EUROPEAN COMMISSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

John Bean Technologies Corporation
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Chicago, IL 60602
United States of America

**Subject:** **Case M.11615 – JBT / Marel**
**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 23 October 2024 and following a referral pursuant to Article 4(5) of the Merger Regulation, the European Commission ("the Commission") received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation, whereby John Bean Technologies ('JBT') will acquire, within the meaning of Article 3(1)(b) of the Merger Regulation, sole control of the whole of Marel hf. ('Marel') (the 'Transaction').[3] JBT is designated hereinafter as the 'Notifying Party', and together with Marel, are designated hereinafter as 'the Parties'.

## 1. THE PARTIES

(2) JBT is a US-based company incorporated under the laws of the State of Delaware, United States. JBT supplies industrial food processing solutions and services used

[1] OJ L 24, 29.1.2004, p. 1 (the 'Merger Regulation'). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ('TFEU') has introduced certain changes, such as the replacement of 'Community' by 'Union' and 'common market' by 'internal market'. The terminology of the TFEU will be used throughout this decision.
[2] OJ L 1, 3.1.1994, p. 3 (the 'EEA Agreement').
[3] OJ C, C/2024/6734, 4.11.2024.

for applications in the global food processing industry. It designs, manufactures and services systems for the food industry, and some non-food applications such as pharma (as well as related spare parts and aftersales services). JBT's business is divided into two segments, namely (i) Protein; and (ii) Diversified Food & Health ('DF&H').

(3) Marel is an Icelandic public limited liability company incorporated under the laws of Iceland. Marel is active globally in the manufacture and supply of equipment and systems for the food processing industry. It offers equipment for the processing of poultry, red meat, fish, and plant-based food and petfood (as well as related spare parts an aftersales services). It organises its business across four segments, namely (i) Poultry; (ii) Meat; (iii) Fish; and (iv) Plant, Pet and Feed.

## 2. THE CONCENTRATION

(4) On 4 April 2024, the Parties entered into a Transaction Agreement whereby the Parties will bring about a combination of JBT and Marel (the JBT Marel Corporation) by way of John Bean Technologies Europe B.V. ('JBT Europe'), a wholly owned subsidiary of JBT, making a voluntary public takeover offer within the meaning of Article 101 of the Icelandic Takeover Act to the shareholders of Marel. Hence, the Transaction consists of an acquisition of sole control by JBT over Marel and constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

## 3. UNION DIMENSION

(5) The combined aggregate worldwide turnover of all the undertakings concerned is less than EUR 5 000 million (JBT: EUR […]; Marel: EUR […]) and it is not more than EUR 100 million in three Member States. Therefore, the Transaction does not have an EU dimension pursuant to Article 1(2) and Article 1(3) of the Merger Regulation.

(6) The Notifying Party submitted a referral request (Form RS) on 11 July 2024. The Commission transmitted this submission to all Member States on 12 July 20024. None of the at least 3 Member States competent to review the Transaction, namely Austria, Germany and Poland, expressed their disagreement with the request for a referral. The Transaction is therefore considered to have a community dimension pursuant to Article 4(5) of the Merger Regulation.

## 4. OVERVIEW OF THE PARTIES' ACTIVITIES

(7) The Parties are active in the development, manufacture and sale of food processing equipment globally.

(8) Food processing describes the process whereby a live animal (or a non-meat substitute) is transformed into a food product that is ready to be purchased or consumed by an end-consumer. Food processing equipment comprises the machinery and systems used in this process, often in combination with, or instead of, human labour.

(9) The Parties are mostly active with respect to equipment for protein processing (red meat, white meat and fish), which is typically broken down into the following processing stages: 'primary processing', which entails working directly with a live

animal and the stages immediately following its entry into a plant (e.g. slaughtering, removing innards, defeathering, bleeding, chilling); 'secondary processing' and 'further processing' entail turning the protein into a consumer-ready product (e.g. mixing and grinding, portioning, coating, cooking, frying, freezing, packaging, etc.); 'processing and logistical control', which involves material handling and 'end of line equipment', using hardware and software to control the overall food processing process and its outcome – e.g. product flow, packaging, labelling, organization, transport and traceability.

(10) Not all food producers or equipment manufacturers are active across the entire value chain, as some may for example only be active in primary processing but not secondary or further processing, or vice versa.

(11) Marel is active in the supply of equipment in the EEA covering all processing stages, with focus on primary processing equipment and in certain types of secondary processing equipment.[4] […].[5] JBT's EEA business is focused on further processing equipment, material handling and 'end of line equipment', as well as freezing equipment.[6]

(12) These activities of the Parties give rise to horizontal overlaps and conglomerate effects. Specifically, horizontally affected markets arise within secondary processing with respect of equipment for: (i) portioning (segments of portioning overall, portioning of poultry, portioning of red meat and waterjet portioning overall); (ii) forming (overall); and (iii) inspection (x-ray segment);[7] as well as within further processing with respect of equipment for : (iv) cooking (segments of cooking overall and convection ovens); (v) coating; and (vi) frying. Possible conglomerate effects arise in relation to equipment for which the Parties' combined market shares result in affected markets – i.e., portioning, forming, inspection, cooking, coating and frying equipment.

## 5. MARKET DEFINITION

### 5.1. Product market definition

#### *5.1.1. The Commission's precedent*

(13) The Commission has previously considered the markets for food processing equipment, with a distinction between primary processing equipment and equipment that belongs to further processing stages.[8]

(14) For primary processing equipment, the Commission considered whether there should be segmentation based on the type of livestock processed.[9] Regarding further processing stages, the Commission considered possible segmentation

4 Form CO, paragraph 13 and Table 1.

5 JBT supplies primary processing equipment outside of the EEA, but its market share considering a global market for overall primary processing would be below 5%.

6 Form CO, paragraph 13 and Table 1.

7 The Parties do not overlap in the market for x-ray technology or other vision technology in 2021-2023, however the Parties will overlap in 2024. JBT has a non-controlling interest in an x-ray inspection manufacturer, Innospexion whose equipment JBT is licensed to distribute. JBT has a pending order for the sale of […] Innospexion units for 2024. Nevertheless, the Parties expect any market share attributable to those sales […] to be *de minimis*. See response to RFI 8, footnote 1.

8 M.5125 - MAREL/SFS, paragraphs 8-10, 17 and 21.

9 M.5125 - MAREL / SFS, paragraphs 13 and 17.

between: (i) 'secondary processing' including equipment used to weigh, grade, cut, slice, portion, size and group parts of the carcass, the end-result being a consumer-ready product or an intermediate product for further processing ; (ii) 'further processing' where additional treatment (such as marinating, spicing, frying, etc.) is carried out using the material resulting from secondary processing; and (iii) 'process and logistical control' which includes software and hardware guaranteeing the operational control of the process and its outcome.[10]

(15) Ultimately, the Commission assessed primary processing for poultry and left open whether the remaining processing stages should be further segmented in secondary processing, further processing and process and logistical control, as well as whether such further processing stages would be meat specific.[11]

*5.1.2. The Parties' view*

(16) While proposing to leave the market definition open, the Parties consider that it is appropriate to segment the market between different processing stages[12]: (i) 'primary processing',[13] (ii) 'secondary processing',[14] (iii) 'further processing';[15] (iv) processing and logistical control'.[16]

(17) In particular, the Parties consider that a segmentation between secondary processing and further processing is appropriate based on the different demand- and supply-side characteristics in each segment. According to the Parties, secondary and further processing serve distinct purposes and, moreover, while it is the case that most protein will undergo some form of secondary processing, this is not the case for further processing. It is also the case that food producers themselves may not be active in both secondary and further processing or that, to the extent they are, these processes take place at different facilities.[17]

(18) Within primary processing, consistent with the Commission's precedent, the Parties consider appropriate to draw a distinction on the basis of the type of the livestock (protein) concerned.[18]

(19) Within secondary and further processing, the Parties consider plausible market segmentations based on the type of equipment, including separate markets of equipment for: (i) portioning, (ii) forming and (iii) inspection equipment within the secondary processing, and (iv) cooking, (v) coating and (vi) frying machines within the further processing. The Parties assess, in each case, whether further segmentations could apply based on protein or technology.

(20) **Portioning** is the step in which a protein or other food mass is converted into individual serving sizes or 'portions' (or slices) of fixed width (i.e. length or height), weight, or shape. The Parties consider that, while many types of machinery within secondary processing are protein agnostic, this is not the case for portioning equipment. Accordingly, the Parties propose a further segmentation of portioning

10 M.5125 - MAREL / SFS, paragraph 18.
11 M.5125 - MAREL / SFS, paragraph 23.
12 Form CO, paragraphs 94, 96
13 Form CO, paragraph 94, in line with the Commission's decision in Marel/SFS.
14 Form CO, paragraphs 96-100.
15 Form CO, paragraphs 176-183.
16 Form CO, paragraphs 207-211.
17 Form CO, paragraph 96.
18 Form CO, paragraph 94.

equipment depending on the type of protein for which the equipment is designed to be used.[19] The Parties submit that portioning equipment can also be segmented by the type of technology used to portion the meat, between: (i) blade portioners, which cut protein using a sharp blade or blades, and (ii) waterjet portioners, which cut protein using use a rapid, thin, high-pressure stream of water.[20]

(21) **Forming** is the step in which a protein or other food mass that has been ground or mixed is converted into the desired weight and shape. The Parties consider that forming equipment can be segmented by type of technology between: (i) drum formers, which are high-capacity machines that use special rotating drums to shape products and rely on an external pump or filling device to transfer the protein mix into the drum; and (ii) plate formers that use plats to shape products at various volumes, without requiring any additional external machines/pumps or filling equipment.[21]

(22) **Inspection** typically takes place after a protein (or other food mass) has been portioned, whereby the product is scanned with x-ray or other vision technology for the purpose of detecting bones or other contaminants such as glass, rubber, plastic, metal, wood. The Parties consider that inspection equipment can be segmented by type of technology between: (i) x-ray equipment, which is fitted with a conveyor belt on which food products are moved through the machine, and (ii) other vision technology.[22]

(23) The Parties consider that equipment for further processing, including cooking, coating and frying is not protein-specific, as customers do not use different types of further processing equipment depending on the protein to be cooked.

