EUROPEAN COMMISSION

Brussels, 28.1.2020
C(2020) 580 final

**PUBLIC VERSION**

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus […]. Where possible the information omitted has been replaced by ranges of figures or a general description.

Compass Group PLC
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KT16 9BQ – Chertsey
United Kingdom

**Subject:** **Case M.9455 – Compass/Fazer Food Services**
**Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1] and Article 57 of the Agreement on the European Economic Area[2]**

Dear Sir or Madam,

(1) On 12 December 2019, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Compass Group PLC ("Compass") acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of "Fazer FS", which is comprised of the target companies Fazer Food Services AB, Fazer Food Services OY, Fazer Food Services AS, Fazer Food Services A/S and Fazer Food OÜ, by way of purchase of

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

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

shares (the "Transaction").[3] Compass is designated hereinafter as the "Notifying Party", whereas Compass and Fazer FS are collectively referred to as the "Parties". The undertaking that would result from the Transaction is referred to as "the merged entity".

## 1. THE PARTIES

(2) **Compass**, incorporated in the United Kingdom (the UK), provides outsourced foodservices to customers in the business & industry, healthcare and seniors, education, and defence, offshore and remote sectors. It also provides certain support services such as facility management and cleaning services, in addition to foodservices and concession foodservices in the sports and leisure sector. Compass is active in around 45 jurisdictions across the world, in particular in the United States and Europe, which account for approximately 55% and 25% of Compass' total revenue respectively. Compass operates the following brands in the Nordics: Eurest, ESS Support Services Worldwide, Chartwells, Medirest, Medirest Signature and Levy.

(3) **Fazer FS** is the target business comprised of the following subsidiaries of Fazer Food AB, namely Fazer Food Services AB (incorporated in Sweden), Fazer Food Services OY (incorporated in Finland), Fazer Food Services AS (incorporated in Norway), Fazer Food Services A/S (incorporated in Denmark) and Fazer Food OÜ (incorporated in Estonia). Fazer Food AB ("Fazer Food") is a subsidiary of the Finnish family-owned company Oy Karl Fazer Ab.

(4) Fazer FS provides catering, restaurant and foodservices in Finland, Sweden, Denmark, Norway, and Estonia. Fazer FS operates the following primary brands and product names: Fazer Food & Co, Amica, Tastory, Bistro A, Ateriapalvelut, Hav a Java, Wicked Rabbit, and Försvarsrestauranger.

(5) Fazer Food owns the target business Fazer FS. Fazer Food currently operates more than 1 000 restaurants and employs approximately 7 000 people across the countries it operates in.

## 2. THE CONCENTRATION

(6) On 10 June 2019, Compass and Fazer Food concluded a sale and purchase agreement pursuant to which Compass, through its subsidiaries,[4] agreed to acquire all of the shares of each of the target companies within Fazer FS.

(7) At closing, the target companies comprising Fazer FS will become wholly-owned subsidiaries of Compass. The Transaction will also include certain IP rights that are currently owned by Oy Karl Fazer Ab and Fazer Food.

(8) In light of the above, the Transaction will result in Compass' acquisition of sole control over Fazer FS within the meaning of Article 3(1)(b) of the EU Merger Regulation.

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3 Publication in the Official Journal of the European Union No C 431, 23.12.2019, p. 18.

4 Compass Group International B.V., Compass Group Sweden AB, Compass Group Danmark AS and Compass Holding Norge AS.

## 3. EU DIMENSION

(9) The Parties have a combined aggregate world-wide turnover of more than EUR 5 000 million[5] [Compass: EUR 26 264.7 million, Fazer FS: EUR 593.2 million]. Each of them has an EU-wide turnover in excess of EUR 250 million [Compass: EUR 6 142.9 million, Fazer FS: […] million]. Neither of the Parties achieves more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The notified Transaction therefore has an EU dimension within the meaning of Article 1(2) of the Merger Regulation.

## 4. OVERVIEW OF THE CONTRACT FOODSERVICES INDUSTRY

(10) Contract foodservices activities include the supply of services consisting in the preparation and/or serving of meals at the premises of business customers. This involves purchasing, preparing, cooking and serving food and drink to private and public business customers operating in various fields, for whom that service is not the primary reason for the customer's presence on the premises (companies, education institutions, hospitals, municipalities, etc.).[6]

(11) Contract foodservices are typically provided on the customer's premises, using the customer's equipment, along with existing staff.[7] Canteen staff are typically transferred to new foodservices suppliers under EU labour rules, more specifically Directive 2001/23/EC, which regulates the issue of the protection of workers' rights when a workplace is transferred from one employer to another.[8] Suppliers typically have training and development programmes in place in order to ensure that new and existing canteen staff, including managers, chefs and servicing staff, are continually trained to a high standard.[9]

(12) In order to provide contract foodservices, the supplier must purchase food products as well as other related non-food products such as tableware, cookware, cleaning supplies, uniforms, etc.[10] The on-site kitchen facility services are, however, generally provided by the customer on their premises, which the new contract foodservices supplier takes over from the previous contract foodservices supplier.[11]

(13) The supplier typically presents a menu to the customer, which is often done by employing a small central culinary team at national level, which typically consists of trained chefs, nutritionists and other food professionals to assist in the developing of recipes that can be made available to chefs operating in the individual units. These

5 Turnover calculated in accordance with Article 5 of the Merger Regulation.
6 Form CO, para. 116.
7 Form CO, para. 1054.
8 Form CO, para. 1070; Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, OJ L 82, 22.3.2001, p.16-20. The United Kingdom has implemented the European Union Transfer of Undertakings Directive 2001/23/EC in UK law through The Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246), colloquially known as "TUPE".
9 Form CO, para. 929.
10 Form CO, para. 904.
11 Form CO, para. 1054.

staff members are then responsible for the development of menus and recipes, food concepts and also the training of staff at the premises.[12]

(14) In the foodservices business, foodservices are sometimes provided together with other facilities maintenance services, such as cleaning, reception and maintenance services, facility management and other support services, in a multi-service contract. Such multi-service providers enable the customer to engage with one sole supplier, which can prove to be more convenient. Furthermore, the customer can “mix and match” the services to cater their specific needs.[13] The Notifying Party argues that customers are increasingly focusing on and demanding for high-quality foodservices over multi-service propositions, and choosing smaller providers whose focus is exclusively on the provision of foodservices.[14] As such, this enables local competitors who are often recognised for their high-quality foodservices to differentiate themselves from the multinational and multi-service providing companies, thereby winning bids as the preferred provider of foodservices. Indeed, the results of the Commission’s market investigation show a tendency towards customers prioritising high-quality, local and/or organic food over low-cost food offering as well as over multi-service solutions, where food is provided together with other services such as cleaning.[15]

(15) Most of the contract foodservices are procured through calls for tender, both by public bodies and private companies. The market for contract foodservices is a bidding marketplace, where competitors are invited to bid for tenders in order to win a contract with a customer.[16] The majority of customers procure contract foodservices through tenders either as a food-only contract or as part of a multi-service contract.[17] Tenders are structured according to the wishes and requirements of the customer tendering.[18] While some contract renewals are done on a bilateral basis, the customer would almost always have the possibility to open a foodservices contract for re-tendering if unsatisfied with the terms offered by the existing supplier.[19]

(16) Contract foodservices contracts in all segments in Sweden, Finland, Norway and Denmark typically have an average term of three to five years.[20] Some contracts include specific provisions for the possibility of extension for an additional period by agreement.[21] Public tender contracts for contract foodservices are subject to a maximum term under the EU public procurement rules.

(17) The contract foodservices market is characterised by the presence of a large number of multi-national, national and local rival suppliers and the market is thus featured by

12 Form CO, para. 909.
13 Form CO, para. 1036.
14 Form CO, para. 121.
15 Replies to Q1 – Questionnaire to Competitors in Sweden, questions 22, 27, 32, 37 and 40; Replies to Q2 – Questionnaire to Competitors in Finland, question 20; Replies to Q3 – Questionnaire to Competitors in Norway, question 20; Replies to Q4 – Questionnaire to Competitors in Denmark, questions 21, 26 and 31.
16 Form CO, para. 283.
17 Form CO, para. 949.
18 Form CO, para. 950.
19 Form CO, para. 949.
20 Form CO, para. 281; Notifying Party’s reply to RFI 17 of 24 January 2020.
21 Form CO, para. 919.

both small and large players.[22] The contract foodservices business in Sweden, Denmark, Norway and Finland is highly diverse and includes over 35 competitors with a variety of different supply models and customer segments.[23]

## 5. THE PARTIES' BUSINESS MODEL

### 5.1. Compass

(18) Compass is a multinational, global company with strong food and support service credentials. Compass offers services in the Nordic countries, its largest market being Norway, followed by Denmark.[24]

(19) Compass is a multi-services provider. In addition to foodservices, Compass also offers services, such as cleaning, facility management and other support services catered to the individual customer's needs. This includes, for example, cleaning in hospitals, reception and maintenance services at corporate headquarters and managing remote camps, grounds and facilities services in schools and universities.[25] Such services are complementary to contract foodservices, in the sense that some customers tender out their needs for contract foodservices together with other services.

(20) According to the Notifying Party, [Notifying Party's internal business strategy], contrary to Fazer FS.[26] Therefore, Compass submits that the Transaction will enable it to enhance its Nordic business and profile in the region, which is less well-established than in other European countries.[27] Compass also explained that it expects that the Transaction will enable it to strengthen its core foodservices offering and [Notifying Party's internal business strategy].[28] The Notifying Party believes that the combination of Compass and Fazer FS will enable them to offer customers in the Nordic region a wider and more innovative choice of products and services at attractive prices.[29]

### 5.2. Fazer FS

(21) Fazer FS started in 1891 as a restaurant business in Helsinki and built its name in the confectionary business, producing some of the most well-known sweets and chocolates from Finland. In the contract foodservices market, Fazer FS has a reputation for "*its focus on food excellence*".[30] Fazer FS' largest market is Finland, followed by Sweden.[31]

(22) Contrary to Compass, Fazer FS is not a multi-service provider and typically does not provide additional services, such as cleaning or facility management. Fazer FS only

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22 Form CO, para. 35.
23 Form CO, para. 33.
24 Form CO, section 4.
25 Form CO, para. 1036.
26 Form CO, para. 9.
27 Form CO, para. 7.
28 Form CO, para. 11.
29 Form CO, para. 9.
30 Form CO, para. 1039.
31 Form CO, section 4.

occasionally competes for multi-service contracts with a partner, as its focus is on the provision of foodservices.[32]

## 6. MARKET DEFINITION

### 6.1. Introduction

(23) Both Compass and Fazer FS provide contract foodservices to customers in Sweden, Finland, Norway and Denmark.[33]

(24) As shown in Table 1, the Parties' activities overlap in the provision of (i) contract foodservices to customers active in the business & industry, education, healthcare & welfare, and defence sectors in Sweden; (ii) contract foodservices only to customers active in the business & industry sector in Finland and Norway; (iii) contract food-services to customers active in the business & industry and education sectors in Denmark.

**Table 1. The Parties' activities per segment in each relevant country**

| | **Segment** | | | |
|---|---|---|---|---|
| **Country** | Business & industry | Education | Healthcare & welfare | Defence |
| Sweden | ✓ | ✓ | ✓ | ✓ |
| Finland | ✓ | *no overlap* *(only Fazer FS active)* | *no overlap* *(only Fazer FS active)* | *no overlap* *(only Fazer FS active)* |
| Norway[34] | ✓ | *no overlap* *(only Compass active)* | *no overlap* *(only Compass active)* | *no overlap* *(only Compass active)* |
| Denmark | ✓ | ✓ | *none of the Parties are active* | *no overlap* *(only Compass active)* |

*Source: Form CO and the Parties' submission "Introduction to Contract Foodservices" of 19 November 2019, slide 19.*

### 6.2. Relevant market: contract foodservices

(25) In this Section, and for the purpose of this Decision, the relevant markets for contract foodservices are defined.

