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 Where possible the information omitted has been replaced by ranges of figures or a general description.

To the notifying party

Subject: **Case M.9369 – PAI Partners/Wessanen**
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1] and Article 57 of the Agreement on the European Economic Area[2]

Dear Sir or Madam,

(1) On 23 July 2019, the European Commission received notification of a concentration pursuant to Article 4 of the Merger Regulation which would result from a proposed transaction by which PAI Partners SAS ("PAI Partners", France) intends to acquire sole control, within the meaning of Article 3(1)(b) of that regulation, over the whole of Koninklijke Wessanen N.V. ("Wessanen", Netherlands) (the "Transaction"). In this Decision PAI Partners is also referred to as 'the Notifying Party'. PAI Partners and Wessanen are collectively referred to as the "Parties".

1 OJ L 24, 29.1.2004, p. 1 (the "Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

2 OJ L 1, 3.1.1994, p. 3 (the "EEA Agreement").

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1. THE PARTIES AND THE TRANSACTION

(2) PAI Partners is a European private equity firm headquartered in Paris. It is an independent company, owned by its partners, which manages and/or advises dedicated private equity funds with a value of more than EUR 12.3 billion.

(3) PAI Partners' current buyout funds include PAI Europe IV, PAI Europe V, PAI Europe VI and PAI Europe VII, as well as several co-investment funds. PAI Partners seeks to acquire Wessanen through PAI Europe VII.

(4) PAI Partners' portfolio includes Labeyrie Fine Foods SAS ("Labeyrie", France) and Refresco Group N.V. ("Refresco", the Netherlands), which are managed by PAI Europe VI. Labeyrie is active globally in the supply of fine and gourmet foods including pâtés, foie gras, crustaceans, fish, olives and other foods, and owns seven different brands: Labeyrie, Delpierre, Blini, L'Atelier Blini, Père Olive, Comptoir Sushi and Ovive. Refresco is active in the bottling of different types of drinks (both non-alcoholic beverages and alcoholic beverages, and both carbonated soft drinks and non-carbonated soft drinks) in different types of packaging (e.g. in carton, aseptic PET ("APET"), cans and glass).

(5) Wessanen is a publicly listed company active in the supply of food products (notably in Germany, Spain, France, Italy, Luxembourg, the Netherlands and the United Kingdom). Since 2015, Wessanen focuses exclusively on healthy and sustainable food.

(6) The Transaction will take place through a recommended public takeover offer under Dutch law. [Details on the creation of a bidding vehicle ("Bidco") between PAI Partners and a "Co-Investor"][3]

(7) On 10 April 2019, Bidco and Wessanen entered into a merger agreement pursuant to which Bidco agreed to make a recommended full public offer for all issued and outstanding ordinary shares in the capital of Wessanen.

(8) Upon closing of the public offer, PAI Partners and the Co-Investor will enter into a shareholders' agreement further describing the rights attached to their shares (the "SHA"). The SHA grants PAI Partners the possibility of exercising decisive influence over Wessanen for the following reasons: […][4][5][6].

(9) […].[7][8] [9][10][11]

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3 […].
4 SHA, Section 6.2.12.
5 SHA, Section 4.
6 SHA, Section 6.1.
7 Schedule 7.1.1(b) of the SHA contains a […]. Item (c) of this list refers to *"adopting the Business Plan"*.
8 Shareholders' agreement, Section 11.2.3. and Schedule 7.1.1(c).
9 SHA, Schedule 7.1.1(c) contains a list of matters that […].
10 SHA, Section 6.2.14.
11 Shareholders' agreement, Section 6.2.12.

(10) It follows that PAI Partners will solely and indirectly control Wessanen upon completion of the Transaction. Therefore, the Transaction would result in a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

2. UNION DIMENSION

(11) The Parties have a combined aggregate worldwide turnover of more than EUR 5 000 million (PAI Partners: EUR 12 183.9 million; Wessanen: EUR 628.4 million).[12] Each of them has a Union-wide turnover in excess of EUR […] (PAI Partners: EUR […]; Wessanen: EUR […]), but neither of the Parties achieves more than two-thirds of their aggregate Union-wide turnover within one and the same Member State. The concentration therefore has a Union dimension within the meaning of Article 1(2) of the Merger Regulation.

3. MARKET DEFINITION

3.1. Introduction

(12) Both parties are active in the supply of various food products to retailers in different European countries (Section 3.2). The Parties are also active in the market for bottling and supply of non-alcoholic beverages, which gives rise to horizontal overlaps and vertical relationships (Section 3.3).

3.2. Supply of food products

(13) The Parties activities, leading to putatively affected markets, overlap in the supply of food products in France. This section discusses, first, possible market segmentations that can be made across all or most types of food and, second, the specific types of food that give rise to affected markets. The following market segmentations are considered cumulatively when assessing the likely competitive effects of the Transaction:

- Section 3.2.1 assesses the possible market segmentation between the supply to retailers of branded products, on the one hand, and private label products, on the other.

- Section 3.2.2 assesses the possible segmentation between the supply of traditional food and the supply of organic and healthy food; within the supply of organic and healthy food, it will also assess the possible distinction between the specific retail channels, i.e. the supply to health food stores and to conventional retail outlets such as supermarkets and hypermarkets.

- Sections 3.2.3 to 3.2.8 will assess the markets by type of food, where the Transaction gives rise to affected market under the narrowest possible definition. All affected markets would be in France. In particular, the following markets regarding the supply to retailers will be discussed: smoked salmon (Section 3.2.3), secondary processed herring (Section 3.2.4), secondary processed mackerel (Section 3.2.4), savoury bread toppings (Section 3.2.5), pre-packaged consumable olives (Section

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

3.2.6), bite-size savoury snacks (Section 3.2.7), and bread substitutes (Section 3.2.8).[13]

3.2.1. Possible segmentation of private label and branded products

(14) PAI Partners supplies both private label and branded food products, while, for the considered product markets, Wessanen exclusively supplies branded food products.

(15) The Parties submit that, for all reportable markets, the relevant branded products are competitively constrained by private label products and that, as such, they both form part of the same product market.[14]

(16) In this regard, the Parties first submit that private label products and branded products are produced on the same production lines and do not require significant investments in order to switch between the production of the two types of products.[15] Second, the Parties argue that private label represents an important share of each of the reportable markets[16], which significantly increases the countervailing buying power of retailers during contract negotiations with suppliers, such as the Parties.[17] Third, the Parties submit that their branded products compete for shelf space with private label products and that they take private label into account when making strategic pricing and/or marketing decisions.[18] Fourth, private label products carry different quality ranges in their assortment that are benchmarked against the quality standard of branded products.[19]

(17) Some of the Parties' internal documents show that they regard branded products and private label products as belonging to the same product market.[20] The Parties also submit that a number of third party market reports (IRI, Nielsen, ILEC and Kantar)

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13 There are other horizontal overlaps between the activities of the Parties. However, based on the data submitted by the Parties, they do not give rise to affected markets and are therefore not further discussed in the Decision. Regarding food products, these are processed meat in France and Belgium, sweet bakery goods in France, breakfast cereals in France, spreadable cheese in France, jams in France, compote and fruits purées in France, sale of ready-made meals, yoghurts and desserts in France, where the combined market share of the Parties is below 20%. As regards non-food products, the Parties supply fragrances and beverages, where the combined market share is also below 20% (Parties' response to the Commission's request for information RFI 14, question 2 and Form CO, paragraphs 332 et seq.; annex 23 (revised 21 August 2019)).

14 Form CO, paragraphs 355 and 356.

15 Form CO, paragraph 356(a).

16 Namely the markets for (i) secondary processed meat; (ii) bakery products; (iii) breakfast cereals; (iv) smoked salmon; (v) fresh salmon; (vi) secondary processed herring; (vii) secondary processed mackerel; (viii) tinned sardines; (ix) olives; (x) savoury bread toppings; (xi) bite-size savoury food; (xii) jams; (xiii) compote; and (xiv) dairy and dairy-alternative.

17 Form CO, paragraph 356(b).

18 Form CO, paragraph 356(c).

19 Form CO, paragraph 356(d).

20 Labeyrie's monthly financial results (Form CO, annex 13) show that private label is taken into account for the internal assessment of its market position on various markets. By way of example, slide 5 of this document indicates that *"[t]the smoked salmon remains a declining market […], mainly due to private labels"*.

take into account private label products for the calculation of the market share of branded products for the relevant markets.[21]

(18) In a previous decision concerning frozen snacks, the Commission considered that private label frozen snacks and branded frozen snacks belong to a single differentiated product market where they exert on each other some degree of competitive pressure.[22] In another decision concerning the markets for mustard, mayonnaise, salad sauces and olive oil, the Commission considered branded products and private label products as part of a single market despite the existing price gap between the two and noted that market shares gained by private labels were to the expense of branded products.[23] In other decisions, the Commission took account of the market share represented by private label products on the total market.[24]

(19) The market investigation provided some indications suggesting that branded products and private label products may belong to separate product markets. A majority of customers responding to the market investigation indicated that they organise separate selection procedures for purchasing branded products and private label products.[25] Namely, branded products tend to be sourced through bilateral negotiations while private label products tend to be sourced through tenders or even in-house production.[26] Some of these customers also stated that they have different internal teams in charge of negotiating the purchase of branded products and private label products.[27] One customer explained that it chooses branded products based on relevance of offer and brand notoriety.[28] Further, there is likely also a different price positioning for private label and branded products.[29]

(20) Some competitors who responded to the market investigation also indicated that their customers organise separate selection procedures between branded and private label products for some specific products.[30]

(21) At the same time, the market investigation provided indications that branded and private label products can belong to the same market. A majority of customers responding to the market investigation indicated that final consumers, who drive the retailers' demand for specific type of food products, do not perceive a difference in quality between branded products and private label products,[31] with possible variations depending on the specific product.[32]

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21 Form CO, paragraph 357(c). The Commission notes that the IRI reports used by the Parties to calculate market share data only provides figures at the retail level.

22 Case M.6321 – *Buitenfood/Ad Van Geloven Holding/JV*, recital 35.

23 Case M.1802 – *Unilever/Amora-Maille*, recital 29.

24 Case M.2302 – *Heinz/CSM*, recital 25 (in relation to sweet bread toppings); and Case M.2817 – *Barilla/BPL/Kamps*, recitals 29, 32 and 25 (in relation to bread substitutes).

25 Questionnaire Q1 to customers, question 5.

26 Questionnaire Q1 customers, questions 5 and 5.1.

27 Questionnaire Q1 to customers, question 5.

28 Questionnaire Q1 to customers, question 5.

29 Questionnaire Q1 to customers, question 5.

30 Questionnaire Q2 to competitors, question 5.

31 Questionnaire Q1 to customers, question 6.

32 Questionnaire Q1 to customers, question 6.

(22) In this regard, the Parties have expressed that it is uncommon for manufacturers to focus exclusively on private label products and that they are not aware of any manufacturer that exclusively produces private label products[33], which would indicate that suppliers may switch from supplying branded to private label products and the other way around.

(23) In light of the above considerations and taking account of the results of the market investigation, and given that the concentration would not raise serious doubts as to its compatibility with the internal market even under the narrowest plausible product market definition, the Commission will leave open the question whether branded and private label products belong to the same or separate markets.

3.2.2. Retail of organic food products

(24) Wessanen is active in the organic and health food products through its main brands in France Bjorg and Bonneterre.[34] PAI Partners, through Labeyrie, is mainly active in the supply of conventional food products, but also offers organic quality for some of its products.

(25) The Parties submit that organic products compared to non-organic (or conventional) products are priced higher and have higher production costs because they need to comply with the standards for organic food.[35] Second, consumers consider organic products healthier and better for environment or animal welfare.[36] Third, organic products are typically sold in different stores or on different shelves in the same retail outlet.[37] However, the Parties consider that while competition between different organic brands is higher than between organic and non-organic, both types of products compete.[38]

(26) The Parties also submit that they focus on different customers and sell their products to different outlets within the retail channel.[39] Labeyrie mainly sells to hyper- and supermarkets (conventional retail outlets). By contrast, Wessanen's products are sold on the dedicated organic shelves in the conventional retail outlets and in health food stores ("HFS").[40] The Parties submit that Bonneterre branded products are sold only in HFS, while Bjorg branded products are sold in the organic shelves of the conventional retail outlets.[41]

(27) In its previous decisions related to certain food products, the Commission considered whether organic and conventional products belong to the same market. In *Total*

33 Parties' response to the Commission's request for information RFI 12, question 37.4.

34 Form CO, Annex 10, page 10.

35 Parties' response to the Commission's request for information RFI 13, questions 4 (savoury bread toppings), 9 (bread substitutes), 15 (taramasalata), 18 (olives), 22 (bite-size products).

36 Parties' response to the Commission's request for information RFI 13, questions 4 (savoury bread toppings), 9 (bread substitutes), 15 (taramasalata), 18 (olives), 22 (bite-size products).

37 Parties' response to the Commission's request for information RFI 13, questions 4 (savoury bread toppings), 9 (bread substitutes), 15 (taramasalata), 18 (olives), 22 (bite-size products).

38 Parties' response to the Commission's request for information RFI 13, questions 4 (savoury bread toppings), 9 (bread substitutes), 15 (taramasalata), 18 (olives), 22 (bite-size products).

39 Form CO, paragraph 346 and parties' response to the Commission's request for information RFI 15, question 11.

40 Form CO, paragraph 346, section on closeness of competition.

41 Form CO, paragraph 346.

Produce/Dole Food Company, the Commission established that it was justified to define separate markets for organic bananas and conventional products[42], while in other cases it left the market definition open[43] or did not consider it necessary to define a separate product market for organic produce.[44]

(28) As highlighted in the internal documents of the Parties, the organic food market has been constantly growing: […].[45] However, it is still small compared to the conventional food retail.[46] Although the results of the market investigation in the present case suggest that organic and non-organic products are largely considered as alternatives,[47] there are also indications that organic food products may belong to a separate market. First, organic products are generally sold at a premium price compared to conventional products.[48] Second, in light of the growing demand for organic products and the increasing offer of organic versions of conventional products[49], organic and conventional products could be seen more as complements[50], rather than substitutes, for retailers supplying both product categories. Third, the presence of special retail outlets dedicated to organic food (health food stores) indicates that from a demand side perspective, conventional and organic products are at least for some retailers not interchangeable. However, the Commission also considers that the degree of substitutability may differ depending on product category and change in time.

(29) The main retail channels in France for retail of organic food products are conventional supermarkets and specialised health food stores. Based on the internal documents of the Parties, conventional retail stores have a share of approximately [40-50]% of all organic food retail, while [30-40]% of organic food sales go to health food stores.[51] Organic food in conventional retail chains can be found either on the dedicated organic shelves, where most of the organic products are placed, or in a shelf together with conventional non-organic products, but clearly labelled as organic.[52]

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42 See, for example, M.8829 – *Total Produce/Dole Food Company*, recital 37 (bananas).

43 See, for example, M.8150 – *Danone/The Whitewave foods company*, recitals 30, 35, 38 (yoghurt); M.6611 – *Arla Foods/Milk Link*, recitals 9-13 (milk); M.6850 – *Marine Harvest/Morpol*, recital 62 (salmon products).

44 See, for example, M.8829 – *Total Produce/Dole Food Company*, recital 179 (pineapples).

45 Form CO, Annex 11, page 137. See also Form CO, annex 10, page 11.

46 Form CO, annex 11, page 142: estimated that currently organic offer represents approx. [0-5]% of conventional retailers market.

47 Questionnaire Q1 customers, question 8 (smoked salmon), question 14 (vegetable toppings), and question 17 (bite-size savoury food products).

48 Form CO, annex 11, page 349 et seq.; Parties' response to the Commission's request for information RFI 12, questions 4 (savoury bread toppings), 9 (bread substitutes), 15 (taramasalata), 18 (olives), 22 (bite-size products), see also agreed non-confidential minutes of a call of 7 June 2019 with a customer.

49 Form CO, annex 10, page 15: considers France to be the fastest growing organic market, the growth triggered by the development of an organic offer in supermarkets and new stores opening in health food stores channel; Form CO annex 11: […].

50 See agreed non-confidential minutes of a call of 7 June 2019 with a customer submitting that an average customer is interested in organic and non-organic products; therefore the retail channel has to offer both of them.

