EN

Case No COMP/M.4842 - DANONE / NUMICO

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REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(2) NON-OPPOSITION
Date: 31/10/2007

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 31-10-2007

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION IN CONJUNCTION WITH 6(2)

To the notifying party:

Dear Sir/Madam,

<u>Subject</u>: **Case No COMP/M.4842 – Danone / Numico**
Notification of 12 September 2007 pursuant to Article 4 of Council Regulation No 139/2004[1]

1. On September 12, 2007, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No. 139/2004 ("the Merger Regulation") by which the French company Danone S.A. (Danone) acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of the Dutch company Royal Numico N.V. (Numico) by way of purchase of shares.

I. THE PARTIES

2. Danone is a worldwide company based in France and engaged in the production and sale of fresh dairy products, mineral water and baby food. Danone is also active in biscuits and cereals products and is in exclusive talks with Kraft foods for the sales of this business[2].

3. Numico is a company incorporated in the Netherlands specialized in the manufacture and distribution of baby food and clinical nutrition products in a large number of countries worldwide.

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[1] OJ L 24, 29.1.2004, p. 1.

[2] See case COMP/M.4824 Kraft/Danone Biscuits.

II. THE OPERATION

4. On July 9, 2007, Danone and Numico concluded a Merger protocol, pursuant to which Danone intends to make a recommended public offer, in cash, for all the shares of Numico. The Offer Memorandum opening the offer period was published on August 20, 2007. The proposed operation constitutes therefore a concentration within the meaning of the Merger Regulation.

.III. COMMUNITY DIMENSION

5. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (EUR 14,073 million for Danone, EUR 2,623 million for Numico). The aggregate Community–wide turnover of Danone and Numico is more than EUR 250 million (EUR […] million for Danone, EUR […] million for Numico). Neither Danone nor Numico achieve more than two-thirds of their Community-wide turnover in the same Member State. The proposed transaction therefore has a Community dimension within the meaning of Article 1(2) of the EC Merger Regulation.

IV. COMPETITIVE ASSESSMENT

6. The proposed transaction concerns the production and sale of baby food (including baby milk) products. Danone is active in this segment directly and mainly through its wholly-owned subsidiary Bledina which achieves [80-90] % of its turnover in France. In 2006, baby food represented [0-10] % of Danone's EEA-wide turnover. By contrast, Numico is a more global baby food player with operations in the EEA as well as in Russia, Central and Latin America and the Asia-Pacific region. In 2006, baby food amounted to [50-60] % of Numico's EEA wide turnover. The Commission recently investigated these baby food markets in the M.4688 Nestlé-Gerber decision[3] , although it did not cover baby milks.

7. On a general basis, the parties explain that the baby food markets should also include home-prepared and non-baby specific products (for example: regular food for meals, cow milk for growing-up milk) since these products are increasingly used as complements or substitutes to baby food. However, in the Nestlé/Gerber decision, the Commission stressed that it appeared difficult to consider that baby food and adult food belong to the same product market (although adult food products have to be taken into account as potential constraint on baby food producers' behaviour). From the point of view of consumers, who happen to be very sensitive to the quality of these products, regular products do not address the specific nutritional needs of their babies and baby food products are packed, priced, promoted and advertised differently from adult food. Furthermore, all retailers hold dedicated shelf-space for manufactured baby food which differentiates it clearly from similar adult food. Supply-side substitutability appears limited as well, in view of the stringent regulatory provisions that set specific requirements on raw materials and hygiene conditions at baby food production sites.

8. This distinction between baby food and regular/home made food has been confirmed by respondents to the market investigation. Accordingly and in line with its previous findings, the Commission will assess the impact of the transaction on specific product markets for baby food, which will be discussed further below. The potential competitive

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3 Decision COMP/M.4688 Nestlé/Gerber of 27 July 2007.

constraints exercised by non-baby food products, which might fluctuate according to the various baby food product markets, will be taken into account in the competitive assessment.

Relevant product markets

1. Baby milk

9. Baby milks include all milks in powder and liquid form primarily intended for feeding infants and toddlers from 0 to 36 months. The parties submit that two different categories of baby milk may be identified and constitute distinct product markets: i) Infant and Follow-on Milk (IFFO milk) and ii) Growing-Up Milk (GUM). This is in line with the findings of the UK Monopolies and Merger Commission (current Competition Commission) which has dealt with these markets before[4].

IFFO

10. IFFO milks designate nutritional milks for babies aged 0 to 12 months which are used as substitutes for human breast milk. In France, where the activities of the parties overlap for baby milk, IFFO milk is mainly sold in powder format, requiring the addition of water.

11. Besides breast milk, IFFO milk is the only milk that the medical community considers as nutritionally acceptable for infants under the age of one year[5]. IFFO milks are subject to strict regulatory requirements in Europe and the Directive 2006/141/EC of 22 December 2006 regulates the marketing of IFFO milk in the Community. The directive includes mandatory requirements for the labelling (e.g. a statement related to the superiority of breast milk) and strict restrictions about advertising. The parties submit that IFFO milk is a distinct product market for the purposes of this assessment.

12. Applicable EC legislation distinguishes two main types of IFFO milk: infant milk for babies aged 0-6 months and follow-on milk for babies aged 6-12 months. Both products are distinct in terms of composition, are sold under slightly different packaging and regulatory requirements on follow-on milk are less demanding. However respondents to the market investigation indicated that the moment when parents should use follow-on milk is not clearly defined (between 4 and 6 months, depending on the circumstances) and consumers tend to remain loyal to a brand when they shift to follow-on milks. In any event, the question of distinct product markets for infant and follow-on milks can be left open as it would not substantially change the conclusions of the competitive assessment.

13. The IFFO milk market may further be segmented according to the distribution channel (retail channel or pharmacy). In France, a substantial part of the infant milk ([35-45] %) and follow-on milk ([15-25] %) is sold through pharmacies and some competitors are only active in the pharmacy channel (Lactalis-Picot, United Pharmaceuticals, and Mead Johnson). Market presence may also vary significantly from one channel to another. For

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[4] Monopolies and Mergers Commission: "NV Verenigde Bedrijven Nutricia and enterprises belonging to Milupa AG: A report on the merger situation", August 1996

[5] Cow's milk is not recommended because of its high protein and salt content, which may put a strain on infant immature's kidneys.

instance, Nestlé has in France a market share of [35-45] % in the retail channel and [5-10] % in the pharmacy channel. There are also some differences in the products sold (therapeutic milks are only purchased in pharmacies, see below) and the purchasing pattern: parents make their own choices in retail stores whilst they usually rely on specialist's advice in the pharmacies. Nevertheless, it is not necessary to make a further distinction within IFFO milk according to the distribution channel since it would not significantly alter the competitive assessment.

14. Finally, within IFFO milks, a further distinction can be made between standard and therapeutic milks: therapeutic milks are milks intended for babies with particular digestive or health problems (milks for premature babies, anti-regurgitation milks, and milks without lactose, anti-diarrheic milks, anti-regurgitation milks or allergy treatment milks). Therapeutic milks, which are only sold in the pharmacy channel, are on average 40-50% more expensive than standard IFFO milks.

15. One competitor indicated during the investigation that "medical milk", which is a subcategory of therapeutic milks, can be seen as a separate product market. This competitor underlines that medical milks deliver nutritional solutions for infants and babies that have specific health conditions which prevent them from using "standard therapeutic milks". These milks can only be purchased with a doctor's prescription and are typically reimbursed by the healthcare system.

16. The Commission notes that such a market definition is neither supported by any other third party submission nor by firmer evidence. First, it appears that therapeutic milks and "medical milks" both provide a therapeutic support in addition to their nutritional functions and are both intended for babies with specific therapeutic needs. As regards reimbursement, the Commission notices that some "standard therapeutic milks" (for instance Numico's product Pepti Junior, which is a partially hydrolyzed milk with a low lactose content aiming at reducing allergy symptoms) are also reimbursed by the healthcare system. As regards some very specific products manufactured by Numico (such as Neocate, an amino acid-based formula for serious allergic conditions), the Commission believes that they should rather be considered as healthcare nutrition products[6] for infants in view of their very specific therapeutic indications[7]. Therefore, the Commission does not take the view that medical milks should be considered as a distinct product market.

17. As regards a distinction between standard and therapeutic milks, the Commission notes that suppliers of IFFO milk typically offer a range of products covering the majority of therapeutic indications and that manufacturers having entered the market with therapeutic milks are now expanding into standard IFFO milk products. Hence there appears to be a certain level of supply-side substitutability between standard milks and therapeutic milks. Nevertheless, it is not necessary to make a further distinction between regular and therapeutic milks since it would not change the competitive assessment.

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6 See decision Case COM/M.4540 Nestlé/Novartis (Medical nutrition business) of 29 June 2007.

7 See list of products reimbursed by the French Healthcare system available at http://www.ameli.fr/fileadmin/user_upload/documents/References_juridiques_secteur_pharmacie.pdf (page 168). The Neocate is listed an oral supplementation product.

18. Based on the above arguments, the Commission considers that IFFO milk is a distinct product market for the analysis of the present transaction.

GUM

19. GUM milks are nutritional milks for children 1-3 years. They exist in both powder and liquid formats although the latter (bottle or tetra pack format) is prevalent in Western Europe. They are almost exclusively sold in the retail channel and average price of GUM is much lower (30-35%) than the average price of IFFO[8].

20. The parties submit that GUM competes with cow milk as well as other baby food products (sweet meals, baby cereals and baby snacks, see below) since the children's diet becomes more diversified after the age of one. According to the parties, in France and Belgium, the only two markets where the parties' activities in GUM overlap, GUM represents respectively 27% and 20% of the milk fed to children between the age of 16 and 36 months.

21. The market investigation has however highlighted that GUM is enhanced with nutrients appropriate for the developing needs of children, particularly a stronger iron content. Therefore, the majority of the parties' competitors in baby milk do not view cow milk as an adequate alternative for GUM. According to some respondents, the proportion of parents feeding cow's milk to their 1-3 year children is decreasing, due to the stronger awareness within the medical community that GUM is necessary for the child's growth and well-being.

22. Furthermore, the price of GUM is on average twice as high as the price of cow's milk. Parents who decide to feed their babies with GUM have consequently already made a choice for a product which is more expensive than cow's milk. Therefore, it is unlikely that these customers would switch to cow's milk in case of a small but significant increase of the price of GUM (in the range of 5-10%) since they are already convinced that GUM is necessary for their children despite its current higher price.

23. Based on the above, the Commission considers that GUM is a distinct product market for the purposes of this assessment.

2. Baby food

24. In line with the Commission's findings in the Nestlé/Gerber case, the parties submit that there are three segments in baby food which are not substitutable with each others and therefore should be considered as distinct product markets. These markets are baby meals, baby snacks, and baby drinks. The question whether baby cereals constitute a separate market was left open in this decision.

25. Baby meals designate prepared meals and individual ingredients for meal preparation, labelled and marketed for babies and children from 6 months up to 36 months. They include mashed purées with a combination of vegetables and meat or fish, single food purees, fruit compotes, soups and ambient dairy products. The parties submit that all baby meals form part of the same market since parents purchase different categories of

[8] Form CO, page 34.

meals in order to provide a balanced diet to the baby. Moreover all manufacturers offer a large range of products.

26. Within baby meals, a distinction could be made between savoury meals (vegetable, fish, poultry, meat, soup) and sweet meals (compote, yogurt, ambient dairy products) as babies' diet should balance savoury and sweet products for nutrition and taste development purposes. For the purposes of the present case, it can be left open whether distinct product market for sweet and savoury meals should be defined.

