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 Where possible the information omitted has been replaced by ranges of figures or a general description.

A-ware Dairy & Cream BV
Rembrandtsplein 1
3411 HA Lopik
The Netherlands

Subject: **Case M.11699 – A-WARE DAIRY & CREAM / THE DAIRY FOOD GROUP**
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 10 March 2025, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which A-Ware Dairy & Cream B.V. ('A-ware' or 'the Notifying Party', the Netherlands), indirectly wholly owned by Koninklijke A-ware Food Group B.V ('A-ware Group', the Netherlands) intends to acquire sole control over the legal entities that form the 'The Dairy Food Group' (the 'Target' or 'DFG', Belgium) by way of purchase of shares (the 'Transaction'). ([3]) A-ware and DFG are designated hereinafter as the 'Parties'.

([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/2025/1719, 19.3.2025.

1. THE PARTIES

(2) A-ware, headquartered in the Netherlands, specialises in the production, processing and trading of cheese and the by-products associated with cheese production such as whey and bulk cream. A-ware also produces fresh and long-life dairy products, as well as other food products (e.g. tapas such as humus, olives, spreads and bites). Moreover, A-ware provides transport services for (amongst others) bulk agricultural products, flour, animal feed and chilled food products. A-ware has four (fresh) dairy production sites: (i) A-ware Herfelingen (Olympia) produces cream, milk, ice-cream mixes, desserts (pudding, riz au lait), fillings of creamy rice (in bags and buckets) and butter, (ii) A-ware Merchtem (LaConcorde) produces different types of cream in different packaging from 1l plastic bottles to 1000 l bulk containers, (iii) A-ware Kruibeke (Hollebeekhoeve) produces mainly dairy drinks and yoghurts, and (iv) A-ware Coevorden produces mainly drinking milk, yoghurt and consumption packed cream.

(3) The Target corresponds to a group of companies established in Belgium that are active in the procurement of raw milk, as well as in the production of fresh and long-life dairy products such as aerosol spray cream, milk and flavoured drinks, custards, different types of desserts, buttermilk, cream and skimmed milk powder.

2. THE CONCENTRATION

(4) Pursuant to a purchase agreement entered into by the Parties on 27 May 2024, A-ware will acquire 100% of the shares of the legal entities that form the Target. ([4]) After the Transaction, DFG will be fully owned and controlled by A-ware and, indirectly, by the A-ware Group. The notified transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3. UNION DIMENSION

(5) The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 2500 million ([5]) (A-ware Group: EUR 3 276 million in 2023; DFG: EUR [> 250] million in 2023), and a combined aggregate turnover of more than EUR 100 million in at least three Member States (in Belgium, Germany and the Netherlands). ([6]) The aggregate Community-wide turnover of both undertakings concerned is more than EUR 100 million (A-ware Group: EUR [>3000] million in 2023; DFG: EUR [>200] million 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 a Union dimension within the meaning of Article 1(3) of the Merger Regulation.

([4]) These are: (i) Gilberts Management Company NV and its wholly owned subsidiaries Incopack NV, Eurodesserts NV, KGS NV and Limelco NV (excluding All Freez NV, which will be carved-out prior to the closing of the Transaction); (ii) Incorock NV, and (iii) Belgian Milk Company NV.

([5]) Turnover calculated in accordance with Article 5 of the Merger Regulation.

([6]) In Belgium, A-ware Group: EUR [>290] million in 2023; DFG: EUR [>50] million in 2023; in Germany, A-ware Group: EUR [>500] million in 2023; DFG: EUR [>50] million in 2023; in the Netherlands, A-ware Group: EUR [>1 900]million in 2023; DFG: EUR [>80] million in 2023. In those three Member States, the turnover of the Parties is more than EUR 25 million in 2023.

4. MARKET DEFINITION

(6) Both Parties are vertically integrated dairy groups, active along the dairy supply chain – from collecting milk from farmers to selling dairy products to supermarkets, wholesalers and other industrial customers.

(7) The Parties' activities overlap in the market for the procurement of raw milk and in the markets for the supply of milk powder, milk concentrate, cream, dairy drinks, dairy desserts, quark and buttermilk. As will be explained in Section 5.1, however, the Transaction only gives rise to horizontally affected markets with respect to the supply of: (i) bulk cream, (ii) spray cream and (iii) skimmed milk concentrate ('SMC').

4.1. Supply of bulk cream

4.1.1. Product market

(8) Bulk cream is a by-product in the production of cheese and skimmed milk powder. Bulk cream is traded in large containers and can be used to produce butter, as a raw material for food products (ice cream, pastries, confectionery, etc.), to produce coffee whiteners, or can be further processed and packaged to be sold to the final consumer as fresh or sterilised cream. ([7])

4.1.1.1. Commission's precedents

(9) In previous cases, the Commission identified separate segments for bulk cream and non-bulk cream as they are supplied to different customer groups and are intended for different uses: while bulk cream is sold in tanker loads to butter makers or large food processors, non-bulk cream is sold in different types of containers (pallecons, pergals, polybottles or pots) to the catering trade or small food processors or multi-nationals. ([8])

4.1.1.2. The Notifying Party's view

(10) The Notifying Party does not hold a view departing from Commission's precedents and agrees that bulk cream and non-bulk cream are distinct markets. ([9])

4.1.1.3. The Commission's assessment

(11) The market investigation indicated that the market for the supply of bulk cream constitutes a distinct market from the supply of non-bulk cream. The majority of market participants that expressed an opinion confirmed that bulk cream and non-bulk cream are separate markets because of differences in customer groups, intended use and packaging. ([10])

([7]) Form CO, page 96.

