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PUBLIC VERSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Mondelēz International, Inc.
Lindbergh-Allee 1
8152 Glattpark
Switzerland

Subject: **Case M.10350 – Mondelēz / Chipita Industrial and Commercial Company**
Commission decision pursuant to Article 6(1)(b) 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 18 October 2021, the Commission received notification of a concentration, pursuant to Article 4 of the Merger Regulation, which would result from a proposed transaction by which Mondelēz International, Inc. ('Mondelēz', the United States) intends to acquire sole control over Chipita Industrial and Commercial Company S.A. and its direct or indirect subsidiaries and affiliates[3] ('Chipita', Greece) by way of a purchase of sales within the meaning of Article 3(1)(b) of the Merger Regulation (the 'Transaction')[4]. In this Decision, Mondelēz is referred to as the

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 […].

4 Publication in the Official Journal of the European Union No C 467, 19.11.2021, p. 12.

'Notifying Party' and, together with Chipita, as the 'Parties'. The entity that would result from the Transaction is referred to as the 'Merged Entity'.

1. THE PARTIES

(2) Mondelēz is a global snack company offering a wide range of products, including biscuits, chocolate, chewing gum and candy, cheese and powdered beverages. Mondelēz manufactures and markets its products internationally. Mondelēz's portfolio of biscuits and chocolate products includes, amongst others, household brands such as Barni, belVita, Cadbury, Chips Ahoy!, Club Social, Lacta, Milka, Oreo, Ritz, Toblerone, and TUC.

(3) Chipita is a multinational manufacturer of branded packaged croissants and other snack products, mostly baked bread based. Chipita is headquartered in Greece with production facilities in multiple countries, including across Europe. Chipita's main brands include 7DAYS, Chipicao and Finetti.

2. THE OPERATION

(4) Pursuant to the Sale and Purchase Agreement signed on 26 May 2021, Mondelēz will acquire, through the Transaction, 100% of the shares of and thereby sole control over Chipita.

(5) In light of the above, the Transaction would thus result in a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3. UNION DIMENSION

(6) The Parties have a combined aggregate worldwide turnover of more than EUR 5 000 million[5] (Mondelēz: EUR 23.2 billion and Chipita: EUR […]). Each of them has a Union-wide turnover in excess of EUR 250 million (Mondelēz EUR […] and Chipita EUR […]), but neither of the Parties achieves more than two-thirds of their aggregate Union-wide turnover within one and the same Member State.

(7) The concentration therefore has a Union dimension within the meaning of Article 1(2) of the Merger Regulation.

4. MARKET DEFINITION

4.1. Product market definition

(8) The Parties' activities overlap with respect to the wholesale of the following snacking products: (i) cakes and morning goods; (ii) sweet biscuits; (iii) sweet spreadable products; and (iv) savoury snacks. The Transaction does not give rise to vertical relationships between the Parties' activities.

5 Turnover calculated in accordance with Article 5 of the Merger Regulation.

(9) This Section examines the product and geographic market definitions for all products in relation to which the Parties' activities overlap horizontally.

4.1.1. The Commission's precedents

4.1.1.1. Distinction by product types

(10) The Commission previously considered the market for cake products separately from those of other snacking products.[6] In past decisions, the Commission also considered the possibility of sub-segmenting the market for cake products into the markets for (i) cakes, mini cakes and other pastries produced by craft pastries and industrial producers, and (ii) morning goods, which include bagels, croissants, scones and similar products that are normally eaten for breakfast, but it ultimately left open whether those sub-segments belong to separate product markets.

(11) With respect to sweet biscuits, in a previous decision the Commission considered that biscuits constitute a separate product market from other snacks, and also considered a number of sub-segments thereof, including sweet biscuits. However, the Commission left open if these sub-segments constitute separate product markets.[7] In another decision, the Commission considered sweet biscuits to belong to a product market that is separate from other types of biscuits such as savoury biscuits.[8]

(12) Also, the Commission previously considered a market for sweet spreadable products and has left open whether a narrower sub-segment for chocolate spreadable products should be considered as separate product market.[9]

(13) Regarding savoury snacks, in a previous decision, the Commission considered the market for savoury biscuits to be separate from that of sweet biscuits.[10] In other decisions, the Commission considered that savoury snack products are likely to constitute a product market that is separate from those of other snack foods.[11]

4.1.1.2. Distinction between branded and private label products

(14) In various previous decisions regarding different snacking products,[12] the Commission considered a distinction between products with brands owned by the manufacturers ('branded' products) and those with private labels marketed by the retailers ('white label' products), but finally left the market definition open.

