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 Where possible the information omitted has been replaced by ranges of figures or a general description.

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**Subject:** **Case M.11419 – PAVAO VUJNOVAC / FORTENOVA GROUP**
**Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1] and Article 57 of the Agreement on the European Economic Area[2]**

Dear Sir or Madam,

(1) On 2 May 2024, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Pavao Vujnovac (the '**Notifying Party**', Croatia) will acquire, directly or indirectly, sole control of Fortenova Group MidCo B.V. ('**Fortenova**', the Netherlands; and together with the Notifying Party referred to as the '**Parties**') within the meaning of Article 3(1)(b) of the Merger Regulation (the '**Transaction**').

(2) The present decision is taken without prejudice to the application of restrictive measures (sanctions) to the Transaction and the assessment thereof that may be made by the competent authorities. The implementation of the Transaction is subject to its compliance with the relevant EU restrictive measures, including Council Regulation

[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').

(EU) No 692/2014[3], Council Regulation (EU) 833/2014[4], Council Regulation (EU) 269/2014 [5] and Council Regulation (EU) 2022/263.[6]

## 1. THE PARTIES

(3) **Pavao Vujnovac** holds controlling interests in a large number of companies active in a wide range of sectors, including the wholesale of fresh fruits and vegetables, non-perishable fruit and vegetables products and non-food products, import and supply of natural gas, production and supply of electricity, rail transport and real estate in Croatia and Slovenia and various non-EU countries in the Balkans (the '**PV Group**').

(4) **Fortenova** is predominantly active in agriculture, food production and the supply of daily consumer goods in Croatia and Slovenia and various non-EU countries in the Balkans.

## 2. THE CONCENTRATION

### 2.1. The contemplated acquisition of Fortenova

(5) The Transaction takes place against the background of a restructuring of Fortenova that is being undertaken to remove sanctioned Russian shareholders from its capital structure. The two sanctioned shareholders are SBK Art Limited Liability Company ('**SBK'**), which currently holds [40-50]% of the depository receipts corresponding to [40-50]% of the voting rights in Fortenova, and OWH SE i.L. (formerly known as VTB Bank (Europe) SE i.L.) ('**VTBE'**), who currently holds [5-10]% of the depositary receipts corresponding to [5-10]% of the voting rights within Fortenova. PV Group, through its subsidiary Open Pass, currently holds [20-30]% of the depository receipts corresponding to approximately [20-30]% of the voting rights in Fortenova.

(6) The Transaction involves the sale and transfer of 100% of the shares in Fortenova to a vehicle ('BidCo') company in which all eligible depository receipt holders have been invited to participate and reinvest. Pursuant to the Transaction Support Agreement and the Term Sheet entered into between PV Group (through its subsidiary Open Pass) and Fortenova dated 29 November 2023, PV Group will acquire (at least) a […]% stake in a vehicle company ('BidCo STAK'), which will indirectly own 100% of the shares in Fortenova via BidCo, representing a voting interest of at least […]% in Fortenova. None of the remaining depository receipt holders will have strategic veto rights conferring control over Fortenova (e.g., the appointment of board members or a veto over the budget or business plan). As a result, the Transaction will confer to Pavao Vujnovac sole control over Fortenova.[7]

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3 OJ L 183, 24.6.2014, p. 9.
4 OJ L 229, 31.7.2014, p. 1.
5 OJ L 078, 17.3.2014, p. 6.
6 OJ L 0421, 23.2.2022, p. 77.
7 For completeness, the sanctions […] had the effect to disenfranchise approximately […] of the voting rights in Fortenova. The Commission received a letter claiming that as a result, PV Group had already acquired sole control, when the disenfranchise was put in place. The Notifying Party argues that any control was held on a temporary basis. While the timing of the disenfranchising was taken into consideration by the Commission as a contextual element for the purpose of this decision, the Commission notes that the assessment of the legal question of the exact timing of acquisition of control is out of scope of this decision which examines the notification received pursuant to Article 6 of the Merger Regulation. […].

## 2.2. The contemplated acquisition of TUŠ by Fortenova

(7) On 15 November 2023, Poslovni sistem Mercator d.o.o. ('**Mercator**') (a wholly owned subsidiary of Fortenova active in the retail and wholesale supply of daily consumer goods in Slovenia) entered into a Sale and Purchase Agreement for the acquisition of 100% of the share capital of Engrotuš, which is also active in the retail and wholesale supply of daily consumer goods in Slovenia, where it operates under the TUŠ brand.

(8) The Notifying Party confirmed that this parallel acquisition of TUŠ by Mercator is not linked or in any way conditional upon the acquisition of Fortenova by PV Group, or vice versa. Furthermore, the Notifying Party confirmed that this parallel acquisition of TUŠ has an EU dimension and is thus subject to prior merger control review before its implementation.

(9) Consequently, this separate acquisition will not be assessed in this decision but will be the subject of a separate procedure.

## 3. PROCEDURE

(10) The Commission received the initial notification of the Transaction on 26 February 2024 via the submission of a Short Form CO in accordance with paragraph 5(d) of the Commission's Simplified Notice (the '**First Investigation**').[8]

(11) During this First Investigation, […], […] and […] each submitted concerns in relation to the Transaction and requested to be registered as interested third parties (together referred as the 'Interested Third Parties'):

(a) […];

(b) […];[9]

(c) […].

(12) During the First Investigation, the Interested Third Parties expressed concerns with respect to the Transaction concerning several horizontal overlaps[10] and vertical relationships[11] between the Parties' activities.

(13) On 29 March 2024, the Notifying Party withdrew its notification and renotified the Transaction on 2 May 2024 via the submission of a new Short Form CO.

(14) In accordance with paragraph 22 of the Commission's Simplified Notice, the Commission decided to revert to the normal procedure, and carried out a full market investigation on the basis of this second Short Form CO (the '**Second Investigation**').

(15) During the Second Investigation, the Interested Third Parties reiterated their concerns about the Transaction. On 23 May 2024, they complemented their initial submissions

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8 Commission Notice on a simplified treatment for certain concentrations under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (the '**Simplified Notice**'), OJ 5.5.2023 C 160.

9 […].

10 Including with respect to: (i) the production and wholesale supply of cereals and oilseeds; (ii) the wholesale and retail distribution of non-food daily consumer goods and (iii) the rental of retail real estate properties in Croatia.

11 Including with respect to: (i) the production and wholesale supply of fresh fruits and daily consumer goods, (ii) the wholesale supply and retail distribution of food and non-food daily consumer goods, (iii) the rental of retail real estate properties and the retail distribution of daily consumer goods.

arguing that the Transaction would give rise to serious doubts because of additional horizontal overlaps[12] and vertical links[13] between the Parties' activities as well as conglomerates effects[14] (the '**Economic Submission**').

(16) On 10 June 2024, the Interested Third Parties submitted an additional submission on the potential harm to innovation caused by the Transaction. This submission reached the Commission at a very late stage of its Phase I investigation, after the Commission had conducted its Phase I investigation. However, the Commission had in any case already investigated the effects of the Transaction also on innovation, and no market participants voiced any concerns in this respect in response to its market investigation.[15] Therefore, the submission of the Interested Third Parties from 10 June 2024 will not be specifically discussed further in this decision, though it will be overall covered by the unaltered assessment and conclusions of this decision.

## 4. UNION DIMENSION

(17) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million.[16] Each of them has a Union-wide turnover in excess of EUR 250 million, but they do not achieve more than two-thirds of their aggregate Union-wide turnover within one and the same Member State. The notified operation therefore has a Union dimension.

**Table 1 – Turnover**

| Undertakings concerned | Country of registration | Role | Turnover (in million EUR) | | Year of turnover |
|---|---|---|---|---|---|
| | | | *World* | *EU* | |
| **PV Group** | ***Croatia*** | **A** | […] | […] | 2022 |
| **Fortenova** | ***The Netherlands*** | **T** | […] | […] | 2023 |
| **Combined turnover of all undertakings concerned** | | | […] | […] | 2022 / 2023 |

*Source: Short Form CO*

## 5. COMPETITIVE ASSESSMENT

### 5.1. Introduction

(18) The Parties are predominantly active across various sectors of the economy in Croatia, Slovenia and various non-EU countries in the Balkans. They are both active in the wholesale and retail sale of both food and non-food daily consumer goods in Croatia and Slovenia. They (in particular PV Group) are also active in other sectors including production of fresh fruits and vegetables as well as preserved food, supply energy (retail supply of gas and electricity to large customers), rail transport and real estate.

12 Including with respect to the production of deciduous fruits, namely apples.

13 Including with respect to (i) the import and supply of natural gas and food production on the supply level and (ii) production and supply of fresh fruits and vegetables and food retail activities in Slovenia.

14 Including with respect to: (i) the import and supply of natural gas and food retail in Croatia.

15 Questionnaire Q5 to food producers, B.22 and B.24; Questionnaire Q1 to food wholesalers, C.14-15 and D.13; Questionnaire Q3 to food retailers, B.24, B.26, B.28, B.30, B.32.

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

(19) More specifically, the Parties are both active across the fresh fruits and vegetables supply chain in Croatia and Slovenia, which can be described as follows:

(a) Upstream, producers (i.e., agriculture production companies) grow (produce) fresh fruits and vegetables and supply such vegetables predominantly to large wholesalers, and, to a lesser extent, directly to downstream retailers and small wholesalers (typically cash & carry stores). Both Parties are active at this level of the supply chain: Fortenova is active in the production and supply of fresh fruits and fresh vegetables in Croatia, and to a limited extent in Slovenia. PV Group is also active in the production and supply of fresh fruits (apples only) in Croatia.

(b) Downstream, large wholesalers offer an entire range of fruits and vegetables to retailers and small wholesalers (typically cash & carry stores). Small wholesalers (e.g., cash and carry stores) offer a wide range of fruits and vegetables and typically sell to professional customers or food service companies (Hotels, Restaurants, Cafés – 'HoReCa companies'). Both Parties are active at this level of the supply chain in Croatia and in Slovenia: PV Group is active as a large wholesaler through its subsidiary ENNA Fruit and Fortenova is active as a small wholesaler via cash & carry stores.

(c) Further downstream, retailers sell fresh fruits and vegetables to consumers. Only Fortenova is active at this level of the supply chain in Croatia and in Slovenia.

(d) To carry out their above-mentioned activities, both Parties also act as buyers vis-à-vis producers/suppliers of fresh fruits and vegetables in Croatia and in Slovenia.

(20) In addition, PV Group is active in the wholesale supply of non-food daily consumer goods, through its subsidiary Kenty Adria ('Kenty') in Croatia and Slovenia, and Fortenova is active in the retail distribution of the non-food daily consumer goods in these countries.

## 5.2. Relevant markets

### *5.2.1. Production and wholesale supply of fresh fruits and vegetables*

#### 5.2.1.1. Description of the Parties' activities[17]

(21) Fortenova is active in the production and supply of fresh fruits and fresh vegetables in Croatia, and to a limited extent in Slovenia. PV Group is also active in this sector, but its activities are limited to the production and supply of apples in Croatia. In addition, PV Group is active as a large wholesaler through its subsidiary ENNA Fruit and Fortenova is active as a small wholesaler via cash & carry stores in Croatia and in Slovenia.

#### 5.2.1.2. Product market

##### 5.2.1.2.1. Commission's precedents

(22) In past decisions, the Commission considered that the production and wholesale supply of fresh fruits and fresh vegetables belong to separate markets, due to the fresh fruits and

[17] The description of the Parties' activities in this decision is limited to the activities giving rise to horizontal overlaps and/or vertical links.

fresh vegetables' difference in characteristics, prices and intended use.[18] The Commission considered, but ultimately left open, the question of whether a further segmentation of each of these markets (i) based on the level in the supply chain, i.e. between the production level and the wholesale level,[19] and (ii) by type/category of fruits (with the exception of bananas, which the Commission considered to constitute a distinct market) and vegetables. [20]

(23) In addition, within the markets for the wholesale supply of fresh fruits and fresh vegetables (and its sub-segments), the Commission considered a further segmentation between large and small wholesale as large wholesalers generally supply smaller wholesalers and retailers, while small wholesalers typically operate cash and carry stores to supply professional customers, such as HoReCa companies.[21]

5.2.1.2.2. The Notifying Party's view

(24) The Notifying Party agrees that the supply of fresh fruits and vegetables constitute different markets but does not consider it necessary to further segment these markets according to the type of fruits[22] or vegetables.[23] Moreover, the Notifying Party considers a segmentation based on the level in the supply chain, i.e. between the production level and the wholesale level is warranted for both the supply of fresh fruits and fresh vegetables[24]. The Notifying Party considers that in any event, the product market definition can be left open because the Transaction does not give rise to serious doubts under all plausible market definitions.[25]

5.2.1.2.3. The Commission's assessment

(25) The results of the market investigation unanimously confirmed the distinction between the markets for fresh fruits and for fresh vegetables both at production[26] and wholesale[27] level. A slight majority of respondents indicated that these markets should be further segmented by type of fresh fruits or vegetables, in particular due to different investments and infrastructure that are needed for the production of respective types of fresh fruits and vegetables.[28]

(26) A clear majority of respondents that expressed a view considered that producers (including producers importing from a different country) of fresh fruits and fresh vegetables compete directly with wholesalers, since they commonly directly supply retailers or other outlets at retail level (HoReCa, hospitals), without necessarily passing through a wholesaler.[29]

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18 M.5199 - *De Weide Blik / Atlanta*, paragraph 9; M.4896 - *CVC Capital Partners/Katopé International*, paragraph 8; M.4216 - *CVC/Bocchi/De Weide Blik,* paragraphs 15 to 20.

19 M.5201 – *Total Produce / Haluco / JV*, paragraph 16; M.5199 – *De Weide Blik / Atlanta*, paragraph 10; M.1409 – *Fyffes / Capespan*, paragraphs. 21-28; M.4896 – *CVC/Capital Partners/Katopé International*, paragraph 9; M.4216 – *CVC/Bocchi/De Weide Blik*, paragraph 18.

20 M.4216 – *CVC/Bocchi/De Weide Blik*, paragraph 17.

21 M.5201 – *Total Produce / Haluco / JV*, paragraph 16.

22 Short Form CO, page 26.

23 Short Form CO, Annex 20, page 7.

24 Short Form CO, Annex 20, pages 7 and 10.

25 Short Form CO, pages 26-27, Short Form CO, Annex 20, pages 7 and 12.

26 Questionnaire Q5 to food producers, question B.4.

27 Questionnaire Q1 to food wholesalers, question B.2.

28 Questionnaire Q5 to food producers, question B6.

29 Questionnaire Q5 to food producers, questions B.9 and B.10.

(27) In any event, the exact product market definition of the markets for (i) the production and wholesale supply of fresh vegetables, and (ii) the production and wholesale supply of fresh fruits can be left open as the Transaction does not give rise to serious doubts as to its compatibility with the internal market under any plausible market definition (i.e. segmented between production and wholesale and/or by type of fruits and vegetables).

5.2.1.3. Geographic market

5.2.1.3.1. Commission's precedents

(28) In past decisions, the Commission considered that the markets for the production and wholesale supply of fresh fruits and fresh vegetables are at least national in scope, if not regional or EEA wide.[30] As to the markets limited to the wholesale supply of fresh fruits and fresh vegetables, the Commission considered these markets to be at least national in scope.[31]

5.2.1.3.2. The Notifying Party's view

(29) The Notifying Party submits that the markets for the (i) production and (ii) wholesale supply of fresh fruits and fresh vegetables are wider than national. Nevertheless, the Parties provided information on hypothetically narrow geographic markets that are national in scope.[32]

5.2.1.3.3. The Commission's assessment

(30) A clear majority of the respondents to the market investigation who expressed a view considered that the geographic scope of the markets for production and wholesale of fresh fruits and fresh vegetables are at least national, if not regional or EEA wide due to the more efficient transport solutions available nowadays.[33]

(31) In any event, the exact product market definition can be left open as the Transaction does not give rise to serious doubts as to its compatibility with the internal market under any plausible market definition for the production and wholesale supply of fresh fruits and fresh vegetables. The Commission will assess the effect of the Transaction on the narrowest plausible geographic market, which is the national level, where the Parties have the highest market shares.

*5.2.2. Production and supply of sweet spreadable products*

5.2.2.1. Description of the Parties' activities

(32) PV Group, through its subsidiary Naturala, produces and supplies sweet spreadable products, namely jams, bakery fillings and compote in Croatia and in Slovenia. PV Group does not produce or supply any other type of sweet spreadable products (e.g. chocolate spreadable products) or savoury spreadable products. Fortenova does not produce or supply spreadable products but procures them from third parties for resale in its retail chains and cash and carry stores in Croatia and in Slovenia.

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30 Cases M.5199 - *De Weide Blik / Atlanta*, paragraph 19, M.4216 - *CVC/Bocchi/De Weide Blik,* paragraphs 18 and 29.

