EUROPEAN COMMISSION

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C(2018) 5178 final

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

To the notifying party

Subject: **Case M.8829 – Total Produce/Dole Food Company**
Commission decision pursuant to Article 6(1)(b) in conjunction with Article 6(2) of Council Regulation No 139/2004[1]

Dear Sir or Madam,

(1) On 11 June 2018, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation, by which Total Produce PLC ("Total Produce") will acquire, within the meaning of Article 3(1)(b) and 3(4) of the Merger Regulation, joint control over DFC Holdings LLC, and thus indirectly over its wholly-owned subsidiary, Dole Food Company, Inc. (together referred to as "Dole") together with its current sole owner, Mr. David H. Murdock by way of purchase of shares (the "Transaction")[2]. Total Produce and Dole are referred to as the "Parties".

1. THE PARTIES

(2) Total Produce is a leading fresh produce distributor, with approximately 70% of its annual turnover being generated in Europe. Total Produce also operates banana ripening centres which are mainly used for its own ripening needs but occasionally for banana ripening services to third parties. Total Produce was

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 Publication in the Official Journal of the European Union No C 214, 19.06.2018, p. 7.

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formed in 2006 following a separation of the general produce and distribution arm of Fyffes Plc ("Fyffes"). It is now an independent and separately quoted company with no residual shareholding relationship with Fyffes.

(3) Mr. David H. Murdock is currently the ultimate sole owner of Dole through The David H. Murdock Living Trust. DFC Holdings LLC (and therefore ultimately Dole Food Company, Inc.) is held by The David H. Murdock Living Trust, of which Mr. David H. Murdock is the trustee and the ultimate beneficiary. In addition to Dole, Mr. David H. Murdock also holds controlling interests in businesses primarily involved in real estate development and ownership, transport equipment leasing, building materials manufacturing, aviation services, as well as mortgage, hotel, and oil and gas operations.

(4) Dole is a producer, marketer and distributor of fresh fruit and vegetables, operating in many locations worldwide but with a principal geographic focus on North America. In 2016, Europe represented only 24% of Dole's worldwide turnover.

2. THE OPERATION AND CONCENTRATION

(5) Pursuant to a binding Securities Purchase Agreement ("SPA") signed on 1 February 2018, Total Produce intends to acquire a 45% shareholding in DFC Holdings LLC, and thus indirectly in its wholly-owned subsidiary, Dole Food Company, Inc. from the current sole owner, Mr. David H. Murdock via The David H. Murdock Living Trust. Total Produce will also obtain the right to nominate half of the members of the board and acquire veto rights over the key strategic and commercial decisions of Dole. This transaction is valued at USD 300 million in cash.

(6) As a result of the Transaction, Total Produce will obtain joint control over Dole together with Mr. Murdock.

(7) Dole will be a joint venture performing on a lasting basis all the functions of an autonomous economic entity. First, Dole already has and will continue to have significant capital to fund its operations as well as the staff and a dedicated management team necessary to operate independently of its shareholders. Second, Dole will continue to have access to and presence on the market, where it will continue to service its customers. Third, Dole is intended to operate on a lasting basis, with plans to expand its business in the years ahead.

(8) The Transaction therefore constitutes a concentration pursuant to Article 3(1)(b) and Article 3(4) of the Merger Regulation.

3. EU DIMENSION

(9) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million[3]. Each Total Produce and Dole have an EU-wide turnover in excess of EUR 250 million (Total Produce EUR […] million in 2017,

[3] Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.4.2008, p. 1).

Dole EUR […] million in 2017), but each does not achieve more than two-thirds of its aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has an EU dimension pursuant to Article 1(2) of the Merger Regulation.

4. APPLICABILITY OF THE EEA AGREEMENT

(10) Fresh produce falls outside the scope of the Agreement on the European Economic Area ("EEA Agreement") pursuant to Article 8(3)(a) of the EEA Agreement. The assessment of the impact of the Transaction in the EFTA States hence falls outside the jurisdiction of the Commission.[4]

5. BANANAS

(11) The Parties' activities in the EU overlap in bananas (assessed in Section 5), bagged salad (assessed in Section 6), pineapples (assessed in Section 7) and other fruit and vegetables (assessed in Section 8).

(12) Dole is a vertically integrated business for bananas; it owns farmland in Central and South America and South Africa, manufacturing plants, pack houses and grows its own bananas, and also purchases them from third parties. It also has its own refrigerated ships, containers and port facilities, and operates a limited number of banana ripening centres.

(13) Total Produce is a wholesale distribution business with only limited assets at other levels of the supply chain. In contrast to Dole, which is focused on a more limited range of products (with bananas and pineapples accounting for 43% and 8% of Dole's worldwide sales), Total Produce deals in a broad portfolio of products across both vegetables and fruits, with bananas accounting for just 10% of its worldwide sales.

5.1. The import and supply of bananas

(14) The majority of bananas marketed in the EU are imported, with approximately 70% coming from Central and South America (so-called 'dollar' bananas) and approximately 20% coming from a variety of African, Caribbean and Pacific countries (so-called 'ACP bananas'), although there is some production within the EU (the remainder).[5]

(15) Bananas grown on farms are harvested green at the appropriate maturity, and packaged on or near the farm where it is grown. Once quality inspections have been passed, these bananas are prepared for transportation to the EU. Bananas must be stored at low temperatures of around 14°C, and for this reason,

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4 Article 8(3)(a) of the EEA Agreement states that products falling within Chapters 1 to 24 of the Harmonised Commodity Description and Coding System are not covered by the EEA Agreement, unless such products are listed in Protocol 3 of said Agreement. Therefore edible fruits and vegetables (fresh or chilled), which are listed in Chapter 8 of the Harmonised Commodity Description and Coding System and are not listed in Protocol 3 of the EEA Agreement, are not covered by the EEA Agreement.

5 https://ec.europa.eu/agriculture/fruit-and-vegetables/product-reports/bananas_en.

specialised refrigerated cargo ships (or 'conventional reefers') or refrigerated containers on general container shipping lines, may be used.[6]

(16) Once in the EU, green bananas must be ripened in temperature-controlled ripening chambers for 4 – 6 days, which may be owned by either the importer, the retailer, or a third party provider. Finally, these bananas, now yellow, may travel much shorter distances and must arrive at customer distribution centres for sale to retailers, wholesalers or the food service sector.[7]

5.1.1. Relevant product market

5.1.1.1. Distinction between bananas and other fresh produce

Parties' arguments

(17) The Parties submit that bananas form part of the whole market for fresh fruit and produce, on the basis that (i) there are considerable similarities between the supply chains for bananas and other fresh fruit, especially given that bananas no longer need to be shipped on dedicated refrigerator ships, and (ii) banana suppliers also supply other fruit. Nevertheless, the Parties also acknowledge that the import and supply of bananas has consistently been analysed separately by the Commission in the past.

Previous decisional practice

(18) In the Commission's most recent precedent, in merger case M.7220 *Chiquita Brands International/Fyffes*, the Commission chose to define the market for bananas as distinct from the market for fresh fruit, from the perspective of both competitors and customers.[8]

(19) The Commission's market investigation in case M.7220 *Chiquita Brands International/Fyffes* found a number of specificities associated with bananas on the supply-side. In particular, the competitors noted the following specificities that distinguish the supply of bananas from the supply of other fruit: (i) a lower degree of price variability, (ii) the distance travelled from origin to destination, (iii) the use of plastic packaging, (iv) the presence of import duties, (v) the perishability and need for regular supply of bananas, (vi) the need for ripening services, (vii) the existence of yearly contracts with growers and (viii) the transport and storing in chilled conditions.[9]

(20) On the demand-side, the investigation found that customer demand for bananas was inelastic, with very limited substitutability with other fruits, and relatively constant throughout the year (whilst other fresh produce is typically seasonal). Furthermore, it was found that retailers tend to organise separate tenders for bananas and that bananas are the lowest cost fruit.[10]

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6 Form CO, paragraph 43.1.

7 Form CO, paragraph 115.

8 Case M.7220 – *Chiquita Brands International/Fyffes*, recital 34.

9 Case M.7220 – *Chiquita Brands International/Fyffes*, recital 33.

10 Case M.7220 – *Chiquita Brands International/Fyffes*, recital 29-32.

Commission assessment

(21) The Commission's market investigation in the present case confirmed that the arguments outlined above are all broadly still relevant. In particular, the majority of competitors stated that there were specificities in supplying bananas as opposed to supplying other fresh fruit.[11] The specificities most often cited include: (i) year-round sourcing of bananas, (ii) the need to ripen bananas prior to sale; (iii) yearly price negotiations, and (iv) special conditions for transportation.[12] Responses by customers also show that ripening is more important for bananas than for other fruit and that yearly contracts and pricing set bananas apart from other fruit.[13]

(22) On the basis of the replies received during the Commission's market investigation, the Commission considers that the definition of the bananas market as a distinct product market from other fresh fruit should be maintained.

5.1.1.2. Distinction based on stage of ripening process: green vs. yellow bananas

(23) Bananas are generally imported green from overseas and ripened into yellow bananas by undergoing a ripening process, usually in geographic proximity of the customer. Bananas can be imported green and sold green to ripening service providers or customers with ripening facilities, or ripened by the importers themselves and sold yellow.

Parties' arguments

(24) The Parties argue that it is not necessary to define separate markets for green and yellow bananas as both suppliers and customers can readily switch between supplying and purchasing green and yellow bananas.

(25) According to the Parties, there is plenty of ripening capacity across the EU, should suppliers or customers wish to switch between green and yellow bananas. Furthermore, if required, new ripening capacity may be easily and promptly created by suppliers. The Parties refer to Total Produce budgeting a cost of around EUR […] for the construction of […] ripening rooms in a new facility in Denmark and a cost of around EUR […] for […] new rooms in Sweden. According to the Parties, retailers can also easily and promptly vertically integrate into ripening or procure ripening services from independent third parties. Finally, the Parties argue that with the increasing flexibility of ripening and trucking arrangements, bananas can be ripened in one EEA country and quickly, easily and cheaply transported across the border to other countries.[14]

Previous decisional practice

(26) In case M.7220 *Chiquita Brands International/Fyffes*, the Commission did not consider it necessary to distinguish separate markets for green and yellow

11 Replies to question 8 of Questionnaire 3 to Competitors – Bananas/Other Fresh Fruit.

12 Replies to question 8.1 of Questionnaire 3 to Competitors – Bananas/Other Fresh Fruit.

13 Replies to question A.C.A.1 and question A.C.A.1.1 of Questionnaire 1 to Customers – Fresh Fruit/Bagged Salad;
Replies to question 12 and question 12.1 of Questionnaire 2 to Customers – Fresh Fruit/Vegetables.

14 Form CO, paragraph 134.13.

bananas, deeming it sufficient to look at the overall volumes of bananas sold to customers independently of their ripening stage.

Commission assessment

(27) The Commission's market investigation revealed that suppliers, wholesalers and retailers can and do purchase both green and yellow bananas. For green bananas, a variety of ripening options are available: (i) suppliers of green bananas with ripening facilities can provide ripening services for the bananas they supply; (ii) suppliers of green bananas with ripening facilities can provide ripening services for their customers' bananas (supplied by other suppliers); (iii) ripening services are provided by independent third party ripeners; and (iv) wholesalers and, to a lesser extent, retailers can operate own ripening facilities.[15]

(28) The majority of competitors who responded indicated that they own ripening facilities[16] and a number of them have indicated that they have opened new ripening facilities in the last 5 years.[17] The majority of wholesalers and retailers who responded consider that there is currently sufficient ripening capacity to meet their needs.[18] Some retailers have also indicated that ripening facility providers can and would, on request, expand their ripening capacity.[19]

(29) On the basis of the results of the market investigation, the Commission considers, for the purposes of the present Transaction, that the relevant product market for the import and supply of bananas comprises of both green and yellow bananas.

5.1.1.3. Distinction based on certification: Fairtrade, organic and conventional

(30) Bananas certified as 'Fairtrade' are those which meet certain ethical, social and environmental standards upheld by the Fairtrade Foundation. Bananas certified as 'organic' are those that meet the criteria specified in the Council Regulation (EC) No. 834/2007 on the organic production and labelling of organic products. Some bananas may bear the double label 'Fairtrade' and 'organic'. Conventional bananas are those which meet neither Fairtrade nor organic requirements.

Parties' arguments

(31) The Parties submit that a distinction should not be made between Fairtrade and organic bananas, due to the wide prevalence of double-label bananas. The Parties further contend that conventional bananas should also be treated within the same frame of reference, arguing that there is a high degree of supply-side

15 Replies to question 40 of Questionnaire 3 to Competitors – Bananas/Other Fresh Fruit; Replies to question 42 and question 42.1 of Questionnaire 2 to Customers – Fresh Fruit/Vegetables; Replies to question A.E.B.B.1 and question A.E.B.B.2 of Questionnaire 1 to Customers – Fresh Fruit/Bagged Salad; Minutes of a conference call with a customer, 8 May 2018, 14.00; Minutes of a conference call with a customer, 16 May 2018, 11.15; Minutes of a conference call with a customer, 30 May 2018, 11.00.

16 Replies to question 40 of Questionnaire 3 to Competitors – Bananas/Other Fresh Fruit.

17 Replies to question 42 of Questionnaire 3 to Competitors – Bananas/Other Fresh Fruit.

18 Replies to question A.E.B.B.1.1 of Questionnaire 1 to Customers – Fresh Fruit/Bagged Salad; Replies to question 42.1 of Questionnaire 2 to Customers – Fresh Fruit/Vegetables.

19 Minutes of a conference call with a customer, 16 May 2018, 11.15; Minutes of a conference call with a customer, 5 July 2018, 10.30.

substitutability between the categories. The Parties suggest that importers, wholesalers and retailers purchase a broad mix of all such bananas, depending on the prevailing tastes in the destination territory.[20]

(32) Furthermore, although there are certain differences in the way bananas are produced, once bananas enter the supply chain, there is no material difference in terms of packing, shipping, ripening, distributing and retailing the products. Both products are ultimately sold on the same supermarket shelves at similar price points.[21]

Previous decisional practice

(33) In case M.7220 *Chiquita Brands International/Fyffes*, the Commission considered that it would be justified to define separate markets for (i) conventional bananas and (ii) organic and Fairtrade bananas. Any further distinction between organic and Fairtrade bananas was considered unnecessary as the presence of double-label bananas (both organic and Fairtrade) blurred the difference between the two.[22]

Commission assessment

(34) The large majority of competitors, retailers and wholesalers that responded to the Commission's questionnaire do not consider non-conventional (i.e. Fairtrade and organic) bananas to be substitutable with conventional bananas.[23] The market investigation indicates that customers that specify their need for Fairtrade or organic bananas would not consider substituting these for conventional bananas. Moreover, Fairtrade and organic bananas command a premium price, which on average was quoted as being around 30-40% higher than conventional bananas (and up to 100% in certain markets).[24]

(35) Overall, the market for Fairtrade and organic bananas appears to be growing, with sales of these non-conventional bananas steadily growing over the last few years.[25]

(36) As regards the substitutability of Fairtrade and organic bananas, the replies to the market investigation are less conclusive than for the substitutability of conventional and non-conventional bananas. Whilst a large number of competitors, retailers and wholesalers that responded to the Commission's questionnaire regard Fairtrade and organic bananas as not substitutable, a number of them pointed out that the majority of organic bananas are already Fairtrade certified and that as long as Fairtrade and organic bananas are priced similarly,

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20 Form CO, paragraph 172.

21 Form CO, paragraph 43.20.

22 Case M.7220 – *Chiquita Brands International/Fyffes*, recital 73.

23 Replies to question A.C.A.2.1 of Questionnaire 1 to Customers – Fresh Fruit/Bagged Salad; Replies to question 13.1 of Questionnaire 2 to Customers – Fresh Fruit/Vegetables; Replies to question 9.2 of Questionnaire 3 to Competitors – Bananas/Other Fresh Fruit.

24 Replies to question A.C.A.2.1.2 of Questionnaire 1 to Customers – Fresh Fruit/Bagged Salad; Replies to question 13.1.2 of Questionnaire 2 to Customers – Fresh Fruit/Vegetables; Replies to question 9.1.1 of Questionnaire 3 to Competitors – Bananas/Other Fresh Fruit.

25 Replies to question 13.1 of Questionnaire 2 to Customers – Fresh Fruit/Vegetables; Minutes of a conference call with a customer, 8 May 2017, 14.00.

they could be seen as substitutable.[26] Moreover, whilst some of the respondents to the Commission's questionnaire noted a price difference between Fairtrade and organic bananas, this price difference appears to be a lot more modest than the price difference between conventional and non-conventional bananas.[27]

(37) On the basis of the results of the market investigation and having regard to its previous decisional practice, the Commission considers that it is justified to define separate markets for (i) conventional bananas and (ii) Fairtrade and/or organic bananas. The Commission does not find that there are separate markets for Fairtrade and organic bananas.

5.1.1.4. Distinction based on branding

(38) Bananas may be sold unbranded or under a range of brands, including from the producer, importer or wholesaler. Private label bananas are characterised as being branded with a retailer's label rather than a supplier's label.

Parties' arguments

(39) The Parties consider that distinguishing separate markets on the basis of brand is not justified, and argue that consumer choice is driven by price and perceived quality rather than the brand. They add that retailers increasingly carry both branded and private label bananas, which is to a large extent due to the competitive pressure from discount retailers, such as Aldi and Lidl, fuelling the growth of private label bananas and therefore also constraining prices for branded bananas. The Parties consider that the price premium for branded bananas has been decreasing, currently estimated at 15%.[28]

Previous decisional practice

(40) In case M.7220 *Chiquita Brands International/Fyffes*, the Commission did not consider it necessary to distinguish the market between branded and non-branded bananas.

Commission assessment

(41) The vast majority of competitors, wholesalers and retailers that responded to the Commission's questionnaires regard branded and non-branded bananas as substitutable.[29] Whilst some respondents indicated that brands are important to some customers, that some customers may be brand loyal and that certain branded

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26 Replies to question 9.2 and question 9.2.1 of Questionnaire 3 to Competitors – Bananas/Other Fresh Fruit; Replies to question A.C.A.2.2 and question A.C.A.2.2.1 of Questionnaire 1 to Customers – Fresh Fruit/Bagged Salad; Replies to question 13.2 and question 13.2.1 of Questionnaire 2 to Customers – Fresh Fruit/Vegetables.