27. Baby snacks refer to all sweet and savoury snacks intended for babies and toddlers from 4 to 36 months and include biscuit, crackers, cereals bars and fruit bars.

28. The parties submit that baby cereals include cereals for feeding infants or toddlers in dry or liquid format. Baby cereals are typically composed of rice semolina, wheat flour or oats. According to the parties, it is possible to distinguish dry cereals (requiring addition of water or milk) from liquid cereals which are ready-to-drink dairy based products with cereals (typically milk with cereals).

29. Finally, baby drinks refer to all drinks other than milk-based drinks intended for babies and children, including juices, syrups and herbal teas. They are available in three product forms: ready-to drink, concentrates and dry granules, which are reconstituted with the addition of water.

30. The market investigation has globally confirmed the existence of the above-mentioned product markets. The classification of liquid cereals which are sold by Danone under the *Bledilac* brand is however unclear. The majority of market participants, especially customers, view *Bledilac* as a substitute for baby milk (primarily GUM since [60-70] % of Bledilac consumption is made by babies aged at least one year[9]) and therefore include this brand in the GUM segment. Although the parties disagree with this approach, it appears from internal documents submitted by Danone that […] [10] .

31. For the above reasons, the Commission will assess the impact of the transaction on the following product markets: i) baby meals, ii) baby dry cereals (without liquid cereals which will be included in the GUM market), iii) baby snacks and iv) baby drinks.

Branded product vs. private label products

32. In line with the Commission's previous practice[11] in consumer goods products, the Commission considers that there are separate markets for the supply of branded baby milk and baby food products to retailers (and pharmacies) and the supply of private label baby food and baby milk products to retailers (products which are marketed under retailer's brands). Accordingly, some suppliers of branded products also provide private label products to retailers and the procurement processes between branded and private labels products is different (bilateral negotiations for the former and tenders for the latter). Although it is clear that when private label products are available, branded and

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9 Answer from the parties to the Commission's request for information dated 4 October 2007.

10 See […].

11 See Cases COMP/M.4533 SCA/P&G, and M.4761 Bongrain/Sodiaal/JV.

private label products compete at retail level (i.e. on the supermarkets' shelves), this is not the case at the wholesale level.

33. As the parties do not supply private label products, the competitive assessment will focus on the branded markets. Nevertheless, the competitive interaction at the downstream retail level (i.e. on supermarkets' shelves) between "manufacturer/branded products" and "retailer/private labels" will be taken into account in the analysis, even if private labels have so far little influence on the baby food markets.

Relevant geographic markets

34. In accordance with past Commission practice regarding the sale of food products to retail chains, and particularly the Nestlé/Gerber decision, the notifying party submits that the relevant geographic markets for each of the products described above is national in scope.

35. The parties point out that national consumption patterns for food fed to babies vary across EU countries, the distribution of baby food products is generally organized on a national basis, the relative weight of the distribution channels (in particular the breakdown of sales between pharmacies and retail chains) may differ significantly according to the countries, market presence of baby food players and brands under which these products are sold vary among Member States and finally the prices of baby food or milk show significant discrepancies from a Member State to an other[12]. The market investigation has widely confirmed the existence of national features which point to the existence of national markets (e.g. procurement at national level, price differences among Member States, existence of national brands, differences between countries as regards consumption level and market growth).

36. As regards baby milk and particularly IFFO, although the caloric and nutrient needs of babies are similar across countries, consumption and sales growth depend directly of national features such as birth rate and breast feeding habits. For example in France, the birth rate is one of the highest in Europe (13 per 1000 inhabitants whereas the rate in Germany is around 8.5) but the breast feeding rate is one of the lowest (58% of French mothers breast-feed their babies, whereas this rate is more than 80% in Germany and above 90% in Scandinavian countries). IFFO formulations may also be different across Member States in order to meet national consumption habits or paediatricians' advices. The same is true for GUM which shows significant differences of saturation level and growth rates among Member States.

37. On the basis of the above considerations, the Commission takes the view that the different markets for branded baby food and baby milk products have a national geographic dimension.

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[12] The parties submit that for IFFO, the average Community price was approximately €13 per kg in 2006. Countries like Greece and Italy offer relatively high average prices (respectively €17 and €28) whereas the average prices in the Netherlands and Germany are respectively €9 and €10..

Competitive assessment

38. Danone's geographic focus in baby food and baby milk is in France where its subsidiary Bledina achieves [80-90] % of its turnover. The activities of the parties overlap to a significant extent in France, Belgium, the Netherlands and Portugal. In the United Kingdom, Danone is only active in baby meals with a market share below [0-5] % (both for sweet and savoury meals). Hence the UK market will not be further discussed below.

1. France

39. The table below provides a summary of the parties' and their competitors' market shares based on value in France in 2006 in all the affected markets[13].

Market	Danone	Numico	Combined Market Share	Competitor 1	Competitor 2	Market Size (MEUR)
IFFO milk	[30-40] %	[15-25] %	[45-55] **%**	[25-35] % (Nestlé)	[5-10] % (Ordesa)	[390-410]
GUM	[25-35] %	[5-10] %	[35-45] **%**	[20-30] % (Sodiaal)	[20-30] % (Lactalis)	[130-150]
Baby drinks	[40-50] %	[10-20] %	[50-60] **%**	[40-50] % (Nestlé)	[0-5] % (Hipp)-	[10-20]

IFFO milk

40. The table show that the transaction would create a market leader in the French market for IFFO milk with a market share of [45-55] % far from its next competitor Nestlé with [25-35] % market share. Other smaller competitors include the Spanish company Ordesa, which is active in France through its subsidiary Sodilac and markets its product under the brand *Modilac* both in retails outlets and in pharmacies; Mead Johnson, a division of the US pharmaceutical company Bristol-Myers Squibb that sells its products under the brand Enfamil exclusively in pharmacies ([5-10] % market share); United Pharmaceuticals, a French company which is only active in the pharmacy channel through its brand Novalac ([5-10] % market share). The market shares submitted by the parties have broadly been confirmed by the data collected from the other market players during the market investigation.

41. The market positions would not significantly change on the basis of narrower product market definitions. If a distinction was made between infant and follow-on milk, the parties would hold a market share of [45-55] % in infant milk, the next competitor being Nestlé with [25-35] % and [45-55] % in follow-on milk (Nestlé [30-40] %). Likewise, the new entity would also become market leader if separate markets where found according to the distribution channel: in the retail channel, the combined market share would be [45-55] % (Nestlé [35-45] %) and [40-50] % in the pharmacy channel, far beyond the next competitor Novalac with [15-25] %. However the new entity would

13 Source: Nielsen

have a higher combined market share on the therapeutic milk market ([50-60] %) as Nestlé is a weaker competitor in this segment ([5-10] %).

42. Respondents to the market investigation indicated that the market structure that would result from the concentration would bring about competition concerns, <u>especially in the retail channel</u>. Indeed, these markets are subject to strong regulatory and quality requirements, and the brand/company image among consumers as well as paediatricians/hospitals prescribing IFFO milk, plays a significant role. Thus, entry/expansion on these markets is a complex task. Respondents to the market investigation indicated that a key factor of success in the IFFO market is to establish brand awareness and credibility among healthcare professionals and prescribers of IFFO products (maternities, general practitioners, paediatricians) which require significant investment in time and money. Customers in the retail channel also unanimously confirmed that brand was a very important criterion for their purchases of IFFO milk.

43. After the transaction, the new entity would hold four of the major brands in IFFO milk in France (Bledina and Gallia from Danone; Nutricia and Milupa from Numico). With one exception, all the retailers responding in the market investigation have confirmed that Danone's IFFO milk brands are "must-have" brands in the French market and a majority of these retailers indicated that Nutricia and Milupa are must-have brands as well.

44. The market investigation highlighted that retailers usually sell a limited number of brands. In general, no more than seven brands are exposed on the retailers' shelves in France, namely Bledina and Gallia (Danone), Nidal and Guigoz (Nestlé), Milupa and Nutricia (Numico) and Ordesa's brand Modilac. Likewise for other consumers' goods products, the way IFFO milk is exposed on the shelves greatly influences consumers' choices. During the investigation, the Commission gathered information as regards the significant role of Danone and Nestlé in so-called "category management" for IFFO milk shelves in France, which allows suppliers to have a more significant weight on the placement of products on the shelves and thereby have an influence on the end-consumers' purchasing decisions. Numico has fiercely competed with Danone and Nestlé to be responsible for management of the shelves. It has managed to introduce in some retailers' outlets new "plan-o-grams" on how to assort products on the shelves (all the brands on the same row) in order to enable consumers to compare prices more easily.

45. The importance of brands in the IFFO milk market is further confirmed by the fact that there is no private label IFFO competing with branded IFFO in France for two main reasons. First, as noted above, IFFO milk is a product for which access to practitioners is crucial and retailers do not promote these products towards the medical community. Second, as non specialist, retailers have to resort to third-party production and cannot control the stringent quality requirements associated with IFFO products, while still incurring the risk of quality problems with disastrous effects on the retailers' image.

46. The parties submitted that Danone and Numico are not close competitors in the French market for IFFO milk in view of the different formulations of their products and price positioning. First, the market investigation did not yield that consumers view Danone and Numico's IFFO milk as really different in terms of ingredients or formulations. Indeed, customer benefits claimed by these suppliers appear to be rather similar.

Numico uses probiotic ingredients of the "FOS-GOS"[14] type, which helps to improve the child's immunity while Danone uses a fermentation process which leads to consumer benefit such as "strengthening natural defences". Second, while it is true that most of the retailers having answered to the market investigation view Nestlé's brands as close competitors of Danone's brands, they also unanimously confirmed that the best alternative for Numico IFFO milk are Danone's products[15].

47. As regards the price positioning, the market investigation revealed that Nutricia's standard baby milk offering is characterized indeed by its low price positioning. This is not the case for the Milupa brand, which is priced at the same level as the Danone's and Nestlé's milk. On average, and according to the parties' submission, Nutricia is priced [10-20] % below the average price of IFFO milk. Some customers indicated that the price gap between Nutricia and its competitors was as high as [25-35] %. Nutricia mainly competes on prices to make up for its weaker brand image compared to Danone's and Nestlé's brands.

48. A majority of customers has expressed the concerns that this low-pricing challenger strategy would not be carried out by Danone after the implementation of the transaction which would ultimately give rise to price increases on IFFO products in France. Some customers have explained that the transaction would significantly undermine their negotiation positions, as Numico is currently a credible alternative to Danone and Nestlé with a mid-priced brand (Milupa) and a low-priced brand (Nutricia). They indicated that there is a risk that given Numico's current role on the market, Danone would have a strong incentive to remove Numico's brands altogether from the market.

49. While market shares are similar in the <u>pharmacy channel</u>, market shares of the parties and their competitors have been less stable in the last years than in the retail channel with the entry and expansion of specific players (Ordesa, Lactalis/Picot, United Pharmaceuticals, and Mead Johnson) in this channel. In the parties' view this is due to apparently lower barriers to entry, as pharmacists can sell any equivalent to the product desired by customers. Consequently, rather than relying on their brand image, competitors in the pharmacy channel rely on the quality of their products, as well as their ability to make pharmacists achieve higher margins. However, given the current market structure, serious doubts cannot be excluded on the market for IFFO sold to pharmacists. The commitments submitted by Danone in any case cover also this channel (as discussed below).