31 Cases M.5199 - *De Weide Blik / Atlanta*, paragraph 20.

32 Short Form CO, Annex 20, page 12.

33 Questionnaire Q5 to food producers, questions B.12-13.

5.2.2.2. Product market

5.2.2.2.1. Commission's precedents

(33) In a past decision,[34] the Commission considered that sweet spreadable products and savoury spreadable products are part of two separate product markets. Within the market for sweet spreadable products, the Commission left open the question of whether a narrower sub-segment for chocolate spreadable products should be considered as separate product market.

(34) The Commission also considered a segmentation of the market of sweet spreadable products by sales channel (producer selling either directly to a retailer or through a distributor) and by label (branded and private label products), but ultimately left the market definition open.[35]

5.2.2.2.2. The Notifying Party's views

(35) In line with the Commission's past decisions, the Notifying Party considers that sweet spreadable products and savoury spreadable products are part of two separate product markets.

(36) However, the Notifying Party considers that it is not necessary to define a market for the production and supply of sweet spreadable products excluding chocolate spreadable products. Moreover, the Notifying Party considers that a further segmentation of the market for the production and supply of sweet spreadable products by (i) sales channel or (ii) between private label and branded products is not appropriate. [36]

5.2.2.2.3. The Commission's assessment

(37) The results of the market investigation did not provide any indication that the Commission should depart from the product market definition identified in the Commission's previous decisions.

(38) In any event, the exact product market definition for the production and supply of sweet spreadable products can be left open as the Transaction does not give rise to serious doubts as to its compatibility with the internal market under any plausible market definitions (i.e. including or excluding chocolate spreadable, segmented by sales channels or segmented between private labels/branded products).

5.2.2.3. Geographic market

5.2.2.3.1. Commission's precedents

(39) In its past decisions, the Commission considered the geographic market for the production and supply of sweet spreadable products to be national in scope.[37]

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34 M.10350 - Mondelez / Chipita Industrial and Commercial Company, paragraphs 32-36.
35 M.10350 - Mondelez / Chipita Industrial and Commercial Company, paragraphs 42-46.
36 Short Form CO, page 71.
37 M.10350 - *Mondelez / Chipita Industrial and Commercial Company*, paragraph 52.

5.2.2.3.2. The Notifying Party's views

(40) The Notifying Party agrees with the Commission's past practice of considering the market for the supply of spreadable products as national in scope.[38]

5.2.2.3.3. The Commission's assessment

(41) The market investigation did not provide any indication that the Commission should depart from its precedents. Thus, the Commission will consider the potential effect of the Transaction on the market for the production and supply of sweet spreadable products (and its sub-segments) at national level.

*5.2.3. Supply of non-perishable vegetables*

5.2.3.1. Description of the Parties' activities

(42) PV Group, through its subsidiary Naturala, produces and supplies non-perishable vegetables namely beetroot, hot chili peppers, cucumbers, paprika and mixed vegetables. PV Group produces non-perishable vegetables both in cans and in glass and supplies them to retailers and small wholesalers in Croatia and in Slovenia. Fortenova does not produce or supply non-perishable vegetables but sells these products in its retail chains and cash and carry stores in Croatia and in Slovenia.

5.2.3.2. Product market

5.2.3.2.1. Commission's precedents

(43) In its past decisions, the Commission defined a market for the supply of non-perishable vegetables and considered, but ultimately left open, the question of whether this market should be further segmented based on the (i) packaging (in cans and in glass), (ii) type of vegetables, and (iii) sales channel (sales to retailers or HoReCa companies).[39]

5.2.3.2.2. The Notifying Party's views

(44) The Notifying Party does not provide its view on a segmentation of the market for the supply of non-perishable vegetables based on types of vegetables and/or types of packaging. However, the Notifying Party considers that there is no particular reason for segmenting the market by sales channel, i.e. by sales to retailers or HoReCa companies, since the product is practically homogenous as to its quality, it is packaged and priced similarly, and health and safety standards are similar.

5.2.3.2.3. The Commission's assessment

(45) The results of the market investigation did not provide any indication that the Commission should depart from the product market definition identified in the Commission's previous decisions.

(46) In any event, the exact product market definition for the supply of non-perishable vegetables can be left open as the Transaction does not give rise to serious doubts as to its compatibility with the internal market under any plausible market definitions (i.e. segmented by type of packaging, type of vegetables and sales channel).

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38 Short Form CO, page 72.

39 M.2302 – *Heinz / CSM*, 23 February 2001, paragraphs 9, 11-13 and 23.

5.2.3.3. Geographic market

5.2.3.3.1. Commission's precedents

(47) In its past decision, the Commission considered the market for the supply of non-perishable vegetables to be national in scope.[40]

5.2.3.3.2. The Notifying Party's views

(48) The Notifying Party argues that the geographic market for the supply of non-perishable vegetables is broader than national, as the very long shelf life of these products facilitate the transport across countries and preferences in taste are limited on a regional level.[41]

5.2.3.3.3. The Commission's assessment

(49) The market investigation did not provide any indication that the Commission should depart from its precedents. Thus, the Commission will consider the potential effect of the Transaction on the market for the supply of non-perishable vegetables (and its sub-segments) at national level.

*5.2.4. Wholesale supply of non-food daily consumer goods*

5.2.4.1. Description of the Parties' activities

(50) The Transaction gives rise to a vertical relationship between (i) PV Group's activities (upstream), via its subsidiary Kenty, which is active in the wholesale supply of non-food daily consumer goods in Croatia and Slovenia and (ii) Fortenova's activities (downstream) for the retail distribution of daily consumer goods, including non-food products in its retail stores (including supermarkets, kiosks, etc.) in Croatia and Slovenia.

5.2.4.2. Product market

5.2.4.2.1. Commission's precedents

(51) In past decisions, the Commission contemplated a segmentation of the market for the wholesale supply of non-food daily consumer goods between several broad product categories, including (i) electrical products;[42] (ii) cookware products;[43] (iii) clothing and footwear; (iv) DIY, home improvement and garden centres; (v) health and beauty; (vi) toys and games, (vii) sporting goods and camping;[44] and (viii) traditional office supplies (i.e. stationery).[45]

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40 M.2302 – *Heinz / CSM*, 23 February 2001.

41 Short Form CO.

42 Comprising electrical installation equipment, conduits and cables, lighting, security products, communication products and tools (see e.g. Case M.10364 – *ECI / Bonak / Fast Group*, decision of 29 October 2021, paragraphs 26-28).

43 Comprising all non-electric kitchen appliances that are primarily used for cooking purposes, such as pots, pans, pressure cookers and woks.

44 Case M.10364 - *ECI / BONAK / FAST Group*, decision of 29 October 2021, paragraph 26.

45 Case COMP/M.6382 - *Unipapel/ Spicers*, decision of 20 December 2011, paragraph 22. For ease of reference, traditional office supplies will be referred to as stationery products in the remainder of this decision.

5.2.4.2.2. The Notifying Party's view

(52) The Notifying Party has not contested the relevance of the market definitions previously contemplated by the Commission.

5.2.4.2.3. The Commission's assessment

(53) The results of the Commission's market investigation did not provide any indication that would justify departing from the market definitions previously contemplated by the Commission in its decisions. The vast majority of wholesalers confirmed the relevance of a segmentation between electrical products, cookware products, clothing and footwear, DIY, health and beauty, maternity products, toys and games, sporting goods and camping within the market for the wholesale supply of non-food daily consumer goods.[46]

(54) In any event, the exact product market definition for the wholesale supply of non-food daily consumer goods can be left open as the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible market definition for the wholesale supply of non-food daily consumer goods.

5.2.4.3. Geographic market

5.2.4.3.1. Commission's precedents

(55) From a geographic point of view, the Commission considered that the wholesale supply of non-food daily consumer goods is at least national in scope. ([47])

5.2.4.3.2. The Notifying Party's view

(56) The Notifying Party has not contested the relevance of the market definitions previously contemplated by the Commission.

5.2.4.3.3. The Commission's assessment

(57) The market investigation did not provide any indication that the Commission should depart from its precedents. Thus, the Commission will consider the potential effect of the Transaction on the markets for the wholesale supply of non-food daily consumer goods at national level.

*5.2.5. Procurement of daily consumer goods*

5.2.5.1. Description of the Parties' activities

(58) Both PV Group and Fortenova act as buyers vis-à-vis producers/suppliers of products in order to supply daily consumer goods to end consumers or other third parties. PV Group purchases daily consumer goods via its subsidiaries ENNA Fruit (for the procurement of fresh fruits and vegetables), Naturala (for the procurement of non-perishable vegetables and sweet spreadable products) and Kenty (for the procurement of non-food daily consumer goods), in Croatia and Slovenia. Fortenova also purchases daily consumer goods for resale in its retail stores, including supermarkets, kiosks and cash and carry stores, in Croatia and Slovenia.

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46 Question Q4 to non-food wholesalers, question B.3.

47 See e.g. Case M.10364 – *ECI / Bonak / Fast Group*, decision of 29 October 2021, paragraphs 55-58.

5.2.5.2. Product market

5.2.5.2.1. Commission's precedents

(59) In the procurement market for daily consumer goods, companies act as buyers vis-à-vis producers/suppliers of products in order to supply those products to the end consumer or to third parties.

(60) In previous decisions, the Commission has considered a distinct market for the procurement of daily consumer goods, comprising the purchase of daily consumer goods by customers such as wholesalers, retailers and other firms from upstream producers and suppliers.[48] The Commission considered a further segmentation of that market into 19 relevant product markets corresponding to different types of goods, namely:[49] (i) meat and sausages, (ii) poultry and eggs, (iii) bread and pastries, (iv) dairy products, (v) fresh fruits and vegetables, (vi) beer, (vii) wine and spirits, (viii) non-alcoholic beverages, (ix) hot beverages, (x) confectionery, (xi) basic food products, (xii) preserved food, (xiii) frozen food, (xiv) baby food, (xv) pet food, (xvi) body care articles (e.g. creams, lotions) and cosmetics (make-up and perfumes); (xvii) detergents, polishes and cleaning products, (xviii) other drugstore products; and (xix) other non-food products usually found in supermarkets (e.g. newspapers, magazines, entertainment).[50] In one precedent, the Commission also considered a different segmentation of the procurement market for daily consumer goods into 23 product categories, including fruits and vegetables.[51]

(61) The Commission also considered, but ultimately left open, whether a further distinction should be made between different sales channels, such as food-retailing, specialised trade, delicatessen, cash and carry stores and other wholesalers, drugstores and export trade.[52]

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48 Case M.9495 – *Fortenova Grupa / Poslovni Sisti Mercator*, paragraph 72; Case M.8468 – *Norgesgruppen/Axfood/Eurocash* (2017), paragraph 22. Case M.7920 – *Netto/J Sainsbury/Dansk Supermarked/New Edlington/Hedon/Roundhay Road*, paragraph 19, Case M.7224 – *Koninklijke Ahold/Spar CZ*, paragraph 10; M.1221 – *Rewe/Meinl*, paragraph 81.

49 Case M.9495 – *Fortenova Grupa / Poslovni Sisti Mercator*, paragraph 73; Case M.1221 – *Rewe/Meinl*, paragraph 81.

50 Case M.9495 – *Fortenova Grupa / Poslovni Sistemi Mercator*, paragraph 73 Case M.7920 – *Netto/J Sainsbury/Dansk Supermarked/New Edlington/Hedon/Roundhay Road* (2016), paragraph 20.

51 (1) Liquids (including soft drinks, beer and cider, water, still wine, sparkling wine and spirits); (2) hardware store products (including cleaning products, sponges, toilet paper and kitchen rolls, deodorants, insecticides, household soaps, washing products, water softeners, washing-up liquids, dishwasher products, all-purpose cleaning products/detergents); (3) perfumes/hygiene products (paper or cotton hygiene/sanitary products, perfumes, health-care products); (4) dry groceries (including breakfast products, sweet biscuits, cakes, confectionery, desserts, cake-making ingredients, baby foods, soups, pasta, starch-containing foodstuffs, preserves and prepared foods, condiments and seasonings, aperitif products, pet foods); (5) parapharmaceutical products; (6) perishable goods sold on a self-service basis (dairy products and eggs, poultry, frozen foods, ice cream, factory-made pastries and bread); (7) delicatessen (prepared meat products and seafood); (8) fish; (9) fruit and vegetables; (10) fresh bread and cakes; (11) meat; (12) do-it-yourself; (13) home decorating; (14) culture; (15) toys/leisure/relaxation; (16) gardening; (17) motor car accessories; (18) large domestic electrical appliances; (19) small domestic electrical; (20) photography/movie-making; (21) hifi/audio; (22) TV/video; and (23) textiles.

52 Case M.9495 – *Fortenova Grupa / Poslovni Sisti Mercator*, paragraph 74. See Case M.7920 – *Netto/J Sansbury/Danks Supermarked/New Edlington/Hedon/Roundhay Road*, paragraph 19; Case M.7933 – *Carrefour/Billa Romania and Billa Invest Construct*, paragraph 16; Case M.1221 – *REWE/Meinl*, paragraph 81.

5.2.5.2.2. The Notifying Party's view

(62) The Notifying Party considers that a segmentation of the overall market for the procurement of daily consumer goods by broad product categories, including for fresh fruits and vegetables, is relevant. However, the Notifying Party is of the view that a further segmentation between fresh fruits, on the one hand, and fresh vegetables, on the other hand, is not relevant.[53] The Notifying Party also submits that the market for the procurement of daily consumer goods comprises all types of customers (i.e. small wholesalers, retailers, etc.) and that a distinction by sales channel is not relevant.[54]

5.2.5.2.3. The Commission's assessment

(63) The results of the Commission's market investigation did not provide any indication that would justify departing from the market definitions previously contemplated in the Commission's decisions. In any event, the exact product market definition can be left open as the Transaction does not give rise to serious doubts as to its compatibility with the internal market under any plausible market definition for the procurement of daily consumer goods.

(64) For the purpose of this decision, the Commission will assess the effects of the Transaction on all plausible market definitions on which the Parties' activities overlap for the procurement of daily consumer goods, i.e. on the market for the procurement of (i) fresh fruits and vegetables (for completeness, the Commission will also take into account plausible further distinctions (i.a) between fresh fruits and fresh vegetables, (i.b) within each of these categories, between various types of fruits and vegetables and (i.c) within each of these segmentations, by sales channel), and (ii) preserved food (with a plausible further distinction for non-perishable vegetables and sweet spreadable products) and (iii) other non-food products usually found in supermarkets (for completeness, the Commission will also take into account a plausible further distinction for household products).[55]

5.2.5.3. Geographic market

5.2.5.3.1. Commission's precedents

(65) In previous decisions, the Commission defined the market for the procurement of daily consumer goods as being national in scope.[56] However, in one precedent, the Commission also indicated that at least some of the possible markets for the procurement of daily consumer goods are increasingly becoming wider than national, thus not fully excluding a market definition that is wider than national in scope.[57]

5.2.5.3.2. The Notifying Party's view

(66) The Notifying Party considers that the relevant market for the procurement of daily consumer goods in general, and fresh fruits and vegetables in particular, is broader than

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53 Short Form CO, Annex 20, page 15.

54 Short Form CO, Annex 20, page 16.

55 As explained in further detail below, if a distinction by sales channel is made the Parties' activities overlap only on the market for the procurement by wholesalers of fresh fruits and vegetables (including all types of wholesalers, in particular large wholesalers and cash and carry stores).

56 Case M.9495 – *Fortenova Group / Poslovini Sistemi MercatorFortenova* , paragraph 125; Case M.7920 – *Netto/J Sainsbury/Dansk Supermarked/New Edlington/Hedon/Roundhay Road*, paragraph 21.

57 Case M.9495 – *Fortenova Group / Poslovini Sistemi MercatorFortenova* , paragraph 124.

national.[58] To support this view, the Notifying Party explains that Fortenova and ENNA Fruit procure and supply from and to entities in various Member States, as well as from and to entities outside the EEA.[59]

5.2.5.3.3. The Commission's assessment

(67) The results of the Commission's market investigation did not provide any indication that would justify departing from the geographic market previously defined by the Commission. In any event, the exact geographic market definition can be left open as the Transaction does not give rise to serious doubts as to its compatibility with the internal market under any plausible market definition for the procurement of daily consumer goods.

(68) For the purpose of this decision, the Commission will assess the effect of the Transaction on the narrowest plausible geographic market for each segment considered within the procurement of daily consumer goods (i.e. at national level) where the Parties have the highest market shares.

*5.2.6. Retail distribution of daily consumer goods*

5.2.6.1. Description of the Parties' activities

(69) Fortenova operates a network of supermarkets and other modern trade retail outlets in Croatia (Konzum / Tisak) and Slovenia (Mercator) in which it sells daily consumer goods. PV Group does not sell daily consumers goods through modern trade retail outlets but supplies daily consumers goods to Fortenova and its competitors for resale to consumers in their retail outlets.

