



**DETERMINATION OF MERGER
NOTIFICATION M/14/026 -**

**VALEO/WARDELL/ROBERT
ROBERTS**

Dated 17 February 2015



Introduction

1. On 17 October 2014, pursuant to section 18(1) of the Competition Act 2002 (“the 2002 Act”), the Competition Authority (“the Authority”) received a notification of a proposed acquisition whereby Valeo Foods UK Limited (“Valeo”) would acquire sole control of Wardell Roberts Limited (“Wardell”) and Robert Roberts (NI) Limited (collectively the “Target Companies”).
2. On 31 October 2014, by virtue of sections 38 and 39 of the Competition and Consumer Protection Act 2014 (“the 2014 Act”), the Authority was dissolved and all of the functions vested in the Authority immediately before that date became vested in the Competition and Consumer Protection Commission (“the Commission”). Section 39(2) of the 2014 Act provides that references in any Act of the Oireachtas passed before 31 October 2014 to the Authority shall, on and after 31 October 2014, be construed as references to the Commission.
3. Section 6 of the 2014 Act provides that where a merger or acquisition was notified under Part 3 of the 2002 Act before the commencement of section 7(1)(b) and Parts 3 and 4 of the 2014 Act (i.e. before 31 October 2014), then, upon such commencement, the 2002 Act shall apply to the merger or acquisition as if the amendments effected by section 7(1) and Parts 3 and 4 of the 2014 Act had not been made.

The Undertakings Involved

The Acquirer

4. Valeo is solely controlled by CapVest Equity Partners II, L.P. (“CapVest”), a limited partnership established in Bermuda which principally makes private equity investments in Western Europe.
5. Valeo is the holding company formed in 2010 to acquire the entire issued share capital of (i) Maiden Acquisition Company Holdings and (ii) Buganda Limited and Odlum Group, both subsidiaries of Origin Enterprises Public Limited Company (referred to collectively as “Origin Foods”). The Authority approved the acquisition of sole control of Valeo (and hence of Origin Foods) by CapVest on 18 November 2010.¹ The Authority approved the acquisition of Jacob Fruitfield Food Group Limited by Valeo on 14 September 2011.²
6. Valeo is involved in the supply of various consumer goods products to the retail sector in the State and Northern Ireland. Valeo’s business involves:
 - The manufacture, sale and distribution of home-baking and cooking ingredients sold under the *Shamrock* and *Odlums* brands;
 - The manufacture, sale and distribution of products sold under the *Batchelors*, *Erin* and *Rowse* brands;

¹ M/10/031 – CapVest/Origin Foods/Maiden.

² M/11/028 – Valeo Foods/Jacob Fruitfield.



- The import, sale and distribution of Italian meal solutions marketed under the *Roma* brand;
 - The sale and distribution of the *Sqeez* brand;
 - The import, sale and distribution of products marketed under the following brands: *Jacob's*, *Bolands*, *Picnic*, *Lustre*, *Fruitfield*, *Chef*, *Tuc*, *Silvermints*, *Double Centres*, *Scots Clan* and *Yorkshire Toffee* brands; and
 - The distribution of products marketed under third party brands, including *Fox's* biscuits³, *Ballymaloe*, *Nature Valley*, *Betty Crocker*, *Green Giant*, *Old El Paso*, *Lavazza*, *Punjana*, *Flora*, *Crisp and Dry*, *Mazola*, *Pura*, *Fiddes Payne*, and *Liga*⁴ brands.
7. For the financial year ending September 2014, CapVest's worldwide turnover was approximately €[...]. CapVest's turnover in the State for the same period was approximately €[...].

The Target Companies

8. Wardell and Robert Roberts (NI) Limited (the "Target Companies") are owned by DCC plc, an international sales, marketing, distribution and business support services group.
9. Wardell is the holding company for both Robert Roberts Limited ("Robert Roberts") and Kelkin Limited ("Kelkin").
10. Robert Roberts and Robert Roberts (NI) Limited distribute a range of owned and agency brands (including *Robert Roberts* tea and coffee, *Goodall's* home cooking products, *Gateaux* cakes, *Lemon's* and *Wilton* confectionery and *YR* sauce) to the retail and food service sectors in the State and Northern Ireland and are also distributors of wine and liqueurs to both the on-trade and off-trade sectors in the State and Northern Ireland. Robert Roberts (NI) Limited carries out the Robert Roberts operations in Northern Ireland.
11. Kelkin is a health food company operating across a number of food segments in the State. In addition to its own brands, Kelkin acts as an agent for third party brands in the grocery and pharmacy sectors that complement the Kelkin brand.
12. For the financial year ending 30 March 2014, Robert Roberts' worldwide turnover was €[...] and Kelkin's worldwide turnover was €[...]. Robert Roberts' turnover in the State was €[...] and Kelkin's turnover in the State for the same period was €[...].

Rationale for the Proposed Transaction

13. The parties state in the notification:

³ [...]

⁴ With the exception of *Ballymaloe*, *Punjana*, *Fiddes Payne* and *Liga*, Valeo does not supply these brands to Tesco.



“Valeo seeks to acquire the Target Companies as it views the Robert Roberts and Kelkin businesses as complementary to its own. The proposed transaction will enable Valeo to enter the growing health and wellness channel through Kelkin and grow its business in the hot beverage segment through the acquisition of Robert Roberts. The proposed transaction will enable Valeo to consolidate, generating growth through developing new products and ranges. The proposed transaction of the Target Companies will also allow Valeo to give greater width and depth to its distribution footprint in Ireland as the Target Companies have a much wider distribution system to that of Valeo. DCC seeks to divest the Target Companies since it wishes to focus on its core businesses both in Ireland and abroad.”

Preliminary Investigation (“Phase 1”)

Contacts with the Undertakings Involved

14. On 13 November 2014, the Commission served a Requirement for Further Information on each of CapVest and DCC plc pursuant to section 20(2) of the 2002 Act. This automatically suspended the procedure for the Commission’s Phase 1 assessment.
15. Upon receipt of the responses to the Requirements for Further Information, the “appropriate date” (as defined in section 19(6) of the 2002 Act) became 21 November 2014.⁵
16. During the Phase 1 investigation, the Authority (and, from 31 October 2014 onwards, the Commission) requested and received, on an on-going basis, further information and clarifications from the notifying parties. This included AC Nielsen data necessary for econometric analysis.
17. On 5 December 2014, the merging parties made a submission to the Commission concerning cold sauces including brown sauce.⁶ On 16 December 2014, the Commission met the merging parties to discuss that submission. On 17 December 2014, the Commission received a letter from the notifying parties concerning cold sauces.

Third Party Submissions

18. During the Phase 1 investigation, the Commission received one third party submission concerning the identity of the acquiring party to the proposed transaction. The Commission considers that this third party submission raises no competition issues in relation to the proposed transaction.

Market Enquiries

⁵ The “appropriate date” is the date from which the time limits for making both Phase 1 and Phase 2 determinations begin to run.

⁶ See paragraphs 59-91 below for a discussion of the definition of the market for the supply of brown sauce to the retail sector in the State.



19. During the Phase 1 investigation, the Commission drew up a questionnaire to be answered by customers of the merging parties. The Commission sent the questionnaire to the merging parties' top five customers in the State (as listed in the notification) in each of nineteen overlapping product categories (as set out in paragraph 34 below, excluding the supply of biscuits to the food service sector).⁷ The Commission received a full response from all customers of the merging parties.
20. During the Phase 1 investigation, the Commission also contacted competitors of the merging parties in the following four overlapping product categories:
 - The supply of ambient juice to the retail sector in the State;
 - The supply of rice cakes to the retail sector in the State;
 - The supply of coffee to the food service sector in the State; and,
 - The supply of brown sauce to the retail sector in the State.

Consumer Survey

21. The Commission engaged Ipsos MRBI to undertake a consumer survey with respect to the brown sauce product category. A representative sample of 1,000 consumers was contacted by telephone interview in November/December 2014, of which 410 purchase brown sauce. On 17 December 2014, the Commission received a final written report from Ipsos MRBI. The results are reported in detail below.

External Econometrician

22. The Commission engaged the services of Professor Patrick Paul Walsh of University College Dublin to carry out a statistical and econometric analysis of the cold sauces segment using AC Nielsen data provided by the parties.

Phase 1 Determination

23. Having considered all the available information in its possession at the time, the Commission was unable to form the view at the conclusion of the Phase 1 investigation that the result of the proposed acquisition would not be to substantially lessen competition in any market for goods or services in the State.
24. Accordingly, on 18 December 2014, the Commission determined, in accordance with section 21(2)(b) of the 2002 Act, to carry out a full investigation under section 22 of the 2002 Act.

⁷ In total, the parties overlap horizontally in twenty product categories. In the case of each of seventeen product categories pertaining to the grocery retail sector in the State, both parties generally listed the same grocery retail customers in the notification. In total, six customers received a questionnaire from the Commission which consisted of questions relating to these seventeen product categories. In the case of other two product categories (the supply of coffee to the Irish food service sector and the supply of tea to the Irish food service sector), both parties listed the same top 5 customers for each product category. Thus, in total, ten customers in the food service sector received a questionnaire. In the case of the supply of biscuits to the Irish food service sector, the Commission did not send a questionnaire to any customers since the level of overlap between the parties is *de minimis*.