([8]) M.3130 – *Arla Foods / Express Dairies*, decision of 10 June 2003 paragraph 13; M.3130 – *Arla Foods / Express Dairies*, decision of 10 June 2003 relating to a partial referral to the competent authorities of the United Kingdom, paragraph 31; M.10260 – *Lactalis/Leerdammer*, decision of 26 August 2021, paragraphs 74 and 81; M.7434 – *Müller UK & Ireland/Dairy Crest Dairy Operations*, relating to a full referral to the competent authorities of the United Kingdom, paragraph 28.

([9]) Form CO, page 96.

([10]) Questionnaires for customers and competitors, questions C.A.1. and C.A.1.1.

4.1.1.4. Conclusion

(12) In light of the above, the Commission considers that the supply of bulk cream and the supply of non-bulk cream constitute distinct markets.

4.1.2. Geographic market

4.1.2.1. Commission's precedents

(13) The Commission has previously considered that the market for the supply of bulk cream could be potentially larger than national, but ultimately the Commission left the precise geographic market definition open and carried out its assessment at the narrowest level (i.e., the national level). ([11])

4.1.2.2. The Notifying Party's view

(14) The Notifying Party argues that a geographic market at the national level is not the appropriate geographic scope for the supply of the bulk cream, as this is a commodity market for a standardised product that is widely traded across the EEA. The Notifying Party submits that the geographic market for bulk cream should be considered EEA-wide or at least not narrower than the regional market encompassing the Netherlands, Belgium and Germany. ([12])

4.1.2.3. The Commission's assessment

(15) The outcome of the market investigation confirms that the geographic scope of the market for the supply of bulk cream is at least the region comprising Belgium, the Netherlands and Germany.

(16) A majority of market participants replied that the geographic area where the conditions of competition (e.g. same suppliers, same quality, same prices) for supplying bulk cream are generally the same is the region comprising Belgium, the Netherlands and Germany. ([13]) They justify their response by explaining that bulk cream is a commodity product and can therefore be transported over long distances. ([14])

(17) One competitor confirmed that, while bulk cream is *"primarily sold on the national market"*, *"there [are] no strict national boundaries"* and bulk cream can be *"transported over longer distances"*. ([15]) In that regard, one market participant explains that *"bulk cream is more condensed than regular milk"* and therefore *"can be transported over longer distances"*. ([16]) Another market participant provides the same reasoning. ([17])

4.1.2.4. Conclusion

(18) For the purposes of this Decision, the precise geographic market definition for the supply of bulk cream can be left open, as the proposed Transaction does not raise serious doubts as to its compatibility with the internal market or a substantial part of it regardless of the geographic market definition upheld. The competitive assessment will be carried out at the narrowest plausible market where the Parties'

([11]) M.10260 – *Lactalis/Leerdammer*, paragraph 90.
([12]) Form CO, page 23.
([13]) Questionnaires for customers and competitors, questions C.B.1.
([14]) Questionnaires for customers and competitors, questions C.B.2.1.
([15]) Minutes of a call held with a market participant on 20 December 2024, paragraph 9.
([16]) Minutes of a call held with a market participant on 20 December 2024, paragraph 9.
([17]) Minutes of a call held with a market participant on 31 January 2025, paragraph 39.

activities overlap and where the Transaction gives rise to affected markets, i.e. a national market limited to the Netherlands.

4.2. Supply of spray cream

4.2.1. Product market

(19) Non-bulk cream encompasses spray cream and liquid cream. Spray cream is long-life cream which is combined with pressurised gas packed in a can. ([18])

4.2.1.1. Commission's precedents

(20) In previous cases, the Commission identified separate markets for spray cream and liquid cream. ([19]) The Commission considered that the market for the supply of spray cream should be further segmented into the following markets:

(a) *Dairy spray cream and non-dairy spray cream*. In previous cases, the Commission considered that dairy and non-dairy spray cream belong to separate product markets, as customers indicated that taste, texture and quality were different, and suppliers indicated that they were unable to swiftly switch from the production of one to the other. ([20])

(b) *The distribution channel*. In previous cases, the Commission considered that the retail and the Out-Of-Home ('OOH') ([21]) distribution channels were separate markets, because of the differences in packaging, services to customers and prices. ([22])

(21) The Commission also considered in previous cases that private or white label spray cream and branded spray cream belong to the same market within the retail distribution channel, as they compete in prices and manufacturers are typically active in the production of both types of products. ([23])

4.2.1.2. The Notifying Party's view

(22) The Notifying Party refers to the Commissions' precedents that distinguish between spray cream and liquid cream. The Notifying Party agrees that dairy spray cream and non-dairy spray cream belong to separate markets, but notes that recent advancements in non-dairy spray cream recipes and production have reduced the differences between the two products. ([24])

(a) From a customer perspective, despite the significant differences in taste and structure between dairy and non-dairy spray cream, advances in non-dairy spray cream recipes and production have improved the taste and the texture

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([18]) M.5046 – *Friesland Foods / Campina*, paragraph 1334.

([19]) M.5046 – *Friesland Foods / Campina*, paragraphs 1335-1338; M.6522 – *Groupe Lactalis / Skanemejerier*, paragraph 19; M.6611 – *Arla Foods / Milk Link*, paragraph 21. Liquid cream is sold in different types of packages (bottles, bag-in-boxes, tetra bricks) and can be produced in either pasteurised form, with a shelf life of around four weeks, or in UHT-treated form that can be stored for several months. The shelf life of dairy spray cream is generally six to nine months (M.5046 – *Friesland Foods / Campina*, paragraphs 1335-1337).

([20]) M.5046 – *Friesland Foods / Campina*, paragraphs 1412-1415.

([21]) The OOH distribution channel serves restaurants, cafes, hotels, catering services, hospitals, but also small businesses like bakers or other food processing entities. M.5046 – *Friesland Foods / Campina*, paragraphs 197.

([22]) M.5046 – *Friesland Foods / Campina*, paragraphs 1425; M.6611 – *Arla Foods / Milk Link*, paragraph 21.

([23]) M.5046 – *Friesland Foods / Campina*, paragraphs 1421-1423.