5.2.6.2. Product market

5.2.6.2.1. Commission's precedents

(70) In past decisions, the Commission considered that within the retail supply of daily consumer goods, modern distribution channel outlets (such as supermarkets, hypermarkets, and discount stores) and small-format stores (such as convenience stores, kiosks, specialised outlets) belong to separate markets because small-format stores sell a narrower range of products than modern distribution channels and fulfil a specialist or convenience function. ([60])

5.2.6.2.2. The Notifying Party's view

(71) The Notifying Party took no view on the product market definition as regards the retail distribution of daily consumer goods.

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58 Short Form CO, Annex 20, page 16.

59 Short Form CO, Annex 20, page 16.

60 See the Commission's decision in case M.10992 - *KAUFLAND/SCP REAL ASSETS*, paragraph 14; M.9495 - *Fortenova Group / Poslovini Sistemi MercatorFortenova* , paragraphs 87 to 91; M.9142 - *REWE/Lekkerland*, paragraph 26; M.8468 - *Norgesgruppen/Axfood/Eurocash*, paragraph 17; M.9561 - *PKN ORLEN/RUCH*, paragraph 14; M.10631 - *ITM/MESTDAGH*, paragraph 16; or in case M.8374 - *UAB Rimi Lietuva/UAB Palink*, paragraph 14.

5.2.6.2.3. The Commission's assessment

(72) The results of the Commission's market investigation did not provide any indication that would justify departing from the market definitions contemplated in previous Commission's decisions. In any event, the exact product market definition can be left open as the Transaction does not give rise to serious doubts as to its compatibility with the internal market under any plausible market definition for retail distribution of daily consumer goods.

(73) For the purpose of this decision, the Commission will assess the effects of the Transaction on all plausible market definitions on which concerns were raised.

5.2.6.3. Geographic market

5.2.6.3.1. Commission's precedents

(74) From a geographic point of view, the retail supply of daily consumer goods has been defined by reference to catchment areas of approximately 10, 20 or 30 minutes driving time, depending on store size. ([61])

5.2.6.3.2. The Notifying Party's view

(75) The Notifying Party took no view on the geographic market definition as regards the geographic retail distribution of daily consumer goods.

5.2.6.3.3. The Commission's assessment

(76) The results of the Commission's market investigation did not provide any indication that would justify departing from the geographic market previously defined in the Commission's precedents. In any event, the exact geographic market definition can be left open as the Transaction does not give rise to serious doubts as to its compatibility with the internal market under any plausible market definition for the retail distribution of daily consumer goods.

*5.2.7. Rental of real estate properties*

5.2.7.1. Description of the Parties' activities

(77) Both Parties rent retail real estate properties in Croatia. PV Group owns […] retail locations in Croatia […] rented out to Fortenova. Fortenova rents […] retail locations to third parties in Croatia.[62]

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61 In previous decisions, the Commission has considered a zone of 10, 20, or 30 minutes of travel time by car to the store: in general, hypermarkets, defined as stores with a surface of more than 2500 square meter, have a larger catchment area (20 to 30 minutes) than smaller stores such as supermarkets (catchment areas of 10 to 20 minutes), Case M.10631 – *ITM / Mestdaugh*, decision of 15 June 2022, paragraph 20; Case M.9495 - *Fortenova Group / Poslovini Sistemi Mercator*, paragraph 133; Case M.8374 – *UAB Rimi Lietuva/UAB Palink*, paragraph 15.

62 Predominantly for purposes other than food retail, i.e., non-food retail, hotels, café or restaurants, etc. Out of these […] premises, only […] premises are rented out to grocery retailers (Short Form CO page 32, Annex 29).

5.2.7.2. Product market

5.2.7.2.1. Commission's precedents

(78) In past decisions in the real estate services sector, the Commission considered that the market for the rental of real estate properties was distinct from the market for the development of real estate properties and the market for the management of real estate properties on behalf of third parties. In addition, the Commission has considered, but ultimately left open, that real estate services could be segmented according to the use made of the real estate property (i.e. between residential and commercial real estate property).[63]

(79) With regard to commercial properties, the Commission has also considered the following segmentations, while ultimately leaving the product market definition open: (i) office properties, (ii) retail properties and (iii) industrial properties. Moreover, with respect to the market for the rental of commercial retail properties, the Commission has considered, but ultimately left open, a possible further delineation of the market for the rental of commercial properties, considering (i) either a market including shopping centres and retail parks of at least 8 000 sqm or 10 000 sqm, or (ii) a market including only shopping centres of at least 8 000 sqm or 10 000 sqm.[64]

5.2.7.2.2. The Notifying Party's view

(80) The Notifying Party considers that the relevant product market for the assessment of the Transaction is the market for the rental of retail real estate property, without any further distinction.[65] However, in line with the Commission's decisional practice, the Parties have provided data on narrower plausible product markets. In any event, the Notifying Party considers that the precise market definition can be left open, as the Transaction does not give rise to affected markets under any plausible product market definition.

5.2.7.2.3. The Commission's assessment

(81) The results of the Commission's market investigation[66] did not provide any indication that would justify departing from the market definitions previously contemplated in the Commission's decisions. In any event, the exact product market definition can be left open as the Transaction does not give rise to serious doubts as to its compatibility with the internal market under any plausible market definition for the rental of real estate properties.

5.2.7.3. Geographic market

5.2.7.3.1. Commission's precedents

(82) In past decisions, the Commission has considered that the geographic scope for the rental of real estate properties (and its plausible segmentations) was national or

63 Commission decision of 29 March 2019 in Case No COMP/M. 9195 - *Lifeco/Hammersom/Swords Pavilions*, paragraph 15.

64 Commission decision of 29 March 2019 in Case No COMP/M. 9195- *Lifeco/Hammersom/Swords Pavilions*, paragraphs 16 and 17; Commission decision of 14 December 2016 in Case No COMP/M.8229 – *Hammerson/Irish Life/ILAC Shopping Centre*, paragraphs 15 and 16.

65 Short Form CO, page 31.

66 Questionnaire Q2 to real estate owners, questions B1 and B2.

narrower than national (i.e., regional or local) in scope, while ultimately leaving the question open.[67]

5.2.7.3.2. The Notifying Party's view

(83) The Notifying Party submits that the market for the rental of commercial real estate properties is national.[68]

5.2.7.3.3. The Commission's assessment

(84) The results of the Commission's market investigation did not provide any indication that would justify departing from the geographic markets previously considered by the Commission.[69] In any event, the exact geographic market definition can be left open as the Transaction does not give rise to serious doubts as to its compatibility with the internal market under any plausible geographic market definitions for the rental of real estate properties (i.e. national, regional, or local).

## 5.3. Market shares

(85) In their Economic Submission, the Interested Third Parties provided estimates of the Parties' market shares based on publicly available information. However:

(a) The Interested Third Parties were not able to provide market share estimates for all plausible segments previously left open by the Commission in its precedents.

(b) The market share estimates provided by Interested Third Parties were less detailed than the market shares provided by the Parties in terms of product market segmentations and with respect to the Parties' sales.

(c) At the retail level in Slovenia, the market share estimates submitted by the Interested Third Parties also included the sales of Engrotuš, even though the contemplated acquisition of Engrotuš is a separate transaction subject to prior merger control review before its implementation.[70]

(86) Against this background, the market shares taken into account below correspond to the Parties' estimates. These estimates cover all plausible market definitions previously left open in the Commission's decisions, they are based on the Parties' internal data (to estimate the Parties' sales) and independent third-party sources (to estimate market sizes).[71] For completeness, it can also be noted that these estimates:

(a) Exclude captive sales, because these sales correspond to products that are not available for sale to non-integrated competitors in the market.[72] In any event, the data submitted by the Parties confirms that the inclusion of captive sales would not lead to any material change in the Parties' market shares;[73]

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67 Commission decision of 14 December 2016 in Case COMP/M.8229 – *Hammerson/Irish Life/ILAC Shopping Centre*, paragraph 16; Commission decision of 29 March 2019 in Case COMP/M.9195 – *Lifeco / Hammerson / Swords Pavilions*, paragraph 21; Commission decision of 25 September 2000 in Case COMP/M.2110 – *Deutsche Bank/SEI/JV*, paragraph 9.

68 Short Form CO, page 30.

69 Questionnaire Q2 to real estate owners, questions B3 and B4.

70 See above section 2.2.

71 For volume market share estimates, the Parties used data from the Croatian and Slovenian statistic bureaux. For value market share estimates, the Parties used data from Nielsen panels.

72 See e.g. Case COMP/M.1693 – *Alcoa / Reynolds*, Commission decision of 3 May 2000, paragraph 13.

73 Response to question 3 of RFI 6 and question 5 of RFI 7, question 1 to RFI 15 and Annex 21 reporting the Parties' market shares including and excluding the captive sales.

(b) Discount transactions between the Parties to avoid double counting: this is the case for estimates of the Parties' procurement shares for products that both Parties purchase but that Fortenova partially sources from PV Group. In such circumstances, the volumes purchased by Fortenova from PV Group were included in the purchasing share of PV Group and not in the purchasing share of Fortenova.

### 5.4. Horizontal overlaps

(87) In light of the market share data submitted by the Parties and the results of the market investigation, the vast majority of the markets on which both Parties are active are not affected within the meaning of the Simplified Notice. The only exceptions concern:

(a) The procurement of berries and soft fruits in Croatia, where the Parties' activities overlap with a combined market share of [20-30]% in 2023 and an increment of [5-10]%; and

(b) The procurement of other fresh vegetables in Croatia,[74] where the Parties' activities overlap with a combined market share of [20-30]% and an increment of [5-10]%.

(88) In addition, the Interested Third Parties expressed concerns as to the compatibility of the Transaction with the internal market and the EEA agreement on certain markets that are not affected. To address the concerns raised, the Commission includes below an assessment of the horizontal overlaps arising from the Transaction for which the Interested Third Parties expressed concerns, namely:

(a) the production and wholesale supply of fresh fruits and vegetables in Croatia and Slovenia;[75]

(b) the procurement of fresh fruits in Croatia;

(c) the wholesale supply of fresh fruits and fresh vegetables;

(d) the procurement of fresh fruits and fresh vegetables, preserved food and other non-food products usually found in supermarkets in Croatia and Slovenia;

(e) the rental of commercial retail real estate properties in Croatia.

(89) Finally, the Interested Third Parties also expressed concerns in relation to:

(a) The alleged horizontal overlap between the activities of Fortenova (through Belje Plus d.o.o, PIK-Vinkovovci plus d.o.o and VUPIK d.o.o) and PV Group (through ENNA Agro) for the wholesale supply of cereals, margarine, edible oils, and oilseeds in Croatia. However, PV Group (which was carrying out these activities through its subsidiaries ENNA Fruit and ENNA Agro) terminated its activities in the supply of cereals and oilseeds in Croatia in 2022 and 2021 respectively, so that there is no horizontal overlap anymore since then on such markets.[76] In addition, the Notifying Party confirmed that PV Group is not active in the

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74 This category corresponds to a reporting category used by the Croatian Bureau for Statistics and includes several types of vegetables without any clear indication of the type of vegetables included. To calculate their market shares, the Parties took account of their sales of fungi, broccoli, cauliflower, asparagus, celery, and other vegetables that the Parties could not clearly classify under any of the other categorisations used.

75 Market which can be further segmented based on the level of the supply chain, namely between (i) production, and (ii) wholesale supply. See Section 5.2.1 above.

76 Short Form CO, page 38.

production and supply of margarine and edible oil.[77] As a result, these alleged horizontal overlaps will not be further discussed.

(b) The horizontal overlap between the activities of Fortenova (through Konzum plus d.o.o. ('**Konzum**')) and PV Group (through PEVEX maloprodaja neprehrambene robe dioničko društvo ('**PEVEX**') for the wholesale supply of non-food consumer goods in Croatia. However, PV Group only has a minority shareholding in PEVEX (36.62%) and the veto rights that this minority shareholding confers on PV Group are limited to the amendments of the articles of association or the share capital of PEVEX, the liquidation of PEVEX or the disposal of all or a substantial part of the assets.[78] These veto rights do not go beyond what is required to protect the interests of a minority shareholder.

Furthermore, in light of the attendance level of the shareholders at general meetings,[79] the minority shareholding of PV Group does not confer it a majority required to exercise decisive influence. In view of the foregoing, the Commission concludes that PV Group does not exercise control over PEVEX. As a consequence, this alleged horizontal overlap between the Parties' activities will not be further discussed.

*5.4.1. Legal framework*

(90) 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.[80]

(91) 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.[81]

(92) The Horizontal Merger Guidelines list a number of factors, which may influence the extent to which horizontal non-coordinated effects arise from a merger, such as: the large market shares of the merging firms; the fact that the merging firms are close competitors; the limited possibilities for customers to switch suppliers; or the fact that the merger would eliminate an important competitive force. This list of factors applies if a merger would create or strengthen a dominant position or would otherwise significantly impede effective competition due to non-coordinated effects. Furthermore,

77 Short Form CO, page 38.
78 Short Form CO, Annex 18, page 5.
79 The attendance rates at the last three shareholders meetings of PEVEX were as follows: (i) […]% in 2021, (ii) […]% in 2022 and (iii) […]% in 2023 (Short Form CO, Annex 18, fn 11).
80 OJ C 31, 5.2.2004, p. 5. The remainder of this decision focuses on non-coordinated effects.
81 Horizontal Merger Guidelines, paragraphs 24-38.

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.[82]

*5.4.2. Production, supply and procurement of daily consumer goods*

(93) The Transaction gives rise to two affected markets, for the procurement of berries and soft fruits and for the procurement of other fresh vegetables[83] in Croatia.

(94) Furthermore, in view of addressing the concerns received from interested third parties, this decision includes an assessment of the following horizontal overlaps between the Parties' activities in relation to the supply chain for daily consumer goods:

(a) Production and wholesale supply of fresh fruits and fresh vegetables:

– Production of fresh fruits (including all relevant plausible sub-segmentations) in Croatia: PV Group produces fresh fruits (only apples) in Croatia via its subsidiary Moslavina. Fortenova produces fresh fruits and vegetables via several subsidiaries located in Croatia (Pik and, to a lesser extent, Eko, Vupik and Belje).

– Wholesale supply of fresh fruits and fresh vegetables (including all relevant plausible sub-segmentations) in Croatia and Slovenia: PV Group is active as a large wholesaler in Croatia and Slovenia for the supply of fresh fruits and vegetables to retailers via its subsidiary ENNA Fruit. Fortenova is active as a small wholesaler in Croatia and Slovenia, since it operates a chain of cash & carry stores supplying fresh fruits and fresh vegetables to professional customers (HoReCa).

(b) Procurement of fresh fruits, fresh vegetables, non-perishable vegetables, sweet spreadable products and other non-food daily consumer goods typically sold in supermarkets in Croatia and Slovenia. PV Group via its subsidiaries ENNA Fruit and Naturala purchases food daily consumer goods, including fresh fruits and vegetables and preserved food, in Croatia and/or Slovenia that it then resells to retailers. In addition, PV Group also purchases via its subsidiary Kenty non-food daily consumer goods in Croatia and Slovenia, including non-food daily consumer goods typically sold in supermarkets. Fortenova also purchases fresh fruits and vegetables, preserved foods and other non-food daily consumer goods in Croatia and Slovenia that it then resells in its retail and cash and carry stores.

5.4.2.1. Production and wholesale supply of fresh fruits and fresh vegetables

(95) The Transaction does not give rise to affected markets under any plausible market definitions, namely on (i) the overall markets for the production and wholesale supply of fresh fruits and fresh vegetables (including its sub-segmentation by type of fresh fruits and by type of fresh vegetables), (ii) the narrower market for the production of fresh fruits (and its sub-segments limited to deciduous fruits and more specifically apples),[84] and (iii) the markets for the wholesale supply of fresh fruits and fresh

[82] 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.

[83] The category 'other fresh vegetables' includes fungi, broccoli, cauliflower, asparagus, celery, and all other vegetables that both Parties purchase but could not clearly classify under any of the other categorisations.

[84] The Parties' activities do not overlap for the production of fresh vegetables in Croatia and Slovenia and for the production of fresh fruits in Slovenia.

vegetables (including the market segments by type of fresh fruits and by type of fresh vegetables).[85]

5.4.2.1.1. The overall markets for the production and wholesale supply of fresh fruits and for the production and wholesale supply of fresh vegetables in Croatia and Slovenia

(96) PV Group produces and supplies apples (i.e. a type of deciduous fruit) via its subsidiary Moslavina in Croatia. Fortenova also produces deciduous fruits, in particular apples, via its subsidiaries Pik, Vinka and Eko in Croatia. Moreover, PV Group is active via its subsidiary as a large wholesaler of fresh fruits and vegetables in Croatia and Slovenia, typically selling its products to retail chains, retailers and small wholesalers. Fortenova sells approximately […]% of its volume of fresh fruits and vegetables via its small wholesale activity (cash & carry stores) to other retailers or HoReCa companies.

