EN

Case No COMP/M.5644 - KRAFT FOODS / CADBURY

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REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) in conjunction with Art 6(2)
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PUBLIC VERSION

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

To the notifying party:

Dear Sir/Madam,

Subject: Case No COMP/M.5644 - Kraft Foods / Cadbury
Notification of 9/11/2009 pursuant to Article 4 of Council Regulation No 139/2004[1]

1. On 9 November 2009, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation No 139/2004 ("the EC Merger Regulation") by which Kraft Foods Inc. ("Kraft", USA) would acquire within the meaning of Article 3(1)(b) of the Merger Regulation sole control of Cadbury PLC ("Cadbury", United Kingdom) by way of a public tender offer for all issued shares.

I. THE PARTIES

2. Kraft is a world-wide food and beverage company active in more than 150 countries with its headquarters in the USA and listed at the New York Stock Exchange. Kraft Food is active in particular in snacks, dairy and cheese, grocery and convenient meals. In the EEA Kraft is primarily active in relation to coffee, cheese, convenient meals, dressings, biscuits and chocolate confectionery.

3. Cadbury is a world-wide producer and seller of chocolate and sugar confectionery products in over 60 countries with its headquarters in the UK and listed on the London and New York stock exchanges. In the EEA, in chocolate confectionery, Cadbury is principally present in the UK, Ireland, France, Poland, Romania and Portugal.

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

II. THE OPERATION

4. The transaction is an acquisition of sole control by Kraft of Cadbury through the acquisition of the whole of the issued and to be issued share capital of Cadbury by way of a public offer for those shares.

5. On 9 November 2009, Kraft announced the terms of an offer (the "Offer") under Rule 2.5 of the UK Takeover Code to acquire the whole share capital of Cadbury. The Offer is made on the basis of a mixture of cash and a percentage of Kraft's share for each Cadbury share. Based on the closing share price of $26.78 per Kraft's share at the date of the announcement of the offer, the offer values each Cadbury share at 717 pence.

6. At the date of the notification, the Offer did not have the support of the Board of Cadbury. Kraft sent the Offer document to Cadbury's shareholders on 4 December 2009 with a deadline for acceptance on 5 February 2010.

7. As after the completion of the notified transaction, Kraft directly or indirectly through one or more wholly-owned subsidiaries, will own all of the shares and assets of Cadbury, the proposed transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. COMMUNITY DIMENSION

8. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion[2] [Kraft EUR […] million, Cadbury EUR […] million]. Each of them has a Community-wide turnover in excess of EUR 250 million [Kraft EUR […], Cadbury EUR […] million], but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension.

IV. COMPETITIVE ASSESSMENT

9. According to the notifying party, the proposed transaction affects primarily the market(s) for the manufacture and sale in the EEA of chocolate confectionery and to a lesser extent it will also have an impact on sugar confectionery, biscuits, soft cakes and chocolate drinks.

10. Within the EEA, the chocolate confectionery activities of Cadbury are focused on just a few countries. Its main chocolate brand is Cadbury Dairy Milk which is primarily sold in the UK and Ireland. In continental Europe, it also has some local brands including Wedel (Poland) and Poulain and 1848 (France). In the EEA, Kraft's main chocolate brands include Milka, Toblerone and Côte d'Or. It also has a number of brands that are available in a limited number of countries including Poiana, Suchard, LEO, Prince Polo and Alpen Gold.

11. On the remaining markets, the parties' activities overlap only to a small extent, with Kraft being active primarily in relation to biscuits and Cadbury being active in sugar confectionery and (mainly) gum.

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2 Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.04.2008, p1).

1. Relevant product markets

12. According to the notifying party, chocolate confectionery is part of an overall market for snacking products, including also sugar confectionery, gum, cakes, cereal bars, biscuits and other sweet snacks as well as salted snacks.

13. In previous decisions, the Commission has considered that chocolate confectionery, sweet biscuits, sugar confectionery and gum might constitute separate markets within the snacking market.[3] However, the Commission ultimately left the market definition open.

A. Chocolate confectionery

14. Within the chocolate confectionery category, various product formats exist such as chocolate bites (small portion pieces, packed in a bag or box, for example M&M's), chocolate tablets, candy bars/countlines, pralines (for example Ferrero Rocher), specialities (for example. Kinder Surprise Egg) and seasonal items (products sold only for Christmas or Easter). The parties 'activities overlap mainly in the tablets segment and to a lesser extent in the countlines and pralines segments.

15. Tablets are chocolate blocks of more than 59g, which usually have a traditional rectangular or square shape and are moulded so as to enable the block to be broken into regularly shaped bite size pieces. Some are filled with nuts and raisins. They are made of different types of chocolate such as milk, dark and white.

16. Countlines are individually-wrapped bars with filling ingredients which are then usually completely covered with chocolate coating or a bar of solid chocolate which has the same rectangular shape as a typical countline. Countlines are usually eaten as a personal snack.

17. Pralines are often indulgent chocolate that is rich and of higher quality, higher price and often of more complex construction than tablets or countlines. Pralines are usually sold in relatively elaborate packaging, typically boxes, but may also be sold in other presentations, such as bags.

18. The notifying party considers that from a demand-side perspective, the various types of chocolate confectionery are generally consumed to satisfy the same needs (hunger satisfaction, treats, intimate sharing, gifting etc) and customers select among these different formats to satisfy their requirements. However, in Kraft/Danone Biscuits[4], the Commission found that countlines form a separate market from other types of chocolate confectionery on the basis of differences in consumption patterns.

19. The notifying party considers that from a demand-side perspective, tablets, countlines and pralines should be viewed as belonging to an overall market for chocolate confectionery. In particular Kraft explains that:

    (a) Customers choose between these different formats to satisfy the same needs, such as hunger satisfaction, treats, intimate sharing, or gifting. Even though there are certain needs that are more frequently associated with certain formats (for example a box of

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[3] Case. COMP/M.5188 – Mars/ Wrigley, para. 7 et seq.; Case COMP/M.4824 – Kraft / Danone Biscuits, paras. 10 et seq.; Case COMP/M.4293 – Nordic Capital Fund VI/ ICA Meny, para. 11; Case M.2072 - Philip Morris/Nabisco.

[4] Case COMP/M.4824 – Kraft / Danone Biscuits.

pralines is more closely associated with gifting), no format will be exclusively associated with a particular need. Customers will select among all formats to satisfy their requirements and the final choice of the product will be the result of personal preferences, the availability of a purchasing opportunity and price.

(b) Within the same format, chocolate confectionery products assume different forms, variants, flavours and sizes. Therefore the same format can be used to meet different needs (for example some tablets are available in a 30g size designed primarily for treat, a 150g size for sharing and in a 400g format primarily for gifting).

(c) Customers do not stick to a single format of chocolate confectionery products and buy the whole range of chocolate products which shows, according to Kraft, that they are clearly making choices between formats. This is facilitated by the fact that at points of sales the different formats are generally shelved contiguously and in comparable sizes (for example countlines are now being offered in multi-pack, which have the same total weight as average tablets).

20. In Kraft/Danone Biscuits, the Commission found that countlines form a separate market from other types of chocolate confectionery products in certain countries[5] on the basis of differences in consumption and purchasing patterns. Countlines were viewed as on-the-go indulgent products typically bought on a piece-by-piece basis, whereas tablets and other chocolate forms were procured in bigger quantities and usually shared at home or during family events.

21. In general, the market investigation did not confirm the notifying party's view but rather point to separate product markets based on the product formats, i.e. tablets, countlines and pralines, although in the UK and Ireland the line of distinction between these three products might be more blurred than in others Member States[6].

22. Most of the respondents consider that tablets, pralines and countlines fulfil different needs and therefore have different purchasing and consumption patterns: tablets are consumed primarily at home and shared between members of families, countlines are primarily purchased for instant consumption by teenagers and young adults whereas pralines are mostly intended for gifting and therefore they follow seasonal purchasing patterns. In general, respondents to the investigation did not consider that customers tend to switch between these products to satisfy a given need.

23. The market investigation pointed also to differences between tablets, countlines and pralines in terms of price per kg (tablets being the cheapest and pralines the most expensive), frequency of purchases (countlines are more often purchased than tablets and pralines), annual spend per buyer (in the UK, the average annual spend per buyer is much higher for countlines than for tablets and pralines) and availability in stores: countlines are widely available in small convenience stores which capture 75% of sales, tablets are mainly sold in large grocery stores whereas pralines are less available and mostly displayed at peak seasonal periods. In addition, not all players are present to the same

5 Hungary, Czech Republic and Slovakia although the question was left open Czech Republic and Slovakia.

6 This is primarily due to the fact that in the British Isles some tablet brands (including Cadbury's Dairy Milk are available in very large formats (for example 400 g) intended primarily for gifting and in smaller formats (50g) which are primarily in competition with countlines as on-the-go indulgence products.

extent throughout the different segments, for example Ferrero is predominately a company present in the segment for pralines with a limited presence in tablets. Except for the UK and Ireland where it is present with its brand Galaxy, Mars is typically not active in the tablets segment but has a strong foothold in countlines.

24. In light of the above, it follows that competitive conditions are distinct in the various chocolate confectionery segments in all considered Member states and for the purpose of the present decision, separate markets are defined for countlines, tablets and pralines.

B. Sugar confectionery

25. Sugar confectionery products are those that have sugar as the principal ingredient, usually combined with colouring matter and flavouring, and often combined with fruit or nuts. Sugar confectionery is available in varying degrees of hardness and softness; the difference being based on the fact that sugar, when boiled, passes through stages during the process of crystallization. Fondant, or sugar cooked to the soft stage, is the basis of most soft sweets whereas when the sugar is cooked until it is fully crystallized, it produces hard sweets.

26. In Mars/Wrigley[7], the Commission considered the sugar confectionery market as a whole although it envisaged possible narrower product segmentations. The notifying party considers that the relevant market is the total sugar confectionery market which would include both hard and soft candies. According to its views, the different product types included in sugar confectionery – hard boiled candy, gummies, toffees, dragees or mixes – present different degrees of "hardness" but do not fall into separate relevant markets and consumers regard sugar confectionery products as a single category of 'candies' from which they will select. Notwithstanding, the notifying party presents sugar confectionery data having regard for the sub-segment of hard candies, the only segment in which the activities of the parties overlap.

27. For the purposes of the present decision, however, the precise scope of the relevant product market can be left open as, under any alternative market definition, the transaction does not raise serious doubts.

C. Sweet biscuits

28. Biscuits are baked products including flour, fats, sugar, milk, eggs and baking powder. Flavouring ingredients might be added such as coffee, chocolate, vanilla, etc. Biscuits are produced in a number of forms and may be sweet or savoury. They are consumed primarily as a shared snack or indulgence during family moments (with tea or coffee or as part of breakfast) when they are shared. They are sold in packs rather than for single serving.

29. In past decisions[8], the Commission considered that from a demand-side perspective there is a distinction between sweet biscuits, which are generally consumed between meals and

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7 Case COMP/M.5188 – Mars/ Wrigley, para. 7 et seq.;

8 Case COMP/M.1920 – Nabisco/United Biscuits, para. 8 et seq.; Case COMP/M.4824 – Kraft/Danone Biscuits, para. 13 et seq.;

savoury biscuits, which are often consumed in the evening as a snack or with a topping such as cheese or meat.

30. Although the notifying party considers that there is sufficient supply-side substitutability between the two categories of biscuits to treat all biscuits as belonging to the same market, it nonetheless acknowledges the Commission's past decisional practice in this respect. Therefore the notifying party assumes that for the purpose of assessing this transaction, the relevant product market is the market for sweet biscuits, the only segment where the parties' activities overlap.

31. For the purpose of assessing the present case however, it can be left open how the product markets should be exactly defined since serious doubts do not arise under any alternative product market definition.

D. Soft cakes

32. The soft cakes supplied by Kraft and Cadbury in Romania are wrapped sponge cakes, usually with a layer or filling of jam, cream or other ingredients, and which may or may not be partially or totally covered in chocolate. The product may be presented as individual portions, for on-the-go hunger satisfaction, or as larger variants for serving at home.

33. The notifying party views soft cakes as part of an overall market for "snacking products" which would include cakes, chocolate, biscuits, sugar confectionery and salted snacks. Although the Commission has never defined this market in its previous decisions, the notifying party has nevertheless presented information on the competitive impact of the transaction by reference to the product segment for soft cakes.

34. In the present case, the precise definition of the market for soft cakes can be left open since the operation as notified does not raise serious doubts as to its compatibility with the common market under any possible product market definition.

E. Powdered chocolate drinks

35. As opposed to ready to drink chocolate milk, powdered chocolate drinks are chocolate powdered products that can be added to milk or water to produce a hot chocolate beverage.

36. According to the notifying party, powdered chocolate drinks should be regarded as a market separate from other forms of hot drinks such as tea, coffee or hot soups on the basis that from a demand-side perspective it has a completely different taste profile, is more frequently diluted with milk rather than with water to produce a hot drink and is consumed primarily by children.

37. There are no previous decisions by the Commission in this segment, although in Friesland Coberco/Nutricia[9], the Commission suggested that a distinction should be made between ready to drink chocolate milk on the one hand and powdered chocolate drinks on the other. In any event, the notifying party's view is consistent with the approach of the UK's Office of Fair Trading ("OFT") in its review of Cadbury's acquisition of Green & Black's

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9 Case COMP/M.2399 – Friesland Coberco/Nutricia, para. 12 et seq.;

Limited.[10] The OFT found that third party responses on the question of substitutability of other drinks were mixed, and it was therefore appropriate to consider a frame of reference which included cocoa-based beverages but excluded other hot or cold beverages.

38. For the purposes of the present decision, it is not necessary to delineate precisely the relevant product markets because, in any alternative market definitions considered, no serious doubts arise.

F. Travel retail

39. Kraft and Cadbury also sell their chocolate confectionery products to travel retailers in Europe. The Commission has previously recognised that sales to travel retail distribution channels could be regarded separately from sales to traditional distribution channels[11].