Full Investigation (“Phase 2”)

Third Party Submissions

25. No third party submission was received by the Commission during the Phase 2 investigation.

Market Enquiries

26. During the Phase 2 investigation, the Commission continued the process, initiated during Phase 1, of seeking the views of customers and competitors of the merging parties. The Commission drew up a questionnaire in relation to the brown sauce product category to be answered by the merging parties’ top six customers in the State (as listed in the notification) and by the discounters, Aldi and Lidl. The Commission received a full response from all third parties.

Contacts with External Econometrician

27. On 28 January 2015, the Commission received a written econometric report from Professor Patrick Paul Walsh. The findings are reported in detail below.
28. Although the Commission benefitted from expert advice, the Commission alone is responsible for the views expressed in this Determination.

Contacts with the Undertakings Involved

29. During the Phase 2 investigation, the Commission requested and received, on an on-going basis, further information and clarifications from the notifying parties. On 6 January 2015, Valeo submitted to the Commission an econometric report prepared by Frontier Economics on behalf of Valeo. On 12 January 2015, the merging parties made a submission to the Commission concerning cold sauces.
30. On 23 January 2015, the Commission sent an informal request for information to both Valeo and the Target Companies. The latter responded on 28 January 2015. No response was received from Valeo.
31. On 9 February 2015, Valeo submitted to the Commission a second econometric report prepared by Frontier Economics on behalf of Valeo.
32. On 9 February 2015, the Commission met with the merging parties. During this meeting, Valeo informed the Commission of its intention to make proposals to the Commission to divest the YR brand. On 16 February 2015, Valeo submitted to the Commission formal proposals under section 20(3) of the 2002 Act to divest the YR brand.

Competitive Analysis

33. Both Valeo and the Target Companies are involved in the supply of food products to the retail sector and the food service sector in the State. The retail sector encompasses large supermarkets known as "multiples", medium-sized shops which are usually part of a "symbol" group, and smaller convenience shops and independent retailers.



34. Specifically, Valeo and the Target Companies overlap horizontally in the supply of the following food products in the State:

- The supply of biscuits to the retail sector;
- The supply of soup to the retail sector;
- The supply of dry pasta to the retail sector;
- The supply of vinegar to the retail sector;
- The supply of stock cubes to the retail sector;
- The supply of olive oil to the retail sector;
- The supply of home baking products to the retail sector;
- The supply of wet pasta sauces to the retail sector;
- The supply of confectionery products to the retail sector;
- The supply of cereal bars to the retail sector;
- The supply of raisins (for lunchboxes) to the retail sector;
- The supply of jams/marmalade to the retail sector;
- The supply of coffee to the retail sector;
- The supply of tea to the retail sector;
- The supply of biscuits to the food service sector;
- The supply of tea to the food service sector;
- The supply of ambient juice to the retail sector;
- The supply of rice cakes to the retail sector;
- The supply of coffee to the food service sector; and,
- The supply of brown sauce to the retail sector.

35. Table 1 below presents the parties' market shares in each product category.⁸

Table 1 – Market Shares by Product Category, by Value, the State, 2013

⁸ The parties did not provide market share estimates for either the supply of biscuits to the Irish retail sector or the supply of biscuits to the Irish food service sector.



Product Category	Valeo	The Target Companies	Combined
Soup	[0-5]%	[0-5]%	[0-5]%
Dry Pasta	[no figure provided]	[0-5]%	
Vinegar	[30-40]%	[0-5]%	[30-40]%
Stock Cubes	[0-5]%	[5-10]%	[5-10]%
Olive Oil	[0-5]%	[0-5]%	[5-10]%
Home Baking Products	[20-30]%	[0-5]%	[20-30]%
Wet Pasta Sauces	[0-5]%	[0-5]%	[5-10]%
Confectionery	[0-5]%	[0-5]%	[0-5]%
Sugar Confectionery	[0-5]%	[0-5]%	[5-10]%
Cereal Bars	[10-20]%	[0-5]%	[10-20]%
Raisins	[5-10]%	[0-5]%	[5-10]%
Jam	[0-5]% (Jam)	[10-20]% (Jam)	[10-20]%
Marmalade	[30-40]% (marmalade)	[0-5]% (marmalade)	[30-40]%
Coffee	[0-5]%	[0-5]%	[0-5]%
Tea	[0-5]%	[0-5]%	[5-10]%



Tea (to the food service sector)	[0-5]%	[10-20]%	[10-20]%
Ambient Juice	[20-30]%	[5-10]%	[20-30]%
Rice Cakes	[0-5]%	[30-40]%	[30-40]%
Coffee (to the food service sector)	[10-20]%	[10-20]%	[30-40]%
Brown Sauce	[50-60]%	[10-20]%	[70-80]%

Source: The Parties

36. The Commission considers that the proposed transaction will not substantially lessen competition in any of the first sixteen product categories listed in paragraph 34 above. For each of these sixteen product categories, the increment in Valeo's share following completion of the proposed transaction will be small. During market inquiries undertaken by the Commission, none of the customers or competitors contacted by the Commission raised a competition concern about any of these sixteen product categories.
37. The Commission now sets out in detail its assessment of the competitive impact of the proposed transaction in each of final four product categories listed in paragraph 34 above.

The supply of Ambient Juices to the retail sector in the State

Views of the Undertakings Involved

38. The parties state in the notification:

“An overlap arises in regard to the Valeo brand Sqeez and Kelkin Juices and Robert Roberts agency products Ocean Spray and Libbys. The Parties submit that the narrowest relevant market is the Irish all juices market where any overlap is *de minimis*. Even if the Authority were to take a narrower view and look only at ambient juices, Sqeez has [20-30]% of the Irish ambient juice 'market'. Kelkin juice represents [0-5]% of Irish retail sales by value while the Robert Roberts agency brands represent [0-5]% approx. by value. In the all juices market, the merged entity will continue to face competition from a number of large and sophisticated competitors including: [...] who make and sell a range of juices, nectars, still drinks, yogurt



drinks and/or smoothies. Furthermore, [private label] brands are offered by the large multiples ([...]) and the 'discounters' ([...]) who together are a strong, significant and growing competitive force accounting for [30-40]% of the total Irish juice market.”

Views of the Commission

39. Table 2 below presents shares in the supply of ambient juices to the Irish retail sector over the period May 2010 to May 2013.

Table 2: Supply of Ambient Juice to the Irish Retail Sector, by value, May 2010-May 2013

Supplier	Year to May 2011	Year to May 2012	Year to May 2013
Valeo	[20-30]%	[20-30]%	[20-30]%
Kelkin	[5-10]%	[5-10]%	[5-10]%
Private Label	[40-50]%	[40-50]%	[40-50]%
Fruice	[5-10]%	[5-10]%	[5-10]%
Sunsweet	[0-5]%	[0-5]%	[0-5]%
Others ⁹	[10-20]%	[10-20]%	[10-20]%

Source: The Parties

40. Valeo’s share of the ambient juices product category will increase from [20-30]% to [20-30]% following the proposed transaction which includes two brands for which Robert Roberts currently acts as an agent (Ocean Spray and Libbys). The Commission considers, however, that the merged entity will continue to face significant competition post-transaction from private label ambient juice products (which have a combined share of [40-50]%) and brands such as *Fruice* (which is owned by Coca-Cola HBC) and *Dawn* (which is owned by Glanbia plc).
41. No retailer contacted by the Commission raised a competition concern about the supply of ambient juices to the retail sector. Retailer 1 expressed the view that the merging parties brands “all appeal to different customers”. Retailer 4 noted that private label

⁹ Included in the “Others” category are the Avonmore and Dawn brands, both of which are owned by Glanbia..



sales are strong in the juices sector. Retailer 6 noted that “the juice market is in significant decline and the DCC brands have very small value and volume.”

42. Two competitors of the merging parties in the ambient juices sector in the State responded to the Commission’s questionnaire. Both competitors stated that private label is their biggest competitor in the ambient juice sector in the State. Competitor 1 stated that “competition from own-label products [is] strong and in our experience juice drinks are very susceptible to consumer brand switching from branded to private label.” Competitor 2 stated that the proposed transaction would have a minimal impact in the ambient juices sector in the State.
43. In light of the above, the Commission considers that the proposed transaction will not substantially lessen competition in the supply of ambient juices to the retail sector in the State.

The supply of Rice Cakes to the retail sector in the State

Views of the Undertakings Involved

44. The parties state in the notification:

“Valeo launched rice cakes in October 2013 under the Jacob's brand. While Kantar does not supply specific data in regard to rice cakes, Kelkin's best estimate is that its rice cakes represent [30-40]% of sales to the Irish retail sector by value. This represents a steep decline from [40-50]% in 2012, with sales being eroded primarily by [private label] and 'discounters'. Valeo estimates its Jacob's rice cakes have [0-5]% of the market by value since its launch in late 2013. Valeo's launch of Jacob's rice cakes demonstrates the ease of entry in this segment which others could easily emulate if they wished to do so. The merged entity will continue to face strong and significant competition from other rice cake brands including [...] who currently has an estimated [30-40]% of the Irish retail sector by value, [private label] brands which represent an estimated [20-30]% of the market by value and other brands including [...] and [...].”