**Table 2 - Production and wholesale supply of fresh fruits and fresh vegetables: Croatia and Slovenia (in volume 2023)**[86]

| Supply chain level | Country | Fruit/ vegetable | Type | Fortenova | PV Group | Combined | Delta HHI |
|---|---|---|---|---|---|---|---|
| **Production and wholesale supply of fresh fruits and fresh vegetables (incl. large and small wholesalers)** | Croatia | Fruits | **Overall** | **[0-5]%** | **[10-20]%** | **[10-20]%** | **<150** |
| | | | Bananas | [0-5]% | [20-30]% | [20-30]% | <150 |
| | | | Deciduous fruits | [0-5]% | [10-20]% | [10-20]% | <150 |
| | | | Berries and soft fruits | [0-5]% | [10-20]% | [10-20]% | <150 |
| | | | Stone fruits | [0-5]% | [10-20]% | [10-20]% | <150 |
| | | | Citrus fruits | [0-5]% | [10-20]% | [10-20]% | <150 |
| | | | Melons | [0-5]% | [10-20]% | [10-20]% | <150 |
| | | | Tropical fruits | [0-5]% | [10-20]% | [10-20]% | <150 |
| | | | Others | [0-5]% | [0-5]% | [0-5]% | <150 |
| | | Vegetables | **Overall** | **[0-5]%** | **[10-20]%** | **[10-20]%** | **<150** |
| | | | Root vegetables | [0-5]% | [10-20]% | [10-20]% | <150 |
| | | | Leaf and stalk vegetables | [0-5]% | [5-10]% | [10-20]% | <150 |

[85] Should the markets for the wholesale supply of fresh fruits (and its sub-segments by type of fruits) and fresh vegetables (and its sub-segments by type of vegetables) be segmented between large and small wholesalers, the Parties' activities would not result in any horizontal overlaps.

[86] In the response to 2P1 RFI 4, question 3 paragraphs 9-10, the Parties indicated that they have only purchased Nielsen data for 2022. Nielsen data was used to calculate the market share on the wholesale supply of fresh fruits and vegetables, the wholesale supply of non-food daily consumer goods, and the supply of sweet spreadable products and non-perishable vegetables. The Parties estimate that the market shares on these markets would not be significantly different in 2021 or 2023. The Parties have prepared additional volume data for 2021 and 2023 on the basis of data published by the Croatian and Slovenian Bureaus of Statistics. Data by the Croatian and Slovenian Bureaus of Statistics was used to calculate market shares on the market at the level of production and large wholesale supply of fresh fruits and vegetables.

| Supply chain level | Country | Fruit/ vegetable | Type | Forteno va | PV Group | Combined | Delta HHI |
|---|---|---|---|---|---|---|---|
| | | | Bulb vegetables | [0-5]% | [5-10]% | [10-20]% | <150 |
| | | | Tomatoes | [5-10]% | [10-20]% | [20-30]% | <300 |
| | | | Potatoes | [0-5]% | [5-10]% | [5-10]% | <150 |
| | | | Nightshade and fruit vegetables | [0-5]% | [20-30]% | [20-30]% | <150 |
| | | | Legumes | [0-5]% | [0-5]% | [0-5]% | <150 |
| | | | Others | [0-5]% | [10-20]% | [10-20]% | <150 |
| | Slovenia | Fruits | **Overall** | **[0-5]%** | **[5-10]%** | **[5-10]%** | **<150** |
| | | | Bananas | [0-5]% | [10-20]% | [10-20]% | <150 |
| | | | Deciduous fruits | [0-5]% | [0-5]% | [0-5]% | <150 |
| | | | Berries and soft fruits | [0-5]% | [5-10]% | [5-10]% | <150 |
| | | | Stone fruits | [0-5]% | [10-20]% | [10-20]% | <150 |
| | | | Citrus fruits | [0-5]% | [5-10]% | [5-10]% | <150 |
| | | | Melons | [0-5]% | [10-20]% | [10-20]% | <150 |
| | | | Tropical fruits | [0-5]% | [5-10]% | [5-10]% | <150 |
| | | | Others | [0-5]% | [0-5]% | [0-5]% | <150 |
| | | Vegetables | **Overall** | **[0-5]%** | **[0-5]%** | **[0-5]%** | **<150** |
| | | | Root vegetables | [0-5]% | [0-5]% | [0-5]% | <150 |
| | | | Leaf and stalk vegetables | [0-5]% | [0-5]% | [0-5]% | <150 |
| | | | Bulb vegetables | [0-5]% | [0-5]% | [5-10]% | <150 |
| | | | Tomatoes | [0-5]% | [5-10]% | [5-10]% | <150 |
| | | | Potatoes | [0-5]% | [0-5]% | [0-5]% | <150 |
| | | | Nightshade and fruit vegetables | [0-5]% | [10-20]% | [10-20]% | <150 |
| | | | Legumes | [0-5]% | [0-5]% | [0-5]% | <150 |
| | | | Others | [0-5]% | [0-5]% | [0-5]% | <150 |

*Source: Short Form CO, Annex 21, as updated by the response to 2P1 RFI8, question 1, Annex 56.*

(97) As shown in Table 2 above, the market share of the Parties on the market including both producers/suppliers as well as wholesalers of fresh fruits and fresh vegetables would remain below 25% under any plausible market segmentation, even if segmented between fruits and vegetables and by type of fresh fruits and vegetables. The Transaction will only result in a small increment (< [0-5]% under all plausible market definitions) and the ensuing HHI delta remains well below 150 for the vast majority of plausible segmentations. Thus, the Transaction does not give rise to affected markets

pursuant to Article 5 of the Simplified Notice. The market investigation has not provided any indication that would put into question the position of the Parties on these markets.

(98) The respondents to the market investigation who expressed a view confirmed the existence of a variety of alternative producers and wholesalers of fresh fruits and vegetables, both in Croatia and Slovenia[87] and most of them did not voice concerns on any of these markets. Most of the respondents to the market investigation expect the Transaction not to have negative impact on the market or its activities.[88]

(99) In view of the foregoing, the Commission considers that the Transaction does not raise serious doubts on the overall markets for (i) the production and wholesale supply of fresh fruits (and its sub-segmentations by type of fruits), and (ii) the production and wholesale supply of fresh vegetables (and its sub-segmentations by type of vegetables) in Croatia and Slovenia.

5.4.2.1.2. The market for the production of fresh fruits in Croatia

(100) PV Group produces deciduous fruits, namely apples, via its subsidiary Moslavina in Croatia. Fortenova also produces deciduous fruits, in particular apples, via its subsidiaries Pik, Vinka and Eko in Croatia. The Transaction therefore gives rise to horizontal overlaps in production of fresh fruits in Croatia, with possible segmentations into deciduous fruits or into apples.

**Table 3 – Production of fresh fruits: Croatia (volume 2023)[89]**

| Supply chain level | Country | Fruit/ vegetable | Type | Fortenova | PV Group | Combined | Delta HHI |
|---|---|---|---|---|---|---|---|
| **Production of fresh fruits and fresh vegetables** | Croatia | Fruits | Overall | [0-5]% | [0-5]% | [0-5]% | <150 |
| | | Fruits | Deciduous | [0-5]% | [5-10]% | [5-10]% | <150 |
| | | Fruits | Apples | [0-5]% | [10-20]% | [10-20]% | <150 |

*Source: Short Form CO, Annex 21, as updated by the response to 2P1 RFI8 , Annex 55 corrected and to 2P1 RFI 9, question 1, Annex 56.*

(101) As shown in Table 3 above, the combined market share of the Parties on the market for the production of fresh fruits remains below 20% under any plausible market segmentation, even if segmented by type of fruit (apples). The Transaction will only result in a small increment (< [0-5]% under all plausible market definitions) and the ensuing HHI delta remains well below 150. Thus, the Transaction does not give rise to affected markets pursuant to Article 5 of the Simplified Notice. The market investigation has not elicited any result that would put into question the position of the Parties on these markets.

(102) The results of the market investigation confirmed the existence of several competing producers of fresh fruits in Croatia, including for deciduous fruits and apples more specifically.[90] Post-Transaction, the Parties will continue to face strong competition from multiple players such as Rabo d.o.o., Setovia d.o.o., or Agro Neretva d.o.o. A clear

87 Questionnaire Q5 to food producers, questions C.1 and D.1.
88 Questionnaire Q5 to food producers, question B.21, B.22 and B.23.
89 Data in 2021 and 2022 do not vary significantly compared to 2023 according to Annex 55, response to 2P1 RFI 8 and Annex 56, response to 2P1 RFI 9.
90 Questionnaire Q5 to food producers, question B.13 and 14.

majority of customers in Croatia who expressed a view indicated that they have sufficient alternative producers/suppliers to purchase fresh fruits from, besides Fortenova and PV Group.[91] Likewise, most producers of fresh fruits who expressed a view considered that the Transaction will have no impact on the markets on which they operate.[92]

(103) In view of the foregoing, the Commission considers that the Transaction does not raise serious doubts with respect to the production of fresh fruits (and its sub-segments for deciduous fruits and apples more specifically) in Croatia.

5.4.2.1.3. The markets for the wholesale supply of fresh fruits and fresh vegetables in Croatia and in Slovenia

(104) PV Group is active via its subsidiary as a large wholesaler of fresh fruits and vegetables in Croatia and Slovenia, typically selling its products to retail chains, retailers and small wholesalers. Fortenova sells approximately […]% of its volume of fresh fruits and vegetables via its small wholesale activity (cash & carry stores) to other retailers or HoReCa companies in Croatia and Slovenia. Thus, while the Parties do not sell to the same customers, the Transaction gives rise to a horizontal overlap on the broader markets for the wholesale supply of fresh fruits and fresh vegetables (including large and small wholesalers) in Croatia and Slovenia.

**Table 4 - Wholesale of fresh fruits and fresh vegetables: Croatia and Slovenia (in volume 2023)[93]**

| Supply chain level | Country | Fruit/ vegetable | Type | Fortenova | PV Group | Combined | Delta HHI |
|---|---|---|---|---|---|---|---|
| **Wholesale supply of fresh fruits and fresh vegetables (incl. large and small wholesalers)** | Croatia | Fruits | **Overall** | **[0-5]%** | **[10-20]%** | **[10-20]%** | **<150** |
| | | | Bananas | [0-5]% | [20-30]% | [20-30]% | <150 |
| | | | Deciduous fruits | [0-5]% | [5-10]% | [5-10]% | <150 |
| | | | Berries and soft fruits | [0-5]% | [10-20]% | [10-20]% | <150 |
| | | | Stone fruits | [0-5]% | [10-20]% | [10-20]% | <150 |
| | | | Citrus fruits | [0-5]% | [10-20]% | [10-20]% | <150 |
| | | | Melons | [0-5]% | [10-20]% | [10-20]% | <150 |
| | | | Tropical fruits | [0-5]% | [10-20]% | [10-20]% | <150 |

91 Questionnaire Q2 to food wholesalers, question C.6.

92 Questionnaire Q5 to food producers, question B.20, B.21 and B.22.

93 In the response to 2P1 RFI 4, question 3 paragraphs 9-10, the Parties indicated that they have only purchased Nielsen data for 2022. Nielsen data was used to calculate the market share on the wholesale supply of fresh fruits and vegetables, the wholesale supply of non-food daily consumer goods, and the supply of sweet spreadable products and non-perishable vegetables. The Parties estimate that the market shares on these markets would not be significantly different in 2021 or 2023. The Parties have prepared additional volume data for 2021 and 2023 on the basis of data published by the Croatian and Slovenian Bureaus of Statistics. Data by the Croatian and Slovenian Bureaus of Statistics was used to calculate market shares on the market at the level of production and large wholesale supply of fresh fruits and vegetables.

| Supply chain level | Country | Fruit/ vegetable | Type | Fortenova | PV Group | Combined | Delta HHI |
|---|---|---|---|---|---|---|---|
| | | | Others | [0-5]% | [0-5]% | [0-5]% | <150 |
| | | Vegetables | **Overall** | **[0-5]%** | **[10-20]%** | **[10-20]%** | **<150** |
| | | | Root vegetables | [0-5]% | [10-20]% | [10-20]% | <150 |
| | | | Leaf and stalk vegetables | [0-5]% | [5-10]% | [10-20]% | <150 |
| | | | Bulb vegetables | [0-5]% | [5-10]% | [10-20]% | <150 |
| | | | Tomatoes | [0-5]% | [10-20]% | [10-20]% | <150 |
| | | | Potatoes | [0-5]% | [5-10]% | [5-10]% | <150 |
| | | | Other nightshade and fruit vegetables | [0-5]% | [20-30]% | [20-30]% | <150 |
| | | | Legumes | [0-5]% | [0-5]% | [0-5]% | <150 |
| | | | Others | [0-5]% | [10-20]% | [10-20]% | <150 |
| | Slovenia | Fruits | **Overall** | **[0-5]%** | **[5-10]%** | **[5-10]%** | **<150** |
| | | | Bananas | [0-5]% | [10-20]% | [10-20]% | <150 |
| | | | Deciduous fruits | [0-5]% | [0-5]% | [0-5]% | <150 |
| | | | Berries and soft fruits | [0-5]% | [5-10]% | [5-10]% | <150 |
| | | | Stone fruits | [0-5]% | [10-20]% | [10-20]% | <150 |
| | | | Citrus fruits | [0-5]% | [5-10]% | [5-10]% | <150 |
| | | | Melons | [0-5]% | [10-20]% | [10-20]% | <150 |
| | | | Tropical fruits | [0-5]% | [5-10]% | [5-10]% | <150 |
| | | | Others | [0-5]% | [0-5]% | [0-5]% | <150 |
| | | Vegetables | **Overall** | **[0-5]%** | **[0-5]%** | **[0-5]%** | **<150** |
| | | | Root vegetables | [0-5]% | [0-5]% | [0-5]% | <150 |
| | | | Leaf and stalk vegetables | [0-5]% | [0-5]% | [0-5]% | <150 |
| | | | Bulb vegetables | [0-5]% | [0-5]% | [5-10]% | <150 |
| | | | Tomatoes | [0-5]% | [5-10]% | [5-10]% | <150 |
| | | | Potatoes | [0-5]% | [0-5]% | [0-5]% | <150 |
| | | | Other nightshade and fruit vegetables | [0-5]% | [10-20]% | [10-20]% | <150 |
| | | | Legumes | [0-5]% | [0-5]% | [0-5]% | <150 |
| | | | Others | [0-5]% | [0-5]% | [0-5]% | <150 |

*Source: Short Form CO, Annex 21, as updated by the response to 2P1 RFI8, question 1, Annex 56.*

(105) As shown in Table 4 above, the combined market share of the Parties on the market for the wholesale supply of fresh fruits and vegetables remains below 25% under any plausible market segmentation, even if segmented by type of fresh fruits and vegetables. The Transaction will only result in a small increment (< [0-5]% under all plausible market definitions) and the ensuing HHI delta remains well below 150. Thus, the Transaction does not give rise to affected markets pursuant to Article 5 of the Simplified Notice. The market investigation has not elicited any result that would put into question the position of the Parties on these markets.

(106) On the contrary, respondents to the market investigation who expressed a view confirmed the existence of a multiple alternative wholesalers of fresh fruits and vegetables who will continue to exercise strong competitive pressure on the Parties, both in Croatia (e.g. Osatina Grupa d.o.o., Dodir Prirode d.o.o., Rabo d.o.o.) and Slovenia (e.g. Evrosad d.o.o., Evrosad d.o.o., Geaprodukt d.o.o.)[94] and have not voiced any concern in connection with this market. In addition, food producers confirmed that they have sufficient alternatives to sell their fresh fruits and vegetables besides to the new entity[95] and food retailers confirmed that they have sufficient alternatives to source the fresh fruits and vegetables from either producers or wholesalers besides the new entity.[96] Finally, it should be noted that in their wholesale activities of fresh fruits and vegetables, the Parties do not target the same customers. PV Group, via ENNA Fruit, targets retail chains purchasing large volumes of fresh fruits and vegetables, while Fortenova, via its cash & carry stores, targets small retailers or HoReCa companies.

(107) In view of the foregoing, the Commission concludes that the Transaction does not raise serious doubts on the markets for (i) the wholesale supply of fresh fruits (and its sub-segmentations by type of fruits), and (ii) the wholesale supply of fresh vegetables (and its sub-segmentations by type of vegetables) in Croatia and Slovenia.

5.4.2.2. Procurement of daily consumer goods

(108) The Parties' activities for the procurement of daily consumer goods overlap[97] for the procurement of the following product categories:

(a) Fresh fruits and vegetables: in Croatia and Slovenia, PV Group purchases fresh fruits and vegetables as a large wholesaler (through its subsidiary ENNA Fruit) while Fortenova purchases fresh fruits and vegetables that it resells in its retail and cash and carry stores. Accordingly, the Parties' activities overlap on a market for the procurement of fresh fruits and vegetables. If a distinction is made between different sales channels, the Parties' activities overlap only on the market for the procurement of fresh fruits and vegetables for sale via wholesalers (i.e. cash and carry stores and other wholesalers).[98]

(b) Preserved food: on these markets, PV Group (via Naturala) purchases in Croatia unlabelled non-perishable vegetables in cans and glass. Naturala subsequently sells these products under its own label. In addition, Naturala purchases small volumes of sweet spreadable products in Croatia for resale as a wholesaler.