[32] Form CO, para. 520.

[33] Fazer FS comprises also Fazer Food OÜ, incorporated in Estonia. The Parties do not have overlapping activities in Estonia.

[34] For completeness, Fazer FS has only *de minimis* activities in Norwegian healthcare & welfare, and education.

### *6.2.1. Product market definition*

6.2.1.1. Distinction between contract foodservices and concession foodservices

(26) The Parties are both active in the foodservices industry. In addition to contract foodservices supplied to customers that are active in various sectors, both of the Parties are also active, to a more limited extent, in concession foodservices for various retail-related locations and sports venues.[35]

*The Commission's past practice*

(27) In its prior decisional practice, the Commission has defined a separate market for contract foodservices, which consists of the provision of foodservices outside the home performed by third parties, typically on the premises of public or private sector customers and involving the supply of food and drink to customers for whom that service is not the primary reason for their presence on the premises.[36] This is in contrast to concession foodservices, which concern the provision of foodservices to the public in travel locations such as airports, railway stations, ferries, roadsides as well as retail related locations such as department stores, sports stadia and leisure venues.[37]

*The Notifying Party's view*

(28) The Notifying Party does not dispute the market definitions provided in the Commission's precedents and considers that the precise market definitions for contract foodservices and concession foodservices can be left open.[38]

*The Commission's assessment*

(29) The market investigation has not produced evidence indicating that the Commission should depart from its prior decisional practice defining separate markets for contract foodservices and concession foodservices.

*Conclusion*

(30) In line with the Commission's precedents and in light of the results of the market investigation, the Commission concludes that, for the purpose of this Decision, contract foodservices and concession foodservices should be defined as separate product markets.

(31) Considering that the Parties' activities in the market for concession foodservices do not give rise to any affected markets, this market will not be discussed any further in this Decision.[39]

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35 Form CO, paras. 227-230.

36 Case M.2977 – *Compass/Onama SpA*, paras. 13-15; Case M.2373 – *Compass/Selecta*, para. 12. See also Case M.4202 – *Charterhouse/Elior*, para. 9.

37 Case M.2977 – *Compass/Onama SpA*, para. 12; Case M.4202 – *Charterhouse/Elior*, para. 10.

38 Form CO, paras. 117, 139 and 227.

39 Based on the Notifying Party's submission, the Parties' activities in concession foodservices only overlap in Sweden with a combined share of [0-5]% in terms of numbers of sites and [0-5]% in terms of annual visitors. See Form CO, para. 226 *et seq*.

6.2.1.2. Segmentation by customer industry

(32) Contract foodservices are typically provided to customers that are active in a variety of sectors, such as in general business industry (e.g. office or factory canteens), healthcare (e.g. patient meals), education (canteens at schools, universities and other tertiary education institutions), defence (e.g. canteens for military establishments) and other sectors.

*The Notifying Party's view*

(33) In the view of the Notifying Party, any segmentation of the market for contract foodservices by customer's industry is not appropriate for the following reasons. First, there would be a high level of supply-side substitutability between the supply of contract foodservices to customers in all types of sectors, including business & industry, education, healthcare & welfare, and defence. Second, customers in different industries would predominantly share the same demand requirements, that is to say an operator to cook and serve meals in their canteens.[40] Third, there would be no significant contractual characteristics that differ depending on the characteristics of customers (that is to say whether it is a customer active in the business & industry sector or the education sector) and no particular contractual form which is specific to a type of customer.[41]

(34) The Notifying Party however concedes that there exist certain "differentiating factors" between those segments, which are reflected in each of the Parties' decision to be present in some segments, but not in others.[42]

(35) Even though the Notifying Party considers that it is not necessary for the Commission to reach a conclusion on the precise relevant product market definition in this case, as the Transaction will not raise serious doubts as to its compatibility with the internal market under any plausible segmentation,[43] it, nonetheless, provided the Commission with the necessary information to assess the effects of the Transaction on the basis of customer's sector.

*The Commission's past practice*

(36) In previous decisions, the Commission considered whether the market for contract foodservices should be further segmented according to the sectors in which the customers of contract foodservices are active, namely into (i) business & industry (staff canteens in both public and private sectors), (ii) healthcare (hospitals, nursing homes), and (iii) education (schools, universities), and (iv) defence and other.[44]

(37) More particularly, in *Granada/Compass*, the Commission noted that certain demand-side differences existed between the relevant sectors in terms of the margins earned, growth projections and penetration rates.[45] In *Avenance Italy/Gemeaz Cusin*, the

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40 From CO, paras. 145-146 and 153.

41 From CO, paras. 146 and 150.

42 Form CO, paras. 155 *et seq*. and 179.

43 Form CO, paras. 117 and 139.

44 Case M.7232 – *Charterhouse/Nuova Castelli*, para. 17; Case M.6513 – *Avenance Italy/Gemeaz Cusin*, paras. 9-11; Case M.1972 – *Granada/Compass*, paras. 9-10.

45 Case M.1972 – *Granada/Compass*, para. 10.

Commission's market investigation showed that segmentation on the basis of the customer's activities could be relevant since each type of customer had its own specificities, meaning that foodservices provided in a nursing home are not the same as those provided to the military.[46]

(38) However, the Commission has not reached in the past a definite conclusion on the possibility to segment the contract foodservices on the basis of customer's sector and ultimately left the question open.[47]

*The Commission's assessment*

(39) The market investigation in the present case delivered mixed results. In some instances, it was confirmed that segmentation on the basis of customer's activities might be relevant. For example, some of the competitors having responded to the market investigation explained that supply of contract foodservices to customers in one sector cannot always be "*easily replicated for customers in another sector*"[48] and gave examples of customers in the healthcare and education sectors which require "*a different menu including nutrition-value calculations*" that typically are not required by customers active in the business & industry segment.[49] Moreover, some of the competitors also noted that "*commercial models differ a lot from segment to segment*",[50] including "*different levels of profitability*".[51] For example, business & industry contracts would be dominated by 'cost-plus' model[52] and to a lesser degree 'fixed-cost' model,[53] whereas other sectors would often operate "*on dramatically different terms*."[54] For this reason, contract foodservices suppliers wishing to enter a new product segment might face entry barriers in relation to different regulatory requirements, production resources, need for differently trained personnel and other know-how and competences.[55]

(40) Some of the customers also expressed their view that due to the particular needs of dietary restrictions of the end customers, "*a high knowledge of dietary recommendations is required (sic)*" for customers active in the healthcare sector.[56] Another customer active in the education sector explained that "*it requires a lot of expertise to*

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46 Case M.6513 – *Avenance Italy/Gemeaz Cusin*, para. 10.

47 Case M.7232 – *Charterhouse/Nuova Castelli*, para. 20; Case M.6513 – *Avenance Italy/Gemeaz Cusin*, para. 12; Case M.1972 – *Granada/Compass*, para. 11.

48 Replies to Q4 – Questionnaire to Competitors in Denmark, question 8.1.

49 Replies to Q1 – Questionnaire to Competitors in Sweden, questions 8.1 and 9.

50 Replies to Q4 – Questionnaire to Competitors in Denmark, question 8.1.

51 Replies to Q2 – Questionnaire to Competitors in Finland, question 8.1.

52 In a cost-plus contract, the supplier provides an estimated budget and operates the service according to it. The customer pays any excess and benefits from any savings. The supplier is remunerated on a fee basis (i.e. on top of the input costs the customer pays). The customer typically specifies the type of pricing model in the tender process. See the Notifying Party's explanation provided in Form CO, para. 916.

53 In a fixed-cost (also known as 'fixed-price') contract, the supplier prepares an annual budget including all known variables, from which a fixed weekly or monthly subsidy is derived. The supplier is responsible for any excess and as a result the margin is higher to reflect the additional risk the supplier undertakes. The customer typically specifies the type of pricing model in the tender process. See the Notifying Party's explanation provided in Form CO, para. 916.

54 Replies to Q4 – Questionnaire to Competitors in Denmark, question 8.1.

55 Replies to Q3 – Questionnaire to Competitors in Norway, questions 8.1 and 9; Replies to Q2 – Questionnaire to Competitors in Finland, question 8.1.

56 Replies to Q5 – Questionnaire to Customers in Sweden, question 9.1.

*handle foodservices at a university with all the different services required and the different segment of customers, meetings and events*”.[57]

(41) On the other hand, a large number of customers and, to a smaller extent, competitors, noted that the provision of contract foodservices requires “*pretty much the same types of resources and delivery regardless of [the] sector. The same standards and HSE[58] requirements within all sectors*”.[59] Indeed, the majority of customers were of the view that the supply of contract foodservices to customers in different sectors in terms of price, quality and services does not differ materially.[60] Certain competitors also responded that, in their view, the supply of contract foodservices to customers active in different sectors is interchangeable.[61]

*Conclusion*

(42) In line with the Commission’s precedents and considering that the results of the Commission’s market investigation were mixed, the Commission concludes that, for the purpose of this Decision, the question whether the market for contract foodservices should be segmented on the basis of customer’s sector can in principle be left open.

(43) However, considering that the Parties only overlap in specific sectors, in the competitive assessment in Section 7 the Commission will assess the likely effects of the Transaction on the narrowest plausible relevant product market segments, that is to say on each identifiable relevant sector, namely the sectors in which customers operate, including (i) business & industry (staff canteens in both private and public sectors), (ii) education, (iii) healthcare & welfare, and (iv) defence.

#### 6.2.1.3. Distinction between contract foodservices and other food-related services

(44) Depending on the nature of the customer’s business, the provision of contract foodservices on customer premises in many instances includes not only food served at the canteen (for example, breakfast and/or lunch), but also other food-related services such as, for example, catering for business meetings, kiosk and café services, snacks, fruit baskets, etc.

*The Notifying Party’s view*

(45) The Notifying Party submits that, based on its experience, kiosks, cafés and catering for business meetings/hospitality in almost all relevant product market segments as defined above are typically tendered together with the primary foodservices contract and that the provision of such services typically does not require different expertise,

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57 Replies to Q8 – Questionnaire to Customers in Denmark, question 9.1.

58 HSE refers to health/hygiene and safety requirements.

59 Replies to Q3 – Questionnaire to Competitors in Norway, question 9. See also Replies to Q1 – Questionnaire to Competitors in Sweden, question 8.1 noting that “*processes are very similar*” and that in essence food is “*manufactured from the same materials*” and Replies to Q4 – Questionnaire to Competitors in Denmark, question 9, explaining that “*there [is] no particular variety of needs from sector to sector*”.

60 Replies to Q5 – Questionnaire to Customers in Sweden, question 9; Replies to Q6 – Questionnaire to Customers in Finland, question 8; Replies to Q7 – Questionnaire to Customers in Norway, question 8; Replies to Q8 – Questionnaire to Customers in Denmark, question 9.