Views of the Commission

45. Table 3 below presents shares in the supply of rice cakes to the Irish retail sector over the period 2012 to 2014.

Table 3: Supply of Rice Cakes to the Irish Retail Sector, by value, 2012-2014

Supplier	2012	2013	2014
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Valeo	N/A	[0-5]%	[0-5]%
Kelkin	[40-50]%	[30-40]%	[30-40]%
National Organic Products	[30-40]%	[30-40]%	[30-40]%
Boyne Valley Group	[5-10]%	[5-10]%	[0-5]%
Kallo	[0-5]%	[0-5]%	[0-5]%
Private Label	[0-5]%	[5-10]%	[10-20]%
"Discounters" ¹⁰	[0-5]%	[5-10]%	[5-10]%

Source: Kelkin Management Estimates

46. Valeo's share of the rice cakes product category will increase from [0-5]% to [30-40]% following the proposed transaction.
47. Two competitors of the merging parties in the rice cakes sector in the State responded to the Commission's questionnaire. Competitor 1 expressed a concern that "consumers may find their choice for different brands much reduced or find that pricing for their rice cakes has increased as a result of a market dominant position from the acquisition over time." This competitor also stated, however, that private label rice cake products are "the dominant factor and account for the vast majority of rice cake sales to consumers".
48. Competitor 2 stated that the proposed transaction would "lead to Valeo having a far greater share of the rice cakes market [and] inevitably lead to less competition and ultimately less choice for the consumer." This competitor also stated, however, that private label rice cake products are "strong and growing".
49. Notwithstanding the concerns expressed by two competing suppliers of rice cakes, the Commission considers it significant that, as can be seen from Table 3 above, Valeo is a new entrant and its share of the supply of rice cakes in the State is only [0-5]%. The Commission considers that the merged entity will continue to face significant competition post-transaction from brands such as *Bunalun* (which is owned by National Organic Products), *Lifeforce* (which is owned by Boyne Valley Group) and private label

¹⁰ This refers to Aldi and Lidl.



products. Significantly, private label's share grew from [0-5]% in 2012 to [10-20]% in 2014 and the discounters' share grew from [0-5]% in 2012 to [10-20]% in 2014.

50. No retailer contacted by the Commission raised a competition concern about the supply of rice cakes to the retail sector. Retailer 1 expressed the view that although “both *Jacob's* and *Kelkin* would be leading brands in the rice cake” segment, other rice cake suppliers are available including Boyne Valley Group and National Organic Products. This retailer also stated that private label rice cake products are very strong in this segment. Retailer 3 stated that “alternative brands and private label exist.” Retailer 4 expressed the view that “Valeo brands [are] very small value and volume as these lines are listed less than 12 months.” Retailer 6 stated that “*Kelkin's* range is a good fit/addition to the current Valeo offering and I do not consider it to be anti-competitive as there are significant number of competing offerings available.” Retailer 8 stated the following: “Less overlap – appeals to different customers. Will provide scale and value to the category.”
51. In light of the above, the Commission considers that the proposed transaction will not substantially lessen competition in the supply of rice cakes to the retail sector in the State.

The supply of Coffee to the Food Service Sector in the State

Views of the Undertakings Involved

52. The parties state in the notification:

“Valeo distributes Douwe Egberts and Lavazza coffee to the food service sector. Robert Roberts manufactures coffee which it also supplies to this sector. Robert Roberts estimates that it has a volume share of the market of [10-20]%. The Valeo agency brands (Lavazza and Douwe Egberts) represent an estimated volume share of approximately [10-20]%. The merged entity will continue to face strong and significant competition from major coffee suppliers including [...] (an estimated [30-40]% market share), [...] and [...]. [...] and the [...] are two further UK competitors who are well positioned to compete to a greater extent in the State.”

Views of the Commission

53. Table 4 below presents shares in the supply of coffee to the Irish food service sector over the period 2012 to 2014.

Table 4: Supply of Coffee to the Irish Food Service Sector, by volume, 2012-2014

Supplier	2012	2013	2014



Valeo	[10-20]%	[10-20]%	[10-20]%
Robert Roberts	[10-20]%	[10-20]%	[10-20]%
Bewleys	[30-40]%	[30-40]%	[30-40]%
Java Republic	[0-5]%	[0-5]%	[0-5]%
United Coffee Company	[0-5]%	[0-5]%	[0-5]%
Matthew Algie	[0-5]%	[0-5]%	[0-5]%
Others	[20-30]%	[20-30]%	[10-20]%

Source: The Parties

54. The Commission notes that Valeo is currently the distributor for Douwe Egberts and Lavazza coffee to the food service sector. Following the proposed transaction, the combination of these agency brands with the Robert Roberts coffee brand will give Valeo a [30-40]% share of this product category. The Commission considers, however, that the merged entity will continue to face significant competition post-transaction from competing suppliers such as Bewleys, Java Republic, United Coffee Company, and a large and growing number of independent suppliers.
55. No customer contacted by the Commission raised a competition concern about the supply of coffee to the food service sector. Customer 1 stated that “there are a range of [coffee] products available on the market from the likes of Bewley’s, Java Republic and non-Irish suppliers.” Customer 2 stated that “there is healthy competition in the market. If you take [...] alone, there are approximately 16 other coffee brands in the marketplace. It appears relatively easy to start supplying coffee and we have witnessed three new suppliers [enter] the market in recent years.”
56. Customer 3 noted that there has been “huge growth in the market in the last number of years” with many new entrants including Badger & Dodo, Cloud Picker Coffee, and Has Bean Coffee. Customer 4 listed the following competitors to the merging parties: Nespresso, Starbucks, Java Republic, Bewleys, Kenco plus other small independent coffee suppliers. Finally, customer 5 stated that “competition is quite strong in this category.”
57. None of the competitors of the merging parties in the supply of coffee to the food service sector in the State contacted by the Commission raised any competition concern. One competitor stated that “competition is strong” in this market and listed



the following suppliers as competitors: Robert Roberts, Java Republic, Kenco, United Coffee, Lavazza, and Matthew Algie.

58. In light of the above, the Commission considers that the proposed transaction will not substantially lessen competition in the supply of coffee to the food service sector in the State.



The supply of Brown Sauce to the Retail Sector in the State

59. In contrast to the other nineteen product categories, the initial investigation by the Commission of the likely competitive impact of the proposed transaction on the supply of brown sauce to the Irish retail sector raised competition concerns that warranted a more detailed competitive analysis during both the Phase 1 and Phase 2 investigation. The following section details the findings of the Commission's investigation.

Relevant Product and Geographic Market

60. In this section, the relevant market that is likely to be affected by the proposed transaction is defined in terms of its product and geographic dimensions. The views of the merging parties involved are summarised and the Commission's views are set out.

Views of the Undertakings Involved

61. The parties' view is that there is no separate product market for brown sauce and they state the following in the notification:

"The Parties submit that the relevant category is cold sauces which include ketchup and other sauces, including brown sauce, Worcestershire sauce and soy sauce. This reflects how the Parties view the market and they are confident that retailers take the same approach...if the Authority wishes to exclude ketchup sales from the category, leaving just "cold sauces", Worcestershire and soy sauce as has been its practice and that of the European Commission in previous cases, Valeo brands would account for [20-30]% of sales by value, while Robert Roberts brands have [0-5]% by value...The Authority may be minded to look at the narrowest possible overlap, namely Valeo's Chef brown sauce which accounts for [50-60]% of Irish retail sales by value overlapping with Robert Robert's YR sauce which has [10-20]% by value. Such a narrow definition is not supported by the Authority's precedent in its decision in *H.J. Heinz Company/HP Foods Limited* which concerned barbeque sauce/Worcestershire sauce...The Parties agree with the Authority's decision [in] *H.J. Heinz Company/HP Foods Limited*. The Parties' internal views, and practices of retailers and customers, confirm that there is no separate market for brown sauce which is part of the broader cold sauces category which includes sauces such as ketchup barbeque sauce, sweet chilli sauce, soy sauce, Worcestershire sauce, hot pepper sauce, garlic sauce, peri peri sauce, Cajun sauce etc."

62. In a submission to the Commission dated 5 December 2014, the parties state the following:



“The relevant product market should be examined by the CCPC by reference to the products offered and their characteristics and in the light of the submissions of the Parties. The Parties submissions and internal documents show that there is a cold sauces market. The relevance of cold sauces as a market definition (as shown by the Parties own documents, third party reports and both EU and Irish precedent) means that there is no sound reason for basing the CCPC’s determination on any narrower market definition particularly given the absence of any clear evidence to the contrary.”

“In regard to the data which was submitted to the CCPC in Tab 10 of Valeo’s response to the RFI, it is notable that the main beneficiaries of switching from Chef Brown Sauce were not other brands of Brown Sauce but other brands of BBQ sauce (i.e. everyone apart from Chef or PL) with [...] in number 2 position. This is supporting evidence for the argument of the parties that the most accurate definition of the category is all Cold Sauces i.e. Brown Sauce + Ketchup + BBQ Sauce + Other Sauces. The Nielsen report which was submitted with Valeo’s RFI response supports this conclusion: “[...]”

“Consideration should be given to the responses of other suppliers to changes in price of the product in question...[...]. This demonstrates the ease of entry/expansion for others and also that substitution by potential suppliers is both technically possible and probable as there are no barriers to entry, regulatory or otherwise. In that regard, the Parties believe that a supplier of cold sauces could switch within a short period to supply a different type of cold sauce (e.g. BBQ sauce) in response to a permanent price increase of (for example) 5-10% in brown sauce.”