40. In L'Oreal/YSL, the Commission considered that sales of cosmetics to travel retail stores can be considered as a distinct product market given differences in sales and negotiation conditions, a more limited product range available in travel retail and different packaging to attract international travellers. Ultimately the Commission left the product market definition open.

41. For the purpose of the present decision, it can be left open whether there are separate markets for the sale of chocolate confectionery products to travel retailers since the concentration will not lead serious doubts in these markets independently of their precise definition.

2. RELEVANT GEOGRAPHIC MARKETS

42. In what regards chocolate confectionery markets, in line with previous Commission decisions[12], the notifying party acknowledged that the geographic markets are national in scope.

43. This has been widely confirmed by the market investigation, which confirmed inter alia i) the importance of national brands in Member States despite the growing importance of some international brands, ii) the divergence in market shares of the relevant suppliers in the different Member States and iii) the national pricing of these products.

44. In what concerns the travel retail segment, the notifying party submits that the market should be considered EEA-wide, although it submits data by reference to both the whole of the EEA regions within the EEA (namely the Nordic Region, the British Isles and Continental Europe).

45. In its previous decisions, in terms of geographic scope, the Commission has considered that the travel retail market can be considered to be at least EEA-wide. In intra-Community travel, for a large number of travellers there are a variety of routes between any two non-adjacent countries. Consumers can purchase the same kind of products at

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10 Completed acquisition by Cadbury Schweppes plc of Green & Black's Limited, decision published on 6 September 2005;

11 Case COMP/M.5068 – L'Oreal/YSL, para. 14et seq.;

12 See for example COMP/M. Kraft/Danone Biscuits*,* para. 19; COMP/M.2072 Philipp Morris/Nabisco*,* para. 17.

most travel retail outlets, regardless of their geographic location. From the supply side perspective, the same retailers are active in many different regions. This being said, the Commission ultimately left the market definition open.

46. For the purposes of this case, the exact definition of the relevant geographic market can be left open because even on the basis of the narrowest market definition (namely by regions within the EEA), no serious doubts arise.

3. COMPETITIVE ASSESSMENT

A. Chocolate confectionery

47. All chocolate confectionery producers sell their products to retailers and/or wholesalers which, in turn, sell these products to final consumers. Therefore, there are two stages in the supply chain: the upstream level, where chocolate confectionery products are supplied to retailers/wholesalers and the downstream level where retailers supply to end-consumers. Kraft and Cadbury are only active on the production and supply upstream (to retailers and/or wholesalers). In a recent consumer goods case[13], the Commission distinguished the upstream level where retailers source their products from a downstream level where the products are sold to the final customer. The same approach is followed in the present case for the different chocolate confectionery markets.

48. Chocolate confectionery products are in general available in two broad categories: brands owned by the manufacturer and private label products which are marketed by the retailer. […]. Therefore the competitive assessment will focus on the upstream level of supply of branded chocolate confectionery products where the parties are active and face competition from other branded suppliers.

49. At downstream level, the market investigation showed that private label and branded products are in general in competition with each other and that the quality of private label products is to a large extent similar to branded products[14]. Therefore, the competitive interaction at downstream level (i.e. on supermarkets' shelves) between branded products and private labels will be taken into account in the analysis, especially in the tablets markets[15]. For that purpose, the notifying parties have provided market shares at retail level where branded products and private labels compete. Although the retail level is not an affected market since the parties are not active therein, these market shares are useful elements to capture the dynamics of competition at the level where end-consumers make their choice within a range of products which includes supplier brands and private labels.

13 See Commission Decision in Case No. COMP/M.4533 – SCA/P&G,

14 Except in Poland where the quality of private label products is deemed inferior to branded products and in Romania where private labels products are hardly available on the shelves.

15 Private labels have so far very limited influence in the countline and praline segments (except in the UK for pralines).

a) United Kingdom

50. The total value of the British chocolate confectionery sector amounts to approximately EUR 3.9 billion. In the UK, the parties' activities overlap only in the markets of tablets and pralines. Kraft is active in tablets and pralines mainly with its brands Milka, Toblerone and Terry's chocolate Orange, and Cadbury with its brands Dairy Milk, Roses and Green & Black.

51. The market shares of the parties and their main competitors for 2008 are as follows (in value). Market shares at retail level represent the share of the products sold by retailers and bearing the brands of the parties and their competitors.

	Wholesale level			**Retail level**		
	Chocolate confectionery	Tablets	Pralines	Chocolate confectionery	Tablets	Pralines
Cadbury	[30-40]%	[50-60]%	[20-30]%	[30-40]%	[40-50]%	[20-30]%
Kraft	[0-5]%	[5-10]%	[5-10]%	[0-5]%	[5-10]%	[5-10]%
Combined	**[30-40]%**	**[60-70]%**	**[30-40]%**	**[30-40]%**	**[50-60]%**	**[30-40]%**
Mars	[20-30]%	[10-20]%	[5-10]%	[20-30]%	[10-20]%	[5-10]%
Nestlé/Rowntree	[10-20]%	[5-10]%	[20-30]%	[10-20]%	[5-10]%	[10-20]%
Ferrero	[0-5]%	n/a	[5-10]%	[0-5]%	n/a	[5-10]%
Lindt	[0-5]%	[5-10]%	[5-10]%	[0-5]%	[5-10]%	[5-10]%
Thorntons	[0-5]%	[0-5]%	[5-10]%	[0-5]%	n/a	[5-10]%
Private labels	n/a	n/a	n/a	[5-10]%	[10-20]%	[10-20]%

Source : AC Nielsen

52. Following the merger, the new entity will maintain Cadbury's current leading market position in chocolate confectionery overall as well as in the tablets and pralines markets. In chocolate confectionery the increment is limited. Kraft is not a significant player in overall chocolate confectionery with only slightly higher market shares than the other continental type of chocolate confectionery manufacturers Ferrero and Lindt. Mars and Nestlé/Rowntree which both share with Cadbury traditional roots in the UK market will remain number two and three respectively on the market.

Tablets

53. In the market for chocolate tablets, the combined market shares are with [60-70]% significantly higher than in chocolate confectionery and the increment of [5-10]% appears significant.

54. In the chocolate tablet market, Kraft is active with Toblerone ([5-10]% market shares at wholesale level), Milka ([0-5]% market shares at wholesale level), and Côte D'Or ([0-5]% market share at wholesale level), while Cadbury is mainly active with its iconic brand Cadbury Dairy Milk ([40-50]% market share at wholesale level), Green & Black ([5-10]% market share at wholesale level), and Bournville ([0-5]% market share at wholesale level).

55. The notifying party puts forward that the transaction would not lead to competition concerns in the narrower market for chocolate tablets for the following reasons. First, the notifying party explains that continental-style chocolate (Kraft or Lindt's brands) is regarded by British

consumers as extremely different from British heritage chocolate such as Cadbury's, which compete more closely with Mars' and Nestlé's brands[16]. Second, Kraft's market share in the tablets segment is overstated because Toblerone is classified by Nielsen as a tablet. Kraft considers that Toblerone does not compete directly with other tablets given the nature of its chocolate taste, its triangular format and its perception by consumers. Without Toblerone, the overlap is only [0-5]% in the tablets segment. Third, retailers in the UK have significant buyer power and can replace branded products with their own retailers' brands ([10-20]% of the tablets segment).

56. The market investigation confirmed these differences between British heritage and continental chocolate and indicated a rather low demand substitution between continental and British heritage type of chocolate due to the distinct taste, texture and heritage. The broad majority of market participants were of the opinion that end-customers would not switch from British heritage type of chocolate to continental type of chocolate in response to a permanent price increase of 5-10% for British heritage chocolate. The proposed transaction would in this respect not reduce the number of British heritage chocolate manufacturers as Kraft does not manufacture or sell British heritage chocolate.

57. Kraft chocolate brands are also not seen as closest competitors to any of Cadbury's chocolate tablet brands. In fact, Mars Galaxy was seen by almost all market participants as Cadbury Dairy Milk's closest competitor. In addition, Cadbury's other major brands Bournville and Green & Black are also not closely competing with Kraft's continental brands. In particular Cadbury's Green & Black with a [5-10]% market share is an organic premium tablet which is not in close competition with any of Kraft chocolate tablets in the UK while Bournville, also a British heritage chocolate, is priced considerably lower than Kraft's closest mainstream brand Côte d'Or.

58. The Commission carried out a descriptive analysis of Nielsen prices and sales data at the SKU[17] level (weekly retail data covering the period of 09/2006 to 10/2009). Based on this analysis and the evolution of prices and sales data of Kraft and Cadbury's products during that period, there is no indication that the brands Toblerone, Milka or Côte d'Or exert a significant competitive constraint on Cadbury's tablet brands.

59. While sales of Côte d'Or are in 2009 insignificant, the Commission investigated whether Milka could constitute a significant constraint on Cadbury Dairy Milk. However, the data indicates that Milka sales remain still too limited to have any significant impact on Cadbury, despite heavy promotional activity on Milka. With respect to Toblerone, it does not appear to constitute a significant competitive constraint on Cadbury brands either. In particular, Toblerone 400g appears to be a much more seasonal product (with peaks in December and around Father's day) and its prices are much more volatile. Furthermore, Toblerone's prices and sales variations do not appear to have any significant impact on the sales and prices of Cadbury Dairy Milk.

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16 British heritage chocolate like Cadbury Dairy Milk has a lower content of cocoa butter, a higher content of milk fat than typical continental European chocolate like Lindt's tablets, Milka and all other continental European chocolates, including those offered by Cadbury in Poland and France. Cadbury Dairy Milk also contains vegetable fats instead of cocoa butter, as do other British heritage chocolates such as Mars brand Galaxy. Cadbury Dairy Milk also uses different production processes from continental type of chocolate like Milka or other continental chocolate. According to the notifying party, these differences in flavour, texture and taste limits significantly the appeal of continental chocolate in the British Isles.

17 Stock Keeping Unit.

60. On the contrary, the data clearly indicates that Galaxy exerts a strong competitive constraint on Cadbury Dairy Milk. For instance, the Nielsen data shows that between August and October 2009, Cadbury's market share in Tablets decreased by more than [10-20]% to the benefit of Galaxy. The fact that Galaxy exerts a much stronger competitive constraint on Cadbury than Toblerone and Milka confirms the findings of the market investigation and is in line with the fact that Mars Galaxy enjoys a much stronger position in the UK than Kraft's brands and that it is a classic British heritage chocolate tablet, exactly like Cadbury (and Nestlé in the UK) but unlike Kraft’s brands, which are continental-style chocolate.

61. This is also underlined by the fact that the majority of market participants denied that Cadbury would react generally in any way to the promotion efforts of Kraft in the chocolate tablet market. Even the reinforced promotion efforts of Kraft concerning Milka in 2008 and 2009 seem to have had no significant effect on the promotion efforts of Cadbury according to most of the market participants. Only one customer indicated that Cadbury and Mars did react to the introduction and promotion of Milka in its retail store.

62. In addition, basically all the respondents view Cadbury's Dairy Milk brands as a "must-have brand" whereas Kraft brands are barely cited in this category, except to a limited extent for Toblerone. As mentioned above, the notifying party considers that Kraft's market share in the tablets segment is generally overstated because Kraft considers that Toblerone does not compete directly with other tablets given the nature of its chocolate taste, its triangular format and its perception by consumers. Without Toblerone, the overlap is only [0-5]% in the tablets segment.

63. According to most market participants, Toblerone belongs to the tablet segment as it does compete to a certain extent with other tablets. However, it was indicated that in particular the 400 g Toblerone has some unique characteristics. Respondents and the data accumulated from Nielsen indicate that this SKU is seen as a gifting product since it is mainly sold at seasonal periods. In 2008 approximately [40-50]% of Kraft's tablet turnover in the UK was achieved by Toblerone 400 g tablets. If all 400 g tablets are excluded from the tablets market given their seasonality pattern, the overlap in the tablets market would drop from [5-10]% to [0-5]%.

Demand estimation and merger simulation for UK and Ireland chocolate tablet markets

64. The parties' economic advisors simulated the effects of the merger in the UK and Ireland.[18] First, they estimated econometrically a nested logit demand system[19] for confectionery chocolate in the UK and Ireland. Nielsen data from 2008 at the SKU level were used and, in the base specification, three nests were defined on the basis of the Nielsen

[18] Enrique Andreu, Kirsten Edwards and Jorge Padilla, "Estimating the price effects of the Kraft /Cadbury transaction in the UK and Ireland", LECG, 25 November 2009.

[19] The nested logit demand system is a particular functional form of demand from which own- and cross-price elasticities are derived. It is based on discrete choice modeling and allocates each product into a particular product category or "nest" (in this case, countlines, tablets or pralines) to allow for some correlation of consumer tastes across products (see Berry S. (1994), "Estimating discrete choice models of product differentiation," *RAND Journal of Economics*, Vol. 25, Summer, pp. 242-263). Such a demand system offers more flexibility than the standard logit model as the independence of irrelevant alternatives assumption, according to which switching between products takes places in proportion to market shares, only has to hold within a nest, while at the same time it has the practical advantage that the number of parameters to estimate is limited (compared e.g. to an almost ideal demand system).

classification (countlines, tablets and pralines). Second, a merger simulation was carried out to predict the impact of the transaction[20].

65. Using this estimated nested logit demand function and the 2008 Nielsen data on prices and sales by SKU, the effect of the transaction was then simulated with a Bertrand model of competition (ignoring product repositioning and entry).[21] In the base scenario in which three nests were defined on the basis of the Nielsen classification and with a price elasticity of aggregate demand equal to minus one, it was estimated that the proposed operation would lead to an overall weighted average price increase of one percent in the UK (even less in Ireland) in the absence of efficiencies.

66. The Commission carried out a series of test of the demand estimation carried out by the parties' economic advisors. In particular, the Commission tested the sensitivity of the results with respect to the characteristics included as controls in the regression, the estimation period, the nest classification, the market elasticity/size of the outside good, etc. Although the values of alpha and sigma[22] appeared relatively robust to most of these changes, they were very sensitive to the inclusion of a few key characteristics in the regression, which casts some doubts on the estimation. The set of instruments used in the regression also appeared somewhat ad-hoc and lacked proper justification and reporting on the selection process and the alternate choices considered. Therefore, and although the estimated demand parameter do not appear unreasonable in terms of predicted elasticities, the demand estimation does not allow to rely with confidence on the reported point estimate of the price increase calculated by the parties' economic advisors.

