Poznan, Poland and registered with the Commercial/Company Registry of Poland under Tax Identification Number 9720000292.

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 5(a), (b) and (c) and described more in detail in the Schedule.

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

Closing Period: the period 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.

Constantia: Constantia Flexibles GmbH, incorporated under the laws of Austria, with its registered office at Handelskai 92, Rivergate, 1200 Vienna, Austria and registered with the Commercial/Company Registry at Vienna under number ATU 80174936.

Divestment Business: the business or businesses as defined in Section B and in the Schedule which Constantia commits to divest.

Divestiture Trustee: one or more natural or legal person(s) who is/are approved by the Commission and appointed by Constantia and who has/have received from Constantia 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.

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.

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 Constantia, and who has/have the duty to monitor the Parties' compliance with the conditions and obligations attached to the Decision.

Omial Novi: Omial Novi d.o.o., incorporated under the laws of Croatia, with its registered office at Zakučac 11, 21310 Omiš, Hrvatska – Croatia and registered with the Commercial/Company Register at Croatia under VAT number (OIB) HR52660468241.

Omial Plant: production plant based on the real property registered with the Split Municipal Court, Omiš Land Registry Department in cadastral municipality (CM) Blato na Cetini and CM Zakučac owned by WertInvest Nekretnine d.o.o. ("WertInvest"), located in Zakučac 11, 21310 Omiš, HR – Croatia, and operated by Omial Novi.

Parties: the Notifying Party (Constantia) and the undertaking that is the target of the concentration (AFP).

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

PPS: Process Point Service AG, incorporated under the laws of Liechtenstein, with its registered office at Äulestrasse 56, 9490 Vaduz, Lichtenstein and registered with the Commercial/Company Registry of Liechtenstein under number FL-0002.153.143-7.

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 21 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.

Section B. The commitment to divest and the Divestment Business

<u>Commitment to divest</u>

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 22 of these Commitments. To carry out the divestiture, Constantia commits to find a purchaser and to enter into a final binding sale and purchase agreement for the sale of the Divestment Business within the First Divestiture Period. If Constantia has not entered into such an agreement at the end of the First Divestiture Period, Constantia shall grant the Divestiture Trustee an exclusive mandate to sell the Divestment Business in accordance with the procedure described in paragraph 34 in the Trustee Divestiture Period.

3. 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 has entered into a final binding sale and purchase agreement and the Commission approves the proposed purchaser and the terms of sale as being consistent with the Commitments in accordance with the procedure described in paragraph 22; and

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

   (c) the transfer of the assets which will be transferred from […] to Omial Novi and listed in paragraphs 7(d)-7(g) of the Schedule has been completed […] from Closing. The Parties commit to manufacture, to procure the manufacture, or assist in the manufacture of any buffer stock of retortable containers and lids required to meet the Divestment Business customers' orders during the aforementioned period […].

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

Structure and definition of the Divestment Business

5. The Divestment Business consists of Omial Novi, which operates the Omial Plant with all relevant assets, contracts and personnel related to the entire EEA retortable pet and human food containers and lids business of AFP. In addition, the Divestment Business includes several other products supplied by the Omial Plant, i.e., (i) retortable pet and human food containers and lids to non-EEA customers, (ii) cheese and dairy non-retortable containers, (iii) other non-retortable human food containers, (iv) injection systems, (v) other non-food packaging and (vi) pre-treated foil. The Divestment Business is subject to the carve-out of certain minor assets, and contracts not related to AFP's retortable pet or human food business, and limited carve-ins from PPS and AFP Novi (Drnis and Zadar) as specified in the Schedule. 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; these licences, permits and authorisations will remain valid and in force post-Divestment.

(c) all contracts, leases, commitments and customer orders of the Divestment Business; all customer, credit and other records of the Divestment Business; and

(d) the Personnel.