63. In a submission on behalf of Valeo to the Commission on 6 January 2015, Frontier Economics state the following:

“In respect of the product market definition, our analysis shows the following: *BBQ sauce*: We have identified a substantial degree of competitive interaction between BBQ sauce and brown sauce. The level of competitive interaction identified, in our view, would support the conclusion that BBQ sauce and brown sauce are close competitors and therefore could be considered in the same product market. *Tomato Ketchup*: There is evidence to suggest that tomato ketchup competes with brown sauce, although not as strongly as does BBQ sauce. In particular, we note that there is a negative correlation between the sales volumes of ketchup and brown sauce. We note also that there is some



degree of correlation in price movements between brown sauce and tomato ketchup. On the basis of this evidence, while one could not conclude definitively that tomato ketchup and brown sauce form part of the same market, they clearly interact competitively, and hence one could not exclude a market definition that included both ketchup and brown sauce. *Other sauces*: There is little evidence to suggest the 'Other sauce' category as a group is in the same market as brown sauce. However, this is a highly differentiated product category, and it is likely that some sauces in this category are closer substitutes to brown sauce than others. This fact should not be lost in any competitive effects analysis of the proposed merger."

Views of the Commission

64. The Commission considers that brown sauce is a distinct product market. This view is based on the evidence outlined below.

Views of Retailers

65. As described above, during the Phase 2 investigation the Commission designed a questionnaire to be answered by the merging parties' top six customers in the State (as listed in the notification) in the cold sauces category. The Commission also sent the questionnaire to Aldi and Lidl during Phase 2.
66. Paragraph 2.9 of the Authority's "*Guidelines for Merger Analysis*"¹¹ states that the Commission "applies the Small but Significant Non-transitory Increase in Price ("SSNIP") test (also known as the hypothetical monopolist test) as an analytical tool" when defining the relevant product market
67. In order to help define the relevant product market, the following SSNIP test question was posed by the Commission in the questionnaire sent to customers during the Phase 2 investigation:
- "If there was a 5-10% rise in the price of all brown sauce products, how do you think consumers would react? For example, would they continue to buy brown sauce, switch to another cold sauce, or stop buying brown sauces altogether and not switch to another product."
68. With one exception, all respondents stated that consumers would continue to buy brown sauce in response to a 5-10% rise in the price of all brown sauce products. The exception referred to is Retailer 5 who stated that "brown sauce is in the same product

¹¹ Since the proposed transaction was notified under Part 3 of the 2002 Act before the commencement of section 7(1)(b) and Parts 3 and 4 of the 2014 Act (i.e. before 31 October 2014), then the 2002 Act shall apply to the notified transaction as if the amendments effected by section 7(1) and Parts 3 and 4 of the 2014 Act had not been made. As a result, the Authority's 2013 merger guidelines govern the competitive assessment of the proposed transaction. The Competition Authority, 2013, *Guidelines for Merger Analysis*, Notice N/13/001.



category as other cold sauces but some end consumers may have a preference for brown sauce over other cold sauces.”

69. By way of contrast, retailer 1 stated: “consumers would probably continue to buy brown sauce and might not even notice that the price has increased on the standard price list as it is an infrequent purchase.” Retailer 2 stated: “consumers would probably continue to buy brown sauce.” Retailer 2 also stated that BBQ sauce is not in the same product market as brown sauce because “BBQ sauce has a very different taste profile to brown sauce.”
70. Retailer 3 stated: “consumers would probably continue to buy brown sauce” and that “BBQ sauce is not a substitute for brown sauce.” Retailer 4 stated: “consumers would not like to see a price rise but would probably continue to buy brown sauce...there is generally very little switching in or out of the brown sauce market to other cold sauces; purchases of brown sauce by end consumers tend to be stable.” Retailer 4 also stated that “BBQ sauce is not a substitute for brown sauce”.
71. Retailer 6 stated: “consumers would probably continue to buy brown sauce because of its unique taste.” Retailer 7 stated: “brown sauce is most likely a separate product market because of its unique taste...end consumers would probably display a high degree of brand loyalty in brown sauce...consumers would probably continue to buy brown sauce” in response to a 5-10% rise in the price of all brown sauce products. Retailer 8 stated “consumers would probably continue to buy brown sauce as it is a unique proposition based on its taste.”
72. In conclusion, the vast majority of retailers hold the view that brown sauce occupies a separate and distinct product market.

Ipsos MRBI Consumer Survey

73. In November/December 2014, a telephone consumer survey was carried out by Ipsos MRBI on behalf of the Commission. A representative sample of 1,000 consumers was contacted, of which 410 said that they purchase brown sauce.
74. The following question was posed to the 410 consumers who said that they purchase brown sauce:

“If the price of Chef Brown sauce increased by 10%, while competitor cold sauces prices remained the same, would you: (a) continue to buy Chef Brown sauce, (b) switch to another brown sauce product, (c) switch to another cold sauce product, (d) stop buying Chef Brown sauce and not switch to another product?”

75. 61% (of the 315 respondents who have used Chef Brown sauce) stated that they would continue to buy Chef Brown sauce if its price increased by 10% while all other cold sauce prices remained the same. 31% stated that they would switch to another brown sauce product. Only 3% stated that they would switch to another cold sauce.
76. The following question was also posed to participants:



“If the price of YR brown sauce increased by 10%, while competitor cold sauces prices remained the same, would you: (a) continue to buy YR brown sauce, (b) switch to another brown sauce product, (c) switch to another cold sauce product, (d) stop buying YR brown sauce and not switch to another product?”

77. 56% (of the 201 respondents who have used YR Brown sauce) stated that they would continue to buy YR Brown sauce if its price increased by 10% while all other cold sauce prices remained the same. 34% stated that they would switch to another brown sauce product. Only 4% stated that they would switch to another cold sauce.
78. The results of the Ipsos MRBI consumer survey indicate a separate product market for brown sauce. Most consumers are unlikely to switch outside the brown sauce product category in response to a rise in the price of either Chef Brown sauce or YR brown sauce by 10%.

Econometric Analysis

79. Professor Walsh reviewed the Frontier Economics report which Valeo provided to the Commission on 6 January 2015 and concluded that there were a number of problems with the methodology used by Frontier Economic, in particular:

“It is not possible to infer competitive interaction by only looking at quantity movements. What one needs to do is control for prices and distinguish between own- and cross-price effects to examine the responsiveness of sales to a change in its own price and to a change in the price of another segment/product. Given the methodology used on de-trended volumes of segment and brand volume sales, we feel nothing definitive can be said about the degree of competitive pressure between or within segments of the cold sauce market. Frontier needed to estimate own and cross price effects within and between segments using a demand system where one instruments for causality issues. An econometric analysis of segment and brand volume sales could never lead to the conclusions of the Frontier report without linking them to price changes and controlling for causation.”

80. Professor Walsh therefore concluded that the findings of the Frontier Economics report were not credible or robust.
81. Using the same AC Nielsen data (which covers all cold sauces including brown sauce) used by Frontier Economics, Professor Walsh carried out an independent econometric analysis on behalf of the Commission. Using the nested logit model, Professor Walsh calculated own-price or cross-price effects over the period 1 January 2012 to 28 September 2014. Professor Walsh’s results indicate that:



“While there is some competitive pressure coming from products outside the segments of the market [other cold sauces], the main cross-price effects are driven by products inside the segments [other brown sauces]. Products in brown sauce are only weakly substitutable with products in other segments.”

82. In conclusion, the econometric analysis undertaken by Professor Walsh indicates a distinct product market for brown sauce

Dunnhumby Data for Tesco Clubcard holders

83. In their submissions of 5 December 2014 and 12 January 2015, the parties refer to Dunnhumby data for Tesco clubcard holders which was provided to the Commission as part of Valeo’s response (dated 21 November 2014) to the formal Requirement for Further Information issued by the Commission. The Dunnhumby data details switching by Tesco clubcard customers over the period November 2012-November 2014.
84. As detailed above, the parties argue that since the main beneficiaries of switching from Chef Brown Sauce were not other brands of brown sauce but other brands of BBQ sauce and Heinz Ketchup, the Dunnhumby data for Tesco clubcard holders is supporting evidence that the most accurate product market definition is one encompassing all cold sauces.
85. The Commission is not convinced, however, that the Dunnhumby data is credible evidence that the relevant product market is wider than brown sauce. The Dunnhumby data provides no information on prices. It is not possible to draw conclusions on the level of competitive interaction between different cold sauce products by focusing only on total sales. The Dunnhumby data makes no attempt to control for prices in order to examine the responsiveness of sales to changes in a product’s own-price and to changes in the price of other cold sauce products. As a result, the Commission is unconvinced that the Dunnhumby data provides persuasive support for the view that the relevant product market is wider than brown sauce, especially in light of all the evidence to the contrary.