(24) **Cooking** is the step in which a protein or other food mass is exposed to heat in order to prepare it for consumption. Cooking can take various forms, including baking, roasting, boiling, steaming or smoking. The Parties submit that cooking equipment may be further segmented based on cooking technology between: (i) contact ovens, in which the food product comes into direct contact with the cooking medium, being placed between two cooking belts that run between hot heating plates; (ii) convection ovens, based on technology where free or forced air (or liquid) is used to gain heat transfer, including by way of steaming or baking, and result in a slower cook time compared to contact cookers; and (iii) barmarkers/searing cookers that are used to give bar marks / grill marks on food products.[23]

(25) **Coating** is the optional step in which a protein (or a vegetable) is coated with flour, seasoning, batter or breadcrumbs to enhance product appearance, texture, taste and/or colour. The Parties do not identify further segmentations for coating equipment based on technology.

(26) **Frying** is the optional step in which a food product is fried in oil or fat to achieve a particular taste, texture and appearance. Frying can be used on both coated and uncoated food products, as well as cooked (fully or partially) and raw food

19 Form CO, paragraph 113.
20 Form CO, paragraph 115.
21 Form CO, paragraph 173.
22 Form CO, paragraph 144.
23 Form CO, paragraph 189.

products. The Parties do not identify further segmentation for frying equipment based on technology.

*5.1.3. The Commission's assessment*

(27) The results of the market investigation support segmentation of food processing equipment between different processing stages, as well as by type of equipment technology within the secondary and further processing stages. The views from market participants on possible segmentations based on type of protein processed varied depending on the specific equipment; the market investigation indicated that competitors and customers may focus their activities only on one or certain types of protein – for instance, on red meat,[24] poultry[25] or fish.[26]

(28) First, regarding a segmentation between different processing stages, from the supply side, not all competitors can deliver the same range of processing equipment, and therefore there is not necessarily supply-side substitutability for different processing stages. For example, the Commission has identified competitors that are active in primary processing equipment,[27] or that are active in primary and secondary processing, but not further processing.[28] A competitor has submitted that they consider 'primary and secondary processing to constitute distinct processing steps'.[29] While the majority of the competitors that replied to the market investigation are active in the supply of one or more types of machinery within secondary processing, only about half supplied one or more types of machinery within further processing.[30]

(29) From a demand perspective, the market investigation confirms that the design and composition of the equipment included in a customer's processing line can vary from company to company, within each type of processing stage.[31] There are customers that are only active in primary and secondary processing, and not in other processing stages.[32] Customers have indicated that 'primary secondary and further processing can be considered as different markets'[33] or as 'separate markets'.[34]

(30) Second, regarding a segmentation within the secondary and further processing stages, where the Parties' activities overlap, the Commission will consider a market segmentation based on the type of equipment or protein, in line with the market investigation, as appropriate.

(31) For **portioning**, most competitors consider that, from a supply-side perspective, it is not possible to switch between blade portioners and waterjet portioners.[35] Likewise, several customers replied that blade portioners and waterjet machines

24 Minutes of a call with a competitor of 25 September 2024, paragraphs 3-4.
25 Minutes of a call with a customer of 9 October 2024, paragraphs 2 and 4. Minutes of a call with a competitor of 23 October 2024, paragraphs 2-4.
26 Minutes of a call with a customer of 16 October 2024, paragraph 2.
27 Minutes of a call with a competitor of 23 October 2024, paragraphs 2-4.
28 Minutes of a call with a competitor of 25 September 2024, paragraphs 3-4.
29 Minutes of a call with a competitor of 14 October 2024, paragraph 6.
30 Questionnaire to competitors, question C.3.
31 Questionnaire to customers, question C.3
32 Minutes of a call with a customer of 9 October 2024, paragraphs 2 and 4.
33 Minutes of a call with a customer of 9 October 2024, paragraph 6.
34 Minutes of a call with a customer of 9 October 2024, paragraph 5.
35 Questionnaire to competitors, question D.A.A.3.

cannot be used interchangeably and do not substitute each other.[36] One competitor explained that *"the two techniques are not substitutable as waterjet portioning is more advanced and precise with less manual effort while blade cutting is always one or two dimensional"*.[37] Another competitor considered that waterjet cutting should not be considered even a type of portioning machine, given that '*waterjet cutting uses a high-speed machine to portion the product while trimming fat or non-usable parts of the product to maximise the quality and yield of the food*'.[38] While the majority of competitors considered that blade portioners can be manufactured to be used on all proteins,[39] the majority of customers who expressed an opinion indicated that they buy blade portioners to be used only for one protein; customers indicated the same in relation to waterjet portioners.[40] With respect to waterjet portioning, a competitor explained that '*it tends to be used for poultry specifically and is not often seen in other applications*.'[41]

(32) For **forming**, competitors had mixed views on whether it is possible to swich production between plate formers and drum formers,[42] and customers had mixed views on whether plate formers and drum formers can be used interchangeably and substitute each other.[43] Most customers and competitors considered that forming equipment is not protein specific, regardless of technical segmentation.[44]

(33) For **inspection** equipment, most competitors and customers consider that, from a supply-side and a demand-side perspective, it is not possible to switch between x-ray and other vision technology.[45] A slight majority of competitors considered that inspection equipment and its technical segmentations are not protein specific, while customers had mixed views in this respect.[46]

(34) For **cooking** equipment, the majority of competitors and customers confirmed no segmentation based on protein but had mixed views on whether switching between convection ovens and other/contact ovens would be possible.[47] Most customers and competitors considered that cooking equipment is not protein specific, regardless of technical segmentation.[48] A competitor supports this finding explaining that, for convection ovens for example, *"it is easier to use the machines across different applications with only minor modifications"*[49]. A customer also states that, taking the example of cooking equipment used, *"the equipment does not need to be protein specific"* at further processing stages.[50]

(35) For **coating** and **frying**, the majority of customers confirmed that no further segmentation is warranted based on technology or protein.[51] Competitors had

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36 Questionnaire to customers, question D.A.A.3.
37 Minutes of a call with a customer of 9 October 2024, paragraph 9.
38 Minutes of a call with a competitor of 14 October 2024, paragraph 9.
39 Questionnaire to competitors, question D.A.A.1.
40 Questionnaire to customers, question D.A.A.1.
41 Minutes of a call with a competitor of 14 October 2024, paragraph 7.
42 Questionnaire to competitors, question D.B.A.3.
43 Questionnaire to customers, question D.B.A.3.
44 Questionnaire to customers, question D.B.A.1. Questionnaire to competitors, question D.B.A.1.
45 Questionnaire to customers, question D.C.A.3.Questionnaire to competitors, question D.C.A.3.
46 Questionnaire to customers, question D.D.A.3. Questionnaire to competitors, question D.D.A.3.
47 Questionnaire to customers, question D.D.A.1. Questionnaire to competitors, question D.D.A.1.
48 Questionnaire to customers, question D.D.A.1. Questionnaire to competitors, question D.D.A.1.
49 Minutes of a call with a competitor of 14 October 2024, paragraph 7.
50 Minutes of a call with a customer of 16 October 2024, paragraph 5.
51 Questionnaire to customers, questions D.E.A.1, D.E.A.3, D.F.A.1 and D.F.A.3.

mixed views on whether coating and frying machines could be used for more than one protein type; one competitor suggested possible segmentation for coating between bakery, confectionary, French fries, and for frying between nuts, snacks and French fries.[52]

*5.1.4. Conclusion*

(36) 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 of the alternative product market delineations considered in this Section.

(37) In order to perform its competitive assessment in the present case, based on the results of the market investigation, the Commission will consider the following product segmentations, where the Parties' activities overlap and give rise to affected markets: (i) portioning (sub-segmented in portioning overall, portioning of poultry and waterjet portioning overall); (ii) forming (overall);[53] (iii) inspection (sub-segmented between x-ray and other vision technology);[54] (iv) cooking (sub-segmented between cooking overall and convection ovens); (v) coating; and (vi) frying. [55]

## 5.2. Geographic market definition

*5.2.1. Commission's precedent*

(38) The Commission has previously considered that the relevant product markets for food processing equipment are at least EEA-wide in scope but left the exact market definition open.[56]

*5.2.2. The Parties' view*

(39) The Parties submit that the geographic market is at least as wide as the EEA and the United Kingdom (and plausibly also the Middle East, and Turkey). According to the Parties, food processing techniques and food hygiene standards tend to be the same across this region, and suppliers of food processing equipment are all present and compete across the region. The Parties are not aware of any material barriers to trade, with trade and shipping costs comprising only a small portion of the cost of food processing machinery.[57]

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52 Questionnaire to competitors, questions D.E.A.1, D.E.A.3, D.F.A.1 and D.F.A.3

53 The Parties' combined market shares in the segment of secondary processing overall do not give rise to an affected market, as indicated in footnote 67 below.

54 The Parties do not overlap in the market for x-ray technology or other vision technology in 2021-2023, however the Parties will overlap in 2024. JBT has a non-controlling interest in an x-ray inspection manufacturer Innospexion, whose equipment JBT is licensed to distribute. JBT has a pending order for the sale of […] Innospexion units for 2024. Nevertheless, the Parties expect any market share attributable to those sales […] to be *de minimis*. See response to RFI 8, footnote 1.

55 The Parties market shares in the EEA with respect to further processing overall (i.e., including the cooking, coating and frying segments) give rise to affected markets. For the purposes of the present decision, the Commission assesses the competitive effects of the Transaction in the narrowest possible markets of cooking, coating and frying, and the analysis applies, *mutatis mutandis*, to the overall further processing segment.

56 M.5125 - MAREL / SFS, paragraph 26.

57 Form CO, paragraphs 256-258.

*5.2.3. Commission's assessment*

(40) The outcome of the market investigation confirms that the geographic scope of the different plausible relevant product markets for food processing equipment is at least EEA in scope. A customer supports that the geographic scope is at least EEA for the following reasons: *'(i) more manual steps outside of Europe (ii) use of different techniques (iii) importance of traceability being greater in Europe'*.[58] A competitor adds to the above list of arguments the fact that customer preferences (e.g. capacity, size of the facility) and regulatory requirements are different between the North American and the European market.[59] The views of customers and competitors as to the precise geographic market definition for each type of equipment varied as follows.