4.1.1.3. Distinction by sale channels

(15) The Commission previously found a distinction by sale channels to be warranted, in particular since conditions of competition differ when snacking products are sold to

6 M.2817 Barilla / BPL / Kamps; M.5286 Lion Capital / Foodvest; M.6430 Oaktree/ Panrico.
7 M.1920 – Nabisco / United Biscuits.
8 M.4824 – Kraft / Danone Biscuits.
9 M.2302 – Heinz/CSM; M.7340 – Ferrero International/Oltan.
10 M.4824 – Kraft/ Danone Biscuits.
11 M.232 – PepsiCo/General Mills; M.2275 – PepsiCo/Quaker; M.5632 – PepsiCo, Inc / PepsiAmericas, Inc.
12 M.1920 – Nabisco / United Biscuits; M.6891 Agrofert/ Lieken.

retailers or to the food service sector (for example hotels, restaurants, canteens, etc.).[13]

4.1.2. The Notifying Party's view

(16) The Notifying Party considers that the various snacking product areas in which the Parties are active belong to a single product market for snacking products.[14]

(17) First, the Notifying Party considers that cakes and morning goods do not belong to the same product market because, from a demand-side prospective, the two product groups are consumed during different times of the day and are typically placed in different parts of retailer shops.[15] Furthermore, the Notifying Party considers that supply-side substitutability is limited and suppliers tend to concentrate more heavily on one of the two product groups.[16]

(18) Second, the Notifying Party argues that sweet biscuits belong to a product market that is separate from those of other biscuits and of other snacking products.[17]

(19) Third, the Notifying Party considers that sweet spreadable products belong to a product market that is separate from those of other snacking products, including other spreadable products such as savoury ones. According to the Notifying Party, no further differentiation of the market for sweet spreadable products is necessary.[18]

(20) Finally, the Notifying Party argues that savoury snacks belong to a product market that is separate from those of other snacking products. The Notifying Party also considers that the market for savoury snacks is differentiated across the various types of products such as for example backed bread products, potato chips, extruded snacks, and savoury biscuits.[19]

(21) With respect to the differentiation between branded and private label products, the Notifying Party considers that private label products should be included within each of the respective relevant markets because branded snacking products face intense competition from private label products in all snacking segments and because private label products provide consumers with an alternative to branded products.[20]

(22) With respect to the distinction between sales made to retailers and those made to the food service sector, while the Notifying Party agrees with the Commission's past practice that the foodservices segment has its own distinguishing features and that conditions of competition may differ between these two sale channels, it also considers that the extent of such a distinction might be less marked for snacking

13 M.5286 – Lion Capital / Foodvest; M.1990 – Unilever/Bestfoods; M.6430 – Oaktree/ Panrico; M.6891 – Agrofert/ Lieken.
14 Form CO, paragraph 152.
15 Form CO, paragraphs 162-163.
16 Form CO, paragraph 164.
17 Form CO, paragraphs 191-195.
18 Form CO, paragraphs 182-186.
19 Form CO, paragraphs 174-178.
20 Form CO, paragraphs 203-205.

products compared to the products considered by the Commission in *Unilever/ Bestfoods*.[21]

4.1.3. The Commission's assessment

4.1.3.1. Cakes and morning goods

(23) For the following reasons, the Commission considers that the results of the market investigation generally support the Notifying Party's view that certain distinctions between morning goods and cakes exist and that therefore they could be considered to belong to two separate product markets.

(24) First, cakes and morning goods appear to have key differences in terms of moments and places of consumption, texture and freshness / naturalness perception. An internal document produced by Mondelēz in the ordinary course of business, for example, shows that (i) soft cakes and certain morning goods[22] are consumed [consumer behaviour]; (ii) soft cakes and certain morning goods are consumed in different places as soft cakes are typically consumed [consumer behaviour] (iii) morning goods are considered by consumers [consumer behaviour], compared to cakes.[23]

(25) Second, internal documents of the Parties produced in the ordinary course of business indicate that conditions of competition for cakes are typically assessed by the Parties separately from those of other morning goods.[24]

(26) Third, the market investigation suggests that the various sub-segments within each of cakes and morning goods are likely part of the same product markets. A majority of market participants that expressed a view consider that morning goods (e.g. crumpets, bagels, pancakes, croissants, brioches and other products generally eaten for breakfast) are substitutable with each other in terms of price, product characteristics and consumer preferences.[25] Similarly to morning goods, a majority of the market participants that expressed a view consider that cakes are substitutable with each other in terms of price, product characteristics and consumer preferences.[26]

(27) Against this background, the Commission considers that within the broader market for cake products, morning goods and cakes may belong to separate product markets, without a need for further sub-segmentation. However, the exact market delineation of the relevant product market(s) can be left open, as the Transaction does not raise doubts as to its compatibility with the internal market with respect to cake products under any plausible market definition. In any event, for the purposes of this Decision, the Commission will conduct its assessment of the potential effects of the Transaction separately for the cake and morning goods segments.

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21 Form CO, paragraph 207.

22 The document considers baked goods and pastries.

23 Reply to RFI 2, Annex 5.2.1 [internal document].

24 See for example: [internal document].

25 Questionnaire to customers, questions 3 and 3.1; questionnaire to competitors, questions 3 and 3.1.

26 Questionnaire to customers, question 3; questionnaire to competitors, question 3.

4.1.3.2. Sweet biscuits

(28) In line with the Commission's past practice, the results of the market investigation suggest that sweet biscuits belong to a product market that is separate from other snacking products and from other types of biscuits.[27]

(29) A majority of market participants that expressed a view in the market investigation indicated that the various products included in the sweet biscuits category are substitutable with one another in terms of price, characteristics and consumer preferences.[28] As one competitor stated: "*Biscuits (sweet biscuits) are very specialized products (not very substitutable) to which people are attached locally, with specific recipes*".[29]

(30) However, the exact market delineation of the relevant product market for sweet biscuits, and more specifically the question whether sweet biscuits are a market separate from other snacking products and from other types of biscuits, can be left open, as the Transaction does not raise doubts as to its compatibility with the internal market under any plausible market definition.