27 Replies to question 9.2.2 of Questionnaire 3 to Competitors – Bananas/Other Fresh Fruit; Replies to question A.C.A.2.2.2 of Questionnaire 1 to Customers – Fresh Fruit/Bagged Salad; Replies to question 13.2.2 of Questionnaire 2 to Customers – Fresh Fruit/Vegetables.

28 Form CO, paragraph 43.25.3.

29 Replies to question A.C.A.2.3 and question A.C.A.2.3.1 of Questionnaire 1 to Customers – Fresh Fruit/Bagged Salad; Replies to question 13.3 and question 13.3.1 of Questionnaire 2 to Customers – Fresh Fruit/Vegetables; Replies to question 9.3 and question 9.3.1 of Questionnaire 3 to Competitors – Bananas/Other Fresh Fruit.

bananas (e.g. Chiquita) can command a premium price,[30] others have noted that customers mostly do not distinguish between branded and non-branded bananas, that price, quality and presentation at point of sale are more important for consumers and that the price premium for branded bananas is relatively modest.[31]

(42) On the basis of the results of the investigation, and with regard to its previous decisional practice, the Commission considers that, for the purposes of the present Transaction, the relevant product market for the import and supply of bananas comprises of both branded and non-branded bananas.

5.1.1.5. Import and supply of bananas to retailers and wholesalers

(43) Importers can sell bananas either directly to retailers in the EU, mainly to the modern retail channel (supermarkets), or to wholesalers who further distribute the bananas to retailers and other customers, including to channels other than the modern retail channel (i.e. cash & carry shops, open markets, food services, institutional catering etc.).

Parties' arguments

(44) The Parties submit that the relevant product market for the import and supply of bananas should not be distinguished between supplies to retailers and wholesalers. The Parties argue that there is no material overlap between them in relation to the non-modern retail channel and suggest therefore that there is no need to decide in the present case on whether and to what extent it should form a distinct product market.[32]

Previous decisional practice

(45) In case M.7220 *Chiquita Brands International/Fyffes*, the Commission defined the relevant market as the import and supply of bananas to retailers and wholesalers, having found that major wholesalers not only sell directly to the large retailers (in addition to smaller retailers and food service channel customers), but that they also directly sourced bananas and traded them with other wholesalers at European ports.[33]

Commission assessment

(46) According to the responses to the market investigation, competitors do not appear to distinguish between supplying customers along the retail or the wholesale channels.[34]

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30 Replies to question A.C.A.2.3.1 of Questionnaire 1 to Customers – Fresh Fruit/Bagged Salad; Minutes of a conference call with a customer, 8 May 2017, 14.00.

31 Replies to question A.C.A.2.3.2 of Questionnaire 1 to Customers – Fresh Fruit/Bagged Salad; Replies to question 13.3.2 of Questionnaire 2 to Customers – Fresh Fruit/Vegetables; Replies to question 9.3.1 of Questionnaire 3 to Competitors – Bananas/Other Fresh Fruit; Minutes of a conference call with a customer, 30 May 2018, 11.00.

32 Form CO, paragraph 45.14.

33 Case M.7220 – *Chiquita Brands International/Fyffes*, recitals 95 and 98.

34 Replies to question 20.1 and 20.2 of Questionnaire 3 to Competitors – Bananas/Other Fresh Fruit; Replies to question A.C.A.3 of Questionnaire 1 to Customers – Fresh Fruit/Bagged Salad; Replies to question 14 and 14.1 of Questionnaire 2 to Customers – Fresh Fruit/Vegetables

(47) Competitors do point to some specificities, as one respondent puts it: "*retailers tend to prefer a vertically integrated supplier that can consistently deliver quality products throughout the year*"[35] and some explain that contracts with the retail sales channel tend to be renewed on a yearly basis while wholesalers buy more on the spot market. Further, they add that small customers, such as food services, require in general more individual attention[36], whereas cash and carry outlets are less sophisticated clients with simpler portfolios. Notwithstanding these differences, respondents noted that in general there were no specific barriers to the supply bananas to the respective sales channels.[37]

(48) On the basis of the responses to the market investigation, and with regard to its decisional practice, the Commission considers that for the purposes of the assessment of the present Transaction, the relevant market for the import and supply of bananas comprises the supply to both retailers in the modern retail channel (i.e. supermarkets) and wholesalers who may sell the bananas to channels other than the modern retail channel (i.e. cash & carry shops, open markets, food services, institutional catering etc.).

5.1.1.6. Distinction based on banana origin and class of banana

(49) The Parties submit that it is not appropriate to distinguish the relevant market by origin of bananas or by class of banana.[38]

(50) In case M.7220 *Chiquita Brands International/Fyffes*, distinguishing separate markets based on origin was not considered relevant[39] and in the same case, the Commission concluded that it was not appropriate to define separate relevant markets according to the class of banana.[40]

(51) In the present case, on the basis of the Commission's previous precedent, the Commission considers that the relevant product market for the import and supply of bananas should not be further distinguished according to the different classes of banana or for the different origin of the banana.

5.1.2. Relevant geographic market

5.1.2.1. Parties' arguments

(52) The Parties submit that the appropriate geographic frame of reference for the import and supply of bananas is at least regional if not EEA-wide for the reasons outlined below. In the alternative, and for the same reasons, the Parties submit that at the very least, it is important to take into account the evidence for assessing the Proposed Transaction on the basis of regional clusters[41].

35 Replies to question 20.1 of Questionnaire 3 to Competitors – Bananas/Other Fresh Fruit.
36 Replies to question 10 of Questionnaire 3 to Competitors – Bananas/Other Fresh Fruit.
37 Replies to question 20.1 and 20.2 of Questionnaire 3 to Competitors – Bananas/Other Fresh Fruit.
38 Form CO, paragraphs 45.7 – 45.9, 45.12.
39 Case M.7220 – *Chiquita Brands International/Fyffes*, recitals 49-52.
40 Case M.7220 – *Chiquita Brands International/Fyffes*, recitals 57-60.
41 Form CO, paragraph 45.35.

(53) The Parties put forward that the market is wider than national for the following reasons: (1) bananas are sold very widely across the entire EEA, arriving at various European ports for onward supply to all parts of the EEA; (2) there is an increasing flexibility of shipping arrangements and trucking operators willing to make frequent intra-EEA deliveries of fresh produce are readily available; (3) customers active in multiple Member States coordinate their banana procurement across different territories, sometimes sourcing the entirety of their European banana requirements under single multi-territory contracts; (4) many retailers procure bananas and other fresh produce across several EEA Member States; (5) wholesalers of any reasonable size procure fruit across borders, in order to obtain supplies on the most cost-effective basis and to ensure the procurement of the full range of produce, which is unlikely to be available domestically; (6) wholesale prices move in a similar way in EEA regions as a result of strong common cost and demand factors; (7) banana ripening centres with spare capacity are widely available across all of the EEA, meaning that green bananas can be transported across borders before being ripened in the destination country.[42]

5.1.2.2. Previous decisional practice

(54) In case M.7220 *Chiquita Brands International/Fyffes*, the Commission found that the market for the supply of bananas is national in scope.[43] The market investigation in that case revealed that there were a number of differences in the preferences of banana consumers among the different Member States, including as to quality, size, origin, brands, certification and packaging of bananas.[44] Moreover, it was found that: (i) the nature of customers (retailer or wholesaler) varied significantly across countries, (ii) there were considerable differences in prices among countries, despite the fact that bananas were often imported through the same ports, (iii) retailers tended to negotiate prices at a national level, (iv) competitors tended to have different pricing strategies per country, and (v) expansion or entry would not be a timely reaction to a 5-10% permanent increase in price of bananas in a given country.[45]

5.1.2.3. Commission assessment

(55) The results of the market investigation do not support the view that customers purchase bananas on a regional basis, with a vast majority of competitors, wholesalers and retailers stating that this is not the case.[46]

(56) The vast majority of competitors, wholesalers and retailers that have responded to the Commission's questionnaire observe differences in prices for bananas between various EU countries.[47] A difference in prices of bananas between various EU

42 Form CO, paragraphs 45.28 – 45.34.

43 Case M.7220 – *Chiquita Brands International/Fyffes*, recital 131.

44 Case M.7220 – *Chiquita Brands International/Fyffes*, recitals 119-124.

45 Case M.7220 – *Chiquita Brands International/Fyffes*, recitals 125-130.

46 Replies to question 21 and question 21.1 of Questionnaire 3 to Competitors – Bananas/Other Fresh Fruit; Replies to question 21 and question 21.1 of Questionnaire 2 to Customers – Fresh Fruit/Vegetables; Replies to question A.D.3 and question A.D.3.1 of Questionnaire 1 to Customers – Fresh Fruit/Bagged Salad.

47 Replies to question 22 and question 23 of Questionnaire 3 to Competitors – Bananas/Other Fresh Fruit; Replies to question 23and 24 of Questionnaire 2 to Customers – Fresh Fruit/Vegetables;

countries was found to exist irrespective of whether the sales in question were through the modern retail channel (supermarkets, retailers) or not (cash & carry, wholesalers, food service channel etc.).[48]

(57) Whilst many competitors and the majority of wholesalers and retailers that responded to the Commission's questionnaires stated that there were no barriers to trade flows between different EU countries for banana sales to the modern retail and wholesale channels,[49] some respondents noted that there were different requirements depending on each country or even retailer. For example, one competitor stated that Spain prefers bananas of EU origin (Canaries), Denmark prefers "*small fingers per box*" and Eastern Europe does not require certified bananas.[50] Another respondent said that "*the retail markets in europe are not the same*", noting "*different retailers, different concepts, different price strategy*" between different EU countries.[51] Some retailers have also noted that they cannot purchase yellow bananas from other countries due to limited shelf life and that longer deliveries are more complicated as ripening needs to be controlled, but that it is possible to buy green bananas and ripen them closer to their warehousing facilities.[52] Indeed, the results of the market investigation reveal that where the retailers are purchasing yellow bananas from other countries, they tend to do so from the immediately bordering countries, whereas green bananas are sometimes purchased from further afield, including from growers directly.[53]

(58) Whilst some of the competitors that responded to the Commission's questionnaire stated that they have faced difficulties entering a particular country in the EU, owing to existing competition, presence of multinationals with cheaper logistics costs and local differences, some others stated that they have not faced such difficulties.[54]

(59) On the basis of the evidence before it, and having regard to its decisional practice, the Commission considers that the relevant geographic market for the import and supply of bananas is at least national, although the exact geographic market definition can be left open as no serious doubts arise under any plausible market definition.

Replies to question A.D.5 and question A.D.6 of Questionnaire 1 to Customers – Fresh Fruit/Bagged Salad.

48 Replies to question 23.2, question 24 and question 24.2 of Questionnaire 3 to Competitors – Bananas/Other Fresh Fruit.

49 Replies to question 20, question 20.1 and question 20.2 of Questionnaire 3 to Competitors – Bananas/Other Fresh Fruit; Replies to question 20, question 20.1 and question 20.2 of Questionnaire 2 to Customers – Fresh Fruit/Vegetables; Replies to question A.D.2, question A.D.2.1 and question A.D.2.2 of Questionnaire 1 to Customers – Fresh Fruit/Bagged Salad.

50 Replies to question 20.1 of Questionnaire 3 to Competitors – Bananas/Other Fresh Fruit.

51 Replies to question A.D.6.1 of Questionnaire 1 to Customers – Fresh Fruit/Bagged Salad.

52 Replies to question A.D.2.1 of Questionnaire 1 to Customers – Fresh Fruit/Bagged Salad.

53 Replies to question A.D.1 of Questionnaire 1 to Customers – Fresh Fruit/Bagged Salad.

54 Replies to question 27 and 27.1 of Questionnaire 3 to Competitors – Bananas/Other Fresh Fruit.

5.1.3. Conclusion on the market definition for the import and supply of bananas

(60) For the purposes of its assessment of the present Transaction, the Commission analyses the markets for the import and supply of bananas, which includes (i) both green and yellow bananas; (ii) supplies both to retailers in the modern retail channel (i.e. supermarkets) and to wholesalers. The Commission also analyses a separate product market for the import and supply of Fairtrade and organic bananas (as opposed to conventional bananas). The geographic market is at least national, although the geographic market definition can be left open as no serious doubts arise under any plausible market definition.

5.2. Banana ripening services

(61) Green bananas need to be ripened prior to their sale to customers and end-consumers. The process consists in placing the boxes of green bananas into a sealed ripening chamber where ethylene gas is circulated for 4 to 6 days depending on the degree of ripeness required, in order to gradually ripen the bananas. Once the bananas are ripened, they become more fragile. Therefore, transporting yellow bananas faces more limitations.

(62) Ripening services can be carried out by the importer itself, in its own ripening facility, or by third party independent ripeners. Alternatively, some retailers also operate their own ripening facilities.

5.2.1. Relevant product market

(63) The Parties note that in M.7220 *Chiquita Brands International/Fyffes*, the Commission concluded that the supply of banana ripening services constituted a separate product market. However, the Parties submit that their activities do not overlap in the provision of ripening services as Dole has not been providing any third party ripening in the EEA.

(64) In case M.7220 *Chiquita Brands International/Fyffes*, the Commission considered a relevant market for banana ripening services, based on the fact that many independent providers of ripening services exist next to the vertically integrated suppliers and many importers owning ripening facilities sell banana ripening services to third parties.[55]

(65) The results of the market investigation in the present case confirmed the presence of a distinct market for the provision of banana ripening services with independent supplier and third party ripening by importers[56].

(66) On the basis of the evidence before it, and having regard to its decisional practice, the Commission considers that there is a distinct market for the provision of banana ripening services.

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55 Case M.7220 – *Chiquita Brands International/Fyffes*, recitals 102-105.

56 Replies to question 49 of Questionnaire 3 to Competitors – Bananas/Other Fresh Fruit; Replies to question 42 of Questionnaire 2 to Customers – Fresh Fruit/Vegetables; Replies to question A.D.2 of Questionnaire 1 to Customers - Fresh Fruit/Bagged Salad.

5.2.2. Relevant geographic market

(67) In case M.7220 *Chiquita Brands International/Fyffes*, the Commission considered that the geographic market for ripening services was at least national, based on the limited geographic range where ripened bananas can be transported.[57]

(68) The majority of the competitors that responded to the Commission's questionnaire in the present case stated that the location of their banana ripening facilities limit the geographic scope of their banana sales in the EU, with 200-300 km being on average the radius of deliveries from a ripening facility.[58]

(69) This is consistent with the view expressed by a large number of retailers and wholesalers, who prefer to have ripening facilities as near as possible and to deliver yellow bananas from ripening facilities located in the same country or, depending on distance, some neighbouring countries. Respondents in this case indicated an even larger, up to 500 km radius where ripened bananas could be transported without deterioration of quality and in sufficient quantities.[59]

(70) On the basis of the evidence before it, and having regard to its decisional practice, the Commission considers that the relevant geographic market for the provision of banana ripening services is at least national, although the exact geographic market definition can be left open as no serious doubts arise under any plausible market definition.

5.2.3. Conclusion on the market definition for banana ripening services

(71) For the purposes of its assessment of the present Transaction, the Commission analyses the markets for the provision of banana ripening services, for which the geographic market is at least national, although the market definition can be left open as no serious doubts arise under any plausible market definition.

5.3. Assessment of potential horizontal non-coordinated effects for the import and supply of bananas and horizontal non-coordinated and vertical effects for banana ripening

5.3.1. Import and supply of bananas

(72) The main areas of horizontal overlap between the Parties' import and supply of bananas in the EU are in Denmark and Sweden. Furthermore, affected markets arise in the Czech Republic, Spain, the Netherlands, Portugal and Romania.

(73) Since the arguments with respect to the import and supply of Fairtrade/organic bananas are essentially the same as with respect to the import and supply of conventional bananas, for the purposes of this decision, these are dealt with together, highlighting the evidence specific to Fairtrade/organic bananas where relevant.

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57 Case M.7220 – *Chiquita Brands International/Fyffes*, recitals 132-135.

58 Replies to question 25 of Questionnaire 3 to Competitors – Bananas/Other Fresh Fruit.

59 Replies to question A.D.8, question A.D.8.1 and question A.D.8.2 of Questionnaire 1 to Customers – Fresh Fruit/Bagged Salad; Replies to question 26, question 26.1 and question 26.2 of Questionnaire 2 to Customers – Fresh Fruit/Vegetables.

5.3.1.1. Parties' arguments

(74) The Parties argue that they are not close competitors. While Dole is a traditional banana importer who ships green bananas into Europe and has an established banana brand, Total Produce is a fresh produce distributor and procures bananas from a variety of importers and supplies bananas to its customers together with many other different fruits and vegetables.[60]

(75) The Parties argue that there are numerous other competitors who are able to supply customers in Denmark and Sweden with green bananas, which are easily transportable. With regard to Sweden and Denmark, the Parties identify large competitors, such as Fyffes, Del Monte, Chiquita and Greenyard (Ewerman in Sweden) that are able to supply any national market, in addition to local competitors, such as Poulsen & Finsen with H&P Frugtimport[61] and Eurofrugt in Denmark, and Lundbladh and Biodynamiska in Sweden, as well as potential entrants such as Bama and Agroban.[62]

(76) The Parties also argue that retail markets are concentrated, with four large retail chains (ICA, Coop, Axfood and Bergendahls) controlling 94% of the Swedish retail market, and three (Coop, Dansk Supermarked Group and Rema) accounting for approximately 80% of the banana market in Denmark. In addition, a number of retail chains operate their own wholesale and logistics arm in competition with the Parties. Therefore, according to the Parties, retailers in these countries exercise buyer power and would be able to resist any price increases.[63]

5.3.1.2. Commission assessment

Denmark

(77) With respect to the import and supply of conventional bananas, the Parties have significant combined market shares in Denmark ([70-80]%), with Total Produce's market share of [50-60]% and Dole's [20-30]%.[64] With respect to the import and supply of Fairtrade/organic bananas, the Parties were unable to provide an estimate of the market size of the Danish Fairtrade/organic market.[65] However, they note that Dole's sales are very limited (c. EUR […]) and any market share increment is likely to be very small. In Denmark, approximately 10% to 20% of all bananas sold are Fairtrade/organic.[66]

(78) Whilst some competitors have noted that the supply of bananas market is highly concentrated in Denmark[67] and market participants considered that Total Produce

60 Form CO, paragraph 138.3.

61 The Parties submit that the two companies belong to the same group. Form CO, footnote 288.

62 Form CO, paragraph 138.22.

63 Form CO, paragraphs 138.4 and 138.5.

64 Annex 7.4 to the Form CO (rounding errors may exist). The Parties do not distinguish between sales of green (unripened) and yellow (ripened) bananas in their sales data. In Denmark, Total Produce provides ripening and logistics services for the supply of bananas from [third party customer names], and the sales of these bananas have also been allocated to Total Produce's total sales of bananas in Denmark.