(41) For portioning, most competitors suggest a worldwide geographic scope for all product segmentations;[60] among customers, although many suggested an EEA-wide geographic scope, many views also indicated a plausible EEA+UK or worldwide geographic market for the different plausible segmentations.[61]

(42) For forming, cooking, coating and frying equipment, customers had mixed views as to whether the geographic scope should be EEA-wide, EEA+UK or worldwide.[62] For forming, cooking and frying equipment, most competitors were split between a geographic market EEA wide or worldwide.[63] For coating, competitor views were split between a geographic market EEA or EEA+UK wide.[64]

(43) For inspection equipment, several competitors and customers considered the geographic market worldwide for all segmentations, although few customers also considered the market possibly EEA wide or EEA+UK.[65]

*5.2.4. Conclusion*

(44) For the purposes of assessing the Transaction, the Commission will conduct its competitive assessment considering the narrowest plausible market definition – i.e., a geographic scope at least EEA-wide for all plausible product market segmentations.

## 6. COMPETITIVE ASSESSMENT

(45) The market share data presented in this Section has been estimated by the Parties based on consolidated sales made in the last three financial years (2021-2023). This approach is justified because the relevant markets in question are characterised by lumpy sales. In certain markets, the Parties sell only a handful of units annually, and therefore large one-time purchases or general market volatility can cause significant fluctuations in the Parties' annual market shares. By considering combined shares across the last three financial years (2021-2023), many of these

58 Minutes of a call with a customer of 9 October 2024, paragraph 9.
59 Minutes of a call with a competitor of 14 October 2024, paragraph 11.
60 Questionnaire to competitors, question D.A.B.1.
61 Questionnaire to customers, question D.A.B.1.
62 Questionnaire to customers, question D.B.B.1, D.D.B.1, D.E.B.1 and D.F.B.1
63 Questionnaire to competitors, questions D.B.B.1, D.D.B.1, D.F.B.1 and D.F.B.2.
64 Questionnaire to competitors, question D.E.B.1,
65 Questionnaire to customers, question D.C.B.1. Questionnaire to competitors, question D.C.B.1.

irregularities are smoothed out and therefore the Parties submit that the combined of the last three years is a more appropriate basis to estimate the Parties' market shares and identify affected markets.[66]

(46) One additional affected market – frying – has been identified considering sales for 2021, 2022 and 2023 individually.

(47) The Transaction also results in horizontal overlaps for a number of other markets. However, none of these give rise to affected markets within the meaning of recital 25(g) Annex I to Regulation (EU) 2023/914, as they meet the conditions for review under point 5 or benefit from the flexibility clauses of point 8 of the Notice on Simplified Treatment (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).[67] Therefore, these overlaps will not be discussed in detail in this decision.

## 6.1. Horizontal effects

### *6.1.1. Legal framework*

(48) The Commission's guidelines on the assessment of horizontal mergers under the Merger Regulation (the 'Horizontal Merger Guidelines') distinguish two main ways in which mergers between actual or potential competitors on the same relevant market may significantly impede effective competition, namely non-coordinated effects and coordinated effects.[68]

(49) Non-coordinated effects may significantly impede effective competition by eliminating the competitive constraint imposed by one merging party on the other, as a result of which the merged entity would have increased market power without resorting to coordinated behaviour. According to recital 25 of the Merger Regulation, a significant impediment to effective competition can result from the anticompetitive effects of a concentration even if the merged entity would not have a dominant position on the market concerned. In this regard, the Horizontal Merger Guidelines consider not only the direct loss of competition between the merging firms, but also the reduction in competitive pressure on non-merging firms in the same market that could be brought about by the merger.[69]

(50) 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

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66 Form CO, paragraph 259.

67 This is the case of the Parties' activities in the EEA with respect to mixing and marination, plate forming (a sub-segment of forming overall), water management, material handling, equipment for pet food processing and software. Also, this is the case of the Parties' activities in secondary processing overall, as well as in process and logistical control overall in the EEA. The Parties do not overlap in the overall primary processing segment in the EEA.

68 OJ C 31, 5.2.2004, p. 5. The remainder of this decision focuses on non-coordinated effects.

69 Horizontal Merger Guidelines, paragraphs 24-38.

effects. Furthermore, not all of those factors need to be present to make significant non-coordinated effects likely and the list itself is not an exhaustive list.[70]

*6.1.2. Portioning*

(51) As explained in paragraph (37), the Commission will assess portioning of poultry and waterjet portioning overall.

**Portioning poultry**

(52) When considering portioning equipment segmented by protein, the Parties' activities overlap in the EEA only with respect to poultry.

**Table 1 – Markets shares for the supply of poultry portioning equipment in the EEA, in value (2021-2023 combined)**

| | **Portioning (poultry)** |
|---|---|
| JBT | [0-5]% |
| Marel | [20-30]% |
| *Combined* | *[20-30]%* |
| Marelec | [30-40]% |
| Multivac | [10-20%] |
| Middleby | [10-20%] |
| Others | [10-20%] |
| **TOTAL** | **100%** |

*Source: The Parties' estimates*[71]

(53) The Notifying Party argues that the Transaction will not give rise to serious doubts regarding the supply of portioning (poultry) in the EEA since the increment is modest and Marelec will remain as an equivalent sized competitor. Moreover, the Parties will continue to be subject to intense competition from other competitors, including Multivac, Middleby and Borncut.[72]

(54) The Commission considers that the Transaction does not raise serious doubts regarding the supply of portioning equipment for poultry in the EEA, for the following reasons.

(55) **First**, in the segment for poultry, the Parties would have a combined moderate market share of [20-30]%, with a small increment of [0-5]%. There are other competitors present such as Marelec, with an estimated market share of [30-40]%, and Multivac, with an estimated market share of [10-20]%.

(56) **Second,** market respondents confirmed the presence of multiple competitors on the market that could challenge the Parties post-Transaction. During the market investigation, customers identified additional suppliers for portioning equipment for poultry[73], of which at least two are included as competitors in the opportunity

70 Horizontal Merger Guidelines, paragraphs 24-38. This assessment is without prejudice of the possible application of other legal provisions on unfair termination of an established commercial relationship or other forms of unfair commercial practices which may apply absent any concentration and/or absent any significant impediment to effective competition.

71 PN RFI 7, Annex 1.

72 Form CO, paragraph 293 and ff.

73 Questionnaire to customers, question D.A.C.4.

data of Marel. Marel participated in the same tender as 23 other competitors (other than JBT and GEA) in the past three years for portioning overall, of which 6 were met in tenders related to portioning equipment for poultry.[74]

(57) Third, while the results of the market investigation were mixed with respect to whether the Parties would be particularly close competitors (with a slight majority of respondents indicting that they are not close competitors or that they compete, but not particularly closely), ultimately the Parties do not supply the same type of portioning equipment for poultry in the EEA. Indeed, [Parties'sales strategy].[75]

(58) **Fourth**, for poultry, several market participants considered that switching from one manufacturer of portioning equipment for poultry to another supplier is easy, while a sizeable number considered it to be difficult.[76] While a similar feedback was gathered on how high barriers to entry or expansion are in the EEA,[77] several market participants identified Marelec as a new entrant in the last 5 years in the EEA.[78] Moreover, the Parties explain that the entry into a market among the secondary and further processing stages is not dependent on having access to a particular patent. Suppliers often use their own technology without relying on the technology developed by a specific supplier, since, as the Parties explain, *"patents in the food processing equipment industry are narrowly focused",* therefore, "*it is very practicable for suppliers to circumvent the patent by making slight modifications to the design of a patented product".* Additionally, suppliers can incorporate other suppliers' identical technology, as a number of the existing products are based on patents that are long expired.[79]

(59) **Fifth**, the market participants who expressed an opinion had mixed opinions on the impact of the concentration on their company.[80] More specifically, half of the market respondents saw possible negative impacts concerning price, a sizable minority concerning commercial terms, several respondents indicated a positive impact of the Transaction and, together with those who held a neutral view, constitute the majority of the respondents with respect to availability and quality of equipment a slight majority of the respondents indicated that the concentration would have a negative impact on choice for customers in the EEA, almost the same number of respondents held that it would be neutral or positive.[81] However, the majority of customers considered that they would have sufficient suppliers available in the EEA post-Transaction under any segmentation for portioning equipment.[82]

**Waterjet portioning**

74 RFI 3, Annex 2.
75 PN RFI 7, Annex 1 and RFI 7, question 2.
76 Questionnaire to customers, question D.A.C.10. Questionnaire to competitors, question D.A.C.10.
77 Questionnaire to customers, question D.A.C.8.Questionnaire to competitors, question D.A.C.8.
78 RFI 4. Questionnaire to customers, question D.A.C.9. Questionnaire to competitors, question D.A.C.9.
79 RFI 4, Q4b.
80 Questionnaire to customers, question D.A.E.4. Questionnaire to competitors, question D.A.E.4.
81 Questionnaire to customers, question D.A.E.2.Questionnaire to competitors, question D.A.E.2.
82 Questionnaire to customers, questions D.A.E.1 and D.A.E.2.Questionnaire competitors, question D.A.E.2.

(60) When considering portioning equipment segmented by technology, the Parties' activities overlap in the EEA only with respect to waterjet portioning.[83]

**Table 2 – Markets shares for the supply of waterjet portioning equipment in the EEA, in value (2021-2023 combined)**

| | **Portioning (waterjet)** |
|---|---|
| JBT | [5-10]% |
| Marel | [20-30]% |
| *Combined* | *[30-40]%* |
| Marelec | [30-40%] |
| Middleby | [20-30%] |
| Other | [5-10%] |
| **TOTAL** | **100%** |

*Source: The Parties' estimates*[84]

(61) The Notifying Party argues that Marelec will remain the largest competitor and that in practice the Parties do not compete since JBT's portioners can only be used on poultry and red meat, whereas Marel's can only be used on fish.[85]

(62) The Commission considers that the Transaction would not give raise to serious doubts regarding the supply of waterjet portioning equipment in the EEA, for the following reasons.