([24]) Form CO, page 81.

of the non-dairy spray creams, reducing the difference between both types of products from a consumer perspective.

(b) From a supply-side perspective, the ability to switch between the production of non-dairy spray cream and the production of dairy spray cream has significantly improved over the past decade, allowing non-dairy spray cream and dairy spray cream to be produced on the same installations, due to technological advancements. Moreover, several producers produce both vegetal (non-dairy), mixed and pure dairy cream products.

(23) The Notifying Party considers that branded and private or white label spray cream should be part of the same market ([25]), and that no distinction should be made between distribution channels. ([26])

4.2.1.3. The Commission's assessment

(24) *Spray cream and liquid cream*. The market investigation confirmed that spray cream and liquid cream belong to separate markets. ([27]) Respondents indicated that even if the raw materials and the customers are the same, spray cream and liquid cream are not substitutable, as they serve two different applications for the customer and they have different production processes. One competitor indicated that spray cream is an end-product while liquid cream must be processed by the consumer before its use. ([28])

(25) *Dairy spray cream and non-dairy spray cream*. The market investigation pointed that the market for the supply of spray cream should not be segmented between dairy and non-dairy. A majority of the respondents indicated that dairy spray cream and non-dairy spray cream are very similar products, that they target the same customer and serve the same intended application and that they require the same technology to be manufactured. ([29]) One market participant also stated that *"their selling and buying prices are in the same range"*. ([30])

(26) *The distribution channel*. The market investigation confirmed that the market for the supply of dairy spray cream should be segmented by distribution channel. A majority of the respondents agreed with the Commission's precedents and considered that the retail distribution channel and the OOH distribution channel for dairy spray cream are separate markets. ([31]) They explained that the two channels are significantly different with respect to their packaging formats (packaging formats for the OOH distribution channel are significantly larger than for the retail distribution channel), their customers and their prices (prices in the OOH distribution channel are significantly higher than in the retail distribution channel). One competitor further explained that they require different sales teams and logistics teams for the two distribution channels. ([32])

(27) *Private or white label products and branded products*. The market investigation confirmed that the market for the supply of dairy spray cream within the retail distribution channel should not be segmented between private or white label products and branded products. All the respondents to the market investigation

([25]) Reply to PN RFI 1 Q5.
([26]) Reply to PN RFI 1 Q6.
([27]) Questionnaires for customers and competitors, questions D.A.1.
([28]) Questionnaires for customers and competitors, questions D.A.1.1.
([29]) Questionnaires for customers and competitors, questions D.A.2.1.
([30]) Minutes of a call held with a market participant on 17 January 2025, paragraph 16.
([31]) Questionnaires for customers and competitors, questions D.A.3.
([32]) Questionnaires for customers and competitors, questions D.A.3.1.

agreed with the Commission's precedents and explained that private or white label products and branded products are competing and can substitute each other. They further explained that private or white label products and branded products are identical products and that they are produced by the same producers and purchased by the same clients. ([33])

4.2.1.4. Conclusion

(28) The Commission considers that the exact market definition can be left open, as the Transaction does not raise serious doubts as to its compatibility with the internal market or a substantial part of it under any plausible product market definition.

(29) For the purposes of assessing the Transaction under the narrowest plausible product market definition, the competitive assessment will be carried out for the following segmentation where the Parties' activities overlap and give rise to affected markets: the supply of dairy spray cream (including both branded products and private or white label products) in the retail segment. The Transaction does not give rise to affected markets under any of the other plausible product market definitions.

4.2.2. Geographic market

4.2.2.1. Commission's precedents

(30) The Commission has previously concluded that both the retail and OOH market for the supply of dairy spray cream include at least Belgium, Germany and the Netherlands. The Commission found that there are a number of similarities between these Member States in terms of consumer habits, available product range, packaging and price which allow customers to source from any of these Member States. ([34])

4.2.2.2. The Notifying Party's view

(31) The Notifying Party does not consider the national markets of Belgium and the Netherlands, or the geographic market encompassing both countries, to represent the appropriate geographic scope for a long-life cream product, such as long-life dairy spray cream. The Notifying Party considers the geographic scope of the market to be EEA-wide, or at least consisting of the neighbouring countries of Belgium, the Netherlands, France and Germany, for the following reasons. ([35])

(a) Due to its long shelf-life and non-perishable nature, long-life dairy spray cream can be transported over longer distances and has similar characteristics across different countries. Any remaining differences in product specifications that still may exist between countries can be addressed through flexible recipes from suppliers.

(b) Transport costs of long-life products are relatively low, allowing for an efficient distribution throughout the EEA. The geographic scope may even evolve towards global as part of the cans currently are already exported worldwide.

([33]) Questionnaires for customers and competitors, questions D.A.4. and D.A.4.1.
([34]) M.5046 – *Friesland Foods/Campina*, paragraphs 1429-1433.
([35]) Form CO, pages 81-82.

4.2.2.3. The Commission's assessment

(32) The outcome of the market investigation confirms that the geographic scope of the market for the supply of dairy spray cream is larger than national.

(33) Respondents to the market investigation pointed to a geographic market that is larger than national and that could be either (i) the region comprising Belgium, the Netherlands and Germany, (ii) the region comprising Belgium, the Netherlands, Germany and France or (iii) even the EEA, with slightly more market participants mentioning the region of Belgium, the Netherlands, Germany and France. ([36]) One customer of the Parties indicated that it does not receive offers from companies located further away than the region comprising Belgium, the Netherlands, Germany and France. ([37])

4.2.2.4. Conclusion

(34) For the purposes of this Decision, the precise geographic market definition for the supply of dairy spray cream can be left open, as the Transaction does not raise serious doubts as to its compatibility with the internal market or a substantial part of it regardless of the geographic market definition.

(35) For the purpose of assessing the Transaction, the competitive assessment will be carried out at the following plausible levels, i.e. the regional markets for the supply of dairy spray cream in the retail distribution channel encompassing (i) Belgium, the Netherlands and Germany, (ii) Belgium, the Netherlands, Germany and France, and (ii) the EEA.