(31) In any event, under a conservative approach and for the purposes of this Decision, the Commission will conduct its assessment of the likely effects of the Transaction separately for the sweet biscuits segment.

4.1.3.3. Sweet spreadable products

(32) In line with its previous decisions, the Commission is of the view that sweet spreadable products and savoury spreadable products are part of two separate product markets.

(33) From a demand-side prospective, consumption often differs in terms of time of consumption and consumption habits: savoury spreadable products are often spread on savoury biscuits, are used as a side or 'dip' to vegetables, or are otherwise spread on bread at lunch or dinner, whereas sweet spreadable products are more often spread on bread or sweet biscuits away from lunch or dinner.

(34) More specifically, with respect to chocolate spreadable products, the market investigation was inconclusive as to whether these constitute a product market separate from other sweet spreadable products. While a majority of the market participants that expressed a view in the market investigation considers that all sweet spreadable products such as spreadable chocolate, jam, honey, and peanut butter are substitutable with one another in terms of price, characteristics and consumer preferences,[30] some customers and competitors of the Parties consider chocolate spreadable products as a separate market.[31]

(35) However, the exact market delineation of the relevant product market for spreadable sweet products, and more specifically the question whether chocolate spreadable

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27 Questionnaire to customers, question 3.1; questionnaire to competitors, question 3.

28 Questionnaire to customers, question 3; questionnaire to competitors, question 3.

29 Questionnaire to competitors, questions 3.1.

30 Questionnaire to customers – question 3; questionnaire to competitors, question 3.

31 Questionnaire to customers – question 3.1; questionnaire to competitors, question 3.1.

products are a market separate from other sweet spreadable products, such as jam, honey and peanut butter, can be left open, as the Transaction does not raise doubts as to its compatibility with the internal market under any plausible market definition.

(36) Under a conservative approach and for the purposes of this Decision, the Commission will conduct its assessment of the likely effects of the Transaction separately for the chocolate spreadable products segment.

4.1.3.4. Savoury snacks

(37) For the following reasons, the Commission considers that he results of the market investigation supports the Commission's previous practice and the Notifying Party's view that savoury snacks are part of a product market that is separate from those of other snacks.

(38) First, a majority of market participants that replied to the market investigation indicated that savoury snacks are not substitutable with other snacks such as sweet biscuits.[32]

(39) Second, a majority of market participants that expressed a view in the market investigation indicated that the various products included in the savoury snacks category such as chips and crisps, extruded and corn-based products, nuts, salty biscuits, and other salty snacks are substitutable with one another in terms of price, characteristics and consumer preferences.[33]

(40) Against this background, the Commission considers that savoury snacks may belong to a product market that is separate from those of other snacks. However, the question whether savoury snacks are a separate market from other types of snacks can be left open, as the Transaction does not raise doubts as to its compatibility with the internal market in either case.

(41) In any event, for the purposes of this Decision, the Commission will conduct its assessment of the potential effects of the Transaction for the savoury snacks segment.

4.1.3.5. Branded and private label products

(42) While a majority of respondents to the market investigation that expressed a view consider that branded and private label products are not substitutable or only somewhat substitutable from a consumer perspective, there is also a significant minority of respondents that consider them to be substitutable with one another.[34,35]

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32 Questionnaire to customers – question 3.1; questionnaire to competitors, question 3..

33 Questionnaire to customers, question 3; questionnaire to competitors, question 3.

34 Questionnaire to customers, question 5; questionnaire to competitors, question 5.

35 While results in this Section and in Section 4.1.3.5 are reported in an aggregated fashion, questions have been asked separately for the following products: morning goods (e.g. crumpets, bagels, pancakes, tea cakes, croissants, brioches and other products generally eaten for breakfast), Savoury snacks (e.g. chips and crisps, extruded and corn-based products, nuts, salty biscuits, and other salty snacks), cakes, Sweet spreadable products (e.g. spreadable chocolate, jam, honey, and peanut butter), Sweet biscuits, and Biscuit wafers.

(43) Moreover, a relative majority of market participants that expressed a view in the market investigation consider that in case of a price increase (of 5-10%) of a given branded product only a small percentage of the Parties' customers would switch to a private label alternative.[36]

(44) However, the question whether a distinction should be made between branded and private label products can be left open as the Transaction does not raise doubts as to its compatibility with the internal market in either case.

4.1.3.6. Sale channels

(45) A majority of respondents to the market investigation that expressed a view indicated that conditions of competition (for example, delivery time, prices, number and quality of suppliers, etc.) differ if a manufacturer sells the same goods directly to retailers or through distributors (or other intermediaries).[37] This suggests that a distinction by sales channels may be appropriate.

(46) However, whether such a distinction is warranted for the purposes of this Decision can be left open, as the Transaction does not raise doubts as to its compatibility with the internal market in either case.