50. Given the high market shares of the new entity, the fact that Danone/Numico would own a high number of must-have brands, the removal of a strong competitive constraint on prices and high barriers to entry in the retail channel, the Commission considers that the transaction may significantly impede effective competition on the French market for IFFO milk. Therefore, the proposed transaction raises serious doubts as to its compatibility with the common market and the EEA agreement.

GUM

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14 Fructo Oligosaccahrides and Galacto-Oligosaccharides

15 Answer to question 18 in questionnaire sent by the Commission to customers on 20.09.2007

51. As regards **GUM**, the transaction would allow Danone to strengthen its leading position in the French market with a market share of [35-45] %. Competitors include dairy products suppliers Sodiaal ([20-30] %), Lactalis ([20-30]%) and baby food suppliers like Nestlé ([15-25]%) as well as smaller players such as Novalac and Picot.

52. A majority of customers and competitors did not express concerns as regard the French GUM market. Indeed, the market investigation revealed that the GUM market shows a significant degree of competition with high promotional activities and a slight decrease in average prices in the last 12 months. Market structure is also different from IFFO to the extent that dairy products manufacturers (Lactalis, Sodiaal) are active in this market with significant market shares. This is due to the fact that contrary to IFFO products which arte almost exclusively in powder format, the liquid format is widespread in the French GUM market and these companies have the know-how and industrial capabilities to develop liquid products.

53. In the light of the above, the transaction does not raise serious doubts as to its compatibility with the common market as regards the French GUM market.

Baby drinks

54. On the French **baby drinks** market, the proposed merger leads to a reduction of the number of suppliers from 3 to 2 and would create a new leader with a market share of [50-60]%. Apart from Nestlé which would hold a market share of [40-50] %, there is just one competitor, the German company Hipp with [0-5] % market share.

55. The parties explained that their market share is not meaningful since baby drinks is the category which is the more exposed to competition from regular products (the French baby drinks market is declining). Moreover, the parties claimed that Danone and Numico do not appear to be direct competitors since Danone only sells fruit juices and Numico sells herbal teas (dehydrated infusions derived from aromatic plants and packed in individual tea bags).

56. However, customers questioned during the market investigation view fruit juices produced by Danone and herbal teas manufactured by Numico as direct competitors in the French baby drinks market since they explained that consumers purchase one or the other product (as well as fruit juices offered by Nestlé) when they intend to buy baby drinks. Consumers make their selections between different flavours available among fruit juices and herbal teas rather than choosing a specific baby drink product.

57. As regards competition from regular drinks, the market investigation has not been conclusive as to its impact on the French baby drink market. The fact that the baby drink market has declined between 2004 and 2006 does not *per se* prove that customers are switching to regular drinks. Actually, baby drink is a seasonal product which is mainly purchased in summer and the level of sales of baby drinks is highly dependent on summer weather conditions. At this stage of the proceedings, the Commission is not in the position to assess whether this competitive pressure would render a price increase from the merged entity unprofitable in view of the duopolistic structure of the French baby drinks market.

58. Inview of the competition concerns identified on the French market for baby drinks, the Commission has serious doubts as to the compatibility of the proposed concentration with the common market.

Baby meals, snacks and cereals

59. With regard to French baby food markets (baby meals, snacks and cereals), one competitor stressed that the transaction will impair potential entry into these markets. According to this competitor, Numico is well established baby food competitor in neighbouring countries (Belgium) and enjoys in this country a strong position with products well suited to the French market. However, Numico makes no sales of baby meals, snacks or cereals in France.

60. However, the Commission did not find evidence supporting this submission. First as regards baby cereals, Numico has tried to enter the market […]. Numico was eventually forced to exit the market. As regards baby meals, the range of Numico's baby food products is essentially made of jars whereas in France retailers require their suppliers to provide more convenient formats such as plates and plastic bowls (which are supplied by Bledina *inter alia*). With regard to baby snacks, Numico has not tried to enter in view of the limited size of the segment […].

61. Therfore, no competition concerns are identified at the French baby food markets (baby meals, snacks and cereals).

2. Belgium.

62. The market structure and size in 2006 are outlined below. Danone's Bledina products are sold through a distributor (PAB) and makes some other sales (*Gervais*, *Lu*) directly. Numico is directly active in Belgium.

Market	Combined Market Share	Overlap	Competitor 1	Competitor 2	Market Size (MEUR)
Baby GUM	**[60-70] %**	[5-15] % (Danone)	[20-30] % (Nestlé)	[10-20] % (others)	**[20-30]**
Baby Meals	**[75-85] %**	[35-45] % (Danone)	[15-25] % (Nestlé)	[5-10] % (Hipp)	**[25-35]**
Baby Snacks	**[90-100] %**	[5-15] % (Numico)	[0-5] % (others)	-	**[5-15]**
Baby DryCereals	**[15-25] %**	[0-5] % (Danone)	[80-90] % (Nestlé)	-	**[0-10]**
Baby drinks	**[90-100] %**	[5-10] % (Danone)	[5-10] % (Hipp)	-	**[0-10]**

Baby meals

63. Baby meals is the market with the most significant overlap and the merger would strengthen the position of the current leading supplier Numico ([40-50] %) with a market share of [75-85] % far beyond its nearest competitor Nestlé ([15-25] %). The parties submit that no competition concerns arise since Nestlé is a strong and growing rival, and Numico and Danone are not close competitors in view of their positioning (Danone and Numico would respectively be strong in Wallonia and Flanders) and different packaging.

64. These claims were not supported by the market investigation. Respondents indicated that Numico and Danone are the closest substitutes in this market and are engaged in face to face competition: retailers play Numico and Danone against each other to keep prices down. Furthermore, it appears that Danone and Numico compete in innovation (introduction of new products), range of products, and of course quality and prices to the benefit of consumers and are heavily advertising their products. Besides these two players, Nestlé's position, while growing, is not comparable to that of the parties, whereas a player such as Hipp has a specific positioning on organic/premium products, and is therefore not exerting a strong constraint either on the parties.

65. Nestlé, Hipp or another market player wishing to expand/enter the market would probably experience the utmost difficulties. Being active on this market requires reaching a critical size, given that a supplier has to preferably provide not only sweet and savoury meals but also products for each day of the week and all baby-age brackets (8-12 months, 12-16 months, 16-20 months). Furthermore, suppliers have to cope with the limited shelf space ascribed to baby food products and retailers do not sell products from suppliers with less than 25-30 Stock Keeping Units in order to maintain a high rotation rate. In view of this and of the importance of establishing brand awareness in these markets, expansion/entry on the baby meal markets is complex.

66. This expansion is all the more difficult, since it has been brought to the attention of the Commission that some category captainship arrangements, under which the leading market players provides recommendations on which brands to shelve, on how to display each product and with which space allocation, etc also exists in the Belgian market in a similar way to the French market for IFFO milk. These recommendations can be provided by more than one player, and, typically, on the Belgian market, category captains are Numico and Danone. This recommendation is supposed to be based on the supplier expertise on the market, and while retailers are free not to follow them, they have an incentive to do so, as they are supposed to maximize their profits. Under these circumstances, entry or expansion on those markets are difficult, as leading market players' influence on which products to shelve and how they should be displayed, often means that their products will benefit from more space and a better display than competitors' products.

67. This overall analysis is not changed if a distinction is made between savoury and sweet meals, since the market positions of the parties are similar for sweet meals (Danone: [40-50] %, Numico : [40-50] %) and savoury meals (Danone : [25-35] %, Numico : [35-45] %).

68. In the light of the above, the Commission has serious doubts that the proposed concentration would significantly impede effective competition on the Belgium market for baby meals.

GUM and baby drinks

69. For the same reasons as for baby meals, the parties contend that, despite their high market share on the GUM market ([60-70] % with an overlap of [5-15] %), the effects of the transaction on competition would remain limited.[16]

70. While it is true that fewer concerns were expressed for GUM and baby drinks than for the effects on the baby meal market, it was pointed out to the Commission that Blédilac (mix of milk and cereal) is one major product of the current Danone's range, which should be included in the GUM market since it is overwhelmingly considered by Belgian retailers as a substitute for GUM. Thus, as confirmed by the market investigation, Danone animates the market for GUM, and its removal would be detrimental to competition. The proposed concentration therefore raises competition concerns on the Belgian market for GUM products.

71. As regards baby drinks, although market shares would be very high, the parties submit that the effects of the transaction would be limited in particular in view of the high degree of substitution with regular drinks. Nevertheless, while no strong concerns were expressed about the effects of the proposed concentration on this market—perhaps due to its limited size—the first-phase investigation does not allow to decisively conclude that suppliers of baby drinks would not be able to increase prices due to regular drinks. Thus, given the new entity's very high market share, and the closeness of substitution between the products of the two parties on this market (in Belgium, Numico's portfolio of products include juices), competition concerns cannot be excluded on the Belgium markets for GUM and baby drinks. The proposed concentration therefore raises competition concerns on the Belgian market for baby drinks.

Baby snacks

72. For baby snacks, Danone is active in Belgium through three brands: Blédiscuit ([10-20] % market share), Betterfood ([40-50] %) and LU Vitabis ([25-35] %). The parties indicate that Danone is currently under exclusive discussions for the sale to Kraft Foods of its biscuit business, including LU Vitabis[17]. However, for the purpose of the present case and given that the sale (presumably to Kraft as part of the Kraft-Danone transaction (M.4824)) of Betterfood and Lu Vitabis is not yet finalized, competition concerns can be identified on the market for baby snacks in Belgium. This is therefore subject to a remedy submitted by Danone by virtue of which Danone commits to sell the two brands. This would leave Danone with a [5-15] % market share, thereby removing competition concerns.

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[16] The sales include Bledilac sales in Belgium in 2006. Bledilac is a mix of milk and cereals, which sales were […] million euros in 2006, approximately [0-10] % of the total GUM market

[17] The transaction has been notified to the Commission on 12 september 2007 M. 4824 Kraft/Danone Biscuits

Conclusion

73. In view of the competition concerns identified on the Belgian markets for baby meals, GUM, baby drinks, and baby snacks,, the proposed concentration raises serious doubts as to its compatibility with the common market

3. Netherlands

74. The affected markets are described in the table below. As in Belgium, Danone products are sold through its distributor PAB[18].

Market	Combined Market Share	Overlap	Competitor 1	Competitor 2	Market Size (MEUR)
Baby Meals	**[85-95] %**	[0-5] % (Danone)	[5-10] % (Nestlé)	[0-5] % (Other)	**[50-60]**
Baby Snacks	**[65-75] %**	[15-25] % (Numico)	[15-25] % (Bolletje)	[10-20] % (Nestlé	**[5-15]**
Baby dry cereals	**[80-90] %**	[0-5] % (Danone)	[5-10] % (Lyempf)	[5-15] % (Sugro)	**[5-15]**

Baby meals

75. As follows from the table above, Numico dominates the Dutch baby meals market and this observation holds true if a distinction is made between sweet meals (Danone: [0-5] %, Numico: [70-80] %) and savoury meals (Danone : [0-5] %, Numico : [85-95] %).

76. While it is true that Danone is a weak actor on this market, this is also the case for Nestlé Thus, under these market conditions, the removal of competition, how weak it may be, could be detrimental. This is all the more true as the market investigation showed that some retailers started in the past to purchase products from Danone to be less dependent on Numico.