(63) **First**, in this segment, the Parties would have a combined moderate market share of [30-40]%, with an increment of [5-10]%. According to the Parties, the following two competitors active in this segment are Marelec with an estimated market share of [30-40]% followed by Middleby with an estimated market share of [20-30]%.

(64) **Second,** the market participants confirmed the presence of several competitors on the market that could challenge the Parties post-Transaction. One customer identified two additional companies as suppliers of waterjet portioning equipment, and another customer identified an additional one.[86] Based on Marel's opportunity data,[87] it participated in the same tender in 2021-2023 with two other competitors (besides GEA and JBT) different than the ones indicated by market respondents.

(65) **Third**, while the results of the market investigation were mixed with respect to whether the Parties would be particularly close competitors (with a slight majority of respondents indicting that they are not close competitors or that they compete, but not particularly closely),[88] a few participants identified Marelec as the closest competitor to each Party.[89] In any event, [Parties'sales strategy].[90] Therefore, the Parties do not supply the same portioning equipment for the same protein in the EEA.

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83 The Parties' activities overlap in the EEA with respect to waterjet portioning, only in the case where the segment of waterjet portioning is not segmented by protein.

84 PN RFI 7, Annex 1.

85 Form CO, paragraph 297 and ff.

86 Questionnaire to customers, question D.A.C.4.

87 RFI 3, Annex 2.

88 Questionnaire to customers, question D.A.D.3. Questionnaire to competitors, question D.A.D.3.

89 Questionnaire to customers, questions D.A.D.1 and D.A.D.2. Questionnaire to competitors, questions D.A.D.1 and D.A.D.2.

90 PN RFI 7, Annex 1 and RFI 7, question 1.

(66) **Fourth**, most market participants consider that it is difficult to switch from one manufacturer of portioning waterjet equipment to another supplier[91] and that barriers to entry or expansion are medium or high in the EEA.[92] However, as explained in paragraph (58), according to the Parties, entry into a market among the secondary and further processing stages is not dependent on having access to a particular patent. Suppliers often use their own technology without relying on the technology developed by a specific supplier or they incorporate the identical technology, as a number of the existing products are based on patents that are long expired.[93]

(67) **Fifth**, whilst some of the market participants indicated that the Transaction would have a negative impact on price for waterjet portioning equipment in the EEA, this view was not shared by all respondents, as the same number indicated that the impact would be neutral. The majority of respondents highlighted a negative impact of the Transaction on choice for customer and commercial terms. Regarding (i) availability and (ii) quality of waterjet portioning equipment, a few respondents expressed a negative impact of the Transaction, several respondents expressed a neutral view and respectively two and one customer highlighted a positive effect.[94] However, the majority of respondents who expressed an opinion on the impact of the Transaction on their company, does not expect any impact.[95]

(68) Based on the above considerations and in the light of the results of the market investigation, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market on (i) portioning equipment for poultry and (ii) portioning waterjet equipment.

*6.1.3. Forming*

(69) As explained in paragraph (37), the Transaction gives rise to an affected market in the EEA at the processing stage of forming.

**Table 3 – Markets shares for the supply of forming equipment in the EEA, in value (2021-2023 combined)**

| | **Forming (overall)** |
|---|---|
| JBT | [0-5]% |
| Marel | [20-30]% |
| *Combined* | *[20-30]%* |
| GEA Group | [30-40%] |
| Provisur Technologies | [20-30%] |
| Azzar | [0-5%] |
| Others | [10-20%] |
| **TOTAL** | **100%** |

*Source: The Parties' estimates*[96]

(70) The Notifying Party argues that, while the market for the supply of forming equipment would be affected following the Transaction, the increment brought by

91 Questionnaire to customers, question D.A.C.10. Questionnaire to competitors, question D.A.C.10.
92 Questionnaire to customers, question D.A.C.8. Questionnaire to competitors, question D.A.C.8.
93 RFI 4, Q4b.
94 Questionnaire to customers, question D.A.E.2. Questionnaire to competitors, question D.A.E.2.
95 Questionnaire to customers, question D.A.E.4. Questionnaire to competitors, question D.A.E.4.
96 PN RFI 7, Annex 1.

JBT is modest ([0-5]%) and GEA will continue to be the largest supplier on the market, with an estimated share of [30-40]%. They further explain that, following the Transaction, the Parties will be able to exercise an increased competitive constraint on GEA, and will themselves be subject to intense competition from other competitors, including Provisur Technologies.[97]

(71) The Commission considers that the Transaction does not raise serious doubts as to the supply of forming equipment in the EEA, for the following reasons.

(72) **First**, as seen in Table 3, the combined market share of the Parties would remain below 30% and the increment brought by JBT is limited as it does not exceed [5-10]%. Moreover, the market share data show that, following the Transaction, GEA would remain the main competitor on the market for the supply of forming equipment in the EEA with a market share of [30-40]%, bigger than the one of the Parties.

(73) **Second**, while the majority of the interrogated market participants indicated that both JBT and Marel were important suppliers of forming equipment[98], the market participants also confirmed the presence of multiple competitors on the market that could challenge the Parties post-Transaction. A majority of them named GEA as the main alternative supplier of forming equipment in the EEA, followed by Provisur. The market participants also mention the presence of Azzar (Provatec), Handtmann and several other local companies. One customer, when listing the main suppliers of forming equipment in the EEA, explicitly replied *"Marel, GEA, Alco, Townsend, Provisur, Provatec.....and many local companies that work at national level in any country when the machines are of low capacity"*.[99] Another customer confirmed that the market for the supply of forming equipment is composed of a sufficient number of players.[100] Moreover, the opportunity data of the Parties show that JBT and Marel met, in tenders launched in the EEA over the years 2021 to 2023, 11 different competitors, other than GEA and the Parties, such as Handtmann […], Provisur and Vemag.[101] Finally, the majority of the market participants considers that there is no specific subsegment of the market for the supply of forming equipment in the EEA, where both JBT and Marel are active and where competition would be particularly limited.[102]

(74) **Third**, many market participants stated that JBT and Marel are not close competitors on the forming market overall.[103] In particular, some customers view the Parties' activities on the market for the supply of forming as complementary, where Marel is stronger in the supply of drum forming, compared to the supply of plate forming, while JBT is only active on the supply of plate forming. For instance, one customer explained that the Transaction would give Marel and JBT *"possible synergies between Marel and JBT, whose product ranges are complementary"*. Another customer stated that *"JBT and Marel offer equipment for different fields of activity"*.[104] The market share data seem to confirm these

97 Form CO, paragraph 286.
98 Questionnaire to customers, question D.B.C.2. Questionnaire to competitors, question D.B.C.2.
99 Questionnaire to customers, question D.B.C.3. Questionnaire to competitors, question D.B.C.3.
100 Questionnaire to customers, question D.B.C.4.
101 RFI 3, Annex 1 and Annex 2.
102 Questionnaire to customers, question D.B.C.4. Questionnaire to competitors, question D.B.C.4.
103 Questionnaire to customers, question D.B.D.3. Questionnaire to competitors, question D.B.D.3.
104 Questionnaire to customers, questions D.B.C.2.1 and D.B.D.4. Questionnaire to competitors, questions D.B.C.2.1 and D.B.D.4.

claims as the market share of Marel on the supply of plate forming decreased significantly from [10-20]% in 2021 to [0-5]% in 2023 (while Marel's market shares for the supply of forming overall increased from [20-30]% to [20-30]%), suggesting that Marel focused over the past years less on the supply of plate forming.[105]

(75) Moreover, no market participants listed JBT as the closest competitor (i.e. competitor who supplies the most similar equipment and can undertake the same projects the most) to Marel, as the majority of the market participants submitted that GEA was the closest competitor to Marel and the rest indicated Provisur. JBT is named as the second closest competitor to Marel by the majority of the market participants.[106] Regarding JBT, while a couple of market participants listed Marel, a majority of the market participants indicated that GEA was its closest competitor. Then, Marel and GEA are named an equal number of occurrences as the second closest competitor to JBT.[107]

(76) **Fourth**, many customers during the market investigation explained that they could easily (i.e. within a relatively short period of time and/or to a relatively moderate cost) switch to another supplier of forming equipment overall.[108]

(77) **Fifth**, even though several market participants stated that the barriers to enter the market are medium or high, a significant proportion of the surveyed market participants did not have an opinion and a couple of them explained that the barriers would be smaller if a company is already active in a neighbouring market (e.g. another step of secondary/further processing).[109] The latter has been confirmed by the Parties claiming that the investments to enter the market for the supply of secondary and further processing equipment depend on whether the new entrant is already active in a neighbouring market or not.[110]

(78) Moreover, as mentioned in paragraph (58), the Parties explain that the entry into a market among the secondary and further processing stages is not dependent on having access to a particular patent, since suppliers often use their own technology without relying on the technology developed by a specific supplier or since they can also incorporate other suppliers' identical technology, as a number of the existing products are based on patents that are long expired. For example, according to the Parties, GEA developed a drum forming machine (Maxiformer) that incorporates the same technology as Marel's drum forming machine (RevoPortioner), whose patent expired.[111]

(79) A customer during the market investigation supports this claim, taking the example of drum forming, which is a recent technology. While Marel was the only manufacturer supplying this technology at the beginning, other players started to manufacture machines of similar characteristics.[112] Regarding plate forming, the same customer explains that the technology is based on a publicly known

105 PN RFI 7, Annex 1.
106 Questionnaire to customers, question D.B.D.1. Questionnaire to competitors question D.B.D.1.
107 Questionnaire to customers, question D.B.D.2. Questionnaire to competitors, question D.B.D.2.
108 Questionnaire to customers, question D.B.C.9.
109 Questionnaire to customers, question D.B.C.5. Questionnaire to competitors question D.B.C.5.
110 RFI 4, question 4c.
111 RFI 4, question 4b.
112 Questionnaire to customers, question D.B.C.4.

mechanical design and is manufactured using material widely available.[113] The customer concludes that many suppliers in the food processing industry already have the expertise required to manufacturer plate forming equipment, suggesting that entry into the market for the supply of forming equipment is accessible. This claim is confirmed by another customer stating that *"the patent for plate forming technology has expired so that there is already a lot of copying happening in Poland and China"*. [114] A further customer explains that barriers to entry appears to be especially high for drum forming equipment rather than for plate forming equipment.[115] However, as JBT is not active on the drum forming equipment, the Transaction will only consolidate the position of the Parties on the plate forming equipment, whose technology seems to be less investment-intensive and more easily replicable.