4.2. Geographic market definition

4.2.1. The Commission's precedents

(47) In previous cases, the Commission considered that the relevant geographic market for bakery products, including its possible sub-segments, is national in scope on the basis of different preferences and purchasing habits between Member States.[38]

(48) Likewise, the Commission previously considered the relevant geographic market of sweet spreadable products as national in scope because negotiations with customers of sweet spreadable products are predominantly national in scope and the prices of sweet spreadable products are generally determined on a national basis.[39]

4.2.2. The Notifying Party's view

(49) The Notifying Party submits that, in line with the Commission's precedents, the relevant geographic market for snacking products is at least national in scope. In this regard, the Notifying Party notes that the pricing and marketing are generally national and that, on the customer side, there are national preferences in the consumption of snacking products, reflected in different brands and different types of tastes. However, the Notifying Party submits that the Baltics should be treated as a single geographic market due to similar competitive conditions.[40]

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36 Questionnaire to customers, question 6; questionnaire to competitors, question 6.

37 Questionnaire to customers, question 8; questionnaire to competitors, questions 8.

38 M.6430 – Oaktree / Panrico, par. 22; M.6891 – Agrofert/ Lieken, par. 14; M.5644 – Kraft Foods/ Cadbury, par. 43; M.1920 – Nabisco/ United Biscuits, par. 12; M.4824 – Kraft/ Danone Biscuits, par. 15.

39 M.7340 – Ferrero International/Oltan, par. 26; M.1990 – Unilever/Bestfoods, par.57.

40 Form CO, paragraphs 208-209.

4.2.3. The Commission's assessment

(50) In line with the Commission's past practice, the results of the market investigation indicate that the markets for cakes, sweet biscuits, chocolate spreadable products and savoury snacks, are national in scope.

(51) A majority of respondents to the market investigation that expressed a view indicate that preferences, purchasing habits, brands and pricing differ between different countries of the EEA.[41] Moreover, a majority of customers that expressed a view in the market investigation indicated that they procure bakery and/or confectionery products on a national basis.[42]

(52) Therefore, the Commission will assess the potential effects of the Transaction on a national basis.

4.3. Conclusions on market definition

(53) The Parties' activities overlap in the following plausible product markets: cake products, morning goods, cakes, biscuits, sweet biscuits, sweet spreadable products, chocolate spreadable products, snacking products, and savoury snacks.

(54) The Commission will assess the potential effects of the Transaction on the plausible markets listed above at the national level.

5. COMPETITIVE ASSESSMENT

5.1. Legal framework

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

(56) Horizontal effects are those potentially deriving from a concentration where the undertakings concerned are actual or potential competitors of each other in one or more of the relevant markets concerned. The Commission appraises horizontal effects in accordance with the Horizontal Merger Guidelines[43].

(57) According to paragraph 26 of the Horizontal Merger Guidelines, a number of factors need to be assessed to determine whether significant non-coordinated effects are likely to result from a merger. A non-exhaustive list of relevant factors is provided in paragraphs 27-38.

(58) Accordingly, Sections 5.3.1-5.3.5 of the present decision assess, respectively, market shares and the increments brought about by the Transaction, closeness of competition between the Parties, the alternatives to the Parties and barriers to entry,

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41 Questionnaire to customers, question 10; questionnaire to competitors, question 10.

42 Questionnaire to customers, question 9.

43 Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings ('Horizontal Merger Guidelines'), OJ C 31, 05.02.2014.

and the impact that the main market participants expect from the Transaction. Based on all these factors considered together, conclusions on horizontal non-coordinated effects are drawn in Section 5.3.6.

(59) Non-horizontal effects may arise when the parties to a concentration either operate at different levels of the supply chain (vertical effects) or are active in closely related markets (conglomerate effects). As explained in Section 4.1, as the Parties operate at the same level of the supply chain the Transaction does not lead to non-horizontal effects.

5.2. Market structure

(60) The Transaction gives rise to the following horizontally affected markets (that is to say, markets in which the Parties' combined shares exceed 20%): (i) cakes in Czechia, France, Greece, Hungary, Latvia, Lithuania, the Netherlands, Poland, Romania and Slovakia; (ii) sweet biscuits in Czechia, Hungary, Lithuania, Poland, Romania and Slovakia; (iii) chocolate spreadable products in Bulgaria and Greece and (iv) savoury snacks in France.

(61) The Parties' market shares in value and in volume in the horizontally affected markets are reported in Table 1 (excluding private label sales) and in Table 2 (including private label sales).

(62) The market for savoury snacks in France has a HHI delta below 150 and the Parties have a combined market share below 50% ([20-30]%, private label excluded). Therefore, the savoury snacks market in France satisfies the conditions set out in point 6 of the Commission Notice on a simplified procedure for treatment of certain concentrations under Council Regulation (EC) No 139/2004 (the 'Simplified Notice'). For the reasons set out in the Simplified Notice, the Transaction is unlikely to raise competition concerns in relation to this market, which will therefore not be assessed further.

(63) In light of the above considerations and of the market shares in Tables 1 and 2, the assessment will focus on horizontal non-coordinated effects in the markets for (i) cakes in Czechia, France (including private label), Greece, Hungary, Latvia, Lithuania, the Netherlands (excluding private label), Poland, Romania and Slovakia; (ii) sweet biscuits in Czechia, Hungary, Lithuania, Poland, Romania and Slovakia; and (iii) chocolate spreadable products in Bulgaria and Greece.