51 Form CO, annex 11, pages 140 and 142; the remaining [10-20]% are attributed to *"direct sales"* and *"other"*.

52 Form CO, annex 11, page 151.

(30) Health food stores compared to conventional retailers have a wider range of organic products offered at a premium price.[53] Health food stores seek to differentiate from conventional retailers also by supplying different organic brands[54] and developing their own organic private labels.[55] For example, Wessanen has brands dedicated to conventional retail outlets (e.g. Bjorg) and other for health food stores (e.g. Bonneterre). A competitor explained that health food stores focus on different customers: conscious buyers of organic products tend to shop in specialised stores, while occasional consumers of organic products tend to choose products in the organic shelves of the conventional retail stores.[56] Competitors responding to the Commission's market investigation indicated that it is not possible to compete effectively with the same brand in health food stores and conventional retail outlets.[57] While not necessarily applicable in all cases, to all products and brands, the results of the market investigation suggest that different brands tend to be offered in HFS and conventional retail stores.[58] As one customer explained: *"No, brands are generally different (even if the supplier is the same) because consumer perceives organic shops as specialised organic outlets and does not expect to find the same brands as in conventional retail outlets*"[59]. A competitor also submitted: *"Health food stores want dedicated brands and products in order to avoid competition based on prices from supermarkets"[60]*. Accordingly, Wessanen has developed two different brands and different marketing strategy for the supply to the two retail channels, which constitute different set of customers.

(31) As a response to the growing demand for organic food products[61], French retail chains are developing private label products to cover a broad range of product categories and acquire existing or open new health food stores.[62] It is expected that conventional retail chains will keep gaining market share,[63] while health food store growth will slow down due to stronger competition.[64] It is also considered that conventional retailers by enlarging their offer want to appeal to health food stores consumers and that this business model will blur the lines between the two retail channels and increase competition.[65] While it is expected that organic food products

53 See for example, Form CO, annex 11, page 146 showing comparison for dairy alternatives and rice cakes.

54 Questionnaire Q2 to competitors, question 26.1.

55 Form CO, annex 11, page 155.

56 Agreed non-confidential minutes of a call of 20 May 2019 with a competitor.

57 Questionnaire Q2 to competitors, question 26.

58 Questionnaire Q1 to customers questions 25 and 25.1, as one customer noted, for example, that one of its baby food brands is distributed in both channels.

59 Questionnaire to customers Q1 question 25, French original reads: "*Non, les marques sont généralement différentes (même si le fournisseur reste le même) car le consommateur identifie les magasins d'alimentation naturelle comme des spécialistes du bio et ne s'attend pas à retrouver les mêmes marques dans les circuits généralistes*".

60 Questionnaire Q2 to competitors, question 26.1.; the French original reads: *"les magasins d'alimentation naturelle souhaitent des marques et des produits dédiés afin d'éviter la concurrence au niveau des prix de la part des supermarchès*".

61 Parties' response to the Commission's request for information RFI 8, annex 8 […], pages 31 and 143, and Form CO, annex 11, page 142: […].

62 Form CO, annex 11, page 142. For example, Casino group owns Naturalia HFS chain.

63 Form CO, annex 11, page 144.

64 Parties' response to the Commission's request for information RFI 8, annex 9 […], p. 6 and p. 21, and Form CO, annex 11, page 143.

65 Parties' response to the Commission's request for information RFI 8, annex 8 […], pages 31 and 143.

will play a larger role for conventional retailers, there is no indication that this will blur the distinction between the supply of organic and conventional food products.

(32) Along these lines, Wessanen's internal strategy documents explain: […].[66] […].[67]

(33) In light of the above considerations and taking account of the results of the market investigation, and given that the concentration would not raise serious doubts as to its compatibility with the internal market even under the narrowest plausible product market definition, the Commission will leave open the question whether organic and conventional food products belong to the same market. The Commission does not find that there are separate markets for the supply of organic products to conventional retail stores and health food stores.

3.2.3. Secondary processed salmon

(34) Secondary processed salmon includes the transformation of primary processed salmon into processed products, such as salmon portions, ready-made meals and smoked salmon.[68] In relation to secondary processed salmon, the Parties' activities, which give rise to a potentially affected market, overlap in the supply of smoked salmon in France.[69]

3.2.3.1. Commission's precedents

(35) The Commission considered in *Marine Harvest/Morpol* that the market for salmon farming and primary processing of salmon can be distinguished from the market for secondary processing of salmon.[70]

(36) Moreover, the Commission suggested that organic salmon and non-organic salmon may belong to separate product markets, due notably to the substantial differences in price, even if the exact market definition was left open.[71]

(37) As regards the possible distinction between the different types of secondary processed salmon, the market investigation in *Marine Harvest / Morpol* suggested that smoked salmon is often used as a festive product and is not consumed on the same occasion as fresh and frozen salmon.[72] However, the Commission ultimately left the relevant product market definition open.[73]

(38) As regards the relevant geographic market, the Commission considered in *Marine Harvest/Morpol* that it could not be excluded that the market for smoked salmon was national in scope.[74] The Commission took into account the different preferences and

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66 Parties' response to the Commission's request for information RFI 8, annex 9 […], pages 6 and 21.

67 Parties' response to the Commission's request for information RFI 8, annex 8 […], pages 31 and143.. See also Questionnaires Q1 to customers, questions 24-25 and Q2 to competitors, questions 24-26.

68 Case M.6850 – *Marine Harvest/Morpol*, recital 20.

69 Form CO, The combined market shares of the Parties for the supply of smoked salmon in Belgium, Spain and Luxembourg would be below 20%; and for secondary processed fresh salmon in France, the combined market shares of the Parties would be below 5%.

70 Case M.6850 – *Marine Harvest/Morpol*, recitals 29-34.

71 Case M.6850 – *Marine Harvest/Morpol*, recital 62.

72 Case M.6850 – *Marine Harvest/Morpol*, recital 66.

73 Case M.6850 – *Marine Harvest/Morpol*, recital 67.

74 Case M.6850 – *Marine Harvest/Morpol*, recitals 69-73.

different roles played by brands at Member State level. However, the Commission left the exact geographic definition open as it would not have changed the outcome of the competitive assessment in that case.

3.2.3.2. The Parties' view

(39) The Parties argue that there is a single relevant market for the sale of secondary processed salmon products and that the market should not be further segmented by processing type or between organic and non-organic secondary processed salmon products.[75]

(40) The Parties also submit that branded secondary processed salmon and private label products belong to the same market because private label products carry different quality ranges in their assortments and therefore exert competitive pressure on all types of branded products.[76] Accordingly, suppliers of branded products need to take competitive pressure from private labels into account when they determine strategy, pricing and marketing campaigns and vice versa.[77]

(41) As regards geographic market definition, the Parties do not express their view but submit market data on the national market basis.[78]

3.2.3.3. The Commission's assessment and conclusion

(42) On the one hand, the results of the market investigation do not support the Parties' view that there is one single relevant market for secondary processed salmon. All respondents to the Commission's market investigation have indicated that smoked salmon belongs to a different market than other secondary processed salmon products.[79] A customer responding to the Commission's request for information submitted: *"Smoked salmon is considered as a festive product and not as an everyday product such as prepared meal or fresh salmon".*[80]

(43) On the other hand, the market investigation in the present case suggests that organic smoked salmon and non-organic smoked salmon are largely considered by the Parties' customers as alternatives.[81]

(44) In light of the above considerations and taking account of the results of the market investigation, and given that the concentration would not raise serious doubts as to its compatibility with the internal market even under the narrowest plausible product market definition, the Commission will leave open the question whether smoked salmon belongs to a separate market, and whether the distinction between organic and non-organic secondary processed salmon would be justified.

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75 Form CO, paragraph 122.

76 Form CO, paragraph 126.

77 Form CO, paragraph 126.

78 Form CO, paragraphs 125-128.

79 Questionnaire Q1 to customers, question 7; questionnaire Q2 to competitors, question 9; see also the decision of the French national competition authority of 31 October 2013, n 13-DCC-157, paragraph 17, identifying that smoked salmon constitutes a distinct relevant product market.

80 Questionnaire Q1 to customers, question 7.1., *« Le saumon fumé est considéré comme un produit festif et non un produit plus quotidien comme peut l'être le plat cuisiné ou le saumon brut ».*

81 Questionnaire Q1 to customers, question 8.

(45) As regards the relevant geographic market, the market investigation in the present case suggests that the markets for smoked salmon and organic smoked salmon are national in scope.[82]

3.2.4. Secondary processed pelagic fish, in particular herring and mackerel

(46) Mackerel, herring and sardines are pelagic fish.[83] In relation to secondary processed pelagic fish, the Parties' activities, which give rise to a potentially affected market, overlap in the supply of secondary processed herring and secondary processed mackerel in France.[84]

(47) As regards secondary processed herring, PAI Partners sell marinated and smoked herring sold in the chilled department of the retail store, while Wessanen only sells smoked herring sold in the chilled department of the retail store.[85]

(48) As regards secondary processed mackerel, PAI Partners is active only in the supply of smoked mackerel sold in the chilled department of the retail store, while Wessanen sells smoked mackerel and one canned mackerel product in France.[86]

3.2.4.1. Commission's precedents

(49) The Commission considered that secondary processing of pelagic fish is a distinct market from primary processing and includes the transformation of primary processed pelagic fish into processed products, such as smoked fish and marinated fish.

(50) Further, the Commission considered that the secondary processing of pelagic fish could be segmented into separate markets according to pelagic fish species (i.e. mackerel, herring, sardines), since different species are processed with different production technology (smoking, marinating or canning) and because competitive conditions may differ for each species because of different supply quotas in the EEA.[87]

(51) As regards the geographic dimension of the relevant market, the Commission considered the national and the EEA dimension for the market of secondary processed pelagic fish.[88]

3.2.4.2. The Parties' view

(52) The Parties consider the relevant markets to be the market for (i) the sale of secondary processed herring products, and (ii) the sale of secondary processed

82 Questionnaire Q1 to customers, question 26.

83 Form CO, paragraph 129.

84 Form CO, paragraph 468: the parties are also active in the supply of tinned sardines in France and Belgium, however, based on the Parties' provided data, their combined market shares in this putative market in France would be below [0-5]% and in Belgium in any event below [10-20]% (due to limited sales, the Parties could not provide the total market estimate).

85 Form CO, paragraph 427 and Annex 23.

86 Form CO, paragraphs 440-441.

87 Case M.7035 – *Austevoll Seafood/Kvefi/JV*, recitals 13-16, 23 and 36.

88 Case M.7035 – *Austevoll Seafood/Kvefi/JV*, recital 24.

mackerel products.[89] The Notifying Party submits that the relevant market defined by the specific species of pelagic fish does not need to be further segmented by processing type, because pelagic fish such as herring and mackerel can be prepared in different styles (e.g. cooked, marinated, and smoked), and can be sold in different packaging (i.e. cans, plastic packaging, glass jars, etc.).[90] For example, smoked herring packaged in cans exerts a competitive constraint on herring packaged in plastic containers and sold in the daily fresh department of retail stores. Since both products are similar in terms of taste, texture and consumption occasion, they are substitutable from a consumer perspective.[91]

(53) Further, the Notifying Party submits that private label have a strong position on the market and referring to the same reasons as argued in relation to smoked salmon products consider that private label and branded products belong to the same market.[92]

(54) By referring to the Commission's decisional practice regarding secondary processed salmon, the Parties submit that the geographic market for secondary processed herring and mackerel products are national in scope or EEA wide.[93]

3.2.4.3. The Commission's assessment and conclusion

(55) The results of the market investigation suggest that the distinction between the pelagic fish species is relevant. In particular, the Parties' customers responding to the Commission's request for information considered that secondary processed herring is different from secondary processed mackerel.[94] For example, a customer submitted: *"Herring is often consumed prepared or in brine, while mackerel is more often consumed in canned"*.[95]

(56) As regards the potential distinction by type of processing, the majority of customers and competitors who responded to the Commission's request for information have submitted that canned herring or canned mackerel cannot be considered as alternatives for [fresh][96] smoked or marinated herring or mackerel respectively.[97] As one customer explained: *"Consumers do not consider these products as potential alternatives, as they meet different needs. Canned products are intended to be kept*

89 Form CO, paragraph 136.
90 Form CO, paragraph 136.
91 Form CO, paragraph 137.
92 Form CO, paragraph 140.
93 Form CO, paragraph 135.
94 Questionnaire Q1 to customers, question 9, questionnaire Q2 to competitors, question 9.
95 Questionnaire Q1 to customers, question 9.1, *« Le hareng est souvent consommé saumuré et préparé, tandis que le maquereau est plus souvent consommé en boîte de conserve »*.
96 The question did not refer to fresh specifically, but the Commission considers that this can be deduced from the context of the question and that respondents understood it that way.
97 Questionnaire Q1 to customers, questions 10 and 11, and agreed non-confidential minutes of a call of 7 June 2019 with a customer.

longer".[98] Moreover, as another customer submitted, there are differences in taste and positioning.[99]

(57) In light of the above, the Commission will assess the likely effects of the concentration in relation to potentially relevant markets for secondary processed mackerel and secondary processed herring sold in the chilled department of a retail store, which would be the narrowest plausible market definition, rather than on the broader market for secondary processed pelagic fish. However, for the purpose of this case, the exact product market definition can be left open as this would not change the outcome of the competitive assessment.

(58) The market investigation in the present case suggest that the markets for secondary processed herring products and secondary processed mackerel products are national in scope.[100]

3.2.5. Savoury bread toppings, in particular vegetable-based savoury bread toppings and taramasalata

(59) Both Parties are active in the sale of savoury bread toppings to retailers. Savoury bread toppings can include various vegetable spreads, seafood-based spreads and meat-based spreads.[101]

(60) Wessanen, via its brands Bonneterre, Bjorg and Tartex[102], sells fresh and ambient vegetable-based bread toppings (e.g. guacamole) and one type of fish-based bread topping (i.e. taramasalata based on cod eggs).[103] PAI Partners, via its brands Atelier Blini, Blini, Père Olive, and King Cuisine sells fresh vegetable-based (e.g. guacamole) and fish-based (e.g. taramasalata) bread toppings but does not sell any ambient savoury bread toppings.[104] While Wessanen only offers branded products, PAI Partners supplies branded as well as private label savoury bread toppings.

3.2.5.1. Commission's precedents

(61) In its previous decision, the Commission considered that sweet spreadable products can be distinguished from savoury spreadable products, but left the market definition open.[105] In *Orkla/Rieber & Son*[106], the Commission mentioned seafood-based savoury bread toppings among the nationally affected markets.

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98 Questionnaire Q1 to customers, questions 10.1 and 11.1, *« Les consommateurs ne considèrent pas ces produits comme des alternatives possibles, ils répondent à des besoins différents. Les produits en conserve sont destinés à une conservation longue durée* ».

99 Questionnaire Q1 to customers, questions 10.1 and 11.1.

100 Questionnaire Q1 to customers, question 26.

101 There are small overlaps in sweet bread toppings (jams), but, based on the data provided by the Parties, there is no horizontal overlap where the combined market shares would be or exceed 20%; thus there is no affected market.

102 Parties' response to the Commission's request for information RFI 12, questions 18.3 and 21.

103 Form CO, paragraphs 161-162.

104 Form CO, paragraphs 163 and 164.

105 Case M. 2302 – *Heinz/CSM*, recital 15 and Case M.7340 – *Ferrero International/Oltan Group*, recitals 27-30.

106 Case M.6753 – *Orkla/Rieber & Son*, recital 17.

(62) As regards the geographic market, the Commission has not previously considered the geographic dimension of the relevant market for savoury bread toppings. However, as regards the manufacturing and sale of sweet spreadable products, the Commission considered that the market is at least national in scope, but ultimately left the exact geographic definition open.[107] The Commission took into account differences in customers' preferences and taste, and the conducting of negotiations on a national basis.

3.2.5.2. The Parties' view

(63) The Parties consider that the relevant market for bread toppings can be segmented into two distinct markets: the sale of sweet bread toppings and savoury bread toppings. The Parties also submit that the market for savoury bread toppings could potentially be further segmented into (i) seafood-based bread toppings; (ii) meat-based bread toppings; and (iii) vegetable-based bread toppings.

(64) As regards the vegetable-based spreads, the Parties submit that vegetable-based bread toppings include all different types of products such as hummus, tapenades, vegetable spreads, guacamole.[108] From a demand side perspective, customers that are looking for vegetable-based spreads to use as either appetisers, cocktail snacks or as part of a main course, will typically consider the whole range of vegetable-based spreads largely substitutable.[109] Similarly, from the supply-side perspective, the Parties submit that suppliers of vegetable-based bread toppings supply different types of vegetable spreads ranging from guacamole and hummus to vegetable mixes.[110] The Parties submit that for the same reasons the further segmentation of seafood-food based bread toppings would be inappropriate.

(65) Similarly, the Parties have provided market data for taramasalatas, which is the only seafood-based product on which they overlap, while arguing that these should be part of a wider market for savoury seafood-based bread toppings such as fish spreads.[111]

(66) In line with the Commission's decisional practice, the Parties submit that the geographic markets for vegetable-based savoury bread toppings and taramasalatas are national in scope.[112]

3.2.5.3. Commission's assessment and conclusion

(67) First, amongst savoury bread topping, the Commission investigated whether vegetables-, seafood- and meat-based savoury bread toppings should be distinguished.[113] The results of the market investigation suggest that vegetables-based savoury bread toppings may be considered to be a distinct market from

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107 Case M.7340 – *Ferrero International / Oltan Group*, recitals 38 and 39.