67. In order to complement the point estimate based on the demand estimation, the parties' economic advisors calculated lower and upper bounds on the predicted price increase by carrying out the merger simulation for different values of the alpha and sigma parameters ("calibrated demand elasticities"). Specifically, the parties' economic advisors simulated price increases for plausible combinations of alpha and sigmas selected on the basis that they did not lead to negative calibrated marginal costs and that the average calibrated cost were consistent with the financial information provided by Kraft.[23] On this basis, the parties'

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20 In the UK, the nested logit regression estimated by LECG included control variables for the product characteristics (such as weight, indications as to whether it contains or can be classified as liqueur, white chocolate, crunchy chocolate, cookie, mint, fruit, caramel, nuts, truffle chocolate, honey, solid tablets, single, and whether it is a retailer brand) as well as monthly, owner and family brand fixed effects. The instruments used to estimate the parameters of interest alpha and sigma were: 1) the standard deviation of the weights of SKUs by month, owner and nest, 2) the number of SKUs of other owners containing fruits and nuts in other nests, 3) the standard deviation of four-months lagged SKU prices by month, family brand and nest, and 4) the standard deviation of four-months lagged intra-nest share of SKUs by month, family brand and nest. The sigma parameter was estimated to be 0,506 and alpha -0,145 (with robust standard errors of 0,063 and 0,017 respectively). The parameters of interest alpha and sigma were then used to calculate the own-price elasticities as well as the intra- and inter-nest elasticities for each product.

21 Brands with a market share inferior to 0,5% were excluded to limit computation time.

22 The main parameters of interest in the nested logit model, which determine own and cross-price elasticities, are designed by the letters alpha and sigma (following Berry (1994)). In essence, the parameter alpha measures the relation between price and market share at the product level, while sigma measures the relation between a product's market share in a nest and its overall market share. Everything else constant, high values of alpha lead to high elasticities (in absolute values). Sigma takes values between zero and one, and the higher its value, the less substitution there is between products in different nests.

23 Specifically, it was required that the calibrated cost represent on average between [40-50]% and [60-70]% of the observed retail price.

economic advisors predicted lower and upper bound weighted average price increases for the market of […] and […] in the base specification where nests were defined following the Nielsen classification.[24]

68. In order to test the robustness of the merger simulation provided by the parties, the Commission replicated the merger simulation with alternate assumptions, concerning in particular the range of alphas and sigmas considered, the acceptable average ratios of calibrated costs versus retail prices, the price elasticity of aggregate elasticity, the period of analysis, etc.[25] The results, and in particular the upper bound on the predicted price increase on which the Commission focused its analysis, were robust to these changes.

69. Therefore, this merger simulation provides further evidence that the proposed operation is unlikely to lead to significant price increases in the UK and Ireland. It is conservative in the sense that the independence of irrelevant alternatives assumption supposes that switching between products happens proportionally to market shares within a nest, while the qualitative and quantitative evidence gathered during the market investigation indicates that the parties are not particularly close competitors.

Conclusion on tablets in the UK

70. Taken all these elements in account, the Commission concludes that the proposed concentration does not raise serious doubts as to its compatibility with the common market with respect to the market for chocolate tablets in the UK.

Pralines

71. Kraft is principally present in the praline market with the brands Terry's Chocolate Orange, Terry' All Gold, Terry's Twilight and Terry's Chocolate Orange Sensations. Cadbury is mainly active with the brands Cadbury Roses, Cadbury Heroes, Cadbury Milk Tray, Cadbury Green & Blacks, Cadbury Dairy Milk and Cadbury Snaps.

72. The combined market shares of the undertakings concerned would be [30-40]% with an overlap of [5-10]%. Market respondents have clearly pointed out that Kraft and Cadbury are not each others' closest competitors in the praline market. The market investigation revealed that Cadbury's closest competitor in terms of size and product range is Nestlé with a share of [20-30]% in the UK.

73. Kraft's main praline product Terry Chocolate Orange has unique traits in form and taste and it does not appear that it closely competes with any of Cadbury's praline products. Mars, Ferrero, Thornton and Lindt are also other major competitor with significant market shares present in the UK. There are also a number of smaller competitors in the market which have together around [10-20]% of market share.

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24 Lower predicted price increases were obtained in the alternate nest specifications considered by LECG (i.e. considering Toblerone in a separate nest or including Toblerone 400g in the pralines nest).

25 The parties' economic advisors also conducted a number of additional sensitivity tests following discussions with the CET, in particular with respect to the treatment of private labels, the nest structure considered and the criteria used for the selection of plausible alphas and sigmas (Enrique Andreu, Kirsten Edwards and Jorge Padilla, "Merger simulation: additional robustness analysis", LECG, November 30, 2009 and "Merger simulation: additional robustness analysis II", LECG, December 3, 2009).

74. Taken all these elements in account, the Commission concludes that the proposed concentration does not raise serious doubts as to its compatibility with the common market with respect to the market for chocolate pralines in the UK.

b) Ireland

75. The total value of the Irish chocolate confectionery market amounts to approximately EUR 440 million. The parties are active in tablets and pralines under the same brands as in the UK.

76. Market shares of the parties and their main competitors for 2008 are as follows (in value). Market shares at retail level represent the share of the products sold by retailers and bearing the brands of the parties and their competitors.

	Wholesale level			**Retail level**		
	Chocolate confectionery	Tablets	Pralines	Chocolate confectionery	Tablets	Pralines
Cadbury	[40-50]%	[40-50]%	[40-50]%	[40-50]%	[30-40]%	[40-50]%
Kraft	[0-5]%	[5-10]%	[0-5]%	[0-5]%	[5-10]%	[0-5]%
Combined	**[40-50]%**	**[50-60]%**	**[40-50]%**	**[40-50]%**	**[40-50]%**	**[40-50]%**
Mars	[20-30]%	[5-10]%	[5-10]%	[10-20]%	[5-10]%	[5-10]%
Nestlé/Rowntree	[10-20]%	[20-30]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%
Ferrero	n/a	n/a	[5-10]%	n/a	n/a	[5-10]%
Lindt	n/a	[5-10]%	[5-10]%	n/a	[5-10]%	[5-10]%
Others	[10-20]%	[5-10]%	[10-20]%	[10-20]%	[5-10]%	[10-20]%
Private labels	n/a	n/a	n/a	[5-10]%	[10-20]%	[0-5]%

Source : AC Nielsen

77. Following the merger, the new entity will maintain Cadbury's leading market position in chocolate confectionery (albeit with a small increment) as well as in the tablets and pralines markets. Its market share will be particularly high in the tablets market (around [50-60]%). The Irish chocolate confectionery sector is led by three manufacturers who together account for more than [80-90]% of all chocolate confectionery.

78. The Irish chocolate confectionery sector has many features comparable to those of the chocolate confectionery sector in the UK in terms of an overwhelming preference for British or Irish heritage chocolate. In this respect it has to be mentioned that Cadbury Dairy Milk is seen by Irish respondents as a typical Irish brand as Cadbury's historical manufacturing facility for the Irish market is located in the Dublin area.

Tablets

79. In Ireland where Cadbury and Kraft are present with the same brands as in the UK, the combined market share would be slightly lower in the tablets market (Cadbury [40-50]%, Kraft [5-10]%)[26] but the market features are similar. Milka is slightly stronger with [0-5]%

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26 At the retail level, the combined market shares of the parties are [40-50]% against [50-60]% at the wholesale level. In Ireland, private label tablets account for nearly [10-20]% in value.

and Toblerone slightly less strong with [0-5]%. As in the UK, if all 400 g tablets were removed from the market, the increment would be reduced to [5-10]%.

80. Kraft's brands are generally not viewed by market participants as the most important brands and the proposed transaction would not eliminate a close competitor of Cadbury's tablet brands in Ireland. In fact, Nestlé and Mars were seen by almost all market participants as Cadbury's closest competitor. According to the respondents to the market investigation, the recent increase in Milka's promotional activity did not have any significant impact on the tablet market as such. Milka, although stronger than in the UK, is not seen by the respondents as an important brand. The majority of retailers in Ireland explain that Kraft and Cadbury do not react to each other's promotions in the chocolate confectionery market.

81. The low level of closeness of competition as well as the lack of impact of Kraft's brand on Cadbury brands has been confirmed by a descriptive analysis of Nielsen prices and sales data which has been conducted in parallel to the UK analysis[27]. Likewise, as mentioned above, the merger simulation has shown that the transaction is unlikely to lead to significant prices increases in the market for chocolate tablets in Ireland.

82. Taking into account the absence of significant competition between Kraft's Toblerone and Milka and Cadbury's brands, it is concluded that the proposed transaction does not raise serious doubts on the chocolate tablets' market in Ireland.

Pralines

83. The market for pralines in Ireland shows also similarities with the UK market. Cadbury has a share of [40-50]% but Kraft is only active to a very limited extent with [0-5]% market share where […] of its turnover is generated by its brand Terry's Chocolate Orange. Due to its form, and according to the market investigation, this product is considered as rather unique and does not closely compete with Cadbury's pralines. Apart from Nestlé ([10-20]%), Mars ([5-10]%), Lindt ([5-10]%) and Thorntons ([0-5]%), there are also a number of traditional Irish praline manufacturers active in the market such as Lilly O´Brien ([0-5]%) and Butlers ([0-5]%) which will compete with the merged entity.

84. Taking into account the absence of significant competition between Kraft's pralines brands in particular Terry's Chocolate Orange with Cadbury's pralines brands in particular Roses, the low increment in market share brought about by the addition of Kraft's pralines activities to those of Cadbury and the presence of significant competitors, it is concluded that the proposed transaction does not raise serious doubts with respect to the market for chocolate tablets in Ireland.

c) France

85. The total value of the French chocolate confectionery market amounts to EUR 2.6 billions. In France, Kraft is mainly active with the brands Milka, Côte d'Or and Suchard while Cadbury's main brands are Poulain and 1848. The parties' activities overlap only in the tablets market.

86. Market shares of the parties and their main competitors at wholesale and retail level are as follows (in value). Market shares at retail level represent the share of the products sold by retailers and bearing the brands of the parties and their competitors.

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27 Bi-monthly retail data covering the period of 11/2006 to 09/2009.

	Wholesale level		Retail level	
	Chocolate confectionery	Tablets	Chocolate confectionery	Tablets
Kraft	[10-20]%	[30-40]%	[10-20]%	[20-30]%
Cadbury	[0-5]%	[5-10]%	[0-5]%	[5-10]%
Combined	**[10-20]%**	**[40-50]%**	**[10-20]%**	**[30-40]%**
Nestlé	[10-20]%	[20-30]%	[10-20]%	[10-20]%
Lindt	[10-20]%	[20-30]%	[10-20]%	[10-20]%
Mars	[10-20]%	n/a	[5-10]%	n/a
Ferrero	[20-30]%	[0-5]%	[20-30]%	[0-5]%
Private labels	n/a	n/a	[10-20]%	[20-30]%

Source : AC Nielsen

87. With respect to chocolate confectionery, the parties's share ([10-20]%) cannot be considered as particularly significant and the increment is not very high ([0-5]%). Ferrero will remain the leader ([20-30]%) with the new entity, Nestlé, Lindt and Mars as close challengers.

88. However, based on a narrower product market for tablets, the increment brought about by the transaction at wholesale level ([5-10]%) as well as the parties' combined market shares which exceed more than […] the one of their next competitors, are more significant. The present merger will lead to an important reduction in the number of competitors in the tablets market, passing from four to three players (Kraft/Cadbury, Nestlé and Lindt).

89. In general, respondents to the market investigation did not consider that this new market structure would lead to a reduction of competitive rivalry in the tablets market in France. However, some competitors and one retailer expressed concerns regarding the impact of the transaction on the French tablets market.

90. With respect to these concerns expressed by some respondents, it should first be noted that a minority of French customers of chocolate tablets have indicated that Cadbury's tablets (marketed under the brands Poulain and 1848) are the closest competitors of Kraft's products (sold under the brands Milka and Côte d'Or). Indeed, Lindt or private labels were in general mentioned as closest competitors of Kraft's brands

91. The fact that Kraft's and Cadbury's products are not the closest competitors is further documented by an assessment of the positioning of the different brands. For example in France, tablets consumption is equally spread between dark and milk chocolate tablets. According to Nielsen data, 1848 and Poulain are rather dark chocolate brands since they achieve [80-90]% and [70-80]% of their turnover in dark chocolate respectively. By contrast, Kraft achieves slightly more than [70-80]% of its French tablets turnover in milk chocolate. Milka is exclusively a milk tablet brand and Côte d'Or has slightly higher sales in dark chocolate than in milk chocolate.

92. Some retailers have indicated during the investigation that an alternative segmentation of the tablets market in France would be a distinction between a an adult/premium segment (which includes thin dark tablets, filled tablets and tablets with ingredients such as

hazelnuts, mint or orange) and a mainstream segment which includes mostly multi-pack tablets primarily targeted at children[28].

93. Even if this segmentation is retained, there are no elements which would indicate that Cadbury exercises a strong competitive constraint on Kraft. According to the data submitted by the notifying party[29], Cadbury is active in the premium segment through 1848, whose share amounts to roughly […] of Côte d'Or/Milka and […] of Lindt. In the mainstream segment, Kraft is the leader with a [60-70]% share of this segment at wholesale level (mostly Milka) followed by Lindt and Cadbury/Poulain ([10-20]% each). However, as mentioned above, Milka is exclusively a milk chocolate brand whereas Poulain is mainly a dark chocolate brand. Lindt achieves around [80-90]% of its sales of mainstream tablets in milk chocolate. One can therefore expect that Lindt exercises a stronger competitive constraint on Milka than Poulain, due to its similar positioning.

94. With respect to the strength of Cadbury's brands, the market investigation showed that 1848 is considered as weak by both retailers and competitors. With respect to Poulain, and although this brand is still viewed as having some traditional value due to its long history in France[30], a majority of market participants do not consider it to be currently strong enough to constrain Kraft's international brands Milka and Côte d'Or. According to the notifying party, Poulain has seen a [40-50]% decrease of its market share between 2006 and 2008.