Baby snacks

77. As regards snacks, Danone is almost exclusively active through its brand LU Liga, which should be divested to Kraft as part of the Kraft/Danone Biscuits transaction. Thus, the same question arises as for the Belgian market for baby snacks and competition concerns cannot be excluded.

[18] The overlaps in GUM (Danone [0-5] %) and in baby cereals (Danone [0-5] %) are minimal.

Conclusion

78. In view of the competition concerns identified on the Dutch market for baby meals and snacks[19], the proposed concentration raises serious doubts as to its compatibility with the common market.

4. Portugal

79. In Portugal, the parties' activities overlap in baby meals, baby cereals and baby drinks. The affected markets are as follows:

Market	Combined Market Share	Overlap	Competitor 1	Competitor 2	Market Size (MEUR)
Baby meals	**[45-55] %**	[5-10] % (Numico)	[45-55] % (Nestlé)	[0-5] % (Hero)	**[15-25]**
Baby dry cereals	**[20-30] %**	[0-5] % (Danone)	[70-80] % (Nestlé)		**[25-35]**
Baby drinks	**[40-50] %**	[15-25] % (Danone)	[50-60] % (Nestlé)	[0-5] % (Hero)-	**[0-5]**

80. As regards baby cereals, Nestlé is the clear market leader and the transaction does not raise competition concerns.

81. As regards baby meals[20] the market share of the new entity would remain below [45-55] % and the consolidation of the market did not raise concerns among respondents to the market investigation. Quite to the contrary, some retailers welcomed the merger on the ground that the combination of Danone and Numico product range would create a good alternative to Nestlé. Indeed, it was confirmed that Danone and Numico were not closest competitors on the market, and that they were used by retailers as an alternative to Nestlé rather than an alternative to each other. Numico is not the closest competitor to Danone since it is only active in sweet meals whereas Danone's and Nestlé's products cover the entire baby meal range. These results suggest that non-coordinated effects as a result of the merger are unlikely to arise.

82. As regards baby drinks, the combined entity would not reach as high market shares as in France and Belgium. It should also be stressed, that baby drinks are even more under-developed than in France and Belgium, and the market size is limited to EUR [0-5] million, which suggests that the competitive pressure stemming from regular drinks might be even stronger in Portugal. Furthermore, Danone and Numico are not closest

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19 Baby dry cereals do not give rise to competition concerns given the marginal sales made by Danone on this market.

20 There is no overlap in savoury baby meals. In sweet baby meals, the new entity would hold a market share of [40-50] % (Nestlé: [50-60] %).

competitors, as they are endeavouring to dispute Nestlé's position on the market. In view of these elements, non-coordinated effects as a result of the merger are unlikely.

83. Given the competitive pressure stemming from regular drinks, and the inherent difficulty to come to a common understanding on the terms of a tacit coordination on a consumer good market (range and quality of products, and introduction of new products differ across companies), coordinated effects as a result of the merger do not seem likely despite symmetry of market shares after the proposed concentration. The same is true for baby meals where suppliers need to have a broad product range in order to be successful, which renders difficult to reach adequate terms of coordination between market players. This is all the more true as innovation and the introduction of new products is a key factor of competition on this market.

84. Thus, the Commission takes the view that the proposed concentration does not impede effective competition on the Portuguese markets for baby meals, cereals, and drinks.

V. COMMITMENTS SUBMITTED BY THE NOTIFYING PARTY

(a) Procedure

85. In order to render the concentration compatible with the common market, the notifying party has offered some commitments pursuant to Article 6(2) of the EC Merger Regulation, which are annexed to this Decision. The initial commitment package was proposed by Danone on September 24, 2007, however due to limited scope of this package the Commission requested several improvements. The improved commitment package was proposed by Danone on October 10, 2007. After examination and market testing of this commitment package, a final commitment package was submitted by Danone on October 30, 2007. The final commitments were deemed suitable to remedy the competition concerns identified. These commitments are attached to this decision and form an integral part thereof.

(b) Description of the commitments

France

86. With respect to baby-milk in France, the divestment package in France would in particular comprise the following:

- the assignment of the *Lemiel* and *Milumel* and *Milumel AR* (therapeutic IFFO) brands;

- an exclusive 5-year license on the following brands: *Nutricia* and *Milupa and the related sub-brands (, Nutricia Confort, Nutricia Soja, Pepti Junior, Nutrilon AR, Nutricia Croissance, Nutricia Kid, HN 25, GES 45, Pregomine, Milupa Digest, Milupa Conformil, Milupa HA and Milupa prema)* followed by a commitment not to reintroduce the licensed brands in France for a period of 5 years after the termination of the 5-year license agreement (black-out period). These products should be re-branded by the purchaser during the licensing period.

- A 5-year license for the use in France of all patents related to the IFFO and GUM products covered by the licensed brands.

- a 5-year exclusive license on know-how relating to recipes, formulations, manufacturing processes, and access to the R&D work that is in progress to support the new product launches planned in France within 2 years from closing[21].

- at the option of the purchaser, Numico's IFFO and GUM milk production facility in […], or alternatively a 3-year at cost supply agreement for the production of the products covered by the licensed products, with Danone committing to reserve sufficient production capacities or making its best efforts to transfer the benefits of existing third-party arrangements with co-manufacturers.

- Numico personnel in France, in particular the sales force in charge of promoting products among paediatricians and maternities, as well as of the sales to retailers.

- All the tangible assets, contracts, customer orders, customer records and personnel in relation with Numico's IFFO and GUM milk businesses in France.

- at the option of the purchaser, the provision of manufacturing technical assistance for 12 months.

- at the option of the purchaser, a licence's to Numico's technology for the new "Eazypack" packaging for powder IFFO.

87. With respect to <u>baby-drinks</u>, the package would include the brand Babysoif brand and all current product recipes (formulations, etc.) with a 3-year supply agreement and at the option of the purchaser, the provision of manufacturing technical assistance for 3 years.

<u>Belgium</u>

88. In Belgium, the divestment package would in particular comprise the following:

1/. **Baby meals**:

- a 5-year exclusive license on the following brands: *Pots Bledina*, *Bledichef, Les Idées de Maman*, *Compotines Blédina*, *Pots Fruits Blédina*, *Pots desserts Blédina Bledisoup*, *Bledimilky/Petit Bledi and Repas du Soir (*only the authorization to use the last product as it is not a registered trademark*)* . This licence would be followed by a 5-year commitment not to reintroduce the divested brands in Belgium (black-out period). Danone furthermore commits not to use the prefix "Blédi" in relation to any product sold by it in Belgium and the Netherlands during the license period and the "blackout" period defined above, except for a transitional period of up to 12 months necessary for the products not covered by the Licensed Baby Meal Brands (*Les Petits Grands*) to be re-branded to other (*e.g.*, Numico) brands in Belgium

- Transfer of the existing production contract with third party/ies

- a 3-year "at cost" supply agreement for the production of the products covered by the licenses(optional)

[21] After the expiry of the licensing period, Danone commits to grant the purchaser a non-exclusive license for the recipes and formulations on an arm's length basis at the request of the purchaser.

- a 3-year- manufacturing technical assistance - a transfer of Bledina's distribution agreement in Belgium (optional)

- a license to *Bledina*'s […] technology for the manufacture of […] (optional)

2/. **GUM**

- the assignment of the brand *1-2-3* (with recipes, formulations etc.) and a 5-year license on the brand Gervais for use solely in Belgium in relation to GUM.

- Danone's contract with its current supplier of GUM *1-2-3*

- a 5-year license for Bledilait and Bledilac (see schedule 4 of the attached commitments), followed by a 5-year black-out period including recipes and formulation as well as a 3-year at cost supply agreement. The same black-out period will follow the 5-year license on the Gervais brand.

3/. **Baby drink**

- the authorization to use the *Minibiberon* designation in Belgium for five years, followed by a 5-year black-out period and all current product recipes, formulations, including a 3-year "at cost" supply agreement for the production of the products covered and at the option of the purchaser a 3-year manufacturing technical assistance etc.

4/. **Baby snack**

- The assignment of the brands *Betterfood*and *Lu Vitabis*.

<u>Netherlands</u>

89. In the Netherlands, the divestment package would in particular comprise the following:

1/. **Baby meals**:

- a 5-year exclusive license on the following brands: *Pots Bledina*, *Bledichef, Idées de Maman*, *Repas du Soir*[22], *Compotines Blédina*, *Pots Fruits Blédina*, *Pots desserts Blédina*, *Bledisoup*, *Bledimilky/Petit Bledi*. This would not include the brand *Les Petits Grands* that would be kept by the new entity. The 5-year license would be followed by a 5-year commitment not to reintroduce the divested brands in the Netherlands (black-out period). Danone furthermore commits not to use the prefix "Blédi" in relation to any product sold by it in Belgium and the Netherlands during the license period and the "blackout" period defined above, except for a transitional period of up to 12 months necessary for the products not covered by the Licensed Baby Meal Brands (*Les Petits Grands)* to be re-branded to other (*e.g.*, Numico) brands in Belgium

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[22] Only the authorization to use this product as it is not a registered trademark.

- the transfer of Bledina's distribution contract with its distributor PAB for the Netherlands (optional for the purchaser)

- a 3-year at cost supply agreement for the products covered by the licensed brands

- a license to *Bledina*'s […] technology for the manufacture of […] (optional)

2/. **Baby snacks**:

- the assignment of the brand *Lu Liga*

(c) Suitability for removing the serious doubts

<u>France</u>

IFFO milk

90. As regards IFFO milk (including therapeutic milks) in France, the divested and licensed brands would completely remove the overlap. Indeed, Numico uses today the two brands Nutricia ([10-20]% market share in 2006) and Milupa ([0-5] % market share) to market its IFFO milk products in France. Lemiel is used as a sub-brand to Nutricia, whereas Milumel was the brand replaced recently by the brand Milupa.

91. The acquirer will be the Milupa and Nutricia licensee of the new entity for 5 years. According to the market test, and while the details of the licensing agreements between Danone and the acquirer (e.g. provisions on the change of brands, resolutions of disputes[23], etc.) would be critical, this duration appears sufficient to allow the acquirer to re-brand the products with its own brands. It can however not be shorter—as claimed by the parties—as brands play an extremely important role on this market and re-branding implies massive education and marketing efforts. It is clear from the commitments that the acquirer of the divested business will be able to use the acquired brands to launch its re-branding. It can rely especially on Lemiel. Indeed, while the divested brand Lemiel has been used since 2006 as a sub-brand to Numico's main brand Nutricia, it appears to continue to enjoy a very strong brand awareness rooted in historical presence on the French market. It represents approximately [30-40]% of the Nutricia sales in France, and those consumers who buy Lemiel products would be more loyal to Lemiel than to Nutricia.

92. According to the information collected by the Commission, the relevance of splitting the brands between two different acquirers appears doubtful with respect to restoring effective competition. Indeed, Milupa achieves today a small market share ([0-5] %), especially among retailers, apparently due to a recent re-branding from Milumel to Milupa. Separating Milupa from Nutricia could strike a fatal blow to Milupa, as the acquirer of the Milupa brand would not achieve enough sales to retain the interest of

[23] Such disputes may arise due to the fact that Danone will continue to use the Nutricia brand for other products.

retailers. Thus, it appears highly preferable that, to restore pre-merger competition conditions, the acquirer acquires the overall divested package in the IFFO milk.

93. The brands introduced by the acquirer will also not face the re-introduction of the Milupa and Nuticia brands after the expiration of the licenses for five years, which provides enough time to the acquirer to build brands' equity.