108 Form CO, paragraph 180.

109 Form CO, paragraph 180.

110 Form CO, paragraph 180.

111 Form CO, paragraph 175.

112 Form CO, paragraphs 177-182.

113 As noted above (60), the Parties activities leading to a putatively affected markets concern only vegetables and seafood based bread toppings.

seafood- or meat-based savoury bread toppings.[114] For example, a customer submitted: *"They do not meet the same needs and consumers have different requirements depending on the products (vegetarian consumers, religious faiths, etc"*.[115] The majority of customers who responded to the market investigation considered that different types of vegetable-based savoury bread toppings, such as guacamole, baba ganoush, tapenade, hummus, are all substitutes in terms of customers' preference and the occasion of the consumption.[116]

(68) Second, as regards vegetables-based savoury bread toppings, the Commission considered whether they could be further segmented into organic and non-organic products, on the one hand, and fresh and ambient products, on the other hand.

(69) The majority of customers who responded to the Commission's request for information indicated that fresh and ambient savoury vegetables-based bread toppings cannot be considered substitutes because of different demand in terms of consumption occasion: "*Ambient spreads are for storage, they are used as a pantry item*".[117] Another customer submitted that the two products are substitutes, however it also highlighted that ambient products are most often less expensive than fresh bread toppings.[118] A competitor also explained that fresh bread toppings are produced differently from ambient products ("undergo different treatments"), are generally more expensive and respond to different consumer needs.[119]

(70) As regards the potential segmentation into organic and non-organic vegetables-based savoury bread toppings, the market investigation results are not conclusive. While a majority of respondents to the Commission's request for information suggested that the two types of products can be considered as alternatives, some customers and competitors indicated the contrary.[120] One customer explained: "*These products are still mainly considered as alternatives but are becoming more and more different with the development of new ways of consumption (vegetarian consumers, religious faiths, etc.)"*.[121]

(71) In light of the above considerations and taking account of the results of the market investigation, and given that the concentration would not raise serious doubts as to

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114 Questionnaire Q1 to customers, question 12. See also agreed non-confidential minutes of a call of 20 May 2019 with a competitor both suggesting that vegetables-based bread toppings could be considered in a larger market for aperitif snacks in light of the trend of consumers switching between animal-based proteins and vegetables-based products.

115 Questionnaire Q1 to customers, question 12, *« ils ne répondent pas aux mêmes besoins et les consommateurs ont des exigences différentes selon les produits (consommateurs végétariens, confessions religieuses, etc) »*.

116 Questionnaire Q1 to customers, question 12.2.

117 French original reads: *"Les produits à tartiner en conserve répondent à un besoin de stockage, ils sont davantage utilisés en tant que produit « fond de placard »"*; Questionnaire Q1 to customers, question 15.1

118 Questionnaire Q1 to customers, question 15.1, agreed non-confidential minutes of a call of 21 May 2019 with a competitor, and agreed non-confidential minutes of a call of 7 June 2019 with a customer.

119 Agreed non-confidential minutes of a call of 20 May 2019 with a competitor.

120 Questionnaire Q1 to customers, question 14, questionnaire Q2 to competitors, question 14 and agreed non-confidential minutes of a call of 7 June 2019 with a customer, agreed non-confidential minutes of a call of 20 May 2019 with a competitor.

121 Questionnaire Q1 to customers Question 14.1, « *Ces produits sont encore majoritairement des alternatives mais se distinguent de plus en plus avec le développement des nouvelles convictions (végétarien, vegan, alimentation "bio"...)* ».

its compatibility with the internal market even under the narrowest plausible product market definition, the Commission will leave open the question whether savoury vegetables-based bread toppings belong to a separate market. Similarly, the Commission leaves the question open whether it would be justified to distinguish between organic and non-organic vegetables-based bread toppings, on the one hand, and fresh and ambient, on the other.

(72) Third, in relation to the seafood-based savoury bread toppings, the results of the market investigation are not conclusive. Several customers considered that a specific product taramasalata is not an alternative to other seafood- or vegetables-based savoury bread spreadable products.[122] However, as one of these customers explained: *"We consider that products of vegetable origin, regardless of the vegetable, are alternatives"*.[123] Other customer explained that as long as the products are seafood-based they can be considered substitutes *"when it regards fish-based products"*[124], while another customer even indicated that taramasalata, other seafood- and vegetables-based products belong to the same group of products because they serve the same need in terms of consumption occasion of the same consumption.[125]

(73) In light of the above, the Commission will assess the likely effects of the concentration in relation to a putative market for taramasalatas, which would be the narrowest plausible market definition, rather than on the broader market for savoury bread toppings or seafood-based bread toppings. However, for the purpose of this case, the exact product market definition can be left open as this would not change the outcome of the competitive assessment.

(74) As regards the geographic market definition, the results of the market investigation in the present case suggest that the markets for vegetables-based savoury bread toppings and taramasalatas are national in scope.[126]

3.2.6. Consumable olives

(75) Consumable olives refer to the olives that can be consumed as an appetiser or used in cooking, but that cannot be used for the production of olive oil. These olives comprise different species and origins and may be stoned or destoned.

(76) Both Wessanen and PAI Partners sell pre-packaged consumable olives in the retail channel. PAI Partners sells fresh private label and branded pre-packaged olives through a number of Labeyrie Group brands, including Père Olive and King Cuisine, which are mainly sold to the conventional retail channel. Wessanen only sells ambient branded olives packaged in cans and glass containers, through its brands Bonneterre and Merza, which are exclusively sold to health food stores.[127] The

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122 Questionnaire Q1 to customers, question 13.

123 Questionnaire Q1 to customers, question 13.1, *« Nous considérons les produits d'origine végétale, quel que soit le végétal comme des alternatives entre elles. Les produits d'origine animal : idem* ».

124 Questionnaire Q1 to customers, question 13.1, *« lorsqu'il s'agit de produits à base de poisons* ».

125 Questionnaire Q1 to customers, question 13.1: « *Nous considérons que ces produits sont des alternatives, ils répondent aux mêmes besoins* ».

126 Questionnaire Q1 to customers, question 26.

127 Parties' response to the Commission's request for information RFI 12, question 31.2.

Parties' activities, which give rise to a potentially affected market, overlap in the supply of pre-packaged consumable olives in France.[128]

3.2.6.1. Commission's precedents

(77) The Commission has not assessed in the past a market for consumable olives.

3.2.6.2. The Parties' view

(78) The Parties consider that the relevant product market comprises the sale of consumable olives in the retail channel, which is distinct from olives intended for the food services channel or the production of olive oil.[129] They submit that it is not appropriate to retain any further segmentation based on the olives' species, colour, taste, use or whether they are stoned or destoned.[130] The Parties do not exclude that pre-packaged consumable olives (i.e. sold in plastic or glass containers) may compete and be substitutable with olives sold in bulk packaging in fresh counters of retail stores.[131]

(79) The Parties propose to leave the exact market definition open and have provided market data for a narrower potential segment for pre-packaged consumable olives.[132] As regards its geographic dimension, the Parties submit that consumable olives are at least national in scope but potentially broader, given in particular that the level of perishability of consumable olives is lower than other fresh products.[133]

3.2.6.3. Commission's assessment and conclusion

(80) A majority of market participants who responded to the market investigation indicated that pre-packed consumable olives are considered as distinct from other savoury food products such as savoury bread toppings and bite-size savoury food products.[134] Moreover, while two competitors indicated that pre-packaged consumable olives and consumable olives sold in bulk packaging for sale in fresh counters are distinct products, customers unanimously indicated they both types are interchangeable.[135] While competitors' views were mixed, a majority of customers indicated that different types of olives based on varieties, colours, tastes or stoned vs destoned are substitutable.[136] While two competitors indicated that fresh and ambient pre-packaged consumable olives are distinct, a majority of customers considered them as substitutable.[137]

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128 Form CO, paragraph 488: The combined market shares of the Parties for the supply of pre-packaged, consumable olives in the Netherlands would be below 20%.

129 Form CO, paragraph 152.

130 Form CO, paragraph 153.

131 Form CO, paragraph 154.

132 Form CO, paragraphs 157 and 158.

133 Form CO, paragraph 151.

134 Questionnaire Q1 to customers, question 19 and Questionnaire Q2 to competitors, question 19.

135 Questionnaire Q1 to customers, question 20 and Questionnaire Q2 to competitors, question 20.

136 Questionnaire Q1 to customers, question 21 and Questionnaire Q2 to competitors, question 21.

137 Questionnaire Q1 to customers, question 22 and Questionnaire Q2 to competitors, question 22.

(81) As regards the geographic market definition, a vast majority of customers who responded to the market investigation indicated that the market for consumable olives is national in scope.[138]

(82) In light of the above considerations and taking account of the results of the market investigation, and given that the concentration would not raise serious doubts as to its compatibility with the internal market even under the narrowest product market definition, the Commission will leave open the question whether consumable olives belong to a separate market, whether it includes consumable olives sold in bulk packaging for sale in fresh counters and whether the distinction between organic and non-organic, fresh and ambient would be justified

3.2.7. Bite-size savoury food products

3.2.7.1. Commission's precedents

(83) Both PAI Partners and Wessanen sell bite-size savoury food. PAI Partners – through its brands Blini, L'Atelier Blini and Père Olive – sells mixed anti-pasti, stuffed peppers, involtini, chilled falafel bites, accras, böreks, samosas and rikakats, keftedes and cheese bites. Wessanen sells through its brand Bjorg ambient falafel bites, vegetable bouchées, peppers, roasted and marinated bell peppers and sundried tomatoes. The Parties' activities, which give rise to a potentially affected market, overlap in the supply of bite-size savoury food products in France.[139]

(84) The Commission has not assessed in the past a market specifically concerning the bite-size savoury food products sold by the Parties.

(85) However, the Commission has previously considered a market for savoury snacks that includes chips/crisps, extruded and corn-based products, nuts, salty biscuits and other salty snacks.[140] In that precedent, the Commission found strong indications that the relevant product market was at least as wide as all nut snacks and some indications that it may be as wide as all savoury snacks and left open the exact product market definition.[141]

(86) As regards the geographic dimension, the Commission previously considered that the market for savoury snacks could be national in scope, but ultimately left the exact geographic definition open.[142] The Commission took into account differences in price and in taste's preferences, and the fact that the snack foods business is organised, operates, and is directed at a national level.

3.2.7.2. The Parties' view

(87) The Parties consider that no sub-segmentation should be made between different bite-size savoury snacks.[143] In this regard, the Parties submit that this market is heterogeneous and characterised by a wide variety of food products (for instance,

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138 Questionnaire Q1 to customers, question 26.

139 Form CO, paragraph 4543 et seq. .

140 Case JV.32 - *Granaria/Ültje / Intersnack/May Holding*, recitals 17-27.

141 Case JV.32 - *Granaria/Ültje / Intersnack/May Holding*, recital 27.

142 Case IV/M.232 - *Pepsico/General Mills*, recitals 12 and 13.

143 Form CO, paragraph 193.

falafel bites, kefta, involtini, stuffed peppers or other snacks) that can serve the same consumption occasions.[144]

3.2.7.3. Commission's assessment and conclusion

(88) A majority of the market participants who responded to the market investigation indicated that bite-size savoury food products represent a product market separate from other food products, where the following products are considered as mutually substitutable: falafel bites, accras, keftedes, böreks, samosas, rikakats, arancini, sundried tomatoes, cheese bites, fish balls, bahajis, pakoras, cocktail sausages, mini burgers, cheese balls, vegetable bouchées, mini quiches.[145]

(89) Moreover, a majority of these customers also considered that organic and non-organic, as well as fresh and ambient bite-size savoury food products are substitutable.[146] Competitors, on the other hand, mainly indicated that these categories lead to different products responding to different needs.[147]

(90) As regards the geographic market definition, a vast majority of customers who responded to the market investigation indicated that the market for bite-size savoury snacks is national in scope.[148]

(91) In light of the above considerations and taking account of the results of the market investigation, and given that the concentration would not raise serious doubts as to its compatibility with the internal market even under the narrowest plausible product market definition, the Commission will leave open the question whether bite-size savoury food products belong to a separate market. Similarly, the Commission leaves the question open whether it would be justified to distinguish between organic and non-organic bite-size savoury food products, on the one hand, and chilled and ambient, on the other.

3.2.8. Bread substitutes

(92) Bread substitutes include a variety of differentiated products, such as extruded bread, crisp rolls, bread sticks, crackers and rusks. Wessanen, through brands Bjorg, Bonneterre, and Krisproll[149], supplies bread substitutes such as rice waffles, breadsticks, toasted bread, and crackers to conventional retail stores and health food stores. PAI Partners, through Labeyrie Group, and its brands Labeyrie and L'atelier Blini, supplies breadsticks, crackers and toasts, grissini. However, the main product

144 Form CO, paragraph 191.

145 Questionnaires Q1 to customers, questions 16 and 16.2, and Questionnaire Q2 to competitors, questions 16 and 16.2.

146 Questionnaire Q1 to customers, questions 17 and 18.

147 Questionnaire Q2 to competitors, questions 17 and 18.

148 Questionnaire Q1 to customers, question 26.

149 Exclusive distribution license in France.

in this category supplied by PAI Partners is blini.[150] In relation to bread substitutes, the Parties' activities give rise to a potentially affected market in France.[151]

3.2.8.1. Commission's precedents

(93) The Commission has previously considered the market for bakery products and its further segmentations in (i) fresh bread, (ii) industrial and pre-packaged bread, (iii) bread substitutes, (iv) cakes, and (v) morning goods.[152] The Commission considered that these products, including bread substitutes, may constitute separate product markets, but ultimately left the market definition open.[153]

(94) As regards bread substitutes, the Commission considered that this market could be further subdivided into as many markets as product types belonging to this category. In particular, the Commission considered a separate product market for crisp bread, but ultimately left the market definition open.[154]

(95) The Commission has previously noted that industrial bakery sector has different distribution structures depending whether customers are active in the retail sector or in the food service sector (hotels, restaurants, fast-food outlets, sandwich shops, canteens hospitals, schools, etc.). The Commission ultimately left open the exact product market definition.[155]

(96) In previous cases, the Commission has considered that the relevant geographic market for bakery products was national in scope.[156]

3.2.8.2. The Parties' view

(97) The Parties submit that there is one single relevant market for bakery products, which can be further segmented into the markets for (i) fresh bread; (ii) bread substitutes; and (iii) bake-off products.[157]

(98) The Parties suggest that blini could be included in the category of bread substitutes because they serve a similar purpose to crackers, toaster or other appetitive bread substitutes.[158] As regards crepes, the Parties note that although crepes and blinis may appear to have similar characteristics, they differ in terms of ingredients, texture,

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150 Form CO, paragraphs 78-81.

151 Form CO, paragraph 393: the Parties also have limited sales of bread substitutes in Belgium and Luxembourg; however, they estimate that their combined market share in any of these countries would be below 20%.

152 Case M.6891 – *Agrofert/Lieken*, recital 6; case M.6430 – *Oaktree/Panrico*, recital 11-19; case M.5286 – *Lion Capital/Foodvest*, recital 12; and case M.2817 – Barilla/BPL/Kamps, recital 11.

153 Case M.6891 – *Agrofert/Lieken*, recital 9; case M.6430 – *Oaktree/Panrico*, recital 13, 15, 17 and 19; case M.5286 – Lion Capital/Foodvest, recital 12 and 15; and case M.2817 – Barilla/BPL/Kamps, recitals 11 and 15.

154 Case M.2817 – *Barilla/BPL/Kamps*, recitals 13-15.

155 Case M.6891 – *Agrofert/Lieken*, recital 6; case M.6430 – *Oaktree/Panrico*, recitals 16-17; and case M.5286 – *Lion Capital/Foodvest*, recital 13.

156 Case M.6430 – *Oaktree/Panrico*, recital 22 and Case M.5286 – *Lion Capital/Foodvest*, recital 16.

157 Form CO, paragraph 94.

158 Form CO, paragraph 95 and 97.

size, taste and the serving/consumption occasions.[159] As regards plausible market segmentation by product type, the Parties submit that toasts and crackers should be considered together.[160]

(99) The Parties agree that for bakery products geographic market is national in scope.[161]

3.2.8.3. Commission's assessment and conclusion

(100) The Commission does not have evidence to depart from its previous precedents. Therefore, for the purposes of this case, the Commission will consider the market for the sale of bread substitutes to the retail channel[162] in France, as well as plausible segment by specific product group, such as galettes, toasts and crackers.