65 Parties' reply Response to the Commission's RFI No. 3 Question 33 and Annex 7.4 to the Form CO.

66 Annex 7.4 to the Form CO (rounding errors may exist).

67 Replies to question 35.1 of Questionnaire 3 to Competitors – Bananas/Other Fresh Fruit.

and Dole compete closely in Denmark,[68] the evidence collected during the market investigation reveals that the market for the supply of bananas in Denmark is competitive and is likely to remain so after the Transaction for the reasons set out in recitals (79) to (85).

(79) First, the majority of competitors stated that they could supply yellow bananas to Denmark from another country at a competitive price for regular deliveries on a not insignificant scale, for example from Northern Germany (Hamburg area) or Southern Sweden.[69]

(80) Second, most of the retailers identified a number of potential suppliers of yellow bananas in Denmark. Thus, in addition to the Parties, retailers could potentially source yellow bananas from suppliers such as Chiquita, Citromex, Fyffes, H&P Frugtimport, Max Havelaar, Poulsen & Finsen, Trio Fruit and Uncle Tuca.[70] Most of the respondents concurred that these suppliers would be able to supply them with yellow bananas of quantity and quality sufficient for their needs.[71] Chiquita and Fyffes in particular were identified as strong competitors. In addition to Total Produce and Dole, the majority of competitors ranked Fyffes and Chiquita as the other two important competitors among their top three most important competitors.[72]

(81) The same was found to be true for Fairtrade/organic bananas specifically, with most retailers identifying a number of potential suppliers of Fairtrade/organic bananas of quantity and quality sufficient for their needs, such as Chiquita, Citromex, Don Mario, H&P Frugt, Max Havelaar and Poulsen & Finsen.[73]

(82) Third, many respondent competitors also stated that they could supply green bananas to Denmark, which could then be ripened either at their own or at third party ripening facilities.[74] This is consistent with the view of most of the respondent retailers, who identified a number of potential suppliers of green bananas in Denmark (in addition to the Parties), from whom they could potentially source green bananas of sufficient quantity and quality, such as Chiquita, Citromex, Compagnie Fruitière, Continental, Don Mario, Euro Frugt, Favorita, Max Havelaar, Poulsen & Finsen, Trio Fruit and Uncle Tuca.[75] The

68 Replies to question 33 and question 34 of Questionnaire 3 to Competitors – Bananas/Other Fresh Fruit; Replies to question A.E.B.A.1.1, question A.E.B.A.1.2, question A.E.B.A.5.1 and question A.E.B.A.5.2 of Questionnaire 1 to Customers – Fresh Fruit/Bagged Salad.

69 Replies to question 47, question 47.1, question 47.2 and question 48 to Questionnaire 3 to Competitors – Bananas/Other Fresh Fruit.

70 Replies to question A.E.B.A.1 of Questionnaire 1 to Customers – Fresh Fruit/Bagged Salad.

71 Replies to question A.E.B.A.1.3 of Questionnaire 1 to Customers – Fresh Fruit/Bagged Salad.

72 Replies to question 31 and question 31.2 of Questionnaire 3 to Competitors – Bananas/Other Fresh Fruit.

73 Replies to question A.E.B.A.5 and question A.E.B.A.5.3 of Questionnaire 1 to Customers – Fresh Fruit/Bagged Salad.

74 Replies to question 48, question 48.1 and 48.2 to Questionnaire 3 to Competitors – Bananas/Other Fresh Fruit.

75 Replies to question A.E.B.A.3 and question A.E.B.A.3.3 of Questionnaire 1 to Customers – Fresh Fruit/Bagged Salad.

majority of respondents have stated that they could also purchase bananas directly from a banana grower. Indeed, a number of them already do so today.[76]

(83) Fourth, there is evidence of countervailing buyer power. The market investigation confirmed the Parties' assertion that the Danish retail market is highly concentrated and that retailers exercise buyer power.[77] A number of competitors provided instances of customers successfully using various strategies (or threats) in their dealings with them, including: (i) switching to an alternative suppliers, (ii) transferring additional costs to the suppliers, (iii) delisting the supplier, (iv) reducing the prominence of the supplier's goods on the shelves, and (v) demanding reverse payments (e.g. discounts, contributions to promotions, stocking fees etc.).[78] This was confirmed by the customer responses to the Commission's questionnaire, the majority of whom confirmed using strategies such as switching or delisting suppliers and demanding reverse payments, as well as, to a lesser extent, transferring costs to suppliers, reducing the prominence of their goods on the shelves and paying in arrears.[79] As one supplier explained: "*All customers use the threat of switching to alternative suppliers and/or delisting as part of normal contract negotiations. In some cases the entire contract is lost and in others some part of the supply base may be lost. Support of promotional activities is also a normal part of business with large retail customers and may be agreed as part of an annual contract or on an ad hoc basis during the year*."[80] The use of the above-mentioned strategies applies especially to retailers such as supermarket chains, but also to wholesalers (depending on size, as larger wholesalers were noted to behave, and exercise buyer power, in a way similar to larger retailers).[81]

(84) Fifth, a number of competitors have provided examples of instances of customers switching banana suppliers within the last five years.[82] This was confirmed by responses from the customers in Denmark with respect to both yellow and green bananas.[83] As one supplier in Denmark observed, *"[a]ll of our customers can switch to alternate suppliers if we don't deliver right quality or price. Especially supermarkets use [the strategy of switching to alternative suppliers] to demand contributions to their campaigns/sales*".[84]

(85) Sixth, whilst a very small number of competitors and retailers considered that the Transaction would strengthen the Parties' position in Denmark and that as a result of the Transaction prices may increase, the majority of the competitors and

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76 Replies to question A.E.B.B.12 of Questionnaire 3 to Competitors – Bananas/Other Fresh Fruit; Replies to question A.E.A.2.1 of Questionnaire 1 to Customers – Fresh Fruit/Bagged Salad.

77 Replies to question 35.1 of Questionnaire 1 to Customers – Fresh Fruit/Bagged Salad.

78 Replies to question 28 of Questionnaire 3 to Competitors – Bananas/Other Fresh Fruit.

79 Replies to question A.E.A.1.1, question A.E.A.1.2, question A.E.A.1.3, question A.E.A.1.4, question A.E.A.1.5, question A.E.A.1.6 and question A.E.A.1.7 of Questionnaire 1 to Customers – Fresh Fruit/Bagged Salad.

80 Replies to question 28.1 of Questionnaire 3 to Competitors – Bananas/Other Fresh Fruit.

81 Replies to question 28.1 and question 30 of Question 3 to Competitors; Replies to question A.E.A.3 of Questionnaire 1 to Customers – Fresh Fruit/Bagged Salad.

82 Replies to question 56 of and question 56.1 of Questionnaire 3 to Competitors – Bananas/Other Fresh Fruit.

83 Replies to question A.E.B.A.2 and question A.E.B.A.4 of Questionnaire 1 to Customers – Fresh Fruit/Bagged Salad.

84 Replies to question 28.1 of Questionnaire 3 to Competitors – Bananas/Other Fresh Fruit.

retailers that responded to the Commission's market investigation considered that the Transaction will not have any significant impact for the supply of bananas in Denmark, since the market is likely to remain competitive, with a number of alternative suppliers and with strong retailers exercising significant buyer power.[85] As one respondent noted, "*it is the retailers that control the price setting in the market, as bananas are a very important product for retailers"* and for this reason they do not consider that the merged Parties *"would be able to push through significant price rises*".[86]

Sweden

(86) With respect to the import and supply of conventional bananas to retailers and wholesalers, the Parties have combined market shares in Sweden of [50-60]%, with Total Produce having a market share of [20-30]% and Dole [20-30]%.[87]

(87) With respect to the import and supply of Fairtrade/organic bananas in Sweden, the Parties have combined market shares of [50-60]%, with Total Produce having a market share of [30-40]% and Dole [20-30]%.[88] In Sweden, Fairtrade/organic bananas account for a significant share of all banana sales (approximately 55% - 65% of all bananas sold in Sweden are Fairtrade/organic[89]).

(88) Whilst several competitors have noted that the supply of bananas market is highly concentrated in Sweden[90] and market participants considered that Total Produce and Dole compete closely in Sweden,[91] the evidence collected during the market investigation reveals that the market for the supply of bananas in Sweden is competitive and is likely to remain so after the Transaction for the reasons set out in paragraphs (89) to (96).

(89) First, although Sweden is geographically situated further away from ripening facilities in neighbouring countries than Denmark, making the import of yellow bananas into Sweden more logistically complicated and costly,[92] most of the retailers that responded to the Commission's questionnaire identified a number of potential suppliers that would be able to supply them with yellow bananas of quantity and quality sufficient for their needs.[93] Thus, in addition to the Parties, retailers could potentially source yellow bananas from suppliers such as Chiquita, Citromex, Del Monte, Ewerman, Fyffes, KA Lundbladh, and Max Havelaar.[94] Chiquita and Fyffes in particular were identified as strong competitors, with the

85 Replies to question 69 of Questionnaire 3 to Competitors – Bananas/Other Fresh Fruit; Replies to question A.F.2 of Questionnaire 1 to Customers – Fresh Fruit/Bagged Salad; Minutes of a conference call with a customer, 16 May 2018, 11.15.

86 Minutes of a conference call with a customer, 30 May 2018, 11.00.

87 Annex 7.4 to the Form CO.

88 Annex 7.4 to the Form CO (rounding errors may exist).

89 Annex 7.4 to the Form CO (rounding errors may exist).

90 Replies to question 35.1 of Questionnaire 3 to Competitors – Bananas/Other Fresh Fruit.

91 Replies to question 33 and question 34 of Questionnaire 3 to Competitors – Bananas/Other Fresh Fruit; Replies to question A.E.B.A.1.1, question A.E.B.A.1.2, question A.E.B.A.5.1 and question A.E.B.A.5.2 of Questionnaire 1 to Customers – Fresh Fruit/Bagged Salad.

92 Replies to question 45 and question 45.1 of Questionnaire 3 to Competitors – Bananas/Other Fresh Fruit.

93 Replies to question A.E.B.A.1.3 of Questionnaire 1 to Customers – Fresh Fruit/Bagged Salad.

94 Replies to question A.E.B.A.1 of Questionnaire 1 to Customers – Fresh Fruit/Bagged Salad.

majority of respondent competitors ranking them (in addition to the Parties) among their top three most important competitors in Sweden (though Chiquita's offering in Fairtrade/organic bananas was noted as being less relevant).[95]

(90) Second, the market investigation revealed that there is no shortage of supply of green bananas into Sweden. The majority of respondent competitors stated that they could supply Sweden with green bananas, which could be easily ripened in ripening facilities in Sweden. Indeed, this appears to be the way that many competitors already operate today.[96] This was confirmed by responses from the retailers, who stated that they could potentially source green bananas of sufficient quantity and quality from suppliers such as Chiquita, Citromex, Del Monte, Favorita, Fyffes and Max Havelaar.[97]

(91) The same was found to be true for Fairtrade/organic bananas specifically, with most retailers identifying a number of potential suppliers of Fairtrade/organic bananas of quantity and quality sufficient for their needs, such as Chiquita, Citromex, Ewerman, Fyffes, KA Lundbladh and Max Havelaar.[98]

(92) Third, the majority of competitors and some of the customers that responded to the Commission's questionnaire have stated that they could purchase bananas directly from a banana grower. Indeed, a number of them already do so today.[99]

(93) Fourth, there is evidence of countervailing buyer power regarding the purchase of bananas. The market investigation confirmed the Parties' assertion that the Swedish retail market is highly concentrated and that retailers exercise buyer power.[100] As one supplier observed, *"[t]he Swedish market is competitive and with high trade standards on quality. We believe there is a healthy competition climate on the market*."[101] Another supplier in Sweden said that "*[s]upermarkets are becoming very strong and they dictate the conditions on the market*."[102]

(94) A number of competitors in Sweden provided instances of customers successfully using various strategies (or threats thereof) in their dealings with them, including (i) switching to alternative suppliers, (ii) transferring additional costs to the suppliers, (iii) delisting the supplier, (iv) reducing the prominence of the supplier's goods on the shelves, and (v) demanding reverse payments (e.g. discounts, contributions to promotions, stocking fees etc.).[103] This was confirmed by the customers, the majority of whom admitted to using strategies

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95 Replies to question 31 and question 31.2 of Questionnaire 3 to Competitors – Bananas/Other Fresh Fruit.

96 Replies to question 46 and question 46.1 of Questionnaire 3 to Competitors – Bananas/Other Fresh Fruit.

97 Replies to question A.E.B.A.3 and question A.E.B.A.3.3 of Questionnaire 1 to Customers – Fresh Fruit/Bagged Salad.

98 Replies to question A.E.B.A.5 and question A.E.B.A.5.3 of Questionnaire 1 to Customers – Fresh Fruit/Bagged Salad.

99 Replies to question A.E.B.B.12 of Questionnaire 3 to Competitors – Bananas/Other Fresh Fruit; Replies to question A.E.A.2.1 of Questionnaire 1 to Customers – Fresh Fruit/Bagged Salad; Minutes of a conference call with a customer, 5 July 2018, 10.30.

100 Replies to question 35.1 of Questionnaire 1 to Customers – Fresh Fruit/Bagged Salad.

101 Replies to question 28.1 of Questionnaire 3 to Competitors – Bananas/Other Fresh Fruit.

102 Replies to question 28.1 of Questionnaire 3 to Competitors – Bananas/Other Fresh Fruit.

103 Replies to question 28 of Questionnaire 3 to Competitors – Bananas/Other Fresh Fruit.

such as switching or delisting suppliers and demanding reverse payments, as well as, to a lesser extent, transferring costs to suppliers, reducing the prominence of their goods on the shelves and paying in arrears.[104] The use of the above-mentioned strategies applies especially to retailers such as supermarket chains, but also to wholesalers (depending on size, as larger wholesalers were noted to behave, and exercise buyer power, in a way similar to larger retailers).[105]

(95) Fifth, some competitors have provided examples of instances of customers switching banana suppliers in Sweden within the last 5 years.[106] This was confirmed by responses from the customers in Sweden.[107]

(96) Sixth, whilst a very small number of competitors and retailers considered that the Transaction would strengthen the Parties' position in Sweden and that as a result of the Transaction prices may increase, the majority of the competitors and retailers that responded to the Commission's questionnaire considered that the Transaction will not have any significant impact for the supply of bananas in Sweden, since the market is likely to remain competitive with strong retailers exercising significant buyer power, with some customers even expecting lower prices as a result of the Transaction.[108]

Other affected markets

(97) As regards the other affected markets, the Parties have a relatively large combined market share for the supply of conventional bananas in the Czech Republic of [30-40]%, where the Parties each have approximately the same market position (Total Produce – [10-20]%, Dole – [10-20]%),[109] whereas on the other affected markets the market share increment is limited (between 2-8%). These other affected markets are Spain ([30-40]%), Portugal ([20-30]%), Romania ([20-30]%) and the Netherlands ([30-40]%), where the Parties also have a combined market share of [20-30]% for the supply of Fairtrade/organic bananas.[110]

(98) With regard to the Czech Republic, the market investigation has revealed that the market for the import and supply of bananas in the Czech Republic is competitive and is likely to remain so after the Transaction, with retailers and wholesalers identifying a number of alternative suppliers of both yellow and green bananas in the Czech Republic.[111] There also do not seem to be any significant barriers to entry, with the majority of the competitors that responded to the Commission's

104 Replies to question A.E.A.1.1, question A.E.A.1.2, question A.E.A.1.3, question A.E.A.1.4, question A.E.A.1.5, question A.E.A.1.6 and question A.E.A.1.7 of Questionnaire 1 to Customers – Fresh Fruit/Bagged Salad.

105 Replies to question 28.1 and question 30 of Questionnaire 3 to Competitors – Bananas/Other Fresh Fruit; Replies to question A.E.A.3 of Questionnaire 1 to Customers – Fresh Fruit/Bagged Salad.

106 Replies to question 55 of and question 55.1 of Questionnaire 3 to Competitors – Bananas/Other Fresh Fruit.

107 Replies to question A.E.B.A.2 of Questionnaire 1 to Customers – Fresh Fruit/Bagged Salad.

108 Replies to question 68 of Questionnaire 3 to Competitors – Bananas/Other Fresh Fruit; Replies to question A.F.A.3 of Questionnaire 1 to Customers – Fresh Fruit/Bagged Salad; Minutes of a conference call with a customer, 8 May 2017, 14.00.