61 Replies to Q3 – Questionnaire to Competitors in Norway, question 8; Replies to Q1 – Questionnaire to Competitors in Sweden, question 8; Replies to Q2 – Questionnaire to Competitors in Finland, question 8.

staff or facilities.[62] According to the Notifying Party, with some exceptions,[63] customers would overwhelmingly choose to tender their contract foodservices and business meeting catering together and suppliers of such services would mainly be the same companies that also offer contract foodservices.[64]

(46) The Notifying Party further submits that the Parties do not account for business meeting catering separately in terms of restaurant/unit profitability.[65] The same is true for the Parties' revenues from kiosk and café services.[66] Therefore, the Commission should assess the putative market for contract foodservices, which comprises canteen services and the related food services, including catering for business meetings, kiosk and café services.[67]

*The Commission's past practice*

(47) In previous decisions, the Commission did not specifically address the question of what type of food-related services should be included in the scope of the contract foodservices.[68]

*The Commission's assessment*

(48) The results of the market investigation, to a large extent, confirmed the submission of the Notifying Party. The majority of customers having responded to the market investigation confirmed that they demand catering for business meetings, and kiosk and café services in combination with contract foodservices (i.e. canteens) as opposed to stand alone or separate service.[69] One customer stated that it *"[m]akes commercially sense to include [business meeting catering and café/kiosk services] in the same agreement*"[70], and another explained that the combination of services allows for an easier administration of the contract.[71] However, the Commission's market investigation also suggests that on the demand side, the final decision on whether the contract is entered for all food service-related needs or only for canteen services depends on negotiations and how favourable is the price offered by the contract foodservices supplier.[72]

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62 Form CO, paras. 177, 191, 193 and 195-204. For completeness, the Notifying Party submits that the Parties are aware of customers that do not tender food-related services with contract foodservices, however, these are exceptions to this general rule. See Form CO, para. 191.

63 See, for example, Form CO, para. 192.

64 Form CO, para. 177. See also Form CO, footnote 143.
Form CO, paras. 177, 184 and 192-193.

65 Form CO, paras. 177 and 207.

66 Form CO, paras. 207-209. In addition, according to the Notifying Party, both Parties focus on contracts where kiosk and café services form part of a broader foodservices offering. See Form CO, para. 204.

67 Form CO, paras. 179 and 207.

68 See, for example, Case M.6513 – *Avenance Italy/Gemeaz Cusin*, para. 9; Case M.2373 – *Compass/Selecta*, para. 10. These decisions only mention that as part of contract foodservices, the food is often sold to end customers at subsidised prices.

69 Replies to Q8 – Questionnaire to Customers in Denmark, questions 7, 7.1 and 7.3; Replies to Q5 – Questionnaire to Customers in Sweden, questions 7.1, 7.3, 8 and 8.1.

70 Replies to Q8 – Questionnaire to Competitors in Denmark, questions 7.1.1 and 7.3.1.

71 Replies to Q8 – Questionnaire to Competitors in Denmark, questions 7.1.1 and 7.3.1.

72 Replies to Q8 – Questionnaire to Competitors in Denmark, questions 7.1.1 and 7.3.1.

(49) A majority of competitors having responded to the market investigation indicated that they do not offer kiosk and café services as a separate, stand-alone service (i.e. without a contract foodservices contract).[73] The same is true in the case of catering for business meetings, as most of competitors indicated that they typically provide hospitality/catering for meetings as part of a wider contract foodservices offering.[74]

*Conclusion*

(50) For the reasons set out in this Section, including in light of the results of the market investigation and of all the evidence available to it, the Commission concludes that, for the purpose of this Decision, the relevant market is the market for contract food-services including catering for business meetings as well as kiosk and café services.

#### 6.2.1.4. Distinction between contract foodservices and vending services

(51) Vending services are the sale of products and services at an unattended point of sale using some form of payment system. Vending machines can be used to provide a large range of products, such as drinks, food, snacks and other.

*The Notifying Party's view*

(52) The Notifying Party submits that the Parties offer only limited vending services in the countries in which they are both active and that vending services are almost exclusively provided as part of the Parties' foodservices offering rather than as a separate stand-alone service.[75] Moreover, in practice, the Parties often sub-contract vending services as part of their contract foodservices offering to third parties rather than carry out such services themselves. The Notifying Party further submits that in some instances, the Parties book any vending-related revenue as contract foodservices or catering revenue.[76]

(53) In the view of the Notifying Party, vending services do not constitute a separate product market.[77] The Notifying Party considers that it is not necessary for the Commission to reach a conclusion on the precise relevant product market definition.[78] However, according to the Notifying Party, if the provision of vending services were to be assessed as a separate product market, the Transaction would not give rise to an affected market as the combined market share of the Parties would be well below the 20% threshold in each of Sweden, Finland, Norway and Denmark.[79]

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73 Replies to Q4 – Questionnaire to Competitors in Denmark, question 6.3; Replies to Q2 – Questionnaire to Competitors in Finland, question 6.3; Replies to Q1 – Questionnaire to Competitors in Sweden, question 6.3.

74 Replies to Q4 – Questionnaire to Competitors in Denmark, question 6.1; Replies to Q2 – Questionnaire to Competitors in Finland, question 6.1; Replies to Q3 – Questionnaire to Competitors in Norway, question 6.1.

75 For completeness, Compass and Fazer FS provide stand-alone vending services in Finland and Sweden, respectively. However, the provision of any stand-alone vending services are negligible, with less than [0-5]% market share for Compass in Finland, and less than [5-10]% for Fazer FS in Sweden. See Form CO, paras. 238 and 241-242.

76 Form CO, paras. 238 and 242.

77 Notifying Party's reply to RFI 3 of 18 December 2019, question 1.

78 Form CO, paras. 117 and 139.

79 Form CO, paras. 244 and 247.

*The Commission's past practice*

(54) In a previous case, the Commission held that vending services and contract foodservices constituted separate markets.[80] In other decisions, the Commission considered whether vending services offered by companies that specialise in such services and vending services that are offered by foodservices providers as an extension of their core services constitute one product market. However, in that case the Commission eventually left the question open.[81]

*The Commission's assessment*

(55) The results of the market investigation in the present case show that the majority of competitors and customers support the view that vending services are mostly acquired and/or provided as an integrated part of the foodservices contract.[82] As indicated by some customers, it is "*the most convenient way*" and "*makes more sense for business, and administration*" to have a supplier as a "*one-stop-shop*".[83] Other customers explained that vending services are provided "*always together with other services*".[84] In a similar vein, the responses received from the Parties' competitors point to the similar direction. For example, some competitors explained that "*vending machine services are always connected with some other service*",[85] and that they *"do not offer vending machines as a stand-alone service"*.[86] Furthermore, one competitor stated that *"offering vending machines as a separate standalone service is not in line with [the company's] global strategy"*.[87]

(56) This is supported by some of the responses received from contract foodservices brokers.[88] For example, a broker noted that "*vending machines are often a very small and almost non-significant part of the contract.*"[89]

(57) Given this, on balance, the Commission is of the view that vending services are, in the majority of cases, provided as part of a package offered in connection with contract foodservices.

*Conclusion*

(58) In light of the above, the Commission concludes that, for the purpose of this Decision, the market for contract foodservices includes the supply of vending services,

80 Case M.2373 – *Compass/Selecta,* para. 23.

81 Case M.4202 – *Charterhouse/Elior,* para. 16; Case M.8454 – *KKR/Pelican Rouge,* para. 16.

82 Replies to Q1 – Questionnaire to Competitors in Sweden, question 6.2.1; Replies to Q2 – Questionnaire to Competitors in Finland, question 6.2.1; Replies to Q3 – Questionnaire to Competitors in Norway, question 6.2.1; Replies to Q4 – Questionnaire to Competitors in Denmark, question 6.2.1; Replies to Questionnaire Q5 – Questionnaire to Customers in Sweden, question 7.2.1; Replies to Q6 – Questionnaire to Customers in Finland, question 6.2.1; Replies to Q8 – Questionnaire to Customers in Denmark, question 7.2.1.

83 Replies to Q6 – Questionnaire to Customers in Finland, question 6.2.1; Replies to Q8 – Questionnaire to Customers in Denmark, question 7.2.1.

84 Replies to Q8 – Questionnaire to Customers in Denmark, question 7.2.1.

85 Replies to Q2 – Questionnaire to Competitors in Finland, question 6.2.1.

86 Replies to Q3 – Questionnaire to Competitors in Norway, question 6.2.1.

87 Replies to Q4 – Questionnaire to Competitors in Denmark, question 6.2.1.

88 Brokers typically are independent third party/business consultants that assist customers of contract foodservices during all stages of their contract foodservices tender process. See Replies to Q9 – Questionnaire to Brokers, question 1.

89 Replies to Q9 – Questionnaire to Brokers, question 9.

because the latter are typically acquired/provided as part of the contract for contract foodservices and accordingly do not constitute a separate product market.

6.2.1.5. Distinction between contract foodservices and non-food related other services

(59) In certain instances, customers that outsource contract foodservices also require other support services, or "soft services", that are directly used by employees and can make the workplace more secure or pleasant, such as cleaning, reception, plant maintenance, handyman, pest control and other.

*The Notifying Party's view*

(60) The Notifying Party submits that Fazer FS concentrates solely on foodservices and accompanying expertise, while Compass provides foodservices both by themselves and in conjunction with other support services.[90] Consequently, the only overlaps between the Parties are in the provision of foodservices and not in the multi-service agreements (i.e. food and soft service). For this reason, the Notifying Party's submission on the competitive effects of the Transaction covers solely the Parties' activities in the provision of contract foodservices.[91]

(61) According to the Notifying Party, the Transaction would not give rise to an affected market in a potential market for support services (or any potential segment thereof, such as cleaning, reception, etc.) as the market share of each Party would be far below 10% in each of Sweden, Finland, Norway and Denmark.

*The Commission's past practice*

(62) In previous decisions, the Commission did not specifically address the question of whether non-food related services (i.e. other support services, such as cleaning, reception and facility management) should be assessed as a separate product market or included in the market for contract foodservices.

*The Commission's assessment*

(63) The results of the market investigation confirm that non-food related other services should not be included in the market for contract foodservices. Indeed, the Commission's market investigation shows that a large majority of customers typically tender contract foodservices separately from other services.[92] As explained by one customer, their experience shows that "*best food is made from suppliers only focusing on food*."[93]

(64) In light of the results of the market investigation and of all the evidence available to it, the Commission considers that, even in cases where a contract foodservices sup-

90 Form CO, para. 331.

91 Form CO, para. 32 and footnote 39.

92 Replies to Q4 – Questionnaire to Customers in Sweden, question 100; Replies to Q8 – Questionnaire to Customers in Denmark, questions 62 and 64; Replies to Q6 – Questionnaire to Customers in Finland, question 34.

93 Replies to Q8 – Questionnaire to Customers in Denmark, question 62.1.

plier has the capability to supply food and other services, a larger part of their contracts are food-only contracts.[94]

*Conclusion*

(65) In light of the above, for the purpose of this Decision, the Commission considers that the relevant product market includes the food-only foodservices contracts excluding non-food related other services (or other support services).

### 6.2.2. *Geographic market definition*

(66) In previous decisions, the Commission found that the relevant geographic market for contract foodservices is national due to the differences in legislation and national preferences in terms of quality and pricing.[95]

(67) The Notifying Party does not dispute the Commission's prior decisional practice.[96] However, it submits that there are instances where contract foodservices suppliers active in one Nordic country have been able to launch a new service in another Nordic country.[97]

(68) The market investigation in the present case confirms the Commission's previous decisions. It appears that, despite the fact that the Parties and some of their competitors are active in all or most countries of the Nordic region, competition in the market for contract foodservices takes place at a national level. Indeed, the large majority of customers and competitors responded that tenders for contract foodservices as well as supply arrangements for ingredients are typically entered into at national level.[98] The market investigation also confirmed that from the supply side, the competitive conditions of providing contract foodservices to customers in each of Sweden, Denmark, Norway and Finland differ significantly.[99] Indeed, a competitor active in several countries relevant for this investigation explained that there are "*different cultures, tax, subsidy policy and legislation*".[100] For example, "*the Swedish customers tend to focus more on organic products and 'green' offerings, where Norway is a bit more conservative […] [in] Denmark [there] is more focus on a more interna-*

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94 Replies to Q1 – Questionnaire to Competitors in Sweden, questions 90 and 96; Replies to Q2 – Questionnaire to Competitors in Finland, question 41; Replies to Q9 – Questionnaire to Brokers, question 24. It should be also noted, however, that the market investigation shows that multi-service contracts are more typical for larger companies, whereas small and medium-sized companies tend to tender only contract foodservices; see Replies to Q4 – Questionnaire to Competitors in Denmark, question 62.1. One competitor explained "*[l]arge international companies are clustering food with other services […] [n]ational companies are not doing this very frequently*", see Replies to Q2 – Questionnaire to Competitors in Finland, question 41.1. See also Replies to Q9 – Questionnaire to Brokers, question 24.1.