(101) However, the exact market definition can be left open as the notified Transaction would not raise doubts as to its compatibility with the internal market under any plausible market definition.[163]

3.3. Supply of beverages

(102) The Transaction gives rise to a vertical link between Refresco's upstream activities in the production and bottling of non-alcoholic beverages ("NABs") and Wessanen's downstream sales of different types of NABs.[164]

3.3.1. Upstream production and bottling of NABs

3.3.1.1. Commission's precedents

(103) The production and bottling of NABs for either private label or branded products comprises the making and packaging of a drink for a retailer or brand owner.

(104) The Commission has previously considered that the production and bottling of carbonated soft drinks ("CSDs") and non-carbonated soft drinks ("NCSDs") constitute two separate product markets.[165] The Commission has not addressed in the past further potential segmentations within CSDs.

(105) Within NCSDs, the Commission has considered that water and ready-to-drink ("RTD") teas belong to separate product markets.[166] The Commission has

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159 Form CO, paragraphs 98, 101. The Parties explain that crepes can be consumed both as a meal (e.g. 'crepe Bretonne') or as a desert or a sweet snack.

160 Form CO, paragraph 100.

161 Form CO, paragraph 94.

162 The Parties submit that there is no overlap in the supply of bread substitutes, or any other product discussed in the Form CO, to the food service channel; Parties' response to the Commission's request for information RFI 14, question 1.

163 The Commission notes that the horizontal overlap in relation to other specific products (i.e. crepes and blini, gingerbread and bake off products) do not give rise to an affected market, because the Parties confirmed that their combined market share in any of these products would be below 20% (Table 15, Form CO).

164 There is no affected horizontal market in the sale of NABs, as the combined market shares regarding horizontal overlaps in any plausible market for beverages is below 20% (Form CO, annex 23 (revised 21 August 2019)).

165 Case M.6924 – *Refresco Group/Pride Foods*, recital 15.

166 Case M.6924 – *Refresco Group/Pride Foods*, recital 23.

considered further potential segmentations within NCSDs (namely fruit juices, energy and sport drinks), but ultimately left this question open.[167] Moreover, the Commission has distinguished in the past separate product markets according to (i) the type of packaging (between carton and aseptic PET); and (ii) the production process (between aseptic and non-aseptic, as well as between ambient and chilled). The Commission considered that it is not relevant to different between sizes of packaging.[168]

(106) The Commission has previously considered that the production and bottling of private label NCSDs for retailers and the contract manufacturing of branded NCSDs for brand-owners belong to separate product markets.[169]

(107) As regards the geographic dimension, the Commission previously considered that the bottling of NCSDs is national in scope, with imports exerting a competitive constraint.[170]

3.3.1.2. The Parties' view

(108) The Parties propose a number of deviations from the Commission's previous practice. First, the Parties argue that it is not appropriate to segment the market into NCSDs and CSDs.[171] Second, the Parties submit that it is not appropriate to distinguish between the bottling of organic and non-organic NABs.[172] Third, the Parties argue that a distinction between chilled and ambient drinks – which was retained by the Commission in the past when assessing NCSDs – is not relevant for CSDs.[173] Fourth, the Parties argue that it is not appropriate to distinguish between private label bottling and contract manufacturing bottling.[174] A competitor of the Parties has largely supported these views.[175]

(109) The Parties submit that the geographic market for the upstream production and bottling of NABs is broader than national in scope, and at least EEA-wide.[176]

3.3.1.3. Commission's assessment and conclusion

(110) In addition to the potential market segmentations considered in previous cases, the Commission inquired in the present case whether a segmentation between the production and bottling of organic and non-organic NABs is appropriate. The Parties have contested this view and argued that bottlers can use the same production line for the bottling of organic and non-organic drinks without considerable investments,

167 Case M.6924 – *Refresco Group/Pride Foods*, recital 15.
168 Case M.6924 – *Refresco Group/Pride Foods*, recital 29.
169 Case M.6924 – *Refresco Group/Pride Foods*, recital 45.
170 Case M.6924 – *Refresco Group/Pride Foods*, recital 50.
171 Form CO, paragraph 282.
172 Form CO, paragraph 305.
173 Form CO, paragraph 307.
174 Form CO, paragraph 308.
175 Agreed non-confidential minutes of a call of 16 July 2019 with a competitor, paragraphs 7-13.
176 Form CO, paragraph 310.

costs or interruptions of their production processes.[177] A competitor of the Parties has supported this view in pre-notification.[178]

(111) Responses to the market investigation were mixed as to whether most companies active in the production and bottling of beverages are able to and actively supply organic NABs.[179] While a customer expressed that it *"is aware of producers/bottlers that offer both organic and non-organic* [NABs] *as part of their product portfolio"*, another customer noted that, in their opinion, *"producers of private label products are not able to accommodate for both production of organic and non-organic products"*.[180] A large number of market participants indicated that the main difference between the production and bottling of organic and non-organic NABs relates to the fact that the manufacturers are required to obtain a specific certification for organic production.[181]

(112) In relation to private label and contract manufacturing of NABs, a majority of competitors indicated that suppliers active exclusively in the bottling of private label NABs to retailers are able to start contract manufacturing for brand owners swiftly and without significant costs.[182] The opposite is also true according to these competitors: suppliers active exclusively in the contract manufacturing of NABs are able to start contract manufacturing private labels for brand owners swiftly and without significant costs.[183]

(113) The market investigation suggests that the market for the production and bottling of NABs is national in scope. A majority of competitors responding to the market investigation indicated that brand owners' tenders for the procurement of NABs are mostly national and that, when they participate in these, they mainly sell the product in the same country as the plant where they manufacture it.[184] Moreover, a majority of competitors also indicated that prices differ significantly among EEA countries for contract manufacturing of branded NABs and that transport costs represent a significant part of the final price of the NABs they contract manufacture.[185]

(114) For the purposes of this case, the precise product market definition can be left open as even under the narrowest possible market definition for the production and bottling of NABs no serious concerns arise as to the compatibility of the concentration with the internal market as regards the vertical relationship between the upstream production and bottling of NABs and the downstream sale of NABs.

(115) Moreover, it can be left open whether the market for the production and bottling of NABs is national in scope or broader, as even under the narrowest possible market definition no serious concerns arise as to the compatibility of the concentration with the internal market as regards the vertical relationship between the upstream production and bottling of NABs and the downstream sale of NABs.

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177 Form CO, paragraph 669.

178 Agreed non-confidential minutes of a call of 16 July 2019 with a competitor, paragraphs 8 and 9.

179 Questionnaire Q3a and Q3b to customers, question 7.

180 Questionnaire Q3a and Q3b to customers, question 7.

181 Questionnaire Q3a and Q3b to customers, question 7 and Q4a, Q4b and Q4c to competitors, question 14.

182 Questionnaire Q3a and Q3b to customers, question 12.

183 Questionnaire Q3a and Q3b to customers, question 13.

184 Questionnaires Q4a, Q4b and Q4c to competitors, questions 15 and 16.

185 Questionnaires Q4a, Q4b and Q4c to competitors, questions 17 and 18.

3.3.2. Sale of NABs

3.3.2.1. Commission's precedents

(116) The sale of NABs includes a large variety of drinks, juices, waters, teas and other non-alcoholic beverages.

(117) The Commission previously considered that CSDs and NCSDs constitute two separate product markets. Within NCSDs, the Commission considered segmentations into packaged water, fruit juices, RTD teas and energy and sports drinks, but ultimately left the segmentation open.[186] Regarding fruit juices, the Commission considered that orange juice is a separate product market from other fruit juices[187] and – while it ultimately left this question open – that orange juice could be segmented into not-from-concentrate ("NFC") orange juice and from-concentrate ("FC") orange juice.[188] Within CSDs, the Commission previously established a distinction between cola-flavoured and non-cola-flavoured CSDs.[189] Moreover, the Commission considered, but ultimately left open, further segmentations between the sale of private label and branded products and between the on-trade and off-trade channels.[190]

(118) As regards the geographic dimension of the relevant market, the Commission previously considered that the relevant geographic markets for NABs were national in scope.[191] The Commission took into account differences in consumption patterns, logistics and distribution networks, as well as marketing strategies.

3.3.2.2. The Parties' view

(119) The Parties consider, contrary to the Commission's previous practice, that all NABs constitute a single product market with no further segmentations.[192]

(120) In line with the Commission's decisional practice, the Parties submit that the geographic market for the sale of NABs is national in scope.[193]

3.3.2.3. Commission's assessment and conclusion

(121) As explained in recital (110) above, in addition to the potential market segmentations considered in previous cases, the Commission inquired in the present case whether a segmentation between organic and non-organic NABs is appropriate. In this regard, a majority of customers responding to the market investigation indicated that organic and non-organic NABs are significantly different in terms of demand, prices or brands from the perspective of their customers.[194]

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186 Case M.8244 – *Coca-Cola Company/Coca-Cola HBC/Neptuno Vandenys*, recital 18.
187 Case M.5907 – *Votorantim/Fischer/JV*, recital 104.
188 Case M.5907 – *Votorantim/Fischer/JV*, recital 132.
189 Case M.7057 – *Suntory/GlaxoSmithKline (Ribena & Lucozade Soft Drinks Business)*, recital 8.
190 Case M.7057 – *Suntory/GlaxoSmithKline (Ribena & Lucozade Soft Drinks Business)*, recitals 23-25.
191 Case M.8244 – *Coca-Cola Company / Coca-Cola HBC / Neptuno Vandenys*, recital 25.
192 Form CO, paragraph 249.
193 Form CO, paragraphs 125-128.
194 Questionnaire Q3a and Q3b to customers, question 6.

(122) For the purposes of this case, the precise market definition can be left open as even under the narrowest possible market definition for the sale of NABs no serious concerns arise as to the compatibility of the concentration with the internal market as regards the vertical relationship between the upstream production and bottling of NABs and the downstream sale of NABs.

4. COMPETITIVE ASSESSMENT

4.1. Legal framework

(123) Article 2 of the Merger Regulation requires the Commission to examine whether notified concentrations are compatible with the internal market, by assessing whether they would significantly impede effective competition in the internal market or in a substantial part of it.

(124) The Commission 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.[195]

(125) 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 preamble 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.[196]

(126) Indeed, the Horizontal Merger Guidelines list a number of factors which may influence whether or not significant non-coordinated effects are likely to result 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. Not all of these factors need to be present for significant non-coordinated effects to be likely. The list of factors, each of which is not necessarily decisive in its own right, is also not an exhaustive list.[197]

(127) In addition, the Commission Guidelines on the assessment of non-horizontal mergers under the Merger Regulation (the "Non-Horizontal Merger Guidelines") distinguish

[195] OJ C 31, 05.02.2004, p. 5. The remainder of this decision focuses on non-coordinated effects.

[196] Horizontal Merger Guidelines, paragraphs 24-38.

[197] Horizontal Merger Guidelines, paragraphs 24-38.

between two main ways in which vertical mergers may significantly impede effective competition, namely input foreclosure and customer foreclosure.[198]

(128) For a transaction to raise input foreclosure competition concerns, the merged entity must have a significant degree of market power upstream.[199] In assessing the likelihood of an anticompetitive input foreclosure strategy, the Commission has to examine whether (i) the merged entity would have the ability to substantially foreclose access to inputs; (ii) whether it would have the incentive to do so; and (iii) whether a foreclosure strategy would have a significant detrimental effect on competition downstream.[200]

(129) For a transaction to raise customer foreclosure competition concerns, the merged entity must be an important customer with a significant degree of market power in the downstream market.[201] In assessing the likelihood of an anticompetitive customer foreclosure strategy, the Commission has to examine whether (i) the merged entity would have the ability to foreclose access to downstream markets by reducing its purchases from upstream rivals; (ii) whether it would have the incentive to do so; and (iii) whether a foreclosure strategy would have a significant detrimental effect on consumers in the downstream market.[202]

4.2. Horizontal non-coordinated effects

(130) Based on the market share data submitted by the Parties, the Transaction would give rise to the following relevant horizontally affected markets in France: secondary processed smoked salmon (Section 4.2.2), secondary processed herring (Section 4.2.3), secondary processed mackerel (Section 4.2.4), pre-packaged consumable olives (Section 4.2.5), savoury bread toppings (vegetables- and seafood based) (Section 4.2.5), bite-size savoury snacks (Section 4.2.9) and bread substitutes (Section 4.2.10).

4.2.1. Overview of market shares in the affected product markets in France

(131) Table 1 below shows the market shares of the Parties and their main competitors in all affected product markets (or segments) in France.

198 OJ L 24, 29.1.2004, p. 1.

199 Non-horizontal Merger Guidelines, paragraph 35.

200 Non-horizontal Merger Guidelines, paragraph 32.

201 Non-horizontal Merger Guidelines, paragraph 61.

202 Non-horizontal Merger Guidelines, paragraph 59.

Table 1 – Value market shares in 2018 in France

Product	PAI Partners	Wessanen	Combined	Main competitor[203]
Smoked salmon	Branded: [20-30]% Private label: [5-10]% Total: [30-40]%	[0-5]%	**[30-40[%**	Delpeyrat: [5-10]% Private labels: [50-60]%[204]
Secondary processed herring	Branded: [20-30]% Private label: [30-40]% Total: [60-70]%	[0-5]%	**[60-70]%**	Baltic: [0-5]% Private labels: [40-50]%[205]
Secondary processed mackerel	Branded: [30-40]% Private label: [10-20]% Total: [40-50]%	[0-5]%	**[40-50]%**	Nordland: [10-20]% Private labels: [10-20]%[206]
Savoury vegetable bread toppings	Branded: [50-60]% Private label: [20-30]% Total: [70-80]%	[0-5]%	**[70-80]%**	Cruscana: [0-5]% Private labels: [30-40]%[207]
Taramasalata	Branded and private label: [70-80]%	[0-5]%	**[70-80]%**	N/A
Pre-packaged consumable olives	Branded: [10-20]% Private label: : [10-20]% Total: [20-30]%	[0-5]%	**[20-30]%**	Croc'Frais: [40-50]% Private labels: [10-20]%[208]
Bite-size savoury snacks	Branded and private label: [20-30]%	[0-5]%	**[30-40]%**	N/A
Bread substitutes (branded only)	[5-10]%	[10-20]%	**[20-30]%**	Mondelez: [30-40]%[209]

Source: Form CO, Annex 23 (revised 21 August 2019) and Parties' response to RFI 10

(132) As regards the potentially relevant markets for smoked salmon, secondary processed herring, secondary processed mackerel, fresh savoury vegetables-based bread toppings, taramasalata and olives, the Parties submit that Wessanen's market shares are overestimated because of the methodology applied for calculation of the total market size.[210] The Parties explain that for this purpose they used the IRI[211] estimates, which are based on sales to consumers at the retail level, include the retail

[203] Reference to private label includes also the private label sales of PAI Partners, Form CO, annex 23 (revised 21 August 2019), methodology description, leading thereby to a double counting. However, based on the data provided by the Parties, the Commission also calculated a breakdown for each product.

[204] Of which, [10-20]% PAI Partners; [80-90]% other competitors.

[205] Of which, [90-100]% PAI Partners; [5-10]% other competitors.

[206] Of which, [90-100]% PAI Partners; [0-5]% other competitors.

[207] Of which, [60-70]% PAI Partners; [30-40]% other competitors.

[208] Of which, [60-70]% PAI Partners; [30-40]% other competitors.

[209] Parties' data based on IRI report for 2018 for the market of bread substitutes, which includes toasts, galettes and crackers, krisprolls, pain grillé, extruded bread and rusks and excludes blini, Mondelez owns brands Heudebert (market share of [10-20]%), Pelletier ([5-10]%), and Cracotte ([5-10]%); Parties response to the Commission's request for information RFI 10, question 4.1.

[210] Form CO, annex 23 (revised 21 August 2019), methodology section.

[211] Information Resources Incorporated (IRI) is a market research company headquartered in the U.S., which provides clients with consumer, shopper, and retail market intelligence and analysis focused on the consumer packaged goods (CPG) industry.

margin and value added tax (VAT)..[212] Notably, the IRI estimates include only the sales to conventional retail stores (hyper- and supermarkets, including proxy stores) and exclude sales to health food stores.[213] While Wessanen supplies above specified products exclusively to health food stores, the total market size provided by the IRI estimates does not reflect this (i.e. the sales by competitors in health food stores are not reflected in the total market size). The Parties also submit that Wessanen's sales provided for each of the product markets considered include sales of all relevant brands to all retail sales channels based on net invoice data.[214]

(133) This means that the total market size including both conventional and health food stores is larger than the market size reported in the IRI estimates. Given that for each relevant product category Wessanen's market shares have been estimated by taking into account all its sales at net invoice level and adding a comparable retail margin and the VAT[215] and the fact that PAI Partners do not have sales into HFS, consequently, the Parties combined market shares are overestimated. As considered in recital (29), the internal documents of the Parties estimate that, overall, [40-50]% of organic food sales are made in conventional retail stores and [30-40]% in the health food stores. However, these proportions are likely to vary from product to product, and the Parties have been unable to estimate in a reliable manner the total size of organic food sales to HFS on a product basis.[216] Therefore, only sales to conventional retail stores, where the IRI estimates are more precise, were considered to calculate the total market size, with the result that the market shares of Wessanen are overestimated. As it has not been possible to obtain figures that are more precise during the market investigation, the Commission will base its assessment on the figures in Table 1, noting however that they correspond to a worst-case scenario.