109 Annex 7.4 to the Form CO.

110 Annex 7.4 to the Form CO (rounding errors may exist).

111 Replies to question 32 and question 34 of Questionnaire 2 to Customers – Fresh Fruit/Vegetables.

questionnaire considering it easy to enter and/or gain market share for the sale of bananas in the Czech Republic.[112] Several competitors and customers also provided examples of instances where the customers have switched banana supplier in the Czech Republic.[113] Furthermore, the majority of competitors and customers that responded to the Commission's questionnaires consider that the Transaction will have no or limited effect in the Czech Republic.[114]

(99) With regard to the Netherlands, Portugal, Romania and Spain, the market investigation did not reveal any concerns: (i) entry and/or gain of market share for the sale of bananas in these countries was generally not perceived as difficult;[115] (ii) a number of alternative suppliers of bananas were identified (including for Fairtrade/organic bananas in the Netherlands) and some wholesalers and retailers have indicated that they source from growers directly (in particular in Spain),[116] and (iii) there is evidence of switching suppliers, with several competitors providing examples of instances where their customers have switched banana supplier in these countries.[117] Furthermore, the majority of competitors and several customers that responded to the Commission's questionnaire considered that the Transaction will have no or limited effect in the Netherlands, Portugal, Spain and Romania.[118]

5.3.1.3. Conclusion

(100) On the basis of the above, the Commission concludes that the Transaction does not raise serious doubts as regards its compatibility with the internal market due to horizontal overlaps in the markets for the import and supply of conventional bananas in Denmark, Sweden, Czech Republic, Spain, the Netherlands, Portugal and Romania, and does not raise serious doubts as regards compatibility with the internal market due to horizontal overlaps in the markets for the import and supply of Fairtrade/organic bananas in Denmark, Sweden and the Netherlands.

5.3.2. Provision of banana ripening services in Denmark and Sweden

5.3.2.1. Parties' arguments

(101) The Parties submit that Dole has not provided any third party ripening services in any of its facilities in the EEA and generally sells its bananas green – with the exception of Germany, Italy and Sweden, where it has some own ripening facilities. Total Produce has a very limited presence in the supply of third-party banana ripening services in the EEA, the only notable market presence in ripening being in Denmark and in Hungary. Therefore, there is no horizontal overlap between the Parties' banana ripening activities and the Parties argue that the

112 Replies to question 38 of Questionnaire 3 to Competitors – Bananas/Other Fresh Fruit.

113 Replies to question 57.1 of Questionnaire 3 to Competitors – Bananas/Other Fresh Fruit; Replies to question 33 and question 35 of Questionnaire 2 to Customers – Fresh Fruit/Vegetables.

114 Replies to question 70 of Questionnaire 3 to Competitors – Bananas/Other Fresh Fruit; Replies to question 56.1 of Questionnaire 2 to Customers – Fresh Fruit/Vegetables.

115 Replies to question 38 of Questionnaire 3 to Competitors – Bananas/Other Fresh Fruit.

116 Replies to question 32, question 32.3, question 34, question 34.3, question 36 and question 39 of Questionnaire 2 to Customers – Fresh Fruit/Vegetables.

117 Replies to question 57.1 of Questionnaire 3 to Competitors – Bananas/Other Fresh Fruit.

118 Replies to question 70 of Questionnaire 3 to Competitors – Bananas/Other Fresh Fruit; Replies to question 56.1 of Questionnaire 2 to Customers – Fresh Fruit/Vegetables.

Transaction could not be expected to give rise to any competition concerns as regards the provision of ripening services to third parties.

(102) The Parties argue that once green bananas have been imported into these two countries, there is no difficulty in obtaining ripening services in order for retailers to be supplied with yellow bananas. The Parties state that it is ultimately the customers who determine which bananas should be ripened for them and that the provision of ripening services is in practice not bundled with the sale of green bananas.

(103) In particular, the Parties argue that they are not able to leverage control of their banana ripening facilities in order to foreclose other importers and banana suppliers from the market. Banana ripening is a simple process and does not require significant investment, such that any importer or indeed retailer could easily incur the cost of expanding, or building new, banana ripening capacity. The Parties also point out that there are alternative facilities to which customers can turn for their ripening needs.

5.3.2.2. Commission assessment

Denmark

(104) While there is no horizontal overlap between the Parties in ripening services in Denmark, the Commission has assessed whether the Transaction leads to vertical concerns regarding customer or input foreclosure.

(105) Total Produce has a share of the banana ripening capacity in Denmark of [80-90]%.[119] Dole does not provide ripening services in Denmark. An independent competitor active in third party ripening in Denmark is H&P Frugtimport together with Poulsen & Finsen,[120] with a share of banana ripening capacity in Denmark of [10-20]%.

(106) In the market investigation, the majority of wholesalers and retailers considered that there is currently sufficient ripening capacity to meet their needs.[121] Moreover, some retailers have also indicated that ripening facility providers can and would, on request, expand their ripening capacity.[122] The majority of the customers indicated that they could purchase green bananas from another country for import into Denmark for regular deliveries of not only insignificant scale and at competitive price for ripening in Denmark.[123]

(107) The Commission considers that any attempt by the Parties to foreclose other importers and banana suppliers from the Danish market by leveraging its banana ripening capacity after the Transaction is likely to be unsuccessful for the reasons set out in paragraphs (108) to (112).

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119 Form CO, paragraph 135.12 Table B.

120 The Parties submit that the two companies belong to the same group. Form CO, footnote 288.

121 Replies to question A.E.B.B.1.1 of Questionnaire 1 to Customers – Fresh Fruit/Bagged Salad; Replies to question 42.1 of Questionnaire 2 to Customers – Fresh Fruit/Vegetables.

122 Minutes of a conference call with a customer, 16 May 2018, 11.15; Minutes of a conference call with a customer, 5 July 2018, 10.30.

123 Replies to question A.E.B.B.11 of Questionnaire 1 to Customers – Fresh Fruit/Bagged Salad.

(108) First, in particular, since yellow bananas can be transported for distances of between 100 and 500 kilometres (or potentially even further, depending on transport conditions),[124] suppliers and customers in Denmark could still obtain yellow bananas relatively easily from other countries, even if they could not access sufficient ripening capacity in Denmark. Indeed, the majority of competitors and customers that responded to the Commission's questionnaire stated that they could supply Denmark with yellow bananas from another country at a competitive price for regular deliveries of not only insignificant scale and that many of them already do so, notably from ripening facilities and distribution centres in Northern Germany (Hamburg area).[125]

(109) Second, those suppliers who currently have spare capacity are not likely to refuse third party banana ripening in their facilities. As one competitor observed: "*For companies who own ripening facilities it is in their interests to maximise utilisation and efficiency therefore they are in general willing to offer service provision to 3rd parties if they have excess capacity*".[126]

(110) Third, even though some competitors have indicated that they consider there to be entry barriers to banana ripening in Denmark,[127] the majority of customers do not deem this to be the case, with one customer remarking: "*Anybody could build ripening facility*".[128] According to the results of the market investigation, a new ripening facility could be constructed for EUR 1-4 million, depending on the capacity required, in as little as 6 months.[129]

(111) Fourth, banana competitors agree and assert that on customer demand they would be ready to set up ripening centres.[130] A large banana competitor remarked to "*... position their ripening centres based on demand by customers*", adding that "*It is not a "push market"' but a "pull market" by the customers.*"[131] These comments support the Parties' view that customer demand is the driver for the creation of ripening capacities.

(112) Fifth, the market investigation provided evidence that competitors have indeed been opening (and also closing down) ripening centres all across the EU, which seems to be a dynamic process.

(113) As concerns a potential foreclosure of green bananas towards the only third party ripener (H&P Frugtimport) by the Parties, the market investigation provided

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124 Replies to question 44 of Questionnaire 3 to Competitors – Bananas/Other Fresh Fruit; replies to question A.E.B.B.7 of Questionnaire 1 to Customers – Fresh Fruit/Bagged Salad.

125 Replies to question 47, question 47.1, question, question 48, question 48.1 and question 48.2 of Questionnaire 3 to Competitors – Bananas/Other Fresh Fruit; Replies to question A.E.B.B.10 and question A.E.B.B.10.1 of Questionnaire 1 to Customers – Fresh Fruit/Bagged Salad.

126 Replies to question 51.1 of Questionnaire 3 to Competitors – Bananas/Other Fresh Fruit.

127 Replies to question 51 and question 51.1 of Questionnaire 3 to Competitors – Bananas/Other Fresh Fruit.

128 Replies to question A.E.B.B.4 and question A.E.B.B.4.1 of Questionnaire 1 to Customers – Fresh Fruit/Bagged Salad.

129 Replies to question 43.1 of Questionnaire 3 to Competitors – Bananas/Other Fresh Fruit; Replies to question, question 45.2 of Questionnaire 2 to Customers – Fresh Fruit/Vegetables and question A.E.B.B.6.2 of Questionnaire 1 to Customers – Fresh Fruit/Bagged Salad.

130 Replies to question 43 of Questionnaire 3 to Competitors – Bananas/Other Fresh Fruit.

131 Minutes of a conference call with a competitor on 23 May 2018, 11h00.

evidence that the Parties would not have the incentive and the ability to carry it out. A retailer in Denmark confirmed[132] that it is not the ripener but the retailer who negotiates and contracts yearly supply agreements with the importers for the supply green bananas. The retailer also explained that the selection and contracting of the ripener happened independently from the green banana supply process; a separate contract is signed with much longer time horizons, potentially several years. Following these two agreements, the ripener then establishes a contractual relationship for the banana deliveries with the green banana importer.

(114) Resulting from this contractual structure, the importer of green bananas could easily lose its sales to the retailer, the latter having ample choice of alternative green banana suppliers to whom it can easily switch, while at the same time being tied to its ripener through the long-term contract.

Sweden

(115) The Parties' ripening activity in Sweden is entirely captive[133] and they have a significant share of the total banana ripening capacity in Sweden of [50-60]% ([20-30]% Total Produce, [20-30]% Dole).[134]

(116) The Commission considers that any attempt by the Parties to foreclose other importers and banana suppliers from the Swedish market by leveraging its banana ripening capacity after the Transaction is likely to be unsuccessful for the reasons set out in paragraph (117) to (121).

(117) First, the majority of competitors indicated that they would not be able to supply yellow bananas to Sweden for regular deliveries at competitive prices, mainly due to logistical issues, such as excessive lead times[135] for yellow bananas, and freight costs. However, the majority of competitors stated that they could supply green bananas and have them ripened in Sweden, holding that this was possible at competitive prices[136] and also with good logistical solutions for the rest of Sweden.[137]

(118) Second, the Parties estimate that the largest alternative ripener, Chiquita, is also active in third party ripening with ca. 33% capacity share. Smaller players present on the market are Ewerman, Lundbladh and Agroban with 9%, 6% and 3% shares respectively. Therefore, there appears to be sufficient ripening capacity in Sweden beyond the Parties.[138]

132 Minutes of a conference call with a customer on 16 May, 2016.

133 Form CO, paragraph 134.4.

134 Form CO, paragraph 140.27.

135 Replies to question A.E.B.B.8.1 of Questionnaire 1 to Customers – Fresh Fruit/Bagged Salad; Replies to question A.E.B.B.9.1 of Questionnaire 1 to Customers – Fresh Fruit/Bagged Salad.

136 Replies to question 46 and question 46.1 of Questionnaire 3 to Competitors – Bananas/Other Fresh Fruit.

137 Replies to question 46.1 of Questionnaire 3 to Competitors – Bananas/Other Fresh Fruit.

138 Replies to question 50.1 of Questionnaire 3 to Competitors – Bananas/Other Fresh Fruit.

(119) Third, customers are of the view that any of the available ripeners in Sweden would ripen bananas for them in order to use up their spare capacity, irrespective of whether or not they are competing with them at the wholesale level.[139]

(120) Fourth, entry barriers onto the Swedish ripening market were considered to be low by respondents.[140] Some of the competitors that do not currently have their own ripening facilities have indicated that, given sufficient demand, they would consider making the investment to build one,[141] for the cost of EUR 1-4 million within 6 months as noted in recital (110) above. The recent entry of a new ripener in Sweden, Agroban, is also indicative of the fact that entry barriers to banana ripening in Sweden are modest.

(121) Fifth, the majority of competitors and customers that responded to the Commission's market investigation did not express any significant concerns in relation to the market for ripening services in Sweden. One customer even expressed the view that the Transaction could lead to lower prices for banana ripening in Sweden.[142]

5.3.2.3. Conclusion

(122) On the basis of the above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market as regards its impact on competition for banana ripening services in Denmark or Sweden, due to either horizontal overlaps or vertical effects.

6. BAGGED SALAD

(123) Bagged salad is loose or cut salad leaves mixed together or mixed with other cut vegetables, which is washed, dried, packaged and ready to eat. Bagged salad is considered to be a type of convenience product. The Parties' activities in bagged salad overlap only in Sweden and, to a lesser extent, Denmark.

6.1. Market definition

6.1.1. Relevant product market

6.1.1.1. Parties' arguments

(124) The Parties argue that bagged salad should be considered part of the same product market as fresh vegetables. This is because consumers tend to spend a fixed amount of money on vegetables as a whole, and therefore at the retail level all vegetable categories should be considered substitutable. They further argue that the delineation between vegetables and bagged salads is blurred given that bagged

139 Minutes of a conference call with a customer, 5 July 2018, 10.30.

140 Replies to question A.E.B.B.3 and question A.E.B.B.3.1 of Questionnaire 1 to Customers – Fresh Fruit/Bagged Salad.

141 Replies to question 43 and 43.1 of Questionnaire 3 to Competitors – Bananas/Other Fresh Fruit; Replies to question A.E.B.B.6 and question A.E.B.B.6.1 of Questionnaire 1 to Customers – Fresh Fruit/Bagged Salad; Minutes of a conference call with a customer, 30 May 2018, 11.00

142 Minutes of a conference call with a customer, 8 May 2017, 14.00.

salads may contain vegetables such as spinach, carrots, beans, kale, peppers, sweetcorn, celery and spring onions.

(125) The Parties suggest that there is a high degree of substitutability of washed bagged salad with unwashed, and even with whole-head salad. They also reason that salad bars and ready-to-eat meals containing salad compete in the same category with bagged salad, as these are all convenience products. Acknowledging that the prices of these products significantly differ, the Parties argue that these products form part of a continuum of products: from loose salad, over unwashed, to bagged, up to salad bars, where each type of product exerts a competitive constraint on the other.

(126) From a supply-side perspective, the Parties argue that barriers to entry into bagged salad are low, since a washing and bagging facility could be easily set up and the supply chain for vegetables, loose salad and bagged salad are identical, consisting of growing, washing, packing and distributing them to retailers and wholesalers.

(127) The Parties also submit that the supply of bagged salad should not be further distinguished according to the sales channel into sales to retailers or food service, as there is complete supply-side substitutability between the two. Bagging machines can be easily switched to bag larger portions (for example 1 kg bags for food service vs. 150-400g bags for retail customers). They also argue that branding is not an issue, at least not in the Nordics, since retail sales are largely unbranded. They submit that quality standards are equally high for supply to the retailer and food service channels.

6.1.1.2. Commission assessment

(128) A previous case[143] briefly touched upon the market for bagged salad, without a market definition being specified. However, there were some indications from the market investigation that bagged and pre-cut salads could belong to the market for fresh vegetables, given the high degree of substitutability for the consumer between bulk and bagged pre-cut salads.

(129) The market investigation in the present case indicated that washed bagged salad should constitute a distinct product market.

(130) First, the market investigation revealed a limited degree of supply-side substitutability between the manufacture of unwashed salad and vegetables, and bagged salad, as the latter requires the capital-intensive establishment of a washing and bagging facility. The market investigation among salad producers revealed only a few market players to be active in the bagging and washing of salads, whereas many more in the supply of unwashed and whole-head salad and vegetables. The two clusters were clearly separate.[144]

(131) Second, from the demand side, washed bagged salad is not a product that retailers would be able to remove from their shelves on the basis of demand-side

143 Case COMP/M.4216 – *CVC/De Weide Blik/Bocchi*, recital 22.

144 Replies to question 5 and question 29 of Questionnaire 4 to Competitors – Bagged Salad.

substitutability with other fresh vegetable or salad products. Both, suppliers[145] and retailers, agreed that washed bagged salad was a 'must-have' product.

(132) Third, respondents to the market investigation were of the view that there was indeed some functional substitutability between unwashed bagged salad and washed bagged salad. In contrast, they considered that there was less substitutability of washed bagged salad with loose or cut salad, whole-head salad, salad bars and stir-fry vegetables. Respondents also agreed that the prices between washed bagged salad, unwashed salad and whole-head salad were significantly different.[146]

(133) Fourth, respondents explained that the distinction between washed bagged salad and unwashed and whole-head salad is mainly driven by distinct consumer preferences: some held the market was moving towards more convenience and more washed salad, some held the market was moving towards less processing with less washed salad.[147]

(134) Fifth, also, internal documents of the Parties[148] and market feedback suggest that washed bagged salad is a so-called "value-added" product, differentiating it from other loose salad or vegetables: it commands considerably higher prices and also has considerably higher ([5-10]% as opposed to [0-5]% of vegetables in general) operating margins.

(135) As concerns the distinction of sales to retail or to food service channels, these have traditionally been defined as separate markets by Commission precedents.[149] The majority of customers responding to the market investigation in the present case[150] suggested that supplying the food service channel with bagged salad made entry into the retail channel easy. However, all but one competitor suggested the opposite. Some explained that there were structural differences on the two markets (packaging, size and logistics set-up were all different) and also mentioned that entry barriers onto the retail market were high.[151]

(136) For the above reasons, the Commission considers that a distinct product market for the manufacture and sale of washed bagged salad is justified. Whether the relevant product market for washed bagged salad is to be further distinguished by sales to the retail channel and food service channel can be left open because serious doubts arise in the supply of washed bagged salad to both customer groups considered together and individually.

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145 See replies to question 8 of Questionnaire 4 to Competitors – Bagged Salad; Replies to question B.B.1 of Questionnaire 1 to Customers - Fresh Fruit/Bagged Salad.

146 Replies to questions 9-14 of Questionnaire 4 to Competitors - Bagged Salad; Replies to questions B.B.2-B.B.7 of Questionnaire 1 to Customers - Fresh Fruit/Bagged Salad.

147 Replies to questions 9-14 of Questionnaire 4 to Competitors - Bagged Salad; Replies to questions B.B.2 – B.B.7 of Questionnaire 1 to Customers - Fresh Fruit/Bagged Salad.

148 See e.g. [internal document submitted by the Parties], December 2017, or see e.g. minutes of a conference call with a competitor on 30 May, 2018, 11.00.

149 See e.g. Case COMP/M.6143 – *Princes/Premier Foods Canned Grocery Operations*, recital 11. Sale of food products to the wholesale, retail and food service channels defined as separate product markets.