94 Questionnaire Q5 to food producers, questions C.1 and D.1.

95 Questionnaire Q5 to food producers, question B.16-1 and B.18.

96 Questionnaire Q3 to food retailers, question B.11.

97 On an overall market for the procurement of daily consumer goods, if a distinction is made between different sales channel, the Parties' activities overlap only on the market for the procurement of daily consumer goods for sale via wholesalers.

98 On such market, only the procurement activities of Fortenova's cash and carry stores (i.e. to the exclusion of its other retail stores (supermarkets, kiosks, etc.) ought to be taken into account).

Fortenova also purchases non-perishable vegetables in Croatia that it resells in its retail stores and cash and carry stores. Accordingly, the Parties' activities overlap on a market for the procurement of preserved food in Croatia (including any plausible segmentations). If a distinction is made between different sales channels, the Parties' activities overlap only on the market for the procurement of preserved food for sale via wholesalers.[99]

(c) Other non-food products usually sold in supermarkets: on these markets, PV Group (via Kenty Adria) procures household products in Croatia and Slovenia that it resells as a wholesaler. Fortenova also procures household products in Croatia and Slovenia that it resells in its retail and cash and carry stores. Accordingly, the Parties' activities overlap on a market for the procurement of other non-food products usually found in supermarkets. If a distinction is made between different sales channels, the Parties' activities overlap only on the market for the procurement of other non-food products usually sold in supermarkets for sale via wholesalers.[100]

(109) The tables below provide the Parties' market shares for the procurement of fresh fruits, fresh vegetables, preserved food, and other non-food products usually found in supermarkets in Croatia and Slovenia, under all plausible market definitions for which the Transaction gives rise to a horizontal overlap between the Parties' activities.

**Table 5 – Procurement of daily consumer goods: Croatia (in volume[101] 2023)[102]**

| **Product markets** | | **Fortenova[103]** | **PV Group** | **Combined** | **Delta HHI** |
|---|---|---|---|---|---|
| ***Fresh fruits and vegetables*** | ***Overall*** | [0-5]% | [10-20]% | [10-20]% | <150 |
| **Fresh fruits** | ***Overall*** | [0-5]% | [5-10]% | [10-20]% | <150 |
| | ***Bananas*** | [0-5]% | [20-30]% | [20-30]% | <150 |
| | ***Deciduous fruits*** | [0-5]% | [0-5]% | [5-10]% | <150 |
| | ***Berries and soft fruits*** | [10-20]% | [5-10]% | [20-30]% | <300 |
| | ***Stone fruits*** | [10-20]% | [5-10]% | [10-20]% | <150 |
| | ***Citrus fruits*** | [10-20]% | [10-20]% | [20-30]% | <300 |

99 On such market, only the procurement activities of Fortenova's cash and carry stores (i.e. to the exclusion of its other retail stores (supermarkets, kiosks, etc.) ought to be taken into account).

100 On such market, only the procurement activities of Fortenova's cash and carry stores (i.e. to the exclusion of its other retail stores (supermarkets, kiosks, etc.) ought to be taken into account).

101 These volume shares are based on the data from the Croatian Bureau of Statistics and no value data was available.

102 In view of the data submitted by the Parties, these purchasing shares have not materially changed over the past three years. The only exception concerns berries and soft fruits where the Parties' combined purchasing share in 2021 was equal to [40-50]% (Fortenova: [10-20]%; PV Group: [20-30]%) because Fortenova increased its purchases of berries and soft fruits from ENNA Fruit in 2022. In addition, the Notifying Party explained that one of the reasons for the variation in the purchase share, is the particularly low market size for berries and soft fruit reported by the Croatian Bureau for Statistics in 2021 compared to 2022 and 2023. In light of the significant deviation of the market size reported in 2021 compared to 2022 and 2023, the Notifying Party believes that the market size for 2021 is underreported.

103 Excluding purchases from PV Group to avoid double counting. This is because the volumes purchased by Fortenova from PV Group are already taken into account in PV Group's purchasing share.

| Product markets | | Fortenova[103] | PV Group | Combined | Delta HHI |
|---|---|---|---|---|---|
| | ***Melons*** | [5-10]% | [5-10]% | [10-20]% | <300 |
| | ***Tropical fruits*** | [5-10]% | [5-10]% | [10-20]% | <300 |
| | ***Others*** | [0-5]% | [0-5]% | [0-5]% | <150 |
| **Fresh vegetables** | ***Overall*** | [5-10]% | [0-5]% | [10-20]% | <150 |
| | ***Root vegetables*** | [10-20]% | [5-10]% | [10-20]% | <300 |
| | ***Leaf and stalk vegetables*** | [5-10]% | [0-5]% | [10-20]% | <150 |
| | ***Bulb vegetables*** | [0-5]% | [0-5]% | [5-10]% | <150 |
| | ***Tomatoes*** | [5-10]% | [5-10]% | [10-20]% | <150 |
| | ***Potatoes*** | [5-10]% | [0-5]% | [10-20]% | <150 |
| | ***Other nightshade and fruit vegetables***[104] | [5-10]% | [5-10]% | [10-20]% | <150 |
| | ***Legumes*** | [10-20]% | [0-5]% | [10-20]% | <150 |
| | ***Others***[105] | [20-30]% | [5-10]% | [20-30]% | <300 |
| **Preserved food[106]** | ***Overall*** | <20% | <[0-5]% | <20% | N/A |
| | ***Non-perishable vegetables*** | <20% | <[0-5]% | <20% | N/A |
| | ***Sweet spreadable products*** | <20% | <[0-5]% | <20% | N/A |
| **Other non-food products[107]** | ***Overall*** | <20% | <[0-5]% | <20% | N/A |
| | ***Household products*** | <20% | <[0-5]% | <20% | N/A |

*Source: Responses 2P1 RFI11, question 7 ; 2P1 RFI8, Annex 54 and 2P1 RFI7, question 3.*

104 Including the Parties' purchases of peppers, cucumber, zucchini, pumpkin, and aubergine. The Parties do not have detailed volume data for both production and import and export of such vegetables. To the best of the Notifying Party's knowledge, the Parties' market shares for specific types of other nightshade and fruit vegetables are not expected to materially deviate from the overall category (response 2P1 RFI7, question 4(b)).

105 Including fungi, broccoli, cauliflower, asparagus, celery, and all other vegetables that both Parties purchase but could not clearly classify under any of the other categorisations. To the best of the Notifying Party's knowledge, the Parties' market shares for specific types of other vegetables are not expected to materially deviate from the overall category (response 2P1 RFI7, question 4(a)).

106 The data reported in the table for preserved food is in value as the Parties do not have procurement shares in volume due to the absence of third-party data sources for the calculation of procurement market sizes in volume (response 2P1 RFI7, question 3).

107 The data reported in the table for non-food daily consumer goods is in value as the Parties do not have procurement shares in volume due to the absence of third-party data sources for the calculation of procurement market sizes in volume (response 2P1 RFI7, question 3).

**Table 6 – Procurement of daily consumer goods: Slovenia (in volume[108] 2023)[109]**

| Product markets | | Fortenova [110] | PV Group[111] | Combined | Delta HHI |
|---|---|---|---|---|---|
| **Fresh fruits and vegetables** | ***Overall*** | [0-5]% | [5-10]% | [5-10]% | <150 |
| **Fresh fruits** | ***Overall*** | [5-10]% | [5-10]% | [10-20]% | <150 |
| | ***Bananas*** | [10-20]% | [0-5]% | [20-30]% | <150 |
| | ***Deciduous fruits*** | [10-20]% | [0-5]% | [10-20]% | <150 |
| | ***Berries and soft fruits*** | [10-20]% | [0-5]% | [10-20]% | <150 |
| | ***Stone fruits*** | [10-20]% | [5-10]% | [20-30]% | <300 |
| | ***Citrus fruits*** | [0-5]% | [5-10]% | [10-20]% | <150 |
| | ***Melons*** | [5-10]% | [5-10]% | [10-20]% | <150 |
| | ***Tropical fruits*** | [10-20]% | [0-5]% | [10-20]% | <150 |
| | ***Others*** | [5-10]% | [5-10]% | [10-20]% | <150 |
| **Fresh vegetables** | ***Overall*** | [0-5]% | [0-5]% | [5-10]% | <150 |
| | ***Root vegetables*** | [0-5]% | [0-5]% | [5-10]% | <150 |
| | ***Leaf and stalk vegetables*** | [0-5]% | [0-5]% | [5-10]% | <150 |
| | ***Bulb vegetables*** | [0-5]% | [5-10]% | [10-20]% | <150 |
| | ***Tomatoes*** | [5-10]% | [5-10]% | [10-20]% | <150 |
| | ***Potatoes*** | [5-10]% | [0-5]% | [5-10]% | <150 |
| | ***Other nightshade and fruit vegetables[112]*** | [0-5]% | [10-20]% | [10-20]% | <150 |
| | ***Legumes*** | [0-5]% | [0-5]% | [0-5]% | <150 |
| | ***Others[113]*** | [0-5]% | [0-5]% | [5-10]% | <150 |

108 These volume shares are based on the data from the Slovenian Bureau of Statistics and no value data was available.

109 In view of the data submitted by the Parties, these purchasing shares have not materially changed over the past three years.

110 Excluding purchases from PV Group to avoid double counting. This is because the volumes purchased by Fortenova from PV Group are already taken into account in PV Group's purchasing share.

111 PV Group does not procure fresh fruits and vegetables in Slovenia, but it procures fruits and vegetables outside of Slovenia for subsequent sale in Slovenia, including to Fortenova (response to 2P1 RFI2, question 1). Under a conservative approach, it can be considered that PV Group is nevertheless active in Slovenia on an overall market for the procurement of fresh fruits and vegetables that includes fresh fruits and vegetables grown outside of Slovenia but imported into Slovenia.

112 Including peppers, cucumbers, eggplants, zucchinis (also known as courgette) and pumpkins. To the best of the Notifying Party's knowledge, the Parties' market shares for specific types of other nightshade and fruit vegetables are not expected to materially deviate from the overall category (response 2P1 RFI7, question 4(b)).

113 Including fungi, broccoli, cauliflower, asparagus, celery, and all other vegetables that both Parties sell and that they could not clearly classify under any of the other categorisations. To the best of the Notifying Party's knowledge, the Parties' market shares for specific types of other vegetables are not expected to materially deviate from the overall category (response 2P1 RFI7, question 4(a)).

| Product markets | | Fortenova [110] | PV Group[111] | Combined | Delta HHI |
|---|---|---|---|---|---|
| **Other non-food products[114]** | ***Overall*** | <20% | <[0-5]% | <20% | N/A |
| | ***Household products*** | <20% | <[0-5]% | <20% | N/A |

*Source: Responses 2P1 RFI11, question 7, 2P1 RFI8, Annex 54 and 2P1 RFI7, question 3.*

(110) As shown above, the Parties' combined market shares remain below 20% for the procurement of fresh fruits, fresh vegetables, preserved food and other non-food products typically sold in supermarkets in Croatia and Slovenia. It is only if a further distinction by type of fruits or vegetables is made that the Parties' combined market share exceeds 20%.[115] However, for the vast majority of these markets[116] the Parties' combined market share remains below 25%.[117] [118]

(111) For all of these markets (including those that do not fall within the scope of the Simplified Notice),[119] the results of the market investigation confirmed that producers of fresh fruits and vegetables in Croatia and Slovenia will continue to have sufficient alternatives to sell their products after the Transaction. In particular, the vast majority of producers of fresh fruits and vegetables active in Croatia and Slovenia indicated that they have sufficient alternative customers to sell their products in these countries[120] and explained that they do not anticipate any effect of the Transaction on the activities of producers of fresh fruits and vegetables in Slovenia.[121] Likewise, the results of the market investigation confirmed that suppliers of household products (other non-food products usually sold in supermarkets) will keep a number of significant alternative customers in Croatia and Slovenia.[122] As to the procurement of preserved food (non-

114 The data reported in the table for non-food daily consumer goods is in value as the Parties do not have procurement shares in volume due to the absence of third-party data sources for the calculation of procurement market sizes in volume (response 2P1 RFI7, question 3).

115 For the procurement: (i) in Croatia of: (i.a) bananas (i.b) berries and soft fruits, (i.c) citrus fruits, (i.d) other vegetables; and (ii) in Slovenia of (ii.a) bananas and (ii.b) stone fruits.

116 The only exceptions are the markets for the procurement of (i) berries and soft fruits (ii) other fresh vegetables in Croatia, where the Parties' combined purchasing share slightly exceeds 25% ([20-30]% and [20-30]% respectively) with a delta HHI above 150. As a result, these two markets do not fall within the scope of the Simplified Notice. However, as explained below, the results of the market investigation confirmed that producers of fresh fruits and vegetables (including producers of berries, soft fruits and vegetables) will keep sufficient alternative routes to markets in Croatia and Slovenia.

117 Horizontal Merger Guidelines, paragraph 18. See also, Simplified Notice, paragraph 8.

118 If a sub-segmentation is made for cash and carry store and other wholesalers of daily consumer goods, the Parties explained that no data is available to determine the market size limited to purchases made by wholesalers to the exclusion of other sales channels (e.g. supermarkets, kiosks, etc.). However, based on the Notifying Party's best estimates of the share that direct purchases of retail stores from producers represent, the Notifying Party confirmed that the Parties' combined market share would not vary significantly on a sub-segment limited to procurement by wholesalers (Responses 2P1 RFI5, question 3 and 2P1 RFI11, question 7).

119 I.e. the markets for the procurement of (i) berries and soft fruits (ii) other fresh vegetables in Croatia, where the Parties' combined purchasing share slightly exceeds 25% ([20-30]% and [20-30]% respectively) with a delta HHI above 150.

120 Questionnaire 5 to food producers, questions B.16 and B.18. The only exception is for legumes where two producers explained that the Parties are their only customers in Croatia and one of them also explained that the Parties are his only customers in Slovenia. However, the combined purchasing share of the Parties for legumes in Croatia and Slovenia remain particularly limited ([10-20]% and [0-5]% respectively) and the increment remains *de minimis* ([0-5]% and [0-5]% respectively).

121 Questionnaire 5 to food producers, question B.20.

122 The results of the market investigation confirmed the existence of at least 12 significant alternative customers of household products in Croatia and 13 in Slovenia (Questionnaire 4 to non-food wholesalers, questions B.11 and B.12).

perishable vegetables and sweet spreadable products) in Croatia, the Parties' combined share remains limited (<20%) with a *de minimis* increment (<[0-5]%). Therefore, suppliers of non-perishable vegetables and sweet spreadable products will continue to have significant alternative routes to markets after the Transaction.

(112) For completeness, the Commission also notes that under a conservative approach and in order to assess whether Croatian and Slovenian producers of fresh fruits and vegetables will keep sufficient alternative routes to markets after the Transaction, the tables below provide the Parties' market shares for the procurement of fresh fruits and vegetables in Croatia and Slovenia when taking into account only fresh fruits and vegetables produced in Croatia or Slovenia (i.e. including exports, without imports).

**Table 7 – Procurement of fresh fruits and vegetables (including exports and excluding imports): Croatia (in volume 2023)[123]**

| Product markets | | Fortenova[124] | PV Group | Combined | Delta HHI |
|---|---|---|---|---|---|
| **Fruits** | ***Overall*** | [0-5]% | [20-30]% | [20-30]% | <150 |
| | ***Deciduous fruits*** | [0-5]% | [10-20]% | [10-20]% | <150 |
| | ***Berries and soft fruits*** | [0-5]% | [5-10]% | [5-10]% | <150 |
| | ***Stone fruits*** | [0-5]% | [5-10]% | [10-20]% | <150 |
| | ***Citrus fruits*** | [0-5]% | [20-30]% | [20-30]% | <150 |
| | ***Melons*** | [0-5]% | [10-20]% | [20-30]% | <300 |
| **Vegetables** | ***Overall*** | [0-5]% | [10-20]% | [10-20]% | <150 |
| | ***Root vegetables*** | [10-20]% | [10-20]% | [20-30]% | <300 |
| | ***Leaf and stalk vegetables*** | [0-5]% | [10-20]% | [10-20]% | <150 |
| | ***Bulb vegetables*** | [0-5]% | [10-20]% | [20-30]% | <150 |
| | ***Tomatoes*** | [0-5]% | [10-20]% | [10-20]% | <150 |
| | ***Potatoes*** | [0-5]% | [10-20]% | [10-20]% | <150 |
| | ***Other nightshade and fruit vegetables*** | [0-5]% | [10-20]% | [10-20]% | <150 |
| | ***Legumes*** | [5-10]% | [0-5]% | [5-10]% | <150 |

*Source: 2P1 RFI8, Annex 54.*

**Table 8 – Procurement of fresh vegetables (including exports and excluding imports): Slovenia[125] (in volume[126] 2023)**

| Product markets | | Fortenova[127] | PV Group | Combined | Delta HHI |
|---|---|---|---|---|---|
| **Vegetables** | ***Overall*** | [0-5]% | <[0-5]% | [0-5]% | <150 |
| | ***Tomatoes*** | [10-20]% | <[0-5]% | [10-20]% | <150 |
| | ***Potatoes*** | [0-5]% | <[0-5]% | [0-5]% | <150 |
| | ***Other*** | [5-10]% | <[0-5]% | [5-10]% | <150 |

*Source: 2P1 RFI8, Annex 54.*

(113) As shown above, the Parties' combined purchasing shares in Croatia and Slovenia of the domestic production of fresh fruits and vegetables remain below 25% under all plausible market definitions for which the Parties' activities overlap. Accordingly,

123 These volume shares are based on the data from the Croatian Bureau of Statistics and no value data was available.

124 Excluding purchases from PV Group to avoid double counting. This is because the volumes purchased by Fortenova from PV Group are already taken into account in PV Group's purchasing share.