(64) With respect to a possible segmentation of the relevant product markets by sale channels, the Parties were not able to provide market share estimates but they consider that they would not significantly differ from those presented in Tables 1 and 2 if a segmentation by sale channel were to be made.[44]

44 Form CO, paragraph 301.

Table 1 Parties' market shares in the plausible snacking markets for which combined shares (excluding private label) exceed 20%

Country	Segment	Market shares in value (private labels excluded)			Market shares in volume (private labels excluded)		
		Mondelēz	Chipita	Combined	Mondelēz	Chipita	Combined
Bulgaria	Chocolate spreadable products	[0-5]%	[20-30]%	**[20-30]%**	[0-5]%	[20-30]%	**[30-40]%**
Czechia	Cakes	[80-90]%	[0-5]%	**[80-90]%**	[80-90]%	[0-5]%	**[80-90]%**
	Sweet biscuits	[50-60]%	[0-5]%	**[50-60]%**	[30-40]%	[0-5]%	**[40-50]%**
France	Savoury snacks	[10-20]%	[0-5]%	**[10-20]%**	[20-30]%	[0-5]%	**[20-30]%**
Greece	Chocolate spreadable products	[50-60]%	[0-5]%	**[50-60]%**	[50-60]%	[0-5]%	**[60-70]%**
	Cakes	[0-5]%	[10-20]%	**[20-30]%**	[0-5]%	[20-30]%	**[30-40]%**
Hungary	Cakes	[60-70]%	[0-5]%	**[60-70]%**	[50-60]%	[0-5]%	**[60-70]%**
	Sweet biscuits	[40-50]%	[0-5]%	**[40-50]%**	[40-50]%	[0-5]%	**[40-50]%**
Latvia	Cakes	[60-70]%	[0-5]%	**[70-80]%**	[60-70]%	[5-10]%	**[70-80]%**
Lithuania	Cakes	[70-80]%	[0-5]%	**[70-80]%**	[70-80]%	[0-5]%	**[70-80]%**
	Sweet biscuits	[20-30]%	[0-5]%	**[20-30]%**	[10-20]%	[0-5]%	**[10-20]%**
Netherlands	Cakes	[20-30]%	[0-5]%	**[20-30]%**	[10-20]%	[0-5]%	**[10-20]%**
Poland	Cakes	[20-30]%	[0-5]%	**[30-40]%**	[10-20]%	[0-5]%	**[10-20]%**
	Sweet biscuits	[20-30]%	[0-5]%	**[20-30]%**	[20-30]%	[0-5]%	**[20-30]%**
Romania	Cakes	[10-20]%	[5-10]%	**[20-30]%**	[5-10]%	[5-10]%	**[10-20]%**
	Sweet biscuits	[20-30]%	[0-5]%	**[20-30]%**	[20-30]%	[0-5]%	**[20-30]%**
Slovakia	Cakes	[80-90]%	[5-10]%	**[80-90]%**	[70-80]%	[5-10]%	**[70-80]%**
	Sweet biscuits	[30-40]%	[0-5]%	**[30-40]%**	[20-30]%	[0-5]%	**[30-40]%**

Source: Form CO, tables 11, 13, 23, 25, 27, 29. Response to the pre-notification request for information no.4, tables, 24, 26, 40 and 41.

Table 2 Parties' market shares in the plausible snacking markets for which combined shares (including private label) exceed 20%

Country	Segment	Market shares in value (private labels included)			Market shares in Volume (private labels included)		
		Mondelēz	Chipita	Combined	Mondelēz	Chipita	Combined
Bulgaria	Chocolate spreadable products	[0-5]%	[20-30]%	**[20-30]%**	[0-5]%	[20-30]%	**[20-30]%**
Czechia	Cakes	[70-80]%	[0-5]%	**[70-80]%**	[60-70]%	[0-5]%	**[60-70]%**
	Sweet biscuits	[40-50]%	[0-5]%	**[40-50]%**	[30-40]%	[0-5]%	**[30-40]%**
France	Cakes	[20-30]%	[0-5]%	**[20-30]%**	[10-20]%	[0-5]%	**[20-30]%**
Greece	Chocolate spreadable products	[50-60]%	[0-5]%	**[50-60]%**	[40-50]%	[0-5]%	**[40-50]%**
	Cakes	[0-5]%	[10-20]%	**[10-20]%**	[0-5]%	[20-30]%	**[20-30]%**
Hungary	Cakes	[30-40]%	[0-5]%	**[30-40]%**	[20-30]%	[0-5]%	**[20-30]%**
	Sweet biscuits	[30-40]%	[0-5]%	**[30-40]%**	[20-30]%	[0-5]%	**[20-30]%**
Latvia	Cakes	[60-70]%	[5-10]%	**[70-80]%**	[60-70]%	[5-10]%	**[70-80]%**
Lithuania	Cakes	[70-80]%	[0-5]%	**[70-80]%**	[70-80]%	[0-5]%	**[70-80]%**
	Sweet biscuits	[20-30]%	[0-5]%	**[20-30]%**	[10-20]%	[0-5]%	**[10-20]%**
Poland	Cakes	[20-30]%	[0-5]%	**[20-30]%**	[10-20]%	[0-5]%	**[10-20]%**
Romania	Cakes	[10-20]%	[5-10]%	**[20-30]%**	[5-10]%	[5-10]%	**[10-20]%**
	Sweet biscuits	[20-30]%	[0-5]%	**[20-30]%**	[10-20]%	[0-5]%	**[10-20]%**
Slovakia	Cakes	[70-80]%	[0-5]%	**[80-90]%**	[60-70]%	[5-10]%	**[70-80]%**
	Sweet biscuits	[30-40]%	[0-5]%	**[30-40]%**	[20-30]%	[0-5]%	**[30-40]%**

Source: Form CO, tables 10,12, 22, 24, 26, 28. Response to the pre-notification request for information no.4, tables, 23, 25, 31, 33, 39 and 41.