95. The Commission has also investigated the impact of Cadbury's significant promotional activity on its Poulain brand in France since mid 2008 given that several retailers submitted during the investigation that Cadbury has intensified promotions on Poulain. It did not appear, however, that these promotions have resulted in major shifts of market shares. In particular, Kraft's market share on the French market has not been impacted and its pricing policy has not been modified. Likewise, it does not appear that Kraft increased its promotional activity regarding Milka in response to Poulain's own promotional activity. This further supports the conclusion that Poulain does not exert a significant competitive constraint on Kraft's chocolate tablet brands.

96. Furthermore at retail level private label products represent a significant share of the tablet market in France ([20-30]%) which has increased by two percentage points between 2007 and 2008. Retailers in France have developed private labels into both mainstream and premium segments. All the retailers having responded to the market investigation indicated that their private label products compete in price and quality with those of Kraft and Cadbury and that they have the intention to further develop these products (either by increasing the proportion of private label products or through introduction of new tablets) in the near future.

97. In addition, the notifying party submitted a similar merger simulation for France as for the UK and Ireland, with the difference that it restricted the analysis to tablets and defined

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28 There is also a third segment of tablets primarily used for cooking purposes. In this segment, Kraft is not active and Nestlé is the undisputed leader.

29 Response of the notifying party to the Commission's request for information dated 1st December 2009.

30 Poulain was founded by confectionery manufacturer Victor-Auguste Poulain in 1848 - hence the name of the *1848* brand, which has no connection with the 1848 revolution leading to the establishment of the French Second Republic.

nests on the basis of the mainstream, premium and cooking segments, to establish whether the combined entity could significantly increase prices in the mainstream segment

98. In this respect, it should be stressed that the merger simulation submitted for France does not attempt to directly answer the key question of closeness of competition between Poulain and Milka in the mainstream segment.

99. Rather, it indicates, in the context of a nested logit model in which switching within one segment is proportional to market shares, that, in a worst case scenario in which there is relatively little substitution between mainstream, premium and cooking segments, competition from other brands, in particular private labels, would prevent the merged entity from increasing prices significantly.[31] This finding is consistent with the qualitative and quantitative evidence that shows that the parties' products are not particularly close competitors in France

100. In the light of the above, the Commission concludes that the proposed concentration does not raise serious doubts as to its compatibility with the common market with respect to the market for chocolate tablets in France.

d) Portugal

101. The total value of the Portuguese chocolate confectionery sector amounts to EUR 186 million. In Portugal, Kraft is mainly active with the brands Milka, Côte d'Or while Cadbury's main brands are Dairy Milk and 1848. The parties' activities overlap only in the tablets market.

102. Market shares of the parties and their main competitors at retail and wholesale level for 2008 are as follows (in value). Market shares at retail level represent the share of the products sold by retailers and bearing the brands of the parties and their competitors.

	Wholesale level		**Retail level**	
	Chocolate confectionery	Tablets	Chocolate confectionery	Tablets
Kraft	[10-20]%	[30-40]%	[10-20]%	[20-30]%
Cadbury	[0-5]%	[5-10]%	[0-5]%	[0-5]%
Combined	**[10-20]%**	**[40-50]%**	**[10-20]%**	**[30-40]%**
Mars	[5-10]%	n/a	[5-10]%	n/a
Nestlé	[10-20]%	[20-30]%	[10-20]%	[10-20]%
Ludwig	n/a	[5-10]%	n/a	[5-10]%
Ferrero	[20-30]%	[5-10]%	[20-30]%	[5-10]%
Private labels	n/a	n/a	[10-20]%	[20-30]%

Source : AC Nielsen

103. With respect to chocolate confectionery, the parties have a limited presence ([10-20]%) with a low increment. Furthermore, Kraft will face competition from strong suppliers such as Ferrero and Nestlé.

31 The Commission tested the robustness of this merger simulation as for the UK and Ireland.

104. In the tablets market, the combined entity would have a market share of [40-50]%. Under this scenario, the overlap between the parties' activities would be slightly more significant ([5-10]%). However, several significant competitors are active in the Portuguese tablets market, in particular Nestlé ([20-30]%), Ferrero ([5-10]%) and Ludwig ([5-10]%). In addition, according to Nielsen data, Cadbury's share in tablets sales has seen a steady decline between 2006 and 2008 from [5-10]% to [0-5]% at retail level.

105. Respondents to the market investigation confirmed in general the notifying party's view that Ferrero and particularly Nestlé are closer competitors of the tablets market leader Kraft than Cadbury. Kraft's brands Milka and Toblerone are considered by Portuguese retailers as strong brands with a significant growth potential. This is not the case for Cadbury's brands Dairy Milk and 1848 which are in general viewed by retailers as less strong brands with more limited potential.

106. Furthermore at retail level private label products represent a significant share of the tablet market in Portugal ([20-30]%) which has slightly grown (+[0-5]%) in 2007. A number of retailers in Portugal have now developed private labels into more sophisticated and wide-ranging products, in all price segments and not, as for example in Poland, just as low priced products. All the retailers having responded to the market investigation indicated that their private label products compete in price and quality with those of Kraft and Cadbury and that they have the intention to further develop these products (either by increasing the proportion of private label products or through introduction of new tablets) in the near future.

107. In the light of the above, the Commission concludes that the proposed concentration does not raise serious doubts as to its compatibility with the common market with respect to the market for chocolate tablets in Portugal.

e) Poland

108. The total value of the Polish chocolate confectionery sector amounts to approximately EUR 1 billion. In Poland, the parties' activities give rise to overlap in the tablets, countlines and praline markets. Kraft is active with two main brands, Milka and Alpen Gold in tablets and pralines market and with its brand Prince Polo in the countlines market. Cadbury is present with a local heritage brand called Wedel sold throughout the three markets.

109. Market shares of the parties and their main competitors <u>at wholesale level</u> are as follows (in value):

	Chocolate confectionery	Tablets	Countlines	Pralines
Kraft	[10-20]%	[30-40]%	[10-20]%	[5-10]%
Cadbury	[10-20]%	[20-30]%	[5-10]%	[20-30]%
Combined	**[30-40]%**	**[60-70]%**	**[20-30]%**	**[30-40]%**
Mars	[10-20]%	n/a	[20-30]%	[0-5]%
Nestlé	[5-10]%	[0-5]%	[20-30]%	[0-5]%
Ferrero	[5-10]%	[0-5]%	[5-10]%	[10-20]%
Storck	[0-5]%	n/a	n/a	[10-20]%
Jutrzenka	[0-5]%	[5-10]%	n/a	[0-5]%
Solidarnosc	[0-5]%	n/a	n/a	[5-10]%
Mieszko	[0-5]%	n/a	[0-5]%	[5-10]%

Source AC Nielsen

110. Market shares of the parties and their main competitors at <u>retail level</u> are set out below. Market shares at retail level represent the share of the products sold by retailers and bearing the brands of the parties and their competitors.

	Chocolate confectionery	Tablets	Countlines	Pralines
Kraft	[10-20]%	[30-40]%	[10-20]%	[5-10]%
Cadbury	[10-20]%	[20-30]%	[5-10]%	[20-30]%
Combined	**[30-40]%**	**[50-60]%**	**[20-30]%**	**[20-30]%**
Mars	[5-10]%	n/a	[20-30]%	[0-5]%
Private label	**[5-10]%**	**[10-20]%**	**[0-5]%**	**[10-20]%**
Nestlé	[5-10]%	[0-5]%	[20-30]%	[0-5]%
Ferrero	[5-10]%	[0-5]%	[5-10]%	[10-20]%
Storck	[0-5]%	n/a	n/a	[10-20]%
Jutrzenka	[0-5]%	[5-10]%	[0-5]%	[0-5]%
Solidarnosc	[0-5]%	n/a	n/a	[5-10]%
Mieszko	[0-5]%	n/a	[0-5]%	[5-10]%

Source AC Nielsen

Tablets

111. Post transaction, the market share of the merged entity will be [60-70]% with a substantial increment (Cadbury [20-30]%) and competitors are significantly smaller than the new entity (Jutrzenka below [5-10]%, Ferrero [0-5]% and Nestlé [0-5]%).

112. While according to well-established case law, very large market shares – 50% or more – may in themselves be evidence of the existence of a dominant market position[32], it is also important to note that several additional elements indicate that the acquisition of Cadbury by Kraft may significantly impede effective competition by removing important competitive constraints exercised from the market on the new merged entity.

113. The Parties are perceived by a majority of competitors and customers as being the closest competitors in terms of brand positioning and brand recognition which is the most important selection aspect for chocolate tablets. Both Kraft and Cadbury own some very strong brands, often regarded by Polish customers as "must have brands". Kraft is active with its two main tablet brands, Milka and Alpen Gold[33] and Cadbury with its iconic Polish brand Wedel. Kraft's Milka and Alpen Gold enjoy very strong brand recognition amongst Polish customers. Similarly, Cadbury's Wedel brand is the best known brand in Poland that customers associate with tradition, good quality and reliability. The large majority of the respondents to the market investigation regard the Parties' respective brands are the three most important, "best selling" chocolate tablets brand in Poland. Accordingly, the transaction will lead to a consolidation of several very important brands, often qualified by customers as "must have" brands.

114. The notifying party's claim that the Cadbury's Wedel brand is declining. This claim is based on the fact that Wedel's share for tablets has decreased from [20-30]% (in value) in 2007 to [20-30]% in 2008. However, a decrease of less than [0-5]% in Wedel's share for chocolate tablets during a one year period is not of such a magnitude that it would allow drawing a conclusion that Wedel is a generally declining brand. Moreover, the market investigation indicates that Wedel's share of tablets has been increasing during the year 2009 (whereas during the same period the shares of Kraft's Alpen Gold and Milka have been declining). This has been also confirmed by the result of the market investigation, […].

115. The market investigation also indicates that Cadbury is the closest competitor to Kraft with respect to price, shelf presence, innovation, promotion and product range. The market investigation indicates that Wedel, Milka and Alpen Gold exert strong competitive constraints on each other despite the price differences between these brands. This has also been acknowledged by the notifying party in its submission when explaining how it sets the prices for its products[34]: "*for Milka and Alpen Gold, the reference product is usually one of the main competitor product in the category. This may be a Wedel Product*". Also, respondents to the market test indicate that Wedel, Milka and Alpen Gold compete strongly in terms of price, advertisement and commercial/marketing efforts. There are also indications that there is a very close correlation between Cadbury's Wedel and Kraft's Milka brands in terms of price (index) and market share. […].

116. The notifying party also argues that countervailing buyer power from the largest retail chains (for example Tesco, Auchan and Carrefour) would restrain the merged entity from

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32 Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings Official Journal C 31, 05.02.2004, p.5-18, paragraph 17 and Case T-210/01 General Electric v Commission [2005] ECR II-5575, paragraph 115.

33 It has also limited sales of Cote d'Or.

34 Form CO, paragraph 334.

raising prices and that retailers could easily delist branded products to the advantage of their own private label products. The notifying party argues that both Kraft's and Cadbury's product have been delisted in Poland.

117. The market investigation revealed however that retail or private label tablets do not impose a significant competitive constrain on the Parties' branded tablets despite their current growth in sales. First, private label is predominantly present in the so-called 'modern trade' (large multiple retailers and large discounters) but not in the 'traditional' trade (small and middle family business) which still account for more than half ([50-60]%) of all retail sales in Poland. Second, even in the modern trade channel, given their significantly lower price, quality, different product denomination and shelf positioning[35], private label tablets may constrain only the segment of economical chocolate, the so-called "compound tablets", but not the mainstream/high-end chocolate segment in which Kraft and Cadbury are active[36].

118. The significant reduction in competion that will be brought about by the proposed concentration will not be offset by the fact that buyer power may exist prior to the transaction given that it must also remain effective following the transaction. This is because a merger of two suppliers may reduce buyer power if it thereby removes a credible alternative. In the present case, as described above, the transaction will remove one of the two main chocolate tablet suppliers considered to be the closest competitors in the market. Post transaction, the merged entity will have a very high market share (almost ten times larger than its next competitors) and it will own several very strong brands, which are often regarded as "must have" brands by customers. Therefore, the Commission cannot at this stage take the view that countervailing buyer power post-merger would be sufficient to offset the potential adverse effects of the transaction. It should be also noted that the retail market in Poland is not as concentrated as in other Member States, as traditional small retail outlets still account for more than 50% of all retail sales.

119. Finally, the large majority of customers and competitors have raised concerns with regard to the transaction given the very high combined market share of Kraft and Cadbury post transaction and their very strong tablet brands. Respondents explain that the transaction will allow Kraft to reinforce its already very strong position and negotiation power in the tablet market which may lead to less promotional activities and to higher prices for customers.

120. For the reasons set out above, the Commission concludes that the notified concentration raises serious doubts as to its compatibility with the common market on the Polish tablets market.

Pralines

121. Post transaction, the combined market share of the new entity will be [30-40]% exceeding two times the shares of each of its two next competitors (Ferrero [10-20]% and Storck [10-20]%).

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35 Private label chocolate is usually placed on the bottom shelf.

36 In Poland, private label tablets are called compound products and are not entitled to be labeled chocolate. They are perceived by most of the customers as low quality products compared to branded tablets. Also, there is a significant price difference of a range of 40-60% between private label and branded tablets.

122. Both Kraft and Cadbury are active in the praline market with very strong brands which are often qualified as "must have" brands. Kraft is active with its two main brands, Milka and Alpen Gold and Cadbury with its iconic Polish brand Wedel. These brands enjoy wide recognition amongst Polish customers, in particular Cadbury's Wedel Ptasie Mleczko which is the best selling product in Poland. Accordingly, the transaction will lead to the consolidation of several very strong brands.

123. The large majority of competitors and customers consider Kraft and Cadbury as the closest competitors in the praline market in terms of brand positioning, price, innovation, promotion and product range. In particular in the segment of Ptasie Mleczko, a Polish specificity within the praline segment (a light sponge cake filled with a souffle and topped with chocolate glaze), Kraft and Cadbury are considered as the main competitors.