4.2.2. Smoked salmon

(134) Based on the market share data submitted by the Parties[217], the combined market shares of the Parties in value terms in 2018 were [30-40]% (PAI Partners: [30-40]%; Wessanen: [0-5]%). Other suppliers of smoked salmon in France are Delpeyrat with a share in value terms of [5-10]%, Kritsen with a share of [0-5]% and Petit Navire with a share of [0-5]%. If only the segment of branded smoked salmon was

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212 The Parties submit that industry reports, such as IRI, are the most reliable sources for market data in the consumer goods sectors; Form CO, paragraph 342 and annex 23 (revised 21 August 2019).

213 Form CO, annex 23 (revised 21 August 2019).

214 Parties' response to the Commission's request for information RFI 12, questions 1.1 (smoked salmon), 8.1 (secondary processed herring) 34.1, 13.1 (secondary processed mackerel), 18.1 (savoury spreadables), 23.1 (bread substitutes), 31.1 (pre-packed consumable olives) and 34.1 (bite-size savoury food products).

215 Form CO, annex 23 (revised 21 August 2019); Parties response to the Commission's request for information RFI 13, questions 1.1 (smoked salmon), 8.1 (secondary processed herring), 13.1 (secondary processed mackerel, question 18.1 (vegetables and seafood based bread toppings), question 23.1 (bread substitutes), question 31.1 (olives), question 34.1 (bite-size food).

216 The same document also indicates, for example, that distribution of seafood and frozen organic food, which likely includes smoked salmon, secondary processed herring and mackerel are distributed to [80-90]% to conventional retail stores, and [10-20]% to HFS; savoury grocery, which likely includes savoury bread toppings and bite-size products, [50-60]% conventional retail stores and [40-50]% HFS. However, the Parties were not able to estimate the total size of sales to the HFS and organic food market for each relevant product category. Form CO, annex 11, page 142; Parties' reply to the Commission's request for information RFI 15, questions 7-9.

217 Form CO, annex 23 (revised 21 August 2019).

considered, the combined market shares of the Parties in value terms in 2018 would be [50-60]% (PAI Partners: [50-60]%; Wessanen: [0-5]%).[218]

(135) If potentially relevant segment for organic smoked salmon (branded and private labels included) in France in 2018 was considered, the combined market shares of the parties would be [30-40]% (PAI Partners: [30-40]%; Wessanen: [0-5]%), however the increment remains very low. Other suppliers of organic smoked salmon in conventional retail stores in France are Kritsen with a share in value terms of [5-10]% and Delpeyrat with a market share of [0-5]%, among others, while the private label products share in the organic smoked salmon segment was [40-50]%. In addition, other suppliers active in HFS include, among others, Herens, Compagnie du saumon Guyader Gastronomie[219], and Olsen.[220]

(136) Given that both Parties sell only branded organic smoked salmon,[221] the Commission also considered that the combined market shares of the parties in 2018 in branded organic smoked salmon were [60-70]% (PAI Partners: [60-70]%, Wessanen: [0-5]%). The Commission also notes that private labels have a large share of the organic smoked salmon segment ([40-50]%) and that it cannot be excluded that private label products would exert competitive pressure on branded products, which could also have an effect on the capacity utilisation of the branded product supplier. For example, a PAI Partners' internal document, though not specifically referring to organic smoked salmon, notes: "[…]".[222]

(137) Given the negligible increment in market share (which is likely to be overestimated as explained in recital (116) above) brought by Wessanen under any plausible market segmentation, the Commission considers that the concentration will not substantially modify the market structure for smoked salmon in France.

(138) Further, the Parties focus on different retail outlets for the supply of smoked salmon products, which indicates that the Parties are not the closest competitors. Wessanen does not supply the conventional retail stores[223] and is only present in health food stores, whereas PAI Partners sells into conventional retail stores and is not present in health food stores.[224] As mentioned in recitals (29) to (32), the different retail outlets imply that the Parties face different customers for the supply of their products and develop outlet-specific brand and pricing strategies.

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218 Form CO, annex 23 (revised 21 August 2019), table A2.

219 Distributed also in the conventional retail stores and sells both organic and non-organic; Parties response to the Commission's request for information RFI 15, question 1.

220 Offers conventional and organic salmon products; Parties response to the Commission's request for information RFI 15, question 1.

221 Form CO, annex 23 and Parties' response to the Commission's request for information RFI 12, question 4.1.

222 Parties' response to the Commission's request for information RFI 10, annex 15, page 5; see also Parties' response to the Commission's request for information RFI 12, paragraph 85.

223 Parties' response to the Commission's request for information RFI 12, question 7: the Parties submitted that until 2018 Wessanen sold only canned salmon products via its brand Bjorg in conventional retail stores in France. Though these products did not specifically concern smoked salmon, it indicates that Wessanen withdrew from the secondary processed salmon segment related to the supply in conventional retail stores.

224 Parties' response to the Commission's request for information RFI 12, questions 1.2 (PAI Partners) and 34.2 (Wessanen).

(139) The results of the market investigation also indicate that the Parties are not the closest competitors. None of the customers having responded to the market investigation has identified Wessanen as the closest competitor to PAI Partners.[225] When asked about the closest competitors to Wessanen, none of the customers having responded to the market investigation who operate health food stores has identified PAI Partners among competitors for organic smoked salmon.[226] As regards customers operating conventional retail stores, the majority among them who responded to the market investigation claimed that they are not aware of Wessanen offering smoked salmon products in France.[227]

(140) Overall, during the market investigation the views on the impact of the concentration expressed by customers were mixed for each of the product markets considered.[228] A majority of the customers who responded to the market investigation and expressed an opinion indicated that they do not expect the Transaction to have any effect on prices in most of the considered product markets.[229] The customers mainly explained that there would be no impact because Wessanen is not present on those markets: "*No impact because Wessanen is not active on this market.*[230] Similarly, other customers submitted: "*Not the same markets, rather complementary products*[231] or "*No change/ We are not aware about the fresh products supplied by Wessanen*".[232] However, a few customers of PAI Partners submitted that the prices might increase following the Transaction across all groups of products. One of these customers explained, for example, that there are already few suppliers in France and that the Transaction will make entry by rivals more difficult.[233]

(141) The market investigation results discussed above in recital (140) apply to smoked salmon. Specifically, in relation to the secondary processed fish products, including the smoked salmon, one customer even suggested that prices may decrease.[234]

(142) The Commission considered whether absent the Transaction it would have been likely that Wessanen enters and develops its offer of smoked salmon products into the conventional retail stores or significantly expands its current activities.

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225 Questionnaire Q1 to customers, question 30.

226 Questionnaire Q1 to customers, question 29.

227 Questionnaire Q1 to customers, questions 29 and 30. However, when asked about the closest competitors to Wessanen, one customer identified PAI Partners as the closest competitor to Wessanen.

228 Questionnaire Q1 to customers considered: Smoked salmon, secondary processed herring, secondary processed mackerel, consumable olives, vegetables-based bread toppings, taramasalata, bite-size savoury food products.

229 Questionnaire Q1 to customers, question 36. For slightly different results of the market investigation see sections 4.2.5 and 4.2.8.

230 Questionnaire Q1 to customers, questions 35 and 36, the French original reads: *"Pas d'impact car Wessanen n'est pas présent sur ce marché*".

231 Questionnaire Q1 to customers, question 36, the French original reads: "*Pas les même marchés, il s'agit de complémentarité*".

232 Questionnaire Q1 to customers, question 36, the French original reads: "*Pas de changement/Nous ne connaissons pas les produits frais proposés à la vente par Wessanen*".

233 Questionnaire Q1 to customers, questions 35 and 36.

234 However, the customer also noted that the quality of the organic smoked salmon might decrease too. The customer explained that the decrease in quality would occur at the expense of other small suppliers that focus on quality; Questionnaire Q1 to customers questions 35, 36 and 39.

(143) First, the entry into conventional stores may not be easy, as it would require significant investment in marketing and sufficient capacity to serve the conventional retail channel volumes. For example, one customer representing a conventional retail channel explained that switching suppliers for smoked salmon and organic smoked salmon would not be easy because of brand loyalty of its customers and the capacity of the supplier to provide the necessary volumes.[235] While Wessanen has sales in organic smoked salmon only, it can be questioned whether it could effectively enter the conventional retail stores with a limited product range. The market shares data provided by the Parties indicate that majority of suppliers present in the overall smoked salmon market are also listed for organic smoked salmon.[236] This is the case for PAI Partners, Delpeyrat and Kritsen. Notably, with the exception of PAI Partners, other competitors' share of organic smoked salmon concerns only a small share of their total estimated sales of smoked salmon.[237] Secondly, as the Parties explained, Wessanen does not consider its activities related to fish products, including smoked salmon, to be one of the core categories, […].[238] Thirdly, the respondents to the market investigation also suggested that it was not likely that Wessanen would enter conventional retail stores.[239] In the light of the above, the Commission considers that the entry or expansion of Wessanen in relation to supply of smoked salmon products in France is thus not likely.

(144) Based on the above considerations and in the light of the results of the market investigation, the Commission considers that the concentration would not raise serious doubts as to its compatibility with the internal market as regards the Parties' activities in France in the putative market for the supply of smoked salmon.

4.2.3. Secondary processed herring

(145) PAI Partners supply marinated and smoked herring sold in the daily fresh department of the conventional retail stores (fresh chilled products as opposed to canned products).[240] Wessanen through its brand Bonneterre sells only branded smoked herring in the daily fresh department of health food stores.[241]

(146) Further to the considerations in recitals (132) to (133), the Commission considers the Parties' submitted market share data for secondary processed herring which includes branded and private label marinated and smoked herring sold in daily fresh department (chilled as opposed to canned herring or herring packaged in glass containers) of the retail stores. Based on this data, the combined market shares of the Parties in value terms in 2018 is [60-70]% (PAI Partners: [60-70]%; Wessanen: [0-5]%). Other suppliers of secondary processed herring in France are Baltic with a share in value terms of [0-5]%, La Mere Angot with a share of [0-5]%, Est Friture with a share of [0-5]%, among others, while the share of private label products is

235 Questionnaire Q1 to customers, question 33.

236 Form CO, Annex 23, tables A1bis and B1bis.

237 For example, Delpeyrat is estimated to have sales in 2018 of the value of […], whereas organic smoked salmon was only […]; similarly, for Kritsen – […] for smoked salmon overall and organic smoked salmon respectively.

238 Form CO, annex 20, refers to *"seafood"* category. See also Parties' response to the Commission's request for information RFI 12, questions 2.2, 7: […].

239 Questionnaire Q1 to customers, question 31, and questionnaire Q2 to competitors, question 32.

240 Form CO, paragraph 427.

241 Form CO, paragraph 438.

[40-50]%.[242] If only the segment of branded secondary processed chilled herring was considered, the combined market share of the Parties in value terms in 2018 would be [50-60]% (PAI Partners: [50-60]%; Wessanen: [0-5]%). Specifically for the HFS, the following companies, among others, are active in the supply of secondary processed herring: Herens, Olsen, and La Sablaise.[243]

(147) If potentially relevant segment of branded chilled smoked herring in France was considered, the combined market shares of the parties would be slightly higher – [70-80]% (PAI Partners: [70-80]%; Wessanen: [0-5]%), however the increment remains very low.[244] There are significant competitors providing branded smoked herring in France, for example Mere Angot and JC David.[245]

(148) The Commission considers that given the negligible increment of below 1% (which is likely overestimated as explained in recitals (132) to (133) in market share brought by Wessanen, including under the narrowest plausible market segmentation, the Transaction will not substantially modify the market structure for secondary processed herring in France.

(149) Furthermore, the Commission considers that the Parties are not the closest competitors. First, the Parties serve different retail outlets and thus supply different customers with differentiated brands and develop outlet specific marketing strategies. As mentioned in recital (145), PAI Partners sells secondary processed herring only in the conventional retail stores and Wessanen only in HFS.

(150) Second, the Parties explained that their secondary processed herring products could be further differentiated in relation to price.[246] The secondary processed herring products sold by PAI Partners, through its brand Delpierre, have a mid-range price position in the conventional retail stores, and generally have a lower price position than Wessanen's products.[247] Since pelagic fish such as herring is not farmed, the distinction between organic and non-organic is not relevant as it is for smoked salmon.[248] Pelagic fish products may still carry the label for sustainable fishery.[249] While it appears that secondary processed herring products of both Parties carry that label[250], Wessanen's products still have a premium price position because it is distributed through health food stores.[251]

(151) The Parties also provided information on private label products. It appears that the difference in price between private label products and branded products of PAI Partners is smaller than between the branded products of the Parties. The

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242 Form CO, annex 23 (revised 21 August 2019), table A1, if PAI Partners' supplies were excluded, the share of private label would be [5-10]%.

243 Parties response to the Commission's request for information RFI 15, question 1.

244 Form CO, annex 23 (revised 21 August 2019), table B.

245 Form CO, paragraph 434.

246 Form CO, paragraph 439.

247 […]

248 Parties' response to the Commission's request for information RFI 12, question 36.

249 "MSC", which is controlled by the Marine Stewardship Council; Parties' response to the Commission's request for information RFI 12, question 17.

250 See for Wessanen: https://www.bonneterre.fr/produit/filets-de-harengs-doux-bio, and for PAI: https://www.delpierre.com/nos-produits/rayons/frais.php (last accessed on 22 August 2019).

251 Parties' response to the Commission's request for information RFI 12, question 36.

Commission considers that it further indicates the differentiation between the Parties offering and the different competitive dynamic in conventional retail stores compared to HFS.

(152) Third, the range of the Parties' portfolios of smoked herring is also different. While Wessanen has only one product of smoked herring,[252] the PAI Partners' portfolio in this category is larger and includes several types of smoked herring.

(153) In line with the assessment in recitals (149) to (152), the results of the market investigation suggest that the Parties are not the closest competitors. None of the customers having responded to the market investigation has identified Wessanen as closest competitor to PAI Partners nor mentioned Wessanen as their potential supplier for secondary processed herring.[253] In addition, several respondents to the Commission's market investigation representing conventional retail outlets submitted not to be aware that Wessanen carries these products.[254]

(154) The Commission also considered whether absent the Transaction it would have been likely that Wessanen enters and develops its offer into the conventional retail stores. Similarly, as analysed in the recital (143) in relation to smoked salmon, the entry into conventional stores for secondary processed herring may not be easy, as it would require sufficient capacity to serve the conventional retail channel volumes. For example, the customer representing a conventional retail channel explained that switching suppliers for secondary processed herring, as for smoked salmon, would not be easy because of brand loyalty of its customers and the capacity of the supplier to provide the necessary volumes.[255] Wessanen has only limited sales of secondary processed herring[256] and), given that sales in the HFS generate higher revenues because of higher prices, suppliers active only in HFS would unlikely have an incentive to switch to conventional retail stores. As regards Wessanen's expansion plans, the Parties explained that Wessanen does not consider its activities related to fish products, including secondary processed herring, to be one of the core categories, and, as its internal documents suggest, […].[257]

(155) The respondents to the market investigation also suggested that Wessanen's entry into conventional retail stores is not likely.[258] In light of the above considerations, the Commission considers that the entry or expansion of Wessanen in relation to supply of secondary processed herring products in France is thus not likely.

(156) The market investigation results discussed above in recital (140) apply to secondary processed herring. Specifically, in relation to the secondary processed fish products,

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252 Parties' response to the Commission's request for information RFI 12, question 12.

253 Questionnaire Q1 to customers, questions 27 and 30, however, one customer identified PAI Partners as the closest competitor to Wessanen; and questionnaire Q2 to competitors, question 29.

254 Questionnaire Q1 to customers, questions 31 and 32, and questionnaire Q2 to competitors, questions 32 and 33.

255 Questionnaire Q1 to customers, question 33.

256 Compared to the sales value of other eleven reported market players in the conventional retail channel, even if Wessanen's sales to both conventional retail stores and HFS were taken into account, Wessanen would be second smallest market participant followed only by Dutriaux estimated to have sales of […] (compared to […] of Wessanen); Form CO, Annex 23, Table A1bis.

257 Form CO, annex 20, and Parties' response to the Commission's request for information RFI 15

258 Questionnaire Q1 to customers, question 31, and questionnaire Q2 to competitors, question 32.

including the secondary processed herring, one customer even suggested that prices may decrease.[259] There were no further substantiated concerns emerging during the market investigation with regard to the supply of secondary processed herring in France.