Competition Authority Determination in M/05/033 – H.J. Heinz Company/HP Foods Limited

86. In support of their view that the relevant product market is broader than brown sauce, the parties cite the Authority’s conclusions in *M/05/033 – H.J. Heinz Company/HP Foods Limited* regarding the relevant market definition. In *M/05/033 – H.J. Heinz Company/HP Foods Limited*, the Authority followed EU Commission precedent and treated ketchup as a distinct product market, it concluded that the evidence indicated that neither barbeque sauce nor Worcestershire sauce should be treated as distinct relevant markets.
87. The conclusions of the Authority in relation to the product markets it considered in *M/05/033 – H.J. Heinz Company/HP Foods Limited* are not relevant to the investigation of this proposed transaction since no assessment of the brown sauce product category was undertaken in that review. Consequently, while the Authority concluded in *M/05/033 – H.J. Heinz Company/HP Foods Limited* that Worcestershire sauce and



barbeque sauce may be part of a wider cold sauce market, it did not define the parameters of that wider market and made no finding in relation to brown sauce. It therefore cannot be inferred from that decision that brown sauce forms part of a wider cold sauce market rather than constituting a distinct product market.

Internal Documentation

88. In its response to the Commission's RFI, DCC provided a document which details the results of an online consumer survey carried out by [...] on behalf of Robert Roberts in February 2014 of 45 grocery categories, including brown sauce. The Commission considers it significant that [...] selected brown sauce as a grocery category in and of itself, to be included in the online consumer survey.

Conclusion on Relevant Product Market

89. In light of the discussion above, the Commission is of the view that there is a distinct product market for the supply of brown sauce to the retail sector.¹² This view is based on all the available evidence, particularly the views of retailers, the results of the Ipsos MRBI consumer survey, and the econometric analysis undertaken by Professor Walsh.

Conclusion on Relevant Geographic Market

90. In the notification, the parties assess the impact of the proposed transaction on the supply of cold sauces to the Irish retail sector. With respect to the geographic boundaries of the relevant product market, the Commission agrees with the parties that the State is the appropriate geographic area in which to assess the impact of the proposed transaction.
91. Having defined the relevant product and geographic markets, the Commission went on to assess the impact of the proposed transaction on the supply of brown sauce to the retail sector in the State.

Market Structure

92. Paragraph 3.1 of the Authority's "*Guidelines for Merger Analysis*" states that "A central element in assessing the competitive impact of a merger is identifying its effect on market structure." Market structure can be characterised by the number and size distribution of firms. The initial impact of any merger or acquisition is felt on market structure as two firms pre-acquisition become one firm post-acquisition
93. Table 5 below details market share data (by value) of retail sales in the brown sauce market in the State for the period August 2011 to August 2014. The total size of the retail brown sauce market was €4.57m for the year to 17 August 2014 and total sales have been stable over the previous two years.

¹² It should be noted, however, that even if the relevant product market was wider than brown sauce to encompass barbeque sauce, Valeo's post-transaction share of this hypothetical product market (i.e., brown sauce and barbeque sauce) would still be very high ([60-70]% according to the econometric report prepared by Frontier Economics on behalf of Valeo).



Table 5: Supplier's Market Share of Irish Retail Sales of Brown Sauce, by Value, August 2011-August 2014

Supplier	Year ending 19 August 2012	Year ending 18 August 2013	Year ending 17 August 2014
Valeo (<i>Chef</i>)	[50-60]%	[50-60]%	[50-60]%
Robert Roberts (<i>YR</i>)	[10-20]%	[10-20]%	[10-20]%
Heinz (<i>HP</i>)	[10-20]%	[10-20]%	[10-20]%
Private Label	[5-10]%	[5-10]%	[5-10]%
Others	[0-5]%	[0-5]%	[0-5]%
Total (€)	€[...]	€[...]	€[...]

Source: The Parties based on Kantar data

94. Market shares have been relatively stable in the brown sauce market. Chef is the clear leader in the brown sauce market with a [50-60]% market share. Chef's number one position in the brown sauce market was confirmed to the Commission by all retailers. Post-transaction, Valeo's share of the brown sauce market would increase from [50-60]% to [70-80]%. HP would be the number two brand with an [10-20]% market share.
95. Total private label sales are relatively small in the brown sauce market (i.e., approximately [5-10]% which includes the sales of private label brown sauce by Aldi and Lidl). Musgrave informed the Commission that it does not sell private label brown sauce. Information provided to the Commission by the other multiple retailers (i.e. Tesco and Dunnes Stores) indicates that their private label brown sauce sales in the State are small. Information provided to the Commission by Aldi and Lidl indicates that while their sales of brown sauce have grown during the period 2012 to 2014, this has been from a very low level. In addition to private label brown sauce, both Aldi and Lidl also sell Chef Brown sauce.
96. All of the retailers contacted indicated to the Commission that there are only three significant brands in the brown sauce market, namely Chef, YR and HP. The sales of other branded brown sauces sold in the State such as Kandee, The Ketchup Company and Branstons are very small, accounting for a combined maximum of [0-5]% of total retail sales in the State.



97. Market concentration refers to the degree to which production/supply in a particular product market is concentrated in the hands of a few large firms. The most commonly used measure of concentration is the Herfindahl-Hirschman index (“HHI”), which is defined as the sum of the squares of the market shares of all firms participating in the market. According to the Authority’s *“Guidelines for Merger Analysis”*, any market with a HHI greater than 2,000 is highly concentrated while a change in the pre-merger HHI compared to the post-merger HHI of less than 150 is “unlikely to cause concern” (paragraph 3.10). Therefore, if the post-merger HHI is above 2,000 and the change in the HHI is greater than 150, this indicates that firms in that market may be able to exercise market power
98. Based on the market shares set out in Table 5 above, the retail brown sauce market is highly concentrated. The HHI post-merger would be over 5,000 while the change in the HHI would be at least 1,200. The HHI calculations indicated that the proposed transaction may raise competition concerns.

Competitive Effects Analysis

99. In this section, the Commission examines the competitive effects of the proposed transaction in the market for the supply of brown sauce to the retail sector in the State.

Views of the Parties

100. In a submission to the Commission dated 5 December 2014, the parties state the following:

“Even if the CCPC took the view that there was a market for brown sauces (which the parties dispute), the proposed transaction would still not lead to an SLC [substantial lessening of competition] in Ireland. Competition will remain sufficiently strong post-transaction to ensure that no such unilateral effects would occur. As the materials submitted in response to the CCPC’s RFI show, [...]. Valeo is not in a position to raise prices profitably as it will be constrained by its competitors, its customers (the retailers) and end consumers who remain very price sensitive. In terms of competitors, Valeo competes with major multi-nationals such as [...] and [...], which have both ample production capacity and incentives to compete. It is also under threat from PL [private label], particularly as consumers increasingly shop at Discounters.”

“Absence of closeness of competition between Chef and YR even if there were a “brown sauces” market. The internal documents, EU and Irish precedents and the experience of the parties in Ireland show that [...] and [...] are far closer competitors than Chef and YR. YR is regarded as a distant competitor in relation to brown sauces based on switching data, independent research (e.g., the [...]) and pricing/promotion. PL sauce products are in the same



market as the Chef and YR brands as are other cold sauces sold by multi-national competitors such as [...] and [...].”

“The barriers to entry and expansion for cold sauces are very low in terms of legal or regulatory barriers, structural barriers, strategic barriers or other barriers. The recent entry and expansion of the “[...]” brand highlights how quickly a brand can be launched and how quickly it can penetrate the market. Important international suppliers can and do enter the market and attract substantial market share, particularly established UK brands which could be easily imported.”

“Countervailing buyer power is one of the most prominent characteristics of the grocery sector with three retail chains accounting for a very significant proportion of sales. It is a further characteristic and unusual feature of the grocery sector that the retailers perform the “gatekeeper” role in which they control access to shelf space while at the same time being competing suppliers of similar products (i.e., PL). The major retailers exercise considerable countervailing power in different forms regarding cold sauces. [...].”

101. In a submission to the Commission dated 12 January 2015, the parties state the following:

“Both [...] and [...] sell their own brand of brown sauce...accordingly given the ongoing growth and success of both supermarkets, their sales of brown sauces will continue to represent a competitive threat to Chef, HP and YR.”

“The 2014 [...] survey on brown sauces is a clear counter to any suggestion in the CCPC’s consumer survey that Valeo’s acquisition of YR would lessen competition...the [...] report shows that Chef and HP are viewed similarly by consumers thus making them the closest competitors in brown sauce but with YR a distant competitor to both.”

“Examples of Entry. [...] was launched in Ireland in January 2014 and [...] was launched in May 2014. In addition, [...] in the late 2000’s...[...] and [...] are a credible and growing competitive threat in the Irish retail grocery sector. In the year ended 9 November 2014...sales of private label brown sauce grew by [20-30]% in [...] and [20-30]% in [...].”

“Brands of brown sauce which have effectively exited the Irish marketplace could re-enter should there be any attempt to increase prices by Valeo/Robert Roberts. These brands include [...].”



“[...] It is thus inconceivable that there is any risk of a combined Valeo/Robert Roberts entity attempting to raise the price of brown sauce beyond a competitive level.”

102. In a submission on behalf of Valeo to the Commission on 6 January 2015, Frontier Economics state the following:

“We have also assessed the potential competitive effects of the proposed merger by considering the current competitive constraints faced by Chef and YR. Our analysis suggests that Chef and HP are nearest competitors, and that YR might be considered a more distant substitute.”