(80) **Sixth**, many market participants that expressed an opinion attested that they do not expect the Transaction to have a negative impact on competition in relation to the supply of forming equipment in general and, more specifically, to prices, availability of equipment, quality of equipment, choice for customers or commercial terms.[116] Moreover, the majority of the market participants that expressed an opinion do not foresee any negative impact on their company arising from the Transaction. Some market participants even expect a positive impact from the Transaction.[117] Namely, one customer notes that JBT's equipment could gain in quality following the Transaction.[118] Finally, the majority of market participants indicated that there is no potential segment in the forming equipment market in the EEA for which, post-Transaction, customers will no longer have sufficient suppliers available.[119]

(81) 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 forming equipment in the EEA.

*6.1.4. Inspection*

(82) As explained in paragraph (37) and in footnote 54, the Transaction gives rise to a future affected market in the EEA at the processing stage of inspection in 2024.

113 Questionnaire to customers, question D.B.C.6.
114 Minutes of a call with a customer of 9 October 2024, paragraph 15.
115 Questionnaire to customers, question D.B.C.6.
116 Questionnaire to customers, question D.B.E.2. Questionnaire to competitors, question D.B.E.2.
117 Questionnaire to customers, question D.B.E.4. Questionnaire to competitors, question D.B.E.4.
118 Questionnaire to customers, question D.B.E.5.
119 Questionnaire to customers, question D.B.E.1. Questionnaire to competitors, question D.B.E.1.

**Table 4 – Markets shares for the supply of inspection equipment in the EEA, in value (2021-2023 combined)**

| | Inspection | X-ray | Other vision technology |
|---|---|---|---|
| JBT | [0-5%] | [0-5%] | [0-5%] |
| Marel | [40-50]% | [50-60]% | [20-30]% |
| *Combined* | *[40-50]%* | *[50-60]%* | *[20-30]%* |
| Ishida | [10-20%] | [10-20%] | [0-5%] |
| Eagle | [10-20%] | [5-10%] | [10-20%] |
| Foss | [5-10%] | [0-5%] | [10-20%] |
| Baader | [0-5%] | [0-5%] | [10-20%] |
| Anritsu | [0-5%] | [5-10%] | [0-5%] |
| Others | [20-30%] | [0-5%] | [20-30%] |
| **TOTAL** | **100%** | **100%** | **100%** |

*Source: The Parties' estimates*[120]

(83) The Notifying Party submits that, since JBT was not active in the EEA over the period 2021-2023, the Transaction does not give rise to any increment. In 2024, JBT has a pending order for the sale of […] Innospexion units, which are X-ray equipment, in its capacity as distributor for Innospexion. The Parties expect any market share attributable to those sales […] to be *de minimis*. In any event, the Parties will continue to be subject to intense competition from other competitors, including Eagle, Ishida and Foss, each of which is larger than JBT/Innospexion in this market, according to the Notifying Party.[121]

(84) The Commission considers that the Transaction does not raise serious doubts regarding the supply of inspection equipment in the EEA for the following reasons.

(85) **First**, as seen in Table 4, the Parties did not overlap in 2021-2023, and JBT just entered the market in 2024. Moreover, the entry of JBT into the market of inspection equipment in 2024 with the sale of […] X-ray equipment units does not guarantee a permanent nor a substantial presence of JBT in the market over the next years. As explained in paragraph (45), secondary and further processing markets are characterised by lumpy sales, where the Parties sell only a handful of units annually. For that reason, combined shares across the last three financial years (2021-2023) are considered to smooth out these irregularities. Therefore, JBT's market shares resulting from the future sale of […] X-ray units in 2024 have to be put into perspective.

(86) **Second,** the market participants confirmed the presence of multiple competitors on the market that could challenge the Parties post-Transaction. Many of them confirmed the presence of Eagle, Ishida and Foss, as well as the presence of many other competitors.[122] Moreover, a sizable proportion of market participants that expressed their opinion submitted that only Marel is an important supplier of inspection equipment, or any subsegment of this market.[123] Additionally, the opportunity data of Marel show that the company met, in tenders launched in the EEA over the years 2021 to 2023, 13 different competitors, such as Ishida […] and

120 PN RFI 7, Annex 1.
121 RFI 7, question 10.
122 Questionnaire to customers, question D.C.C.4. Questionnaire to competitors, question D.C.C.4.
123 Questionnaire to customers, question D.C.C.2. Questionnaire to competitors question D.C.C.2.

Foss.[124] Furthermore, none of the market participants raised any particular competitive advantage that the Parties would hold, compared to their competitors,[125] and the majority of the market participants considers that there is not a specific subsegment of the market for the supply of inspection equipment in the EEA, where both JBT and Marel are active, where competition would be particularly limited.[126] As the X-ray inspection technology is the only potential subsegment in which the Parties are both active, this points to the fact that market participants do not perceive competition to be limited to the Parties.

(87) **Third**, the majority of the market participants that expressed their view submitted that JBT and Marel are not close competitors in the market for the supply of inspection equipment.[127] Moreover, a large share of market participants listed Ishida as the closest competitor (i.e. competitor who supply the most similar equipment and can undertake the same projects the most) to Marel in the supply of inspection equipment, while none of them cited JBT. The competitors Foss and Eagle were also mentioned. JBT is only mentioned by two market participants as the second closest competitor. Regarding JBT, the market participants equally mentioned Marel and Ishida as its closest competitors.[128]

(88) **Fourth**, a majority of market participants explained during the market investigation that they could easily (i.e. within a relatively short period of time and/or to a relatively moderate cost) switch to another supplier of inspection equipment.[129]

(89) **Fifth,** while several market participants state that the barriers to enter are high, many interrogated market participants did not have a view and the majority of market participants that expressed their opinion indicated that the barriers to enter the market for the supply of inspection equipment are low or medium. For the x-ray equipment in particular, slightly more market participants that expressed their opinion indicated that the barriers to enter are rather low than medium or high.[130] Moreover, a significant number of market participants submitted that they are aware of at least one new entry in the production and supply of inspection equipment in the EEA in the last 5 years.[131] Furthermore, as explained in paragraph (58), according to the Parties, the entry into a market among the secondary and further processing stages is not dependent on having access to a particular patent. Suppliers often use their own technology without relying on the technology developed by a specific supplier or they incorporate the identical technology, as a number of the existing products are based on patents that are long expired.[132]

(90) **Sixth,** many market participants that expressed an opinion attested that they do not expect the Transaction to have a negative impact on competition in relation to the supply of inspection equipment in general and, more specifically, to prices, availability of equipment, quality of equipment, choice for customers or

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124 RFI 3, Annex 2.

125 Questionnaire to customers, question D.C.C.3. Questionnaire to competitors, question D.C.C.3.

126 Questionnaire to customers, question D.C.C.5. Questionnaire to competitors, question D.C.C.5.

127 Questionnaire to customers, question D.C.D.2. Questionnaire to competitors, questions D.C.D.3.

128 Questionnaire to customers, question D.C.D.1. Questionnaire to competitors, questions D.C.D.1 and D.C.D.2.

129 Questionnaire to customers, question D.C.C.10. Questionnaire to competitors, question D.C.C.10.

130 Questionnaire to customers, question D.C.C.6. Questionnaire to competitors, question D.C.C.6.

131 Questionnaire to customers, question D.C.C.8. Questionnaire to competitors, question D.C.C.8.

132 RFI 4, question 4b.

commercial terms, for both inspection equipment overall and for x-ray equipment.[133] Moreover, the majority of the market participants that expressed an opinion do not foresee any negative impact on their company arising from the Transaction. In particular, no customer expects any negative impact on their company following the Transaction, for both inspection equipment overall and for x-ray equipment.[134] Some customers argue that there are enough suppliers that offer equipment with similar quality.[135] Finally, none of market participants indicated that there is a potential segment in the inspection equipment market in the EEA for which, post-Transaction, customers will no longer have sufficient suppliers available.[136]

(91) For the reasons above, 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 inspection equipment in the EEA.

*6.1.5. Cooking*

(92) As explained in paragraph (37), the Transaction gives rise to an affected market in the EEA in the processing stage of cooking.

**Table 5 – Markets shares for the supply of cooking equipment in the EEA, in value (2021-2023 combined)**

| | **Cooking (overall)** | **Cooking (convection ovens)** |
|---|---|---|
| JBT | [20-30]% | [10-20]% |
| Marel | [5-10]% | [5-10]% |
| *Combined* | *[30-40]%* | *[20-30]%* |
| GEA Group | [30-40%] | [40-50%] |
| DSI Dantech | [10-20%] | [10-20%] |
| Marlen (part of Duravant) | [10-20%] | [10-20%] |
| Others | [10-20%] | [0-5%] |
| **TOTAL** | **100%** | **100%** |

*(93) Source: The Parties' estimates[137]*

(94) The Notifying Party submits that, while the market for the supply of cooking equipment overall and the market for the supply of convection oven equipment would be affected following the Transaction, the increment brought by Marel is modest ([5-10]% for cooking equipment overall and [5-10]% for convection ovens) and GEA will continue to be the largest supplier on the market with an estimated share of at least [30-40]% ([40-50]% for convection ovens). The Notifying party further explains that, following the Transaction, the Parties will be able to exercise an increased competitive constraint on GEA, and will themselves the subject to intense competition from other competitors, including DSI Dantech and Marlen.[138]

133 Questionnaire to customers, question D.C.E.2. Questionnaire to competitors, question D.C.E.2.
134 Questionnaire to customers, question D.C.E.4. Questionnaire to competitors, question D.C.E.4.
135 Questionnaire to customers, questions D.C.E.3 and D.C.E.5.
136 Questionnaire to customers, question D.C.E.1. Questionnaire to competitors, question D.C.E.1.
137 PN RFI 7, Annex 1.
138 Form CO, paragraph 309 and RFI 7, question 8.

(95) The Commission considers that the Transaction does not raise serious doubts regarding the supply of cooking equipment in the EEA for the following reasons.