95 Case M. 2373 – *Compass/Selecta*, para. 25; Case M.1972 – *Granada/Compass*, para. 20.

96 Form CO, paras. 248 and 254.

97 Form CO, para. 248.

98 See, for example, Replies to Q2 – Questionnaire to Competitors in Finland, questions 13 and 14; Replies to Q4 – Questionnaire to Competitors in Denmark, questions 14 and 15; Replies to Q8 – Questionnaire to Customers in Denmark, question 13.

99 Replies to Q1 – Questionnaire to Competitors in Sweden, question 18; Replies to Q2 – Questionnaire to Competitors in Finland, question 16; Replies to Q3 – Questionnaire to Competitors in Norway, questions 15 and 16; Replies to Q4 – Questionnaire to Competitors in Denmark, question 16.

100 Replies to Q4 – Questionnaire to Competitors in Denmark, question 16.1; Replies to Q1 – Questionnaire to Competitors in Sweden, questions 18 and 18.1.

*tional food offering.*"[101] A majority of competitors indicated that competitive conditions are different from one country to another due to the differences in tax systems and subsidies that employers pay towards employees' lunches.[102] Many competitors also observe a "*different foodculture (sic)*" which requires them to adapt meals to national preferences.[103]

(69) In light of the above and in line with the Commission's precedents, the Commission concludes that, for the purpose of this Decision, the geographic market for contract foodservices is national in scope.

## 7. COMPETITIVE ASSESSMENT

(70) In this section, the Commission assesses the likely effects of the Transaction with respect to the relevant markets or market segments concerned. More specifically, the Commission assesses the likely non-coordinated effects of the Transaction in the relevant markets or segments in which the Parties' activities overlap as to the provision of food contractservices (Section 7.1), as well as the likely conglomerate effects of the Transaction due to Compass' diversified activities in other support services markets or segments where the Parties' activities do not overlap (Section 7.2).

### 7.1. Horizontal assessment

#### *7.1.1. Legal framework for the competitive assessment*

(71) Effective competition brings benefits to consumers, such as low prices, high quality products, a wide selection of goods and services, and innovation. Through its control of mergers, the Commission prevents mergers that would be likely to deprive customers of those benefits by significantly increasing the market power of firms.[104]

(72) Under Article 2(2) and (3) of the Merger Regulation, the Commission must assess whether a proposed concentration would significantly impede effective competition in the internal market or in a substantial part of it, in particular as a result of the creation or strengthening of a dominant position. The notion of "significant impediment to effective competition" must be interpreted as extending, beyond the concept of dominance, to the anticompetitive effects of a concentration resulting from the non-coordinated behaviours of undertakings which do not have a dominant position on the market concerned.[105]

(73) As regards its non-coordinated effects, a merger presenting horizontal overlaps may significantly impede effective competition in a market, even if it does not result in

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101 Replies to Q1 – Questionnaire to Competitors in Sweden, questions 18 and 18.1

102 See, for example, Replies to Q2 – Questionnaire to Competitors in Finland, question 16.1 and Replies to Q3 – Questionnaire to Competitors in Norway, questions 16.1.

103 Replies to Q4 – Questionnaire to Competitors in Denmark, questions 19 and 19.1.

104 Commission Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings (the "Horizontal Merger Guidelines"), OJ C 31, 5.2.2004, p. 5, paragraph 8.

105 Recital 25 of the Merger Regulation.

the creation or strengthening of a dominant position, by removing important competitive constraints and influencing parameters of competition.[106]

(74) The Horizontal Merger Guidelines list a number of factors which may influence whether or not significant non-coordinated effects are likely to result from a merger, such as the large market shares of the merging firms, the fact that merging firms are close competitors, the limited possibilities for customers to access to the services provided by the parties and their competitors and the fact that the merger would eliminate an important competitive force.

(75) It is in light of the principles set out above that the Commission must analyse whether and to what extent the Transaction may raise serious doubts as to its compatibility with the internal market due to its horizontal effects.

*7.1.2. Overview of the reportable markets*

(76) Table 1 shows that the Transaction would result in several horizontal overlaps between Compass and Fazer FS's activities in the following countries and segments:

(a) Sweden: business & industry, education, healthcare & welfare, and defence.

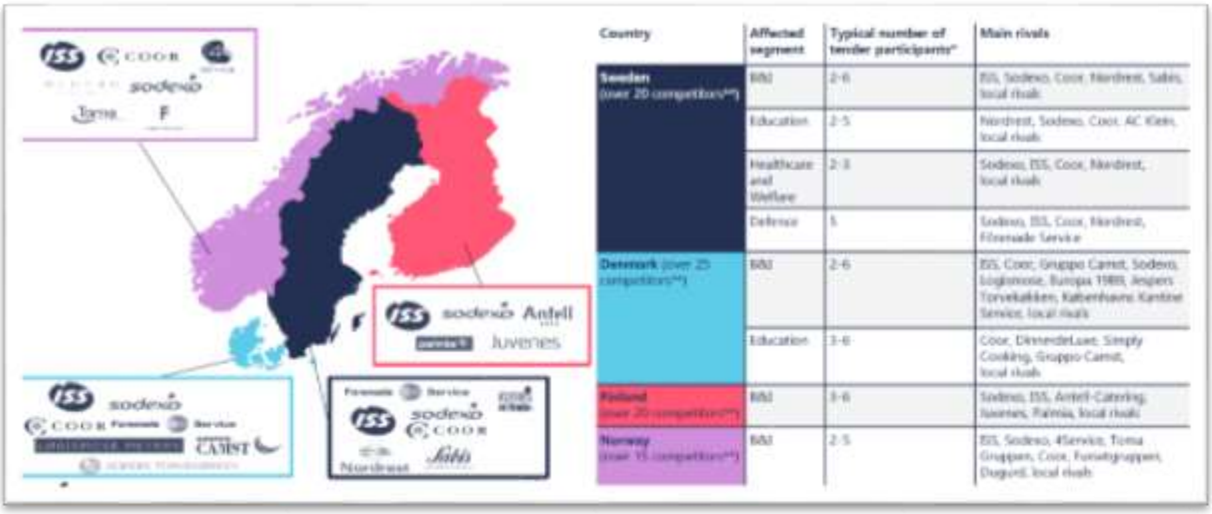
(b) Denmark: business & industry, and education.

(c) Norway: business & industry.

(d) Finland: business & industry.

(77) The Parties submit that following the Transaction, the merged entity will be constrained by a large number of multi-national, regional and local players as showed in Figure 1.

**Figure 1. Significant competition in contract foodservices in the Nordics**




*Source: The Parties' submission "Introduction to Contract Foodservices" of 19 November 2019, slide 22.*
** Based on the Parties' tender data of known competitors. These competitors are in addition to the Parties.*
*** Based on the Parties' tender data.*

106 Horizontal Merger Guidelines, paragraph 8.

(78) ISS is a Danish company and is a globally active provider of facilities management services, also providing foodservices. In 2018, ISS had a revenue of EUR 9,566 million and employed almost 500 000 employees globally.[107]

(79) Sodexo is a French company and is also a global provider of facilities management, including contract foodservices. In 2018, Sodexo had a revenue of EUR 20.4 billion worldwide and of EUR 659 million in the Nordics. Sodexo employed over 450 000 employees globally and more than 11 000 employees in the Nordics.[108]

(80) Coor is a Swedish company, also providing facilities management including foodservices. In 2018, Coor generated a revenue of EUR 900 million and employed more than 9 000 employees. Sweden is Coor's largest market, where it generated around 50% of its turnover in 2018.[109]

(81) In addition to these large multinational companies acting across all four Nordic countries, there are, in each of them, national players. Some of them serve also large customers. In addition, smaller regional companies are offering contract foodservices in each of the four Nordic countries. Markets are therefore characterised by large, medium-sized and many small contract foodservices providers.

(82) In Denmark, there are for example Gruppo Camst, Jespers Torvekøkken, Forenede Service and Meyers Kantiner active. In Sweden, Nordrest and Sabis are active in providing contract foodservices. In Finland, Antell-Catering and Palmia are active, and in Norway, Toma Gruppen and 4Service.

### *7.1.3. Market data*

(83) As already explained in Section 4, both private and public customers of contract foodservices generally tender out their contracts. For that reason, the Parties submit that market shares would not be an accurate indicator of the competitive conditions in the contract foodservices industry, because in bidding markets static market shares would only reflect the outcome of the tenders and would not be very insightful about the competitive process itself. According to the Parties, the market shares would only reflect previous wins of contracts, but not the Parties' nor their competitors' actual strengths or future success rate.[110] The Parties therefore consider that it would be more important to determine whether a sufficient number of credible bidders will remain post-Transaction.[111] In addition, the Parties explained that, due to the lack of any reliable third-party data source, they could not submit market shares with any degree of accuracy.[112]

(84) The Parties have provided their best estimate of the total number of tenders in each segment in 2018, which is shown in Table 2. However, the Parties explain that they

[107] Form CO, para. 633.
[108] Form CO, para. 633.
[109] Form CO, para. 633.
[110] Form CO, para. 294 *et seq.*
[111] Form CO, para. 297.
[112] Form CO, para. 284 *et seq*.

only have knowledge of the tenders in which they participated and would not be able to estimate how much of the respective market they are unaware of.[113]

**Table 2. The Parties' estimate of the total number of tenders in 2016-2018**

| Country | Segment | 2016 | 2017 | 2018 |
|---|---|---|---|---|
| Sweden | business & industry | [50-100] | [50-100] | [50-100] |
| | education | [0-50] | [0-50] | [0-50] |
| | healthcare & welfare | [0-50] | [0-50] | [0-50] |
| | defence | 1 tender in 2016 (new tender in 2020) | | |
| Denmark | business & industry | [0-50] | [0-50] | [0-50] |
| | education | [0-50] | [0-50] | [0-50] |
| Finland | business & industry | [50-100] | [50-100] | [50-100] |
| Norway | business & industry | [50-100] | [100-150] | [100-150] |

*Source: Form CO, para. 287.*

(85) In previous cases in which the Commission assessed transactions in the contract foodservices industry, the Commission considered market shares in its analysis.[114]

(86) In the present case, the Commission observes that in the Swedish defence sector, the Swedish Ministry of Defence tendered out the contract foodservices, split in five lots, in 2016. Fazer FS holds four of these five lots.[115] The next tender is planned for 2020.[116] The Commission considers that for the analysis of the market for contract foodservices to the Swedish defence sector, market shares do not fully capture the competitive conditions in the market. For the purpose of this Decision, the Commission will therefore take account of the tender data provided by the Parties in Section 7.1.4.5 below.

(87) Concerning the other market segments, the Commission notes that the Parties' are not certain of how much of the market is not captured by the information provided in Table 2. The Commission considers that the total number of tenders mentioned above might be understated and that, therefore, the total number of tenders might be higher than stated in the table above.