150 Replies to question 16 of Questionnaire 4 to Competitors – Bagged Salad; Replies to question B.B.9 of Questionnaire 1 to Customers – Fresh Fruit/Bagged Salad.

151 Answer specific to the Swedish market with reference to concentrated retail market.

6.1.2. Relevant geographic market

6.1.2.1. Parties' arguments

(137) The Parties submit that the geographic market for washed bagged salad is at least regional, if not EU-wide.

(138) They argue that there are no obstacles to purchasing bagged salad from suppliers in other Member States. The Parties estimate that a typical bagged salad would lose only around one day of its shelf life if it were imported from another EU country, rather than sourced domestically and submit that there is evidence of bagged salads being supplied across borders: [example of cross-border supply by a Party]. Moreover, the largest bagged salad suppliers in the EU – such as Bonduelle, Agrial and Les Crudettes – operate across various countries.

(139) The Parties argue that the 'Made in Sweden' labelling, although mandatory from a legal compliance point of view for all bagged salad suppliers, does not bring any commercial benefit, as bagged salad does not tend to be marketed as a locally produced product.

6.1.2.2. Commission assessment

(140) On a general note, the market investigation confirmed that washed bagged salad was traded across borders and that the washing and bagging facility did not need to be necessarily located in the country of destination.[152] However, only a minority of responding salad suppliers affirmed that they could market their products Europe-wide. While many reported of existing export activities, these tended to be only to neighbouring countries, for example shipping bagged salad from Germany to Denmark, from Italy to France, from France to Belgium, form Spain to Portugal or from the UK to Ireland. Importantly, no evidence was found on any imports into Sweden specifically.

(141) The market investigation found a number of elements pointing to a national market for washed bagged salad.

(142) First, two thirds of responding competitors[153] were of the view that prices for bagged salad were significantly different among the different EU countries.

(143) Second, only a minority of customers said that they would look for bagged salad suppliers abroad if prices in Sweden increased by 10%.[154]

(144) Third, in contrast to the Parties' assessment, the vast majority of customers stated that the "Made in Sweden" label strongly drives the decision of the customer.[155]

(145) Fourth, the large majority of responding suppliers thought that national distribution assets and an established relationship with local customers were necessary to be active on the market.[156]

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152 Replies to question 17 of Questionnaire 4 to Competitors - Bagged Salad.

153 Replies to question 17 of Questionnaire 4 to Competitors - Bagged Salad.

154 Replies to question 17 of Questionnaire 4 to Competitors - Bagged Salad; Replies to question B.C.3 of Questionnaire 1 to Customers – Fresh Fruit/Bagged Salad.

155 Replies to question B.C.10 of Questionnaire 1 to Customers – Fresh Fruit/Bagged Salad.

(146) Sixth, market respondents noted that due to the limited shelf life of the product, a one-day delivery requirement typically limited the delivery radius.[157]

(147) For the above reasons, for the purposes of this decision, the Commission considers that the geographic market for washed bagged salad is national in scope.

6.1.3. Conclusion

(148) For the purposes of its assessment of the present Transaction, the Commission analyses the markets for the supply of washed bagged salad, for which the geographic market is national.

6.2. Assessment of potential horizontal non-coordinated effects in Sweden

6.2.1. Parties' arguments

(149) The Parties argue that the large bagged salad supplier Salico in Sweden is an effective competitive force constraining the Parties. Although Salico's business currently mainly focuses on supplying the food service channel, they argue that Salico would be able to increase its supply to the food retail channel.

(150) Further, the Parties suggest that alternative suppliers are not constrained by geography or transport and customers could at any time turn to alternative suppliers outside of Sweden, just as the Parties who are supplying customers in Denmark from their Swedish facilities.

(151) Accordingly, the Parties argue that actual and potential suppliers could include manufacturers of bagged salad all over the Nordics and from as far as Italy, from where fresh and whole-head salad is often sourced for the retailers' shelves and as an input for bagged salad production. The Parties argue that companies such as Bonduelle, Agrial and Les Crudettes are active and can supply bagged salad all over Europe, and that bagged salad and frozen vegetable manufacturers such as Orcla and Findus could easily enter the market for bagged salad.

(152) The Parties also argue that any of the numerous suppliers for unwashed loose salad or vegetables could easily expand into creating the production facilities for washed bagged salad, especially if sponsored by a large retailer.

(153) Finally, the Parties submit that they would be constrained by significant countervailing buyer power of the retailers, Sweden being an extremely concentrated food retail market with four large retail chains.

6.2.2. Commission assessment

(154) The Parties have significant market share in washed bagged salad in Sweden (combined [70-80]%), [20-30]% for Total Produce and [50-60]% for Dole,

156 Replies to question 17 of Questionnaire 4 to Competitors - Bagged Salad.

157 Replies to question 21 of Questionnaire 4 to Competitors - Bagged Salad and see e.g. minutes of a conference call with a bagged salad competitor on 26 June, 2018, minutes of a conference call with Swedish customer on 15 May 2018, 08.00.

according to the Parties' own estimate.[158] The largest and only significant competitor remaining is Salico.

(155) The market investigation confirmed the Parties' strong position, with market participants estimating their share in Sweden at around two-thirds of the market.[159]

(156) Responding customers stated that in Sweden, Dole and Total Produce were each other's closest competitors for washed bagged salad.[160] Competitors also confirmed the Parties as the main competitors in Sweden, alongside Salico.[161] The market investigation also confirmed that Salico currently focuses on supply to the food service channel, but does also sell to the food retail channel.

(157) As regards the argument of significant bargaining power exercised by large retail chains the Commission observes that indeed the retail market in Sweden is concentrated, with the four large retailers being ICA Sweden, Axfood, Coop Sweden and Bergendahls. However, although one large competitor had experienced loss of volumes or other form of pressure from retailers,[162] there was limited additional evidence in the market investigation of buyer power exercised with respect to washed bagged salad.

(158) Very few customers confirmed having switched suppliers in the past five years; and customer relationships consequently seem to be more long term (alternatively, this could be an indication of limited suppliers to whom customers may switch).[163] Less than half of the retailers claimed having reduced purchases from a supplier in order to negotiate better prices[164] and many do not multisource.[165]

(159) In fact, many customers expressed concerns as to the impact of the Transaction on washed bagged salad in Sweden and a significant majority of the customers who replied considered that the Parties would be in a position to raise prices after the Transaction.[166]

(160) The Commission observes that there are currently limited imports of washed bagged salad into Sweden from abroad, including from Denmark. In the market investigation, while salad suppliers reported of shipping bagged salad for instance from Germany to Denmark, from Italy to France, from France to Belgium, from Spain to Portugal or from the UK to Ireland, they did not report of imports into Sweden specifically.

158 Reply to question 19 of the Commission's questions of 11 June 2018.

159 Minutes of conference calls with various customers on 8 May, 2018, 14.00, on 15 May 2018, 08.00 and on 30 May 2018,11.00.

160 Replies to question 17 of Questionnaire 4 to Competitors - Bagged Salad; Replies to question B.D.16 of Questionnaire 1 to Customers – Fresh Fruit/Bagged Salad.

161 Replies to question 38 and question 39 of Questionnaire 4 to Competitors - Bagged Salad

162 Replies to question 27 of Questionnaire 4 to Competitors - Bagged Salad.

163 Replies to question B.D.5 of Questionnaire 1 to Customers – Fresh Fruit/Bagged Salad.

164 Replies to question B.D.6 of Questionnaire 1 to Customers – Fresh Fruit/Bagged Salad.

165 Replies to question B.D.3 of Questionnaire 1 to Customers – Fresh Fruit/Bagged Salad.

166 Replies to question B.E.3 of Questionnaire 1 to Customers – Fresh Fruit/Bagged Salad.

(161) Some respondents indicated that the limited shelf life of washed bagged salad put a limit on its transport radius. In the case of Sweden in particular, it was also noted that supplying Denmark from Sweden was logistically easier as the factories in the south of Sweden could reach the whole of Denmark with no additional logistical capabilities, whereas for Danish suppliers to supply Sweden meant completely new logistical challenges, for a country several times the size of Denmark.[167] Market participants noted that it would take an extra day to ship washed bagged salad from Denmark to Sweden and limiting the shelf life of washed bagged salad by one day would be unacceptable to retailers, in light of the relatively short shelf life of washed bagged salad.[168]

(162) Indeed, the Parties and also their largest competitor Salico achieve considerable presence on the washed bagged salad market in Denmark, whereas the presence of Danish producers could not be detected in Sweden. In the case of Sweden in particular, respondents mentioned that the higher price level of the surrounding countries made exports from Sweden attractive but did not make imports into Sweden competitive. For example, Denmark or Norway have much higher price levels and production costs.

(163) The market investigation confirmed that customers in Sweden received all of their supplies for bagged salad from Swedish-based suppliers.[169] Furthermore, the market investigation found no evidence of competitors willing to start supplying Sweden even in circumstances where the prices for bagged salad would increase.[170]

(164) As regards barriers to entry and expansion into bagged salad, the market investigation did not support the Parties' view that these were minimal. Rather, respondents considered that barriers to entry were high. In particular, the costs of establishing a new plant were estimated to be between EUR 5 and 10 million and would take on average at least 18 months to build.[171]

6.2.3. Conclusion

(165) On the basis of the above, the Commission concludes that the Transaction raises serious doubts as to its compatibility with the internal market as regards its impact on competition for bagged salad in Sweden, due to horizontal non-coordinated effects.

6.3. Assessment of potential horizontal non-coordinated effects in Denmark

(166) In Denmark, supplies of bagged salad from Total Produce's and Dole's Swedish plants result in a combined market share of [30-40]%, [10-20]% by Total Produce

167 Minutes of a conference call with a competitor, 28 June 2018, 10.45; Minutes of a conference call with a competitor, 26 June 2018, 16.00.

168 Minutes of a conference call with a competitor, 28 June 2018, 14.30.

169 Replies to question B.C.1 of Questionnaire 1 to Customers – Fresh Fruit/Bagged Salad.

170 Replies to question 31 of Questionnaire 4 to Competitors - Bagged Salad.

171 Replies to question 29 of Questionnaire 4 to Competitors - Bagged Salad.

and [10-20]% by Dole.[172] This market share in Denmark has been achieved by the Parties [details of Parties' supply arrangements].

(167) In contrast to Sweden, the Commission's investigation found evidence of imports of bagged salad into Denmark, not only from Sweden but also from Germany and the Netherlands. In addition, there are a greater number of bagged suppliers present in Denmark. The number of competitors identified by customers[173] is higher than in Sweden, with Hessing, AP Grönt, Yding Grönt, Flensted or Fresh Choice all present.

(168) Respondents to the market investigation did not raise concerns regarding the impact of the Transaction on the bagged salad market in Denmark.

(169) On the basis of the above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market as regards its impact on competition for bagged salad in Denmark, due to horizontal non-coordinated effects. In any event, the horizontal overlap between the Parties' activities in the supply of bagged salad in Denmark is eliminated by the Final Commitments proposed by the Parties, notably the divestment of Dole's bagged salad business in Sweden.

7. PINEAPPLES

(170) Pineapples are tropical fruit that are resilient to a range of weather conditions. Over 80% of pineapples imported into Europe are of the MD2 variety, which was developed by Del Monte in the mid-1990s to have a sweet taste, high vitamin C content and longer shelf life. Other pineapples in Europe mostly comprise of the Smooth Cayenne, Sugarloaf and Victoria varieties[174].

(171) Some volumes of pineapples are sold as organic, Fairtrade or as dual-certified (i.e. both organic and Fairtrade), although this accounts for only a very limited volume of pineapples[175].

(172) Costa Rica is the leading supplier of pineapples to Europe, accounting for approximately 87% of supply in 2015, with increases in production and productivity still being seen. Brazil, the Philippines and Thailand also produce significant quantities, however Brazil and Thailand do not currently export significant quantities and the Philippines currently focus on supplying Asia and the Middle East. Significant alternative supplies are arriving from countries including Ecuador, Ivory Coast, Panama and Ghana, particularly as they diversify into the popular MD2 variety[176].

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172 Replies to question 24 of the Commission's questions of 22 May 2018 and reply to question 19 of the Commission's questions of 11 June, 2018. In the absence of facilities there, they were unable to provide reliable estimates for bagged salad only in Denmark, therefore, the shares also include unwashed baby leaves.

173 Replies to question B.C.1 of Questionnaire 1 to Customers – Fresh Fruit/Bagged Salad.

174 Form CO, paragraph 142.1.

175 Form CO, paragraph 142.1.

176 Form CO, paragraph 142.2.

7.1. Market definition

7.1.1. Relevant product market

7.1.1.1. Parties' arguments

(173) The Parties argue in favour of a single market for all fresh fruit, with the possible exclusion of bananas. They assert that the consumption and volume of pineapples fluctuate in response to the availability of other fresh fruit, particularly seasonal and local fruit, indicating the presence of demand-side substitution. Furthermore, the Parties argue that consumers tend to spend a fixed amount of money when purchasing fresh fruit in general which are all largely substitutable with each other.

(174) As regards supply-side substitutability, the Parties argue that with the exception of the ripening stage (which is not required for pineapples), the respective supply chains for bananas and pineapples are broadly identical[177], and fruit importers may readily switch to sourcing and supplying pineapples given the similarities in their supply chain to other fresh fruit as regards packing, shipping, distributing and retailing the products. The Parties therefore submit that at least all key banana competitors are able to supply pineapples and that there are in fact also additional competitors who do not supply bananas but other fresh fruit. This large number of competitors therefore constrains the Parties' activities in the market for pineapples.

7.1.1.2. Commission assessment

(175) In Chiquita/Fyffes[178], the Commission chose to leave open whether the import and supply of pineapples constitute a distinct product market or whether they are part of a wider market for fresh fruits (excluding bananas). However, it was noted that retailers would be relatively unresponsive in terms of purchasing patterns to a price increase of 5-10% for pineapples. Moreover, many retailers were found to organise separate tenders for pineapples, and stated that their customers would not consider pineapples to be substitutable with other fresh fruit.

(176) In the market investigation in the present case, a vast majority of respondents[179] reject the demand-side substitutability of pineapples with other fresh fruit. They consider that pineapples have a specific exotic taste which differentiates them from more 'customary' fruit such as bananas, and customers will not substitute to other fruit when it cannot be found. Furthermore, those that disagree consider that the seasonality of pineapples may only make them partially substitutable with fruits of their season, for instance local berries, soft and stoned fruits. Nevertheless, some market respondents suggested that brand loyalty was weaker with pineapples than for bananas[180] and internal business documents provide

177 Form CO, paragraph 143.2.

178 Case M.7220 – *Chiquita Brands International/Fyffes*, recitals 367-371.

179 Replies to question A.C.B.2 of Questionnaire 1 to Customers – Fresh Fruit/Bagged Salad; Replies to question 16 of Questionnaire 2 to Customers – Fresh Fruit/Vegetables; Replies to question 12 of Questionnaire 3 to Competitors – Bananas/Other Fresh Fruit.

180 Minutes of a conference call with a customer, 16 May 2018, 11.15.

evidence in favour of fluctuations of pineapple prices over time, which ultimately exert pressure on the margins of suppliers.

(177) There is a stronger case for supply-side substitutability, with the majority of market respondents[181] suggesting that there are no specificities in purchasing pineapples as compared with any other fresh fruit. The majority of retailers were found to source pineapples on the spot market on a weekly or monthly basis,[182] indicating that there is in general no additional or specific capital investment to be attributed to the procurement of pineapples.

(178) However, the Commission considers that the exact product market definition for the import and supply of pineapples can be left open, as no serious doubts arise under any plausible market definition, including a separate market for the import and supply of pineapples only.

(179) As regards a possible separate product market for organic pineapples, this market is small within the overall supply of pineapples, with few being supplied into Europe. The Parties were not able to provide market shares for sales of organic pineapples. Specifically, Total Produce does not make any material sales of organic produce in the EU for pineapples, and Dole's sales in this area are minimal, with a total turnover for organic pineapples in the EU at EUR […] in 2017. Dole does not track the sales of its organic pineapples.[183] As such the Commission considers that it is not necessary to define a separate product markets for organic pineapples, since no serious doubts arise under any plausible market definition.

7.1.2. Relevant geographic market

7.1.2.1. Parties' arguments

(180) The Parties submit that the geographic market for pineapples is at least EEA-wide. They argue that wholesale prices are homogenous and pineapples can be purchased and transported from any country, as transportation of pineapples over longer distances is easier than for bananas given their less delicate nature.

7.1.2.2. Commission assessment

(181) The Chiquita/Fyffes precedent found arguments both in favour of an EU-wide market for pineapples (no obstacles in sourcing them from other Member States) and also against (for instance, price differences and price negotiations which take place at Member State level). The market definition for the import and supply of pineapples was ultimately left open.[184]

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181 Replies to question A.C.B.1 of Questionnaire 1 to Customers – Fresh Fruit/Bagged Salad; Replies to question 15 of Questionnaire 2 to Customers – Fresh Fruit/Vegetables; Replies to question 11 of Questionnaire 3 to Competitors – Bananas/Other Fresh Fruit.

182 Replies to question 31 of Questionnaire 2 to Customers – Fresh Fruit/Vegetables; Minutes of a conference call with a customer, 16 May 2018, 11.15; Minutes of a conference call with a customer, 5 July 2018, 10.30; Minutes of a conference call with a customer, 23 May 2018, 11.00.

183 Form CO, paragraph 48.7, footnote 165.

184 Case M.7220 – *Chiquita Brands International/Fyffes*, recitals 372-375.

(182) The market investigation in the present case indicated that customers in Sweden and Denmark do consider competitor firms in other countries to Dole and Total Produce in the supply of pineapples, with suppliers from Germany and the Netherlands being the most frequently cited.[185] Customers were comfortable that these alternate suppliers would be able to provide products of sufficient quality and quantity.[186] Furthermore, there is no evidence of trade barriers impeding activity,[187] and respondents stated that they would not anticipate any difficulty entering any particular country in the EU if they wished.[188]

(183) On the other hand, the majority of customers recognise a difference in prices between EU countries[189], and transport costs form a large proportion of final costs for customers. This suggests that location in the EU does matter, and that firms have an incentive to source closer to their final location.