4.3. Supply of SMC

4.3.1. Product market

(36) SMC is a liquid concentrate produced through the removal of water from skimmed milk via, for example, evaporation. SMC is used, inter alia, in the production of yogurt, processed cheese, dairy drinks, dairy desserts, ice cream, and other reduced-fat dairy products. SMC is also used in confectionery and bakery products where a liquid milk component is required. ([38])

4.3.1.1. Commission's precedents

(37) The Commission has not assessed to date a separate relevant product market for the supply of SMC. ([39])

4.3.1.2. The Notifying Party's view

(38) The Notifying Party acknowledges the lack of precedents discussing product market definition specifically for SMC and argues that potential substitutes for SMC include skimmed milk, milk protein concentrates, and rehydrated skimmed milk powder ('SMP').

([36]) Questionnaires for customers and competitors, questions D.B.1. and D.B.2.
([37]) Minutes of a call held with a market participant on 17 January 2025, paragraph 10.
([38]) Form CO, page 32.
([39]) In precedents where the Commission assessed product market definition for milk powder, the Commission has considered whether fluid milk concentrate would be a substitute for milk powder, as in principle the difference between them would be the moisture level. However, given the absence of competition concerns, the Commission left this question open. Case M.6119 – *Arla/Hansa*, paragraph 32-34; Case. M.6627 – *Arla Foods/Milch-Union Hocheifel*, paragraph 55-57.

(39) In particular, the Notifying Party considers that SMC is an intermediate step in the production of SMP, based on the same equipment. Accordingly, the Notifying Party argues that, to some extent, there may be a certain degree of supply-side substitutability between SMC and SMP as in its view producers of SMP inherently have the capability to produce SMC. Notwithstanding, the Notifying Party considers that SMC and SMP do not belong to the same product market. While they are both derived from skimmed milk, their differences in physical form, handling, perishability, and logistics indicate that they should be considered as belonging to separate markets. ([40])

4.3.1.3. The Commission's assessment

(40) The market investigation indicated that the market for the supply of SMC constitutes a distinct market.

(41) The majority of the market participants that replied to the questionnaire considered that although SMP could be considered, to some extent, interchangeable with SMC, there are several factors that limit full substitutability.

(42) From a demand perspective, the respondents mention differences concerning SMC and SMP in relation to the production equipment, intended use, and price. The respondents have explained that "*skim[med] milk powder can be used in place of SMC if the customer factory has the necessary equipment to process this*"; "*SMC and SMP can both be used for the production of yoghurt. However, SMP is not used for the production of cheese*."; "*Although SMP can also be transported relatively easily, it has higher CO2 emissions given the drying process that requires a lot of energy, which also has an impact on price*". ([41]) Importantly, market participants have also explained that customers typically use either SMC or SMP in their production lines and, therefore, do not necessarily have the equipment to process both. ([42])

(43) From the supply-side perspective, market participants explain that different equipment is used to produce SMC and SMP, but producers of SMP typically have the equipment to produce SMC as well. ([43]) However, one market participant explains that switching from the production of SMP to the production of SMC may not be rational. ([44])

4.3.1.4. Conclusion

(44) For the purposes of assessing the Transaction, the exact scope of the product market definition can be left open, as the Transaction does not give rise to serious doubts under any potential product market delineation. In order to perform its competitive assessment in the present case, based on the results of the market investigation, the Commission will consider the narrowest plausible market, i.e. the market for the supply of SMC.

([40]) Form CO, page 33.

([41]) Questionnaire to customers, questions E.A.1 and E.A.2. Questionnaire to competitors E.A.1 and E.A.2.

([42]) Minutes of a call held with a market participant on 25 February 2025, paragraph 9. Minutes of a call held with a market participant on 27 February 2025, paragraph 6.

([43]) Minutes of a call held with a market participant on 25 February 2025, paragraph 7. Minutes of a call held with a market participant on 27 February 2025, paragraph 8.

([44]) Minutes of a call held with a market participant on 25 February 2025, paragraph 7.

4.3.2. Geographic market

4.3.2.1. Commission's precedents

(45) The Commission has to date not assessed the relevant geographic market for the supply of SMC.

4.3.2.2. The Notifying Party's view

(46) The Notifying Party considers that the geographic market for the supply of SMC is EEA-wide or should at least encompass several neighbouring countries such as Belgium, the Netherlands, and Germany. ([45]) The Notifying Party argues that SMC is actively traded and transported across the EEA and amongst neighbouring countries. ([46])

4.3.2.3. The Commission's assessment

(47) The outcome of the market investigation indicated that the geographic scope of the market for the supply of SMC is broader than national.

(48) A majority of the respondents indicated that the area where the conditions of competition are sufficiently homogeneous (e.g. same suppliers, same quality, same prices) for supplying SMC are generally broader than national – i.e., at least the region comprising Belgium, the Netherlands, Germany, and France, or even the EEA. ([47]) One respondent has explained that '*SMC is a commodity product and can be transported over long distances*'. ([48]) Indeed, although one market respondent indicated that it purchases SMC within a 100km radius from its production site, ([49]) a greater number of market participants explained that SMC can be transported up to 800 kilometres, for example, from Belgium, the Netherlands, Germany and North of France to Greece and Italy. ([50]) Even if SMC is a perishable product, the market participants have indicated that the shelf life of SMC is from 2 to 5 days. ([51])

4.3.2.4. Conclusion

(49) For the purposes of this Decision, the precise geographic market definition for the supply of SMC can be left open, as the proposed Transaction does not raise serious doubts as to its compatibility with the internal market or a substantial part of it, regardless of the geographic market definition upheld. The competitive assessment will be carried out at the narrowest plausible market where the Parties' activities overlap and where the Transaction gives rise to affected markets, i.e. a national market encompassing Belgium.