[113] Form CO, para. 287.
[114] See for example Case M.6513 – *Avenance Italy/Gemeaz Cusin*, paras. 18 *et seq.*
[115] Form CO, para. 816.
[116] Form CO, paras. 825 and 830 *et seq*.

(88) In the case at hand, regarding contract foodservices to business & industry, education, healthcare & welfare customers, the Commission considers that, because of the high number of tenders per year, these contract foodservices market segments are not characterised by infrequent tenders and infrequent demand.

(89) In light of the above, the Commission considers that the Parties' combined market shares by calendar year constitute an appropriate starting point for the Commission's analysis of the markets for contract foodservices to business & industry, education and healthcare & welfare customers.

(90) The Parties provided the Commission with market shares based on the GIRA report, a report commissioned by Fazer FS in 2016 from GIRA Foodservices for the purpose of exploring a [information on Fazer FS's business strategy] ("the GIRA report"). However, the Parties claim that the Commission should disregard the market shares in the GIRA report. It was argued that the GIRA report has methodological issues, in particular because of the "bottom-up" approach of the GIRA report that only took into account a small number of larger competitors and excluded smaller competitors.[117]

(91) In any case, since the market shares in the GIRA report are from 2015 and upon request of the Commission, the Parties provided an estimate of their market shares from 2016 to 2018. These market shares are based on the Parties' turnover in each market segment. For the total market size, the Parties have built up on previous work by [third party consultant]. The Notifying Party had commissioned [third party consultant] to estimate the sizes of the contract foodservices markets in the countries in which the Notifying Party operates. In the course of the pre-notification stage, the Notifying Party asked [third party consultant] to focus on Sweden, Denmark, Finland and Norway.[118]

(92) [Third party consultant] estimated the total size of the contract foodservices markets by multiplying the estimated number of sold meals with the average price of a meal in each market segment and country, using public sources as inputs.[119] [Third party consultant] estimated the total market size for 2017. The Parties then applied their best estimate of the growth rate for 2016 and 2018 to provide the Commission with the total market size in 2016 and 2018.[120] Based on the [third party consultant] dataset, which includes canteen services during lunch only, the Parties have provided market share data also for all contract foodservices, including ancillary vending.[121] In addition, the Parties sought to verify the assumptions used by [third party consultant].[122] The Commission, in its following assessment, will first present the Parties' market shares based on a market total as estimated by [third party consultant] for each affected market as the first set of market share data.

(93) In addition, upon request of the Commission, the Parties provided an estimate of their as well their competitors' market shares in 2018. This market share estimate is based on the Parties' turnover in each market segment and their estimate of their

[117] See Notifying Party's reply to RFI 12 of 14 January 2020, question 7 and Form CO, Annex 7A-002.
[118] Form CO, para. 298.
[119] Form CO, Annex 7A-008.
[120] Form CO, Annex 7A-015.
[121] Form CO, paras. 298 *et seq*.
[122] Form CO, Annex 7A-007.

competitors' turnover based on public sources, such as annual reports. The Parties provided these market share estimates calculated with two market totals, based on (1) the [third party consultant] market total and (2) the market total as determined by the total of the Parties' turnover and their competitors' turnover.[123] The [third party consultant] market total is higher than the market total determined by the total of the Parties' turnover and their known competitor turnover. In the following assessment, to apply a conservative approach, the Commission uses the estimates of the Parties' and their competitors' market shares calculated based on the total market as determined by the total of the Parties' and their competitors' turnover in each market segment. These market share estimates are presented as the second set of market share data in the analysis of each individual market segment.

(94) The Commission has verified the reliability of the market share estimates provided by the Parties in the course of the market investigation. The results of that verification will be addressed in the assessment of each individual market segment.

### *7.1.4. Sweden*

#### 7.1.4.1. Overview of the contract foodservices industry in Sweden

(95) In addition to the multi-national companies ISS, Sodexo and Coor referred to in paragraph (78) and following above, several national companies are active in one or more market segments for the provision of contract foodservices in Sweden, for instance, the larger national suppliers Nordrest and Sabis.

(96) Nordrest is a Swedish company founded in 2013. It provides contract foodservices in the business & industry, education and healthcare & welfare segments. It employs around 500 employees with an annual turnover of around EUR 74.5 million.[124]

(97) Sabis is a Stockholm-based, family-owned company, providing contract foodservices as well as operating more than 20 restaurants and a number of cafés, hotels and food stores. [125]

#### 7.1.4.2. Contract foodservices to business & industry customers in Sweden

(98) Table 3 presents the Parties' estimate of their market shares in 2018, 2017, 2016 in the supply of contract foodservices to business & industry customers in Sweden based on the Parties' turnover and the estimation of the total market size by [third party consultant] as explained above.

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[123] See Notifying Party's reply to RFI 12 of 14 January 2020 and Notifying Party's reply to RFI 13 of 20 January 2020.

[124] Form CO, paras. 633, 651, 670, 701, 716, 758, 779, 791, and 805.

[125] Form CO, para. 670.

**Table 3. The Parties' market shares in supply of contract foodservices to business & industry customers in Sweden in 2018, 2017 and 2016 ([third party consultant])**

| | **2018** | | **2017** | | **2016** | |
|---|---|---|---|---|---|---|
| | **Revenue (€ millions)** | **Share** | **Revenue (€ millions)** | **Share** | **Revenue (€ millions)** | **Share** |
| **Compass** | […] | [5-10]% | […] | [5-10]% | […] | [5-10]% |
| **Fazer FS** | […] | [10-20]% | […] | [10-20]% | […] | [10-20]% |
| **Combined** | […] | **[10-20]%** | […] | **[10-20]%** | […] | **[20-30]%** |
| **Total market** | […] | **100%** | […] | **100%** | […] | **100%** |

*Source: Form CO, para. 620.*

(99) The Parties verified the assumptions used in the [third party consultant] model and concluded that the average price per meal might be overstated. When using the Parties' price data instead of the [third party consultant] estimates, the Parties' combined market share would increase to [20-30]%.[126]

(100) Table 4 presents the Parties' estimate of their market shares in 2018 in the supply of contract foodservices to business & industry customers in Sweden based on (i) the Parties' turnover, (ii) the Parties' estimate of their known competitors' turnover based on public sources and (iii) the total market size calculated as the total of the Parties' own turnover and the estimated known competitors' turnover.[127]

**Table 4. The Parties' market shares in supply of contract foodservices to business & industry customers in Sweden in 2018 (estimated competitor turnover)**

| | **Market shares estimated in 2018** |
|---|---|
| Compass | [20-30]% |
| Fazer | [20-30]% |
| **Parties combined** | **[40-50]%** |
| Sodexo | [20-30]% |
| ISS | [5-10]% |
| Coor | [5-10]% |
| Nordrest | [10-20]% |
| Sabis | [5-10]% |
| 12 other competitors with an estimated market share of up to 2% each | [5-10]% |

*Source: Notifying Party's reply to RFI 12 of 14 January 2020.*

126 Form CO, Annex 7A-007, Table 1.

127 See Notifying Party's reply to RFI 12 of 14 January 2020.

(101) The total market size used to estimate these market shares was around EUR […] million, whereas the total market size as estimated by the [third party consultant] model was around EUR […] million. The Commission therefore acknowledges that the market share estimates provided by the Parties based on competitors' revenues might be overstated.

(102) In the course of the market investigation, the Commission has verified the market share estimates of the Parties. To do this, the Commission has contacted the majority of significant competitors who won tenders in which one of the Parties participated. The verification confirms the broader picture of the Parties' position as the market leader with a clear difference over the next in line competitors.[128]

(103) The Notifying Party submits that following the Transaction, the merged entity will continue to be constrained by a number of significant competitors, including Sodexo, ISS, Coor, Nordrest and Sabis. Moreover, according to the Notifying Party, the merged entity will continue to face competition from a large number of smaller, local competitors.[129] In addition, barriers to entry and expansion would be low and there would be strong constraints on the merged entity through buyer power as well as out-of-market constraints, such as restaurants.[130]

(104) Despite the somewhat high combined market shares of the Parties post-Transaction, and the clear lead over the next in line competitors, the Commission considers that the Transaction is unlikely to raise serious doubts as to its compatibility with the internal market due to the following reasons.

(105) First, as shown by the market investigation and demonstrated in Table 4 above, the Swedish market for contract foodservices to business & industry customers is featured not only by large multi-national players such as Coor, ISS, Sodexo, but also by national foodservices suppliers like Nordrest and Sabis Invest AB as well as a number of smaller or local players like Heat.[131] Demonstrative of this point is the fact that the Parties' tender data includes over [10-20] competitors, [information on the Parties' bidding data].[132] The large number of smaller suppliers is also capable of serving larger customers. For example, in 2017 and 2018, local competitors won [information on the Parties' bidding results],[133] [information on the Parties' bidding results].[134] As demonstrated by the Parties' tender data, these tenders are substantially based on the value of the tender. For example, the average value of a tender lost by the Notifying Party between 2014 and 2018 was around EUR [information on the Parties' bidding results].[135]

128 Replies to Q1 – Questionnaire to Competitors in Sweden, question 21.

129 Form CO, paras. 666 *et seq.*

130 Form CO, paras. 676 *et seq*.

131 Heat entered the market for contract foodservices in 2008 and has recently expanded, for example, it won the tender by the Swedish Police Authority in 2019, see Form CO, para. 681.

132 Form CO, paras. 650 *et seq.*

133 Form CO, para. 674.

134 Form CO, para. 673.

135 Own calculation based on Form CO, paras. 651 *et seq*. The average value of a tender lost by the Notifying Party between 2014 and 2018 was around [information on the Parties' bidding results] EUR if [information on the Parties' bidding results], see Form CO, para.653.

(106) Furthermore, evidence collected during the market investigation shows that in selecting their contract foodservices providers via tender processes, Swedish business & industry customers do not give preference to the historical relationship with the contract foodservices supplier. Customers give preference to quality of the food, the price of the food and efficient day-to-day operations.[136] Contract foodservices suppliers try to differentiate from each other to win tenders on these parameters.[137] Moreover, the results of the market investigation show that both competitors and customers see as the most important trends in the contract foodservices in Sweden in the next three years the following: (i) customers prefer high-quality food over low-cost food offering; (ii) customers prefer high-quality food over multi-service solutions where food is provided together with other services, such as cleaning; (iii) customers demand healthy food with local ingredients and sustainable services; and (iv) customers see their canteen as a possibility to attract and retain employees.[138] A trend towards customers favouring smaller or independent suppliers was also confirmed to some extent.[139] One of the brokers active in Sweden summarised as follows: "*Most clients are interested in high quality, entrepreneurial spirit and their own driving force. Likewise, locally produced food and a high sustainability factor. Many are willing to pay higher prices for better quality. Today, the client does not want larger meal companies but smaller companies that can strengthen their brand. The trend is towards smaller meal companies.*"[140]

(107) Customers in the business & industry segment will therefore continue to benefit from the ability to choose from an extensive list of credible alternative bidders, which ranges from multi-national and national firms, to smaller local rivals. The Commission therefore considers that post-Transaction, the Parties will continue to face significant competition from the other companies active in the business & industry segment in Sweden.