(96) **First**, as seen in Table 5, the Parties have a moderate combined market share of [30-40]%, with a limited increment of [5-10]% for cooking equipment overall, while, for convection ovens, the Parties' market shares remain below [30-40]%, also with a relatively limited increment. Moreover, the market shares data show that, following the Transaction, GEA would remain the main competitor on the market for the supply of cooking equipment in the EEA with a market share of [30-40]% ([40-50]% in the case of convection ovens), with a market share bigger the one than that of the merged entity.

(97) Furthermore, the combined market shares of the Parties kept decreasing over the past years from [30-40]% in 2021 to [20-30]% in 2023 ([30-40]% to [10-20]% for convection ovens), due to a decrease in Marel's market shares from [10-20]% to [0-5]% ([10-20]% to [0-5]% for convection ovens).[139] According to the Parties, Marel's market share significantly decreased over the past years as Marel's products were likely not up to the requirements of customers anymore, leading them to switch to alternative suppliers. [Product information about Marel].[140]

(98) **Second**, while half of the market respondents submitted that JBT and Marel are both important suppliers of cooking equipment,[141] the market participants confirmed the presence of multiple competitors on the market that could challenge the Parties post-Transaction. A majority of them named GEA as the main alternative supplier of cooking equipment in the EEA.[142] Customers also mention the presence of DSI Dantech and several other local suppliers.[143] Moreover, the opportunity data of the Parties show that they faced, in tenders launched in the EEA over the years 2021 to 2023, 6 different competitors, other than GEA and each other, such as DSI Dantech […].[144] Furthermore, the majority of the customers considers that there is no specific subsegment of the market for the supply of cooking equipment in the EEA, where both JBT and Marel are active and where competition would be particularly limited.[145]

(99) **Third**, the majority of the market participants that expressed their view did not indicate that JBT and Marel are particularly close competitors in the market for the supply of cooking equipment.[146] Moreover, a large majority of market participants listed GEA as the closest competitor (i.e. competitor who supply the most similar equipment and can undertake the same projects the most) to Marel in the supply of cooking equipment. Very few market participants indicated JBT as the closest one (none indicated JBT as the closest one for convection ovens specifically), as most of them listed JBT as the second closest competitor.[147] Regarding JBT, the vast majority of the market participants listed GEA as its closest competitor (for convection ovens, all respondents listed GEA as its closest competitor) and only one named Marel. As the second closest competitor to JBT, only a couple of

139 PN RFI 7, Annex 1.
140 Footnote 69 of the Form CO.
141 Questionnaire to customers, question D.D.C.4. Questionnaire to competitors, question D.D.C.2.
142 Questionnaire to customers, question D.D.C.4. Questionnaire to competitors, question D.D.C.4.
143 Questionnaire to customers, question D.C.4.1.
144 RFI 3, Annex 1 and Annex 2.
145 Questionnaire to customers, question D.D.C.5. Questionnaire to competitors, question D.D.C.5.
146 Questionnaire to customers, question D.D.D.3. Questionnaire to competitors, question D.D.D.3.
147 Questionnaire to customers, question D.D.D.1. Questionnaire to competitors, question D.D.D.1.

respondents cited Marel, while several other suppliers were named such as Weindich or Wemag.[148]

(100) **Fourth**, a majority of customers explained during the market investigation that they could easily (i.e. within a relatively short period of time and/or to a relatively moderate cost) switch to another supplier of cooking equipment.[149] Moreover, as explained in paragraph (97), the significant decrease of Marel's market shares over the past years supports the fact that customers can easily switch to alternative suppliers.

(101) **Fifth**, while several market participants state that the barriers to enter the market for the supply of cooking equipment are high, the majority of the interrogated market participants did not have a view and several of them indicated that the barriers to enter are low.[150] A customer that indicated high barriers to entry argues that substantial research and development are required to produce cooking equipment while another customer that indicated low barriers explains that the technology, the material and the know-how to manufacture that kind of equipment are available on the market.[151]

(102) According to the Parties, the investments to enter the market for the supply of secondary and further processing equipment depend on whether the new entrant is already active in a neighbouring market or not. In the case of the market for the supply of cooking equipment, the Parties explain that cost of entry into that market is expected to be lower if the new entrant is already active in the market for the supply of freezers, as the oven technology and the freezer technology are quite similar. The Parties bring forward the example of DSI Dantech, that has successfully entered the market for the supply of cooking equipment while being originally active on the market of freezers.[152] One competitor also named HiTec (a company based in the Netherlands), as an example of entry in the last 5 years.[153]

(103) Furthermore, as explained in paragraph (58), according to the Parties, entry into a market among the secondary and further processing stages is not dependent on having access to a particular patent. Suppliers often use their own technology without relying on the technology developed by a specific supplier or they incorporate the identical technology, as a number of the existing products are based on patents that are long expired.[154] One competitor in particular supports this claim by giving the example of HiTec that entered the market for the supply of cooking equipment *"with a low capacity single spiral convection oven"*, which is a copy of JBT's single spiral oven.[155]

(104) **Sixth**, many market participants that expressed an opinion attested that they do not expect the Transaction to have a negative impact on competition in relation to the supply of cooking equipment in general. More specifically, for cooking equipment overall, a sizeable group of respondents who expressed an opinion foresees a neutral impact on commercial terms, while two respondents expect a positive

148 Questionnaire to customers, question D.D.D.2. Questionnaire to competitors, question D.D.D.2.
149 Questionnaire to customers, question D.D.C.10.
150 Questionnaire to customers, question D.D.C.6. Questionnaire to competitors, question D.D.C.6.
151 Questionnaire to customers, question D.D.C.7. Questionnaire to competitors, question D.D.C.7.
152 RFI 4, footnote 5.
153 Questionnaire to customers, question D.D.C.9. Questionnaire to competitors, question D.D.C.9.
154 RFI 4, question 4b.
155 Questionnaire to competitors, question D.D.C.9.

impact. Regarding convection ovens, the majority of the respondents who expressed an opinion expect a neutral impact commercial terms and one expects a positive impact. On prices, availability of equipment, quality of equipment, choice for customers, the majority of respondents who expressed an opinion expect a neutral impact, while one or two even noted a positive impact, for cooking equipment overall and for convection ovens.[156] Moreover, the majority of the market participants that expressed an opinion do not foresee any negative impact on their company arising from the Transaction, both for cooking equipment overall and for convection ovens.[157] Many of them motivate their response by arguing that there are many credible alternatives on the market.[158]

(105) For the reasons above, 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 cooking equipment in the EEA.

*6.1.6. Coating*

(106) As explained in paragraph (37), the Transaction gives rise to an affected market in the EEA at the processing stage of coating.

**Table 6 – Markets shares for the supply of coating equipment in the EEA, in value (2021-2023 combined)**

| | **Coating** |
|---|---|
| JBT | [10-20]% |
| Marel | [10-20]% |
| *Combined* | *[30-40]%* |
| GEA Group | [40-50%] |
| Heat & Control | [5-10%] |
| Fortifi | [5-10%] |
| Others | [10-20%] |
| **TOTAL** | **100%** |

*Source: The Parties' estimates*[159]

(107) The Notifying Party notes that, following the Transaction, the merged entity will not be the largest supplier in the market for the supply of coating equipment, as it will still face GEA which holds a strong and leading position in the market ([40-50]%). The Notifying Party argues that the Transaction will enable to create a stronger competitor to GEA. Moreover, the Parties will also continue to face competition from several other suppliers, including Heat & Control and Fortifi.[160]

(108) The Commission considers that the Transaction does not raise serious doubts regarding the supply of coating equipment in the EEA, for the following reasons.

(109) **First**, as seen in Table 6, the combined market share of the Parties is moderate, as amounts to around [30-40]%. Moreover, GEA remains the main competitor on the

156 Questionnaire to customers, questions D.D.E.2 and D.D.E.4. Questionnaire to competitors, questions D.D.E.2 and D.D.E.4.
157 Questionnaire to customers, question D.D.E.4. Questionnaire to competitors, question D.D.E.4.
158 Questionnaire to customers, question D.D.E.5. Questionnaire to competitors, question D.D.E.5.
159 PN RFI 7, Annex 1.
160 Form CO, paragraph 312.

market for the supply of coating equipment in the EEA with a market share of [40-50]%, bigger than the one of the Parties.

(110) **Second**, while market participants submitted that JBT and Marel are both important suppliers of coating equipment[161], they confirmed the presence of multiple competitors on the market that could challenge the Parties post-Transaction. Besides the Parties, most customers and competitors named GEA as the main supplier in the EEA. The market participants also named Nothum (Fortifi) and Schomaker as the other main suppliers[162]. Moreover, the opportunity data of the Parties show that JBT and Marel faced, in tenders launched in the EEA over the years 2021 to 2023, several different competitors other than GEA and the Parties (such as Nothum (Fortifi), […], Schomaker and Kaufler).[163] Additionally, no market participant considers that there is a specific subsegment of the market for the supply of coating equipment in the EEA, where both JBT and Marel are active and where competition would be particularly limited.[164]

(111) **Third,** the majority of the market participants that expressed an opinion indicated that JBT and Marel compete, but not particularly closely or that JBT and Marel are not close competitors.[165] Moreover, while some market participants listed JBT and Marel as the closest competitor to each other, the majority of the market participants submitted that GEA was the closest competitor to each of the Parties. Some market participants also listed Nothum as the second or third closest competitor to the Parties and some other listed Schomaker as the third closest.[166]

(112) **Fourth**, the majority of the market participants stated that they could easily (i.e. within a relatively short period of time and/or to a relatively moderate cost) switch to another supplier of coating equipment.[167]

(113) **Fifth,** even though slightly more market participants among those who expressed an opinion stated that the barriers to enter the market are high, a significant portion of the interrogated market participants did not have an opinion and a couple of them explained that the barriers would be smaller if a company is already active in a neighbouring market (e.g. another step of secondary/further processing)[168]. The latter has been confirmed by the Parties which explain that the investments to enter the market for the supply of secondary and further processing equipment depend on whether the new entrant is already active in a neighbouring market or not[169]. Moreover, some market participants named several new entrants into the market for the supply of coating equipment in the EEA over the last 5 years (such as Nothum[170] and Sertec[171]). Furthermore, as explained in paragraph (58), according to the Parties, the entry into a market among the secondary and further processing stages is not dependent on having access to a particular patent. Suppliers often use