94. As regards production facilities, interested acquirers will have the possibility to purchase Numico's plant in […]. Should it be the case, such acquirer would be able to manufacture the products marketed in France. As the plant has considerable capacity, the acquirer would have to supply to Danone products for the marketing of these Numico products outside of France. This solution would have the merit to enable the purchaser to control its cost structure. This is all the more important, as Numico's Nutricia is priced at a lower level than competing brands, and cost of manufacturing is therefore critical. Second, the new entity would be able to introduce innovations and new products on the market without delay. Third, the inherent difficulties of the cost monitoring of supply-agreements would be avoided.

95. Alternatively, if the buyer is of the view that no production facility is needed as it could use or expand its own capacity or find alternative sources, it could opt for a supply agreement. This supply agreement would enable the buyer to manage the transition period during which the manufacturing of Milupa and Nutricia products would be transferred from the current Numico's production lines to its own. According to the market investigation, this transition could last up to three years (and the duration of the supply agreement offered by Danone is set accordingly). Thus, given that, under this arrangement, the supply agreement could be in force during much more than a couple of months, it will have to work effectively so as to ensure that competition conditions post-merger are comparable to those conditions pre-merger. These conditions are all the more sensitive as the purchaser would be supplied by the leading market player in France.

96. According to the market test, and even if one competitor explained that such supply agreement would not be satisfactory, this arrangement would be feasible under some conditions. Indeed, among those competitors that believe such supply agreement could work in a satisfactory fashion, one of them explains that "*the supply agreement to be entered between Danone and the acquirer would need to guarantee that the acquirer generates a sufficiently high gross margin to finance a high level of advertising and promotion costs. High promotion is a must if the business is to survive and generate a satisfactory return for the acquirer*."[24] This is confirmed by another competitor. Another competitor points out that costs are difficult to monitor and, to ensure that competition is restored, costs other than manufacturing costs should be taken into account: *"The supply agreement should make sure that the acquirer will benefit from all economies of scale including supply of raw material. Other elements (such as transport costs, packaging, general administration and marketing) play a role in the ability of the acquirer to maintain the pricing policy. Monitoring these factors is difficult due to the lack of transparency. It is necessary to bring in a third party to ensure the acquirer will benefit from economies of scale"*.[25] In this respect, the attached commitments provide that the monitoring trustee will have the responsibility to review such supply agreement.

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[24] Response to market test sent to competitors, question 2

[25] Ibidem

97. As regards innovations not included in the current product pipeline of Numico for the next two years, confidentiality issues (innovations designed by the acquirer must not be communicated to Danone) implies that the acquirer would be able to design and produce such innovations on its own.

98. In any case, should the acquirer not wish to buy Numico's plant, it would also have access to the Numico's Eazypack packaging technology through a license and also to the FOS/GOS (oligosaccharides) formulation. These two latter points are essential to the remedy package given that the Eazypack technology is currently being introduced on French shelves. As for the FOS/GOS formulation, it was reported to the Commission that the formulation of the products based on the FOS/GOS recipe had clinically proven beneficial effects and are marketed as such to paediatricians and maternities.

99. Furthermore, the acquirer would also have access to the recent and current fruits of Numico's research and development and have access to Numico's innovation for the next two years. The personnel of Numico France dedicated to the baby-food business, and in particular the sales force in charge of marketing the products to professionals (paediatricians) and to retailers, is also part of the package. This is all the more crucial as the acquirer of the divested business will need to explain to professionals the change of brands so that the latter don't change their recommendations.

100. Given the design of the remedy package, respondents unanimously explained that the acquirer should be a company already active in the IFFO/GUM business or, at least, a dairy company. The Commission notes that such companies have expressed interest for acquiring the divested business, which suggests the good degree of viability of the package.

101. In conclusion, provided the final purchaser meets the requirements explained above, the attached commitments remedy the serious doubt expressed on the French market for IFFO milk.

Baby-drinks

102. While the baby-drink business of Numico in France is modest, a similar conclusion can be reached for the commitment made by Danone in this respect. The overlap would be removed in its entirety and, in view of the result of the market test, competition concerns would no longer exist. As regards viability, an interested purchaser expressed the view that the licensing and black out periods should be long enough to enable the re-branding, and this observation is addressed in the amended commitments offered by Danone.

<u>Belgium</u>

103. Danone offered a revised package to address competition concerns identified on the baby meal, baby GUM, and baby drink markets in Belgium. In addition, given that the Kraft-Danone transaction is not yet closed, a "technical" remedy with respect to baby snacks was also submitted. As described above, it consists of the divestiture of the Betterfood and Lu Liga brands.

104. This package removes the entire overlap for baby-meals[26], GUM[27], and drinks[28]. The Commission in particular notes that the acquirer could be transferred the distribution agreement of Danone with its Belgian distributor, which means that it will benefit from the access to retailers and customer relationships this distributor has achieved. Upon the results of the market test, the license and black-out period are extended each to 5 years, the acquirer will have a license on the […] technology (used for the manufacturing of some products already marketed in Belgium) as well as technical assistance for manufacturing, and all current Bledina brands will be included in the package. Similarly to the French package, the acquirer will be able to benefit from innovations introduced by Danone/Bledina for the next two years.

105. Contrary to the production of baby-milk in France, where higher volumes are at stake, a 3-year supply agreement would not raise major difficulties besides cost monitoring. First, a share of Danone's current production (fruit pouches, meal bowls, soups and purees) is outsourced and this part of the production would be transferred to the acquirer. Second, companies able to manufacture Danone's products are active on the market (but outside of Belgium) and three years will be sufficient to migrate Danone's product portfolio[29]. Third, given the low volumes at stake, additional capacity is easier to find/add. Finally, the buyer will benefit from Danone's technical assistance to operate the migration of the production to its production lines. Accordingly, respondents to the market investigation did not express concerns regarding the arrangement provided in the commitments.

106. As regards baby snacks, the commitment will reduce the parties' market share to [15-25] %, thereby removing the existence of serious doubts[30].

107. In conclusion, the attached commitments submitted by Danone remedy the serious doubts raised by the Commission on the above mentioned Belgian markets for baby meal, baby GUM, baby snacks, and baby drinks.

Netherlands

108. As explained above, Danone is active in the Netherlands through its Belgian distributor, and Danone has agreed to extend the Belgian remedy package regarding baby meals to the Netherlands. The package will therefore include, among others, 5-year licensing on brands, supply-agreement, and the transfer of Danone's distribution

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26 The market share of the licensed brands are the following: Pots Bledina ([5-10] %), Repas du Soir ([0-5] %), Bledichef ([15-25] %), Idees de Maman ([0-5] %), Bledisoup ([0-5] %), Compotines Bledina ([5-10] %), Pots Fruits Bledina ([0-5] %), Pots Desserts Bledina ([0-5] %), Beldimilky ([0-5] %). *Les Petits Grands* retained by Danone achieved only marginal sales in 2007.

27 The market shares of the licensed brands on the GUM market (including liquid cereal) are: Gervais ([5-10] %) and Bledilait/Bledilac ([0-5] %).

28 *Blédi à Boire* amounts to [5-10] % of the market

29 See market test sent to competitors, question 23

30 Betterfood and Lu Vitabis respectively amount to [40-50] % and [25-35] % of the market.

contract. This undertaking removes the overlap on the Dutch market for baby meals and remedies the identified competition concerns.

109. As regards snacks, Danone is almost exclusively active through its brand LU Liga ([45-55] % market share in 2006), which should be divested to Kraft as part of the Kraft/Danone transaction. A remedy has been included in the remedy package, whereby Danone commits to sell the Lu Liga brand in the Netherlands. This will remove any competition concerns.

110. Consequently, the attached commitment addresses the serious doubts raised on the Dutch markets for baby meals and baby snacks.

(d) Conclusion on the commitments

111. The Commission therefore considers the commitments suitable for remedying the serious doubts on the compatibility of the concentration with the Common Market and the EEA, which have been established in the previous sections of this Decision.

VI. CONDITIONS AND OBLIGATIONS

112. Under the first sentence of the second subparagraph of Article 6(2) of the Merger Regulation, the Commission may attach to its decision conditions and obligations intended to ensure that the undertakings concerned comply with the commitments they have entered into vis-à-vis the Commission with a view to rendering the concentration compatible with the common market.

113. The fulfilment of the measure that gives rise to the structural change of the market is a condition, whereas the implementing steps which 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 common market no longer stands. 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.

114. In accordance with the basic distinction described above, the decision in this case is conditioned on the full compliance with Sections B to E of the Commitments submitted by the notifying party on 30/10/2007.

115. The remaining requirements set out in the other Sections of the Commitments submitted by the parties on 30/10/2007 are considered to constitute obligations.

VII. CONCLUSION

116. The Commission has concluded that the remedies submitted by the Parties are sufficient to remove the serious doubts raised by the concentration. Accordingly, subject to the full compliance with the commitments submitted by the Parties the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) and Article 6(2) of Council Regulation (EC) No 139/2004.

117. The detailed text of the commitments is annexed to this decision. The full text of the annexed commitments forms an integral part to this decision.

For the Commission
signed
Neelie KROES
Member of the Commission

By hand and by fax: 00 32 2 296 4301

European Commission – Merger Task Force

DG Competition

Rue Joseph II 70

B-1000 Brussels

Case M. 4842 – DANONE / NUMICO

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2) of Council Regulation (EC) No. 139/2004 (the "***Merger Regulation***"), Groupe Danone S.A. ("***Danone***") and Royal Numico N.V. ("***Numico***") (the "***Parties***") hereby provide the following Commitments (the "***Commitments***") in order to enable the European Commission (the "***Commission***") to declare the acquisition by Danone of Numico compatible with the common market and the EEA Agreement by its decision pursuant to Article 6(1)(b) of the Merger Regulation (the "***Decision***").

These Commitments are given by the Parties without prejudice to their position that the notified concentration does not significantly impede effective competition within the common market or a substantial part of it, and is therefore compatible with the common market and the functioning of the EEA, and that the initial remedy package offered by the Parties on September 24, 2007, would adequately address any competitive concern arising from the transaction.

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

This text shall be interpreted in the light of the Decision to the extent that the Commitments are attached as conditions and obligations, in the general framework of Community law, in particular in the light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EEC) No 4064/89 and under Commission Regulation (EC) No 447/98.

A. DEFINITIONS

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 the light of the Commission Consolidated Jurisdictional Notice.
Blédina:	a company controlled by Danone active in the baby food business, incorporated under the laws of France with its registered address at BP 432, 383, rue Philippe Héron, 69654 Villefranche sur Saone Cedex, France and registered with the Commercial/Company Register at Villefranche sur Saone-Tarare under the number RCS 301 374 922.
Closing:	the transfer of the legal title of the Divested Business to the Purchaser.
Danone:	a company incorporated under the laws of France, with its registered office at 17, boulevard Haussmann 75009 Paris, France and registered with the Commercial/Company Register at Paris under number RCS 552 032 534.
Divested Business:	the businesses as defined in Section B and the Schedules, that the Parties commit to divest.
Divestiture Trustee:	one or more natural or legal person(s), independent from the Parties, approved by the Commission and appointed by Danone and who has received from Danone the exclusive Trustee Mandate to sell the Divested Business to a Purchaser at no minimum price.