124. Also, customers and competitors highlighted the fact that Kraft's recent entry into the Ptasie Mleczko segment (with the launch of Alpejskie Mleczko) exercised an important competitive constraint on the leading Cadbury's Wedel Ptasie Mleczko. Post transaction, the rivalry between Kraft and Cadbury as an important source of competition would be removed as a result of the merger. While there will remain strong competitors such as Ferrero and Strock in the praline market, market participants indicated that they do not seem to exercise the same competitive constraint.

125. In line with the tablet market, the market investigation revealed that retail or private label pralines do not impose a significant competition constrain on the Parties' branded pralines.

126. For the reasons set out above, the Commission concludes that the notified concentration raises serious doubts as to its compatibility with the common market on the Polish market for pralines.

Countlines

127. In the countlines market, the combined entity would have a market share of [20-30]% with an increment of [5-10]%. However, post transaction, several significant competitors with higher market shares will remain active, in particular Mars ([20-30]%) and Nestlé ([20-30]%). There will also remain some smaller players such as Kaliszanka ([5-10]%) and Ferrero ([5-10]%).

128. Mars is leader in the countlines market in terms of market share and product range. Mars is active in Poland with some very strong brands such as Snickers, Mars, Twix, Milky Way and Bounty. Kraft's is mainly active in countlines with a local Polish brand called Prince Polo. Similarly, Cadbury's is active with a local brand called Pawelek. There are other strong competitors such as Nestle with local brands (*Princessa)*.

129. The market investigation confirmed in general the notifying party's view that Kraft and Cadbury are not close competitors in the countline market. None of the respondents to the investigation view Cadbury's Pawelek as the closest brand to Kraft's Prince Polo. Most customers and competitors regard Nestlé's well known Polish brand Princessa and Kaliszanka's brand Grzeski as the closest substitute to Kraft's Prince Polo in terms of brand image, price and product range.

130. In the light of the above, the Commission concludes that the proposed concentration does not raise serious doubts as to its compatibility with the common market with respect to the market for chocolate countlines in Poland. However, in any event, the commitment submitted by the notifying party to address the serious doubts identified in the tablets and pralines

markets will also eliminate the overlap in the countlines market sold under the Wedel brand.

f) Romania

131. The total value of the Romanian chocolate confectionery amounts to approximately EUR 240 million. The parties' activities give rise to an overlap in the tablets, countlines and pralines markets. In Romania, Kraft is active with three brands, Poiana, Africana (local brands) and Milka (international brand). Cadbury's main brands are Kandia, Laura and Rom (local brands).

132. The market share of the parties and their main competitors at wholesale level[37] are as follows (in value):

	Chocolate confectionery	Tablets	Countlines	Pralines
Kraft	[30-40]%	[50-60]%	[5-10]%	[10-20]%
Cadbury	[10-20]%	[10-20]%	[10-20]%	[5-10]%
Combined	**[40-50]%**	**[60-70]%**	**[20-30]%**	**[20-30]%**
Supreme	[10-20]%	[10-20]%	[0-5]%	[5-10]%
Mars	[5-10]%	n/a	[30-40]%	[0-5]%
Nestlé	[5-10]%	n/a	[20-30]%	n/a
Ferrero	[5-10]%	[0-5]%	[5-10]%	[10-20]%
Laderach	[0-5]%	[5-10]%	[0-5]%	[5-10]%
Storck	[0-5]%	n/a	n/a	[10-20]%

Source : AC Nielsen

Tablets

133. Post transaction, the market share of the new entity will be [60-70]% with a substantial increment (Cadbury [10-20]%). Competitors are significantly smaller than the new entity (Supreme [10-20]%, Laderach [5-10]% and Ferrero [0-5]%). While the market share of [60-70]% of the new entity may in itself be evidence of the existence of a dominant market position[38], there are additional elements indicating that the acquisition of Cadbury by Kraft may significantly impede effective competition by removing important competitive constraints on the new entity.

134. Kraft and Cadbury are perceived by a majority of competitors and customers as the closest competitors in terms of brand positioning. Brand image constitutes the main criterion in the competitive process in the tablet market in Romania. Kraft is active in the tablets

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37 The combined market share of the parties remain almost unchanged at the retail level as private label tablets account for less than [0-5]% (in value) in Romania.

38 Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings Official Journal C 31, 05.02.2004, p.5-18, paragraph 17 and Case T-210/01 General Electric v Commission [2005] ECR II-5575, paragraph 115.

market with its international brand, Milka, and its local brands Poiana and Africana. Cadbury is active with two local heritage brands Kandia and Laura. The parties' respective brands are considered as the strongest, best sold brands in Romania, Kraft's brands being considered as number 1 and Cadbury's brands as number 2.

135. The Romanian tablet market can be segmented into premium, mainstream and economical (compounds) segments. Kraft and Cadbury compete mainly in the mainstream and economical segments, which constitute the largest part of the overall tablet market in Romania. The parties' respective brands are perceived by a large majority of customers and competitors as the closest substitutes both in the mainstream (Poiana-Kraft and Kandia-Cadbury) and economical segments (Africana-Kraft and Laura--Cadbury) in terms of pricing and product range.

136. The notifying party argues that Supreme has a stronger position in the tablet segment than Cadbury and therefore exercises a more significant constraint on Kraft's local brands Africana and Poiana. This submission has not been confirmed by the result of the market investigation.

137. Respondents to the market investigation do not consider Supreme as Kraft's closest competitors but rather as the number 3 player, following Kraft and Cadbury. In terms of brand recognition, Supreme's brands (i.e. Primola-mainstream and Novatini-economical) enjoy less notoriety amongst customers than those of the parties. This might be explained by the fact that both Supreme brands (i.e. Primola and Novatini) have been launched in the Romanian market after the brands of Kraft and Cadbury.

138. Also, Supreme's brands, in comparison with the parties' respective brands, both in the mainstream and economic sector, are lower priced, have a smaller product range and benefit from a less profitable positioning on the shelf (they are often positioned at the lower shelf) which makes access to this brand more difficult. Supreme also tries to differentiate itself from Kraft and Cadbury by communicating a slightly different image for its brands and by targeting a different customer group[39].

139. The notifying party also submit that several strong international players will remain in the tablet market in Romania. It should be noted, however, that remaining competitors such as Laderach (Heidi) and Ferrero will have substantially lower market shares than the new merged entity. Moreover, these remaining market players focus mainly, if not exclusively, on the premium segment and would therefore not be able to prevent the new entity from implementing price increases in the mainstream and economical segments (constituting the most important part of the tablet market).

140. The market investigation also confirmed that private label tablets do not exercise any significant competitive constraint on the parties' branded products. Today, private label tablets represent less than [0-5]% (in value) of the overall tablet market in Romania. Also, they differ from branded products in terms of shelf space, denomination, quality and price.

[39] In the mainstream segment, both Kraft and Cadbury promoted their brands by communication based on emotional values such as love in couple and in family translated by chocolate bought for sharing and offering. As opposed to the latter, Supreme's communication is based on the promotion of individual, personal pleasure which is translated by chocolate bought more for individual consumption (selfish vision vs/sharing). Given the difference in communication, Supreme has attracted different target customers in comparison with the socio-demographic profile of customers of Kraft's and Cadbury's brands.

141. The notifying party also claims that countervailing buyer power from the largest retailer chains such as Metro and Cora would prevent the merged entity from raising prices in the tablet market. The notifying party submits that both Kraft's and Cadbury's product have suffered delisting in Romania.

142. In this respect, it should be noted again that, irrespective of whether or not there is buyer power pre-transaction, it is not sufficient that buyer power exists prior to the transaction, but it must also exist and remain effective following the merger. This is because a merger of two suppliers may reduce buyer power if it thereby removes a credible alternative. In the present case, as described above, the transaction will remove one of the two main suppliers of chocolate tablets considered to be the closest competitors in the market. Post transaction, the merged entity will have a very high market share (more than three and more than ten times bigger than its first and second competitors) and it will own several very strong brands, which are, often qualified as "must have" brands. Therefore, it appears that countervailing buyer power post-merger would not be sufficient to offset potential adverse effects of the merger. It should also be noted that the retail market in Romania is not as concentrated as in other Member States, modern trade representing less than 50% of all retail sales.

143. For the reasons set out above, the Commission concludes that the notified concentration raises serious doubts as to its compatibility with the common market on the Romanian tablet market.

Countlines

144. In the countlines market, the combined entity would have a market share of [20-30]% with an increment of [5-10]%. Both Kraft and Cadbury are present in the praline market with local brands, Poiana for Kraft and Rom and Papi for Cadbury.

145. While most of the customers regard Nestlé as the closest competitors of Kraft in the countlines market, there is a certain number of respondents who consider that Kraft's Poiana and Cadbury's Rom are the closest substitutes. However, most of the respondents do not consider that the transaction will raise any competition concerns in the countlines market given the presence of several strong competitors. Indeed, post transaction, there will remain a sufficient number of competitors such as Mars and Nestlé with comparable or even higher market shares than the one of the new merged entity.

146. In light of the above, the Commission concludes that the proposed concentration does not raise serious doubts as to its compatibility with the common market with respect to the market for chocolate countlines in Romania. However, the commitment submitted by the notifying party in the tablet market will also eliminate the overlap in the countlines segment.

Pralines

147. In the praline market, the combined entity would have a market share of [20-30]% with an increment of [5-10]%.

148. Similarly to the countlines market, given the presence of several alternative competitors such as Ferrero and Storck with similar market position as the new entity, it is unlikely that the transaction will raise serious doubts in the praline market. This has been also confirmed by the customers' responses to the market test.

149. However, the commitment submitted by the notifying party to address the competition concerns identified in the tablet market will also eliminate the overlap in the praline market.

g) Other Member States

150. Besides the six national markets affected in the UK, Ireland, Portugal, France, Poland and Romania, the activities of the parties overlap in a number of other markets for chocolate confectionery. However, the vast majority of the potentially affected markets involve an increment of less than [0-5]% reflecting Cadbury's limited presence in all of these Member States. In many cases the increment is less than [0-5]%. These countries are: Bulgaria, Germany, Greece, Hungary, Latvia, Lithuania, The Netherlands, Slovakia, Slovenia and Sweden.

151. Cadbury's small presence in the above-mentioned countries suggests that the transaction will not affect the competitive situation that currently exists in those countries. Moreover, in all of the mentioned cases the merged entity will continue to face strong competition from a number of other manufacturers such as Nestlé, Mars, Ferrero and Storck, amongst others, as well as from retailer brands.

152. In light of the above elements, it is concluded that the transaction does not raise serious doubts as to the compatibility with the common market with respect to these markets.

153. Besides the above-mentioned Member States, there are three countries where the overlap of the activities of Kraft and Cadbury is greater than [0-5]% at either retail or wholesale level: Cyprus, the Czech Republic and Spain.

154. In Cyprus, Kraft is present (indirectly) with Milka and Toblerone and Cadbury is present with Dairy Milk and Bournville. In chocolate confectionery, the parties' aggregate market share is [10-20]% and the increment is at just [0-5]%. At the level of the tablets market the combined share will be of [30-40]% but in any event the increment brought about by Kraft is still modest, at [5-10]%, with Kraft being the number 5 player on the market. Moreover, post merger strong competitors will remain in the market such as Mars – with a tablet share of [20-30]% - and Ion – with a tablet share of [10-20]% -, the number 2 and number 3 players respectively. In addition to this, Kraft does not participate directly in the Cypriot market since it operates entirely through a distributor, who resells its products to retailers. Kraft has no contact with retailers; all negotiations on pricing, range, display and promotions are handled by the distributor. As a result, the competitive dynamics of this market are driven by the distributor and not Kraft. In light of the above, the transaction does not raise serious doubts as to its compatibility with the common market in Cyprus.

155. In the Czech Republic, Kraft is active with Milka and Figaro, whereas Cadbury only sells a limited amount of Cadbury Dairy Milk and in Pralines, Compliment. In this country, post transaction, the merged entity's market share in chocolate confectionery will be at [30-40]% although the increment – Cadbury's share of [0-5]% - is extremely small, reflecting Cadbury's limited presence. Moreover, post merger, Nestlé will remain the market leader, with a [30-40]% market share. At the narrower level of pralines, the parties' combined share will be even lower, at [20-30]% with an increment of only [0-5]%, there being other large international manufacturers in the market such as Nestlé, Storck and Ferrero. In light of the above, the transaction does not raise serious doubts as to its compatibility with the common market in the Czech Republic.

156. In Spain, Kraft is active with Milka and Cadbury is mainly active in countlines with Huesito and Tokke. At the level of chocolate confectionery, the Spanish market is not an affected market, since the parties' combined market share post merger is below 15%. In the different formats, Kraft's portfolio does not compete closely with Cadbury. Kraft is mostly active in tablets where Cadbury has virtually no presence; and Cadbury is appreciably active in countlines, where Kraft's presence is small. As such, post transaction the merged entity's share of the countlines market will be at [20-30]% with Kraft's small share bringing a small market increment of [0-5]%. In any event, the merged entity will still be behind Nestlé, the segment market leader. Ferrero and Mars also have a significant presence in the countlines market and will exercise a competitive constraint on the merged entity. Moreover, Cadbury's Huesito cannot be considered a close competitor to Kraft's Milka and Toblerone. In light of the above, the transaction does not raise serious doubts as to its compatibility with the common market in Spain.

157. In the light of the above the Commission concludes that the proposed concentration does not raise serious doubts as to its compatibility with the common market with respect to all potential chocolate confectionery markets in Cyprus, the Czech Republic and Spain..

B. Sugar confectionery

158. In sugar confectionery, the proposed transaction creates an overlap in only one country, Hungary – where the operation will result in a combined share of [20-30]%.

159. Even if the market is segmented by reference to hard and soft candies, the combined share in value of the parties' in hard candies – the only segment where the parties are both active – is at [20-30]%. Also, the merged entity will continue to face competition from strong retailer brands as well as from a number of significant branded manufacturers. These include Haribo, Ferrero, Mars, Nestlé and Bombonetti.