6. The Divestment Business includes the benefit, for a transitional period of […] after Closing of all current arrangements under which AFP or its Affiliated Undertakings supply products or services to the Divestment Business, as detailed in the Schedule [Parties' contractual arrangements]. The Purchaser shall have the option to terminate the transitional arrangements, as detailed further in the Schedule, earlier if the Purchaser no longer requires these transitional arrangements, in particular in the event that the Purchaser decided to conclude an agreement with a third-party provider for the supply of the relevant services or decided to in-source these services. If required by the Purchaser, the relevant period can be extended by […] if such extension is necessary to ensure the viability of the Divestment Business and subject to the Monitoring Trustee's consent. Such extension of […] can be made to ensure that the Purchaser has (i) in-sourced to a sufficient extent the pre-treatment of the retortable food lidding foil or has entered into a supply agreement with a third-party supplier and (ii) the Divestment Business' customers have qualified the pre-treated foil supplied either by the Purchaser itself or third-party supplier (or both). If further extensions (beyond the aforementioned […]) are requested by the Purchaser and are deemed necessary to ensure the viability of the Divestment Business ([Parties' contractual arrangements]) and subject to the Monitoring Trustee's consent, such extensions can be provided for successive […] periods on the same price terms as above (i.e. at cost basis). 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 services operations.

7. In addition, if following the qualification of the pre-treated foil for retortable food lidding by the relevant Divestment Business' customers, the Purchaser runs into unforeseen issues with its own production of pre-treated foil for retortable food lidding, for a period of […] from Closing AFP commits to use best efforts, subject to any reasonable capacity constraints, to support the Purchaser by supplying such pre-treated foil to the Divestment Business at market price, until the Purchaser is able to resume its own production to fulfil the orders of the Divestment Business' customers.

8. At Purchaser's request, the Divestment Business will include also key personnel from AFP's […] plant (i.e., […] as identified in the **Updated Exhibit 4 – Key Personnel**), which the Parties will

use their best efforts, including appropriate incentives schemes, to transfer to the Divestment Business (at the Purchaser's request on temporary or permanent basis) anytime within […] from Closing (the exact timing shall be determined by the Purchaser subject to a reasonable notice period and can be extended […] if the Purchaser's co-extrusion line has not been delivered within this time period) to assist the Purchaser with among others the installation of the co-extrusion machine and the material testing. The Parties will also provide incentives to the key personnel to be transferred from AFP's […] plant contingent on the Purchaser achieving specific milestones, such as the installation of the co-extrusion line, commencement of production, and first qualification with main customers. Additionally, AFP will provide comprehensive training and support to employees located in both the Omial Plant or in other plants of the Purchaser to produce co-extruded lidding foil, covering manufacturing, technological, and technical processes.

9. Additionally, for […] post-Closing the Divestment Business will benefit from a technology transfer agreement granting the Purchaser access [Parties' contractual arrangements] to AFP's specifications for retortable lidding and the accompanying co-extrusion process and homologation records necessary to order the required co-extrusion line and to produce the co-extruded foil. The Purchaser will also be granted reasonable access to AFP's [Parties' contractual arrangements], enabling the Purchaser to test its plain foil and related raw materials on AFP's co-extrusion assets. AFP's technology team will offer support in testing pre-materials, while Constantia's technical experts will provide consulting services relating to the installation and commissioning of the Purchaser's co-extrusion line. Prior to Closing, at the Purchaser's request, and subject to (i) the Commission having issued a Purchaser approval decision, (ii) the consent of the Monitoring Trustee, and (iii) the entry into confidential agreements governing the access to and distribution of such know how and technical documentation by the Purchaser, the Parties will grant the Purchaser access to AFP's specifications for retortable lidding and the accompanying co-extrusion process and homologation records necessary to order the required co-extrusion line and to produce the co-extruded foil.

10. The Divestment Business includes also CAPEX funding in the quantity sufficient for the Divestment Business to complete the CAPEX spending listed in **Confidential Annex 27**, involving mainly the purchasing of [Parties' contractual arrangements]. To this effect, Constantia shall establish an account at a recognized bank or other financial institution (the **"CAPEX Funding Escrow Account"**), which shall, at or around Closing, be funded with an amount of […] (the "**CAPEX Funding Escrow Deposit**"). Constantia and the Monitoring Trustee will, prior to or at the Divestment Business Closing, enter into an escrow agreement, which shall entitle the Monitoring Trustee to disburse the CAPEX Funding Escrow Deposit to the Purchaser for the sole purpose of making investments for the completion of the CAPEX spending as listed in the aforementioned Confidential Annex. Should the Purchaser wish to implement any measures covered by this Confidential Annex, the Purchaser shall be entitled to obtain a full or partial disbursement for such measure to be paid out of the CAPEX Funding Escrow Deposit of these Commitments from the Monitoring Trustee within one year from the Divestment Business Closing (the "**Investment Period**"). After the Investment Period, the Monitoring Trustee will pay the amount that has not been disbursed to the Purchaser and that does not concern investments pursuant to Confidential Annex which have already been commenced and, at that time, remains deposited in the Escrow Account, to Constantia in accordance with Constantia's instructions.