Effective Date:	the date of adoption of the Decision.
First Divestiture Period:	the period of […] months from the Effective Date.
Hold Separate Manager(s):	the person(s) appointed by Danone for the Divested Business to manage the day-to-day business under the supervision of the Monitoring Trustee.
Key Personnel:	all personnel necessary to maintain the viability and competitiveness of the Divested Business, as listed in the Schedule.
Monitoring Trustee:	one or more natural or legal person(s), independent from the Parties, who is approved by the Commission and appointed by Danone, and who has the duty to monitor Danone's compliance with the conditions and obligations attached to the Decision.
Personnel:	all personnel currently employed by the Divested Business, including Key Personnel, staff seconded to the Divested Business, shared personnel and the additional personnel listed in the Schedule.
Purchaser:	one or more entities approved by the Commission as acquirer(s) of the Divested Business in accordance with the criteria set out in Section E.
Trustee(s):	the Monitoring Trustee and the Divestiture Trustee.
Trustee Divestiture Period:	the period of […] months from the end of the First Divestiture Period.

For the avoidance of doubt, where in the commitments below both Danone and Numico are mentioned, these commitments apply to Danone to the extent that the business to be divested is a Danone business, and to Numico to the extent that the business to be divested is a Numico business. Danone procures that, after the time of closing of the Danone/Numico transaction, Numico will comply with the commitments below.

B. THE DIVESTED BUSINESS

Identification of the Divested Business

1. Danone and Numico agree to divest:

   (a) The Infant Formula and Follow-on ("IFFO") and Growing-Up ("GUM") Milk Business in France;

   (b) The Baby Meal Business in Belgium and the Netherlands;

   (c) The GUM Business in Belgium;

   (d) The Baby Cereal Business in Belgium;

   (e) The Baby Snack Business in Belgium and the Netherlands; and

   (f) The Baby Drink Business in France and Belgium.

Definition of the Divested Business

2. As described in schedules 1 to 7, the Divested Business in particular consists of:

   (a) The IFFO and GUM Milk Business in France: the Numico IFFO milk business in France operated under the following brands:

      (i) *Lemiel* and *Milumel* (standard IFFO); and

      (ii) *Milumel AR* (therapeutic IFFO)*;*

   including the absolute assignment of all rights of Numico in France in the brands mentioned in (i) and (ii) above and all relevant product formulae, recipes, goodwill and intellectual property rights together with the copyright in the packaging, advertising and promotional materials used in relation to the products sold under these brands (the "IFFO Assigned Brands");

      (iii) *Nutricia* and *Milupa* (babyfood);

      (iv) *Nutricia Confort +, Nutricia Soja, Milupa Digest,* and *Milupa Conformil* (standard IFFO);

      (v) *HN 25*, *GES 45, Pregomine, Pepti-Junior, Nutrilon AR, Milupa HA,* and *Milupa Prema* (therapeutic IFFO)*;* and

      (vi) *Nutricia Croissance* and *Nutricia Kid* (GUM).

including an exclusive license for the brands mentioned in (iii), (iv), (v) and (vi) above for use solely in France (excluding the French overseas territories - "DOM-TOM"-), in the babyfood sector for the *Nutricia* and *Milupa* umbrella brands, and IFFO and GUM for the sub-brands mentioned in (iv), (v) and (vi) (all together, the "IFFO/GUM Licensed Brands"). This exclusive license shall be concluded for a period of 5 years.

(b) <u>The Baby Meal Business in Belgium and the Netherlands</u>: the Blédina baby meal business in Belgium and the Netherlands operated under the brands *Blédina*, *Blédichef*, *Les Idées de Maman*, *Compotines, Blédicrèm,' Blédisoup*, *Petit Blédi*, and *Blédimilky* and, at the option of the purchaser, the Blédina baby meal business in Belgium and the Netherlands operated under the designation *Repas du Soir*.

This comprises (i) an exclusive license for the brands *Blédina*, *Blédichef*, *Les Idées de Maman*, *Compotines, Blédicrèm,' Blédisoup*, *Petit Blédi*, and *Blédimilky* for use solely in Belgium and the Netherlands for a period of 5 years, including all current product recipes and formulations, the goodwill, and the copyright in the packaging, advertising and promotional materials used in relation to the products sold under these brands; and, at the option of the purchaser, (ii) the exclusive authorization to use the designation *Repas du Soir* (which is not a registered trademark in Belgium and the Netherlands) solely in Belgium and the Netherlands for a period of 5 years, and all current product recipes and formulations, the goodwill, and the copyright in the packaging, advertising and promotional materials used in relation to the products sold under this designation.

(c) <u>The GUM Business in Belgium:</u> the Danone/Blédina GUM business in Belgium operated under the brands *1-2-3* and *Blédilait.*

This comprises (i) an exclusive license for the brand *Blédilait* for use solely in Belgium for a period of 5 years, including all current product recipes and formulations, the goodwill, and the copyright in the packaging, advertising and promotional materials used in relation to the products sold under this brand; and (ii) the absolute assignment of all rights of Danone in the *1-2-3* brand and all relevant product formulae, recipes, goodwill and intellectual property rights together with the copyright in the packaging, advertising and promotional materials used in relation to the products sold under this brand;

(d) <u>The Baby Cereal Business in Belgium</u>: the Blédina baby cereal business in Belgium operated under the *Blédilac* brand. This comprises an exclusive license for the brand *Blédilac* for use solely in Belgium for a period of 5 years, including all current product recipes and formulations, the goodwill, and the copyright in the packaging, advertising and promotional materials used in relation to the products sold under this brand.

(e) <u>The Baby Snack Business in Belgium and the Netherlands</u>: the Danone/Blédina baby snack business operated under the brands *LU Vitabis* and *Betterfood* in Belgium and the brand *LU Liga* in the Netherlands; this comprises the absolute assignment of all rights of Danone in the above-mentioned brands;

(f) The Baby Drink Business: the Numico baby drink business operated under the brand *Babysoif* in France including the absolute assignment of all rights of Numico in the above-mentioned brand and all relevant product formulae, recipes, goodwill and intellectual property rights together with the copyright in the packaging, advertising and promotional materials used in relation to the products sold under this brand; and

the exclusive authorization by Danone to use the designation *Minibiberon* (which is not a registered trademark in Belgium) solely in Belgium for a period of 5 years, and all current product recipes and formulations, the goodwill, and the copyright in the packaging, advertising and promotional materials used in relation to the products sold under this designation.

3. The Divested Business, described in more detail in the Schedules, includes where applicable:

(a) all intangible assets (including intellectual property rights), which contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divested Business;

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

(c) all contracts, leases, commitments and customer orders of the Divested Business; all customer, credit and other records of the Divested Business (items referred to under (a)-(c) hereinafter collectively referred to as "Assets");

(d) the Personnel; and

(e) the benefit, for a transitional period and on terms and conditions at least equivalent to those at present afforded to the Divested Business, of all current arrangements under which Danone, Numico or Affiliated Undertakings supply products or services to the Divested Business, as detailed in the Schedule, unless otherwise agreed with the Purchaser.

4. The "goodwill" as referred to in these commitments shall comprise the independent customers of the Divested Business with whom:

(a) the Divested Business did business in the year 2006, and, for business 2(a)(i) [*Milumel*], in 2005,

(b) the Divested Business did business in the year 2007, up to the date a binding agreement is entered into for the transfer of the Divested Business, and

(c) the Divested Business has a framework agreement in the years 2006 or 2007 up to the closing Date for the supply of products which are part of the Divested Business.

5. Unless otherwise stated the divestment will not include:

(a) For the Baby Meal Business in Belgium and the IFFO/GUM Licensed Brands in France, the assignment of brands (trademarks), since the purchaser shall re-brand the products concerned during the period of the license;

(b) any right of the licensees of any of the licensed brands to use the brands in other countries than those which are specified in the respective licensing agreement.

For the avoidance of doubt, Danone and Numico and their Affiliated Undertakings will be entitled to use the licensed brands after expiry of the license agreements and of the period referred to in paragraph 11 below (again and also) for the products concerned and the countries concerned by the licenses.

C. RELATED COMMITMENTS

Preservation of Viability, Marketability and Competitiveness

6. From the Effective Date until Closing, Danone shall preserve the economic viability, marketability and competitiveness of the Divested Business in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the Divested Business. In particular Danone and Numico undertake:

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

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

(c) to take all reasonable steps, including appropriate incentive schemes (based on industry practice), to encourage all Key Personnel to remain with the Divested Business.

Hold-separate obligations of Parties

7. Danone and Numico commit, from the Effective Date until Closing, to keep the Divested Business separate from their other retained businesses and to ensure that Key Personnel of the Divested Business – including the Hold Separate Manager(s) – have no involvement in any business retained and vice versa, and shall also ensure that the Personnel does not report to any individual outside the Divested Business.

8. Until Closing, Danone and Numico shall assist the Monitoring Trustee in ensuring that the Divested Business is managed as a distinct and saleable entity separate from the businesses retained by the Parties. Danone shall appoint Hold Separate Manager(s) who shall be responsible for the management of the Divested Business, under the supervision of the Monitoring Trustee. The Hold Separate Manager(s) shall manage the Divested 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.

Ring-fencing

9. Danone and Numico shall implement all necessary measures to ensure that they do not after the Effective Date obtain any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to the Divested Business. In particular, the participation of the Divested Business in a central information technology network shall be severed to the extent possible, without compromising the viability of the Divested Business. Danone may obtain information relating to the Divested Business which is reasonably necessary for the divestiture of the Divested Business or whose disclosure to Danone is required by law.

Non-solicitation clause

10. 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 Divested Business for a period of two years after Closing.

Restriction of use of brands

11. Danone takes the following commitments:

(a) With respect to the brands for which an exclusive licence has been granted according to paragraphs 2(b), 2(c), 2(d), 2(f): not to use the prefix "Blédi" in relation to any relevant product sold by it in Belgium and the Netherlands during the license period and the "blackout" period defined below, except for a transitional period of up to 12 months necessary for the products not covered by the Licensed Brands to be re-branded to other brands;

(b) With respect to the brands for which an exclusive licence has been granted according to paragraph 2 and as described in details in Schedules 1 to 6 (including the *Repas du Soir and Minibiberon* designations): not to re-introduce or promote the licensed brands or designations for a period of 5 years after the termination of the 5-year initial agreement.

D. THE DIVESTMENT PROCEDURE

12. In order to restore effective competition, Danone commits to divest, or procure the divestiture of the Divested Business by the end of the Trustee Divestiture Period as a going concern to a purchaser and on terms approved by the Commission in accordance with the procedure described in paragraph 21.

13. To carry out the divestiture, Danone commits to find a purchaser and to enter into a final binding agreement for the divestiture of the Divested Business within the First Divestiture Period. If Danone has not entered into such an agreement at the end of the First Divestiture Period, Danone shall grant the Divestiture Trustee an exclusive mandate to sell the Divested Business in accordance with the procedure described in paragraph 30 in the Trustee Divestiture Period.

14. Danone shall be deemed to have complied with this commitment if, by the end of the Trustee Divestiture Period, Danone has entered into a final binding agreement, if the Commission approves the Purchaser and the terms in accordance with the procedure described in paragraph 21 and if the closing of the transfer of the Divested Business takes place within a period not exceeding 3 months after the approval of the purchaser and the terms of the agreement by the Commission.

15. In order to maintain the structural effect of the Commitments, the Parties shall, for a period of 10 years after the Effective Date, not acquire direct or indirect influence over the whole or part of the Divested Business, unless the Commission has previously found that the structure of the market has changed to such an extent that the absence of influence over the Divested Business is no longer necessary to render the proposed concentration compatible with the common market.