(184) The Commission considers that the exact geographic market definition for the import and supply of pineapples can be left open, as no serious doubts arise under any plausible market definition, including separate national geographic markets for pineapples.

7.1.3. Conclusion

(185) For the purposes of its assessment of the present Transaction, the Commission analyses the markets for the import and supply of pineapples, for which the geographic market is national, although the market definition can be left open as no serious doubts arise under any plausible market definition.

7.2. Assessment of potential horizontal non-coordinated effects

7.2.1. Parties' arguments

(186) The Parties argue that they are constrained by a large number of competitors in all affected markets, including at least all key banana suppliers given the similarity of the banana and pineapple supply chains, as well as some additional competitors who supply other fresh fruit.

(187) In Sweden, where the Parties have the highest combined market share ([70-80]%) the Parties claim that the four large retailers, ICA, Coop, Bergendahls and Axfood can and do readily constrain any attempt by their suppliers to increase prices or lower quality in an anti-competitive manner. The Parties argue that due to the size and the volume of their orders, the suppliers' market share mirrors the retailers' market share, and that supply contracts are negotiated annually with the threat of

185 Replies to question A.D.1 of Questionnaire 1 to Customers – Fresh Fruit/Bagged Salad; Replies to question 19 and question 50 of Questionnaire 2 to Customers – Fresh Fruit/Vegetables.

186 Replies to question A.E.C.1.3 of Questionnaire 1 to Customers – Fresh Fruit/Bagged Salad; Replies to question 50.3 of Questionnaire 2 to Customers – Fresh Fruit/Vegetables.

187 Replies to question A.D.2.3 of Questionnaire 1 to Customers – Fresh Fruit/Bagged Salad; Replies to question 20.3 of Questionnaire 2 to Customers – Fresh Fruit/Vegetables; Replies to question 20.3 of Questionnaire 3 to Competitors – Bananas/Other Fresh Fruit.

188 Replies to question 27.2 of Questionnaire 3 to Competitors – Bananas/Other Fresh Fruit.

189 Replies to question A.D.6.3 Questionnaire 1 to Customers – Fresh Fruit/Bagged Salad; Replies to question 23.3 and 24.3 of Questionnaire 3 to Competitors – Bananas/Other Fresh Fruit (but for 'other fruit and veg').

switching putting pressure on prices. For these reasons, the Parties explain that this market share is not reflective of genuine market power.

(188) In the Czech Republic (combined market share of [20-30]%), the Parties claim that the large importers Chiquita, Del Monte, Citronex and Compagnie Fruitière are present, as well as wholesalers Bakker and Cerozfrucht, among others. The Parties also add that countervailing buyer power of retailers is especially high as cross-border retail groups control 66% of the retail channel. They multisource and purchase cross-border, in alliances.

(189) In Spain (combined market share of [20-30]%), the Parties note the presence of strong multinational competitors Del Monte and Compagnie Fruitière as well as Spanish wholesalers, such as Grupo Hermanos Fernandez Lopez, Nufri, CMR and Cultivar. According to the Parties, Spain's retail channel is also concentrated, with Mercadona, the current market leader, and Grupo Dia, Eroski and El Corte Inglés also present. Finally, the Parties add that their customers do not overlap in Spain.

(190) In Lithuania (combined market share of [30-40]%), the Parties note that given Total Produce's low sales of only EUR […] and [details of Total Produce's supply arrangements in Lithuania], there is an extremely limited increment in this market.

7.2.2. Commission assessment

(191) The Transaction leads to affected markets for pineapples in a number of European countries. Combined market shares are highest in Sweden ([70-80]% combined, [40-50]% for Total Produce and [30-40]% for Dole).

Table 1: The Parties' market shares in the import and supply of pineapples

	Total Produce share	Dole share	Combined share
Austria	[0-5]%	[20-30]%	**[20-30]%**
Czech Republic	[10-20]%	[5-10]%	**[20-30]%**
Germany	[0-5]%	[20-30]%	**[20-30]%**
Lithuania	[5-10]%	[20-30]%	**[30-40]%**
Spain	[10-20]%	[5-10]%	**[20-30]%**
Sweden	[40-50]%	[30-40]%	**[70-80]%**

Source: Annex 7.4 to Form CO, based on Parties' estimates (rounding errors may exist)

7.2.2.1. Sweden

(192) No concerns were raised during the course of the Commission's market investigation regarding the proposed Transaction for the market for pineapples in Sweden, and the vast majority of market participants anticipate that the

Transaction would have no impact on the market for the import and supply of pineapples in Sweden[190].

(193) In the course of the Commission's investigation, several competitors have noted that the supply of pineapples (in Sweden and in the EU more generally) is "*abundant*" or "*plentiful*", with "*a large number of independent growers/exporters*" present on the market, which has "*good logistic links and low barriers to entry*".[191]

(194) On the one hand, the market for pineapples in Sweden is small, at approximately EUR 5 million[192], and on the other, there are a number of competitors present on the market who are able to exert a competitive constraint on the merged entity. One Swedish retailer explained that *"sourcing and logistics are in general easier [for pineapples] than for bananas"*[193] (referring to the fact that pineapples do not require ripening as bananas do), and another noted that *"the market for pineapples is more fluid than the market for bananas, simply by virtue of these simpler distribution requirements"*.[194] This allows retailers *"greater degrees of freedom"*[195] with respect to procurement and sourcing.

(195) Competitors that are able to supply pineapples in Sweden are global competitors Chiquita, Del Monte and Fyffes. Regional competitors, such as Bama and Swedish banana suppliers Ewermann (Greenfood) and KA Lundbladh also have the potential of expanding into pineapples.[196] According to the market investigation, these companies and others, including competitors from Denmark (at least 5 to 6 according to one customer[197]), the Netherlands and Germany[198] are ready and able to supply pineapples to Sweden if required. The vast majority of retailers that responded to the Commission's questionnaire consider that they would be able to procure pineapples of sufficient quantity and quality from suppliers other than the Parties in Sweden.[199]

(196) The Commission therefore concludes that there are a number of actual and potential suppliers of pineapples that would be able to exert a competitive constraint in Sweden after the proposed Transaction.

(197) In addition, as noted at recital (93), the Swedish retail market is highly concentrated and the market investigation found evidence of countervailing buyer power regarding the purchase of bananas. On the basis that the sourcing of pineapples is even easier than sourcing of bananas (see recital (194)) and the

190 Replies to question A.F.B.1 of Questionnaire 1 to Customers – Fresh Fruit/Bagged Salad; Minutes of conference call with a customer, 8 May 2017, 14.00.

191 Replies to question 62.1 of Questionnaire 3 to Competitors – Bananas/Other Fresh Fruit; Minutes of conference call with a customer, 8 May 2017, 14.00.

192 Annex 7.4 to the Form CO (rounding errors may exist).

193 Minutes of a conference call with a customer, 8 May 2018, 14.00.

194 Minutes of a conference call with a customer, 23 May 2018, 11.00.

195 Minutes of a conference call with a customer, 23 May 2018, 11.00.

196 Replies to question A.E.C.1 of Questionnaire 1 to Customers – Fresh Fruit/Bagged Salad; Replies to question 62.1 of Questionnaire 3 to Competitors – Bananas/Other Fresh Fruit.

197 Minutes of a conference call with a customer, 16 May 2018, 11.15.

198 Replies to question A.E.C.1 of Questionnaire 1 to Customers – Fresh Fruit/Bagged Salad.

199 Replies to question A.E.C.1 and question A.E.C.1.3 to Questionnaire 1 to Customers – Fresh Fruit/Bagged Salad.

actual or potential suppliers of pineapples in Sweden are the same as those for bananas, the Commission considers that countervailing buyer power is also likely to be present as regards the purchase of pineapples. Further, a number of Swedish retailers have also provided examples of switching suppliers of fruit, including pineapples, in the past five years.[200]

7.2.2.2. Other affected markets

(198) Similarly, there was no anticipated negative impact[201] by the majority of respondents in the market for pineapples in the other affected markets, revealing very little concern on the part of the market respondents.

(199) In the Czech Republic (combined market share of [20-30]%) and Spain (combined market share of [20-30]%), the market investigation confirmed the presence of a number of competitors who would be able to exert a competitive constraint on the Parties[202]. Customers were able to name several alternate suppliers who would be able to supply them with pineapples of quantity and quality sufficient for their needs,[203] and indeed some suggested that they regularly engage in multi-sourcing,[204] indicating that there is a significant degree of buyer power. One customer noted that *"the EU pineapple market is very competitive with lots of new entrants which have become active on the market in recent years"*[205], suggesting a dynamic and competitive market environment. Furthermore, several customers in the Czech Republic have indicated that they have switched pineapple suppliers in the past five years.[206]

(200) All respondents of the market investigation further suggested that they should be able to expand under short notice without significant additional cost in these markets[207]. Some respondents were able to confirm their own successful expansion into new EU countries such as the Czech Republic,[208] further indicating ease of entry.

(201) With respect to Lithuania, Austria, and Germany in particular (combined market shares of [30-40]%, [20-30]%, and [20-30]% respectively), the Commission notes that the increment accrued by the proposed Transaction is limited ([0-5]% and [0-5]% in Germany and Austria and [5-10]% in Lithuania). In Lithuania, Total Produce has sales of EUR […], and [details of Total Produce's supply arrangements in Lithuania]. A similar situation is seen in Austria and Germany, with increments from Total Produce of less than EUR […] and EUR […] in each country respectively.

200 Replies to question A.E.C.4 of Questionnaire 1 to Customers – Fresh Fruit/Bagged Salad.

201 Replies to question 57 of Questionnaire 2 to Customers – Fresh Fruit/Vegetables; Replies to question 71 of Questionnaire 3 to Competitors – Bananas/Other Fresh Fruit.

202 Replies to question 50 of Questionnaire 3 to Customers – Fresh Fruit/Vegetables to Customers – Fresh Fruit/Vegetables

203 Replies to question 50 and question 50.3 of Questionnaire 2 to Customers – Fresh Fruit/Vegetables.

204 Replies to question 51 of Questionnaire 2 to Customers – Fresh Fruit/Vegetables.

205 Replies to question 71.1 Questionnaire 3 to Competitors – Bananas/Other Fresh Fruit.

206 Replies to question 51 of Questionnaire 2 to Customers – Fresh Fruit/Vegetables.

207 Replies to question 62 of Questionnaire 3 to Competitors – Bananas/Other Fresh Fruit.

208 Replies to question 19 of Questionnaire 3 to Competitors – Bananas/Other Fresh Fruit.

7.2.3. Conclusion

(202) On the basis of the above, the Transaction does not raise serious doubts as to its compatibility with the internal market as regards its impact on competition for the markets for the import and supply of pineapples in Sweden, the Czech Republic, Spain, Lithuania, Germany or Austria, due to horizontal non-coordinated effects.

8. OTHER FRUIT AND VEGETABLES

(203) Dole is principally active in bananas and pineapples. However, due to Dole's controlling stake in a Swedish wholesaler, Saba Fruit & Grönt AB, the Parties' activities overlap in the supply of a number of other fruit and vegetables in Sweden.

(204) The Parties' activities lead to affected markets in the supply of the following other fruit and vegetables in Sweden: apples and pears (Total Produce [20-30]%, Dole [5-10]%), citrus fruits (Total Produce [20-30]%, Dole [0-5]%), grapes (Total Produce [20-30]%, Dole [0-5]%), stone and soft fruits (Total Produce [20-30]%, Dole [0-5]%), exotics (Total Produce [20-30]%, Dole [0-5]%), tomatoes (Total Produce [30-40]%, Dole [0-5]%).

8.1. Relevant product market

8.1.1. Parties' arguments

(205) The Parties submit that the market for other fresh fruit and vegetables should not be distinguished further into different categories.

(206) They argue that most suppliers are capable of supplying the full range of fruits and vegetables, or at least a large array, and that 'specialist' wholesalers are not typical. They suggest that the handling of the each fruit or vegetable type is close to identical, with minor differences that may be accommodated in any warehouse.

(207) The Parties explain that this is further reflected by their internal organisational structure. Total Produce's sales organisation is [details of Total Produce's internal organisational structure], while Dole has [details of Dole's internal organisational structure].

8.1.2. Commission assessment

(208) A large body of precedents[209] separate the markets for fresh fruit and vegetables, based on the significant differences in characteristics, prices and intended uses of each, suggesting an absence of sufficient demand-side substitutability. Nevertheless, the exact market definition has remained open to date in this respect.[210]

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209 Case COMP/M.5201 – *Total Produce/Haluco*, recitals 14-15; Case COMP/M.4216 – *CVC/De Weide Blik/Bocchi*, rectials 15-20.

210 With the exception of bananas, which have been defined as separate. See case M.7220 – *Chiquita Brands International/Fyffes*.

(209) In CVC/ De Weide Blik/ Bocchi, the Commission identified various categories of fruit, namely bananas, deciduous fruit, citrus fruit, stone fruit, berries/soft fruit, kiwi fruit and tropical fruit, leaving the exact market definition open. The market investigation for this case however found some degree of substitutability, demonstrating among other things that consumers tend to spend a fixed amount of money on 'fruits' as a whole, and that in the event of a price increase for a certain fruit or vegetable type, they would be likely to simply switch to another.

(210) Furthermore, distinct markets are established for the import/production versus wholesale aspects of the process, on the basis that the customers for both differ (typically wholesalers or retailers at the import/production level and smaller wholesalers, restaurants, hospitals, etc. at the wholesale level).[211] Market investigations in previous cases have broadly indicated this, although some note that the distinction becomes less important as larger customers such as retail chains increasingly purchase directly from importers/producers.

(211) Customers stated in the market investigation in the present case that they asked suppliers for quotes for different categories of fruit and vegetable separately[212], and two thirds were of the view that wholesalers did to some extent specialise, without supplying the whole portfolio of fresh fruits and vegetables.[213]

(212) Questions regarding the demand-side substitutability of the different fresh fruit and vegetable categories did not result in a conclusive answer.[214] In any event, the exact market definition for the supply of fresh fruit and vegetables may be left open as no serious doubts arise under any plausible market definition.

8.2. Relevant geographic market

(213) Although the Parties provided market shares on a national basis, they argue in favour of an EEA-wide market.

(214) This is also supported by Commission precedents.[215]

(215) The present market investigation also indicated that the source of all different fruit and vegetables can be and often are located outside the country of sale.[216] Respondents were unable to identify any barriers to trade within the EU.[217]

(216) Nevertheless, the geographic market definition can be left open as no serious doubts arise under any plausible market definition, including a national Swedish market.

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211 Case COMP/M.1409 – *Fyffes/Capespan*, recitals 24 and 27; Case COMP/M.5199 – *De Weide Blik/Atlanta* recital 10; Case COMP/M.4896 – *CVC/Katope*, recitals 12-3.

212 Replies to question A.C.C.3 of Questionnaire 1 to Customers – Fresh Fruit/Bagged Salad.

213 Replies to question A.C.C.4 of Questionnaire 1 to Customers – Fresh Fruit/Bagged Salad.

214 Replies to question A.C.C.1 of Questionnaire 1 to Customers – Fresh Fruit/Bagged Salad.

215 Case COMP/M.4216 – *CVC/De Weide Blik/Bocchi*, recitals 28-9.

216 Replies to question A.D.1 of Questionnaire 1 to Customers – Fresh Fruit/Bagged Salad.

217 Replies to question A.D.2 of Questionnaire 1 to Customers – Fresh Fruit/Bagged Salad.

8.3. Conclusion

(217) For the purposes of its assessment of the present Transaction, the Commission analyses the markets for all fresh fruit and vegetables and also the narrower fruit and vegetable categories, for which the geographic market is national, although the market definition can be left open as no serious doubts arise under any plausible market definition.

8.4. Assessment of potential horizontal non-coordinated effects

(218) Assuming an EU-wide market for fresh fruit and vegetables, the Transaction does not lead to affected markets.

(219) However, when considering narrower fruit and vegetable categories, affected markets arise in Sweden where combined market shares are [40-50]% in exotic fruit, [30-40]% in tomatoes, [30-40]% in deciduous fruit, [20-30]% in grapes, [20-30]% in stone and soft fruits and [20-30]% in citrus fruit. However, it must be noted that Dole's market presence [comparison between the Parties] of Total Produce and increments do not exceed [0-5]%.

(220) The Parties argue that the concentrated customers on the retail market in Sweden, Dole's marginal position and no overlap between the Parties customers all indicate the absence of a competition problem. The Parties also add that Total Produce's high market shares are merely a result of them having contracts with [customer names], two of the four large retailers.

(221) The market investigation has not revealed any concerns related to the supply of other fruits and vegetables in Sweden.[218]

(222) A number of competitors were confirmed to be present in Sweden in the market investigation who would be able to exert a competitive constraint on the Parties.[219] Furthermore, there are no evident barriers to trade[220], allowing fresh fruit and vegetables to currently be sourced from a number of countries[221], and several indeed source directly from growers themselves, including apples and pears and stone and soft fruit in particular. Customers regarded these alternative suppliers as being able to provide produce of sufficient quantity and quality[222]. These results indicate that there exists ample competitive activity in the market that is likely to exert an adequate amount of competitive constraint on the merging entity.

(223) On the basis of the above, the Transaction does not raise serious doubts as to its compatibility with the internal market with regards its impact on competition for the markets for the supply of other fruit and vegetables, including in Sweden, due to horizontal non-coordinated effects.

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218 Replies to question A.F.C.1 of Questionnaire 1 to Customers – Fresh Fruit/Bagged Salad.

219 Replies to question A.E.C. 1 of Questionnaire 1 to Customers – Fresh Fruit/Bagged Salad.

220 Replies to question A.D. 2.3 of Questionnaire 1 to Customers – Fresh Fruit/Bagged Salad.

221 Replies to question A.D.1 of Questionnaire 1 to Customers – Fresh Fruit/Bagged Salad.

222 Replies to question A.E.C.3 of Questionnaire 1 to Customers – Fresh Fruit/Bagged Salad.

9. PROPOSED REMEDIES

9.1. Framework for the Commission assessment

(224) Where, as in this case, a notified concentration raises serious doubts as to its compatibility with the internal market, the Parties may modify the notified concentration so as to remove the grounds for the serious doubts identified by the Commission with a view to having it declared compatible with the internal market pursuant to Article 6(1)(b) in conjunction with Article 6(2) of the Merger Regulation.