160. Moreover, the notifying party has submitted elements demonstrating that the products of Kraft (Negro) and Cadbury (Halls and Vita C) within the hard candy segment are not particularly close competitors due to the significant differences in brand positioning, pricing, consumer profiles, reasons for purchasing and channel penetration.

161. In the light of the above the Commission concludes that the proposed concentration does not raise serious doubts as to its compatibility with the common market with respect to all potential sugar confectionery markets in Hungary.

C. Sweet biscuits

162. In sweet biscuits, the activities of the parties overlap in the EEA in the Czech Republic, France, Portugal and Spain. However, in every case the increment in market share is below [0-5]%. Cadbury's shares are in all cases negligible which suggests that the merger does not raise serious doubts in these markets.

D. Soft cakes

163. Romania is the only national market where the merging parties have overlapping activities in soft cakes. Post merger the combined market shares of the parties in the market for soft cakes would be [20-30]%, there being at least two other large branded international competitors in the market, Chipita and Ferrero. Furthermore, both Kraft's and Ferrero's recent entry and performance tend to show that the barriers to entry are low, a fact which serves as a competition constraint on pricing in that market. Finally, Kraft's largest selling

products – sold under its Barni brand – which represent over [30-40]% of Kraft's sales in this category, are not a close competitor to Cadbury's Magura, given the product format and the fact that Barni targets only young children whereas this is not the case for Magura. It follows from the foregoing that the transaction does not raise serious doubts as to its compatibility with the common market regarding the soft cakes market in Romania. In any event it is worth noting that the Magura business will be included in the remedies offered by the parties concerning Romania.

E. Powdered chocolate drinks

164. In chocolate drinks, the proposed transaction creates one affected market, in Greece. There, the combined share of Kraft and Cadbury is at [20-30]% and the increment brought about by the transaction is of only [0-5]%. Moreover, the market structure shows that post merger there are strong international players in the market, in particular Nestlé and Giotis who will remain being the number 1 and number. 2 players on the Greek market.

165. As such, the proposed acquisition does not raise serious doubts as to its compatibility with the common market regarding the Greek market for powdered chocolate drinks.

F. Travel retail

166. In the travel retail segment, regardless of whether the market is viewed on worldwide basis, on an EEA-wide basis or on a regional basis, the combined share of the parties is under 30%, in all cases. In terms of confectionery in travel retail in the EEA, the combination of Kraft and Cadbury will only overlap to a minimal extent, merely increasing the EEA market share by [0-5]%.

167. Further to the above, the merged entity will continue to face competition from a large number of strong confectionery manufacturers including Mars, Nestlé, Toms, Ferrero and Lindt, all of whom have a large range of products that will compete with the merged entity after the transaction.

168. For the above reasons, the Commission concludes that the proposed concentration does not raise serious doubts as to its compatibility with the common market with respect to a possible travel retail market.

V. PROPOSED COMMITMENTS

169. In light of the above, the proposed transaction raises serious doubts as to its compatibility with the common market with regard to three markets, i.e. (i) the Polish chocolate tablet market, (ii) the Polish chocolate pralines market and (iii) the Romanian chocolate tablet market.

A. Procedure

170. In order to render the concentration compatible with the common market, the notifying party has proposed to modify the notified concentration by offering the following commitments, which are annexed to this decision and form an integral part thereof. A first commitment package was proposed by the notifying party on 7 December 2009. After examination and market testing of this commitment package, the notifying party

amended the latter and submitted on 21 December 2009 its final commitments, which are deemed suitable to remedy the serious doubts identified.

B. Description of the revised commitments

171. To address the serious doubts identified with regard to the two first markets, i.e. the Polish chocolate tablet and pralines markets, the notifying party commits to divest Cadbury's "Polish-traditional" confectionery business marketed under the Wedel brand in Poland ("Wedel Divestment Business"). The Wedel Divestment Business includes the trademarks relating to the Wedel brand for confectionery in the EEA, the Wedel franchising businesses under the Wedel brand, and the Wedel manufacturing facilities in Warsaw and Bielany Wroclawskie ("BW"). The Wedel Divestment Business also includes a dedicated management team including all key personal and other employees which are necessary to maintain the viability and competitiveness of the Wedel Divestment Business.

172. As regard the Romanian chocolate tablet market, the notifying party commits to divest the Cadbury's domestic chocolate confectionery and soft cake business in Romania ("Kandia Divestment Business"). The Kandia Divestment Business includes the trademarks relating to the Kandia, Laura, ROM, Anda, Papi, Vis and Fagaras brands for chocolate confectionery, the Magura brand and any sub-brands in the EEA and the Kandia manufacturing facilities in Bucharest. The Kandia Divestment Business also includes a dedicated management team and other employees which are necessary to maintain the viability and competitiveness of the Kandia Divestment Business

Wedel Divestment Business

173. The Wedel Divestment Business holds the number one brands in chocolate confectionery in Poland with leading positions in both the tablet and the praline markets. It is estimated to have net revenues of PLN […] million (EUR […] million) in 2008. More particularly, it consists of:

(a) Rights, title and interests in the domestic "Polish-traditional" confectionery (including chocolate and non-chocolate) business marketed under the Wedel brand and any sub-brands in Poland (the "Wedel Confectionery Products");

(b) The confectionery manufacturing plant BW, including all manufacturing assets required for the production of Wedel Confectionery Products at BW; the BW plant is a modern plant built in 1993. The factory is located in South West Poland with good access to major transport routes. Its production was recently extended to […]. At the request of the Purchaser and after the report of the Monitoring Trustee, the Commission may approve the sale of the Wedel Divestment Business without some or all of the assets and personnel of the manufacturing facility in BW. If this is the case, appropriate structural arrangements have to be put in place in order to ensure that the Purchaser will be in a position to supply the Wedel products currently manufactured at the facility in BW, if this does not affect the viability and competitiveness of the Wedel Divestment Business after the sale, taking account of the proposed Purchaser;

(c) The confectionery manufacturing plant in Warsaw, including all manufacturing assets required for the production of Wedel Confectionery Products at Warsaw ("Warsaw"); The Warsaw plant is the original Wedel plant for which a modernization programme was launched in 2007 which added a new production line for Ptasie Mleczko, new research laboratories and new offices.

(d) Insofar as Wedel Chocolate Products for the Polish market are currently manufactured outside of BW and Warsaw in other Cadbury factories, the notifying party shall be obliged to supply the Purchaser for a period of up to […] with the respective products currently produced on terms and conditions equivalent to those applying at the date of the adoption of the present decision. After that period Kraft Foods, at its own expense, has to transfer all the respective manufacturing assets contributing to or necessary for the production of these Wedel Chocolate Products to a site determined by the Purchaser within a period of up to […][40].

(e) Rights, titles and interests in the Wedel franchising business currently operated by Cadbury in Poland (the "Wedel Franchise Business").

Kandia Divestment Business

174. The Kandia Divestment Business is the second largest chocolate confectionery business in Romania comprising [10-20]% of total chocolate confectionery in Romania and a full range of tablet, countline and praline formats. It is estimated to have net revenues of RON […] million (EUR […] million) in 2008. More particularly, it consists of:

(a) Rights, titles and interests in the domestic chocolate confectionery business marketed under the Kandia, Laura, ROM, Anda, Papi Vis and Fagaras brands and any sub-brands in Romania (the "Kandia Chocolate Products");

(b) Rights, title and interests in the soft cake business or related to it marketed under the Magura brand and any sub-brands in Romania and owned by Cadbury (the "Magura Products");

(c) The manufacturing plant at Bucharest, including all manufacturing assets required for the production of Kandia Chocolate Products and Magura Products ("Bucharest"); The Bucharest plant was completely modernized in 2007 and its capacity was upgraded to […] tons per year. It is well located near major transport routes.

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VI. ASSESSMENT OF THE PROPOSED REMEDIES

175. As set out in the Commission Notice on Remedies[41], the Commission assesses the compatibility of a notified concentration with the common market in line with the terms of the Merger Regulation. Where a concentration raises serious doubts which could lead to a significant impediment to effective competition, the Parties may undertake to modify the concentration so as to resolve the serious doubts identified by the Commission with a view to having the transaction approved. In assessing whether or not the remedy will restore effective competition, the Commission considers the type, scale and scope of the remedies

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40 In case the removal of the assets requires third party's consent, Kraft will use its best endeavours to obtain such consent. If third party consent is not obtained, Kraft will have to provide appropriate structural arrangements in order to ensure the supply of the Wedel products currently manufactured outside of BW and Warsaw in other Cadbury factories for the Polish market.

41 Commission Notice on remedies acceptable under Council Regulation (EEC) No 139/2004 and under Commission Regulation (EC) No 802/2004, Official Journal C 267, 22.10.2008, p. 1-27.

by reference to the structure and the particular characteristics of the market in which these serious doubts arise.

176. As concerns the different types of remedy, the most effective way to maintain effective competition is to create the conditions for the emergence of a new competitive entity or for the strengthening of existing competitors via divestiture by the merging parties. The divested activities must consist of a viable business, which if operated by a suitable purchaser, can compete effectively with the merged entity on a lasting basis and which is divested as a going concern.

177. The Commission has concluded that the proposed remedy package as submitted by the notifying party on 21 December 2009 addresses all serious doubts identified during the course of the procedure and adequately deals with concerns identified by market participants in response to the remedy package. As such, the Commission has concluded that the proposed remedy package is effective in removing the serious doubts brought about by the transaction in the relevant markets.

Suitability to remove serious doubts raised with regards to Polish chocolate tablets and pralines markets

178. The Wedel Divestment Business proposed by the notifying party constitutes [90-100]% of Cadbury's entire chocolate confectionery business in Poland. The notifying party proposes to retain all (i) non-chocolate confectionary businesses, (ii) the brand Cadbury and (iii) the non-Wedel branded international products, including chocolate brands like Picnic, Mr Big, Crunchie and P.S ("Retained Business"). According to the notifying party, the Retained Business accounts for less than [0-5]% of the Polish chocolate tablets and pralines markets[42]. Therefore, the proposed divestment will not only nearly eliminate the entire overlap between the parties in the manufacture and sales of chocolate tablets and pralines in Poland but also the overlap in countlines where no serious doubts have been identified.

179. The Wedel brand enjoy the number one position in chocolate confectionery in Poland with leading positions in both tablets (approximately [20-30]% market share) and pralines (approximately [20-30]% market share) markets. It is estimated to have net revenues of PLN […] million (EUR […] million) in 2008. Accordingly, the purchaser of the Wedel Divestment Business will become a sizeable and strong market player in the chocolate confectionary in particular in the tablets and pralines markets.

180. The market test provided in overall a positive feedback on the proposed Wedel Divestment Business and confirmed the notifying party's view that the Wedel Divestment Business is likely to attract the interest of potential purchasers. However, some concerns were expressed during the market test as regards its viability. […]

181. The commitments as modified by the notifying party on 21 December 2009 have been improved in this respect. The purchaser will have the possibility of either acquiring the BW plant or the notifying party has to provide appropriate structural arrangements[43] in order to ensure the supply of the Wedel products currently manufactured at the facility in

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42 As some of these products are manufactured at the BW and Warsaw plants (the divested plants), the notifying party propose to remove the machinery and other assets used for the production of these products.

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BW to the Wedel Divestment Business[44]. In addition, the scope of the Wedel Divestment Business was enlarged to include also all non-chocolate confectionary products sold under the Wedel brand umbrella to increase the plant utilization rate and to improve the viability of the overall Wedel Divestment Business. For the limited volume of Wedel confectionery products manufactured outside the BW and Warsaw plant, the notifying party is obliged to supply the potential purchaser for a transitional period of […] with the respective products under equivalent terms and conditions as applied at the date of the decision. After the transitional period, the notifying party will transfer at its own expenses the manufacturing assets to a site determined by the purchaser[45].

182. In the light of the above, the Commission considers the Wedel Divestment Business as a suitable commitment to remedy the serious doubts identified with regard to the Polish chocolate tablets and pralines markets (including the segment of Ptasie Mleczko).

Suitability to remove serious doubts raised with regards to Romanian chocolate tablet market

183. The Kandia Divestment Business proposed by the notifying party to address the serious doubts on the Romanian chocolate tablet market includes Cadbury's entire chocolate confectionery business in Romania. Therefore, the proposed divestment will eliminate the entire overlap between the parties in the manufacture and sales of chocolate tablets in Romania but also the overlap in pralines and countlines where no serious doubts have been identified.

184. The Kandia Divestment Business is the second largest chocolate confectionery business in Romania comprising [10-20]% of total chocolate confectionery in Romania and a full range of tablet, countline and praline formats. It is estimated to have net revenues of RON […] million (EUR […] million) in 2008. In the chocolate tablet market, it holds the third market position with market share of approximately [10-20]% and of approximately [10-20]% in countlines. Accordingly, the purchaser of the Kandia Divestment Business will become a sizeable and strong player in the chocolate confectionery and in particular in the tablets markets.

185. The market test provided in general a positive feedback on the proposed Kandia Divestment Business and confirmed the notifying party's view that the Kandia Divestment Business is likely to attract the interest of potential purchasers. Several respondents to the market test have manifested interest in acquiring the Kandia Divestment Business. However, some concerns were expressed during the market test regarding its viability. The Divested Business in the initial remedy package proposed by the notifying party did not include the soft cake business under the Magura brand. The production for the soft cake business accounts for more than one quarter of the current manufacturing output in the

44 As noted above, at the request of the Purchaser and after the report of the Monitoring Trustee, the Commission may approve the sale of the Wedel Divestment Business without some or all of the assets and personnel of the manufacturing facility in BW, provided that appropriate structural arrangements are put in place in order to ensure the supply of the Wedel products currently manufactured at the facility in BW to the Purchaser, if this does not affect the viability and competitiveness of the Wedel Divestment Business after the sale, taking account of the proposed Purchaser.

45 As noted above, in case the removal of the assets requires third party's consent, Kraft will use its best endeavours to obtain such consent. If third party consent is not obtained, Kraft will have to provide appropriate structural arrangements in order to ensure the supply of the Wedel products currently manufactured outside of BW and Warsaw in other Cadbury factories for the Polish market.