Due Diligence

16. In order to enable potential purchasers to carry out a reasonable due diligence of the Divested Business, Danone 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 Divested Business;

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

Reporting

17. Danone shall submit written reports in French or English on potential purchasers of the Divested 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).

18. The Parties shall inform the Commission and the Monitoring Trustee on the preparation of the data room documentation and the due diligence procedure and shall submit a copy of an information memorandum to the Commission and the Monitoring Trustee before sending the memorandum out to potential purchasers.

E. THE PURCHASER

19. In order to ensure the immediate restoration of effective competition, the Purchaser, in order to be approved by the Commission, must:

    (a) be independent of and unconnected to the Parties;

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

    (c) neither be likely to create, in the 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, and must, in particular, reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divested Business (the before-mentioned criteria for the purchaser hereafter the "***Purchaser Requirements***").

20. When Danone has or is about to reach an agreement with a purchaser, it shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), to the Commission and the Monitoring Trustee. Danone must be able to demonstrate to the Commission that the purchaser meets the Purchaser Requirements and that the Divested Business is being sold in a manner consistent with the Commitments. For the approval, the Commission shall verify that the purchaser fulfils the Purchaser Requirements and that the Divested Business is being transferred in a manner consistent with the Commitments. The Commission may approve the divestiture of the Divested Business without one or more Assets or parts of the Personnel, if this does not affect the viability and competitiveness of the Divested Business after the transfer, taking account of the proposed purchaser.

F. TRUSTEE

I. Appointment Procedure

21. Danone shall appoint a Monitoring Trustee to carry out the functions specified in the Commitments for a Monitoring Trustee. If Danone has not entered into a binding agreement for the Divested Business one month before the end of the First Divestiture Period or if the Commission has rejected a purchaser proposed by Danone at that time or thereafter, Danone shall appoint a Divestiture Trustee to carry out the functions specified in the Commitments for a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Trustee Divestiture Period.

22. The Trustee shall be independent of the Parties, possess the necessary qualifications to carry out its mandate, for example as an investment bank or consultant or auditor, and shall neither have nor become exposed to a conflict of interest. The Trustee shall be

remunerated by the Parties in a way that does not impede the independent and effective fulfillment of its mandate. In particular, where the remuneration package of a Divestiture Trustee includes a success premium linked to the final transfer value of the Divested Business, the fee shall also be linked to a divestiture within the Trustee Divestiture Period.

Proposal by the Parties

23. No later than one week after the Effective Date, Danone shall submit a list of one or more persons whom Danone proposes to appoint as the Monitoring Trustee to the Commission for approval. No later than one month before the end of the First Divestiture Period, Danone shall submit a list of one or more persons whom Danone proposes to appoint as Divestiture Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the proposed Trustee fulfils the requirements set out in paragraph 22 and shall include:

(a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfill 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

24. 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 fulfill its obligations. If only one name is approved, Danone shall appoint or cause to be appointed, the individual or institution concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, Danone 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

25. If all the proposed Trustees are rejected, Danone shall submit the names of at least two more individuals or institutions within one week of being informed of the rejection, in accordance with the requirements and the procedure set out in paragraphs 22 and 23.

Trustee nominated by the Commission

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

II. Functions of the Trustee

27. The Trustee shall assume its specified duties in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or Danone, 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

28. 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 the on-going management of the Divested Business with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by Danone 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 Divested Business, and the keeping separate of the Divested Business from the business retained by the Parties, in accordance with paragraphs 6 and 7 of the Commitments;

(b) supervise the management of the Divested Business as a distinct and saleable entity, in accordance with paragraph 8 of the Commitments;

(c) (i) in consultation with Danone, determine all necessary measures to ensure that Danone does not after the effective date obtain any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to the Divested Business, in particular strive for the severing of the Divested Business' participation in a central information technology network to the extent possible, without compromising the viability of the Divested Business, and (ii) decide whether such information may be disclosed to Danone as the disclosure is reasonably necessary to allow Danone 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 Divested Business and Danone, Numico or Affiliated Undertakings;

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

(iv). In particular, the Monitoring trustee should review the provisions of the potential supply agreements between Danone and the acquirer(s) of the divested business and ensure their compatibility with the restoration of effective competition on the relevant markets. Such supply agreements should include fast track arbitration clauses by a third party, should a dispute arise at a later stage. This paragraph does not apply to the potential supply-agreement (supply of IFFO and GUM product by the acquirer of the divested business to Danone) mentioned in schedule 7, paragraph 3(b).

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

(vi). 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 information relating to the Divested 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;

(vii). provide to the Commission, sending Danone a non-confidential copy at the same time, a written report within 15 days after the end of every month. The report shall cover the operation and management of the Divested Business 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. In addition to these reports, the Monitoring Trustee shall promptly report in writing to the Commission, sending Danone a non-confidential copy at the same time, if it concludes on reasonable grounds that Danone is failing to comply with these Commitments;

(viii). within one week after receipt of the documented proposal referred to in paragraph 20, submit to the Commission a reasoned opinion as to the suitability and independence of the proposed purchaser and the viability of the Divested Business after the divestiture and as to whether the Divested Business is transferred in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the transfer of the Divested Business without one or more Assets or not all of the Personnel affects the viability of the Divested Business after the divestiture, taking account of the proposed purchaser.

Duties and obligations of the Divestiture Trustee

29. Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at no minimum price the Divested Business, to a purchaser, provided that the Commission has approved both the purchaser and the final binding agreement in accordance with the procedure laid down in paragraph 20. The Divestiture Trustee shall include in the agreement such terms and conditions as it considers appropriate for an expedient divestiture in the Trustee Divestiture Period. In particular, the Divestiture Trustee may include in the agreement such customary representations and warranties and indemnities as are reasonably required to effect the divestiture. The Divestiture Trustee shall protect the legitimate financial interests of Danone, 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 French 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. Danone shall provide and shall cause its advisors to provide the Trustee with all such cooperation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of Danone's or the Divested Business' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments and Danone and the Divested Business shall provide the Trustee upon request with copies of any document. Danone and the Divested 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. Danone shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Divested Business. This shall include all administrative support functions relating to the Divested Business which are currently carried out at headquarters level. Danone shall provide and shall cause its 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 and all other information granted to potential purchasers in the due diligence procedure. Danone shall inform the Monitoring Trustee on possible purchasers, submit a list of potential purchasers, and keep the Monitoring Trustee informed of all developments in the divestiture process.

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

34. Danone 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 Danone 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 willful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.

35. At the expense of Danone, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to Danone's 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 Danone refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard Danone. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 28 shall apply mutates mutandis. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served Danone during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient divestiture.

IV. Replacement, discharge and reappointment of the Trustee

36. 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:

(a) the Commission may, after hearing the Trustee, require Danone to replace the Trustee; or

(b) Danone, with the prior approval of the Commission, may replace the Trustee.

37. If the Trustee is removed according to paragraph 36, 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 21-26.

38. Beside the removal according to paragraph 36, 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.

F. THE REVIEW CLAUSE

39. The Commission may, where appropriate, in response to a request from Danone showing good cause and accompanied by a report from the Monitoring Trustee:

(i). Grant an extension of the time periods foreseen in the Commitments, or

(ii). Waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments.

Where Danone seeks an extension of a time period, it shall submit a request to the Commission no later than one month before the expiry of that period, showing good cause. Only in exceptional circumstances shall Danone be entitled to request an extension within the last month of any period.

duly authorised for and on behalf of Groupe Danone S.A.

Christiane Butte

General Counsel

Groupe Danone S.A.

SCHEDULE 1 – IFFO AND GUM MILK BUSINESS IN FRANCE

1. The IFFO and GUM Milk Business in France includes:

   (a) the following main intangible assets:

      a. the brands *Lemiel* and *Milumel* (standard IFFO) and *Milumel AR* (therapeutic IFFO) in France (the "IFFO Assigned Brands"), and all relevant product formulae, recipes, goodwill and intellectual property rights together with the copyright in the packaging, advertising and promotional materials used in relation to the products sold under these brands;

      b. an exclusive license for the brands *Nutricia* and *Milupa* for use solely in France (excluding the French overseas territories - "DOM-TOM"-) in the babyfood sector for a period of 5 years;

      c. an exclusive license for the brands *HN 25*, *GES 45, Pregomine, Comformil, Milupa Digest*, *Milupa Conformil, Milupa HA, Milupa Prema* for use solely in France (excluding the French overseas territories - "DOM-TOM"-) in the IFFO sector for a period of 5 years;

      d. an exclusive license for the brands *Nutricia Confort +, Nutricia Soja, Pepti-Junior, Nutrilon AR,* for use solely in France (excluding the French overseas territories - "DOM-TOM"-) in the IFFO sector for a period of 5 years;

      e. an exclusive license for the brands *Nutricia Croissance* and *Nutricia Croissance Kid* for use solely in France (excluding the French overseas territories - "DOM-TOM"-) in the GUM sector for a period of 5 years ;

      (the brands referred to above under items b. through e. are designated hereafter as the "IFFO/GUM Licensed Brands")

      f. an exclusive license for the use in France (excluding the French overseas territories - "DOM-TOM"-) of all patents related to the IFFO and GUM products covered by the IFFO/GUM Licensed Brands, including a license on the FOS-GOS patents for the *Milupa* IFFO products, for a period of 5 years, followed by a non-exclusive license for the lifetime of the patents; the exclusivity for the initial 5-year period shall remain subject to the continued validity of patent protection for the underlying FOS-GOS technology; and

      g. an exclusive license for the use in France (excluding the French overseas territories - "DOM-TOM"-) of all trade secrets and know-how related to the IFFO and GUM products covered by the IFFO/GUM Licensed Brands for a period of 5 years, including in particular:

         (i) all current recipes and formulations,

         (ii) manufacturing processes (to the extent that such information is proprietary to Numico);

(iii) all available pre-clinical, clinical and marketing data relating to the products covered by the IFFO/GUM Licensed Brands;

(iv) for use in France only, access to the R&D work that is in progress to support the new product launches planned in France within 2 years from Closing; and

(v) copyright in the packaging, advertising and promotional materials currently used in relation to products covered by the Licensed Brands.

(b) After the expiry of the exclusive license for the IFFO/GUM Licensed Brands, Danone commits to grant the purchaser a non-exclusive license for the recipes and formulations on an arm's length basis at the request of the purchaser;

(c) At the option of the purchaser, a 3-year at cost transitional supply agreement for the products covered by the IFFO/GUM Licensed Brands. If so requested by the purchaser, Danone stands ready to reserve sufficient production capacities in the relevant Numico plants and/or to use its best efforts to transfer the benefits of existing third-party arrangements with co-manufacturers;

(d) At the option of the purchaser, a license for the use in France of the *Eazypack* packaging for the IFFO powder products covered by the IFFO/GUM Licensed Brands;

(e) At the option of the purchaser, the provision of manufacturing technical assistance for 12 months;

(f) At the option of the purchaser, Numico's […] IFFO and GUM milk plant located in […], see Schedule 7);

(g) An exclusive license from the purchaser to the Parties for the use of the IFFO Assigned Brands in the French overseas territories ("DOM-TOM") for a period of 5 years;

(h) All the tangible assets, contracts, customer orders, customer records and personnel in relation with Numico's IFFO and GUM milk businesses in France, including:

a. Numico France's employees dedicated to the babyfood business with product and customer-base knowledge in France, amounting to approximately […] employees, including the sales forces and the product development managers (including […]);

b. the following Key Personnel:

[…]

c. part of the personnel shared with the clinical nutrition division of Numico France in order to ensure the viability of the divested assets.