([45]) Form CO, page 33.
([46]) Form CO, page 23.
([47]) Questionnaire to customers, question E.B.2. Questionnaire to competitors, question E.B.2.
([48]) Questionnaire to customers, question E.B.2.1.
([49]) Questionnaire to customers, question E.B.1.1.
([50]) Minutes of a call held with a market participant on 26 March 2025, paragraph 7. Minutes of a call held with a market participant on 27 February 2025, paragraph 5. Minutes of a call held with a market participant on 28 February 2025, paragraph 6.
([51]) Minutes of a call held with a market participant on 25 February 2025, paragraph 11. Minutes of a call held with a market participant on 26 March 2025, paragraph 7. Minutes of a call held with a market participant on 27 February 2025, paragraph 10.

5. COMPETITIVE ASSESSMENT

5.1. Introduction

(50) The transaction gives rise to the following horizontally affected markets:

(a) The supply of bulk cream in the Netherlands;

(b) The supply of SMC in Belgium.

(51) In addition, even if the supply of dairy spray cream (including both branded and private or white label products) in the regional retail markets encompassing (i) Belgium, the Netherlands and Germany, (ii) Belgium, the Netherlands, Germany and France, and (ii) the EEA are not affected markets strictly speaking, the competitive assessment is also carried out in relation to those markets because some market participants raised potential concerns. Following the Transaction, they indeed feared that the number of alternative suppliers would be limited and that it would be difficult or not possible to switch to them.

(52) The Transaction also results in several horizontal overlaps ([52]) and in several vertical links ([53]). However, these horizontal overlaps and vertical links do not give rise to affected markets within the meaning of recital 25(g) Annex I to Regulation (EU) 2023/914 ([54]), as they meet the conditions for review under point 5 or benefit from the flexibility clauses of point 8 of the Notice on Simplified

([52]) The Transaction also results in horizontal overlaps in the markets for bulk cream, spray cream and SMC in the EEA and other regional and national markets (for bulk cream: Belgium and Germany, for spray cream: France, Germany, Spain, Luxembourg, Hungary and Poland). Moreover, it results in horizontal overlaps in the following additional product markets in the EEA, other regional and national markets (in Belgium and the Netherlands): (a) procurement of raw milk, (b) skimmed milk powder, (c) milk powder including skimmed milk powder and whole milk powder, (d) retail and OOH sales of other flavoured long-life dairy drinks, (e) retail sales of branded fruit flavoured long-life dairy drinks; (f) branded and private label retail and OOH sales of chocolate flavoured long-life dairy drinks; (g) fresh portion pack dairy desserts.
The Transaction does not give rise to horizontally affected markets in the procurement of raw milk, considering possible national geographic markets (e.g., Belgium, the Netherlands); nor markets corresponding to the regions of Flanders and of Wallonia in Belgium; nor markets corresponding to combinations of such national or local markets (e.g. Belgium and the Netherlands together, or Flanders and the Netherlands together); nor markets corresponding to local catchment areas (proxied for the purpose of assessing this Transaction by local regions encompassing 80% of the Parties' closest farmers supplying milk, based on the shortest road distance). Market participants did not raise concerns with respect to the impact of the Transaction to their raw milk supply or raw milk collection activities.

([53]) The Transaction also results in several vertical links: (a) The upstream market for the procurement of raw milk in Belgium and various dairy-based downstream markets on which A-ware and/or DFG are active, including milk, milk powder, milk-based beverages, dairy cream, dairy based spray cream, dairy desserts, yoghurt and quark, butter, cheese, ice cream mixes and custard; (b) The upstream market for bulk cream in the EEA and various downstream markets including dairy cream, dairy based spray cream, dairy desserts, butter and ice cream mixes; (c) The upstream market for bulk cream in the EEA and the downstream market for the sale of fresh portion pack dairy desserts in Belgium; (d) The upstream market for the production of spray cream in the EEA and the downstream market for the wholesale supply of spray cream in Belgium, the Netherlands and France; (e) The upstream market for the production of quark in Belgium and the downstream market for the wholesale supply of quark in Belgium.

([54]) Commission Implementing Regulation (EU) 2023/914 of 20 April 2023 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings and repealing Commission Regulation (EC) No 802/2004, OJ L 119, 5.5.2023, p. 22.

Treatment ([55]). Therefore, these horizontal overlaps and vertical links will not be assessed in detail in this decision.

5.2. Legal framework

(53) The Commission's guidelines on the assessment of horizontal mergers under the Merger Regulation ([56]) distinguish two main ways in which mergers between actual or potential competitors on the same relevant market may significantly impede effective competition, namely non-coordinated effects and coordinated effects. ([57])

(54) 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, which is the most direct effect of the merger, but also the reduction in competitive pressure on non-merging firms in the same market that could be brought about by the merger. ([58])

(55) 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 present to make significant non-coordinated effects likely and the list itself is not an exhaustive list. ([59])

5.3. Supply of bulk cream

(56) The Transaction gives rise to a horizontally affected market in relation to the supply of bulk cream in the Netherlands. ([60])

([55]) Commission Notice on a simplified treatment for certain concentrations under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (2023/C 160/01, OJ C 160, 5.5.2023, p. 1; the 'Simplified Notice').

([56]) Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings (2004/C 31/03) (the 'Horizontal Merger Guidelines').

([57]) The remainder of this decision focuses on non-coordinated effects.

([58]) Horizontal Merger Guidelines, paragraphs 24-38.

([59]) Horizontal Merger Guidelines, paragraphs 24-38.

([60]) The Transaction does not give rise to an affected market in relation to the supply of bulk cream at the EEA level or at the regional level encompassing Belgium, the Netherlands and Germany.