5.3. Horizontal non-coordinated effects

5.3.1. Cakes

(65) The Commission considers that the Transaction does not raise serious doubts with respect to the affected markets for the sale of cakes. This is for the following reasons.

(66) First, while the Parties' combined shares exceed 20% in the cake markets in Czechia (including and excluding private label), France (including private label), Greece, Hungary, Latvia, Lithuania, the Netherlands (excluding private label), Poland, Romania and Slovakia (including and excluding private label), the Transaction, as shown in Tables 1 and 2, would lead to either low-to-moderate combined market shares which remain below [30-40]%, or, when combined market shares exceed [30-40]%, to increments that would be limited and at most [0-5]%. The two exceptions to this are the cake markets in (i) Latvia (where the combined market shares in value would be [70-80]% with an increment of [5-10]% and those in volume would be [70-80]% with an increment of [5-10]%, excluding private label; and [70-80]% in value with an increment of [5-10]% and [70-80]% in volume with an increment of [5-10]%, including private label) and Slovakia (where the combined market shares in value would be [80-90]% with an increment of [5-10]% and those in volume would be [70-80]% with an increment of [5-10]%, excluding private label; and [80-90]% in value with an increment of [0-5]% and [70-80]% in volume with an increment of [5-10]%, including private label). However, in both Latvia and Slovakia (as in the other affected markets), the Merged Entity would continue to face several competitors, as explained in more detail below.

(67) Second, the Parties' activities in cakes are largely complementary, as Chipita is mainly active in the production and supply of packaged croissants and other baked bread based products where Mondelēz is not active. As internal documents of Mondelēz explain, [market strategy].[45] As one customer of both Parties states: "*Chipita's products don't compete closely with Mondelēz's products and their products mostly differ and are not substitutable with one another*".[46]

(68) Chipita's main activities consist in the production and supply of packaged croissants and other baked bread based products. Mondelēz does not manufacture or supply croissants or any other form of pastry product, and only has negligible activities in baked bread based products, as can be seen from Figure 1 below. Moreover, Chipita's packaged croissants are typically viewed as morning goods, where Mondelēz has a limited presence. Mondelēz itself considers croissants as a "neighbouring" market to its cake business and is a market in which it is not active.[47]

Figure 1

[Slide from internal document]

Source: Form CO, Annex 5.4.A.10 – page 18

45 Form CO, paragraphs 86 and 87; Form CO, Mondelēz' internal document titled […].

46 Minutes of 05.10.2021 from a call with a customer.

47 Form CO, paragraphs 86 and 87.

(69) Moreover, the Parties are not close competitors in any of the affected cake markets. A majority of customers that expressed a view in the market investigation indicated that they do not view Mondelēz and Chipita as close competitors.[48] Indeed, as illustrated by Figures 2 and 3 below, Mondelēz's internal documents suggest that the Parties are not active in the same segments and each of them have other competitors (rather than the other Party) with whom they compete more closely that the other Party.

Figure 2

[Slide from internal document]

Source: Form CO, Annex 5.4.A.1 – page 8

Figure 3

[Slide from internal document]

Source: Annex 5.4.A.1 – page 29

(70) The Parties' internal documents also indicate that they are not close competitors in the markets where their combined shares are above [30-40]% and the increment brought about by the Transaction is above [0-5]%. Indeed, Mondelēz internal documents show that the company has lost sales in […], in favour of competitors others than Chipita (see Figures 4-5 below):

Figure 4

[Slide from internal document]

Annex 6.18.A.9 – page 9

Figure 5

[Slide from internal document]

Annex 6.18.A.9 – page 14

(71) As regards Latvia, Chipita's internal report of market intelligence[49] shows brands other than Mondelēz' that compete with its own cakes products (as can be seen from Figure 6 below).

Figure 6

[Slide from internal document]

Annex 6.18.B.2

(72) Moreover, the Parties indicate that Mondelēz's presence in the cake markets mainly consists of sales of its Barni brand, which is addressed to children aged between

48 Questionnaire to customers, Question 13.

49 Annex 6.18.B.2

[…]. In contrast, Chipita's main cake product, sold under the 7DAYS' brand, is addressed to customers of all ages. Only [0-10]% of Chipita's cake sales are made with its Chipicao brand, which is Chipita's brand addressed to children. In addition, although Chipita's Chipicao cakes are also addressed to children, they are addressed to children of a different age range […] than those targeted by the Barni brand. Moreover, the Parties submit that their products have different portion sizes and marketing methods.