(157) Based on the above considerations and in the light of the results of the market investigation, the Commission considers that the concentration would not raise serious doubts as to its compatibility with the internal market as regards the Parties' activities in France in the putative market for the supply of secondary processed herring.

4.2.4. Secondary processed mackerel

(158) In France, PAI Partners supply branded (and to a very limited extent – private label) smoked mackerel in the daily fresh department of the retail store (fresh products as opposed to canned products).[260] Wessanen sells only branded smoked mackerel in the daily fresh department of health food stores.[261]

(159) Further to the considerations in recitals (132) to (133), the Commission considers the market share data submitted by the Parties for secondary processed mackerel which includes branded and private label smoked mackerel sold in the fresh daily department (chilled as opposed to canned mackerel or mackerel packaged in glass containers). Based on this data, the Parties' combined market share in terms of value in 2018 are [40-50]% (PAI Partners: [40-50]%; Wessanen: [0-5]%). Other suppliers of smoked mackerel sold in the fresh daily department in France are Nordland with a share in value terms of [10-20]%, Pecheur d'Islande [5-10]%, No brand [0-5]%, among others.[262] If only the segment of branded smoked mackerel was considered, the combined market shares of the Parties in value terms in 2018 would be [40-50]% (PAI Partners: [30-40]%; Wessanen: [0-5]%).[263] Specifically for the HFS, the following companies, among others, are active in the supply of secondary processed mackerel: Herens, Olsen, and Safa.[264]

(160) Given the low increment in market share (which is likely to be overestimated as explained in recital (132) brought by Wessanen, the Transaction will not substantially modify the market structure for secondary processed mackerel in France.

(161) Furthermore, the Commission considers that the Parties are not the closest competitors. First, the Parties serve different retail outlets and thus supply different customers with differentiated brands and develop outlet specific marketing strategies. As mentioned in recital (158), PAI Partners sells smoked mackerel only in the conventional retail stores and Wessanen only in HFS.

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259 However, the customer also noted that the Transaction would not have any impact because of limited sales; Questionnaire Q1 to customers questions 35 and 36.

260 Form CO, paragraph 440.

261 Form CO, paragraph 438.

262 Form CO, annex 23 (revised 21 August 2019), table A1bis; Parties' response to the Commission's request for information RFI 13, question 24.

263 Form CO, annex 23 (revised 21 August 2019), table A2.

264 Parties response to the Commission's request for information RFI 15, question 1.

(162) Second, the Parties explained that secondary processed mackerel products could be differentiated in relation to price.[265] Smoked mackerel sold by PAI Partners, through its brand Delpierre, have a mid-range price position in the market, and have a lower pricing position as Wessanen's products.[266] Since pelagic fish such as mackerel is not farmed, the distinction between organic and non-organic is not relevant as it is for smoked salmon. However, Wessanen's products still have a premium price position because it has a more sustainable brand image[267] and is sold in HFS.

(163) In line with the assessment in recitals (161) to (162), the results of the market investigation suggest that the Parties are not the closest competitors.[268] None of the customers having responded to the market investigation has identified Wessanen as closest competitor to PAI Partners nor mentioned Wessanen as their potential supplier.[269] In addition, several respondents to the Commission's market investigation representing conventional retail outlets submitted not to be aware that Wessanen carries these products.[270]

(164) Furthermore, the Commission notes that the market share data submitted by the Parties suggest that PAI Partners covers all the demand for private label products and significant part of branded products.[271] Hence, for PAI Partners the two segments are important because its capacity utilisation and sales depend on supply of both types of products. While other suppliers of branded products could potentially start offering private label products[272], in particular since it appears that the price difference between private label and branded products is small,[273] the Commission does not have sufficient elements to conclude whether private label products exert competitive constraint on the branded products. Nonetheless, if private label products and branded products were not part of the same market, the overlap would only occur on the branded segment and the combined market share would be decreased.[274]

(165) The Commission also considered whether absent the Transaction it would have been likely that Wessanen enters and develops its offer into the conventional retail stores.

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265 Parties' response to the Commission's request for information RFI 12, question 17.

266 Parties' response to the Commission's request for information RFI 12, question 17, more sustainable fishing practices and carry the label for sustainable fishery, which is often associated with the organic label.

267 "MSC", which is controlled by the Marine Stewardship Council; Parties' response to the Commission's request for information RFI 12, question 17.

268 Questionnaire Q1 to customers, questions 29 and 33.

269 Questionnaire Q1 to customers, questions 28 and 30; however, one customer identified PAI Partners as the closest competitor to Wessanen (question 29).

270 Questionnaire Q1 to customers, question 31, and questionnaire Q2 to competitors, question 32.

271 Form CO, annex 23 (revised 21 August 2019), table A1.bis.

272 Parties reply to the Commission's request for information RFI 12, question 37.4 stated that it is uncommon for any manufacturer to focus exclusively on private label products.

273 Parties reply to the Commission's request for information RFI 12, table 2; see also Questionnaire Q1 to customers, question 5 where one customer explained, for products like secondary processed herring or mackerel, which are less marketed, there is no difference in customers' perception regarding private label products and branded products.

274 Form CO, Annex 23, Table A2, the combined market share of the Parties in branded segment would be [40-50]%.

(166) Similarly, as analysed in the recital (143) in relation to smoked salmon, the entry into conventional stores for secondary processed mackerel may not be easy, as it would require sufficient capacity to serve the conventional retail channel volumes. For example, the customer representing a conventional retail channel explained that switching suppliers for secondary processed mackerel, as for smoked salmon and secondary processed herring, would not be easy because of brand loyalty of its customers and the capacity of the supplier to provide the necessary volumes.[275] Based on the market share data provided by the Parties, Wessanen would be second smallest supplier of the conventional retail (followed only by "No brand").[276] However, given that sales in the HFS generate higher revenues because of higher prices, suppliers active in HFS only, as it is the case for Wessanen, would unlikely have an incentive to switch to conventional retail stores. As regards Wessanen's expansion plans, the Parties explained that Wessanen does not consider its activities related to fish products, including secondary processed mackerel, to be one of the core categories and, as its internal documents suggest, […].[277] Furthermore, the respondents to the market investigation also suggested that such entry is not likely.[278]

(167) The market investigation results discussed above in recital (140) apply to secondary processed mackerel. Specifically, in relation to the secondary processed fish products, including the secondary processed mackerel, one customer even suggested that prices may decrease.[279] There were no further substantiated concerns emerging during the market investigation with regard to the supply of secondary processed mackerel in France.

(168) Based on the above considerations and in the light of the results of the market investigation, the Commission considers that the concentration would not raise serious doubts as to its compatibility with the internal market as regards the Parties' activities in France in the market for the supply of secondary processed mackerel.

4.2.5. Savoury bread toppings

(169) For the purposes of this Decision, the Commission will consider the likely effects of the Transaction on the following plausible market delineation: (i) fresh vegetables-based bread toppings and (ii) taramasalata, which is the only fish-based savoury bread topping for which the Parties have overlapping activities. This market delineation represents the narrowest plausible market definition and the same reasoning would apply under any other plausible market definition.

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275 Questionnaire Q1 to customers, question 33, while the majority indicated that switching for this product category would not be difficult.

276 Compared to the sales value of other four reported market players in the conventional retail channel, even if Wessanen's sales to both conventional retail stores and HFS stores were taken into account, Wessanen would be second smallest market participant followed only by No brand estimated to have sales of […] (compared to […] of Wessanen); Form CO, Annex 23, Table A1bis.

277 Form CO, annex 20, and Parties' response to the Commission's request for information RFI 15.

278 Questionnaire Q1 to customers, question 31.

279 However, the customer also noted that the Transaction would not have any impact because of limited sales; Questionnaire Q1 to customers questions 35 and 36.

4.2.6. Vegetables-based bread toppings

(170) Wessanen, through its brand Bonneterre, sells fresh vegetables-based bread toppings to HFS. Wessanen also supplies branded ambient vegetables-based bread toppings to HFS and to conventional retail stores.[280] PAI Partners supplies branded and private label fresh vegetables-based bread toppings to conventional retail stores.[281]

(171) The Parties provided market share data for savoury vegetables-based bread toppings. As a preliminary remark, the Parties explained that estimation of the total market size includes only fresh vegetables-based toppings and does not include canned or packaged in jar containers products having longer shelf life. The Parties' activities overlap only in fresh vegetables-based bread toppings in France.

(172) Second, the Parties argued that market shares they have provided overstate their positions because the vegetables-based bread toppings should include larger group of products than they sell and which was used to estimate the size of the total market. [282]

(173) Third, further to the considerations in recital (132), the total market estimations for overall and organic[283] fresh vegetables-based bread toppings include only the sales to conventional retail stores and does not reflect the sales of competitors in the HFS. As regards fresh vegetables-based bread toppings, Wessanen is only active in HFS.

(174) Based on this data, the Parties' combined market share in terms of value in 2018 are [70-80]% (PAI Partners: [70-80]%; Wessanen: [0-5]%[284]). Other suppliers of fresh vegetables-based bread toppings in France are Cruscana with a share in value terms of [0-5]%, Yarden [0-5]%, Mayaane [0-5]%, among others.[285] If only the potentially relevant segment of branded fresh vegetables-based bread toppings was considered, the combined market share of the Parties in value terms in 2018 would be [80-90]% (PAI Partners: [80-90]%; Wessanen: [0-5]%).[286] Specifically for the HFS, the following companies, among others, are active in the supply of savoury vegetables based bread toppings: Senfas and Primeal.[287]

(175) If a putative segment of the organic fresh vegetables-based bread toppings was considered (branded and private labels), the combined market shares of the Parties would be [40-50]% (PAI Partners: [40-50]%, Wessanen: [0-5]%).[288]

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280 Parties' response to the Commission's request for information RFI 12, question 18; Form CO, paragraphs 161-162.

281 Form CO, paragraphs 163 and 164.

282 Form CO, paragraph 176 include only fresh guacamole, hummus, olive tapenades, tzatziki, ktipiti and moutabal. They submit that the market for vegetable-based bread toppings should include a range of other vegetable spreads, such as sundried tomato tapenade and exotic spreads such as muhammara or raita.

283 Parties' response to the Commission's request for information RFI 13, question 2.

284 Parties' response to the Commission's request for information RFI 12, question 18.3.

285 Form CO, annex 23 (revised 21 August 2019), table B1bis.

286 Form CO, annex 23 (revised 21 August 2019), table B2; Parties' response to the Commission's request for information RFI 12, question 18.3.

287 Both sell ambient vegetables-based bread toppings; Parties response to the Commission's request for information RFI 15, question 1.

288 Parties' response to the Commission's request for information RFI 12, question 18.3 and RFI 13, question 2.

(176) The Parties provided an estimation of Wessanen's market share if all of its sales related to vegetables-based bread toppings (fresh and ambient) were considered and compared to the total market estimate for fresh vegetables-based bread toppings sold to conventional retail stores. In that case, Wessanen's total sales of vegetables-based bread toppings would correspond to [0-5]% market share in the market for branded fresh vegetables-based bread toppings.[289]

(177) Notably, the major part of Wessanen's sales concerns ambient vegetables-based bread toppings.

(178) In addition to a very small increment in market share (which is likely to be overestimated as explained in recitals (170) to (173) above) as regards the supply of fresh savoury vegetables based bread toppings, the Commission considers that the concentration will not substantially modify the market structure for fresh vegetables-based bread toppings in France. While the addition in market share is larger if Wessanen's total sales of vegetables-based bread toppings is considered, the Commission notes that this is due to the fact that the major part of Wessanen's sales concern ambient vegetables-based bread toppings.[290] However, the Commission does not consider that this larger increment suggests that it is more likely that the Transaction would give rise to competition concerns because it would not be an accurate reflection of the competitive situation of the Parties even if broader overall market for vegetables-based bread toppings was considered.

(179) Furthermore, the Commission considers that the Parties are not the closest competitors. First, the Parties serve different retail outlets and thus supply different customers with differentiated brands and develop outlet specific marketing strategies. As mentioned in recital (170), PAI Partners sells fresh vegetables-based bread toppings only in the conventional retail stores and Wessanen only in HFS.

(180) Second, the Parties focus on different types of products. Notably, the major part of Wessanen's sales concerns ambient vegetables-based bread toppings […] of savoury vegetables-based bread toppings concerns fresh products. Whereas, PAI Partners only sells fresh bread toppings.

(181) As regards, the difference between fresh and ambient, the Commission recalls that the results of the market investigation suggest that fresh and ambient products are not substitutes (see recital (69)).

(182) As one customer explained the difference between Wessanen's products (Bjorg brand) and PAI Partners (Labeyrie group): *"Bjorg supplies long life products while Labeyrie supplies fresh products"*.[291] Furthermore, the products that the Parties supply to the conventional retail channel do not compete for the space on the same shelf: fresh bread toppings of PAI Partners are sold in the refrigerated counters, while ambient products are placed on different shelves in the grocery store.

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289 Form CO, annex 23 (revised 21 August 2019), table B1bis.

290 Over […]% of Wessanen's total sales of savoury vegetable bread toppings in France corresponds to ambient products, Parties' response to the Commission's request for information RFI 12, paragraph 44.

291 French original reads: "*Bjorg propose des produits de longue conservation, tandis que Labeyrie propose des produits frais : il ne s'agit pas des mêmes catégories de produits* "; Questionnaire Q1 to customers, question 29 ; other customers provided similar explanations Questionnaire Q1 to customers, questions 28 and 35.

(183) Third, Wessanen's products are exclusively organic, whereas the share of organic products in PAI Partners portfolio of fresh vegetables-based bread toppings is [0-50]%.[292]

(184) In light of the above, the Commission considers that Wessanen does not exert a significant competitive constraint on PAI Partners for the conventional retail channel because of different product offering.

(185) Furthermore, the market share data submitted by the Parties indicate that PAI Partners serve a large part of demand for the supply of fresh vegetables-based bread toppings. The Commission also considered the likely competitive pressure exerted by private label products. Although PAI Partners deliver […] of the private label supplies, there are also other suppliers of private labels (see

[292] Parties' response to the Commission's request for information RFI 13, question 1.

(187) Table 1). In addition, other suppliers of branded products could potentially start offering private label products.[293] Furthermore, the results of the market investigation also suggested that private label products seem to exert competitive pressure on branded products. For example, some customers representing the conventional retail chains have indicated that closest competitor to PAI Partners are private label products.[294] Accordingly, the Commission considers that it cannot be excluded that private label products exert certain competitive pressure on the branded products.

(188) As regards switching of suppliers, the majority of customers who responded to the Commission's request for information indicated that they could easily and without incurring high costs switch suppliers for this group of products.[295] Two customers submitted that they do not have any effective alternative. However one of them provided a substantiated explanation for its view saying that his observation applies only for fresh vegetables-based bread toppings but not for ambient products (i.e., not for the products supplied by Wessanen).[296]

(189) Overall, during the market investigation the views on the impact of the concentration expressed by Parties' customers were mixed.[297] Some customers who responded to the market investigation indicated that they do not expect the Transaction to have any effect on prices as discussed above in recital (140). The customers mainly explained, referring specifically to vegetables-based bread toppings: *"No impact because fresh and ambient product sections are considered as being very different by consumers"*;[298] similarly another customer submitted: *"Not the same markets, it is a question of complementarity"* [299] or *"No change / we do not know fresh products supplied by Wessanen"*. However, in addition to a few customers of PAI Partners who generally expect the prices to increase following the Transaction as explained in recital (140), one further customer considered that, specifically for vegetables-based bread toppings, prices may increase.[300]

(190) The Commission considered whether absent the Transaction it would have been likely that Wessanen expands its offer into the conventional retail stores. All except one customer responding to the market investigation submitted that such entry is not likely.[301] One customer expressed a different view, without however providing any verifiable element to back its opinion: *"Wessanen seems to fit with an aperitif trend*

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293 Parties reply to the Commission's request for information RFI 12, question 37.4 stated that it is uncommon for any manufacturer to focus exclusively on private label products.

294 Questionnaire Q1 to customers question 30.

295 Questionnaire Q1 to customers, question 33, including customers representing HFS.

296 Questionnaire Q1 to customers, question 33. *« Oui pour les produits ambiants / non pour les produits frais car peu d'intervenants et forte notoriété de Delabi avec ses marques Blini et Atelier de Blini* ».

297 Without a clear majority of either positive or negative views.

298 French original reads: *Pas d'impact car les rayons frais et ambiants sont considérés comme deux rayons très différents par les consommateurs* ; Questionnaire Q1 to customers, question 35.