(i) the following main contracts, agreements, leases, commitments and understandings, to the extent these relate to the Divested Business (baby food):

a. all customer contracts;

b. an agreement with […] for warehousing services;

c. agreements with various transporters for transportation services;

d. an agreement with […] for the lease of office space; and

(j) the following customer, credit and other records: all customer lists with contact details, overdue lists with details per customer, and credit terms.

2. With respect to the IFFO/GUM Licensed Brands, the Divestment shall not include:

(k) An assignment of the *Nutricia* and *Milupa* umbrella brands, since the purchaser shall re-brand the products covered by the IFFO/GUM Licensed Brands;

(l) Any right of the licensee of the IFFO/GUM Licensed Brands to use the IFFO/GUM Licensed Brands in any country other than France; or

(m) Any right of the licensee of the IFFO/GUM Licensed Brands to use the IFFO/GUM Licensed Brands for products other than babyfood products, in particular for clinical nutrition products.

SCHEDULE 2 – THE BABY MEAL BUSINESS IN BELGIUM AND THE NETHERLANDS

1. The Baby Meal Business in Belgium and the Netherlands includes:

   (a) the following main intangible assets: an exclusive license for the brands *Blédina*, *Blédichef*, *Les Idées de Maman*, *Compotines, Blédicrèm', Blédisoup*, *Petit Blédi*, and *Blédimilky* (the "Licensed Brands") for use solely in Belgium and the Netherlands for a period of 5 years, including all current product recipes and formulations, the goodwill, and the copyright in the packaging, advertising and promotional materials used in relation to the products sold under these brands;

   In addition, at the option of the purchaser, the authorization to use the product designation *Repas du Soir* (which is not a registered trademark) in Belgium and the Netherlands for a period of 5 years, and all current product recipes and formulations, the goodwill, and the copyright in the packaging, advertising and promotional materials used in relation to the product sold under this designation.

   (b) After the expiry of the exclusive license for the Licensed Brands and the initial 5-year period for the product designation *Repas du Soir*, Danone commits to grant the purchaser a non-exclusive license for the recipes and formulations on an arm's length basis at the request of the purchaser;

   (c) At the option of the purchaser, the transfer of Blédina's distribution contract with PAB for Belgium and the Netherlands; this transfer shall include the distribution in Belgium of GUM, baby cereal and baby drink products described in schedules 3, 4 and 6.

   (d) At the option of the purchaser, a license to Blédina's […] technology for the manufacture of […] products to be sold in Belgium and the Netherlands;

   (e) A transfer of a production contract with […] for the manufacture of the relevant SKUs of *Les Idées de Maman;*

   (f) At the option of the purchaser, Danone shall make its best efforts to facilitate the conclusion of a manufacturing contract between […] and the purchaser for the products sold under the *Blédisoup* brand ;

   (g) the following customer records: the records concerning Blédina's commercial relationship with PAB, and the data on local customers that has been communicated by PAB to Blédina during this relationship;

   (h) A 3-year at cost supply agreement for the products covered by the Licensed Brands; and

   (i) At the option of the purchaser, the provision of manufacturing technical assistance for 3 years.

(j) For use in Belgium only, access to the R&D work that is in progress to support the new product launches planned in Belgium within 2 years from Closing

2. The Baby Meal Business in Belgium and the Netherlands shall not include:

(k) A license to the following brand in Belgium or the Netherlands: *Les Petits Grands* (Blédina however commits to re-brand the corresponding products under a non-“Blédi” trademark as soon as possible and within a maximum 12 month period);

(l) An assignment of the relevant brands, since the purchaser shall re-brand the products covered by the Licensed Brands; or

(m) Any right of the licensee of the Licensed Brands to use the Licensed Brands in any country other than Belgium and the Netherlands.

SCHEDULE 3 – THE GUM BUSINESS IN BELGIUM

1. The GUM Business in Belgium includes:

   (a) the following main intangible assets: (i) an exclusive license for the brands *Blédilait*, for use solely in Belgium for a period of 5 years, including all current product recipes and formulations, the goodwill, and the copyright in the packaging, advertising and promotional materials used in relation to the products sold under this brands; and (ii) the assignment of the brand *1-2-3*, including all current product recipes and formulations, the goodwill, and the copyright in the packaging, advertising and promotional materials used in relation to the products sold under these brands; and a license to the umbrella brand *Gervais* for use solely in Belgium in relation in relation to GUM for a period of 5 years to allow for the migration of the *1-2-3* brand under the purchaser's umbrella brand; Danone shall not re-introduce or promote the umbrella brand Gervais on the baby-food markets for a period of five years after the termination of the 5-year initial agreement.

   (b) At the option of the purchaser, Danone shall make its best efforts to transfer Danone's manufacturing contract with […] for the GUM sold under the brand *1-2-3*; and

   (c) For use in Belgium only, access to the R&D work that is in progress to support the new product launches planned in Belgium within 2 years from Closing

   (d) A 3-year at cost supply agreement for *Blédilait*;

   (e) and

   (f) all customer lists with contact details, and credit terms.

2. The GUM Business in Belgium shall not include:

   (a) An assignment of the brands *Blédilait* and *Gervais*, since the purchaser shall re-brand the products covered by the Licensed Brands;

   (b) Any right of the licensee to use *Blédilait* and *Gervais* in any country other than Belgium.

SCHEDULE 4 – THE BABY CEREAL BUSINESS IN BELGIUM

1. The Baby Cereal Business in Belgium includes:

   (a) The following main intangible asset: an exclusive license for the brand *Blédilac* (the "Licensed Brand") for use solely in Belgium for a period of 5 years, including all current product recipes and formulations, the goodwill, and the copyright in the packaging, advertising and promotional materials used in relation to the products sold under this brand;

   (b) After the expiry of the exclusive license for the Licensed Brand, Danone commits to grant the purchaser a non-exclusive license for the recipes and formulations on an arm's length basis at the request of the purchaser;

   (c) The following customer records: the data on local customers that has been communicated by PAB to Blédina;

   (d) For use in Belgium only, access to the R&D work that is in progress to support the new product launches planned in Belgium within 2 years from Closing

   (e) A 3-year at cost supply agreement for the products covered by the Licensed Brand; and

   (f) At the option of the purchaser, the provision of manufacturing technical assistance for 3 years.

2. The Baby Cereal Business in Belgium shall not include:

   (c) An assignment of the Licensed Brand, since the purchaser shall re-brand the products covered by the Licensed Brand;

   (d) Any right of the licensee of the Licensed Brand to use *Blédilac* in any country other than Belgium.

SCHEDULE 5 – THE BABY SNACK BUSINESS IN BELGIUM AND THE NETHERLANDS

1. The Baby Snack Business in Belgium and the Netherlands includes:

   (a) the following main intangible assets: the brands *Betterfood* and *LU Vitabis* in Belgium and the brand *LU Liga* in the Netherlands including all current product recipes and formulations, the goodwill, and the copyright in the packaging, advertising and promotional materials used in relation to the products sold under this brands;

   (b) the following customer records: the data on local customers that has been communicated by PAB to Blédina for baby snacks.

SCHEDULE 6 – THE BABY DRINK BUSINESS IN FRANCE AND BELGIUM

1. The Baby Drink Business includes:

   (a) the following main intangible assets:

      a. the brand *Babysoif* in France, including all current product recipes and formulations, manufacturing know-how, intellectual property rights, together with the copyright in the packaging, advertising and promotional materials used in relation to the products sold under this brand for use solely in France;

      b. the authorization to use the designation *Minibiberon* (which is not a registered trademark in Belgium) solely in Belgium for a period of 5 years, and all current product recipes and formulations, the goodwill, and the copyright in the packaging, advertising and promotional materials used in relation to the products sold under this designation;

   (b) After the expiry of the exclusive license for *Babysoif* and the initial 5-year period for the product designation *Minibiberon*, Danone commits to grant the purchaser a non-exclusive license for the recipes and formulations on an arm's length basis at the request of the purchaser;

   (c) The following customer records: for *Minibiberon*, the data on local customers that has been communicated by PAB to Blédina; for Babysoif, all customer lists with contact details, overdue lists with details per customer, and credit terms;

   (d) a 3-year at cost supply agreement for the products covered by the Baby Drink Business; and

   (e) at the option of the purchaser, the provision of manufacturing technical assistance for 3 years.

2. The Baby Drink Business shall not include any right of the purchaser of the Baby Drink Business to use *Babysoif* and *Minibiberon* in any country other than France and Belgium, respectively.

SCHEDULE 7 – THE […] BUSINESS

1. The […] Business as operated to date has the following legal and functional structure:

   (a) The […] production facility, […]. Except as specified elsewhere in this Schedule, […] owns or leases all assets used in the operation of the […] production facility;

   (b) the […] Business also includes procurement functions related to the operation of the […] production facility.

2. The […] Business specifically includes:

   (a) the […] production facility located in […], and all machinery and equipment located therein;

   (b) Subject to paragraph 4, all tangible assets used in the development, production, servicing, and sale of the products manufactured at the […] production facility, including: all real property; manufacturing assets, including capital equipment, vehicles, supplies, personal property, inventory, office furniture, fixed assets and fixtures, materials, on or off-site warehouses or storage facilities, and other tangible property or improvements; all licenses, permits and authorisations issued by any governmental organisation;

   (c) all contracts, agreements, leases, commitments, and understandings; provided that for supply contracts not intended exclusively for the […] Business, Numico shall make its best efforts to facilitate the conclusion of such contracts between the supplier and the purchaser of the […] Business, at conditions no less favorable than those offered to Numico;

   (d) all customer contracts, lists, accounts, and credit records;

   (e) and other records relating to the[…] Business;

   (f) all intangible assets that have been used exclusively or primarily in the development, production, servicing, and sale of the products manufactured at the […] production facility and necessary for marketing Numico's IFFO and GUM products in France, including but not limited to all patents, licenses, and sublicenses, intellectual property, trademarks, trade names, service marks, service names, technical information, computer software and related documentation, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances, quality assurance and control procedures, design tools and simulation capability, and all manuals and technical information provided to the employees, customers, suppliers, agents or licensees of the […] Business;

   (g) a non-exclusive, non-transferable, royalty-free license(s) for use of any intangible asset that has been used by both the […] Business and any of Numico's non-divested businesses, provided that such license(s) may be transferable to any future purchaser of the […] Business, and provided further that such license(s) shall be provided on commercially reasonable terms;

(h) all research data concerning historic and current research and development efforts conducted at or for the […] Business for the French IFFO and GUM markets, including designs of experiments, and the results of unsuccessful designs and experiments;

(i) all employees of the […] production facility (amounting to approximately […] people) (the Personnel); and

(j) the following Key Personnel:

[…]

3. The Divestment Business will also include:

(a) at the option of the purchaser, a supply agreement for liquid GUM by the Parties ([…]) at cost, for a transitional 3-year period; and

(b) an agreement for the supply by the […] production facility to the Parties of specialized products not included in the IFFO and GUM Milk Business in France to be divested and currently manufactured by […] for Numico, at cost, for a transitional 2-year period.

4. The […] Business shall not include:

(c) Any limitation on Numico's access to tangible or intangible assets that are not located in the […] production facility and/or used exclusively for the […] production facility.