Bucharest plant. Given that the current utilisation rate of the Bucharest plant is […], the removal of the Magura soft cake business might negatively affect the viability of the Bucharest plant. The commitments as modified by the notifying party on 21 December 2009 have been improved and now include the Magura soft cake business.

186. In the light of the above, the Commission considers the Kandia Divestment Business as a suitable commitment to remedy the serious doubts identified with regard to the Romanian chocolate tablet market.

Overall conclusion

187. For the reasons outlined above, the commitments entered into by the notifying party are sufficient to eliminate the serious doubts as to the compatibility of the transaction with the common market.

VII. CONDITIONS AND OBLIGATIONS

188. 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.

189. The achievement 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 8(5) 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.

190. In accordance with the basic distinction described above, the decision in this case is conditional on the full compliance with Section B of the Commitments. The remaining requirements set out in the other Sections C, D and E of the Commitments are considered to constitute obligations.

VIII. CONCLUSION

191. For the above reasons, the Commission has decided not to oppose the notified operation as modified by the commitments and to declare it compatible with the common market and with the functioning of the EEA Agreement, subject to full compliance with the conditions in section B of the commitments annexed to the present decision and with the obligations contained in the other sections of the said commitments. This decision is adopted in application of Article 6(1)(b) in conjunction with Article 6(2) of Council Regulation (EC) No 139/2004.

For the Commission

(signed)

Joaquin ALMUNIA
Member of the Commission

By email and by fax: 00 32 2 296 4301

European Commission
Directorate-General for Competition
Merger Registry
70 Rue Joseph II / Jozef-II straat 70

B-1000 Brussels

Case M. 5644 Kraft Foods/Cadbury

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2), of Council Regulation (EEC) No. 139/2004 as amended (the **"Merger Regulation"**), Kraft Foods Inc. ("**Kraft Foods**") hereby provides the following Commitments (the **"Commitments"**) in order to enable the European Commission (the **"Commission"**) to declare the acquisition of Cadbury plc compatible with the common market and the EEA Agreement by its decision pursuant to Article 6(1)(b) of the Merger Regulation, (the **"Decision"**).

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 (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004.

Section A. Definitions

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

Affiliated Undertakings: undertakings controlled by Kraft Foods, whereby the notion of control shall be interpreted pursuant to Article 3 Merger Regulation and in the light of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004.

Cadbury: Cadbury plc, whose registered office is at Cadbury House, Sanderson Road, Uxbridge, UB8 1DH, UK and all affiliated undertakings controlled by Cadbury plc., whereby the notion of control shall be interpreted pursuant to Article 3 Merger Regulation and in the light of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004.

Cadbury Shares: the existing unconditionally allotted or issued and fully paid (or credited as fully paid) ordinary shares of 10 pence each in the capital of Cadbury (including those represented by Cadbury American depositary shares) and any further such shares which are unconditionally allotted or issued and fully paid (or credited as fully paid) before the Offer closes (or before such earlier time as Kraft Foods may, subject to the City Code On Takeovers and Mergers, decide), but excluding in both cases any such shares held or which become held in treasury.

Closing: In relation to each Divestment Business, the transfer of the legal title of the Divestment Business to the Purchaser.

Decision Date: the date of the adoption of the Decision.

Divestment Businesses: the businesses as defined in Section B and the Schedules that Kraft Foods commits to divest (each respective business described in the Schedules herein referred to as a **Divestment Business**).

Divestiture Trustee: one or more natural or legal person(s), independent from Kraft Foods, who is approved by the Commission and appointed by Kraft Foods and who has received from Kraft Foods the exclusive Trustee Mandate to sell the Divestment Businesses to one or more Purchasers at no minimum price.

Effective Date: the date on which the Offer becomes or is declared wholly unconditional within the meaning of the Offer.

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

Hold Separate Manager: the person or persons appointed by Kraft Foods to manage the day-to-day business of each Divestment Business under the supervision of the Monitoring Trustee.

Key Personnel: all personnel necessary to maintain the viability and competitiveness of the Divestment Businesses, as described in the Schedules.

Kraft Foods: Kraft Foods Inc. whose business address is at Three Lakes Drive, Northfield, Illinois 60093, USA.

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

Offer: the offer made by Kraft Foods on 4 December 2009 to acquire all the Cadbury Shares (including those represented by Cadbury American depositary shares) on the terms and subject to the conditions set out in the offer document and the acceptance forms provided for by the Offer (and, where the context so requires, any subsequent revision, variation, extension or renewal of such offer, including any election or alternative available in connection with it).

Personnel: all personnel currently employed by the Divestment Businesses including Key Personnel, as described for each Divestment Business in the Schedules.

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

Trustee(s): the Monitoring Trustee and the Divestiture Trustee.

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

Section B. The Divestment Businesses

Commitment to divest

1. In order to restore effective competition, Kraft Foods commits to divest, or procure the divestiture of, each of the Divestment Businesses by the end of the Trustee Divestiture Period as a going concern to one or more Purchaser and on terms of sale approved by the Commission in accordance with the procedure described in paragraph 15. To carry out the divestiture, Kraft Foods commits to find, for each Divestment Business, a Purchaser and to enter into a final binding sale and purchase agreement for the sale of the Divestment Businesses within the First Divestiture Period. In respect of each Divestment Business, if Kraft Foods has not entered into such an agreement at the end of the First Divestiture Period, Kraft Foods shall grant the Divestiture Trustee an exclusive mandate to sell the relevant Divestment Business in accordance with the procedure described in paragraph 24 in the Trustee Divestiture Period.

2. Kraft Foods shall be deemed to have complied with this commitment if, by the end of the Trustee Divestiture Period, Kraft Foods or an Affiliated Undertaking has entered into a final binding sale and purchase agreement for each of the Divestment Businesses, if the Commission approves the Purchaser or Purchasers and the terms in accordance with the procedure described in paragraph 15 and if the closing of the sale of the Divestment Businesses takes place within a period not exceeding three months after the approval of the Purchaser or Purchasers and the terms of sale by the Commission.

3. In order to maintain the structural effect of the Commitments, Kraft Foods shall, for a period of 10 years after the Effective Date, not acquire direct or indirect influence over the whole or part of the Divestment Businesses, 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 Divestment Businesses is no longer necessary to render the proposed concentration compatible with the common market.

Structure and definition of the Divestment Businesses

4. The Divestment Businesses consist of:

4.1 The Wedel Divestment Business, as described more fully in Schedule 1, being the domestic "Polish-traditional" confectionery business of Cadbury in Poland marketed under the *Wedel* brand in Poland. The Wedel Divestment Business includes the trademarks relating to the *Wedel* brand for confectionery in the EEA, the Wedel franchising businesses under the *Wedel* brand, and the Wedel manufacturing facilities in Warsaw and Bielany Wroclawskie. Subject to applicable employment and other laws, the Wedel Divestment Business also includes a dedicated management team including all Key Personnel and other employees.

4.2 The Kandia Divestment Business, as described more fully in Schedule 2, being the domestic chocolate confectionery and soft cake business of Cadbury in Romania. The Kandia Divestment Business includes the trademarks relating to the *Kandia, Laura, ROM, Anda, Papi, Vis* and *Fagaras* brands for chocolate confectionery and the Magura brand and sub-brands in the EEA and the Kandia manufacturing facilities in Bucharest. Subject to applicable employment and other laws, the Kandia Divestment Business also includes a dedicated management team and other employees.

4.3 In relation to each Divestment Business as listed in paragraphs 4.1 and 4.2 above, and as described in more detail in Schedules 1 and 2:

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

(b) all licences, permits and authorisations issued by any governmental organisation for the benefit of the Divestment Business, which contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business;

(c) all contracts (including without limitation contracts with suppliers), leases, commitments and customer orders relating to the Divestment Business which contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business; all customer, credit and other records of the Divestment Business which contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business (items referred to under (a)-(c) hereinafter collectively referred to as **"Assets"**);

(d) the Personnel contributing to the current operation of the Divestment Business or that are necessary to maintain the viability and competitiveness of the Divestment Business, as described in the Schedules (subject to applicable employment laws and other relevant legislation); and

(e) the benefit (insofar as necessary to ensure that the Divestment Businesses are fully competitive and viable), for a transitional period of up to […] after Closing and on terms and conditions equivalent to those at present afforded to the Divestment Business, of all current arrangements under which Cadbury supplies products or services to the Divestment Businesses, as detailed in the Schedules, unless otherwise agreed with the Purchaser of any of the Divestment Businesses.

Section C. Related commitments

Preservation of Viability, Marketability and Competitiveness

5. From the Effective Date until Closing, Kraft Foods shall preserve the economic viability, marketability and competitiveness of the Divestment Businesses, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the Divestment Businesses. In particular Kraft Foods undertakes:

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

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

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

Hold-separate obligations of Kraft Foods

6. Kraft Foods commits, from the Effective Date until Closing, to keep the Divestment Businesses separate from the businesses it is retaining and to ensure that Key Personnel of the Divestment Businesses - including the Hold Separate Manager - have no involvement in any business retained and vice versa. Kraft Foods shall also ensure that the Personnel does not report to any individual outside the Divestment Businesses.

7. Until Closing, Kraft Foods shall assist the Monitoring Trustee in ensuring that the Divestment Businesses are managed as distinct and saleable entities separate from the businesses retained by Kraft Foods.

8. To the extent that any sale by Kraft Foods or the Divestiture Trustee of a Divestment Business takes the form of a transfer of shares, to ensure that such Divestment Business is held and managed as a separate entity, the Monitoring Trustee shall exercise Kraft Foods' rights as shareholder in the Divestment Business (except for its rights for dividends that are due before Closing), with the aim of acting in the best interest of such business, determined on a stand-alone basis, as an independent financial investor, and with a view to fulfilling Kraft Foods' obligations under the Commitments. Furthermore, the Monitoring Trustee shall have the power to replace members of the supervisory board or non-executive directors of the board of directors, who have been appointed on behalf of Kraft Foods. Upon request of the Monitoring Trustee, Kraft Foods shall resign as member of the boards or shall cause such members of the boards to resign.

Ring-fencing

9. Kraft Foods shall implement all necessary measures to ensure that it 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 Divestment Businesses. In particular, the participation of the Divestment Businesses in a central information technology network shall be severed to the extent possible, without compromising the viability of the Divestment Businesses. Kraft Foods may obtain information relating to the Divestment Businesses which is reasonably necessary for the divestiture of the Divestment Businesses or whose disclosure to Kraft Foods is required by law.

Non-solicitation clause

10. Kraft Foods undertakes, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, the Key Personnel transferred with the Divestment Businesses for a period of […] after Closing.

Due Diligence

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

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

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

Reporting

12. Kraft Foods shall submit written reports in English on potential purchasers of the Divestment Businesses 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).

13. Kraft Foods 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.

Section D. The Purchaser

14. 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 Divestment Business as a viable and active competitive force in competition with Kraft Foods 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 Divestment Business (the before-mentioned criteria for the purchaser hereafter the "Purchaser Requirements").

15. The final binding sale and purchase agreement shall be conditional on the Commission's approval. When Kraft Foods has reached 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. Kraft Foods must be able to demonstrate to the Commission that the purchaser meets the Purchaser Requirements and that the Divestment 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 Divestment Business is being sold in a manner consistent with the Commitments. The Commission may approve the sale of the Divestment Business without one or more Assets or parts of the Personnel, if this does not affect the viability and competitiveness of the Divestment Business after the sale, taking account of the proposed purchaser. In particular,

at the request of the Purchaser and after the report of the Monitoring Trustee, unless required otherwise by applicable employment laws or other relevant legislation, the Commission may approve the sale of the Wedel Divestment Business without some or all of the assets and personnel of the manufacturing facility in Bielany Wroclawskie, provided that appropriate structural arrangements are put in place in order to ensure the supply of the Wedel Confectionary Products currently manufactured at the facility in Bielany Wroclawskie to the Purchaser, if this does not affect the viability and competitiveness of the Wedel Divestment Business after the sale, taking account of the proposed Purchaser.

Section E. Trustee

I. Appointment Procedure

16. Kraft Foods shall appoint a Monitoring Trustee to carry out the functions specified in the Commitments for a Monitoring Trustee. If Kraft Foods has not entered into a binding sales and purchase agreement one month before the end of the First Divestiture Period or if the Commission has rejected a purchaser proposed by Kraft Foods at that time or thereafter, Kraft Foods 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 Divestment Period.

17. The Trustee shall be independent of Kraft Foods, 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 Kraft Foods in a way that does not impede the independent and effective fulfilment of its mandate. In particular, where the remuneration package of a Divestiture Trustee includes a success premium linked to the final sale value of the Divestment Business, the fee shall also be linked to a divestiture within the Trustee Divestiture Period.

Proposal by Kraft Foods

18. No later than one week after the Effective Date, Kraft Foods shall submit a list of one or more persons whom Kraft Foods 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, Kraft Foods shall submit a list of one or more persons whom Kraft Foods 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 17 and shall include:

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

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

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

Approval or rejection by the Commission

19. The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one name is approved, Kraft Foods 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, Kraft Foods 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 Kraft Foods

20. If all the proposed Trustees are rejected, Kraft Foods 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 16 and 19.

Trustee nominated by the Commission

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

II. Functions of the Trustee

22. 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 Kraft Foods, 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

23. The Monitoring Trustee shall:

(a) 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.