125 PV Group does not purchase fresh fruits or other types of fresh vegetables in Slovenia (response 2P1 RFI5, question 4).

126 These volume shares are based on the data from the Slovenian Bureau of Statistics and no value data was available.

127 Excluding purchases from PV Group to avoid double counting. This is because the volumes purchased by Fortenova from PV Group are already taken into account in PV Group's purchasing share.

Croatian and Slovenian producers of fresh fruits and vegetables will keep sufficient alternatives for selling their products after the Transaction.

(114) In view of the foregoing, the Commission concludes that the Transaction does not raise serious doubts with respect to the procurement of fresh fruits and vegetables, preserved food and other non-food products usually sold in supermarkets in Croatia and Slovenia.

*5.4.3. Rental of commercial retail properties in Croatia.*

(115) Fortenova and PV Group are both active in the rental of commercial retail properties in Croatia. PV Group rents […] retail locations in Croatia (including […] real estate properties of more than 8 000 sqm). Fortenova rents […] retail locations to third parties in Croatia (including […] real estate properties of more than 8 000 sqm).[128]

(116) Based on a market size of 6.4 million sqm retail surface and a total retail surface of […] sqm ([0-5]%) and […] sqm ([0-5]%) rented out to third parties by PV Group and Fortenova respectively, the Parties have a combined market share of [0-5]% on the market for the rental of commercial retail properties.[129] Moreover, on both the markets for the rental of (i) retail properties, including shopping centres and retail parks, of at least 8 000 sqm or 10 000 sqm, and (ii) shopping centres only of at least 8 000 sqm or 10 000 sqm, the Parties' combined market share remain well below 20%.[130] Likewise, the Parties' market share would remain well below 20% at regional or local level, under all plausible product market definitions.[131] Thus, the Transaction does not give rise to affected markets pursuant to Article 5 of the Simplified Notice.

(117) The Commission's market investigation confirmed that there are sufficient alternatives to the Parties' renting commercial retail properties (including of more than 8 000 sqm).[132] All respondents to the Commission's market investigation confirmed that post-Transaction for the overall market for the rental of commercial retail properties in Croatia the impact will be neutral, neither positive nor negative. [133] The respondents also confirmed that post-Transaction when considering parameters like rental price, quality, and choice of properties the impact will also be neutral (neither positive nor negative).[134]

(118) In view of the foregoing, the Commission concludes that the Transaction does not raise serious doubts with respect to the rental of commercial retail properties (and its sub-segments based on the size and location of the property) in Croatia or any part of Croatia.

## 5.5. Vertical links

(119) In light of the market share data submitted by the Parties and the results of the market investigation, the Transaction does not give rise to vertically affected markets within the meaning of the Simplified Notice.

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128 Predominantly for purposes other than food retail, i.e. non-food retail, hotels, café or restaurants, etc. Out of these […] premises, only […] premises are rented out to grocery retailers (Short Form CO page 31, Annex 29).

129 Annex 29. Based on data from the Croatian Chamber of Commerce, Eurostat and CBRE.

130 Short Form CO, page 31, Annex 29.

131 Short Form CO, page 30.

132 Questionnaire Q2 to real estate owners, question B5.

133 Questionnaire Q2 to real estate owners, question B8.

134 Questionnaire Q2 to real estate owners, question B10.

(120) However, the Interested Third Parties expressed concerns as to the compatibility of the Transaction with the internal market and the EEA agreement. To address the concerns raised, the Commission includes below an assessment of the vertical links arising from the Transaction for which the Interested Third Parties expressed concerns, namely:

(a) The markets for the production and supply of fresh fruits and fresh vegetables (upstream) and the wholesale supply of fresh fruits and fresh vegetables (downstream) in Croatia and Slovenia;

(b) The markets for the wholesale supply of fresh fruits and fresh vegetables (upstream) and the retail distribution of daily consumer goods (downstream) in Croatia and Slovenia;

(c) The markets for the production and supply of sweet spreadable products (upstream) and the retail distribution of daily consumer goods (downstream) in Croatia and Slovenia;

(d) The markets for the production and supply of non-perishable vegetables (upstream) and the retail distribution of daily consumer goods (downstream) in Croatia and Slovenia; and

(e) The markets for the wholesale supply of non-food daily consumer goods (upstream) and the retail distribution of daily consumer goods (downstream) in Croatia and Slovenia.

(121) In addition, the Interested Third Parties also expressed concerns in relation to the alleged vertical links between:

(a) PV Group's activities for the retail supply of electricity in Croatia (through ENNA Opskrba, PPD) (upstream) and the various activities of Fortenova (downstream);[135]

(b) PV Group's activities for the retail supply of gas in Croatia and Slovenia (through ENNA Opskrba, PPD) (upstream) and the various activities of Fortenova (downstream);[136] and

(c) PV Group's rental of retail real estate properties (upstream) and the activities of Fortenova in the retail supply of food and non-food products (daily consumer goods), (downstream) in Croatia.[137]

(122) However, according to the Notifying Party, the supply of electricity and gas as well as the rental of retail real estate properties are services provided to various sectors and do not constitute important inputs for any of Fortenova's activities. The Commission agrees that these relationships between the Parties' activities do not amount to vertical relationships within the meaning of footnote 4 of the Commission's non-horizontal guidelines[138] and footnote 18 of the Simplified Notice.[139] Indeed, as explained in footnote 18 of the Simplified Notice "*vertical relationship usually presupposes that the*

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135 Economic submission, paragraphs 53, 77, 109, 502.

136 Economic submission, paragraphs 429 and following.

137 Letters of the Interested Third Parties of 16 March 2024, pages 2, 7; Economic Submission, paragraphs 71, 109.

138 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**').

139 Commission Notice on a simplified treatment for certain concentrations under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (the '**Simplified Notice**'), OJ 5.5.2023 C 160.

*input is used directly in the downstream entity's own production (i.e. it is integrated in the product or it is strictly needed for the production of the downstream product) or that the input is re-sold by the downstream firm (e.g. distributors). This excludes remote links or links with services provided to various sectors, such as supply of electricity or waste collection services*." In the present case, the supply of electricity and gas as well as the rental of real estate companies do not constitute input used directly (i.e., integrated) in the production of Fortenova's downstream activities or input that are re-sold by Fortenova. On the contrary, the upstream products are inputs provided to various sectors. In any event, none of these vertical relationships between the Parties' activities give rise to affected markets.[140] On the one hand, PV Group's market shares in (i) the retail supply of electricity,[141] (ii) the supply of gas to large industrial customers[142] and (iii) the rental of retail real estate properties are well below 30%.[143] On the other hand, Fortenova's share of purchases of these products and services remains well below 30%.[144] In this context, these relationships between the Parties' activities will not be further discussed.

(123) Finally, the Interested Third Parties expressed foreclosure concerns with respect to PV Group's production and supply of canned condiments (upstream) and Fortenova's retail activities (downstream) in Croatia and in Slovenia.[145] However, the Notifying Party confirmed that PV Group is not active in the manufacture and supply and/or wholesale supply of canned condiments in Croatia and/or Slovenia.[146] In this context, this relationship between the Parties' activities will not be further discussed.

*5.5.1. Legal framework*

(124) A concentration 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.[147] Such foreclosure may discourage entry or expansion of rivals or encourage their exit.

(125) In assessing the likelihood of such a scenario, the Commission examines, first, whether the merged entity would have the ability to engage in such foreclosure strategy, second,

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140 With respect to the vertical link between the rental of retail real estate properties, market on which Pavao Vujnovac is active as a landlord (upstream) and Fortenova as a retailer of daily consumer goods (downstream) in Croatia, it should also be noted that the activities of the Parties are already integrated, and this vertical link cannot give rise to any input foreclosure (as PV Group currently rents around […]% of its retail real estate properties to third parties) or customer foreclosure (as Fortenova already rents the majority around […]% the PV Group's real estate properties).

141 [0-5]% for retail supply of electricity to large industrial and commercial customers (Short Form CO, page 76).

142 [20-30]% for retail supply of gas to large industrial customers (Short Form CO, page 77).

143 [0-5]% for the rental of retail real estate properties (Short Form CO, Annex 29).

144 Short Form CO, pages 76 and 77, Annex 29.

145 Economic Submission.

146 Notifying Party's response to 2P1 RFI10, question 7. For completeness, the Notifying Party notes that Fortenova does produce certain edible oils, margarine, mayonnaise and ketchup. However, these activities do not give rise to horizontal or vertical relations between PV Group and Fortenova (Notifying Party's response to 2P1 RFI14, question 2).

147 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 2029.

if the merged entity would have the economic incentive to do so[148] and, third, whether a foreclosure strategy would have a significant detrimental effect on competition, thus causing harm to consumers.[149] In practice, these factors are often examined together as they are closely intertwined.[150]

*5.5.2. Production and supply of fresh fruits and fresh vegetables (upstream) / wholesale supply of fresh fruits and fresh vegetables (downstream)*

(126) The Transaction gives rise to several vertical links between:

(a) the Parties' activities for the production of fresh fruits and fresh vegetables in Croatia (upstream): as explained above, both Parties produce and supply apples in Croatia. In addition, Fortenova also produces and supplies several other types of fresh fruits and fresh vegetables in Croatia; and

(b) the Parties' activities for the wholesale supply of fresh fruits and fresh vegetables in Croatia and Slovenia (downstream): PV Group is active on this market through its subsidiary ENNA Fruit, which is a large wholesaler of fresh fruits and vegetables in Croatia and Slovenia. Fortenova is also active on this market as a small wholesaler through cash & carry outlets in Croatia and in Slovenia.[151]

(127) The table below provides an overview of the Parties' combined upstream and downstream market shares as well as their purchasing shares for the production of fresh fruits and fresh vegetables in Croatia and Slovenia under all plausible market definitions in 2023.[152]

148 Non-Horizontal Merger Guidelines, paragraphs 40-46, 68-71 and 105-110.

149 Non-Horizontal Merger Guidelines, paragraphs 47-57, 72-77 and 111-118.

150 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.

151 Short Form CO, page 36.

152 Data in 2021 and 2022 do not vary significantly compared to 2023 according to Annex 56, response to 2P1 RFI 9.

**Table 9 – Market shares of the Parties on the markets for the production and supply (upstream) and wholesale supply (downstream) of fresh fruits and fresh vegetables / Purchasing shares of the Parties on the markets for the production and supply of fresh fruits and fresh vegetables: Croatia and Slovenia (in volume 2023)[153]**

| Country | Fruit / vegetable | Category | Combined production market shares (upstream)[154] | Combined market share wholesale[155] | Combined purchasing shares |
|---|---|---|---|---|---|
| Croatia | Fresh fruits | ***Overall*** | **[0-5]%** | **[10-20]%** | **[10-20]%** |
| | | ***Deciduous fruits[156]*** | [5-10]% | [5-10]% | [5-10]% |
| | | ***Stone fruits*** | < [0-5]% | [10-20]% | [10-20]% |
| | | ***Melons*** | [0-5]% | [10-20]% | [10-20]% |
| | Fresh vegetables | ***Overall*** | **[0-5]%** | **[10-20]%** | **[10-20]%** |
| | | ***Leaf and stalk vegetables*** | [0-5]% | [10-20]% | [10-20]% |
| | | ***Bulb vegetables*** | [0-5]% | [10-20]% | [10-20]% |
| | | ***Tomatoes*** | [5-10]% | [10-20]% | [10-20]% |
| | | ***Potatoes*** | < [0-5]% | [5-10]% | [5-10]% |
| | | ***Other nightshade and fruit vegetables*** | [0-5]% | [20-30]% | [20-30]% |
| Slovenia | Fresh fruits | ***Overall*** | **< [0-5]%** | **[5-10]%** | **[10-20]%** |
| | | ***Deciduous fruits*** | < [0-5]% | [10-20]% | [10-20]% |

*Source: Short Form CO, Annex 21, Response to 2P1 RFI 9, Annex 56.*

(128) As shown above, the Parties' market shares upstream and downstream as well as their combined purchasing shares remain well below 30% under all plausible market definitions for both upstream for the production and downstream for the wholesale supply of fresh fruits and vegetables in Croatia and Slovenia. The market investigation has not provided any indication that would put into question the consequent lack of serious doubts.

153 The table is limited to those markets with vertical links.

154 PV Group only produces apples (via Moslavina). Hence, this is the only horizontal overlap on the market for the production of fresh fruits and fresh vegetables.

155 On a conservative basis, the combined market shares include both large and small wholesalers.

156 Even considering production of apples separately, market shares at production level of Fortenova is [0-5]% and PV Group [10-20]%, i.e. the combined market share would be [10-20]% (below 30%).

5.5.2.1. Input foreclosure

(129) The results of the Commission's market investigation suggest that the merged entity will not have the ability to foreclose other wholesalers of fresh fruits (or any specific type of fresh fruits) and fresh vegetables (or any specific type of fresh vegetables) in Croatia and in Slovenia from access to fresh fruits and fresh vegetables.

(130) As indicated in Table 9, the merged entity would have limited market shares on the upstream market for the production of fresh fruits and fresh vegetables, well below 30%. This remains the same even when looking into narrower segmentations of the different types of fresh fruits and fresh vegetables. The market investigation did not elicit any result that would put into question the reliability of the abovementioned market shares estimates.[157] Indeed, the results of the market investigation confirmed the existence of several competing producers of fresh fruits and fresh vegetables in Croatia and in Slovenia or in the neighbouring EEA and non-EU countries, from whom food wholesalers can easily source fresh fruits and fresh vegetables.[158] Indeed, the vast majority of food wholesalers who responded to the Commission's market investigation indicated that wholesalers typically procure from multiple suppliers for each type of vegetables and fruits.[159]

(131) Furthermore, food wholesalers who responded to the market investigation expect a neutral or positive effect of the Transaction on their activities in Croatia and Slovenia.[160] In addition, most of the responding food wholesalers expressing a view do not expect any negative impact of the Transaction on the wholesale of food daily consumer goods in terms of price, quality, choice or innovation in Croatia and Slovenia.[161]

(132) Based on the foregoing, the Commission takes the view that the new entity would have no ability to foreclose competing food wholesalers downstream by restricting their access to sufficient upstream production of fresh fruits and fresh vegetables, in Croatia or Slovenia.

(133) Because the criteria that have to be fulfilled for an input foreclosure scenario to raise serious doubts are cumulative, it can be concluded that the Transaction does not raise serious doubts as to its compatibility with the internal market as a result of input foreclosure for this vertical link, without having to assess the incentive to foreclose or the impact thereof.

5.5.2.2. Customer foreclosure

(134) The results of the Commission's market investigation suggest that the merged entity will not have the ability to foreclose other fresh fruits and fresh vegetables producers in Croatia and Slovenia.

(135) As indicated in Table 9, the merged entity would have limited market shares, of well below 30% on the downstream markets for the wholesale supply of fresh fruits (and any type of fresh fruits produced and/or supplied by the merged entity) and vegetables (and any type of fresh vegetables produced and/or supplied by the merged entity), well below

157 Questionnaire Q5 to food producers, question B.13.
158 Questionnaire Q2 to food wholesalers, questions C.6 and C.7 and D.6 and D.7.
159 Questionnaire Q2 to food wholesalers, questions C.4 and C.5 and D.4 and D.5.
160 Questionnaire Q3 to food wholesalers, question E1.
161 Questionnaire Q3 to food retailers, question C.14 and D13.

30%. In addition, the merged entity would hold a purchasing share well below 30% of any of the fresh fruits and fresh vegetables produced and/or supplied by the merger entity upstream.