161 Questionnaire to customers, question D.E.C.2. Questionnaire to competitors, question D.E.C.2.
162 Questionnaire to customers, question D.E.C.4. Questionnaire to competitors, question D.E.C.4.
163 RFI 3, Annex 1 and Annex 2.
164 Questionnaire to customers, question D.E.C.5. Questionnaire to competitors, question D.E.C.5.
165 Questionnaire to customers, question D.E.D.2. Questionnaire to competitors, question D.E.D.2.
166 Questionnaire to customers, questions D.E.D.1 and D.E.D.2. Questionnaire to competitors, questions D.E.D.1 and D.E.D.2.
167 Questionnaire to customers, question D.E.C.10. Questionnaire to competitors, question D.E.C.10.
168 Questionnaire to customers, question D.E.C.7. Questionnaire to competitors, question D.E.C.7.
169 RFI 4, question 4c.
170 Nothum (owned by Fortifi) is an established supplier of coating (and other further processing) equipment in the EEA, […]. See response to RFI 7, question 5.
171 […]. See response to RFI 7, question 5.

their own technology without relying on the technology developed by a specific supplier or they incorporate the identical technology, as a number of the existing products are based on patents that are long expired.[172]

(114) **Sixth**, the majority of the market participants that expressed an opinion attested that they do not expect the Transaction to have a negative impact on competition in relation to the supply of coating equipment in general and, more specifically, to prices, availability of equipment, quality of equipment, choice for customers or commercial terms.[173] Moreover, the large majority of the market participants that expressed an opinion do not foresee any negative impact on their company arising from the Transaction. Some market participants even expect a positive impact.[174] Finally, none of market participants indicated that there is a potential segment in the coating equipment market in the EEA for which, post-Transaction, customers will no longer have sufficient suppliers available.[175]

(115) 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 coating equipment in the EEA.

*6.1.7. Frying*

(116) As explained in paragraph (37), the Transaction gives rise to an affected market in the EEA at the processing stage of frying.

**Table 7 – Markets shares for the supply of frying equipment in the EEA, in value (2021-2023 combined)**

| | **Frying** |
|---|---|
| JBT | [10-20]% |
| Marel | [0-5]% |
| *Combined* | *[20-30]%* |
| GEA Group | [40-50%] |
| Heat & Control | [0-5%] |
| Fortifi | [0-5%] |
| Others | [10-20%] |
| **TOTAL** | **100%** |

*Source: The Parties' estimates*[176]

(117) The Notifying Party argues that, while the overlap gives rise to a horizontally affected market ([20-30]%) ([20-30]% in 2023), the increment is modest ([0-5]%). Moreover, the Parties will continue to face the competitive constraint of GEA, which holds a leading position on the market for the supply of coating equipment with a market share of [40-50]%. According to the Notifying Party, the Transaction will enable the Parties to exercise an increased competitive constraint on GEA and

172 RFI 4, question 4b.
173 Questionnaire to customers, question D.E.E.2. Questionnaire to competitors, question D.E.E.2.
174 Questionnaire to customers, question D.E.E.4. Questionnaire to competitors, question D.E.E.4.
175 Questionnaire to customers, question D.E.E.1. Questionnaire to competitors, question D.E.E.1.
176 PN RFI 7, Annex 1.

the Parties will themselves be subject to intense competition from other competitors, including Fortifi and Heat & Control.[177]

(118) The Commission considers that the Transaction does not raise serious doubts regarding the supply of frying equipment in the EEA for the following reasons.

(119) **First**, as seen in Table 7, the combined market shares of the Parties remain below 30% and the increment brought by Marel is limited as it does not exceed [0-5]% ([0-5]% in 2023). Moreover, the market shares data show that, following the Transaction, GEA would remain the main competitive force on the market for the supply of frying equipment in the EEA as it dominates the market with a market share of [40-50]%, far exceeding the one of the Parties.

(120) **Second,** while market participants submitted that JBT and Marel are both important suppliers of frying equipment,[178] customers confirmed the presence of multiple competitors on the market that could challenge the Parties post-Transaction.[179] Besides the Parties, most customers and competitors named GEA as the main supplier in the EEA. The market participants also named, among others, Schomaker,[180] whose presence was also confirmed in JBT's opportunity data.[181] Moreover, the opportunity data of the Parties show that JBT and Marel met, in tenders launched in the EEA over the years 2021 to 2023, several different competitors other than GEA and the Parties (such as DSI Dantech, […], Nothum (Fortifi), Schomaker, Wittkamp and Kaufler).[182] Additionally, no market participant considers that there is a specific subsegment of the market for the supply of frying equipment in the EEA, where both JBT and Marel are active and where competition would be particularly limited.[183]

(121) **Third,** half of the market participants that expressed an opinion indicated that JBT and Marel compete, but not particularly closely or that JBT and Marel are not close competitors.[184] The majority of market respondents named GEA as closest competitors to both Parties.[185]

(122) **Fourth,** the majority of market respondents consider that it is easy to switch from one manufacturer of frying equipment to another supplier.[186]

(123) **Fifth**, even though the majority of market participants who expressed an opinion stated that the barriers to enter the market for the supply of frying equipment are high, a significant portion of the surveyed market participants did not have an opinion and a couple of them consider that the barriers to enter are low.[187] Moreover, some market participants named two new entrants into the market for the supply of frying equipment in the EEA over the last 5 years (i.e. HiTec and Sertec)[188]. Furthermore, as explained in paragraph (58), according to the Parties,

177 Form CO, paragraph 315.
178 Questionnaire to customers, question D.F.C.2. Questionnaire to competitors, question D.F.C.2.
179 Questionnaire to customers, question D.F.C.4.
180 Questionnaire to customers, question D.F.D.4.
181 RFI 3, Annex 1.
182 RFI 3, Annex 1 and Annex 2.
183 Questionnaire to customers, question D.F.C.5. Questionnaire to competitors, question D.F.C.5.
184 Questionnaire to customers, question D.E.D.2. Questionnaire to competitors, question D.E.D.2.
185 Questionnaire to customers, question D.F.D.1. Questionnaire to competitors, question D.F.D.1.
186 Questionnaire to customers, question D.F.C.8. Questionnaire to competitors, question D.F.C.8.
187 Questionnaire to customers, question D.E.C.6. Questionnaire to competitors, question D.E.C.6.
188 Questionnaire to customers, question D.E.C.7. Questionnaire to competitors, question D.E.C.7.

the entry into a market among the secondary and further processing stages is not dependent on having access to a particular patent. Suppliers often use their own technology without relying on the technology developed by a specific supplier or they incorporate the identical technology, as a number of the existing products are based on patents that are long expired.[189]

(124) **Sixth,** the majority of respondents who expressed an opinion indicated that the Transaction would have a neutral impact on frying equipment in the EEA on price, availability of equipment, choice for customers, quality of equipment and commercial terms. For every parameter, at least one respondent indicated that it expects a positive impact of the Transaction.[190] In addition, the majority of respondents expressed that the Transaction will not have an impact on their company.[191] Finally, none of market participants indicated that there is a potential segment in the frying equipment market in the EEA for which, post-Transaction, customers will no longer have sufficient suppliers available.[192]

(125) 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 frying equipment in the EEA.

## 6.2. Conglomerate effects

(126) The Commission has assessed whether, as a result of the concentration, the merged entity may have the ability and incentive to engage in anticompetitive bundling or technical tying of certain of their secondary and further processing equipment, in order to foreclose rivals and/or to use its wide product portfolio as leverage to increase prices to its customers.

(127) The Commission considered specifically whether the Parties would have the ability and incentive to pursue a conglomerate strategy in relation to equipment for which the Parties' combined market shares result in affected markets – i.e., portioning, forming, inspection, cooking, coating and frying equipment, by either (i) offering integrated solutions unmatched by other competitors, or (ii) preventing the interoperability of the Parties' equipment and the equipment of competitors.

### *6.2.1. Legal framework*

(128) A merger can entail non-horizontal effects when it involves companies operating at different levels of the same value chain or in closely related markets. In assessing potential non-horizontal effects of a merger, the Commission analyses, among other things, whether the merger results in foreclosure so that actual or potential rivals' access to supplies or markets is hampered or eliminated as a result of the merger, thereby reducing those companies' ability and/or incentive to compete.[193] Such foreclosure may discourage entry or expansion of rivals or encourage their exit.

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189 RFI 4, question 4b.

190 Questionnaire to customers, question D.F.E.2. Questionnaire to competitors, question D.F.E.2.

191 Questionnaire to customers, question D.F.E.4. Questionnaire to competitors, question D.F.E.4.

192 Questionnaire to customers, question D.F.E.1. Questionnaire to competitors, question D.F.E.1.

193 Commission Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings, OJ C 265, 18.10.2008, p. 6 ('Non-Horizontal Merger Guidelines'), paragraphs 20-29.

(129) In assessing the likelihood of such a scenario, the Commission examines, first, whether the merged firm would have the ability to foreclose its rivals[194], second, whether it would have the economic incentive to do so[195] and, third, whether a foreclosure strategy would have a significant detrimental effect on competition, thus causing harm to consumers.[196] In practice, these factors are often examined together as they are closely intertwined.

*6.2.2. The Parties' view*

(130) The Parties maintain that customers have the option to mix and match equipment from different suppliers. Customers may choose to purchase each piece of equipment separately or purchase more than one type of equipment at the same time; in the latter case, the Parties claim that they still price the equipment individually.

(131) The Parties argue that the combined entity will not have the ability to foreclose competitors by selling bundles of equipment because:[197] (i) there is no indication that the combined entity would have a significant degree of market power in any product segments, including product segments related to portioning, formatting, inspection, cooking, coating and frying equipment; (ii) because the Parties will continue to face strong competition in all such segments – in forming, cooking, coating and frying, notably from GEA, the largest supplier in these markets, as well as from other competitors such as Provisur and Azzar for forming; Marlen and DSI Dantech for cooking; Heat & Control, Fortify and Middleby for coating and frying; in portioning, from Marelec, Middleby and Multivac; in inspection from Eagle, Ishida and Foss; and (iii) because some competitors could replicate and product bundles that the Parties may offer.