Section C. Related commitments

Preservation of viability, marketability and competitiveness

11. 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 through 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.

Hold-separate obligations

12. The Parties commit, from the Effective Date until Closing, to keep the Divestment Business separate from the business(es) it is retaining and to ensure that unless explicitly permitted under these Commitments: (i) management and staff of the business(es) 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.

13. 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 11(c) of these Commitments. The Commission may, after having heard the Parties, require the Parties to replace the Hold Separate Manager.

14. To ensure that the Divestment Business is held and managed as a separate entity the Monitoring Trustee shall exercise AFP's, and if applicable Constantia'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 AFP and Constantia, as applicable. Upon request of the Monitoring Trustee, AFP and Constantia, as applicable, shall resign as a member of the boards or shall cause such members of the boards to resign.

Ring-fencing

15. The Parties shall implement, or procure to implement, all necessary measures to ensure that they do 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 AFP's, or Constantia's, as 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

16. 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.

17. The Parties undertake not to solicit for a period of […] after Closing any of the customers of the Divestment Business for the scope of work (SKUs) covered by the Divestment Business' current commercial relationship with each such customer. The Parties further undertake not to compete for a period of […] after Closing for any of the customers of the Divestment Business for the scope of work (SKUs) covered by the Divestment Business' current commercial relationship with each such customer.

Due diligence

18. 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

19. The Parties shall submit written reports in English on potential purchasers of the Divestment Business and developments in the negotiations with such potential purchasers to the Commission and the Monitoring Trustee no later than 10 days after the end of every month following the Effective Date (or otherwise at the Commission's request). The Parties 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.

20. The Parties 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

21. 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 and 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.

22. The final binding sale and purchase agreement (as well as ancillary agreements) relating to the divestment of the Divestment Business shall be conditional on the Commission's approval. When the Parties have reached an agreement with a purchaser, it shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), within one week to the Commission and the Monitoring Trustee. The Parties must be able to demonstrate to the Commission that the purchaser fulfils the Purchaser Criteria and that the Divestment Business is being sold in a manner consistent with the Commission's Decision and the Commitments. 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

23. Constantia shall appoint a Monitoring Trustee to carry out the functions specified in these Commitments for a Monitoring Trustee. Constantia commits not to close the Concentration before the appointment of a Monitoring Trustee.

24. If Constantia 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 Constantia at that time or thereafter, Constantia shall appoint a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Trustee Divestiture Period.

25. The Trustee shall:

(a) at the time of appointment, be independent of the Parties and its/their Affiliated Undertakings;

(b) possess the necessary qualifications to carry out its mandate, for example have sufficient relevant experience as an investment banker or consultant or auditor; and

(c) neither have nor become exposed to a Conflict of Interest.

26. The Trustee shall be remunerated by Constantia 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 Constantia

27. No later than two weeks after the Effective Date, Constantia shall submit the name or names of one or more natural or legal persons whom Constantia 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, Constantia shall submit a list of one or more persons whom Constantia 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 25 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

28. 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, Constantia 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, Constantia shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

New proposal by the Constantia

29. If all the proposed Trustees are rejected, Constantia 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 22 and 27 of these Commitments.

Trustee nominated by the Commission

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

II. <u>Functions of the Trustee</u>

31. 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 Constantia, 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

32. 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 12 and 13 of these Commitments;

(b) supervise the management of the Divestment Business as a distinct and saleable entity, in accordance with paragraph 14 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 Constantia such measures as the Monitoring Trustee considers necessary to ensure the 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 Constantia 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 are failing to comply with these Commitments;

(viii) within one week after receipt of the documented proposal referred to in paragraph 22 of these Commitments, submit to the Commission, sending Constantia 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.