(136) The market investigation did not provide any indication that would put into question the reliability of the abovementioned market shares estimates.[162] A large majority of fresh fruits and vegetables producers who expressed a view confirmed the existence of sufficient alternative customers for all of the product categories, both in Croatia and Slovenia.[163]

(137) Furthermore, the majority of food producers does not expect negative impact on their activities arising from the Transaction[164] and they do not expect negative impact of the Transaction on the overall market for wholesale supply of fresh fruits and fresh vegetables in Croatia and Slovenia in terms of price, quality, choice or innovation.[165]

(138) Based on the abovementioned, the Commission considers that the new entity will not have the ability to foreclose competing producers of fresh fruits and fresh vegetables by restricting their access to sufficient downstream customers (wholesalers of fresh fruits and vegetables) in Croatia or Slovenia.

(139) Because the criteria that have to be fulfilled for a customer foreclosure scenario to raise serious doubts are cumulative, it can be concluded that the Transaction does not raise serious doubts as to its compatibility with the internal market as a result of customer foreclosure for this vertical link, without having to assess the incentive to foreclose or the impact thereof.

5.5.2.3. Conclusion

(140) For the reasons above, the Commission concludes that the vertical link arising from the Transaction between the production of fresh fruits and fresh vegetables (upstream) and the wholesale supply of fresh fruits and fresh vegetables (downstream) does not raise serious doubts as to its compatibility with the internal market as a result of input or customer foreclosure.

*5.5.3. Wholesale supply of fresh fruits and fresh vegetables (upstream) / retail distribution of daily consumer goods (downstream)*

(141) The Transaction gives rise to vertical links between:

(a) PV Group's activities for the wholesale supply of fresh fruits and fresh vegetables in Croatia and Slovenia (upstream): on this market, PV Group is active through its subsidiary ENNA Fruit, which is a large wholesaler of fruits and vegetables active in Croatia and Slovenia.

(b) Fortenova's activities for the retail distribution of daily consumer goods in Croatia and Slovenia (downstream): Fortenova operates a network of supermarkets and other modern trade retail outlets as well as small wholesalers (Cash & Carry) in Croatia (Konzum / Tisak) and Slovenia (Mercator) in which it sells daily consumer goods, including food products such as fresh fruits and fresh vegetables.

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162 Questionnaire Q2 to food wholesalers, question C.1.

163 Questionnaire Q5 to food producers, question B.16 to B.19.

164 Questionnaire Q5 to food producers, question B.22.

165 Questionnaire Q1 to food wholesalers, question C14 and D13.

(142) The tables below provide an overview of the Parties' upstream market shares and their corresponding purchasing shares of fresh fruits and fresh vegetables in Croatia and Slovenia under all plausible market definitions in 2023.

**Table 10 - Wholesale supply of fresh fruits and vegetables / Purchasing share of Fortenova: Croatia and Slovenia (in volume 2023[166]) [167] [168]**

| Supply chain level | Country | Fruit / Vegetable | Type | Market share PV Group (%) | Fortenova's purchasing share (%) |
|---|---|---|---|---|---|
| **Wholesale supply of fresh fruits and vegetables (limited to large wholesalers) / Fortenova's purchasing share** | **Croatia** | **Fruit** | **Overall** | **[10-20]%** | **[10-20]%** |
| | | | *Bananas* | [20-30]% | [20-30]% |
| | | | *Deciduous fruits* | [5-10]% | [5-10]% |
| | | | *Berries and soft fruits* | [10-20]% | [10-20]% |
| | | | *Stone fruits* | [10-20]% | [10-20]% |
| | | | *Citrus fruits* | [10-20]% | [20-30]% |
| | | | *Melons* | [10-20]% | [10-20]% |
| | | | *Tropical fruits* | [10-20]% | [10-20]% |
| | | | *Others* | [0-5]% | [0-5]% |
| | | **Vegetable** | **Overall** | **[10-20]%** | **[10-20]%** |
| | | | *Root vegetables* | [10-20]% | [10-20]% |
| | | | *Leaf and stalk vegetables* | [5-10]% | [10-20]% |
| | | | *Bulb vegetables* | [5-10]% | [5-10]% |
| | | | *Tomatoes* | [10-20]% | [10-20]% |
| | | | *Potatoes* | [5-10]% | [10-20]% |
| | | | *Other nightshade and fruit vegetables* | [20-30]% | [20-30]% |
| | | | *Legumes* | [0-5]% | [5-10]% |
| | | | *Others* | [10-20]% | [10-20]% |
| | **Slovenia** | **Fruit** | **Overall** | **[5-10]%** | **[5-10]%** |
| | | | *Bananas* | [10-20]% | [10-20]% |
| | | | *Deciduous fruits* | [0-5]% | [5-10]% |

166 Data in 2021 and 2022 are not significantly different to 2023 according to Annex 56, response to 2P1 RFI 9, response to 2P1 RFI 10, Annex 57.

167 The table is limited to those markets with vertical links.

168 On a conservative basis, Fortenova's activities as small wholesalers (Cash & Carry) business have been accounted for in the purchasing's share of Fortenova (rather than in the upstream market) since small wholesalers generally procure daily consumer goods from large wholesalers. Thus, the size of the upstream markets excludes small wholesalers. In any event, should the upstream markets also include small wholesalers, the Parties' combined market shares would also remain well below 30%, under all plausible market definitions.

| Supply chain level | Country | Fruit / Vegetable | Type | Market share PV Group (%) | Fortenova's purchasing share (%) |
|---|---|---|---|---|---|
| | | | *Berries and soft fruits* | [5-10]% | [10-20]% |
| | | | *Stone fruits* | [10-20]% | [10-20]% |
| | | | *Citrus fruits* | [5-10]% | [5-10]% |
| | | | *Melons* | [10-20]% | [10-20]% |
| | | | *Tropical fruits* | [5-10]% | [5-10]% |
| | | | *Others* | [0-5]% | [5-10]% |
| | | **Vegetable** | **Overall** | **[0-5]%** | **[5-10]%** |
| | | | *Root vegetables* | [0-5]% | [0-5]% |
| | | | *Leaf and stalk vegetables* | [0-5]% | [5-10]% |
| | | | *Bulb vegetables* | [0-5]% | [5-10]% |
| | | | *Tomatoes* | [5-10]% | [10-20]% |
| | | | *Potatoes* | [0-5]% | [0-5]% |
| | | | *Other nightshade and fruit vegetables* | [10-20]% | [10-20]% |
| | | | *Legumes* | [0-5]% | [0-5]% |
| | | | *Others* | [0-5]% | [5-10]% |

*Source: Response to 2P1 RFI 9, Annex 56.*

**Table 11 - Production and wholesale supply of fresh fruits and vegetables / Purchasing share of Fortenova: Croatia and Slovenia (in volume 2023[169]) [170] [171]**

| Supply chain level | Country | Fruit / Vegetable | Type | Combined market share (%) | Fortenova's purchasing share (%) |
|---|---|---|---|---|---|
| **Production and wholesale supply of fresh fruits and vegetables / Fortenova's** | **Croatia** | **Fruit** | **Overall** | **[10-20]%** | **[10-20]%** |
| | | | *Bananas* | [20-30]% | [20-30]% |
| | | | *Deciduous fruits* | [10-20]% | [5-10]% |
| | | | *Berries and soft fruits* | [10-20]% | [10-20]% |
| | | | *Stone fruits* | [10-20]% | [10-20]% |

169 Data in 2021 and 2022 do not vary significantly compared to 2023 according to Annex 56, response to 2P1 RFI 9.

170 On a conservative basis, Fortenova's activities as small wholesaler (Cash & Carry) business have been accounted for in the purchasing's share of Fortenova (rather than in the upstream market) since small wholesalers generally procure daily consumer goods from large wholesalers. Thus, the size of the upstream markets excludes small wholesalers. In any event, should the upstream markets also include small wholesalers, the Parties' combined market shares would also remain well below 30%, under all plausible market definitions.

171 The table is limited to those markets with vertical links.

| Supply chain level | Country | Fruit / Vegetable | Type | Combined market share (%) | Fortenova's purchasing share (%) |
|---|---|---|---|---|---|
| **purchasing share** | | | *Citrus fruits* | [10-20]% | [20-30]% |
| | | | *Melons* | [10-20]% | [10-20]% |
| | | | *Tropical fruits* | [10-20]% | [10-20]% |
| | | | *Others* | [0-5]% | [0-5]% |
| | | **Vegetable** | **Overall** | **[10-20]%** | **[10-20]%** |
| | | | *Root vegetables* | [10-20]% | [10-20]% |
| | | | *Leaf and stalk vegetables* | [10-20]% | [10-20]% |
| | | | *Bulb vegetables* | [10-20]% | [10-20]% |
| | | | *Tomatoes* | [20-30]% | [10-20]% |
| | | | *Potatoes* | [5-10]% | [10-20]% |
| | | | *Other nightshade and fruit vegetables* | [20-30]% | [20-30]% |
| | | | *Legumes* | [0-5]% | [5-10]% |
| | | | *Others* | [10-20]% | [20-30]% |
| | **Slovenia** | **Fruit** | **Overall** | **[5-10]%** | **[10-20]%** |
| | | | *Bananas* | [10-20]% | [10-20]% |
| | | | *Deciduous fruits* | [0-5]% | [10-20]% |
| | | | *Berries and soft fruits* | [5-10]% | [10-20]% |
| | | | *Stone fruits* | [10-20]% | [20-30]% |
| | | | *Citrus fruits* | [5-10]% | [5-10]% |
| | | | *Melons* | [10-20]% | [10-20]% |
| | | | *Tropical fruits* | [5-10]% | [5-10]% |
| | | | *Others* | [0-5]% | [5-10]% |
| | | **Vegetable** | **Overall** | **[0-5]%** | **[5-10]%** |
| | | | *Root vegetables* | [0-5]% | [5-10]% |
| | | | *Leaf and stalk vegetables* | [0-5]% | [5-10]% |
| | | | *Bulb vegetables* | [0-5]% | [10-20]% |
| | | | *Tomatoes* | [5-10]% | [10-20]% |
| | | | *Potatoes* | [0-5]% | [5-10]% |
| | | | *Other nightshade and fruit vegetables* | [10-20]% | [10-20]% |
| | | | *Legumes* | [0-5]% | [0-5]% |
| | | | *Others* | [0-5]% | [5-10]% |

*Source: Response to 2P1 RFI 9, Annex 56, Response to 2P1 RFI 10, Annex 57.*

(143) As shown above, the Parties' market shares (upstream) and their corresponding purchasing shares (downstream) remain below 30% under any plausible market definition for the wholesale supply of fresh fruits and vegetables in Croatia and Slovenia. As such, these vertical links fall within the scope of paragraph (5)(d)(ii)(bb) of the simplified notice. The market investigation has not elicited any result that would put into question the consequent lack of serious doubts.

5.5.3.1. Input foreclosure

(144) The results of the Commission's market investigation suggest that the merged entity will not have the ability to foreclose other food retailers of daily consumer goods in Croatia and Slovenia from access to sufficient wholesale supply of fresh fruits and vegetables.

(145) As indicated in the tables above, the merged entity would have limited market shares on the upstream market, well below 30% under all possible segmentations. Indeed, this remains the same even when looking into even narrower segmentations of the different categories of fruits and vegetables.[172]

(146) The limited market shares have also been confirmed by the market investigation.[173] A large majority of responding retailers of food daily consumer goods in Croatia and Slovenia confirmed they have sufficient alternative wholesale suppliers for all categories of fruits and vegetables.[174] Most responding retailers named a number of additional suppliers, for each product category, among others for Slovenia Atlantic trade d.o.o., Vočar Ljubljana d.o.o., Presad d.o.o., Medex trade d.o.o., Be life d.o.o. and for Croatia PODRAVKA d.d., WILHELM REUSS GmbH & Co. KG, Nutrifit food d.o.o., Brinker food d.o.o. [175]

(147) Furthermore, none of the responding retailers overall expects a negative effect from the Transaction on their activities.[176] In addition, a majority of the responding retailers expressing a view do not expect a negative impact of the Transaction on the retail of food daily consumer goods in terms of price, quality, choice or innovation in Croatia and Slovenia.[177]

(148) In view of the foregoing, the Commission takes the view that the new entity would have no ability to foreclose competing retailers downstream by restricting their access to sufficient wholesale supply of food daily consumer goods in Croatia or Slovenia.

(149) Because the criteria that have to be fulfilled for an input foreclosure scenario to raise serious doubts are cumulative, it can be concluded that the Transaction does not raise serious doubts as to its compatibility with the internal market as a result of input

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172 Market shares remain below 30% even when looking into the different categories of fruits and vegetables, for fruits namely bananas, deciduous fruits, berries/soft fruits, stone fruits, citrus fruits and others; for vegetables namely root vegetables, fungi, stem vegetables, leaf and leafstalk vegetables, bulb vegetables, head/flower vegetables, tomatoes, potatoes, other nightshade and fruit vegetables, legumes, and others, Response to 2P1 RFI 9, Annex 56.

173 Questionnaire Q1 to food wholesalers, question C1 and D1.

174 Questionnaire Q3 to food retailers, question B11, B14, and B17.

175 Questionnaire Q3 to food retailers, question B13, B16, and B19.

176 Questionnaire Q3 to food retailers, question E.1.

177 Questionnaire Q3 to food retailers, question C.14 and D13.

foreclosure for this vertical link, without having to assess the incentive to foreclose or the impact thereof.

5.5.3.2. Customer foreclosure

(150) The results of the investigations suggest that the merged entity will not have the ability to foreclose other wholesalers of fresh fruits and vegetables in Croatia and Slovenia from access to retail distribution of daily consumer goods.

(151) While market shares downstream around local catchment areas of modern distribution channel outlets (such as supermarkets, hypermarkets, and discount stores) and small-format stores (such as convenience stores, kiosks, specialised outlets) of the merged entity can be high in several regions, procurement of daily consumer goods is done on a national level[178] and as indicated in the tables above, the merged entity would have limited market shares on a national procurement market for fresh fruits and vegetables[179], even when further distinguishing (i) between fresh fruits and fresh vegetables, (ii) within each of these categories of fruits and vegetables, with market share below 30%.[180]

(152) This has also been confirmed by the market investigation. A large majority of wholesalers expressing a view confirmed the existence of sufficient alternative customers for all of these product categories, both in Croatia and Slovenia.[181] Indeed, the market investigation confirmed the presence of other consumer goods retailers such as Interspar/Spar, Tuš, Hofer, Lidl, Euro Spin, and E.Leclerc in Slovenia and Lidl, Tommy, Plodine, Euro Spin, Interspar/Spar, and Bakmaz in Croatia.

(153) Furthermore, none of the wholesalers of fresh fruits and vegetables expect a negative impact on their activities,[182] on wholesale supply of fresh fruits and vegetables in Croatia and Slovenia neither in terms of price, nor quality, choice or innovation.[183]

(154) In view of the above, the Commission takes the view that the new entity will not have the ability to foreclose competing wholesalers of food daily consumer goods by restricting their access to Fortenova's stores in Croatia or Slovenia.

(155) Because the criteria that have to be fulfilled for a customer foreclosure scenario to raise serious doubts are cumulative, it can be concluded that the Transaction does not raise serious doubts as to its compatibility with the internal market as a result of customer foreclosure for this vertical link, without having to assess the incentive to foreclose or the impact thereof.

5.5.3.3. Conclusion

(156) For the reasons above, the Commission concludes that the vertical link arising from the Transaction between the wholesale supply of fresh fruits and vegetables in Croatia and Slovenia (upstream) and the retail distribution of daily consumer goods in these

178 See section 5.2.5 on the market definition for procurement of daily consumer goods.

179 On a national level, Fortenova's market shares on the market for retail distribution of daily consumer goods would remain below 30%, even when considering different categories of fruits and vegetables, see Short Form CO, Annex 41.

180 Short Form CO, Annex 21.

181 Questionnaire Q1 to food wholesalers, question C12 and D11.

182 Questionnaire Q1 to food wholesalers, question E1.

183 Questionnaire Q1 to food wholesalers, question C14 and D13.

countries (downstream) does not raise serious doubts as to its compatibility with the internal market as a result of input or customer foreclosure.

*5.5.4. Production and supply of sweet spreadable products and supply of non-perishable vegetables (upstream) / retail distribution of daily consumer goods (downstream)*

(157) The Transaction gives rise to vertical links between:

(a) PV Group is active in the production and supply of sweet spreadable products and non-perishable vegetables through its subsidiary Naturala in Croatia and Slovenia;

(b) Fortenova's activities for the retail distribution of daily consumer goods in Croatia and Slovenia (downstream): Fortenova operates a network of supermarkets and other modern trade retail outlets in Croatia (Konzum / Tisak) and Slovenia (Mercator) in which it sells daily consumer goods, including sweet spreadable products and non-perishable vegetables.