(108) Second, barriers to entry into the market for contract foodservices to business & industry customers are low, especially for the companies already operating in the food sector in Sweden. A new market entry requires limited resources given that staff is typically transferred to the winner of the tender, whereas kitchen facilities typically belong to the customer. One competitor explained, for example, that the assets and investments needed to start offering contract foodservices in another market segment than the one he is currently active in are as follows "*The entry barriers (sic) is low as it comes to monetary investment, may need to hire specialists i.e. dietists etc. Normally the outsourcer owns all fixed assets, i.e. kitchen equipment*."[141] This is supported by the results of the market investigation, which show that the most important criteria for a new market entry in Sweden are (i) the existence of management staff with experience in the contract foodservices industry and (ii) the knowledge of the contract foodservices industry and how to organise day-to-day op-

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136 Replies to Q1 – Questionnaire to Competitors in Sweden, question 22; Replies to Q5 – Questionnaire to Customers in Sweden, question 17.

137 Replies to Q1 – Questionnaire to Competitors in Sweden, question 23; Replies to Q5 – Questionnaire to Customers in Sweden, question 18.

138 Replies to Q1 – Questionnaire to Competitors in Sweden, question 26; Replies to Q5 – Questionnaire to Customers in Sweden, question 21.

139 Replies to Q1 – Questionnaire to Competitors in Sweden, question 26; Replies to Q5 – Questionnaire to Customers in Sweden, question 21.

140 Replies to Q9 – Questionnaire to Brokers, question 14.

141 Replies to Q1 – Questionnaire to Competitors in Sweden, question 9.

erations.[142] In addition, the majority of competitors responding to the market investigation explained that it would be easy for them to find suitable food suppliers for their contract foodservices operations in Sweden.[143] The Commission's findings in relation to low entry barriers on the supply side are also supported by the fact that a majority of the Swedish competitors responding to the Commission's market investigation believe that a company can enter the Swedish market and start offering contract foodservices with a contract for a single canteen or only one customer.[144]

(109) Third, on the demand-side, there are no significant barriers to switching between contract foodservices suppliers in the business & industry sector in Sweden. The majority of competitors responding to the market investigation explained that the majority of business & industry customers switches their contract foodservices supplier after the contract is terminated, when the contract would be re-tendered and awarded to another supplier.[145] Nearly half of the customers responding to the market investigation confirmed that they had switched their contract foodservices supplier in the last five years.[146] In addition, the majority of customers responding to the market investigation confirmed that it was (somewhat) easy for them to find a suitable supplier of contract foodservices or to switch to a different supplier of contract foodservices.[147] This ability to switch strengthens the competitive constraints on the Parties post-Transaction and contributes to the dynamic and competitive environment in the Swedish business & industry segment.

(110) Fourth, the market investigation indicated that customers of contract foodservices may sponsor new entry or expansion of other, in particular smaller, contract foodservices suppliers. This can be done by determining the contract details as well as the scope of the foodservices contract.

(111) The majority of respondents to the market investigation confirmed that the conditions of the foodservices contracts (i.e. quality of the food, price, termination clauses) are determined by the customers in the business & industry segment in Sweden.[148] In general, it seems that the larger the customer, the higher the ability to negotiate the conditions.[149]

(112) As explained, customers also have the possibility to structure their tender in separate tenders for contract foodservices for each of their canteens or sites. Furthermore, they have the possibility to split their tenders into smaller lots to increase competition and promote smaller contract foodservices suppliers. The market investigation

[142] Replies to Q1 – Questionnaire to Competitors in Sweden, question 83; Replies to Q5 – Questionnaire to Customers in Sweden, question 95.

[143] Replies to Q1 – Questionnaire to Competitors in Sweden, question 84.

[144] Replies to Q1 – Questionnaire to Competitors in Sweden, question 85.

[145] Replies to Q1 – Questionnaire to Competitors in Sweden, question 57.

[146] Replies to Q5 – Questionnaire to Customers in Sweden, question 52.

[147] Replies to Q5 – Questionnaire to Customers in Sweden, question 50; Replies to Q9 – Questionnaire to Brokers, question 19.

[148] Replies to Q1 – Questionnaire to Competitors in Sweden, question 55; Replies to Q5 – Questionnaire to Customers in Sweden, question 49; Replies to Q9 – Questionnaire to Brokers, question 16.

[149] Replies to Q1 – Questionnaire to Competitors in Sweden, question 55; Replies to Q5 – Questionnaire to Customers in Sweden, question 51; Replies to Q9 – Questionnaire to Brokers, question 18.

has shown that these possibilities are used by some customers.[150] The majority of respondents to the market investigation confirmed that Swedish customers in the business & industry sector use one or more of the following tactics to achieve better contract terms: suggestion to take the foodservices in-house, to terminate the contract and re-tender and/or to split the tender in smaller lots that may be tendered to different suppliers.[151]

(113) Fifth, the Commission's assessment of the effects of the Transaction has also taken into account the fact that other lunch food options are available to the staff in the business & industry sector compared to lunch in the on-site canteen. The majority of respondents to the market investigation considered that bringing lunch from home or eating lunch at home would be the preferred alternative lunch food option, followed by eating lunch at an outside restaurant.[152] One competitor explained, for example, that "*To bring a Lunchbox is by far the biggest competition*."[153] The Commission therefore considers that these out-of-market constraints will have an effect on the merged entity's continued incentive to deliver good quality and price ratio to their customers post-Transaction.

(114) Finally, the majority of respondents to the market investigation having expressed a view considered that the Transaction would have no effect on competition in the business & industry segment in Sweden.[154] While the views of competitors as to whether there would be sufficient competition in all sectors, including business & industry, following the Transaction were mixed;[155] the majority of customers in Sweden did not considered that the Transaction would have an impact on their company.[156]

(115) Taking the above considerations into account, the Commission considers that the Parties will face significant competition in the business & industry segment in Sweden post-Transaction and that the competitive constraints on the Parties in the supply of contract foodservices to business & industry customers in Sweden would be sufficient.

*Conclusion*

(116) In light of the results of the market investigation and considering the evidence available to it, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the market for the supply of contract foodservices to business & industry customers in Sweden.

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150 Replies to Q1 – Questionnaire to Competitors in Sweden, question 54; Replies to Q5 – Questionnaire to Customers in Sweden, question 48; Replies to Q9 – Questionnaire to Brokers, question 15.

151 Replies to Q1 – Questionnaire to Competitors in Sweden, question 56; Replies to Q5 – Questionnaire to Customers in Sweden, question 54; Replies to Q9 – Questionnaire to Brokers, question 20.

152 Replies to Q1 – Questionnaire to Competitors in Sweden, question 25; Replies to Q5 – Questionnaire to Customers in Sweden, question 20.

153 Replies to Q1 – Questionnaire to Competitors in Sweden, question 25.

154 Replies to Q1 – Questionnaire to Competitors in Sweden, question 109; Replies to Q5 – Questionnaire to Customers in Sweden, question 111; Agreed non-confidential minutes of a conference call of 9 January 2020 with a customer in Sweden, para. 6.

155 Replies to Q1 – Questionnaire to Competitors in Sweden, question 108; E-Mail of a competitor of 15 January 2020.

156 Replies to Q5 – Questionnaire to Customers in Sweden, question 110; Agreed non-confidential minutes of a conference call of 9 January 2020 with a customer in Sweden, para. 13.

7.1.4.3. Contract foodservices to education customers in Sweden

(117) Table 5 presents the Parties' estimate of their market shares in 2018, 2017 and 2016 in the supply of contract foodservices to education customers in Sweden based on the Parties' turnover and the estimation of the total market size by [third party consultant] as explained above.

**Table 5. The Parties' market shares in supply of contract foodservices to education customers in Sweden in 2018, 2017 and 2016 ([third party consultant])**

| | **2018** | | **2017** | | **2016** | |
|---|---|---|---|---|---|---|
| | **Revenue (€ millions)** | **Share** | **Revenue (€ millions)** | **Share** | **Revenue (€ millions)** | **Share** |
| **Compass** | […] | [5-10]% | […] | [5-10]% | […] | [0-5]% |
| **Fazer FS** | […] | [0-5]% | […] | [5-10]% | […] | [5-10]% |
| **Combined** | […] | **[10-20]%** | […] | **[10-20]%** | […] | **[5-10]%** |
| **Total market** | […] | **100%** | […] | **100%** | […] | **100%** |

*Source: Form CO, para. 621.*

(118) The Parties verified the assumptions used in the [third party consultant] model.[157]

(119) Table 6 presents the Parties' estimate of their market shares in 2018 in the supply of contract foodservices to education customers in Sweden based on (i) the Parties' turnover, (ii) the Parties' estimate of their known competitors' turnover based on public sources and (iii) the total market size calculated as the total of the Parties' own turnover and the estimated known competitors' turnover.[158]

**Table 6. The Parties' market shares in supply of contract foodservices to education customers in Sweden in 2018 (estimated competitor turnover)**

| | **Market shares estimated in 2018** |
|---|---|
| Compass | [10-20]% |
| Fazer | [10-20]% |
| **Parties combined** | **[20-30]%** |
| Sodexo | [30-40]% |
| ISS | [10-20]% |
| Hörs/Nordrest[159] | [10-20]% |
| ACKlein | [5-10]% |
| Skolfood i Göteborg | [5-10]% |
| Fraiche Catering | [0-5]% |
| 5 other competitors with an estimated market share of up to 2% each | [5-10]% |

*Source: Notifying Party's reply to RFI 13 of 20 January 2020.*

157 Form CO, Annex 7A-007, Table 1.

158 See Notifying Party's reply to RFI 12 of 14 January 2020 and the Notifying Party's reply to RFI 13 of 20 January.

159 Nordrest acquired Hörs in 2019, see Form CO, para. 716.

(120) The total market size used to estimate these market shares was around EUR […] million, whereas the total market size as estimated by the [third party consultant] model was around EUR […] million. The Commission therefore acknowledges that the market share estimates provided by the Parties based on competitors' revenues might be overstated. However, in the course of the market investigation, the Commission has verified the market share estimates of the Parties. To do this, the Commission has contacted the majority of significant competitors who won tenders in which one of the Parties participated. While the verification confirms the broader picture, namely the presence of sizable competitors, the Parties' position seems to be stronger than the estimate provided in the table above.[160]

(121) The Notifying Party submits that following the Transaction, the merged entity will continue to be constrained by a number of significant competitors, including Sodexo, ISS, Nordrest, and several education foodservices specialists like AC Klein and Fraiche Catering.[161] In addition, barriers to entry and expansion would be low and there would be strong constraints on the merged entity through buyer power.[162]

(122) The Commission considers that the Transaction is unlikely to raise serious doubts as to its compatibility with the internal market for the following reasons.

(123) First, this market is featured not only by the presence of large multi-national players such as Sodexo and ISS, but also by national foodservices suppliers like Nordrest, AC Klein, or Fraiche Catering. Demonstrative of this point is the fact that the Parties' tender data includes over [0-10] competitors.[163] This is also evidenced by the Notifying Party's own analysis of the supply of foodservices to lower education institutions: [Notifying Party's internal document].[164]

(124) Furthermore, evidence collected during the market investigation shows that in selecting their contract foodservices providers via tender processes, Swedish education customers do not give preference to the historical relationship. Customers give preference to the quality of the food, local, fresh and/or organic ingredients/food, nutritional value of the food, price of the food as well as reputation and track-record of the supplier.[165] Contract foodservices suppliers try to differentiate from each other to win tenders on these parameters and by offering efficient day-to-day operations.[166] Moreover, the results of the market investigation show that both competitors and customers see as the most important trends in the contract foodservices in Sweden in the next three years the following: customers prefer high-quality food over low-cost food offering and customers demand healthy food with local ingredients and sustain-

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160 Replies to Q1 – Questionnaire to Competitors in Sweden, question 21.

161 Form CO, paras. 737 *et seq*.

162 Form CO, paras. 719 *et seq*. and 741 *et seq*.

163 Form CO, paras. 699 *et seq*. and 727 *et seq*.

164 See Form CO, Annex 5.4.A-126, "[…]", see also Form CO, para. 736.

165 Replies to Q1 – Questionnaire to Competitors in Sweden, questions 27 and 32; Replies to Q5 – Questionnaire to Customers in Sweden, questions 22 and 27.