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

Duties and obligations of the Divestiture Trustee

34. 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 21 and 22 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 Constantia, subject to Constantia's unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.

35. 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 Constantia.

III. Duties and obligations of the Parties

36. The Parties shall provide and shall cause its advisors to provide the Trustee with all such co-operation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of the Parties' or the Divestment Business' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments and the Parties and the Divestment Business shall provide the Trustee upon request with copies of any document. The Parties 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.

37. 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. Constantia shall provide and shall cause its advisors to provide the Monitoring Trustee, on request, with the information submitted to potential

purchasers, in particular give the Monitoring Trustee access to the data room documentation and all other information granted to potential purchasers in the due diligence procedure. The Parties 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.

38. Constantia 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, Constantia shall cause the documents required for effecting the sale and the Closing to be duly executed.

39. Constantia 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 Constantia for, any liabilities arising out of the performance of the Trustee's duties under the Commitments, except to the extent that such liabilities result from the willful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.

40. At the expense of Constantia, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to Constantia'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 Constantia refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard Constantia. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 35 of these Commitments shall apply *mutatis mutandis*. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served the Parties during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.

41. Constantia agrees that the Commission may share Confidential Information proprietary to Constantia 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*.

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

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

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

44. 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 Constantia, require Constantia to replace the Trustee; or

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

45. If the Trustee is removed according to paragraph 44 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 23 and 30 of these Commitments.

46. Unless removed according to paragraph 44 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

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

48. The Commission may further, in response to a reasoned request from the Notifying Parties showing good cause waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to the Notifying Party. 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

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

Duly authorised for and on behalf of Constantia
Brussels, 22 January 2025
[signed]

Duly authorised for and on behalf of Aluflexpack AG
Reinach AG, 22 January 2025
[signed]

SCHEDULE

1. The Divestment Business comprises Omial Novi, which operates the Omial Plant with all relevant assets, contracts and personnel related to the entire EEA retortable pet and human food containers and lids business of AFP. In addition, the Divestment Business includes several other products supplied by the Omial Plant, i.e., (i) retortable pet and human food containers and lids to non-EEA customers, (ii) cheese and dairy non-retortable containers, (iii) other non-retortable human food containers, (iv) injection systems, (v) other non-food packaging and (vi) pre-treated foil. The Divestment Business is subject to certain limited carve-outs, as outlined in paragraph 4 of this Schedule concerning minor assets and contracts not related to the Divestment Business.

2. In accordance with Paragraph 5 of these Commitments, the Divestment Business consists of Omial Novi. As set out in paragraph 3 of this Schedule, the Divestment Business shall comprise 100% of the shares in Omial Novi d.o.o., including all its (a) tangible and intangible assets, (b) licences, permits and authorisations, (c) contracts, leases, commitments and customer orders, (d) customer, credit and other records, and (e) personnel, except certain limitations listed exhaustively in paragraph 4 of this Schedule. The Divestment Business will also comprise certain limited assets, contracts, personnel and records transferred from PPS and AFP Novi (Drnis and Zadar), as set out in paragraph 7 of this Schedule.

3. In particular, the Divestment Business includes **all assets and personnel currently part of Omial Novi**, including but not limited to:

   (a) **the following main tangible assets**: the Divestment Business comprises the Omial Plant and all the assets and equipment required for the purchaser to operate the Divestment Business as a viable and competitive business, as set out in the updated **Exhibit 1 – List of Machinery**. In particular:

   - One multi-functional foil lacquering / lamination line;
   - two slitting lines;
   - eighteen deep-drawing lines;
   - five punching lines;
   - along with all relevant tooling equipment (e.g. including the deep-drawing and punching moulds for different types of retortable pet and human food containers and lids) located mostly at the Omial Plant;[1]
   - a warehouse (“Warehouse Blato”), located close to the production facilities of the Omial Plant with approximately 7,000 m² storage capacity, which is currently owned by Omial Novi.

   (b) **the following main intangible assets**: all intangible assets, intellectual property rights and know-how necessary for the stand-alone operation of the Divestment Business, as well as for the Purchaser’s co-extrusion line to be able to supply co-extruded foil for retortable lidding meeting the qualification requirements of the Divestment Business’ customers of retortable container lids.