(b) oversee the on-going management of the Divestment Business with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by Kraft Foods with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:

(i) monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Business, and the keeping separate of the Divestment Business from the business retained by the Parties, in accordance with paragraphs 5 and 6 of the Commitments;

(ii) supervise the management of the Divestment Businesses as distinct and saleable entities, in accordance with paragraph 7 of the Commitments;

(iii) (a) in consultation with Kraft Foods, determine all necessary measures to ensure that Kraft Foods 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 Divestment Businesses, in particular strive for the severing of the Divestment Businesses' participation in a central information technology network to the extent possible, without compromising the viability of the Divestment Businesses, and (b) decide whether such information may be disclosed to Kraft Foods as the disclosure is reasonably necessary to allow Kraft Foods to carry out the divestiture or as the disclosure is required by law;

(iv) monitor the splitting of assets and the allocation of Personnel between the Divestment Businesses and Kraft Foods or Affiliated Undertakings;

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

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

(vii) review and assess potential purchasers as well as the progress of the divestiture process and verify that, dependant on the stage of the divestiture process, (a) potential purchasers receive sufficient information relating to the Divestment Businesses 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;

(viii) provide to the Commission, sending Kraft Foods 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 Divestment Businesses 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 Kraft Foods a non-confidential copy at the same time, if it concludes on reasonable grounds that Kraft Foods is failing to comply with these Commitments;

(ix) within one week after receipt of the documented proposal referred to in paragraph 15, submit to the Commission a reasoned opinion as to the suitability and independence of the proposed purchaser and the viability of the relevant Divestment Business after the Sale and as to whether the Divestment Business is sold in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the Sale of the Divestment Business without one or more Assets or not all of the Personnel affects the viability of the Divestment Business after the sale, taking account of the proposed purchaser.

Duties and obligations of the Divestiture Trustee

24. Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at no minimum price any Divestment Business to a purchaser, provided that the Commission has approved both the purchaser and the final binding sale and purchase agreement in accordance with the

procedure laid down in paragraph 15. The Divestiture Trustee shall include in the sale and purchase agreement such terms and conditions as it considers appropriate for an expedient sale in the Trustee Divestiture Period. In particular, the Divestiture Trustee may include in the sale and purchase agreement such customary representations and warranties and indemnities as are reasonably required to effect the sale. The Divestiture Trustee shall protect the legitimate financial interests of Kraft Foods, subject to Kraft Foods' unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.

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

III. Duties and obligations of the Parties

26. Kraft Foods shall provide and shall cause its advisors to provide the Trustee with all such co-operation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of Kraft Foods' or the Divestment Businesses' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments and Kraft Foods and the Divestment Businesses 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.

27. Kraft Foods shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Divestment Businesses. This shall include all administrative support functions relating to the Divestment Businesses which are currently carried out at headquarters level (if any). Kraft Foods 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. Kraft Foods 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.

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

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

30. At the expense of Kraft Foods, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to Kraft Foods' 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 Kraft Foods refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard Kraft Foods. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 29 shall apply mutatis mutandis. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served Kraft Foods during the Divestiture Period if the Divestiture Trustee considers this is in the best interest of an expedient sale.

IV. Replacement, discharge and reappointment of Trustees

31. If the Trustee ceases to perform its functions under the Commitments 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 Kraft Foods to replace the Trustee; or

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

32. If the Trustee is removed according to paragraph 31, 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 16-21.

33. Beside the removal according to paragraph 31, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

Section F. The Review Clause

34. The Commission may, where appropriate, in response to a request from Kraft Foods, 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 Kraft Foods 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 Kraft Foods be entitled to request an extension within the last month of any period.

SIGNED BY:

……………………………………...

Gerd Pleuhs, Senior Vice President and Deputy General Counsel

duly authorised for and on behalf of

KRAFT FOODS INC.

SCHEDULE 1

Wedel Divestment Business

1. The Wedel Divestment Business has 150 years of history and holds the number one position in chocolate confectionery in Poland with leading positions in both tablet and praline formats. It is estimated to have net revenues of PLN […] million (EUR […] million) in 2008. More particularly, it consists of:

   (a) Rights, title and interests (other than those mentioned in paragraph 3) in the domestic "Polish-traditional" confectionery business marketed under the *Wedel* brand and sub-brands in Poland (the "**Wedel Confectionery Products**"); Wedel Confectionery Products includes both chocolate confectionery and sugar confectionery products sold under the Wedel brand and sub-brands in Poland.

   (b) The confectionery manufacturing plant at Bielany Wroclawskie, including all manufacturing assets required for the production of Wedel Confectionery Products at Bielany Wroclawskie ("**BW**"); the BW plant is a modern plant built in 1993. The factory is located in South West Poland with good access to major transport routes. Its production was recently extended to […] sqm;

   (c) The confectionery manufacturing plant in Warsaw, including all manufacturing assets required for the production of Wedel Confectionery Products at Warsaw ("**Warsaw**"); The Warsaw plant is the original Wedel plant for which a modernization programme was launched in 2007 which added a new production line for Ptasie Mleczko, new research laboratories and new offices. A total of EUR […] has recently been spent on the factory.

   (d) Insofar as Wedel Confectionery Products for the Polish market are currently manufactured outside of BW and Warsaw in other Cadbury factories, Kraft Foods shall be obliged to supply the Purchaser for a period of up to […] with the respective products currently produced on terms and conditions equivalent to those applying at the Decision Date. After that period Kraft Foods, at its own expense, has to transfer all the respective manufacturing assets contributing predominantly to or necessary for the production of these Wedel Confectionery Products to a site determined by the Purchaser within a period up to […]. In case the removal of the assets requires third party's consent, Kraft will use its best endeavors to obtain such consent. If third party consent is not obtained, Kraft will have to provide appropriate structural arrangements in order to ensure the supply of the Wedel Confectionery Products currently manufactured outside of BW and Warsaw in other Cadbury factories for the Polish market.

   (e) Rights, title and interest in the Wedel franchising business currently operated by Cadbury in Poland (the "**Wedel Franchise Business**").

2. The Wedel Divestment Business includes:

   (a) Finished goods inventory, work in process, sales and promotional material (where available) relating to the Wedel Divestment Business and held at the date of Closing;

   (b) All Wedel Confectionery Products trademarks listed in Annex 1(a);

(c) The transfer of all other intellectual property rights (including pending applications) available to Cadbury and necessary to give the Purchaser the right to manufacture and sell the Wedel Confectionery Products or operate the Wedel Franchise Business. These intellectual property rights consist of recipes, manufacturing know-how and other secret know-how, rights to the trade dress and all related copyright;

(d) All licenses, permits and authorizations contributing to the Wedel Divestment Business, including all relevant dossiers relating to such licenses, permits and authorizations available to Cadbury;

(e) Copies of all relevant data, books, records, and other documents available to Cadbury and related to or necessary for the operation of the Wedel Divestment Business, including existing customer records of the Wedel Divestment Business, provided that Kraft Foods may redact from such copies any information that does not relate to the Wedel Divestment Business;

(f) Subject to applicable employment laws and other relevant legislation, all employees including Key Personnel currently contributing to the Wedel Divestment Business at the BW and Warsaw manufacturing facilities or necessary to maintain the viability and competitiveness of the Wedel Divestment Business;

(g) Subject to applicable employment laws and other relevant legislation, employees engaged in the management, marketing, sales, finance, human resources, R&D and logistics functions and currently contributing to the Wedel Divestment Business or necessary to maintain the viability and competitiveness of the Wedel Divestment Business;

(h) Unless otherwise requested by the Purchaser, Kraft Foods will provide the Wedel Divestment Business with transitional services for the period of up to […] months after Closing on terms and conditions equivalent to those at present afforded by Cadbury to the Wedel Divestment Business, insofar as necessary to maintain the viability and competitiveness of the Wedel Divestment Business.;

(i) If so required by the Purchaser and when necessary to maintain the viability and competitiveness of the Wedel Divestment Business, a licence to use any *Cadbury* brand currently used in connection with the Wedel Confectionery Products other than those transferred hereunder to the Purchaser in connection with the Wedel Confectionery Products in Poland, for a period of […].

3. For the avoidance of doubt, the Wedel Divestment Business shall not include and Kraft Foods shall retain:

   (a) The assets located in Skabmierz, including an existing plant for gum and a chocolate production facility / R&D center, currenctly under construction;

   (b) The confectionery business sold without the Wedel brand, including all confectionery brands and sub-brands owned by Cadbury as well as any other intellectual property related thereto, subject to the obligation of Kraft Foods to provide the Purchaser with a licence to those brands pursuant to 2(i) above. For the avoidance of doubt, in this sub-paragraph 3(b) and in sub-paragraph 3(c) and 3(d), the use of the word “Wedel” or the use of the “Wedel” logo on the packaging of products merely to indentify the manufacturer, importer or distributor of the product concerned does not for that reason alone result in that product being a Wedel Confectionery Product. In relation to all Retained Products (defined below) that use the Wedel name or logo merely for this purpose, Kraft Foods will remove all references to Wedel on these products as soon as existing stocks of such packaging are fully utilised, or after a period of […] whichever is longer.

(c) The brands *Cadbury* and *Halls* as well as (i) all confectionery brands and sub-brands that are not used on products in Poland; and (ii) those confectionery brands and sub-brands currently used by the Wedel Divestment Business in Poland in combination with, and outside Poland without, the *Wedel* brand which are predominantly sold by Cadbury outside of Poland. The latter include, to the best of Kraft Foods' knowledge, the brands *Picnic, Mr Big, Crunchie* and *P.S.*. This provision is subject to the obligation of Kraft Foods to provide the Purchaser with a license pursuant to 2(i) above. To the best of Kraft Foods' knowledge, the brands covered by this paragraph (c) account for no more than [0-5]% of the Polish chocolate confectionery market or any segment of that market;

(d) The non-Wedel branded international products, including all confectionery brands and sub-brands manufactured anywhere in the world and sold in Poland under the Cadbury brand, including, *Milk Tray, Eclairs* and *Mini Eggs* (the products in sub-paragraphs (b) (c) and (d), together being the "**Retained Products**").

(e) The manufacturing assets exclusively devoted to the Retained Products. Kraft Foods shall, at its own expense and– within a period of up to […], remove from BW and Warsaw the machinery and other assets used in the production of the Retained Products. Until the removal of that machinery and assets, the Purchaser shall, on request of Kraft Foods, continue to co-manufacture the Retained Products currently produced in these facilities.

Annex 1(a)

Trademarks

SCHEDULE 2
Kandia Divestment Business

1. The Kandia Divestment Business is the second largest chocolate confectionery business in Romania comprising [10-20]% of total chocolate confectionery in Romania and a full range of tablet, countline and praline formats. It is estimated to have net revenues of RON […] million (EUR […] million) in 2008. More particularly, it consists of:

   (a) Rights, title and interests (other than those mentioned in paragraph 3) in the domestic chocolate confectionery business marketed under the *Kandia, Laura, ROM, Anda, Papi Vis* and *Fagaras* brands and sub-brands in Romania (the "**Kandia Chocolate Products**");

   (b) Rights title and interests (other than those mentioned in paragraph 3) in the soft cake business or related to it marketed under the *Magura* brand and any sub-brands in Romania and owned by Cadbury (the "**Magura Products**");

   (c) The manufacturing plant at Bucharest, including all manufacturing assets required for the production of Kandia Chocolate Products and Magura Products ("**Bucharest**"); The Bucharest plant was completely modernized in 2007 and its capacity was upgraded to […] tons per year. It is well located near major transport routes.

2. The Kandia Divestment Business includes:

   (a) Finished goods inventory, work in process, sales and promotional material (where available) relating to the Kandia Divestment Business and held at the date of Closing;

   (b) All Kandia Chocolate and Magura Products trademarks listed in Annex 2(a);

   (c) The transfer of all other intellectual property rights available to Cadbury and necessary to give the Purchaser the right to manufacture and sell the Kandia Chocolate and Magura Products. These intellectual property rights consist of recipes, manufacturing know-how and other secret know-how, rights to the trade dress and all related copyright;

   (d) All licenses, permits and authorizations contributing to the Kandia Divestment Business, including all relevant dossiers relating to such licenses, permits and authorizations available to Cadbury;

   (e) Copies of all relevant data, books, records, and other documents available to Cadbury and related to or necessary for the operation of the Kandia Divestment Business, including existing customer records of the Kandia Divestment Business, provided that Kraft Foods may redact from such copies any information that does not relate to the Kandia Divestment Business;

   (f) Subject to applicable employment laws and other relevant legislation, all employees currently contributing to the Kandia Divestment Business at the Bucharest manufacturing facility or necessary to maintain the viability and competitiveness of the Kandia Divestment Business;

   (g) Subject to applicable employment laws and other relevant legislation, employees engaged in the management, marketing, sales, finance, human resources, R&D and logistics functions and currently contributing to the Kandia Divestment Business or necessary to maintain the viability and competitiveness of the Kandia Divestment Business;

(h) Unless otherwise requested by the Purchaser, Kraft Foods will provide the Kandia Divestment Business with transitional services for the period of up to […] after Closing on terms and conditions equivalent to those at present afforded by Cadbury to the Kandia Divestment Business, insofar as necessary to maintain the viability and competitiveness of the Kandia Divestment Business;

(i) Unless the Purchaser does not require it, Kraft Foods will enter into a co-manufacturing agreement with the Purchaser for a period of up to […], pursuant to which the Purchaser will manufacture products currently manufactured in Bucharest other than the Kandia Chocolate or Magura Products (the "**Kandia Co-Manufacturing Agreement**"). If the Purchaser does not require Kraft Foods to enter into the Kandia Co-Manufacturing Agreement, Kraft Foods shall, at its own expense and within a period of up to […], remove from Bucharest the machinery and other assets used in the production of the Kandia Non-Chocolate Products (defined as non-chocolate brands and sub-brands owned by Cadbury, including, without limitation, the *Sugus* and *Silvana* brands as well as any other intellectual property related thereto except the *Magura* brand and sub-brands).

3. For the avoidance of doubt, the Kandia Divestment Business does not include:

(a) The non-chocolate confectionery business, including all non-chocolate brands and sub-brands owned by Cadbury, including , *Sugus* and *Silvana* brands except the *Magura* brand and sub-brands (the "**Kandia Non-Chocolate Products**");

(b) The brand *Cadbury* as well as all chocolate brands and sub-brands that are not used by the Kandia Divestment Business in Romania.

(c) The manufacturing assets exclusively devoted to the Kandia Non-Chocolate Products. If the Purchaser does not require Kraft Foods to enter into the Kandia Co-Manufacturing Agreement, Kraft Foods shall, at its own expense and within a period of up to […], remove from Bucharest the machinery and other assets used in the production of the Kandia Non-Chocolate Products.

Annex 2(a)

Trademarks

[…]