Views of the Commission

103. Assessing the competitive effects of the proposed transaction requires the identification of any relevant theories of harm (i.e., how the proposed transaction could result in a substantial lessening of competition) and an analysis of those theories of harm through an evaluation of the available evidence.
104. The applicable theory of harm on which the Commission’s investigation focused in the present case was unilateral effects which, as explained in paragraph 4.8 of the Authority’s “*Guidelines for Merger Analysis*”, occur when “a merger results in the merged entity having the ability and the incentive to raise prices at its own initiative and without coordinating with its competitors.”
105. The Commission is concerned that the proposed acquisition of the YR brown sauce brand would enable Valeo to unilaterally raise the price of its brown sauce brands post-transaction. This view is based on the following evidence:

Closeness of Competition

106. The exercise of unilateral effects, while not limited to, usually involves a merger of sellers of differentiated products who previously competed on the basis of price and depends largely on the closeness of the merging firms’ products. Valeo will only have the incentive to exercise market power and increase price if it would be profitable to do so. In order for this to occur, the Chef and YR brown sauce brands should be close competitors to each other in the supply of brown sauce to the retail sector in the State such that a price rise in one product (e.g. YR) will result in a sufficient diversion of sales revenue to the other (e.g. Chef) and *vice versa*.
107. The Commission considers that Chef and YR are sufficiently close competitors in the brown sauce market such that post-transaction the merged entity will find it profitable to raise prices. This view is based on the following evidence:

Econometric Analysis

108. Although the Frontier Economics econometric report reached the conclusion that Chef and HP are the nearest competitors, and that YR might be considered a more distant substitute, Professor Walsh, using the same AC Nielsen data, concluded otherwise.



109. Professor Walsh carried out an econometric analysis of the cold sauces segment using the nested logit model and calculated own-price or cross-price effects in the cold sauces segment over the period 1 January 2012 to 28 September 2014.

110. With respect to the competitive impact of the proposed transaction, Professor Walsh concludes as follows:

“The within brown segment analysis finds that YR is price elastic to changes in its own- and cross-prices. A change in the price of Chef has a much bigger effect on YR market share than a change in the price of HP. A merger of YR with Chef may be a competitive concern. It would lead to dominance in sales, with weak cross-price effects coming in from HP.”

111. The econometric analysis carried out by Professor Walsh concluded that Chef and YR are close competitors in the supply of brown sauce to the retail sector in the State.

Ipsos MRBI Consumer Survey

112. The telephone consumer survey carried out by Ipsos MRBI on behalf of the Commission (detailed above) found that:

- 61% (of the 315 respondents who have used Chef Brown sauce) stated that they would continue to buy Chef Brown sauce if its price increased by 10% while all other cold sauce prices remained the same. 31% stated that they would switch to another brown sauce product: of these, 51% would consider switching to HP, 51% to YR, 27% to private label, and 25% to Branstons. Only 3% stated that they would switch to another cold sauce.
- 56% (of the 201 respondents who have used YR Brown sauce) stated that they would continue to buy YR Brown sauce if its price increased by 10% while all other cold sauce prices remained the same. 34% stated that they would switch to another brown sauce product: of these, 60% would consider switching to Chef, 42% to HP, 33% to private label, and 24% to Branstons. Only 4% stated that they would switch to another cold sauce.

113. The results of the Ipsos MRBI consumer survey indicate that YR brown sauce is a close competitor to Chef Brown sauce.

Internal Documentation

114. During Phase 1, the Commission sent a formal Requirement for Further Information to CapVest and DCC plc requesting internal documentation. Internal documents provided by both parties suggest that both Valeo and Robert Roberts perceive Chef and YR to be number 1 and number 2, respectively, in the brown sauce product category in the State.

115. For example, a document provided to the Commission by CapVest entitled “Project Tardis” contains the following statement:

“[...]”



116. Another document provided to the Commission by CapVest entitled “Coyne Research: Bottled Sauces/Side of Plate” contains the following statement:

“[...]”

117. A document provided to the Commission by DCC entitled “Robert Roberts Business Plan, June 2014” contains the following statement:

“[...]”

118. DCC also provided a document which details the results of an online consumer survey carried out by [...] on behalf of Robert Roberts in February 2014 of 45 grocery categories, including brown sauce.

119. Although the results of the [...] consumer survey suggest that HP brown sauce may be a closer competitor to Chef Brown sauce than YR brown sauce, the survey concludes with the following “Key Findings”: “In terms of brand range, the YR, Chef and HP brands are largely interchangeable...YR needs to find new ways to increase brand awareness and encourage trial in a very competitive market place which has three key brands with limited perceived differences. The holy grail is to identify ways to stand out from the other two key brands Chef and HP.”

Views of Retailers

120. The Commission contacted the merging parties’ biggest retail customers in the State during both the Phase 1 and Phase 2 investigation. All six respondents to the Commission’s questionnaires expressed the view that YR is a close competitor to Chef in the brown sauce market.

Commission’s View on Closeness of Competition

121. The Commission considers that the evidence described above clearly indicates that Chef and YR are close competitors in brown sauce.¹³ Paragraph 4.19 of the Authority’s “Guidelines for Merger Analysis” states as follows: “All things being equal, a merger between close competitors (i.e., competitors engaged in intense competition) will remove a strong competitive constraint and hence be more likely to raise competition concerns than a merger between distant competitors.”
122. As Table 5 above makes clear, there are three key brands in the brown sauce market: Chef, HP and YR. Other brown sauce brands such as Kandee, Daddies, The Ketchup Company and Branstons have negligible market share. Furthermore, it is significant that many of the retailers contacted by the Commission indicated that the only brown sauce brands they stock are Chef, HP and YR. The Commission is of the view that these other brown sauce brands are not sufficiently close competitors to the merging parties’

¹³ The Commission also considers that the evidence described above is conflicting as to which of YR and HP is the closest competitor to Chef in brown sauce. It should be noted, however, that even if HP is a closer competitor to Chef than YR, this does not mean that the proposed transaction will not substantially lessen competition in the supply of brown sauce to the retail sector in the State.



brands to prevent a price increase in the market for the supply of brown sauce to the retail sector in the State.

123. It is clear from Table 5 above that sales of private label brown sauce are small and stagnant over the period August 2012 to August 2014. The Commission is of the view that private label brown sauce products are not sufficiently close competitors to the merging parties' brands to prevent a price increase in the market for the supply of brown sauce to the retail sector in the State.

Entry

124. Paragraph 6.4 of the Authority's "*Guidelines for Merger Analysis*" state that for entry to be a constraint on the ability of the merged entity to raise prices post-merger, it must be timely, likely and sufficient.

125. The parties argue in a submission to the Commission dated 5 December 2014 that:

"[...]"

126. The Commission, however, is not aware of any evidence to support this view in relation to the supply of brown sauce to the retail sector in the State. No retailer cited any example of a recent entrant in the past two years that has grown its market share at the expense of any of the three key brown sauce brands.

127. The Ketchup Company started selling its brown sauce brand in the State in late 2013 but its sales have been and remain very small (around €[...]). The Ketchup Company expressed the view to the Commission that the reason for its low level of brown sauce sales is the existence of a high degree of brand loyalty amongst Irish brown sauce consumers.

128. P Mulrine and Son Sales, a manufacturer of cold sauces located in Co. Donegal, informed the Commission that sales of its Kandee brown sauce brand are very small. When asked whether there has been any successful entrant in recent years, P Mulrine and Son Sales stated that occasionally a brown sauce brand from the United Kingdom will appear and then shortly disappear but there has been no example of a brown sauce brand that has entered and grown its market share in the State in recent years.

129. Retailer 1 indicated to the Commission that it sells the Kandee brown sauce brand and its sales of that brand are minimal. Retailer 4 indicated that it no longer stocks the Kandee brown sauce brand. Retailer 8 indicated to the Commission that it sells The Ketchup Company's brown sauce brand, the Kandee brown sauce brand, and the Tiptree brown sauce brand. Retailer 8 stated that sales of all three brands are minimal.

130. The Commission's view is that entry into the brown sauces market is difficult. Some retailers in the State only stock three brown sauce brands (i.e., Chef, YR, and HP) so even getting distribution would be a challenge. The existence of well-established brown sauce brands with loyal consumers, and limited consumer switching, make entry difficult.



131. The Commission considers that even if timely entry into the brown sauce market were possible, it is unlikely that a new entrant would be able to establish a sufficiently strong presence in the brown sauce market such that it will be able to constrain the merged entity from raising prices post-acquisition.

Countervailing Buyer Power

132. The parties raised, and the Commission examined, the possibility that the existence of countervailing buyer power among retailers could act as a deterrent to the merged entity raising the price of brown sauce post transaction. The Authority's "Guidelines for Merger Analysis" state in paragraph 7.1:

"In some circumstances, a customer may possess sufficient negotiating strength to enable it to constrain the ability of a supplier or suppliers to harm competition."

133. The parties argue in their submission to the Commission dated 5 December 2014 that:

"[...]"

134. In order to examine the credibility of this assertion by the parties, the Commission, in an informal information request to both Valeo and the Target Companies dated 23 January 2015, asked the parties to provide all examples of countervailing buyer power exerted by grocery retailers during the period 1 January 2012 to 31 December 2014 with respect to their brown sauce brands. In their response dated 28 January 2015, the Target Companies provided no examples of retailers exercising countervailing buyer power. The Commission received no response from Valeo to this information request.