   (c) **the following main licences, permits and authorisations**: all licenses, permits, certifications and government authorizations that are required for the regular day to day operations, including construction and land registry permits, fire safety permits, permits

1 A small number of these tools is currently located at […] and will be moved to the Omial Plant as part of the Divestment Business, as set out in paragraph 7(e) of this Schedule. Moreover, certain tools already owned by Omial Novi will be moved from […] to the Omial Plant as part of the Divestment Business. Any additional tools that will be part of the Divestment Business will be listed in detail in the updated Exhibit 1.

for the continuous performance of hazardous activity and the use of hazardous and toxic chemicals, water management and discharge of waste water permits, permits for own waste storage, as well as environmental and operational permits. These licences, permits, and authorisations will remain valid and in force post-Divestment.

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

- **Omial Plant lease contract**: The lease agreement between […] regarding the Divestment Business' facilities and land.

- **Split Warehouse lease**: The lease agreement between […] for a warehouse located in Split.

- **Operations contracts**: All contracts related to operations of the Divestment Business, including among others the contracts for corporate vehicles, rent for workers' housing.

- **Customer contracts:** Currently there are […] EEA customers with framework agreements for the supply of retortable pet food containers and lids and […] EEA customers with framework agreements for the supply of retortable human food containers and lids. These agreements are executed with […] as the contracting entity, and will be transferred from […] to the Divestment Business.

  As to the other product categories part of the Divestment Business, there are currently framework agreements entered by […] with the following customers for the supply of pre-treated foil, injection systems and retortable pet food containers and lids: […]. These agreements will be transferred with respect to the products that are part of the Divestment Business.

  The Parties commit to transfer and to use their best efforts to obtain customers' consent for the transfer of these customer contracts. As regards [customer], the Parties commit to manufacture, to procure the manufacture, or assist in the manufacture of any buffer [Parties' contractual arrangements] production of retortable containers and lids for any potential period required for the requalification of [customer] EEA volumes of retortable containers and lids currently produced in [Parties' contractual/sales activities] to Omial.

- **Supplier contracts:** All supplier contracts related to the Divestment Business. The Parties commit to transfer and to use their best efforts to obtain suppliers' consent for the transfer of these suppliers' contracts. In addition, and at the Purchaser's request, the Parties commit to transfer, and to use their best efforts to obtain suppliers' consent for the transfer, the supply agreements for the already qualified plain foil, PP/PE and any other raw materials (e.g., solvents, glues, etc.) used by AFP for the production (co-extrusion) of retortable lidding foil at the […] plant to the Purchaser to ensure continuity of supply.

- **Supply Contracts with the broader AFP group:** The Parties commit to maintain any current supply relationships with the broader AFP group for a transitional period of [Parties' contractual arrangements], after which the contract(s) shall be phased out under the supervision of the Monitoring Trustee. The Purchaser shall have the option to terminate such supply relationships earlier if the Purchaser no longer requires these relationships, in particular in the event that the Purchaser decided to conclude an agreement with a third-party provider for the supply of the aforementioned services or decided to in-source these services. Equally, where required by the Purchaser, the relevant period can be extended by […] if such extension is necessary to ensure the viability of the Divestment Business and subject to the Monitoring Trustee's consent, until the Divestment Business' customers have qualified the pre-treated foil supplied by the Purchaser or a third-party supplier. If further extensions (beyond the aforementioned […]) are requested by the Purchaser and are deemed necessary to ensure the viability of the Divestment Business (i.e. to cover for existing Divestment Business' customers that have not yet been qualified despite the Purchaser having committed their reasonable best efforts to qualify such customers) and subject to the Monitoring Trustee's consent, such extensions can be provided for successive up to […] periods on the same price terms as above (i.e. at cost basis).

(e) **the following customer, credit and other records:**

- **Customer records:** All customer records of the Divestment Business as well as all of their pending purchase orders, including invoicing and customer services as also set out in the updated **Exhibit 2 – Customers contracts and records** will be transferred from [Parties' contractual arrangements] to the Divestment Business, as per paragraph 7 below.

- **Supplier records:** all supplier records of the Divestment Business will be transferred, as also set out in **Exhibit 3 – Suppliers contracts**.