(73) Third, in each of the affected markets a number of competitors would remain including both local players and large international competitors, such as Lotus Bakeries, Ferrero, Barilla, Valeo Foods, Dr Oetker, Bonne Maman.[50][51]

(74) In Czechia, the Merged Entity would continue to compete with large international competitors such as Valeo Foods ([0-5]% in value and [5-10]% in volume, excluding private labels). Moreover, the Merged Entity would face some constraints by private label suppliers that together hold a market share of almost [10-20]% in value and over [20-30]% in volume.[52]

(75) In France, the Merged Entity would compete with a number of suppliers such as Jacquet Brossard ([10-20]% in value and [10-20]% in volume, including private labels), Ferrero ([5-10]% in value and [5-10]% in volume, including private labels), Andros ([0-5]% in value, including private labels) and Valeo Foods ([0-5]% in value, including private labels).[53]

(76) In Greece, the Merged Entity would continue to compete with large international competitors and local producers such as Ferrero ([20-30]% in value and [10-20]% in volume, excluding private labels), Stergiou ([10-20]% in value and [10-20]% in volume, excluding private labels), Il Vecchio Forno ([5-10]% in value, excluding private labels). Moreover, the Merged Entity would face some constraints by private label suppliers that together hold a market share of about [0-5]% in value and in volume.[54]

(77) In Hungary, the Merged Entity would continue to compete with large international competitors and local producers such as Ferrero ([0-5]% in value, private label included), Do-Ra Snacks ([0-5]% in value and [0-5]% in volume, private label excluded), Bahlsen ([0-5]% in value, private label included). Moreover, the Merged Entity would face some constraint by private label suppliers that together hold a market share of about [40-50]% in value and over [50-60]% in volume.[55]

(78) In Latvia, the Merged Entity would face competitive pressure from international and local producers, such as Ferrero ([5-10]% in value and [5-10]% in volume, private

50 Form CO, paragraph 328.

51 The Parties were unable to provide market shares for competitors excluding private label for all affected markets, so some competitors the Commission will present their market shares including private label and specifying this for each instance.

52 Form CO, paragraphs 347 - 353.

53 Form CO, paragraphs 356 - 362.

54 Form CO, paragraphs 365 - 371.

55 Form CO, paragraphs 374 – 381.

label included) and others (that together hold a combined market share of around [10-20]% in value and [20-30]% in volume, private label included). [56]

(79) In Lithuania, the Merged Entity would competes with a number of international and local producers such as Ferrero ([5-10]% in value and [0-5]% in volume, excluding private label,), Casalini s.r.l. ([5-10]% in value and [5-10]% in volume, excluding private label). Moreover, the Merged Entity would face some constraints by private label suppliers that hold together a market share of almost [0-5]% of the market in value and over [0-5]% of the market in volume.[57]

(80) In the Netherlands, the Merged Entity would compete with a number of international and local producers such as Valeo Foods ([10-20]% in value and [20-30]% in volume, excluding private label), and others like Lotus and Ferrero. Moreover, the Merged Entity would face some constraints by private label suppliers that together hold a market share of almost [70-80]% of the market in value and over [80-90]% of the market in volume.[58]

(81) In Poland, the Merged Entity would continue to compete with large international and local producers such as Oskroba ([10-20]% in value and [30-40]% in volume, private label included), Kopenik ([5-10]% in value, private label included), Ferrero ([0-5]% in value, private label included). Moreover, the Merged Entity would face some constraint by private label suppliers that together hold a market share of almost [20-30]% of the market in value and over [30-40]% market in volume.[59]

(82) In Romania, the Merged Entity would continue to compete with large international and local producers such as Julius Meinl ([10-20]% in value and [10-20]% in volume, private label excluded), Alka ([10-20]% in value, private label excluded), Primo ([5-10]% in value, private label excluded), Boromir ([20-30]% in value, private label included), Kex (10% in value, private label included), Ferrero (5-10% in value, private label included). Moreover, the Merged Entity would face some constraint by private label suppliers that together hold a market share of almost [10-20]% of the market in value and over [10-20]% market in volume.[60]

(83) In Slovakia, the Merged Entity would continue to compete with local producers and large international producers, such as Valeo Foods ([0-5]% in value, private label excluded) and others (with a combined market share of [10-20]% in value and [20-30]% in volume, private label excluded). Moreover, the Merged Entity would face some constraints by private label suppliers that together hold a market share of almost [5-10]% in value and over [5-10]% in volume.[61]

(84) Fourth, even though the majority of the market participants that expressed a view in the market investigation consider that, in general, barriers to entry in the cake market are medium[62] for a new manufacturer, they also noted that established manufacturers

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56 Form CO, paragraphs 383 – 389.
57 Form CO, paragraphs 390 – 397.
58 Form CO, paragraphs 400 – 405.
59 Form CO, paragraphs 408-410.
60 Form CO, paragraphs 419-422.
61 Form CO, paragraphs 429-430.
62 Questionnaire to customers, question 16; Questionnaire to competitors, question 15.

can expand in adjacent markets.[63] The view that established manufacturers already present in the market with strong brands can enter into adjacent markets is also supported by internal documents of Mondelēz that show [Mondelēz market strategy].[64]

(85) Fifth, no substantiated concerns have been raised in the market investigation as to any potential effects of the Transaction on prices, innovation and choice.[65]

5.3.2. Sweet biscuits

(86) The Commission considers that the Transaction does not raise serious doubts with respect to the affected markets for the sale of sweet biscuits. This is for the following reasons.