166 Replies to Q1 – Questionnaire to Competitors in Sweden, questions 28 and 33; Replies to Q5 – Questionnaire to Customers in Sweden, questions 23 and 28.

able services.[167] A trend towards customers favouring smaller or independent suppliers was also confirmed to some extent.[168]

(125) Customers in the education segment will therefore continue to benefit from the ability to choose from an extensive list of credible alternative bidders, which ranges from multi-national and national firms to smaller local rivals. The Commission therefore considers that post-Transaction, the Parties will continue to face significant competition from the other companies active in the education segment in Sweden.

(126) Second, barriers to entry into the market for contract foodservices to education customers in Sweden are low, especially for the companies already operating in the food sector in Sweden. A new market entry requires limited resources given that staff is typically transferred to the winner of the tender, whereas kitchen facilities typically belong to the customer. One competitor explained, for example, that the assets and investments needed to start offering contract foodservices in another market segment than the one he is currently active in are as follows "*The entry barriers (sic) is low as it comes to monetary investment, may need to hire specialists i.e. dietists etc. Normally the outsourcer owns all fixed assets, i.e. kitchen equipment*."[169] This is supported by the results of the market investigation, which show that the most important criteria for a new market entry in Sweden are (i) the existence of management staff with experience in the contract foodservices industry and (ii) the knowledge of the contract foodservices industry and how to organise day-to-day operations.[170] In addition, the majority of competitors responding to the market investigation explained that it would be easy for them to find suitable food suppliers for their contract foodservices operations in Sweden.[171] The Commission's findings in relation to low entry barriers on the supply side are also supported by the fact that a majority of the Swedish competitors responding to the Commission's market investigation believe that a company can enter the Swedish market and start offering contract foodservices with a contract for a single canteen or only one customer.[172]

(127) Third, on the demand-side, there are no significant barriers to switching between contract foodservices suppliers in the education sector in Sweden. The majority of competitors responding to the market investigation explained that the majority of Swedish customers in the education sector switches their suppliers of contract foodservices after the contract is terminated, when it would be re-tendered and awarded to another supplier.[173] The majority of customers responding to the market investigation confirmed that they had switched their contract foodservices supplier in the last five years.[174] In addition, the majority of customers responding to the market investigation confirmed that it was (somewhat) easy for them to find a suitable supplier of contract foodservices or to switch to a different supplier of contract foodservices.[175]

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167 Replies to Q1 – Questionnaire to Competitors in Sweden, questions 31 and 36; Replies to Q5 – Questionnaire to Customers in Sweden, questions 26 and 31.

168 Replies to Q1 – Questionnaire to Competitors in Sweden, questions 31 and 36; Replies to Q5 – Questionnaire to Customers in Sweden, questions 26 and 31.

169 Replies to Q1 – Questionnaire to Competitors in Sweden, question 9.

170 Replies to Q1 – Questionnaire to Competitors in Sweden, question 83; Replies to Q5 – Questionnaire to Customers in Sweden, question 95.

171 Replies to Q1 – Questionnaire to Competitors in Sweden, question 84.

172 Replies to Q1 – Questionnaire to Competitors in Sweden, question 85.

173 Replies to Q1 – Questionnaire to Competitors in Sweden, questions 62 and 67.

174 Replies to Q5 – Questionnaire to Competitors in Sweden, questions 60 and 68.

175 Replies to Q5 – Questionnaire to Customers in Sweden, questions 58 and 66.

This ability to switch strengthens the competitive constraints provided by customers and contributes to the dynamic and competitive environment in the Swedish education segment.

(128) Fourth, the market investigation provided indications that customers of contract foodservices may sponsor new entry or expansion of other, in particular smaller, contract foodservices suppliers. This can be done by determining the contract details as well as the scope of the foodservices contract, for example, by splitting their tenders into smaller lots.

(129) The majority of respondents to the market investigation confirmed that the conditions of the foodservices contracts (i.e. quality of the food, price, termination clauses) are determined by the customers in the education segment in Sweden.[176] In general, it seems that the larger the customer, the higher the ability to negotiate the conditions.[177]

(130) As explained, customers also have the possibility to structure their tender in separate tenders for contract foodservices for each of their canteens or sites. Furthermore, they have the possibility to split their tenders into smaller lots to increase competition and promote smaller contract foodservices suppliers. The market investigation has shown that these possibilities are used by some customers.[178] The majority of customers responding to the market investigation explained that they use the tactic of suggesting the termination of the contract to achieve better contract terms.[179] While competitors responding to the market investigation considered that such a threat would not be used by customers,[180] the general tactic was, however, broadly confirmed by a competitor who explained that "*Public sector contracts are always re-tendered or taken in-house following the contract period – this is general knowledge thus no threats are necessary. The argument is used however, in case the customer consider (sic) the supplier to breach contract.*"[181]

(131) The Commission also notes that the majority of respondents to the market investigation having expressed a view considered that the Transaction would have an effect on competition in the market for contract foodservices to education customers in Sweden.[182]

(132) Taking the above considerations into account, the Commission considers that the Parties will face significant competition in the education segment in Sweden post-Transaction and that the competitive constraints on the Parties in the supply of contract foodservices to education customers in Sweden would be sufficient.

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176 Replies to Q1 – Questionnaire to Competitors in Sweden, questions 60 and 65; Replies to Q5 – Questionnaire to Customers in Sweden, questions 57 and 65.

177 Replies to Q5 – Questionnaire to Customers in Sweden, questions 59 and 67.

178 Replies to Q1 – Questionnaire to Competitors in Sweden, questions 59 and 64; Replies to Q5 – Questionnaire to Customers in Sweden, questions 56 and 64.

179 Replies to Q5 – Questionnaire to Customers in Sweden, questions 62 and 70.

180 Replies to Q1 – Questionnaire to Competitors in Sweden, questions 61 and 66.

181 Replies to Q1 – Questionnaire to Competitors in Sweden, question 66.

182 Replies to Q1 – Questionnaire to Competitors in Sweden, questions 110 and 111; Replies to Q5 – Questionnaire to Customers in Sweden, questions 112 and 113.

*Conclusion*

(133) In light of the results of the market investigation and considering the evidence available to it, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the market for the supply of contract foodservices to education customers in Sweden.

7.1.4.4. Contract foodservices to healthcare & welfare customers in Sweden

(134) Table 7 presents the Parties' estimate of their market shares in 2018, 2017 and 2016 in the supply of contract foodservices to healthcare & welfare customers in Sweden based on the Parties' turnover and their estimation of the total market size by [third party consultant] as explained above.

**Table 7. The Parties' market shares in supply of contract foodservices to healthcare & welfare customers in Sweden in 2018, 2017 and 2016 ([third party consultant])**

| | **2018** | | **2017** | | **2016** | |
|---|---|---|---|---|---|---|
| | **Revenue (€ millions)** | **Share** | **Revenue (€ millions)** | **Share** | **Revenue (€ millions)** | **Share** |
| **Compass** | […] | [5-10]% | […] | [5-10]% | […] | [5-10]% |
| **Fazer FS** | […] | [5-10]% | […] | [5-10]% | […] | [5-10]% |
| **Combined** | […] | **[10-20]%** | […] | **[10-20]%** | […] | **[10-20]%** |
| **Total market** | […] | **100%** | […] | **100%** | […] | **100%** |

*Source: Form CO, para. 622.*

(135) The Parties verified the assumptions used in the [third party consultant] model.[183]

(136) Table 8 presents the Parties' estimate of their market shares in 2018 in the supply of contract foodservices to healthcare & welfare customers in Sweden based on (i) the Parties' turnover, (ii) the Parties' estimate of their known competitors' turnover based on public sources and (iii) the total market size calculated as the total of the Parties' own turnover and the estimated known competitors' turnover.[184]

[183] Form CO, Annex 7A-007, Table 1.

[184] See Notifying Party's reply to RFI 12 of 14 January 2020 and reply to RFI 13 of 20 January 2020.

**Table 8. The Parties' market shares in supply of contract foodservices to healthcare & welfare customers in Sweden in 2018 (estimated competitor turnover)**

| | **Market shares estimated in 2018** |
|---|---|
| Compass | [10-20]% |
| Fazer | [20-30]% |
| **Parties combined** | **[40-50]%** |
| Sodexo | [20-30]% |
| ISS | [10-20]% |
| Coor | [10-20]% |
| Nordrest | [5-10]% |
| Förenade Care | [5-10]% |

*Source: Notifying Party's reply to RFI 13 of 20 January 2020.*

(137) The total market size used to estimate these market shares was around EUR […] million, whereas the total market size as estimated by the [third party consultant] model was EUR […] million. The Commission therefore acknowledges that the market share estimates provided by the Parties based on competitors' revenues might be overstated.

(138) In the course of the market investigation, the Commission has verified the market share estimates of the Parties. To do this, the Commission has contacted the majority of significant competitors who won tenders in which one of the Parties participated. The verification confirms the broader picture of the Parties' position as the market leader post-Transaction.[185]

(139) The Notifying Party submits that, following the Transaction, the merged entity will continue to be constrained by a number of significant competitors, including Coor, Sodexo, ISS and Nordrest.[186] In addition, barriers to entry and expansion would be low and there would be strong constraints on the merged entity through buyer power.[187]

(140) The Commission considers that the Transaction is unlikely to raise serious doubts as to its compatibility with the internal market for the following reasons.

(141) First, as shown by the market investigation and demonstrated in Table 8 above, the Swedish market for contract foodservices to healthcare & welfare customers is featured not only by large multi-national players such as Coor, ISS and Sodexo, but also by national foodservices suppliers like Nordrest.

(142) Furthermore, evidence collected during the market investigation shows that in selecting their contract foodservices providers via tender processes, Swedish healthcare & welfare customers do not give preference to the historical relationship with the contract foodservices supplier. Customers give preference to the quality of the food, the nutritional value of the food, price of the food, efficient day-to-day operations, and

185 Replies to Q1 – Questionnaire to Competitors in Sweden, question 21.
186 Form CO, paras. 779 and 805.
187 Form CO, paras. 780 *et seq.*, 784 *et seq.*, 807 *et seq.*, 812 *et seq*.

the reputation and track-record of the supplier.[188] Contract foodservices suppliers try to differentiate from each other to win tenders on these parameters.[189] Moreover, the result of the market investigation shows that both competitors and customers see as the most important trends in the contract foodservices in Sweden in the next three years the following: customers prefer high-quality food over low-cost food offering; customers demand healthy food with local ingredients and sustainable services; and digital solutions.[190] Especially for the elderly care, a competitor also mentioned that "*[t]here is a trend towards pre-packed ready meals in the elderly care sector which is more frequently being provided from wholesaler/producer*."[191] A trend towards customers favouring smaller or independent suppliers was also confirmed to some extent.[192]

(143) Customers in the healthcare & welfare segment will therefore continue to benefit from the ability to choose from an extensive list of credible alternative bidders. The Commission therefore considers that, post-Transaction, the Parties will continue to face significant competition from the other companies active in the healthcare & welfare segment in Sweden.