(f) **all Personnel of Omial Novi** and 4 external hires. This includes the Key Personnel, as set out in the **Updated Exhibit 4 – Key Personnel**. In addition, the Parties commit best efforts, including through appropriate incentive schemes, to transfer key personnel from AFP's […] plant (as identified in the **Updated Exhibit 4 – Key Personnel)**, at the Purchaser's request on temporary or permanent basis, [Parties' contractual arrangements] from Closing (the exact timing shall be determined by the Purchaser subject to a reasonable notice period and can be extended up to […] if the Purchaser's co-extrusion line has not been delivered within this time period) to the Purchaser to assist the latter with among others [Parties' contractual arrangements]. The Parties will also provide incentives to the key personnel to be transferred from AFP's […] plant contingent on the Purchaser achieving specific milestones, such as the installation of the co-extrusion line, commencement of production, and first qualification with main customers.

(g) the arrangements for the **supply of products or services by AFP or Affiliated Undertakings** for a transitional period of […] after Closing: The Parties commit to maintain any current supply relationships with the broader AFP group for a transitional period of […] after which the contracts shall be phased out under the supervision of the Monitoring Trustee. In particular, the Parties commit to provide a Transitional Services Agreement ("**TSA**") along with the Divestment Business covering, *inter alia*, the supply of pre-treated aluminium foil for aluminium lids, the supply of printed lids[2] and of IT related services,[3] at cost basis, taking into account AFP's fixed and variable production and distribution costs. The Purchaser shall have the option to terminate the TSA earlier if the Purchaser no longer requires the TSA, in particular in the event that the Purchaser decided to conclude an agreement with a third-party provider for the supply of the aforementioned services or decided to in-source these services. If required by the Purchaser, the relevant period can be extended by up to […] if such extension is necessary to ensure the viability of the Divestment Business and subject to the Monitoring Trustee's consent. Such extension of up to […] can be made to ensure that the Purchaser has (i) in-sourced to a sufficient extent the pre-treatment of the retortable food lidding foil or has entered into a supply agreement with a third-party supplier and

2 The Parties confirm that the TSA will cover the supply of printed retortable lids [customer information] completes the requalification of the Omial Plant if such requalification is needed.

3 The Parties will amend the TSA to clarify that the training and support of employees will also cover employees in the Purchaser's co-extrusion line location (and in […] as needed).

(ii) the Divestment Business customers have qualified the pre-treated foil supplied either by the Purchaser itself or third-party supplier (or both). If further extensions (beyond the aforementioned […]) are requested by the Purchaser and are deemed necessary to ensure the viability of the Divestment Business (i.e. to cover for existing Divestment Business' customers that have not yet been qualified despite the Purchaser having committed their reasonable best efforts to qualify such customers) and subject to the Monitoring Trustee's consent, such extensions can be provided for successive up to […] periods on the same price terms as above (i.e. at cost basis).

In addition, if following the qualification of the pre-treated foil for retortable food lidding by the relevant Divestment Business' customers, the Purchaser runs into unforeseen issues with its own production of pre-treated foil for retortable food lidding, for a period of […] from Closing AFP commits to use best efforts, subject to any reasonable capacity constraints, to support the Purchaser by supplying such pre-treated foil to the Divestment Business at market price, until the Purchaser is able to resume its own production to fulfil the orders of the Divestment Business' customers.

(h) **CAPEX funding** in the quantity sufficient for the Divestment Business to complete the CAPEX spending listed in **Confidential Annex 27**, involving mainly the purchasing of [business strategy/logistic arrangements]. To this effect, Constantia shall establish an account at a recognized bank or other financial institution (the **"CAPEX Funding Escrow Account"**), which shall, at or around Closing, be funded with an amount of […] (the "**CAPEX Funding Escrow Deposit**"). Constantia and the Monitoring Trustee will, prior to or at the Divestment Business Closing, enter into an escrow agreement, which shall entitle the Monitoring Trustee to disburse the CAPEX Funding Escrow Deposit to the Purchaser for the sole purpose of making investments for the completion of the CAPEX spending as listed in the aforementioned Confidential Annex. Should the Purchaser wish to implement any measures covered by this Confidential Annex, the Purchaser shall be entitled to obtain a full or partial disbursement for such measure to be paid out of the CAPEX Funding Escrow Deposit of these Commitments from the Monitoring Trustee within one year from the Divestment Business Closing (the "**Investment Period**"). After the Investment Period, the Monitoring Trustee will pay the amount that has not been disbursed to the Purchaser and that does not concern investments pursuant to Confidential Annex which have already been commenced and, at that time, remains deposited in the Escrow Account, to Constantia in accordance with Constantia's instructions.