(87) First, while the Parties' combined shares exceed 20% in the sweet biscuits markets in Czechia, Hungary, Lithuania, Poland, Romania and Slovakia, the Transaction, as shown 1 and 2, the Transaction would lead to either low-to-moderate combined market shares which remain below [30-40]%, in all markets with the exception of Czechia (where market shares would be [50-60]% in value and [40-50]% in volume, private label excluded). Moreover, the increments brought about by the Transaction would be limited and at most [0-5]% in all affected markets, including Czechia.

(88) Second, the HHI delta for the affected sweet biscuits markets is below 150 and the Parties' combined market share is below 50%. Therefore, the sweet biscuits markets in Czechia, Hungary, Lithuania, Poland, Romania and Slovakia satisfy the conditions set out in point 6 of the Simplified Notice. It follows that, absent special circumstances that are not present in this case, it can be considered that the Transaction does not raise competition concerns with respect to those markets.

(89) Third, the Parties are not close competitors in any of the affected sweet biscuits markets. A majority of customers that expressed a view in the market investigation indicated that they do not view Mondelēz and Chipita as close competitors.[66] This view is also supported by the fact that Chipita's sweet biscuits' average price per kilogramme is materially different from that of Mondelēz.[67]

(90) Furthermore, the internal documents of the Parties do not seem to indicate that any of the Parties monitor the activities and market shares of the other Party but rather focus on other competitors (as exemplified by Figure 7 below):

Figure 7

[Slide from internal document]

Source: Form CO, Annex 5.4.A.10 – page 13

63 Questionnaire to customers, question 16.1; Questionnaire to competitors, question 15.1.

64 Reply to RFI PN 1, [internal document]; Reply to RFI PN 1, [internal document].

65 Questionnaire to customers, questions 16-20; Questionnaire to competitors, questions 15-19.

66 Questionnaire to customers, Question 13.

67 Mondelēz's average price per kilogram for sweet biscuits across the affected markets is EUR […], whereas Chipita's average price per kilogram across the affected markets is EUR […]. – Form CO, paragraph 314.

(91) Fourth, customers will retain a number of alternatives available post-Transaction as there are international players remaining in the affected markets like Lotus Bakeries, Ferrero, Barilla, Valeo Foods, Dr Oetker, Bonne Maman, which offer strong internationally recognised brands.[68]

(92) Fifth, no substantiated concerns have been raised in the market investigation as to any potential effects of the Transaction on prices, innovation and choice.[69]

5.3.3. Chocolate spreadable products

(93) The Commission considers that the Transaction does not raise serious doubts with respect to the affected markets for the sale of chocolate spreadable products. This is for the following reasons.

(94) First, while the Parties' combined shares exceed 20% in chocolate spreadable products markets in Bulgaria and in Greece, the Transaction, as shown in Tables 1 and 2, on the one hand, would lead to moderate combined market shares in Bulgaria and, in the other hand, to increments that would be limited and at most [0-5]% in both markets.

(95) Second, the HHI delta for the affected chocolate spreadable products markets is below 150 and the Parties' combined market share is below 50% (if market shares in value are considered this does not apply to the market for spreadable chocolate products in Greece). Therefore, the chocolate spreadable products markets in Bulgaria and in Greece satisfy the conditions set out in point 6 of the Simplified Notice. It follows that, absent special circumstances that are not present in this case, it can be considered that the Transaction does not raise competition concerns with respect to those markets.

(96) Third, the Parties are not close competitors in any of the affected spreadable chocolate products markets. A majority of customers that expressed a view in the market investigation indicated that they do not view Mondelēz and Chipita as close competitors.[70] This view is also supported by the fact that Chipita's spreadable chocolate products' average prices per kilogramme are materially different than those of Mondelēz.[71]

(97) Fourth, customers will retain a number of alternatives available post-Transaction as there are international players remaining in the affected markets like Ferrero, Ion and Oskar.[72]

(98) Fifth, no substantiated concerns have been raised in the market investigation as to any potential effects of the Transaction on prices, innovation and choice.[73]

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68 Form CO, paragraph 328.

69 Questionnaire to customers, questions 16-20; Questionnaire to competitors, questions 15-19.

70 Questionnaire to customers, Question 13.

71 Mondelēz's average price per kilogram for sweet biscuits across the affected markets is EUR […], whereas Chipita's average price per kilogram across the affected markets is EUR […]. – Form CO, paragraph 314.

72 Form CO, paragraph 328.

73 Questionnaire to customers, questions 16-20; Questionnaire to competitors, questions 15-19.

5.3.4. Conclusions on horizontal non-coordinated effects

(99) Based on the considerations presented in paragraphs 65-98 and in view of the results of the market investigation and of all evidence available to it, the Commission considers that the Transaction does not give rise to serious doubts as to its compatibility with the internal market and the EEA Agreement with respect to horizontal non-coordinated effects in any plausible markets, and in particular in the following markets:

(i) cakes in Czechia, France, Greece, Hungary, Latvia, Lithuania, the Netherlands, Poland, Romania and Slovakia;

(ii) sweet biscuits in Czechia, Hungary, Lithuania, Poland, Romania and Slovakia;

(iii) chocolate spreadable products in Bulgaria and Greece; and

(iv) savoury snacks in France.

6. CONCLUSION

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

For the Commission

(Signed)

Margrethe VESTAGER
Executive Vice-President