(158) The table below provides an overview of the Parties' market shares (upstream) and their corresponding purchasing shares for sweet spreadable products and non-perishable vegetables in Croatia and Slovenia under all plausible market definitions in 2022.

**Table 12 – Production and supply of sweet spreadable products and supply of non-perishable vegetables: Croatia and Slovenia (in value,[184] 2022)** [185]

| 2022 | Type | PV Group's market shares | Fortenova's purchasing shares |
|---|---|---|---|
| **Croatia** | **Sweet spreadable products**[186] | [10-20]% | [20-30]% |
| | **Non-perishable vegetables**[187] | [20-30]% | [10-20]% |
| **Slovenia** | **Sweet spreadable products**[188] | [0-5]% | [10-20]% |
| | **Non-perishable vegetables**[189] | [0-5]% | [20-30]% |

*Source: Short Form CO, Annex 21, as updated by Annex 58, 2P1 RFI 11*

184 The data reported in the table for preserved food is in value as the Parties do not have procurement shares in volume due to the absence of third-party data sources for the calculation of procurement market sizes in volume (response 2P1 RFI7, question 3).

185 Data in 2021 and 2023 are not significantly different data 2023 according to Annex 58, response to 2P1 RFI 11.

186 PV Group's market shares are below 30% under any plausible market definition, even considering a segmentation by private label and branded product and considering a split by sales channel, response 2P1 RFI8. Market shares are below 30% even when considering a hypothetical market segment for jams, bakery fillings or compote even under any possible further segregation into private labels and branded products, Notifying Party's response to question 1, 2P1 RFI 11.

187 PV Group's market shares are below or would not significantly exceed 30% for the production and supply of non-perishable vegetables segmented (i) by type of vegetable, (ii) by type of packaging and (iii) by sale channel, Notifying Party's response to question 2(4) 2P1 RFI 11.

188 PV Group's market shares are below 30% under any plausible market definition, even considering a segmentation by private label and branded product and considering a split by sales channel, response 2P1 RFI8. Market shares are below 30% even when considering a hypothetical market segment for jams, bakery fillings or compote even under any possible further segregation into private labels and branded products, Notifying Party's response to question 1, 2P1 RFI 11.

189 PV Group's market shares are below 30% for the production and supply of non-perishable vegetables segmented (i) by type of vegetable, (ii) by type of packaging and (iii) by sale channel, response to question 2, 2P1 RFI 11.

5.5.4.1. Input foreclosure

(159) The results of the investigations suggest that the merged entity will not have the ability to foreclose other food retailers of daily consumer goods in Croatia and Slovenia from sufficient access to sweet spreadable products and non-perishable vegetables.

(160) First, as shown in Table 12 above and according to the Notifying Party's estimates, PV Group's market shares for production and supply of sweet spreadable products and non-perishable vegetables in Croatia and Slovenia remain below 30%.

(161) The market investigation did not provide any result that would put into question the reliability of these estimates. A large majority of retailers confirmed that sufficient alternatives will remain available for the procurement of these products.[190] Most responding retailers named a number of additional suppliers, for each product category, among others for Slovenia Eta Kamnik d.o.o, Mabit d.o.o., Conserve Italia, Ahac d.o.o., Mlinotest d.o.o. and for Croatia Podravka, ZMH Horvat d.o.o., Dodelk agro d.o.o., Božjakovin d.d., Agro Krnjak d.o.o.

(162) Therefore, the Commission takes the view that the new entity would have no ability to foreclose competing retailers downstream by restricting their access to sweet spreadable products and non-perishable vegetables in Croatia or Slovenia.

(163) Because the criteria that have to be fulfilled for an input foreclosure scenario to raise serious doubts are cumulative, it can be concluded that the Transaction does not raise serious doubts as to its compatibility with the internal market as a result of input foreclosure for this vertical link, without having to assess the incentive to foreclose or the impact thereof.

5.5.4.2. Customer foreclosure

(164) The results of the investigations suggest that the merged entity will not have the ability to foreclose producers of sweet spreadable products and non-perishable vegetables in Croatia and Slovenia from sufficient access to retail distribution of daily consumer goods.

(165) As shown in Table 12 above and according to the Notifying Party's estimates, Fortenova's purchasing shares for sweet spreadable products and non-perishable vegetables remain below 30% under any plausible market definition.

(166) Overall, the results of the market investigation are consistent with the market share estimates submitted by the Parties. It confirmed the existence of several significant alternative customers for sweet spreadable products and non-perishable vegetables in Croatia and Slovenia. Indeed, as mentioned in the section above, the market investigation confirmed the presence of several other retailers of daily consumer goods such as Interspar/Spar, Tuš, Hofer, Lidl, Euro Spin, and E.Leclerc in Slovenia and Lidl, Tommy, Plodine, Euro Spin, Interspar/Spar, and Bakmaz in Croatia.

(167) In view of the above, the Commission takes the view that the new entity will not have the ability to foreclose competing producers of sweet spreadable products and non-perishable vegetables by restricting their access to Fortenova's stores in Croatia or Slovenia.

[190] Questionnaire Q3 to retailers, questions B.17.

(168) Because the criteria that have to be fulfilled for a customer foreclosure scenario to raise serious doubts are cumulative, it can be concluded that the Transaction does not raise serious doubts as to its compatibility with the internal market as a result of customer foreclosure for this vertical link, without having to assess the incentive to foreclose or the impact thereof.

5.5.4.3. Conclusion

(169) For the reasons above, the Commission concludes that the vertical link arising from the Transaction between the production and supply of sweet spreadable products and non-perishable vegetables (upstream) and the retail distribution of daily consumer goods (downstream) does not raise serious doubts as to its compatibility with the internal market as a result of input or customer foreclosure.

*5.5.5. Wholesale supply of non-food daily consumer goods (upstream) / retail distribution of daily consumer goods (downstream)*

(170) The Transaction gives rise to vertical links between:

(a) PV Group's activities for the wholesale supply of non-food daily consumer goods in Croatia and Slovenia (upstream): on this market, PV Group is active through its subsidiary Kenty which is a large wholesaler of non-food daily consumer goods, including household products, electrical appliances, toys, clothing / footwear, as well as sports and leisure products;

(b) Fortenova's activities for the retail distribution of daily consumer goods in Croatia and Slovenia (downstream): Fortenova operates a network of supermarkets and other modern trade retail outlets in Croatia (Konzum / Tisak) and Slovenia (Mercator) in which it sells daily consumer goods, including non-food products, in particular household products, electrical appliances, toys, clothing / footwear, as well as sports and leisure products.

(171) The table below provides an overview of the Parties' market shares (upstream) and their corresponding purchasing shares for the wholesale supply of non-food daily consumer goods in Croatia and Slovenia under all plausible market definitions in 2022:[191]

[191] As shown in the table below, the Parties' market shares (upstream) and their corresponding purchasing shares (downstream) remain below 30% under any plausible market definitions for the wholesale supply of non-food daily consumer goods in Croatia and Slovenia. As such, these vertical links fall within the scope of paragraph (5)(d)(ii)(bb) of the simplified notice.

**Table 13 – Wholesale supply of non-food daily consumer goods: Croatia and Slovenia (in value,[192] 2022)[193]**

| 2022 | Non-food daily consumer goods | PV Group's market shares | Fortenova's purchasing shares |
|---|---|---|---|
| **Croatia** | ***Non-food*** | [0-5]% | [10-20]% |
| | ***Household***[194] | [0-5]% | [10-20]% |
| | ***Electrical appliances*** | [0-5]% | [5-10]% |
| | ***Toys and games*** | [5-10]% | [10-20]% |
| | ***Clothing / Footwear*** | [0-5]% | [5-10]% |
| | ***Sporting goods and camping*** | [10-20]% | [10-20]% |
| **Slovenia** | ***Overall*** | [0-5]% | [10-20]% |
| | ***Household***[195] | [0-5]% | [10-20]% |
| | ***Electrical appliances***[196] | [0-5]% | [5-10]% |
| | ***Stationery*** | [0-5]% | [20-30]% |
| | ***Clothing / Footwear*** | [0-5]% | [0-5]% |

*Source: Short Form CO, Annex 21*

5.5.5.1. Input foreclosure

(172) The results of the investigations suggest that the merged entity will not have the ability to foreclose other food retailers of daily consumer goods in Croatia and Slovenia from access to wholesale supply of non-food daily consumer goods.

(173) As shown in Table 13 above and according to the Notifying Party's estimates, PV Group's market shares for the wholesale supply of non-food daily consumer goods in Croatia and Slovenia remain below 30% under any plausible market definition.

(174) The market investigation did not provide any indication that would put into question the reliability of these market share estimates and consequent lack of market power.[197] The

192 The Parties are not aware of third-party sources that would allow to calculate reliable procurement market sizes in volume.

193 The Parties do not have the corresponding data for 2021 and 2023 but confirmed that their market shares have not significantly changed in 2021 and 2023 compared to 2022 (response to 2P1 RFI4, question 3). This is consistent with the overall results of the market investigation (Questionnaire Q4 to non-food wholesalers, questions B.8 and B.10).

194 The Parties do not have market data distinguishing household products between DIY, home improvement and garden centers, as well as for cookware products, furnishings and household goods. The Nielsen data used by the Parties to calculate their market shares only contain data for 'household' products. However, the Notifying Party confirmed that PV Group's market share for the wholesale supply of any sub-category of the household segment would be well below 5%. Likewise, the Notifying Party confirmed that the share of procurement by Fortenova would in any event remain well below 30% on any sub-category of 'household' products (response to 2P1 RFI2, question 3(a)).

195 See footnote 194 above.

196 The Nielsen data used by the Parties to calculate their market shares only contain data for 'electrical appliances' and not for 'electrical products' but the Notifying Party confirmed that PV Group's market share for the wholesale supply of any sub-category of the household segment would be well below 5%. Likewise, the Notifying Party confirmed that the share of procurement by Fortenova would in any event remain well below 30% on any sub-category of electric appliances (response to 2P1 RFI2, question 3(b)).

197 All respondents who expressed an opinion in the course of the market investigation confirmed that the market share of PV Group (including Kenty) remains below 30% for all types of non-food daily consumer goods in Slovenia and for most of them in Croatia (Questionnaire Q4 to non-food wholesalers, questions B.7-1 to B.7-4). The only exceptions for which some market respondents indicated that PV Group may have a market share equal or above 30% in Croatia concern the wholesale supply of household product, toys and sports and leisure. However, for these product categories, the market investigation also confirmed that at least 3 to 5 other wholesalers will remain active in Croatia (Questionnaire Q4 to non-food

retailers who expressed an opinion in the course of the market investigation confirmed that PV Group (including Kenty) is not among their main wholesale suppliers of non-food daily consumer goods in Croatia and Slovenia[198] and that sufficient alternatives will remain available for the procurement of these products.[199]

(175) Therefore, the Commission takes the view that the merged entity would have no ability to foreclose competing retailers downstream by restricting their access to the wholesale supply of non-food daily consumer goods in Croatia or Slovenia.

(176) Because the criteria that have to be fulfilled for an input foreclosure scenario to raise serious doubts are cumulative, it can be concluded that the Transaction does not raise serious doubts as to its compatibility with the internal market as a result of input foreclosure for this vertical link, without having to assess the incentive to foreclose or the impact thereof.

5.5.5.2. Customer foreclosure

(177) The results of the investigations suggest that the merged entity will not have the ability to foreclose other wholesalers distributing non-food daily consumer goods in Croatia and Slovenia from access to retailers.

(178) *First*, as shown in Table 13 above and according to the Notifying Party's estimates, Fortenova's purchasing shares for the wholesale supply of non-food daily consumer goods in Croatia and Slovenia remain below 30% under any plausible market definition. Overall, the results of the market investigation are consistent with the market share estimates submitted by the Parties and a majority of wholesalers having expressed an opinion confirmed that the Parties' market shares remain below 30%.[200]

(179) *Second*, the results of the market investigation confirmed the existence of several significant alternative customers for the supply of non-food daily consumer goods in Croatia and Slovenia, including for electrical appliances, household products, toys, clothing and footwear.[201] In particular, the results of the market investigation confirmed the existence in Croatia of at least five significant alternative customers for clothing and footwear, eleven for electrical appliances and twelve for household products.[202] Likewise, in Slovenia, the results of the market investigation confirmed the existence of at least seven significant alternative customers for the supply of clothing and footwear, thirteen for household products and six for toys.[203]

(180) In view of the above, the Commission takes the view that the merged entity will not have the ability to foreclose competing wholesalers of non-food daily consumer goods by restricting their access to Fortenova's stores in Croatia or Slovenia. In any event, the

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wholesalers, questions B.1 and B.2) and that customers will keep sufficient alternative suppliers (Questionnaire Q4 to non-food wholesalers, questions B.13 and B.14).

198 Questionnaire Q3 to retailers, questions B.19.

199 Questionnaire Q3 to retailers, questions B.20.

200 For completeness, it can be noted that a minority of the wholesalers who expressed an opinion in the course of the market investigation indicated that the purchasing share of Fortenova exceeds 30%, (i) in Croatia for the procurement of (a) electrical appliances, (b) household products, (c) clothing and footwear; and (ii) in Slovenia for the procurement of (a) household products, (b) toys, (c) clothing and footwear (Questionnaire Q4 to non-food wholesalers, questions B.9-1 and B.9-2).

201 Questionnaire Q4 to non-food wholesalers, questions B.11 and B.12. Questionnaire Q3 to retailers, question B.19.

202 Questionnaire Q4 to non-food wholesalers, questions B.11.

203 Questionnaire Q4 to non-food wholesalers, questions B.12.

Commission considers that such strategy would have no significant impact on the upstream market for the wholesale supply of non-food daily consumer goods.

(181) Because the criteria that have to be fulfilled for a customer foreclosure scenario to raise serious doubts are cumulative, it can be concluded that the Transaction does not raise serious doubts as to its compatibility with the internal market as a result of customer foreclosure for this vertical link, without having to assess the incentive to foreclose or the impact thereof.

5.5.5.3. Conclusion

(182) For the reasons above, the Commission concludes that the vertical link arising from the Transaction between the wholesale supply of non-food daily consumer goods in Croatia and Slovenia (upstream) and the retail distribution of daily consumer goods (downstream) does not raise serious doubts as to its compatibility with the internal market as a result of input or customer foreclosure.

## 6. CONGLOMERATE EFFECTS

(183) During the market investigation, the Interested Third Parties also referred to the existence of conglomerate links between the activities of PV Group (through its subsidiary PPD) for the supply of natural gas (in Croatia and Slovenia) and electricity (in Croatia) and the activities of Fortenova for the production of food products and the retail distribution of daily consumer goods (in Croatia and Slovenia).[204]

(184) Conglomerate mergers are mergers between firms that are in a relationship which is neither purely horizontal (as competitors in the same relevant market) nor vertical (as supplier and customer). Conglomerate links arise when the parties to a concentration are active in closely related markets, for instance because they supply complementary products to the same set of customers or because they supply a range of products that is generally purchased by the same set of customers for the same end use.[205]

(185) In light of this definition, PV Group and Fortenova do not operate on closely related markets with respect to the supply of natural gas and electricity, on the one hand, and the retail distribution of daily consumer goods, on the other hand.

(186) With respect to electricity, PV Group exclusively supplies large industrial customers and does not supply the same customers as those to whom Fortenova distributes daily consumer goods (i.e. end consumers).[206]

(187) As regards natural gas, PV Group is active in the retail supply of gas, however the customers of PV Group on this market do not purchase gas together with daily consumer goods and the specific characteristics of these products would make it impossible for the merged entity to tie or bundle these products. In any event, the market shares of PV Group on the retail market of gas remain limited in Croatia and Slovenia (respectively [20-30]%[207] and <[0-5]%)[208] like Fortenova's market share for the retail distribution of daily consumer goods at national level in these two countries

204 Economic Submission, section 8.3.
205 Non-Horizontal Guidelines, paragraph 91.
206 PV Group exclusively supplies electricity to large industrial customers that are connected to high and medium voltage grid (Short Form CO, section 10.9).
207 Short Form CO, section 10.10.
208 Response 2P1 RFI10, question 1.

(respectively [20-30]% and [20-30]%).[209] This is consistent with the results of the market investigation which confirmed that Fortenova will continue to face competition from a number of alternative retailers of daily consumer goods in Croatia and Slovenia.[210]

(188) In view of the foregoing, the Commission concludes that the Transaction does not give rise to conglomerate relationships between the Parties' activities for the supply of natural gas and electricity on the one hand, and the retail distribution of daily consumer goods on the other hand, and in any event, any conglomerate link between these activities would not raise serious doubts as to the compatibility of the Transaction with the internal market and the EEA agreement.

## 7. CONCLUSION

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

*For the Commission*

*(Signed)*
*Margrethe VESTAGER*
*Executive Vice-President*

209 Response 2P1 RFI11, question 11.

210 Questionnaire Q1 to food wholesalers, question C12 and D11 and Questionnaire Q4 to non-food wholesalers, questions B.11.