135. In the questionnaire sent by the Commission to retailers during Phase 2, the Commission asked if, post-transaction, Valeo increased the price of all of its brown sauce products (i.e., *Chef* Brown sauce and *YR* Brown sauce) by 5%, how would you react? All of the retailers indicated to the Commission that they would resist such a price rise by Valeo. Retailers stated that in order for them to consider a proposed price rise, suppliers must provide a clear justification, including evidence for any proposed price rise in any product category.

136. In the same questionnaire to the retailers, the Commission asked them to describe the impact (if any) the proposed transaction will have on the bargaining position of retailers looking for supplies of brown sauce. All retailers indicated to the Commission that the proposed transaction would have no impact on their bargaining position with Valeo with regard to supplies of brown sauce.

Commission's views on Countervailing Buyer Power

137. Taking all the available evidence into account, including that provided by the notifying parties and retailers, the Commission, in the circumstances of this case, is not convinced that countervailing buyer power would prevent the merged entity from increasing prices post transaction. First, the parties were unable to provide any evidence of buyer power by retailers with respect to brown sauce. Second, there are reasons to believe



that even if retailers had the ability to use countervailing buyer power, they may not be sufficiently incentivised to exercise such buyer power in the brown sauce market.

138. It is at least plausible, in the context of this product market, that retailers may decide to pass through some or all of a wholesale price increase to end consumers through higher retail brown sauce prices. The Commission considers that there are two reasons why this might occur post-transaction.

139. First, given the relatively small size of the retail brown sauce market in the State and the fact that a number of retailers indicated to the Commission that brown sauce consumers tend to exhibit a high degree of brand loyalty and do not tend to switch brands to any great extent during promotional periods, there might not be an incentive for retailers to exercise countervailing power (if it existed). Instead they may simply choose to pass through any wholesale price rise to end consumers post-transaction. Most retailers indicated to the Commission that brown sauce is not considered a Known Value Item (“KVI”) which is critical for retailers to stock in order to drive footfall through their stores (such as, for example, milk). This is unsurprising given the relatively small size of the brown sauce market. As a result, retailers might not have the incentive to exercise any hypothetical countervailing buyer power in response to a price rise by Valeo as they might in the case of a product which is considered a KVI. In short, the Commission is concerned that retailers may be somewhat indifferent to a price rise by Valeo in brown sauce post-transaction.

140. Second, as noted in paragraph 7.9 of the Authority’s *“Guidelines for Merger Analysis”*:

“A customer with buyer power who is also a competitor may not have the same incentive to resist an exercise of market power (e.g., a price rise) by the merged entity since such a price rise may enable the customer to increase sales of its own private-label products.”

141. In the context of a brown sauce market, a retailer might have an incentive to pass through a price rise by Valeo post-transaction as this could lead to increased sales of its private-label brown sauce products at the expense of the merged entity’s brown sauce products. As noted above, retail sales of private label brown sauce are small so a price increase by Valeo post-merger could provide an opportunity for retailers to grow their private label presence in the brown sauce market. This possibility is noted in footnote 21 of the Authority’s *“Guidelines for Merger Analysis”*:

“if the merged entity raises the price of its products, there may be an incentive for a customer to also raise the price of its private-label products but by less than the price increase of the merged entity. This may lead to a customer increasing sales of its private-label products at the expense of the merged entity’s products.”

142. In conclusion, the Commission considers that there is not sufficient evidence that countervailing buyer power exists in the market for the supply of brown sauce to the Irish retail sector. In addition, and even if it were possible, the Commission is concerned that retailers may not be sufficiently incentivised to exercise countervailing buyer



power to prevent an increase in the wholesale price of brown sauce by Valeo post-transaction. Furthermore, even if there were evidence that large retail customers possess some degree of countervailing buyer power with respect to brown sauce (and the Commission repeats that it considers that there is not sufficient evidence that such countervailing buyer power exists), there is no evidence that any such countervailing buyer power would benefit smaller grocery retailers.

Conclusion on Unilateral Effects

143. The Commission was concerned that the proposed acquisition of the YR brown sauce brand may provide Valeo with the incentive and ability to unilaterally increase the price of its brown sauce brands. This view is based on the following evidence:

- The relevant product market is the supply of brown sauce to the retail sector in the State;
- The HHI results mean that the brown sauce retail market is highly concentrated and more liable to raise competition concerns;
- Valeo will have a [70-80]% market share by value in brown sauce post-acquisition with HP a distant second with a market share of [10-20]%;
- Evidence from a variety of sources indicates that Chef brown sauce and YR brown sauce are close competitors;
- The market shares of brown sauce brands outside the top three are very small and have shown little signs of growth in the past two years;
- Private label sales of brown sauce are small;
- Private label brown sauce products are not close competitors to Chef or YR brown sauce;
- It is highly unlikely that new entrants will be able to establish a sufficiently strong presence in the brown sauce market such that they will be able to constrain Valeo from raising its brown sauce prices post-transaction; and
- There is little evidence of countervailing buyer power and even if it did exist, there are reasons to believe that retailers will have insufficient incentive to exert buyer power post-transaction.

Proposals Submitted by Valeo

144. On 16 February 2015, Valeo submitted to the Commission formal proposals under section 20(3) of the 2002 Act to divest the YR brand. The Commission is of the view that the proposals are sufficient to address the competition concerns identified by the Commission in the market for the supply of brown sauce to the retail sector in the State. In accordance with section 20(3) and section 26(1) and section 26(4) of the 2002 Act, the proposals have become commitments binding upon Valeo.



145. The Commission considers that the divestment of the YR brand by Valeo will restore the pre-merger competitive landscape such that the proposed transaction will no longer have any competitive impact on the market for the supply of brown sauce to the retail sector in the State.

Conclusion

146. In light of the binding divestiture proposals submitted by Valeo, and in light of its analysis as set out in this determination, the Commission has determined that the proposed transaction will not substantially lessen competition in any market for goods or services in the State.

Ancillary Restraints

147. The Share Purchase Agreement between the parties to the proposed transaction contains a number of restrictive obligations on DCC plc. These include non-compete and non-solicitation clauses. None of these restrictive obligations exceed two years in duration. The Commission considers these restrictions to be directly related and necessary to the implementation of the proposed transaction.



Determination

Pursuant to section 20(3) of the Competition Act 2002, Valeo Foods UK Limited (“Valeo”) has submitted to the Competition and Consumer Protection Commission (the “Commission”) the proposals set out below regarding measures to be taken to ameliorate any effects of the proposed acquisition on competition in markets for goods or services, with a view to the said proposals becoming binding on Valeo.

The Commission has taken the proposals into account and, in light of the said proposals (which form part of the basis of its determination), has determined in accordance with section 22(3)(a) of the Competition Act 2002 that the result of the proposed acquisition will not be to substantially lessen competition in any market for goods or services in the State and, accordingly, that the acquisition may be put into effect.

Proposals submitted by Valeo to the Commission (“Proposals”):

A. Definitions

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

“Act” means the Competition Act 2002, as amended;

“Business” means the Business identified in Part C below and in the Schedule;

“CCPC” means the Competition and Consumer Protection Commission;

“CapVest” means CapVest Equity Partners II, L.P. and its subsidiaries, divisions, groups and affiliates which are directly or indirectly controlled by it;

“DCC” means DCC plc and its subsidiaries, divisions, groups and affiliates which are directly or indirectly controlled by it;

“Determination” means the Determination of the CCPC pursuant to Section 22(3)(a) of the Act that the Proposed Transaction may be put into effect;

“Divestment Package” means the Business to be sold by Valeo under the terms of these Proposals;

“Hold Separate Manager” means the person appointed by Valeo to undertake the day-to-day management of the Business, under the supervision of the Trustee, pending the disposal of the Business;

“Key Personnel” means any applicable personnel necessary to maintain the viability and competitiveness of the Business;



“Proposed Transaction” means the proposed acquisition by Valeo of sole control of Wardell Roberts Limited and Robert Roberts (NI) Limited as notified to the Competition Authority on 17 October 2014 pursuant to Section 18(1) of the Act;

“Valeo” means the company known as Valeo Foods UK Limited and, where the context admits and requires, the subsidiaries, divisions, groups and affiliates which are directly or indirectly controlled by Valeo.

B. The Proposal to Divest

2. Valeo undertakes, subject to the provisions set out below, to effect the sale of the Divestment Package within [...] months of the Determination to an independent third party purchaser or purchasers approved by the CCPC (whose approval shall not be unreasonably withheld).
3. Valeo recognises that for a prospective purchaser to meet with the CCPC’s approval pursuant to paragraph 2 above such purchaser shall be unconnected to and independent of CapVest and Valeo, and shall be able to maintain and develop the relevant Business as an active competitive force.
4. Valeo further recognises that for a prospective purchaser to meet with the CCPC’s approval, that purchaser must be deemed reasonably likely to obtain all authorisations and consents required to effect a transfer of the relevant Business.
5. Valeo shall be deemed to have complied with paragraph 2 above if, within a [...] period from the Determination of the CCPC under Section 22(3)(a) of the Act (or such longer period as may be allowed by the CCPC or as may result from the delays referred to in paragraph 8 below), it has entered into a binding letter of intent or a binding contract for the sale of all elements of the Divestment Package (subject to due diligence, regulatory consents and any other conditions not within the control of Valeo or the purchaser) provided that such sale is completed within a [...] period from the date of the relevant letter of intent or contract (or such longer period as may be allowed by the CCPC).
6. Valeo shall:
 - (i) promptly inform the CCPC in writing, with a fully documented and reasoned proposal, of any prospective purchaser who indicates a serious desire to purchase the relevant Business and to whom Valeo is seriously considering the sale of the said Business, enabling the CCPC to verify the suitability of the prospective purchaser; and
 - (ii) when the parties have entered into a binding letter of intent or a binding contract for the sale of the relevant Business, submit a fully documented and reasoned proposal enabling the CCPC to verify that the conditions laid down in these



commitments are fulfilled and that there has been no material change in the status of the purchaser not reasonably foreseeable at the time the CCPC assessed that purchaser's suitability subject to the CCPC agreeing to keep confidential all such information received.