Table 1 – Market shares for the supply of bulk cream in the Netherlands (2023)

Competitor	Supply of bulk cream in the Netherlands ([61])	
	Value	Volume
A-ware	[30-40]%	[20-30]%
DFG	[0-5]%	[0-5]%
Combined	*[30-40]%*	*[30-40]%*
FrieslandCampina	[20-30]%	[20-30]%
DMK	[10-20]%	[10-20]%
Lactalis	[10-20]%	[10-20]%
Others	[10-20]%	[10-20]%
TOTAL	**100%**	**100%**

Source: Parties' estimates ([62])

5.3.1. The Notifying Party's view

(57) The Notifying Party argues that the Transaction does not give rise to any competition concern for the following reasons ([63]).

(a) DFG is a minor player on the market for the supply of bulk cream with a marginal individual market share (i.e. below [0-5]%).

(b) The Parties will continue to face several significant players in the market for the supply of bulk cream, such as FrieslandCampina, DMK, Lactalis and Arla Foods.

(c) The majority of the Parties' customers purchasing bulk cream are large food industry players or dairy trading companies. Dairy trading companies based in the Netherlands account for a large part of the sales by the Parties in the Dutch market and they do not limit their bulk cream trade to the Netherlands but trade it across the entire EEA. Therefore, the Parties' customers have countervailing purchasing power and are able to counteract any attempts by the Parties to raise prices post-transaction.

5.3.2. The Commission's assessment

(58) The Commission considers that the Transaction does not raise serious doubts as to the supply of bulk cream in the Netherlands, for the following reasons.

(59) **First**, as seen in Table 1, the increment brought by DFG is very limited as it is below [0-5]%. Therefore, following the Transaction, the combined market share of the merged entity is unlikely to impact the current structure of the market. Moreover, the merged entity will still face large competitors such as FrieslandCampina ([20-30]%), DMK ([10-20]%) and Lactalis ([10-20]%).

(60) **Second,** a large majority of market participants that responded to the market investigation confirmed that, following the Transaction, customers will have access to a sufficient number of alternative suppliers of bulk cream in the

([61]) At the EEA level, the Parties have a combined market share of [0-5]% ([0-5]% for A-ware and [0-5]% for DFG) in value and of [0-5]% ([0-5]% for A-ware and [0-5]% for DFG) in volume in 2023. At the regional level encompassing Belgium, the Netherlands and Germany, the Parties have a combined market share of [10-20]% ([5-10]%for A-ware and [0-5]% for DFG) in value and of [10-20]% ([5-10]%for A-ware and [0-5]% for DFG) in volume in 2023.

([62]) Form CO, page 25.

([63]) Form CO, page 24.

Netherlands. ([64]) Furthermore, while A-ware and DFG are identified as important suppliers by some respondents, the majority of them listed FrieslandCampina and Vreugdenhil as the most important suppliers in the Netherlands, followed by smaller players, such as Arla or Farmel. ([65]) One customer confirmed that the Parties are not the main players in the market for the supply of bulk cream and that there are many other suppliers of bulk cream. ([66])

(61) **Third,** customers can easily switch to alternative suppliers. The majority of the respondents to the market investigation indicated that it is easy for purchasers of bulk cream to switch from one supplier of bulk cream to another supplier. ([67]) Several customers argue that bulk cream is a commodity product. One customer specifies that, as bulk cream is a commodity product, the product does not differ depending on the supplier. ([68]) Moreover, one competitor stated that customers in the retail distribution channel have some negotiation power ([69]), purchasers of bulk cream in the Netherlands are not dependent on one single supplier as they currently procure bulk cream from several suppliers ([70]) and respondents stated that the Parties do not have a competitive advantage in the supply of bulk cream. ([71])

(62) **Fourth,** as explained in paragraph (8), bulk cream is a by-product in the production of cheese and in the production of skimmed milk powder. Therefore, any producer of cheese and of skimmed milk powder could technically enter the market**.** One market participant mentioned the entry of two companies in the last 5 years into the market for the supply of bulk cream in the Netherlands, although they are currently not among the main suppliers. ([72])

(63) **Fifth,** a majority of market participants that responded to the market investigation considered that A-ware and DFG are not close competitors or that they do not compete closely. ([73]) One customer indicated that they are not close competitors because they are not of the same size on the market for the supply of bulk cream in the Netherlands. Another market participant stated that, as bulk cream is a commodity product, A-ware and DFG are as close to each other as to other competitors, therefore they are not close competitors compared to other suppliers. ([74])

(64) The majority of respondents listed Vreugdenhil and FrieslandCampina as the first two closest competitors to A-ware in the supply of bulk cream in the Netherlands. ([75]) While A-ware is mentioned by three different respondents as, respectively, the first closest, the second closest and the third closest competitor to DFG in the supply of bulk cream in the Netherlands, the majority of respondents again listed Vreugdenhil and FrieslandCampina as the first two closest competitors to DFG in the supply of bulk cream in the Netherlands. ([76])

([64]) Questionnaires for customers and competitors, questions C.C.A.4.
([65]) Questionnaires for customers and competitors, questions C.C.A.1.
([66]) Minutes of a call held with a market participant on 22 January 2025, paragraph 10.
([67]) Questionnaires for customers and competitors, questions C.C.C.1.
([68]) Questionnaires for customers and competitors, questions C.C.C.1.1.
([69]) Minutes of a call held with a market participant on 20 December 2024, paragraph 15.
([70]) Questionnaires for customers, question C.C.C.2.
([71]) Questionnaires for customers and competitors, questions C.C.A.3.
([72]) Questionnaires for customers, question C.C.B.1.1.
([73]) Questionnaires for customers and competitors, questions C.C.D.5.
([74]) Questionnaires for customers and competitors, questions C.C.D.5.1.
([75]) Questionnaires for customers and competitors, questions C.C.D.1.
([76]) Questionnaires for customers and competitors, questions C.C.D.3.