(225) As set out in the Commission Notice on Remedies,[223] commitments have to eliminate the Commission's serious doubts entirely, they have to be comprehensive and effective from all points of view.

(226) In assessing whether or not commitments will restore effective competition, the Commission considers all relevant factors, including the type, scale and scope of the proposed commitments, with reference to the structure and particular characteristics of the market in which the Commission has identified serious doubts as to the compatibility of the notified concentration with the internal market, including the position of the Parties and other participants on the market.[224]

9.2. Commitments submitted by the Parties

(227) In order to address the serious doubts raised by the Transaction in the market for bagged salad in Sweden with a view to rendering the concentration compatible with the internal market, the Parties have modified the notified concentration by submitting to the Commission proposed commitments.

(228) The Parties submitted two sets of commitments. Notably, the Parties formally submitted a remedy proposal on 9 July 2018 (the 'Initial Commitments'). After the Commission gathered the views of market participants on the Initial Commitments (the 'market test'), and informed the Parties of the remaining serious doubts raised by the Transaction, the Parties submitted a revised remedy proposal on 20 July 2018 (the 'Final Commitments')

(229) The Commission considers the Final Commitments sufficient to ensure that, if implemented, the Transaction no longer raises serious doubts as to its compatibility with the internal market. The Final Commitments are annexed to this decision and form an integral part of the decision.

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223 Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (2008/C 267/01), (the "Commission Notice on Remedies").

224 Commission Notice on Remedies, paragraph 12.

9.2.1. Initial Commitments

(230) The Initial Commitments proposed by Total Produce and Dole consisted of the divestment of Saba Fresh Cuts AB, a Swedish legal entity currently wholly-owned by Dole and running a bagged salad plant in Helsingborg, Sweden ("Divestment Business"). The Divestment Business included:

(a) a washed bagged salad production plant, located in Helsingborg (Sweden);

(b) all licenses permits and authorisations issued by any governmental organization or other body for the benefit of the Divestment Business and allowing it to operate its business;

(c) all customer and supplier contracts and agreements;

(d) all personnel currently working at the bagged salad product plant;

(e) one employee (the [senior employee] of the Divestment Business) as Key Personnel;

(f) a licence to use the DOLE brand for a transitional period of two years, at the request of the purchaser;

(g) transitional services, comprising HR, IT, finance support, use of the Enterprise Resource Planning ("ERP") system, to be provided by the Parties on equivalent terms to those currently provided to the Divestment Business, at the request of the purchaser.

(231) In addition the Parties entered into related commitments, *inter alia* regarding the separation of the divested businesses from their retained businesses, the preservation of the viability, marketability and competitiveness of the divested businesses, including the appointment of a monitoring trustee and, if necessary, a divestiture trustee.

9.2.2. The Commission's market test

(232) The Commission launched a market test of the Initial Commitments on 10 July 2017.

(233) In general, the view of the market test respondents was that the Initial Commitments could remedy the serious doubts identified by the Commission in the market for washed bagged salad in Sweden,[225] subject to the modification of one specific element of the Initial Commitments.

(234) In particular, customers and competitors considered that additional positions should be added as key personnel to ensure the viability and competitiveness of the Divestment Business. The additional positions identified were: Plant

[225] Replies to question 11 of Market Test Questionnaire on commitments offered by Total Produce and Dole.

Manager; Operations Manager; Production Manager; Sales and Marketing Manager; Product Development; and equipment maintenance engineers.[226]

(235) In all other respects, respondents considered that the Divested Business includes all necessary assets and would be able to compete effectively with the Parties after the Transaction. All respondents to the market test considered that the Divestment Business was sufficiently interesting to attract suitable purchasers, with one noting that the Divestment Business: "*…is a good plant with efficient production*."[227]

9.2.3. The Final Commitments

(236) The Final Commitments have been modified vis-à-vis the Initial Commitments described in Section 9.2.1 mainly as follows:

(a) 12 additional Key Personnel have been added, with the following positions: Purchase Manager; Product & Marketing Manager; Sales Manager; Key Account Manager; Plant Manager; Production Supervisor; Quality Manager; Product Development Manager; Production Planner; Production Controller; Maintenance Manager; and Technical Manager.

(b) the transfer of the ERP system, which is currently used exclusively by the Divestment Business, will be included in the Divestment Business at the request of the purchaser.

9.3. The Commission assessment

(237) The Commission considers that the Final Commitments set aside the serious doubts raised by the Transaction entirely because they remove the entire overlap between the Parties in bagged salad in Sweden, the market in which serious doubts were raised. The Commission also finds that the modifications contained in the Final Commitments and described at Section 9.2.3 above address the outstanding issues, as identified in the course of the market test, related to the viability and competitiveness of the Divestment Businesses. In particular the Final Commitments:

(a) consist of the removal of the entire overlap between the Parties' activities in bagged salad in Sweden. The Divestment Business is significantly larger than the bagged salad business of Total Produce in Sweden, with an estimated market share of [50-60]% in bagged salad in Sweden, as compared to the estimated [20-30]% market share achieved by Total Produce in the same market;

(b) ensure the continued competitiveness and viability of the Divestment Business. The Final Commitments consist of the divestment of a standalone business, with no long term links to Dole.[228] The Divestment Business is profitable and currently operating successfully, with EUR […]

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226 Replies to question 8 of Market Test Questionnaire offered by Total Produce and Dole.

227 Reply to question 11 of Market Test Questionnaire offered by Total Produce and Dole.

228 Transitional services for back-office functions comprising HR, IT and finance support will however be provided by the Parties if requested by the Purchaser.

in revenues and an EBITDA of EUR […] in 2017.[229] In the Final Commitments, additional Key Personnel have been added covering all key functions in the Divestment Business, ensuring that it will continue to be run effectively;

(c) are likely to attract suitable purchasers. Respondents to the market test considered that the Divestment Business was sufficiently interesting to attract suitable purchasers and a number of respondents expressed an interest in purchasing the Divestment Business.[230]

(238) For the reasons outlined above, the Commission considers that the Final Commitments entered into by the undertakings concerned are sufficient to eliminate the serious doubts as to the compatibility of the Transaction with the internal market with respect to the market for bagged salad in Sweden. Moreover, the Final Commitments are comprehensive and effective from all points of view, and are capable of being implemented effectively within a short period of time.

10. CONDITIONS AND OBLIGATIONS

(239) The fulfilment of the measures that gives rise to the structural change of the market is a condition, whereas the implementing steps that are necessary to achieve this result are generally obligations on the Parties. Where a condition is not fulfilled, the Commission's decision declaring the concentration compatible with the internal market is no longer applicable. Where the undertakings concerned commit a breach of an obligation, the Commission may revoke the clearance decision in accordance with Article 6(3) of the Merger Regulation. The undertakings concerned may also be subject to fines and periodic penalty payments under Articles 14(2) and 15(1) of the Merger Regulation.

(240) In accordance with the basic distinction between conditions and obligations, the commitments in Sections B as well as the Schedule of the Final Commitments set out in the Annex constitute conditions attached to this decision, as only through their full compliance can the structural changes in the relevant markets be achieved. The other commitments set out in the Annex constitute obligations, as they concern the implementing steps that are necessary to achieve the modifications sought in a manner compatible with the internal market.

(241) The full text of the Final Commitments is attached to this Decision as the Annex and forms an integral part of this Decision.

229 Form RM and response to RFI dated 9 July, question 4.

230 Replies to questions 11 and 15 of Market Test Questionnaire on commitments offered by Total Produce and Dole.

11. CONCLUSION

(242) For the above reasons, the Commission has decided not to oppose the notified operation as modified by the Final Commitments and to declare it compatible with the internal market, subject to full compliance with the conditions in Sections B as well as the Schedule of the Final Commitments annexed to the present decision and with the obligations contained in the other sections of the Final Commitments. This decision is adopted in application of Article 6(1)(b) in conjunction with Article 6(2) of the Merger Regulation.

For the Commission

(Signed)
Margrethe VESTAGER
Member of the Commission

Annex

20/07/2018

Case M.8829 – Total Produce / Dole Food Company

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2) of Council Regulation (EC) No 139/2004 (the "***Merger Regulation***"), Total Produce plc and DFC Holdings, LLC., including its wholly-owned subsidiary Dole Food Company, Inc. ("***Dole***"), (together, the "***Notifying Parties***") and Dolicious Corporation, Castle & Cooke Holdings, Inc. and The David H. Murdock Living Trust Dated May 28, 1986, As Amended (the "***DHM Parties***"), (together, "***the Parties***"), hereby enter into the following Commitments (the "***Commitments***") vis- à-vis the European Commission (the "***Commission***") with a view to rendering the acquisition of joint control over Dole as a joint venture (the "***Concentration***") compatible with the internal market and the functioning of the EEA Agreement.

This text shall be interpreted in light of the Commission's decision pursuant to Article 6(1)(b) of the Merger Regulation to declare the Concentration compatible with the internal market and the functioning of the EEA Agreement (the "***Decision***"), in the general framework of European Union law, in particular in light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (the "***Remedies Notice***").

Section A. Definitions

1. For the purpose of the Commitments, the following terms shall have the following meaning:

Affiliated Undertakings: undertakings controlled by the Parties and/or by the ultimate parents of the Parties, whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in light of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (the "***Consolidated Jurisdictional Notice***").

Assets: the assets that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business as indicated in Section B, paragraphs 5(a) to (d) and 6(a) and (b) and described more in detail in Schedule A.

Closing: the transfer of the legal title to the Divestment Business to the Purchaser.

Closing Period: the period of […] from the approval of the Purchaser and the terms of sale by the Commission.

Confidential Information: any business secrets, know-how, commercial information, or any other information of a proprietary nature that is not in the public domain.

Conflict of Interest: any conflict of interest that impairs the Trustee's objectivity and independence in discharging its duties under the Commitments.

Decision: Commission's decision pursuant to Article 6(1)(b) of the Merger Regulation to declare the Concentration compatible with the internal market and the functioning of the EEA Agreement.

DHM Parties: Dolicious Corporation, Castle & Cooke Holdings, Inc. and The David H. Murdock Living Trust Dated May 28, 1986, As Amended, the affiliated undertakings of DFC Holdings, LLC.

Divestment Business: Saba Fresh Cuts AB, a company incorporated under Swedish law and having its registered office at Torbonav 13 B, 250 15 Helsingborg (Sweden) as defined in Section B and in **Schedule A**.

Divestiture Trustee: one or more natural or legal person(s) who is/are approved by the Commission and appointed by the Parties and who has/have received from the Parties the exclusive Trustee Mandate to sell the Divestment Business to a Purchaser at no minimum price.

Dole: DFC Holdings, LLC, a company incorporated under the Laws of the State of Delaware, United States of America, with registered office in One Dole Drive, Westlake, CA 91362, United States of America and its wholly-owned subsidiary Dole Food Company, Inc., a company incorporated under the laws of North Carolina, US with registered office at One Dole Drive, Westlake Village, CA 91362, United States of America.

Effective Date: the date of adoption of the Decision.

First Divestiture Period: the period of […] from the Effective Date.

Hold Separate Manager: the person appointed by the Parties for the Divestment Business to manage the day-to-day business under the supervision of the Trustee.

Key Personnel: all personnel necessary to maintain the viability and competitiveness of the Divestment Business, as listed in **Schedule A**, including the Hold Separate Manager.

Monitoring Trustee: one or more natural or legal person(s) who is/are approved by the Commission and appointed by the Parties, and who has/have the duty to monitor the Parties' compliance with the conditions and obligations attached to the Decision.

Parties: the Notifying Parties and the DHM Parties.

Personnel: all staff currently employed by the Divestment Business.

Purchaser: the entity approved by the Commission as acquirer of the Divestment Business in accordance with the criteria set out in Section D.

Purchaser Criteria: the criteria laid down in paragraph 16 of these Commitments that the Purchaser must fulfil in order to be approved by the Commission.

Saba Shared Service Center: a wholly-owned subsidiary of Dole, which provides back office support functions to the Divestment Business, as described in Schedule A.

Schedule A: the schedule to these Commitments describing more in detail the Divestment Business.

Trustee(s): the Monitoring Trustee and/or the Divestiture Trustee as the case may be.

Total Produce: Total Produce plc, a company incorporated under the laws of Ireland, with its registered office at 29 North Anne Street, Dublin 7, D07 PH36, Republic of Ireland.

Trustee Divestiture Period: the period of […] from the end of the First Divestiture Period.

Section B. The commitment to divest and the Divestment Business

Commitment to divest

2. In order to maintain effective competition, the Parties commit to divest, or procure the divestiture of, the Divestment Business by the end of the Trustee Divestiture Period as a going concern to a purchaser and on terms of sale approved by the Commission in accordance with the procedure described in paragraph 16 of these Commitments. To carry out the divestiture, the Parties commit to find a purchaser and to enter into a final binding sale and purchase agreement for the sale of the Divestment Business within the First Divestiture Period. If the Parties have not entered into such an agreement at the end of the First Divestiture Period, the Parties shall grant the Divestiture Trustee an exclusive mandate to sell the Divestment Business in accordance with the procedure described in paragraph 29 in the Trustee Divestiture Period.

3. The Parties shall be deemed to have complied with this commitment if:

   (a) by the end of the Trustee Divestiture Period, the Parties or the Divestiture Trustee have/has entered into a final binding sale and purchase agreement and the Commission approves the proposed purchaser and the terms of sale as being consistent with the Commitments in accordance with the procedure described in paragraph 17; and

   (b) the Closing of the sale of the Divestment Business to the Purchaser takes place within the Closing Period.

4. In order to maintain the structural effect of the Commitments, the Parties shall, for a period of ten (10) years after Closing, not acquire, whether directly or indirectly, the possibility of exercising influence (as defined in paragraph 43 of the Remedies Notice, footnote 3) over the whole or part of the Divestment Business, unless, following the submission of a reasoned request from the Parties showing good cause and accompanied by a report from the Monitoring Trustee (as provided in paragraph 43 of these Commitments), the Commission finds that the structure of the market has changed to such an extent that the absence of influence over the Divestment Business is no longer necessary to render the proposed concentration compatible with the internal market.

Structure and definition of the Divestment Business

5. The Divestment Business consists of Saba Fresh Cuts AB, a Swedish legal entity currently wholly-owned by Dole and running a bagged salad plant in Helsingborg, Sweden. The legal and functional structure of the Divestment Business as operated to date is described in **Schedule A**. The Divestment Business, described in more detail in **Schedule A**, includes all assets and staff that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business, in particular:

   (a) all tangible and intangible assets (including intellectual property rights, as specified in paragraph 6(a));

   (b) all licences, permits and authorisations issued by any governmental organisation for the benefit of the Divestment Business;

(c) all contracts, commitments and customer orders of the Divestment Business; all customer, credit and other records of the Divestment Business; and

(d) the Personnel.

6. In addition, unless otherwise agreed with the Purchaser, the Divestment Business shall have the benefit, for a transitional period of up to two (2) years after Closing and on terms and conditions equivalent to those at present afforded to the Divestment Business, of:

(a) the right to use DOLE brand granted by Dole Food Company, Inc., via a temporary trademark licence; and

(b) all current arrangements under which Dole or its Affiliated Undertakings supply products or services to the Divestment Business, as detailed in Schedule A, unless otherwise agreed with the Purchaser. Strict firewall procedures will be adopted so as to ensure that any competitively sensitive information related to, or arising from such supply arrangements will not be shared with, or passed on to, anyone outside the relevant business unit/division within Dole providing the product/service.

Section C. Related commitments

Preservation of viability, marketability and competitiveness

7. From the Effective Date until Closing, the Parties shall preserve or procure the preservation of the economic viability, marketability and competitiveness of the Divestment Business, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the Divestment Business. In particular the Parties undertake:

(a) not to carry out any action that might have a significant adverse impact on the value, management or competitiveness of the Divestment Business or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the Divestment Business;

(b) to make available, or procure to make available, sufficient resources for the development of the Divestment Business, on the basis and continuation of the existing business plans of the Divestment Business;

(c) to take all reasonable steps, or procure that all reasonable steps are being taken, including appropriate incentive schemes (based on industry practice), to encourage all Key Personnel to remain with the Divestment Business, and not to solicit or move any Personnel to the Parties' remaining business. Where, nevertheless, individual members of the Key Personnel exceptionally leave the Divestment Business, the Parties shall provide a reasoned proposal to replace the person or persons concerned to the Commission and the Monitoring Trustee. The Parties shall demonstrate to the Commission that the replacement is well suited to carry out the functions exercised by those individual members of the Key Personnel. The replacement shall take place under the supervision of the Monitoring Trustee, who shall report to the Commission.

Hold-separate obligations

8. The Parties commit, from the Effective Date until Closing, to keep the Divestment Business separate from the businesses that the Parties will be retaining and to ensure that unless explicitly permitted under these Commitments: (i) management and staff of the businesses retained by the Parties shall have no involvement in the Divestment Business; (ii) the Key Personnel and Personnel of the Divestment Business have no involvement in any businesses retained by the Parties and do not report to any individual outside of the Divestment Business.

9. Until Closing, the Parties shall assist the Monitoring Trustee in ensuring that the Divestment Business is managed as a distinct and saleable entity separate from the businesses which the Parties are retaining. Immediately after the adoption of the Decision, the Parties shall appoint a Hold Separate Manager. The Hold Separate Manager, who shall be part of the Key Personnel, shall manage the Divestment Business independently and in the best interest of the business with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from the businesses retained by the Parties. The Hold Separate Manager shall closely cooperate with and report to the Monitoring Trustee and, if applicable, the Divestiture Trustee. Any replacement of the Hold Separate Manager shall be subject to the procedure laid down in paragraph 7(c) of these Commitments. The Commission may, after having heard the Parties, require the Parties to replace the Hold Separate Manager.