299 Questionnaire Q1 to customers, question 36.

300 The Commission notes that this concern of an HFS customer should be put in the context with its other answers. This customer indicates that there are alternative suppliers for vegetables-based bread toppings and suggests that switching is easy. However, it also states that the Transaction may lead to more choice, which apparently should be considered as a negative effect in light of its explanation that specialised organic stores try to discard as much as possible the products available in different distribution channels (conventional/HFS) (questions 27, 33, 35, 37.1).

301 Questionnaire Q1 to customers, question 31.

in the medium and long-term. Thus it seems consistent for it to develop spreadable and bite-size products".[302] That customer also indicated that it would face difficulty in switching suppliers for fresh vegetables-based bread toppings because of the strong notoriety of brands held by PAI Partners. The Commission thus considers that entry into the conventional retail channel may require significant investment in brand development for this product category and the ability to supply sufficient volumes to exercise an effective constraint on the current market leader PAI Partners[303]. The Parties submit that savoury bread toppings is not a core product category for Wessanen in France.[304] The Parties refer to Wessanen's internal strategy documents for France, which suggest that […].[305]

(191) In light of the above and given the minimal current sales of Wessanen of fresh vegetables-based bread toppings (which are multiple times smaller compared to main players in the conventional retail market), as well as the positioning of its current product portfolio, the Commission considers that Wessanen's expansion into the fresh bread toppings in the conventional stores is not likely.

(192) Based on the above considerations and in the light of the results of the market investigation, the Commission considers that the concentration would not raise serious doubts as to its compatibility with the internal market as regards the Parties' activities in France in the putative market for the supply of savoury vegetables-based bread toppings.

4.2.7. Taramasalata

(193) The Parties submitted market share data for seafood-based bread toppings including only branded and private label taramasalata. Based on this data, the Parties' combined market share in terms of value in 2018 are [70-80]% (PAI Partners: [70-80]%; Wessanen: [0-5]%[306]). If only the potentially relevant segment of branded taramasalata was considered, the combined segment share of the Parties in value terms in 2018 would be [90-100]% (PAI Partners: [90-100]%; Wessanen: [0-5]%).[307] The Parties submit that they cannot provide the breakdown of competitors' market shares for the segment.[308] However, the Parties indicate that other suppliers of taramasalata are Aspasia (with the brand Le Traiteur Gourmet and active in private label products) and brand Fjord King.[309]

(194) The Parties note that their combined market shares and total market size are calculated on the same methodology as referenced above in recital (132) and do not

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302 French original reads: "*Wessanen semble s'inscrire sur le moyen et long terme sur la tendance de l'apéritif. Il paraît donc cohérent qu'il développe des gammes de tartinables et de bouchées.*"; Questionnaire Q1 to customers, questions 28 and 31.1., and another customer evoked that Bjorg could eventually develop into an alternative to Labeyrie.

303 See also agreed non-confidential minutes of a call of 20 May 2019 with a competitor supplying HFS, confirming that ability to supply necessary volumes is an important factor of entering the conventional retail stores.

304 Parties' response to the Commission's request for information RFI 12, question 22, and Form CO, annex 20, slide 14.

305 Form CO, annex 20, slide 14.

306 Form CO, annex 23 (revised 21 August 2019), table C1.

307 Form CO, annex 23 (revised 21 August 2019), table C2.

308 Parties' response to the Commission's request for information RFI 12, question 20.

309 Parties' response to the Commission's request for information RFI 12, question 20.

include the sales to the health food stores from competitors. Nonetheless, given the minimal sales of Wessanen the Transaction cannot give rise to any competition concerns in the segment considered.[310] The Commission also notes that, if the putative market for organic taramasalata were considered, there would be no overlap between the Parties' activities because Wessanen only sells organic taramasalata and PAI Partners sells only non-organic products.[311]

(195) Given the very low increment in market share brought by Wessanen, the Transaction will not substantially modify the market structure for seafood based bread toppings including only taramasalata in France. Furthermore, the Parties supply different retail outlets and cannot be considered closest competitors, which is in line with the results of the market investigation.[312] The Commission also considered whether absent the Transaction it would have been likely that Wessanen enters and develops its offer into the conventional retail stores. The Parties submitted that […].[313] The respondents to the market investigation also submitted that such entry is not likely.[314]

(196) Based on the above considerations and in the light of the results of the market investigation, the Commission considers that the concentration would not raise serious doubts as to its compatibility with the internal market as regards the Parties' activities in France in the putative market for the supply of taramasalata.

4.2.8. Consumable olives

(197) In France, PAI Partners sells private label and branded fresh pre-packaged consumable olives through a number of Labeyrie Group brands, including Père Olive and King Cuisine, which are exclusively sold to conventional retail stores. PAI Partners also supplies consumable olives in bulk packaging for sale in fresh counters of supermarkets.[315] Wessanen only sells branded ambient pre-packaged consumable olives in glass jars in France through its brand Bonneterre, which are exclusively sold to health food stores.[316]

(198) Based on the market share data submitted by the Parties[317], the combined market share of the Parties in value terms in pre-packaged consumable olives in France is [20-30]% (PAI Partners: [20-30]%; Wessanen: [0-5]%), which would only experience a marginal increment compared to the situation pre-Transaction.

(199) There would be remaining credible competitors in the French market for pre-packaged consumable olives post-Transaction that would continue exerting

310 Parties' response to the Commission's request for information RFI 12, question 19.2.

311 Parties' response to the Commission's request for information RFI 13, question 12.

312 Questionnaire Q1 to customers question 30.

313 Parties' response to the Commission's request for information RFI 12, question 22, and Form CO, annex 20, slide 14.

314 Questionnaire Q1 to customers, question 31.

315 Labeyrie only has limited net sales of olives sold in bulk packaging, amounting to […] in 2018 (Parties' response to the Commission's request for information RFI 12, question 28). Because of this, the Parties have not been able to provide an estimation of the market size of olives sold in bulk packaging to the retail channel in France (Parties' response to the Commission's request for information RFI 12, question 29).

316 Parties' response to the Commission's request for information RFI 12, question 31.2.

317 Form CO, annex 23 (revised 21 August 2019).

competitive constraints on the Parties. Other suppliers include Croc'Frais ([40-50]%), Tropic Apéro ([20-30]%), Mille et un Sud ([0-5]%) and Provence Olives ([0-5]%). The combined entity would therefore remain distant from the current market leader (Croc'Frais) and similar in size to the third player (Tropic Apéro). There is, in addition, a presence of private label sales in the French market for pre-packaged consumable olives ([10-20]% of the market, of which [60-70]% relates to PAI Partners' private labels).

(200) In a potential market for branded-only pre-packaged consumables olives, the Parties' combined market shares by value ([10-20]%), with an increment of [0-5]% – according to the market share data submitted by the Parties – would not lead to an affected market.

(201) Given the negligible increment in market share (which is likely to be overestimated as explained in recital (116) above) brought by Wessanen under any plausible market segmentation and the presence of credible competitors, the Commission considers that the Transaction will not substantially modify the market structure for consumable olives in France.

(202) In addition to the low increment from Wessanen in consumable olives, the Parties argue that they are not each other closest competitor.[318] They sell to different channels and have a different product range, with Wessanen selling branded ambient pre-packaged consumable olives in glass jars exclusively in health food stores[319] and PAI Partners selling private label and branded fresh pre-packaged consumable olives exclusively to the conventional retail channel.[320]

(203) The market investigation has confirmed that the Parties are not close competitors. None of the market participants who responded to the market investigation identified Wessanen as the closest competitor to PAI Partners in consumable olives.[321] When asked about the closest competitors to Wessanen, no competitor identified PAI Partners as the closest competitor to Wessanen.[322]

(204) Overall, during the market investigation the views on the impact of the concentration expressed by Parties' customers were mixed.[323] Some customers who responded to the market investigation indicated that they do not expect the Transaction to have any effect on prices as discussed above in recital (140). The customers mainly explained referring specifically to olives: *"Not the same markets, it is a question of complementarity"* or *"No change / we do not know fresh products supplied by Wessanen".*[324] However, in addition to a few customers of PAI Partners who generally expect the prices to increase following the Transaction as explained in

318 Form CO, paragraph 482.
319 Parties' response to the Commission's request for information RFI 12, question 31.2.
320 Parties' response to the Commission's request for information RFI 13, question 17.
321 Questionnaires Q1 to customers, question 30 and Q2 to competitors, question 31.
322 Questionnaires Q1 to customers, question 29 and Q2 to competitors, question 30.
323 Without a clear majority in either positive or negative views.
324 Questionnaire Q1 to customers, question 36.

recital (140), one further customer considered, that specifically for consumable olives, prices may increase.[325]

(205) None of the competitors who responded to the market investigation was concerned that the Transaction would bring a price increase or an effect on competition in relation to pre-packaged olives.[326]

(206) The Commission also considered whether absent the Transaction it would have been likely that Wessanen enters and develops its offer of consumable olives into the conventional retail stores. Entry into conventional stores may not be easy. As explained in recital (143) above, Wessanen would require significant investment in marketing and sufficient capacity to serve the conventional retail channel volumes. Moreover, customers have explained that switching suppliers would not be easy because of brand loyalty of its customers and the capacity of the supplier to provide the necessary volumes.[327] Moreover, the respondents to the market investigation submitted that such entry into conventional retail stores is not likely.[328]

(207) Based on the above considerations and in the light of the results of the market investigation, the Commission considers that the concentration would not raise serious doubts as to its compatibility with the internal market as regards the Parties' activities in France in the putative market for the supply of consumable olives.

4.2.9. Bite-size savoury food products

(208) PAI Partners – through its brands Blini, L'Atelier Blini and Père Olive – sells in France branded chilled falafel bites, mixed anti-pasti, stuffed peppers, involtini, accras, böreks, samosas and rikakats, keftedes and cheese bites. Wessanen sells in France branded ambient falafel bites and vegetable bouchées through its brand Bjorg. The Parties do not sell private label bite-size savoury food products in France.[329]

(209) The Parties argue that, given their presence only in a limited segment, they cannot provide an accurate view on the total market size.[330] The Parties have provided market data corresponding to the products sold by PAI Partners, namely chilled involtini, tomate confite, dried tomato, artichoke, peppers, eggplant, stuffed peppers, zucchini, falafel bites, accras, samossas, rikakats, keftedes aubergine and arancini. As these estimations do not include other savoury food products not sold by the parties nor ambient products, the Parties argue that the total market size is underestimated.

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325 Reduction of supplies: not further substantiated and other suppliers mentioned; Questionnaire Q1 to customers, questions 27, 36.

326 Questionnaire Q2 to competitors, questions 39 and 40.

327 Questionnaire Q1 to customers, question 33.

328 Questionnaire Q1 to customers, question 31.

329 Parties' response to the Commission's request for information RFI 15, question 13.

330 Form CO, paragraph 544.

(210) Based on the market share data submitted by the Parties[331], the combined market share of the Parties in value terms in bite-size savoury food in France is [30-40]% (PAI Partners: [20-30]%; Wessanen: [0-5]%).

(211) The Parties argue that they cannot provide data on their competitors nor on branded-only bite-size savoury food products. They nevertheless submit that there are a number of noticeable competitors for bite-size savoury food products in France, including Ensoleil'ade, Justin Bridou, Aspasia, Palais du Monde, Paso Traiteur, Dessaint Traiteur, Herta, Bonduelle and Céreal Bio.[332] Moreover, while the Parties have not been able to provide a view on the total market share represented by private labels in the French market for bite-size savoury food products, they argue that private labels are very visible in this market.[333] The Parties refer to the examples of Carrefour, Auchan, Monoprix and Système U, which all have an offering of private label falafel bites.[334]

(212) The Parties also argue that most competitors for bite-size savoury food products generally have a wide product offering and that it is relatively easy to extend production and offerings to additional or different food products or varieties.[335] The Parties refer in particular to Paso Traiteur, which started in 2005 as a producer of bake-off bread and later expanded its assortment to include falafel bites, cheese and meat croquettes and mini burgers.[336]

(213) Given the negligible increment in market share of [0-5]% (which is likely to be overestimated as explained in recital (209) above) brought by Wessanen under any plausible market segmentation, the Commission considers that the Transaction will not substantially modify the market structure for bite-size savoury food products in France.

(214) In addition to the low increment from Wessanen in bite-size savoury food products, the Parties argue that they are not each other closest competitor.[337] In this regard, the Parties argue that they sell differentiated products: PAI Partners sells only fresh non-organic snack-size in the chilled counter of hyper- and supermarkets, while Wessanen sells only ambient organic products, both snack-size and for meals, in the organic shelves of supermarkets.[338] The Parties' products would thus be sold on different shelves of conventional retail stores.[339]

(215) The market investigation confirmed that the Parties are not close competitors. None of the customers or competitors having responded to the market investigation identified Wessanen as closest competitor to PAI Partners in bite-size savoury food

331 Form CO, annex 23 (revised 21 August 2019).
332 Form CO, paragraph 551.
333 Form CO, paragraph 550.
334 Form CO, paragraph 550.
335 Form CO, paragraph 552.
336 Form CO, paragraphs 552 and 565.
337 Form CO, paragraph 562.
338 Form CO, paragraphs 558 to 562.
339 Form CO, paragraph 562.

products.[340] When asked about the closest competitors to Wessanen, no competitor identified PAI Partners as the closest competitor to Wessanen.[341]

(216) During the market investigation, the views on the impact of the concentration on bite-size savoury food products expressed by customers were mixed. A majority of the customers who responded to the market investigation and expressed an opinion indicated that they do not expect the Transaction to have any effect on prices in this market.[342] A customer even suggested that prices may decrease.[343]

(217) A majority of competitors who responded to the market investigation was not concerned that the Transaction would bring a price increase or an effect on competition in relation to bite-size savoury food products.[344] One competitor pointed out that there may be a *"high risk"* that the Transaction has an impact on competition in relation to bite-size savoury products *"in case of consolidation by PAI of market players"*.[345] This same customer also stated that there will not be an effect on prices post-Transaction, given that the Parties will *"remain subject to a strong pressure"* from large distributors.[346]

(218) The Commission considered whether absent the Transaction it would have been likely that Wessanen expands its offer in the conventional retail stores. All except one customer responding to the market investigation submitted that such expansion is not likely.[347] The customer expressing a different view stated that *"it seems consistent for [Wessanen] to develop […] bite-size products"*.[348] That customer also indicated that it would face difficulties in switching suppliers for bite-size savoury food products because of the strong notoriety of brands held by PAI Partners.[349] The Commission thus considers that the expansion into the conventional retail channel may require significant investment in brand development for this product category and the ability to supply sufficient volumes to exercise an effective constraint on the current market leader PAI Partners. In light of this, the Commission considers that Wessanen's expansion into the fresh bread toppings in the conventional stores is not likely.

(219) Based on the above considerations and in the light of the results of the market investigation, the Commission considers that the concentration would not raise serious doubts as to its compatibility with the internal market as regards the Parties'

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340 Questionnaire Q1 to customers, question 30 and Q2 to competitors, question 31.

341 Questionnaire Q1 to customers, question 29 and Q2 to competitors, question 30.

342 Questionnaire Q1 to customers, question 36.

343 Questionnaire Q1 to customers questions 36.

344 Questionnaire Q2 to competitors, questions 39 and 40.

345 Questionnaire Q2 to competitors, question 41. French original reads: *"risque fort en cas de consolidation par PAI des acteurs du marché".*

346 Questionnaire Q2 to competitors, questions 39 and 40. French original reads: *"restent soumis à la forte pression des de la grande distribution"*.

347 Questionnaire Q1 to customers, question 31.

348 French original reads: "*Wessanen semble s'inscrire sur le moyen et long terme sur la tendance de l'apéritif. Il paraît donc cohérent qu'il développe des gammes de tartinables et de bouchées.*", and another customer evoked that Bjorg could eventually develop into an alternative to Labeyrie ; Questionnaire Q1 to customers, questions 28 and 31.1.

349 Parties' response to the Commission's request for information RFI 12, question 33.

activities in France in the putative market for the supply of bite-size savoury food products.

4.2.10. Bread substitutes

(220) Both Parties are active in the sale of bread substitutes. The main product of PAI Partners in this category is blini[350], while the major share of Wessanen's sales related to bread substitutes concern crisp bread and rice waffles.[351] PAI Partners is active in branded products through brands Labeyrie, and L'Atelier Blini and private label products. Wessanen […] sells bread substitutes […] through brands Krisproll[352] and Bjorg, and […]through its brand Bonneterre.[353]

(221) In light of the market share data submitted by the Parties[354], the Transaction gives rise to a single horizontally affected putative market for branded bread substitutes.[355] Accordingly, based on this data, the Parties' combined market shares in terms of value in 2018 were [20-30]% (PAI Partners: [5-10]%; Wessanen: [10-20]%).