7. The CCPC shall communicate in writing its approval or non-approval of a prospective purchaser within two weeks of receipt of a fully documented and reasoned proposal identifying a prospective purchaser in accordance with paragraph 6(i) and a binding agreement and accompanying fully documented and reasoned proposal in accordance with paragraph 6(ii).
8. In each case, failure of the CCPC to communicate its approval or non-approval within two weeks shall delay the running of the [...] period established in paragraph 5 above until the CCPC communicates its approval or non-approval. However, if the CCPC does not communicate its approval or non-approval within 30 days of receipt as aforesaid, such approval shall be deemed to have been given unconditionally. In the case of a plurality of offers from prospective purchasers to whom the CCPC does not object, Valeo shall be free to accept any offer or to select the offer it considers best.

C. The Business to be Divested

The YR business (Business)

9. Valeo undertakes to dispose of the entirety of the Business conducted by it under the YR brand (as more particularly described in the Schedule hereto).
10. Valeo undertakes not to seek or accept a licence in respect of any part of the YR brand.
11. Valeo undertakes that if it attempts to buy the purchaser of YR, it will inform the CCPC prior to doing so and will notify any such proposed acquisition in accordance with Section 18(3) of the Act if required to do so by the CCPC.
12. Valeo undertakes to sell the Business identified in the Schedule as a going concern including (if requested by the purchaser) any appropriate supply agreements and any suitable sales and marketing and distribution staff.
13. For the avoidance of doubt, Valeo confirms that it will not impose, as a condition of sale of the Business, an obligation on the purchaser to acquire associated production facilities or staff from Valeo.

D. Common Provisions

Appointment of a Trustee



14. Within [...] after the Determination, Valeo will propose to the CCPC [...] trustees, who are independent of CapVest, Valeo and DCC (**Proposed Trustee**). The appointment of the Proposed Trustees is subject to approval of the CCPC. If the CCPC does not reject the Proposed Trustees by notice in writing within [...] of the proposal, the Proposed Trustees shall be deemed to have been approved. If [...] Proposed Trustees have been approved, then Valeo shall, at its own discretion, appoint one of them.
15. If the Proposed Trustees are rejected, Valeo will propose the name of a new trustee (**New Trustee**) within [...] of being informed of the rejection. If the CCPC does not reject the New Trustee by notice in writing to Valeo within [...] of the new proposal, the New Trustee shall be deemed to have been approved.
16. If the New Trustee is rejected by the CCPC, the CCPC shall nominate a suitable Trustee (**the CCPC Trustee**) which Valeo will appoint or cause to be appointed.

Trustee's Mandate

17. Within [...] of the date on which the CCPC has approved or is deemed to have approved either the Proposed Trustees, the New Trustee or the CCPC Trustee, Valeo shall enter into a mandate agreement (**Mandate**) with the approved Trustee (**Trustee**), the terms of which shall have previously been agreed with the CCPC which confers on the Trustee all the rights and powers necessary to permit the Trustee to monitor Valeo's compliance with the terms of these Proposals and in a manner consistent with the purpose of these Proposals.
18. The Trustee shall be independent of CapVest, Valeo and DCC, possess the necessary qualifications and experience to carry out its mandate, and shall neither have nor become exposed to a conflict of interest.
19. Throughout the duration of the Trustee's appointment the Trustee shall:
 - (i) provide written reports (**Trustee Reports**) to the CCPC on the progress of the discharge of its duties under the Mandate, identifying any respects in which the Trustee has been unable to discharge such duties. The Trustee Reports shall be provided at monthly intervals, commencing one month after the date of the appointment of the Trustee, or at such other times or time periods as the CCPC may specify and are notified in writing to Valeo. Valeo shall receive a non-confidential copy of such Trustee Reports;
 - (ii) monitor and advise the CCPC as to the development of the procedure for selecting a purchaser and as to the conduct of the negotiations;
 - (iii) monitor and advise the CCPC as to whether prospective purchaser(s) with whom Valeo intends to negotiate are likely to satisfy the CCPC's requirements as to suitability;



- (iv) monitor the maintenance of the viability and marketability of the Business and the products to which they relate and ensure that they are managed in the ordinary course of business, pursuant to good business practice.
- 20. The Trustee's duties and functions as set out above shall not be extended or varied in any way by Valeo, save with the express consent of the CCPC. Any instruction or request to the Trustee from Valeo which conflicts with the terms of the Mandate and duties and functions as set out above will be considered null and void.
- 21. The CCPC may, on its own initiative or at the request of the Trustee, give any orders or instructions to the Trustee that are required in order to ensure compliance with the conditions and obligations attached to the Determination but so long as Valeo is given an opportunity to comment on any such orders or instructions in advance.
- 22. After [...] (or such longer period as may be agreed by the CCPC or as may result from the delays referred to in paragraph 8 of the Proposals above) have lapsed from the Determination without Valeo having entered into a binding agreement for the disposal of all elements of the Divestment Package, the Trustee shall be given an irrevocable mandate to negotiate and conclude arrangements for the sale of the Business in relation to which a binding agreement remains to be concluded within [...] and upon such terms and conditions as it considers appropriate for an expedient sale, to a viable and independent third party. The Trustee shall have regard to the legitimate financial interests of Valeo, [...].
- 23. If, however, the Trustee is unable to conclude such an arrangement at the end of the [...] period (or such longer period as may be agreed by the CCPC) within which the Trustee is required to conclude arrangements, the Trustee is entitled to enter into arrangements for a further maximum and non-extendable period of [...].

Miscellaneous

- 24. Valeo will provide the Trustee with all reasonable assistance and will procure (so far as it is able) that all relevant third parties provide such assistance required to ensure compliance with these Proposals. Valeo will provide or cause to be provided to the Trustee all such assistance and information, including copies of all relevant documents accessible by Valeo as the Trustee may require in carrying out its Mandate, and will pay reasonable remuneration for the Trustee's services.
- 25. In addition, at the expense of Valeo, the Trustee may (during the trustee divestiture periods referred to in paragraphs 22 and 23 above) appoint advisors (in particular for corporate finance or legal advice), subject to Valeo's approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee are



- reasonable. Should Valeo refuse to approve the advisors proposed by the Trustee the CCPC may approve the appointment of such advisors instead, after having heard Valeo. Only the Trustee shall be entitled to issue instructions to the advisors.
26. The Trustee shall have full and complete access to the manager of the Business and any other employees of the Business in order to ensure compliance by Valeo with its obligation to maintain the financial and competitive viability of the Business.
 27. Notwithstanding the Trustee's overall responsibility to discharge its functions and in particular notwithstanding the Trustee's position as an independent unrelated third party, the Trustee (who shall undertake in the Mandate to do so) shall have to the extent possible given the nature of its tasks due regard to the commercial interests of Valeo.
 28. Valeo 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 Valeo for, any liabilities arising out of the performance of the Trustee's duties under the Proposals and the Mandate, 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.
 29. The Mandate and these Proposals shall be deemed to be discharged and the Trustee's appointment shall be deemed to be terminated if Valeo announces that the Proposed Transaction has been irrevocably abandoned.
 30. The Trustee's and all other relevant third parties' powers of attorney and appointment shall be irrevocable.

Interim Position of the Business

31. Following the Determination and pending the sale of the Business, Valeo undertakes to hold separate the Business and preserve the economic viability, marketability, and competitiveness of the Business until the date of disposal in accordance with good commercial practice, and to manage the Business in the best interests of the Business. Valeo further undertakes to appoint a Hold Separate Manager who shall be responsible for the day-to-day management of the Business, under the supervision of the Trustee. The Hold Separate Manager shall manage the Business independently and in the best interest of the Business with a view to ensuring its continued economic viability, marketability, and competitiveness and its independence from the business retained by Valeo.
32. Valeo undertakes not to carry out any act upon its own authority which may reasonably be expected to have a significant adverse impact on the economic value, the management, or the competitiveness of the Business until the date of disposal.



33. Valeo undertakes not to carry out upon its own authority any act which may be of such a nature as to alter the nature or the scope of activity, or the industrial or commercial strategy, or the investment policy of the Business. Sufficient resources shall be made available for the Business to develop until the disposal, based on any approved strategic and (annual) business plans of the Business as adopted in the ordinary course of its business.
34. Valeo also undertakes to take all reasonable steps, including incentive schemes (based on industry practice), to encourage any applicable Key Personnel to remain with the Business pending the disposal of the Business. Valeo undertakes not to solicit any Key Personnel transferred with the Business for a period of [...] after the disposal of the Business.

For the Competition and Consumer Protection Commission

Isolde Goggin
Chairperson
Competition and Consumer Protection Commission