4. The Parties commit to provide, until […] from Closing, support which the Purchaser may reasonably require to ensure an effective installation of the co-extrusion line and qualification of the Divestment Business' customers for the retortable container lids. More specifically, the Parties commit to provide the Purchaser at its request with the following support and/or training:

(a) support for the commissioning, installation and initial testing of a new machinery for the production of co-extruded foil used to produce retortable food lidding, on the basis of the know-how and technical documentation available to the Parties. In particular,

- at the Purchaser's request, the Parties commit to use best efforts, including through appropriate incentive schemes, to transfer to the Divestment Business (at the Purchaser's request on temporary or permanent basis) [Parties' contractual arrangements] in charge of the co-extruded technology for retortable food lidding anytime […] from Closing (the exact timing shall be determined by the Purchaser subject to a reasonable notice period and can be extended […] if the Purchaser's co-extrusion line has not been delivered within this time period) to assist the Purchaser with the installation of the co-extrusion machine and material testing ensuring the production process is set up smoothly. The Parties will also provide incentives to the key personnel to be transferred from AFP's […] plant contingent on the Purchaser achieving specific milestones, such as the installation of the co-extrusion line, commencement of production, and first qualification with main customers;

- at the Purchaser's request, the Parties commit to use best efforts, including through appropriate incentive schemes, to also transfer to the Divestment Business (at the Purchaser's request on temporary or permanent basis) [Parties' contractual arrangements] (the exact timing shall be determined by the Purchaser subject to a reasonable notice period and can be extended […] if the Purchaser's co-extrusion line has not been delivered within this time period) to the Purchaser to assist the latter with any technical aspects of running a co-extrusion line. The Parties will also provide incentives to the key personnel to be transferred from AFP's […] plant contingent on the Purchaser achieving specific milestones, such as the installation of the co-extrusion line, commencement of production, and first qualification with main customers;

- the Parties will also enter into a separate technology transfer agreement ("**TTA**") which will grant the Purchaser with comprehensive support. In particular,

    - once the Purchaser's co-extrusion machine is installed and ready to be commissioned, AFP's technology team will provide support to the Purchaser in the testing of the Purchaser pre-material on the co-extrusion line at the Purchaser premises; and

    - Constantia's technical team, as identified under the TTA, with expertise in the installation and set-up of co-extrusion lines and pre-treatment equipment [Parties' contractual arrangements] will be available to assist the Purchaser in the installation and commissioning of the co-extrusion line.

(b) technical training to the Purchaser's personnel in relation to the production of co-extruded foil used to produce retortable food lidding, as provided under the TSA and for the duration of the TSA.

5. Furthermore, the Parties commit to provide during a period […] following the Closing, support in the context of the co-extrusion machine installation, operation and customer qualification proceedings for co-extruded foil used to produce retortable food lidding which the Purchaser may need to undergo following the transfer of the Divestment Business. In particular:

- Under the TTA, the Parties will grant the Purchaser, at no cost, access to *(i)* AFP's specifications for retortable lidding and the accompanying co-extrusion process (including the bill of materials, rooting, and technical procedures), *(ii)* AFP's homologation / qualification records with respect to customers of retortable food lidding and *(iii)* reasonable access to AFP's co-extrusion assets for the Purchaser to test its own plain foil and related raw materials on AFP's co-extrusion assets. Prior to Closing, at the Purchaser's request, and subject to (i) the Commission having issued a Purchaser approval decision, (ii) the consent of the Monitoring Trustee, and (iii) the entry into confidential agreements governing the access to and distribution of such know how and technical documentation by the Purchaser, the Parties will grant the Purchaser access to AFP's specifications for retortable lidding and the accompanying co-extrusion process and homologation records necessary to order the required co-extrusion line and to produce the co-extruded foil.