(222) As regards, competitors' market shares for the sale of bread substitutes other than blini, the Parties provide the following data: Mondelez (with the brands Heudebert with a market share of [10-20]%, Pelletier [5-10]%, Cracotte [5-10]%,) Pasquier [5-10]%.[356] Other competitors, among others, include Nutrition & Santé with the brands Gerblé (conventional retail stores), and for organic bread substitutes Céréal bio and Jardin bio for HFS.[357] The Parties indicate that share of private labels for dry bread substitutes in conventional retail stores represents [30-40]%, and [40-50]% for the HFS.[358] Further to the data submitted by the Parties, there are sufficient credible competitors for bread substitutes, including organic bread substitutes.

(223) However, as the Parties explained, the group of products included in the category of bread substitutes contain blini and other different products such as toasts, galettes, crackers, krisprolls, extruded bread and rusks.[359] In this regard the Parties explain: "*consumers usually do not consume rice waffles with a savoury bread topping, and in any event not in any way similarly to how blinis are consumed. Therefore, the Parties consider it unlikely that consumers would substitute blinis with rice waffles*".[360] In light of the previous Commission decisions, which considered that the market for bread substitutes could be subdivided into as many markets as product types, the Commission considers relevant that, in the present case on the narrowest

350 Form CO, paragraph 369, indicates that blini represent […]% of total sales related to bread substitutes.

351 Parties' response to the Commission's request for information RFI 12, question 25: [70-80]% and [20-30]% respectively.

352 Form CO, paragraph 55: an exclusive distribution license for France.

353 Parties' response to the Commission's request for information RFI 12, question 23.2, representing […]% of its total sales of bread substitutes; and Form CO, paragraph 78.

354 Form CO, Annex 23 (revised 21 August 2019).

355 The combined market share in the potentially relevant market for branded and private label bread substitutes would amount to [10-20]%; Form CO, Annex 23 (revised 21 August 2019).

356 Parties' response to the Commission's request for information RFI 10, paragraph 25.

357 Parties' response to the Commission's request for information RFI 10, question 4.

358 Parties' response to the Commission's request for information RFI 10 question 4.

359 Parties' response to the Commission's request for information RFI 10, paragraph 24.

360 Parties' response to the Commission's request for information RFI 10, paragraph 18.

product specific segment level, the Parties' combined market shares would be below 20%[361] or would not give rise to overlapping activities.[362]

(224) Furthermore, given that the group of bread substitutes include highly differentiated products with a different degree of substitutability, the Commission also considers that PAI Partners and Wessanen are not closest competitors.

(225) First, the range of product portfolio is very different: PAI Partners mainly supplies blini (fresh product), whereas Wessanen's main products are rice waffles and Swedish bread (dry bread substitutes). The internal Parties' documents prepared in the ordinary course of business also indicate that for "*bread and biscuit replacers*" as they are referred to[363], […].[364]

(226) Second, these differentiated products do not compete for the space on the same shelf in the retail store. Even if to a large extent both Parties supply their bread substitutes to the conventional retail stores, PAI Partners' blini are fresh products, sold in the chilled counter.[365] Wessanen's bread substitutes are dry and are sold on different dry products shelves.[366] The Parties also submit that other PAI Partners' bread substitutes (toasts and crackers) are usually sold next to other PAI Partners' fresh products (e.g. foie gras or smoked salmon) and therefore would not be on the shelf for bread substitutes.[367]

(227) Based on the above considerations, the Commission considers that the concentration would not raise serious doubts as to its compatibility with the internal market as regards the Parties' activities in France in the putative market for the supply of bread substitutes.

4.2.11. Conclusion

(228) For the reasons set out above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market as regards horizontal effects of concentration on the supply of all product groups.

4.3. Vertical relationships between the upstream production and bottling of NABs and the downstream sale of NABs

(229) The Transaction gives rise to a vertical link between Refresco's upstream activities in the production and bottling of NABs and Wessanen's downstream sales of different types of NABs. The Parties submit that they are not aware of any existing or prior vertical link between Refresco and Wessanen in this regard.

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361 Toasts (including the putative segment for branded products; no overlap in organic segment) and crackers (including the putative segment for branded products; no overlap in organic segment); Parties' response to the Commission's requests for information RFI 13, question 10 and RFI 15, question 4.2.

362 E.g. Blini ([…]% of PAI Partners' sales in this category); Galettes ([…]% of Wessanen's sales in this category), for swedish bread (Krisproll; […]% of Wessanen's sales in this category); Parties' response to the Commission's request for information RFI 10, question 4; and RFI 12, question 4.2.

363 Parties' response to the Commission's request for information RFI 10, annex 16.

364 Parties' response to the Commission's request for information RFI 10, annex 16, slide 4.

365 Parties' response to the Commission's request for information RFI 15, question 6.

366 Parties' response to the Commission's request for information RFI 15, question 6.

367 Parties' response to the Commission's request for information RFI 15, question 6.

(230) Refresco is active in the upstream bottling of different types of drinks (both NABs and ABs, and both CSDs and NCSDs) in different types of packaging (in carton, aseptic PET, cans and glass). It bottles both private label products for retailers and, through contract manufacturing, branded products for brand owners. Refresco is not active in the production and bottling of dairy alternative drinks, such as soy or almond milk.

(231) Wessanen, through different brands, sells dairy alternative drinks, orange juice, fruit juice (excluding orange juice), vegetable juice, non-cola flavoured carbonated soft drinks and cola-flavoured carbonated soft drinks. The Parties argue that, with the exception of dairy alternative drinks, the sale of beverages is not Wessanen's core business.

(232) The following assessment focuses on potential input foreclosure resulting from the combination of Refresco's upstream activities in the bottling of NABs (recital (237)) and the Parties' downstream sales of NABs (see Table 2).

(233) Given the very limited market power of the combined entity in any plausible downstream market, the Commission considers highly unlikely that the Parties will have the ability or the incentive to embark in a customer foreclosure strategy. For this reason, this section will not assess customer foreclosure in further detail.

4.3.1. Input foreclosure

4.3.1.1. The Parties' view

(234) The Parties maintain that the Transaction will not lead to the ability or the incentive to engage in an input foreclosure strategy.

(235) The Parties use a number of arguments in this regard. First, the Parties submit that Refresco lacks the necessary upstream market share to foreclose any input.[368] Second, the Parties submit that Refresco faces upstream competition from multiple strong players with significant capacity to bottle CSDs and NCSDs in cans, which could easily offer their services to Refresco's customers in the UK, France and the Netherlands as a reaction to an input foreclosure strategy.[369] Third, the Parties argue that Wessanen does not have a substantial market share on a downstream market that it could consolidate or expand in the event of a potential increase in its rivals' bottling costs.[370] Fourth, the Parties argue that Wessanen's limited volumes and argue that – if Wessanen were to source all of its packaging needs from Refresco – it would only represent a minimal percentage of the volumes that Refresco currently sells under its contract manufacturing agreements.[371] Fifth, the Parties argue that any potential gains ([…]) of engaging in an input foreclosure strategy would be minimal compared to Refresco's current revenues generated by providing contract manufacturing services on the market ([…]).[372]

368 Form CO, paragraph 731.
369 Form CO, paragraphs 708 and 731.
370 Form CO, paragraph 731.
371 Form CO, paragraph 731.
372 Form CO, paragraph 731.

(236) Further, the Parties submit that PAI Partners does not have the ability to implement such a strategy on its own considering that Refresco is a jointly controlled portfolio company.[373]

4.3.1.2. The Commission's assessment

4.3.1.2.1 Ability to foreclose

(237) The Parties have been unable to provide reliable information on Refresco's exact market share on the upstream market for the production and bottling of NABs. The Parties nevertheless estimate that Refresco holds a market share equal or above 30% on four separate markets.[374] These are:

a) the Dutch market for contract manufacturing of branded ambient NCSDs in cans (excluding water and RTD teas);

b) the French market for contract manufacturing of branded ambient NCSDs in cans (excluding water and RTD teas);

c) the Dutch market for contract manufacturing of branded ambient CSDs in cans (excluding water and RTD teas); and

d) the UK market for contract manufacturing of branded ambient CSDs in cans (excluding water and RTD teas).

(238) In this regard, a competitor has submitted that Refresco is the European leader on bottling in glass and cans, as well as an important competitor in the bottling of fruit juices in PET and carton.[375] According to this source, Refresco currently represents more than 40% of the overall European market for fruit juices and is considerably larger than its first competitor.[376] This source moreover states that Refresco is currently a very aggressive player on the beverages market and is in the processing of becoming a *"new giant on overall packaging"* (*"un nouveau géant du conditionnement en général"*).[377] Moreover, this market participant argues that the acquisition of Wessanen would allow Refresco to have a stronger position in its negotiations with suppliers and distributors.[378]

(239) Regardless of Refresco's degree of upstream market power, the market investigation has indicated that the company is unlikely to have the ability to foreclose third party suppliers of NABs post-Transaction.

(240) None of the customers who responded to the market investigation has raised concerns about the vertical links created by the Transaction.[379] Moreover, these

[373] Form CO, paragraph 728.

[374] Form CO, paragraph 646. Refresco also has a market share above 30% in the UK market for contract manufacturing of branded ambient NCDs in APET, where Wessanen is not active.

[375] Agreed non-confidential minutes of a call of 16 July 2019 with a competitor, paragraphs 5 and 6.

[376] Agreed non-confidential minutes of a call of 16 July 2019 with a competitor, paragraph 5.

[377] Agreed non-confidential minutes of a call of 16 July 2019 with a competitor, paragraph 14.

[378] Agreed non-confidential minutes of a call of 16 July 2019 with a competitor, paragraph 14.

[379] Questionnaire Q3b to customers, question 9.

customers have almost unanimously expressed that Refresco is unlikely to stop supplying them or increase prices.[380]

(241) However, the results of the market investigation suggest that there are alternatives to Refresco's bottling activities in France, the Netherlands and the UK. A vast majority of customers who responded to the market investigation expressed that there are available alternatives in these countries from which they can purchase at a competitive price similar volumes and range.[381] In this regard, the market investigation has also revealed that some competitors have significant free bottling capacity and are able of serving the Dutch, French and British markets.[382] Moreover, a competitor has expressed that it will need to consider increasing its production capacity in France to react to the consequences of the Transaction on its activities.[383]

(242) Some customers have, however, expressed the concern that there may be some constraints to switching bottling suppliers.[384] A customer expressed in this regard that *"changing suppliers would be a difficult process – we would need to consider capacity, product quality, cost, reliability and service and hygiene. Also transport to and from UK"*.[385] Another customer noted that *"it may be more difficult for a brand owner / producer to switch to alternative service suppliers in the case of organic beverages, than is the case for non-organic alternatives"*, given *"the additional difficulty of finding an organic-certified operator (or waiting for an operator to be certified); possible capacity constraints for the new operator; the more limited availability of organic-certified ingredients; and, the need to establish certification documentation for each stage of the new supply chain".*[386] Another customer referred to the long lead time to approve a new manufacturer, which *"is about 12 months to allow for approval of samples, commercial agreement and contract, packaging printing, ingredient sourcing etc"*.[387]

(243) The Commission considers that existing alternative suppliers to Refresco's bottling services, which seem to have free capacity, would be able to effectively constrain Refresco's ability to decrease output or reduce quality following the Transaction.

(244) For the reasons set out above, the Commission considers that the Transaction does not lead to the ability to foreclose other suppliers of NABs with regard to the production and bottling of NABs.

4.3.1.2.2 Incentive to foreclose

(245) Based on the market share data submitted by the Parties, the Parties would have very limited combined market shares in any plausible downstream market for the sale of NABs. Market shares range between less than 1% in a number of national markets and [10-20]% in the Dutch market for the sale of fruit juice other than orange juice and including low juice content still drinks, as illustrated in the table below.

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380 Questionnaire Q3a and Q3b to customers, question 8.

381 Questionnaire Q3b to customers, questions 8.1., 8.2. and 8.3.

382 Questionnaire Q4a and Q4b to competitors, questions 19.1 and 19.2.

383 Agreed non-confidential minutes of a call of 18 July 2019 with a customer, paragraph 15.

384 Questionnaire Q3b to customers, question 8.1.1.

385 Questionnaire Q3b to customers, question 8.1.1.

386 Questionnaire Q3a to customers, question 8.1.1.

387 Questionnaire Q3b to customers, question 8.1.1.

Table 2 – Overview of downstream markets – Volume market shares in 2018

Product		All			Branded only		
		PAI Partners	Wessanen	Combined	PAI Partners	Wessanen	Combined
Orange juice							
	France	-	[0-5]%	-	-	[0-5]%	-
Orange juice (including juice content below 25%)							
	Netherlands	[5-10]%	[0-5]%	[5-10]%	[10-20]%	[0-5]%	[10-20]%
Fruit juice (excluding orange juice)							
	France	-	[0-5]%	-	-	[0-5]%	-
	Italy	-	[0-5]%	-	-	[0-5]%	-
	Netherlands	-	[0-5]%	-	-	[0-5]%	-
	Spain	-	[0-5]%	-	-	[0-5]%	-
	Portugal	-	[0-5]%	-	-	[0-5]%	-
	Belgium	-	[0-5]%	-	-	[0-5]%	-
Fruit juice (excluding orange juice and including juice content below 25%)							
	Netherlands	[5-10]%	[0-5]%	[5-10]%	[10-20]%	[0-5]%	[10-20]%
Vegetable juice							
	France	-	[0-5]%	-	-	[0-5]%	-
	Netherlands	-	[0-5]%	-	-	[0-5]%	-
Vegetable juice (on-trade)							
	Netherlands	-	[0-5]%	-	-	[0-5]%	-
Non-cola flavoured CSDs							
	United Kingdom	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
	Netherlands		[0-5]%			[0-5]%	
	Sweden		[0-5]%			[0-5]%	
	Belgium		[0-5]%			[0-5]%	
	Iceland		[0-5]%			[0-5]%	
Cola flavoured CSDs							
	United Kingdom		[0-5]%			[0-5]%	
	Netherlands		[0-5]%			[0-5]%	
	Sweden		[0-5]%			[0-5]%	
	Italy		[0-5]%			[0-5]%	
	Belgium		[0-5]%			[0-5]%	

Source: Parties' calculations based on the European Fruit Juice Association Report (2018). Form CO, Annex 26 (revised 12 August 2019).

(246) Downstream markets where the combined market shares are above 5% are due to PAI Partners' market share preceding the Transaction. In these instances, the Wessanen's increment brought about by the Transaction is very limited and unlikely to change Refresco's incentive prior to the Transaction.

(247) In this regard, a customer has stated that *"the drinks part of Wessanen is so marginal that it will […] not enhance or strengthen P[AI]'s currently already strong position in the market or vis-à-vis [this competitor]"*.[388]

(248) One competitor in bottling considered likely that after the Transaction Refresco will increase prices, degrade the offering or the quality of its bottling services for NABs for Wessanen's competitors. This competitor pointed out that the Transaction will reinforce Wessanen against its competitors and lead to *"attacks on suppliers of Wessanen for services offered by Refresco"*.

(249) In that regard, the Commission notes that if Wessanen switched completely to Refresco, it would only cover a very small percentage of its overall capacity. Wessanen's total bottling and packaging requirements in the EEA amount to […].[389] This amount would only represent around […]% of Refresco's total contract manufacturing production in France alone, which amounted to […] in 2018.[390] The Commission also notes that Refresco's current revenue generated by providing contract manufacturing services on the market is of approximately […], while the potential gain of the Parties for engaging in an input foreclosure strategy would be of only […].[391] This entails that, should Refresco cease to supply third party sellers of NABs, it would result in substantial idle capacity and foregone revenue without compensation. The Commission therefore considers that engaging in an input foreclosure strategy would not be a profitable strategy for Refresco.

(250) For the reasons set out above, the Commission considers that the Transaction does not lead to the incentive to foreclose other suppliers of NABs with regard to the production and bottling of NABs.

4.3.1.2.3 Effects

(251) Given the absence of the ability or the incentive to foreclose other suppliers of NABs, the Commission considers that the Transaction will not lead to increased prices in the downstream market thereby significantly impeding effective competition. In particular, the Commission has seen no evidence that a potential anticompetitive foreclosure would increase the cost of downstream competitors in the sale of NABs nor raise the barriers to entry to potential competitors.

4.3.2. Conclusion

(252) For the reasons set out above and in light of the results of the market investigation and of all the evidence available, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market as regards the vertical relationship between the upstream production and bottling of NABs and the downstream sale of NABs.

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388 Questionnaire Q3b to customers, question 9.1.

389 Form CO, paragraphs 631 and 731. This amount represents Wessanen's total sales volume in the EEA related to the sale of all drinks combined without distinction.

390 Form CO, paragraph 661. Wessanen's total bottling and production requirements would represent […]% of Refresco's total contract manufacturing volumes in the Netherlands ([…]) and […]% of Refresco's total contract manufacturing volumes in the United Kingdom ([…]).

391 Form CO, paragraph 731.

5. CONCLUSION

(253) 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
Member of the Commission