(132) The Parties also argue that the combined entity will not have the incentive to engage in foreclosing conduct by selling bundles of equipment because, in their experience, most customers source equipment individually on a standalone basis and not combined with other types of machinery. In the last three years, cases in which each of the Parties have sold different combinations of equipment in the EEA are generally a small percentage (less than [10-20]% or [10-20]%) of their sales, compared to sales of the same equipment on a standalone basis; in the specific case of cooking, coating and frying equipment, the proportion of sales of each party of these 3 types of equipment combined is between [20-30]% compared to standalone sales of each equipment.[198]

(133) The Parties therefore claim that it would not be profitable for them try to condition the sale of a given type of equipment to the customers buying additional types of machines, because their customers are sophisticated food processors and would

194 Non-Horizontal Merger Guidelines, paragraphs 33 to 39, 60 to 67 and 95 to 104.
195 Non-Horizontal Merger Guidelines, paragraphs 40 to 46, 68 to 71 and 105 to 110.
196 Non-Horizontal Merger Guidelines, paragraphs 47 to 57, 72 to 77 and 111 to 118
197 Form CO, paragraphs 320 et *seq*. RFI 4, questions 5 to 8.
198 RFI 4, question 8. The only exception is mixing and grinding equipment [Parties'sales strategy]. In response to the market investigation, most competitors indicate that they also typically sell mixing and grinding equipment together (Questionnaire to competitors, question E.1), although a majority of customers indicated that they do not typically purchase mixing and grinding equipment together (Questionnaire to customers, question E.1). Considering that the Parties' combined shares in mixing and griding equipment do not giver rise to affected markets, and that other suppliers are also able to offer this combination of equipment together, the Commission considers that the Transaction does not give rise to conglomerate effects with respect to mixing and griding equipment.

either refuse to purchase on bundled or tied terms or would purchase the standalone product from an alternative supplier. Therefore, in the view of the Parties, any bundling strategy would likely alienate customers.[199]

(134) With respect to the possibility of technical tying – i.e., whether the Parties could limit interoperability between their equipment and equipment of third parties, the Parties maintain that they would not have the ability, nor the incentive to do so. Preliminarily, the Parties explain that food processing equipment is not pre-manufactured to interoperate or not interoperate with other equipment. The process of making a machine interoperable with other equipment is customer- and plant-specific. This means that suppliers of any food processing equipment, when making a sale, will work with the customer to install the equipment at the customer's plant and to ensure that it interoperates with other equipment already in the plant.

(135) Customers are unlikely to select a supplier that would refuse to work with the customer to ensure that their equipment interoperates with other equipment in the plant. In fact, contracts signed with the customer as a rule would require that the supplier of a given equipment would use its best efforts to integrate the equipment with other equipment at the customer's plant; therefore, the Parties do not have the ability to deny customers interoperability with other machines as this would mean a breach of contract. Even if the Parties had this ability, they would completely lack the incentive to deny interoperability because as a rule customers' plants are composed of different pieces of equipment and for this reason customers need to prioritize suppliers that interoperate with other equipment; a different strategy from the Parties would entail long term damage to its reputation and to customer's trust, and make the Parties less attractive as suppliers. Moreover, the Parties are equally reliant on other manufacturers ensuring interoperability with their machines as those manufacturers are on the Parties, and so the question of interoperability goes beyond any particular customer opportunity and is an essential position for all suppliers to take in order to be able to be viable in the long term.[200]

*6.2.3. The Commission's assessment*

(136) When replying to the market investigation, for most potential equipment combinations - including equipment for portioning, forming and inspection, as well as all primary processing equipment, all secondary processing equipment, all

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199 RFI 4, question 6.

200 The Parties submit that these arguments – concerning no ability or incentive to foreclose – fully apply to Marel's supply of its software Innova/Axin as standalone product (JBT's software is only capable of being linked to JBT equipment, and therefore JBT does not supply its software as standalone product). First, the Parties submit that the vast majority of customers that use Marel's software already use Marel's equipment as well, so in practice Marel's software is rarely used as a standalone product, although it is conceived to be equipment agnostic. Second, the Parties combined market share from the sale of software is below 10% in the EEA, and therefore, the Parties considered together, or Marel considered alone, do not have a significant degree of market power resulting from the sale of software that they could have the ability to leverage with respect to other equipment. Third, the customer pre-Transaction has a choice to buy Marel's software without Marel equipment and vice-versa, as well as to buy both together. This will not change post-Transaction with respect to software and equipment sold by the combined entity. Fourth, the Parties would lack the incentive to limit interoperability of software with competitor's equipment, or to impose a bundled or tied sale of software and their own equipment, as by doing so they would risk losing customers. Therefore, the Commission considers that the Transaction does not give rise to conglomerate effects with respect to software.

further processing equipment, and all process and logistical control equipment - the majority of customers who expressed an opinion indicated that they do not typically buy equipment together and a majority of competitors indicated that they do not typically sell equipment together.[201] In addition, several customers point out that '*There are other manufacturers on the market that serve the same segment and supply devices with the same functionality*' as the Parties; '*JBT or MAREL are not the only ones to supply the equipment they offer*', '*They can be replaced for other manufacturers easily*', '*We think that are also other suppliers that can have those equipment*', '*There are alternatives available*'.[202] There is therefore no indication that, with respect to most product combinations, customers expect suppliers to offer bundles, or that the Parties would have the ability or incentive to attempt to foreclose competitors by offering product bundles.

(137) With respect specifically to the combination of cooking, coating and frying equipment, responses were mixed, with only a slight majority of customers indicating that they do not typically source them together and only a slight majority of competitors indicating that they do not typically sell them together.[203] A competitor points out that '*cooking equipment is bundled with forming, coating and frying equipment, But also [sold as] stand alone*'; also that '*fryers are in many cases bought stand alone (e.g. replacement). For extention in many cases combined with coating equipment and cooking*'.[204] A customer pointed out that '*it is common for customers to source together cooking and frying equipment; also coating and cooking equipment; also coating and frying*'.[205]

(138) The market investigation confirmed that GEA and a few other competitors[206] would be able to offer combinations of cooking, coating and frying equipment, and that the Parties would continue to have competition from these and from other suppliers able to deliver each of these equipment items on a standalone basis. Moreover, any conglomerate effects with respect to the combined sale of cooking, coating and frying equipment would not be merger-specific because the Parties already offer to sell this equipment together pre-Transaction (although combination sales make up a small percentage of the sales, cf. paragraph (132) above).[207]

(139) With respect to the supply of a full production line, while the majority of customers indicated that they do not source a full line together, half of the competitors indicated that they do typically sell equipment corresponding to a full production line.[208] Some competitors pointed out that very few competitors can offer the supply of a full production line; likewise a few customers pointed out that not many market participants can offer such an extensive product portfolio as the Parties.[209] However, the market investigation also confirmed that there are competitors able to supply equipment in each step of the value chain, as standalone or in combination with other equipment.[210]

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201 Questionnaire to customers, question E.1 Questionnaire to competitors, question E.1.
202 Questionnaire to customers, questions E.4 and E.6.
203 Questionnaire to customers, question E.1. Questionnaire to competitors, question E.1.
204 Questionnaire to competitors, questions D.D.C.12 and D.F.C.10.
205 Questionnaire to customers, questions D.D.C.12, D.E.C.12 and D.F.C.10.
206 Questionnaire to customers, question E.2. Questionnaire to competitors, question E.2
207 RFI 4, question 7.
208 Questionnaire to customers, question E.1. Questionnaire to competitors, question E.1.
209 Questionnaire to customers, question E.6. Questionnaire to competitors, question E.6.
210 Questionnaire to customers, question E.6. Questionnaire to competitors, question E.6.

(140) While some customers and competitors have pointed out advantages of sourcing combined equipment from one supplier – such as reducing the number of interfaces to have different equipment delivered, installed and undergo maintenance; concentrating in one or fewer suppliers the responsibility for continuity of the production process; safeguarding quality; better use of spare parts; facilitating price negotiations[211] – the market investigation did not reveal a clear trend or preference towards integrated solutions provided by one and the same supplier. A competitor explained that even if it could be more convenient to source different equipment from the same supplier, '*customers do not always do this as they care about having the best-in-class equipment and if there are some interoperability issues between machines from different suppliers, the customers' internal engineers can usually address these*'.[212] Another customer indicates that '*The competition is capable of supplying parts of lines. We are not forced into buying a line*'.[213]

(141) The market investigation has also not shown that Parties would have the ability to foreclose competitors by limiting the interoperability between its products and products from competitors. A customer explained that they do not allow suppliers to create lock in effects; '*their technology needs to work with equipment also from other suppliers, it needs to provide open architecture and open infrastructure*'.[214] In the same sense, a competitor explains that '*for each customer every step in the processing process will be different as the equipment may need be modified and sometimes the equipment will even be different (even if the machines fundamentally look similar). The machines therefore must always be tailored to the customer's specific needs*'.[215]

*6.2.4. Conclusion*

(142) Based on the results of the market investigation, the Commission considers that the merged entity will not have the ability or incentive to anti-competitively foreclose its rivals by linking the sales of its different equipment through bundles or technical tying. Accordingly, there is no need to consider the overall impact of a conglomerate strategy in a hypothetical scenario where the Parties would have the ability and incentive to do so. Therefore, the Commission finds that the specific effects of the present Transaction are not such as to raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement in relation to potential conglomerate effects.

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211 For instance, Questionnaire to customers questions D.A.C.12, D.B.C.11, D.C.C.12, D.D.C.12, D.E.C.12, D.F.C.10 and E.2; Questionnaire to competitors, questions D.A.C.12, D.B.C.9.1, D.C.C.12, D.D.C.12, D.E.C.12, D.F.C.10 and E.2.

212 Minutes of a call with a competitor of 14 October 2024, paragraph 16.

213 Questionnaire to customers, question E.6.

214 Minutes of a call with a customer of 16 October 2024, paragraph 10.

215 Minutes of a call with a competitor of 14 October 2024, paragraph 8.

## 7. CONCLUSION

(143) For the above reasons, the European Commission has decided not to oppose the Transaction 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*