10. To ensure that the Divestment Business is held and managed as a separate entity the Monitoring Trustee shall exercise the Parties' rights as shareholders in the legal entity or entities that constitute the Divestment Business (except for its rights in respect of dividends that are due before Closing), with the aim of acting in the best interest of the business, which shall be determined on a stand-alone basis, as an independent financial investor, and with a view to fulfilling the Parties' obligations under the Commitments. Furthermore, the Monitoring Trustee shall have the power to replace members of the supervisory board or non-executive directors of the board of directors, who have been appointed on behalf of the Parties. Upon request of the Monitoring Trustee, the applicable Parties' board members shall resign as a member of the boards or the Parties shall cause such members of the boards to resign.

Ring-fencing

11. The Parties shall implement, or procure to implement, all necessary measures to ensure that they do not, after the Effective Date, obtain any Confidential Information relating to the Divestment Business and that any such Confidential Information obtained by the Parties before the Effective Date will be eliminated and not be used by the Parties. This includes measures vis à vis the Parties' appointees on the supervisory board and/or board of directors of the Divestment Business. In particular, the participation of the Divestment Business in any central information technology network shall be severed to the extent possible, without compromising the viability of the Divestment Business. This commitment is without prejudice to the Parties' ability to obtain or keep information relating to the Divestment Business which is reasonably necessary for the divestiture of the Divestment Business or the disclosure or retention of which to or by the Parties is required by law including but not limited to information required for accounting purposes.

Non-solicitation clause

12. The Parties undertake, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, the Key Personnel transferred with the Divestment Business for a period of two (2) years after Closing.

Due diligence

13. In order to enable potential purchasers to carry out a reasonable due diligence of the Divestment Business, the Parties shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process:

    (a) provide to potential purchasers sufficient information as regards the Divestment Business;

    (b) provide to potential purchasers sufficient information relating to the Personnel and allow them reasonable access to the Personnel.

Reporting

14. The Parties shall submit written reports in English on potential purchasers of the Divestment Business and developments in the negotiations with such potential purchasers to the Commission and the Monitoring Trustee no later than 10 days after the end of every month following the Effective Date (or otherwise at the Commission's request). The Parties shall submit a list of all potential purchasers having expressed interest in acquiring the Divestment Business to the Commission at each and every stage of the divestiture process, as well as a copy of all the offers made by potential purchasers within five days of their receipt.

15. In the event the Parties decide to establish a data room, the Parties shall inform the Commission and the Monitoring Trustee on the preparation of the data room documentation and the due diligence procedure. The Parties shall also submit a copy of any information memorandum to the Commission and the Monitoring Trustee before sending the memorandum out to potential purchasers.

Section D. The Purchaser

16. In order to be approved by the Commission, the Purchaser must fulfil the following criteria:

    (a) The Purchaser shall be independent of and unconnected to the Parties and their Affiliated Undertakings (this being assessed having regard to the situation following the divestiture).

    (b) The Purchaser shall have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors;

    (c) The acquisition of the Divestment Business by the Purchaser must neither be likely to create, in light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed. In particular, the Purchaser must reasonably be

expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business.

17. The final binding sale and purchase agreement (as well as ancillary agreements) relating to the divestment of the Divestment Business shall be conditional on the Commission's approval. When the Parties have reached an agreement with a purchaser, they shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), within one week to the Commission and the Monitoring Trustee. The Parties must be able to demonstrate to the Commission that the purchaser fulfils the Purchaser Criteria and that the Divestment Business is being sold in a manner consistent with the Commission's Decision and the Commitments. For the approval, the Commission shall verify that the purchaser fulfils the Purchaser Criteria and that the Divestment Business is being sold in a manner consistent with the Commitments including their objective to bring about a lasting structural change in the market. The Commission may approve the sale of the Divestment Business without one or more Assets or parts of the Personnel, or by substituting one or more Assets or parts of the Personnel with one or more different assets or different personnel, if this does not affect the viability and competitiveness of the Divestment Business after the sale, taking account of the proposed purchaser.

Section E. Trustee

I. Appointment procedure

18. The Parties shall appoint a Monitoring Trustee to carry out the functions specified in these Commitments for a Monitoring Trustee. The Parties commit not to close the Concentration before the appointment of a Monitoring Trustee.

19. If the Parties have not entered into a binding sale and purchase agreement regarding the Divestment Business one month before the end of the First Divestiture Period or if the Commission has rejected a purchaser proposed by the Parties at that time or thereafter, the Parties shall appoint a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Trustee Divestiture Period.

20. The Trustee shall:

    (i) at the time of appointment, be independent of the Parties and their Affiliated Undertakings;

    (ii) possess the necessary qualifications to carry out its mandate, for example have sufficient relevant experience as an investment banker or consultant or auditor; and

    (iii) neither have nor become exposed to a Conflict of Interest.

21. The Trustee shall be remunerated by the Parties in a way that does not impede the independent and effective fulfilment of its mandate. In particular, where the remuneration package of a Divestiture Trustee includes a success premium linked to the final sale value of the Divestment Business, such success premium may only be earned if the divestiture takes place within the Trustee Divestiture Period.

Proposal by the Parties

22. No later than one week after the Effective Date, the Parties shall submit the name or names of one or more natural or legal persons whom the Parties propose to appoint as the Monitoring Trustee to the Commission for approval. No later than one month before the end of the First Divestiture Period or on request by the Commission, the Parties shall submit a list of one or more persons whom the Parties propose to appoint as Divestiture Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the person or persons proposed as Trustee fulfil the requirements set out in paragraph 20 and shall include:

    (a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments;

    (b) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks;

    (c) an indication whether the proposed Trustee is to act as both Monitoring Trustee and Divestiture Trustee or whether different trustees are proposed for the two functions.

Approval or rejection by the Commission

23. The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one name is approved, the Parties shall appoint or cause to be appointed the person or persons concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, the Parties shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

New proposal by the Parties

24. If all the proposed Trustees are rejected, the Parties shall submit the names of at least two more natural or legal persons within one week of being informed of the rejection, in accordance with paragraphs 18 and 23 of these Commitments.

Trustee nominated by the Commission

25. If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom the Parties shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

II. Functions of the Trustee

26. The Trustee shall assume its specified duties and obligations in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or the Parties, give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

Duties and obligations of the Monitoring Trustee

27. The Monitoring Trustee shall:

(i) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision.

(ii) oversee, in close co-operation with the Hold Separate Manager, the on-going management of the Divestment Business with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by the Parties with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:

(a) monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Business, and the keeping separate of the Divestment Business from the businesses retained by the Parties, in accordance with paragraphs 8 and 9 of these Commitments;

(b) supervise the management of the Divestment Business as a distinct and saleable entity, in accordance with paragraph 11 of these Commitments;

(c) with respect to Confidential Information:

– determine all necessary measures to ensure that the Parties do not after the Effective Date obtain any Confidential Information relating to the Divestment Business, in accordance with paragraph 11,

– in particular strive for the severing of the Divestment Business' participation in a central information technology network to the extent possible, without compromising the viability of the Divestment Business,

– make sure that any Confidential Information relating to the Divestment Business obtained by the Parties before the Effective Date is eliminated and will not be used by the Parties and

– decide whether such information may be disclosed to or kept by the Parties as the disclosure is reasonably necessary to allow the Parties to carry out the divestiture or as the disclosure is required by law.

(d) monitor the splitting of assets and the allocation of Personnel between the Divestment Business and Parties or their Affiliated Undertakings;

(iii) propose to the Parties such measures as the Monitoring Trustee considers necessary to ensure the Parties' compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the Divestment Business, the holding separate of the Divestment Business and the non-disclosure of competitively sensitive information;

(iv) review and assess potential purchasers as well as the progress of the divestiture process and verify that, dependent on the stage of the divestiture process:

(a) potential purchasers receive sufficient and correct information relating to the Divestment Business and the Personnel in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process, and

(b) potential purchasers are granted reasonable access to the Personnel;

(v) act as a contact point for any requests by third parties, in particular potential purchasers, in relation to the Commitments;

(vi) provide to the Commission, sending the Parties a non-confidential copy at the same time, a written report within 15 days after the end of every month that shall cover the operation and management of the Divestment Business as well as the splitting of assets and the allocation of Personnel so that the Commission can assess whether the business is held in a manner consistent with the Commitments and the progress of the divestiture process as well as potential purchasers;

(vii) promptly report in writing to the Commission, sending the Parties a non-confidential copy at the same time, if it concludes on reasonable grounds that the Parties are failing to comply with these Commitments;

(viii) within one week after receipt of the documented proposal referred to in paragraph 17 of these Commitments, submit to the Commission, sending the Parties a non-confidential copy at the same time, a reasoned opinion as to the suitability and independence of the proposed purchaser and the viability of the Divestment Business after the Sale and as to whether the Divestment Business is sold in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the Sale of the Divestment Business without one or more Assets or not all of the Personnel affects the viability of the Divestment Business after the sale, taking account of the proposed purchaser;

(ix) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision.

28. If the Monitoring and Divestiture Trustee are not the same legal or natural persons, the Monitoring Trustee and the Divestiture Trustee shall cooperate closely with each other during and for the purpose of the preparation of the Trustee Divestiture Period in order to facilitate each other's tasks.

Duties and obligations of the Divestiture Trustee

29. Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at no minimum price the Divestment Business to a purchaser, provided that the Commission has approved both the purchaser and the final binding sale and purchase agreement (and ancillary agreements) as in line with the Commission's Decision and the Commitments in accordance with paragraphs 16 and 17 of these Commitments. The Divestiture Trustee shall include in the sale and purchase agreement (as well as in any ancillary agreements)

such terms and conditions as it considers appropriate for an expedient sale in the Trustee Divestiture Period. In particular, the Divestiture Trustee may include in the sale and purchase agreement such customary representations and warranties and indemnities as are reasonably required to effect the sale of the Divestment Business. The Divestiture Trustee shall protect the legitimate financial interests of the Parties, subject to the Parties' unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.

30. In the Trustee Divestiture Period (or otherwise at the Commission's request), the Divestiture Trustee shall provide the Commission with a comprehensive monthly report written in English on the progress of the divestiture process. Such reports shall be submitted within 15 days after the end of every month with a simultaneous copy to the Monitoring Trustee and a non-confidential copy to the Parties.

III. Duties and obligations of the Parties

31. The Parties shall provide and shall cause their advisors to provide the Trustee with all such co-operation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of the Parties' or the Divestment Business' books, records, documents, management or other personnel, facilities, sites and technical information necessary in each case for fulfilling its duties under the Commitments and the Divestment Business shall provide the Trustee upon request with copies of any document. The Parties and the Divestment Business shall make available to the Trustee one or more offices on their premises and shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.

32. The Parties shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Divestment Business. This shall include all administrative support functions relating to the Divestment Business which are currently carried out at headquarters level. The Parties shall provide and shall cause their advisors to provide the Monitoring Trustee, on request, with the information submitted to potential purchasers, in particular give the Monitoring Trustee access to the data room documentation, if applicable, and all other information granted to potential purchasers in the due diligence procedure, if any. The Parties shall inform the Monitoring Trustee on possible purchasers, submit lists of potential purchasers at each stage of the selection process, including the offers made by potential purchasers at those stages, and keep the Monitoring Trustee informed of all developments in the divestiture process.

33. The Parties shall grant or procure Affiliated Undertakings to grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to effect the sale (including ancillary agreements), the Closing and all actions and declarations which the Divestiture Trustee considers necessary or appropriate to achieve the sale and the Closing, including the appointment of advisors to assist with the sale process. Upon request of the Divestiture Trustee, the Parties shall cause the documents required for effecting the sale and the Closing to be duly executed.

34. The Parties shall indemnify the Trustee and its employees and agents (each an "**Indemnified Party**") and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to the Parties for, any liabilities

arising out of the performance of the Trustee's duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.

35. At the expense of the Parties, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to the Parties' approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should the Parties refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard the Parties. Only the Trustee shall be entitled to issue instructions to its advisors. Paragraph 34 of these Commitments shall apply *mutatis mutandis*. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served the Parties during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.

36. The Parties agree that the Commission may share Confidential Information proprietary to the Parties with the Trustee. The Trustee shall not disclose such information and the principles contained in Article 17(1) and (2) of the Merger Regulation apply *mutatis mutandis*.

37. The Parties agree that the contact details of the Monitoring Trustee are published on the website of the Commission's Directorate-General for Competition and they shall inform interested third parties, in particular any potential purchasers, of the identity and the tasks of the Monitoring Trustee.

38. For a period of 10 years from the Effective Date the Commission may request all information from the Parties that is reasonably necessary to monitor the effective implementation of these Commitments.

IV. Replacement, discharge and reappointment of the Trustee

39. If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a Conflict of Interest:

    39.1. the Commission may, after hearing the Trustee and the Parties, require the Parties to replace the Trustee; or

    39.2. the Parties may, with the prior approval of the Commission, replace the Trustee.

40. If the Trustee is removed according to paragraph 39 of these Commitments, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 18-25 of these Commitments.

41. Unless removed according to paragraph 39 of these Commitments, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring

Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

Section F. The review clause

42. The Commission may extend the time periods foreseen in the Commitments in response to a request from the Parties or, in appropriate cases, on its own initiative. Where the Parties request an extension of a time period, they shall submit a reasoned request to the Commission no later than one month before the expiry of that period, showing good cause. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to the Parties. Only in exceptional circumstances shall the Parties be entitled to request an extension within the last month of any period.

43. The Commission may further, in response to a reasoned request from the Notifying Parties showing good cause waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments. This request shall be accompanied by a report from the Trustee, who shall, at the same time send a non-confidential copy of the report to the Notifying Parties. The request shall not have the effect of suspending the application of the undertaking and, in particular, of suspending the expiry of any time period in which the undertaking has to be complied with.

Section G. Entry into force

44. The Commitments shall take effect upon the date of adoption of the Decision.

duly authorised for and on behalf of Total Produce plc

duly authorised for and on behalf of DFC Holdings, LLC, its subsidiaries and affiliates

SCHEDULE A

1. The Divestment Business as operated to date has the following legal and functional structure: it constitutes Saba Fresh Cuts AB, a company incorporated under the laws of Sweden. The registered address / place of business of Saba Fresh Cuts AB is Torbonav 13 B, 250 15 Helsingborg (Sweden). The only activity of Saba Fresh Cuts AB is the manufacturing of bagged salads. The corporate structure chart is hereby attached as **Annex 1**.

2. In accordance with paragraph 5 of these Commitments, the Divestment Business owns and operates a bagged salads business which includes, but is not limited to:

   2.1. the following main tangible asset: a bagged salad production plant, located at Torbonav 13 B, 250 15 Helsingborg (Sweden) with a size of 96,529 square feet and under full ownership of Saba Fresh Cuts AB.[1] This plant includes the following equipment:

      (a) […] triple wash systems of different capacity ([…] kg);

      (b) […] wash line;

      (c) […] horizontal spin dryers;

      (d) […] air tunnel dryer (for baby leaves);

      (e) […] stir dry line (for baby leaves);

      (f) […] vertical form fill packaging lines;

      (g) […] tray packing line; and

      (h) equipment to serve the lines (cutters, elevators, trim lines and bin dumpers).

   2.2. all licences, permits and authorisations issued by any governmental organization or other body for the benefit of the Divestment Business and allowing it to operate its business as described hereby, to the extent transferable under applicable law;

   2.3. all customer contracts, agreements, commitments, understandings and orders of the Divestment Business (**"*Customer Contracts***") and all contracts, agreements, commitments, understandings and orders relating to suppliers that supply the Divestment Business as at Closing ("***Supplier Contracts***"). The Parties will […] procure the consent of third parties, where applicable, to the transfer of the material Customer Contracts and Supplier Contracts to the Purchaser;

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[1] The Divestment Business also currently leases a very small office, located at Slånbåret 2 Slånbärsgatan 8, 722 23 Västerås (Sweden), with a facility size of 172 square feet, […] as part of the ordinary course of business of the Divestment Business.

2.4. customer, credit and other records, in particular those relating to paragraph 2.3 of this Schedule above;

2.5. the following Personnel who are mentioned in the Divestment Business's organizational chart hereby attached as **Annex 2**. The Parties will provide reasonable assistance to facilitate the transfer of any members of the Personnel to the Purchaser, in so far as requested by the Purchaser;

2.6. the following Key Personnel:

Name	**Title**	**Function**
[…]	[…]	[…]
[…]	[…]	[…]
[…]	[…]	[…]
[…]	[…]	[…]
[…]	[…]	[…]
[…]	[…]	[…]
[…]	[…]	[…]
[…]	[…]	[…]
[…]	[…]	[…]
[…]	[…]	[…]
[…]	[…]	[…]
[…]	[…]	[…]
[…]	[…]	[…]

2.7. any know-how held by the Divestment Business; and

2.8. at the election of the Purchaser, the Enterprise Resource Planning (ERP) system, which is an IT data management system currently used solely by the Divestment Business.

3. Other than goodwill covered by paragraph 2.3 of this Schedule, the main intangible asset of the Divestment Business is the right to use the DOLE brand. The Divestment Business shall not own the right to use DOLE brand which is owned by Dole Food Company, Inc. via an implied licence for the benefit of Saba Fresh Cuts AB, except for a transitional period of two (2) years but only at the request of the suitable purchaser acquiring the Divestment Business.

4. The Divestment Business benefits from basic back office services/products from Dole which are provided by the Saba Shared Service Center. These services/products comprise IT support and systems (including Microsoft Office and Outlook, and an IT financial reporting system), finance, book keeping and human resources management. The Divestment Business shall continue to have the benefit of some or all of these services/products at the Purchaser's election and on equivalent terms to those currently provided. This will be undertaken by way of a transitional services arrangement on terms which will be subject to Commission approval. In addition, the Purchaser will also be able to elect to acquire the ERP system as per paragraph 2.8 of this Schedule A above.

5. If there is any asset or personnel which is not be covered by paragraphs 2, 3 or 4 of this Schedule but which is both used (exclusively or not) in the Divestment Business and necessary for the continued viability and competitiveness of the Divestment Business, that asset or adequate substitute will be offered to potential purchasers.

6. Notwithstanding paragraph 8 of these Commitments, […] can, under the supervision and approval of the Monitoring Trustee, continue to provide services to Dole's retained business, […], until Closing.

ANNEX 1 – CORPORATE STRUCTURE CHART

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ANNEX 2 – PERSONNEL ORGANISATIONAL CHART

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