(65) **Sixth**, the majority of the respondents to the market investigation stated that the Transaction will have not have a negative impact neither on the market for bulk cream in the Netherlands nor on their company. ([77]) Market participants justify their response by explaining that there is a sufficient number of suppliers of bulk cream in the Netherlands and that DFG is not an important player in the market for the supply of bulk cream. ([78])

5.3.3. Conclusion

(66) For the above reasons, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market or a substantial part of it as a result of horizontal non-coordinated effects on the market for the supply of bulk cream in the Netherlands.

5.4. Supply of dairy spray cream

(67) For the reasons indicated in paragraph (51) above, even though the supply of private or white label and branded dairy spray cream in the regional retail markets encompassing (i) Belgium, the Netherlands and Germany, (ii) Belgium, the Netherlands, Germany and France, and (ii) the EEA are not affected markets, the Commission will conduct a competitive assessment of those markets.

Table 2 – Market shares for the supply of dairy spray cream (including both branded and private or white label products) in the regional retail markets encompassing (i) Belgium, the Netherlands and Germany, (ii) Belgium, the Netherlands, Germany and France, and (iii) the EEA (2023)

Competitor	Supply of dairy spray cream (retail)					
	in Belgium, the Netherlands and Germany		in Belgium, the Netherlands, Germany and France		in the EEA	
	Value	Volume	Value	Volume	Value	Volume
A-ware	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
DFG	[10-20]%	[20-30]%	[10-20]%	[20-30]%	[5-10]%	[10-20]%
Combined	*[10-20]%*	*[20-30]%*	*[10-20]%*	*[20-30]%*	*[5-10]%*	*[10-20]%*
Friesland Campina	[30-50%]	[30-50%]	[40-50]%	[40-50]%	[30-50%]	[30-50%]
Lactalis	[5-10%]	[5-10%]	[10-20]%	[10-20]%	[0-5%]	[0-5%]
Isigny	/	/	[5-10]%	[5-10]%	[0-5%]	[0-5%]
Hochwald	[10-20]%	[10-20] %	/	/	[0-5%]	[0-5%]
Ken Foods	/	/	/	/	[5-10%]	[5-10]%
IFFCO (Codap)	/	/	/	/	[5-10%]	[5-10]%
Trevalli Cooperlat	/	/	/	/	[5-10]%	[5-10]%
Others	[10-40%]	[10-40%]	[10-20]%	[10-20]%	[0-50]%	[0-50]%
TOTAL	**100%**	**100%**	**100%**	**100%**	**100%**	**100%**

Source: Parties' estimates ([79])

5.4.1. The Notifying Party's view

(68) The Notifying Party argues that the Transaction does not give rise to any competition concerns for the following reasons.

([77]) Questionnaires for customers and competitors, questions C.D.1. and C.D.3.
([78]) Questionnaires for customers and competitors, questions C.D.2. and C.D.3.1.
([79]) Form CO, pages 28-30.

(a) While DFG holds a significant market position, A-ware is a small player on this market, with a market share that does not exceed 1%. Moreover, A-ware does not have its own dairy spray cream production capacity but acquires all dairy spray cream bottles from [supply source]. Therefore, A-ware's market position before the Transaction is minimal. ([80])

(b) A-ware and DFG face strong competition from FrieslandCampina, the largest player on the EEA-wide market for long-life dairy spray cream, which holds a larger position in the market than DFG. Furthermore, Lactalis, the largest dairy group in the EEA and globally ([81]) also competes strongly on this market.

(c) Customers in the wholesale market for long-life dairy spray cream generally are retailers and large dairy food industry brands, both of which possess significant negotiation power. ([82])

5.4.2. The Commission's assessment

(69) The Commission considers that the Transaction does not raise serious concerns as to the regional retail markets for the supply of dairy spray cream encompassing (i) Belgium, the Netherlands and Germany, (ii) Belgium, the Netherlands, Germany and France, and (ii) the EEA for the following reasons.

(70) **First**, the Parties' combined market share is approximately [20-30]% in the regional retail market for the supply of dairy spray cream encompassing Belgium, the Netherlands and Germany and the HHI resulting from the concentration on this market is below 150. The Parties' combined market shares are below 25% in the regional retail markets encompassing (i) Belgium, the Netherlands, Germany and France, and (ii) the EEA. Consequently, the Parties are eligible for simplified treatment of the Simplified Notice in these markets.

(71) Moreover, the market investigation revealed that customers have access to sufficient alternative suppliers that can provide dairy spray cream in the regional retail markets encompassing (i) Belgium, the Netherlands and Germany (ii) Belgium, the Netherlands, Germany and France, and (iii) the EEA, including Savencia, Trevalli Cooperlat, IFFCO, Rajo Meggle, Ken Liasa, Vreugdenhill, Arla, Hochwald, Turm and Debic. ([83]) Moreover, the merged entity will still face significant competition from competitors such as FrieslandCampina, Hochwald and Lactalis. ([84])

(72) **Second**, as seen in Table 2, the increment brought by A-ware is very limited as it is significantly below 1%. This is notably explained by the fact that A-ware does not have its own dairy spray cream production capacity but procures the entirety of its (limited) dairy spray cream bottles need from [supply source]. Therefore, following the Transaction, the combined market share of the merged entity is unlikely to impact the current structure of the market.