- Under the TTA, the Parties commit to provide any additional know-how and technical documentation that fulfills the following cumulative criteria: (i) is required for the order of the required co-extrusion line or the production of co-extruded foil used to produce retortable human and pet food lidding to fulfil the orders of the customers of the Divestment Business, and (ii) is requested by the Purchaser.

Where required by the Purchaser, the relevant period of the TTA can be extended by […] if such extension is necessary to ensure the viability of the Divestment Business and subject to the Monitoring Trustee's consent, until the Divestment Business' customers have qualified the pre-treated foil supplied by the Purchaser or a third-party supplier. If further extensions are requested by the Purchaser and are deemed necessary to ensure the viability of the Divestment Business (i.e., to cover for existing Divestment Business' customers that have not yet been qualified despite the Purchaser having committed their reasonable best efforts to qualify such customers) and subject to the Monitoring Trustee's consent, such extensions can be provided for successive […] under the same terms.

6. Notwithstanding the above, the Divestment Business shall <u>not</u> include the below items currently held by Omial Novi:

(a) **the following shareholdings:** all shares held by Omial Novi in [Parties' corporate structure]. For completeness, Omial Novi d.o.o. also holds a single share in [Parties' corporate structure]. This share will be transferred to another AFP Group company prior to closing.

(b) **the following tangible assets**: tangible assets not relevant for the Divestment Business will be transferred out of the Omial plant and will not be part of the Divestment Business. These consist of spare parts for production of coffee capsules which are owned by the relevant customer and not by Omial.

(c) **the following intangible assets**: intangible assets, intellectual property rights and know-how relevant exclusively to the supply of coffee capsules or pre-treated foil for coffee capsules (the "**Retained Business**") will be transferred out of the Omial plant and will not be part of the Divestment Business.

(d) **the following licences, permits and authorisations**: all licenses, permits, certifications and government authorizations required exclusively for the Retained Business.

(e) **the following customer, credit and other records**:

- **Customer records:** all customer records of AFP's Retained Business.
- **Supplier records:** all supplier records of AFP's Retained Business.

7. In particular, the Divestment Business will also include certain contracts and assets which will be transferred from […] to Omial Novi:

(a) **the lease agreement for the warehouse** operated by […] in Liechtenstein **as well as access to storage at warehouses** used for pet food products in Germany ([…]) and the Netherlands ([…]).

(b) **the supplier contracts and records** relevant to the Divestment Business will be transferred, as set out and marked in **<u>Exhibit 3 – Suppliers contracts</u>**.

(c) **the following customer contracts and records will be transferred, as set out and marked in the updated <u>Exhibit 2 – Customers contracts and records</u>:**

- the […] agreements entered into by […] for the sale of pet food containers and lids;
- a […] agreement entered into by […] for the sale of pet food containers and lids.

- the […] agreements entered into by […] with the following customers sourcing retortable human food containers and lids: […][4], […].

- The […] agreements entered by […] with the following customers for the supply of pre-treated foil, injection systems and retortable pet food containers and lids: […]. These agreements will be transferred with respect to the products that are part of the Divestment Business.

(d) **an additional punching line and the tools used for retortable aluminium human food lids currently located in** […], as listed and marked in the updated **Exhibit 1 – List of Machinery**.

(e) **the tools used for retortable aluminium pet food containers and lids** […], as listed and marked in the updated **Exhibit 1 – List of Machinery**. This includes tools for the production of pet and human food containers and lids as well related spare parts.

(f) **the equipment used for retortable aluminium pet food lids** […], which is already owned by Omial Novi, as discussed in paragraphs 55-57 of the Form RM. This equipment consists of moulds for punching retortable pet food lids.

(g) **the tools used for the production of** [information on customers] **at the Omial Plant** which are about to be delivered to Omial in the coming days.

8. If there is any asset or personnel which is not be covered by paragraph 2, 3, and 5 of this Schedule but which is both used (exclusively or not) in the Divestment Business and necessary for the continued viability and competitiveness of the Divestment Business, that asset or adequate substitute will be offered to potential purchasers.

4 [Information on customers].

Exhibit 1 – List of Machinery

[…]

Exhibit 2 – Customers contracts and records

[…]

Exhibit 3 – Suppliers contracts

[…]

Updated Exhibit 4 – Key Personel

[…]