(73) **Third,** customers can switch from supplier of dairy spray cream without significant constraints. While many respondents to the market investigation

([80]) Form CO, page 27.
([81]) DAIRY NEWS, 'Rabobank's Global Dairy Top 20 Report Highlights Slower Growth, Shifting Strategies, and Potential M&A Activity', 27 August 2024, https://dairynews.today/news/rabobank-s-global-dairy-top-20-report-highlights-slower-growth-shiftingstrategies-and-potential-m-a.html
([82]) Form CO, page 27.
([83]) Questionnaires for customers and competitors, questions D.C.A.1 and D.C.A.5.
([84]) See above Table 2.

consider it difficult or not possible to switch due to a lack of alternative suppliers, an equal number of respondents consider it easy. ([85]) One customer explains that "*the two relevant suppliers of spray cream on the market today produce an almost identical product. In addition, both have a Europe-wide logistics system, which makes it possible to switch between suppliers at short notice*," while another customer explained that "*you can change the supplier easily if the contracts gives you the possibility*." One customer also explained that "*the existing suppliers are eager to attract volume. There is also some overcapacity*". ([86]) Moreover, the market investigation revealed that there are several alternative suppliers for dairy spray cream in the regional retail markets encompassing (i) Belgium, the Netherlands and Germany, (ii) Belgium, the Netherlands, Germany and France, and (iii) the EEA, ([87]) and that most customers are not dependent on a single supplier as they typically purchase dairy spray cream from several suppliers. ([88])

(74) **Fourth**, the majority of the respondents to the market investigation considered that A-ware and DFG are not close competitors or that they do not compete closely. ([89]) Especially, A-ware's presence in the market is perceived as low by customers that replied to the market investigation. One customer explained that they are not close competitors because the *"spray cream business is new additional business for A Ware",* ([90]) while several customers indicated not being aware of A-ware's presence in the market either as a producer or a supplier. ([91])

(75) **Fifth**, the majority of the respondents to the market investigation stated that the Transaction will not have a negative impact neither on the regional retail markets for dairy spray cream encompassing (i) Belgium, the Netherlands and Germany, (ii) Belgium, the Netherlands, Germany and France, and (iii) the EEA, nor on their company. ([92])

5.4.3. Conclusion

(76) For the above reasons, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market or a substantial part of it as a result of horizontal non-coordinated effects on the regional retail markets for the supply of dairy spray cream encompassing (i) Belgium, the Netherlands and Germany, (ii) Belgium, the Netherlands, Germany and France, and (iii) the EEA.

5.5. Supply of SMC

(77) The Transaction gives rise to a horizontally affected market in relation to the supply of SMC in Belgium.

([85]) Questionnaires for customers and competitors, questions D.C.C.1, D.C.C.2 and D.C.C.1.4
([86]) Questionnaires for customers and competitors, questions D.C.C.2 and D.C.C.4.
([87]) See above paragraph (71).
([88]) Questionnaire for customers, question D.C.C.2
([89]) Questionnaires for customers and competitors, questions D.C.D.9.
([90]) Questionnaire for customers, question D.C.D.9.1.1 and D.C.D.9.4.
([91]) Questionnaire for customers, question D.C.D.9.1.1 and D.C.D.9.4.
([92]) Questionnaire for customers and competitors, question D.D.1 and D.D.5.

Table 3 – Market shares for the supply of SMC in Belgium (2023)

Competitor	Supply of SMC in Belgium ([93])	
	Value	Volume
A-ware	[10-20]%	[10-20]%
DFG	[20-30]%	[20-30]%
Combined	*[30-40]%*	*[30-40]%*
Milcobel	[20-30]%	[20-30]%
LDA (Solarec)	[20-30]%	[20-30]%
Others	5-20%	5-20%
TOTAL	**100%**	**100%**

Source: Parties' estimates ([94])

5.5.1. The Notifying Party's view

(78) The Notifying Party argues that the Transaction does not give rise to any competition concern because the Parties will continue to face several significant players in the market for the supply of SMC in Belgium, such as Milcobel and LDA (Solarec).

5.5.2. The Commission's assessment

(79) The Commission considers that the Transaction does not raise serious doubts as to the supply of SMC in Belgium, for the following reasons.

(80) **First**, as seen as Table 3, the merged entity will continue to face large competitors such as Milcobel ([20-30]%) and LDA ([20-30]%). ([95])

(81) **Second**, the majority of customers that responded to the market investigation confirmed that, following the Transaction, customers will have access to enough alternative suppliers of SMC in Belgium. ([96]) Furthermore, while A-ware and DFG are identified as important suppliers in Belgium, respondents have also listed other important suppliers such as LDA (Solarec) and Milcobel. ([97])

(82) **Third,** customers can easily switch to alternative suppliers. The majority of customers that responded to the market investigation consider that switching from one SMC supplier to another is easy. ([98]) Accordingly, customers argue that SMC is a commodity product with uniform characteristics. ([99]) Moreover, customers in Belgium are not dependent on one single supplier as they currently procure SMC from several suppliers ([100]) and respondents stated that the Parties do not have a competitive advantage in the supply of SMC in Belgium. ([101])

([93]) At the EEA level, the Parties have a combined market share of [0-5]%in value ([0-5]%for A-ware and [0-5]%for DFG) and in volume ([0-5]%for A-ware and [0-5]%for DFG) in 2023. At the regional level encompassing Belgium and the Netherlands, the parties have a combined market share below [5-10]%

([94]) Form CO, pages 38-39.

([95]) Moreover, as explained above in paragraph (49), the assessment is carried out at the narrowest plausible geographic market. If a broader geographic market is considered, for instance encompassing Belgium, the Netherlands and Germany, the Parties combined market share is [10-20]%.

([96]) Questionnaire for customers, questions E.C.A.4 and E.C.A.4.1.

([97]) Questionnaire for customers, question E.C.A.1.

([98]) Questionnaire for customers, question E.C.C.1.

([99]) Questionnaire for customers, question E.C.C.1.1.

([100]) Questionnaire for customers, question E.C.C.2.

([101]) Questionnaire for customers and competitors, question E.C.A.3.

(83) **Fourth**, the majority of the respondents to the market investigation stated that the Transaction will not have a negative impact neither on the market for SMC in Belgium nor on their company. ([102])

5.5.3. Conclusion

(84) For the above reasons, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market or a substantial part of it as a result of horizontal non-coordinated effects on the market for the supply of SMC in Belgium.

6. CONCLUSION

(85) For the above reasons, the European 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)
Teresa RIBERA
Executive Vice-President

([102]) Questionnaire for customers and competitors, question E.D.1.