(144) Second, barriers to entry into the market for contract foodservices in Sweden in general are low, especially for the companies already operating in the food sector in Sweden. In general, a new market entry requires limited resources given that staff is transferred to the winner of the tender, whereas kitchen facilities typically belong to the customer. This is supported by the results of the market investigation, which show that the most important criteria for a new market entry in Sweden are (i) the existence of management staff with experience in the contract foodservices industry and (ii) knowledge of the contract foodservices industry and how to organise day-to-day operations.[193] In addition, the majority of competitors responding to the market investigation explained that it would be easy for them to find suitable food suppliers for their contract foodservices operations in Sweden.[194] The Commission's findings in relation to low entry barriers on the supply side are also supported by the fact that a majority of the Swedish competitors responding to the market investigation believe that a company can enter the Swedish market and start offering contract foodservices with a contract for a single canteen or only one customer.[195]

(145) However, for the healthcare & welfare segment in Sweden, barriers to entry and expansion appear slightly higher. As explained by the Parties, an entrant into the healthcare segment would need to demonstrate his ability to provide safe patient food, which would however be possible by taking over the staff with the relevant

188 Replies to Q1 – Questionnaire to Competitors in Sweden, questions 37 and 40; Replies to Q5 – Questionnaire to Customers in Sweden, questions 32 and 35.

189 Replies to Q1 – Questionnaire to Competitors in Sweden, questions 38 and 41; Replies to Q5 – Questionnaire to Customers in Sweden, questions 33 and 36.

190 Replies to Q1 – Questionnaire to Competitors in Sweden, questions 39 and 42; Replies to Q5 – Questionnaire to Customers in Sweden, questions 34 and 37.

191 Replies to Q1 – Questionnaire to Competitors in Sweden, question 42.

192 Replies to Q1 – Questionnaire to Competitors in Sweden, questions 39 and 42; Replies to Q5 – Questionnaire to Customers in Sweden, questions 34 and 37.

193 Replies to Q1 – Questionnaire to Competitors in Sweden, question 83; Replies to Q5 – Questionnaire to Customers in Sweden, question 95.

194 Replies to Q1 – Questionnaire to Competitors in Sweden, question 84.

195 Replies to Q1 – Questionnaire to Competitors in Sweden, question 85.

know-how after winning a tender.[196] This was broadly confirmed by the market investigation, where one competitor explained that to provide contract foodservices to healthcare customers "*You would need to recruit chefs with a different skill set; invest in a nutritional calculation system to aid with menu planning and recruit a dietician to manage the system and menus. […]*"[197]

(146) In addition, some hospitals or care homes do not have a kitchen to produce food, for example, the hospitals in the Region Skåne.[198] The Region Skåne has tendered its healthcare contracts in 2015 and 2018 divided in five different lots. Currently, the foodservices contracts in the healthcare sector in the Region Skåne are tendered out to Compass (3 lots) and Fazer (2 lots).[199] Compass, however, does not supply its Region Skåne contracts from a central kitchen, but [information on the Notifying Party's operations].[200] Fazer provides contract foodservices to hospitals in the Region Skåne only since 2015. Fazer explained that it […] took over and rebuilt an existing kitchen into a hospital production kitchen before the contract started.[201] One competitor also explained that to provide contract foodservices to healthcare customers "*[…] we would also require that the healthcare authority in question would agree to provide a kitchen/production facility (which they would normally would agree to*)".[202] In the Commission's view, this demonstrates that a production kitchen does not amount to any significant barrier to entry into the market for contract foodservices in the healthcare & welfare segment in Sweden. As a result, the Commission concludes that barriers to entry into the healthcare & welfare segment in Sweden are low.

(147) Third, on the demand-side, there are no significant barriers to switching between contract foodservices suppliers in the healthcare & welfare sector in Sweden. The majority of competitors responding to the market investigation explained that the majority of healthcare & welfare customers switches their contract foodservices supplier after the contract is terminated, when the contract would be re-tendered and awarded to another supplier.[203]

(148) Fourth, the market investigation provided indications that customers of contract foodservices may sponsor new entry or expansion of other, in particular smaller, contract foodservices suppliers. This can be done by determining the contract details as well as the scope of the foodservices contract, for example by splitting their tenders into smaller lots.

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196 Form CO, para. 781.

197 Replies to Q1 – Questionnaire to Competitors in Sweden, question 14.6.

198 Form CO, para. 768.

199 Form CO, para. 767.

200 Form CO, para. 772.

201 Form CO, para. 768.

202 Replies to Q1 – Questionnaire to Competitors in Sweden, question 14.6.

203 Replies to Q1 – Questionnaire to Competitor in Sweden, questions 72 and 77; from the customers' side the market investigation was inclusive as to whether customers in the majority have switched their contract foodservices supplier in the last five years and if it is (somewhat) easy for them to find a suitable supplier of contract foodservices or to switch to a different supplier of contract foodservices, see Replies to Q5 – Questionnaire to Customers in Sweden, question 50; Replies to Q9 – Questionnaire to Brokers, question 19.

(149) The majority of respondents to the market investigation confirmed that the conditions of the foodservices contracts (i.e. quality of the food, price, termination clauses) are determined by the customers in the healthcare & welfare segment in Sweden.[204] In general, it seems that the larger the customer, the higher the ability to negotiate the conditions.[205]

(150) As explained, customers also have the possibility to structure their tender in separate tenders for contract foodservices for each of their canteens or sites. Furthermore, they have the possibility to split their tenders into smaller lots to increase competition and promote smaller contract foodservices suppliers. The market investigation has shown that these possibilities are used by some customers.[206] The majority of customers responding to the market investigation confirmed that Swedish customers in the healthcare & welfare sector use one or more of the following tactics to achieve better contract terms: suggestion to take the foodservices in-house, to terminate the contract and re-tender and/or to split the tender in smaller lots that may be tendered to different suppliers.[207] This was also broadly confirmed by a competitor who explained that "*Public sector contracts are always re-tendered or taken in-house following the contract period – this is general knowledge thus no threats are necessary. The argument is used however, in case the customer consider the supplier to breach contract.*" Another competitor explained that "*[s]ince public sector and the tender follows a strict public tender process, threats are uncommon*."[208]

(151) Fazer FS also estimates in its internal documents that the margin in the Swedish public sectors including healthcare & welfare is expected to […] [Fazer FS internal document].[209]

(152) The Commission also notes that the market investigation gave mixed results on the question if the Transaction would have an effect on competition.[210]

(153) Taking the above considerations into account, the Commission considers that the Parties will face significant competition in the healthcare & welfare segment in Sweden post-Transaction and that the competitive constraints on the Parties in the supply of contract foodservices to healthcare & welfare customers in Sweden would be sufficient.

*Conclusion*

(154) In light of the results of the market investigation and considering the evidence available to it, the Commission concludes that the Transaction does not raise serious

[204] Replies to Q1 – Questionnaire to Competitors in Sweden, questions 70 and 75; Replies to Q5 – Questionnaire to Customers in Sweden, questions 73 and 81.

[205] Replies to Q1 – Questionnaire to Competitors in Sweden, questions 70 and 75; Replies to Q5 – Questionnaire to Customers in Sweden, questions 75 and 83.

[206] Replies to Q1 – Questionnaire to Competitors in Sweden, question 69 and 74; Replies to Q5 – Questionnaire to Customers in Sweden, questions 72 and 80.

[207] Replies to Q5 – Questionnaire to Customers in Sweden, questions 78 and 86.

[208] Replies to Q1 – Questionnaire to Competitors in Sweden, questions 71 and 76.

[209] Form CO, Annex 5.4.B-0.49, page 4; Form CO, para. 812.

[210] Replies to Q1 – Questionnaire to Competitors in Sweden, questions 112 and 113; Replies to Q5 – Questionnaire to Customers in Sweden, questions 114 and 115; E-mail of a competitor of 15 January 2020; Agreed non-confidential minutes of a conference call 9 January 2020 with a customer in Sweden, para. 13.

doubts as to its compatibility with the internal market with respect to the market for the supply of contract foodservices to healthcare & welfare customers in Sweden.

7.1.4.5. Contract foodservices to the Swedish defence

(155) The Parties' activities overlap in the supply of contract foodservices in the defence segment in Sweden.[211]

(156) The Försvarets Materielverk ("FMV") is a Swedish government agency responsible for the procurement of materiel to the Swedish defence, including contract foodservices. The Swedish defence (and therefore FMV) is the only customer of contract foodservices in the defence segment in Sweden.[212]

(157) Fazer FS and Compass both participated in the multiservice tender process launched in 2016 by the FMV (the "2016 FMV Tender"). The 2016 FMV Tender was divided into five lots corresponding to the four military regions of Sweden (the fifth lot was for the Swedish defence headquarters in Stockholm).[213] As a result of the tender process, Fazer FS was awarded four lots for the supply of contract foodservices to the Swedish defence. The fifth lot was awarded to Förenade Service AB.[214]

(158) Although Fazer FS currently holds four out of the five lots related to the supply of contract foodservices in the defence segment in Sweden and the results of the market investigation are inconclusive as to whether the Transaction would have an effect on competition,[215] the Commission considers that the Transaction is unlikely to raise competition concerns for the following reasons.

(159) First, Fazer FS and Compass will continue to face significant competition in the market for contract foodservices in the defence segment in Sweden post-Transaction. In the 2016 FMV Tender, besides Fazer FS and Compass, several contract foodservices suppliers made it into the second round of each of the five lots, including Coor, ISS, and Sodexo.[216] The Swedish defence is likely to announce the next tender for contract foodservices in the first trimester of 2020 (the "2020 FMV Tender").[217] All the participants to the 2016 FMV Tender are viable and credible bidders for the 2020 FMV Tender.

(160) Second, the Swedish defence currently has and will continue to have post-Transaction significant power to constrain competitors. During the market investigation, the Swedish defence indicated that the conditions of foodservices contracts (e.g. quality of the food, price and termination clauses) are determined by itself rather

[211] Form CO, para. 617.

[212] Form CO, para. 836.

[213] Form CO, paras. 816 *et seq*.

[214] The four lots awarded to Fazer account for approximately 95% of the total value of the 2016 FMV Tender (Form CO, Table 126).

[215] The majority of competitors indicated that the Transaction will have an effect on competition but did not further substantiate their replies; Replies to Q1 – Questionnaires to Competitors in Sweden, question 114.

[216] Form CO, Table 126.

[217] Form CO, para. 825.

than the supplier of contract foodservices[218] and that it is easy to switch from one supplier to another.[219]

(161) Third, Fazer FS and Compass are not each other's closest competitors. During the market investigation, the Swedish defence stated that Compass and Fazer FS are not close competitors in contract foodservices for the Swedish military.[220] Fazer FS' internal documents show that Fazer FS considers [competitor's name] as a close competitor in the defence segment in Sweden.[221] By contrast, Fazer FS considers that the defence segment in Sweden is one of Compass' [Fazer FS internal document].[222]

(162) Fourth, barriers to entry in the market for contract foodservices in Sweden are low, as explained in Section 7..1.4.4 above. More specifically, with respect to the defence segment in Sweden, the Swedish defence indicated that prior experience in the market for contract foodservices is not a determining criterion when awarding a contract.[223] This is further demonstrated by the fact that the Swedish defence awarded in the 2016 FMV Tender a lot to Förenade Service AB, which used to provide only facility services prior to this tender. In addition, according to the latest draft of the 2020 FMV Tender, the revenue thresholds will not exclude any of the bidders that were in the second round of the 2016 FMV Tender.[224]

(163) Therefore, taking the above considerations into account, the Commission considers that the Parties will face significant competition in the defence segment in Sweden post-Transaction and that the competitive constraints on the Parties in the supply of contract foodservices to the Swedish defence would be sufficient.

*Conclusion*

(164) In light of the results of the market investigation and considering the evidence available to it, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the market for the supply of contract foodservices to the Swedish defence.

### *7.1.5. Denmark*

#### 7.1.5.1. Overview of the contract foodservices industry in Denmark

(165) In addition to the multi-national companies ISS, Sodexo and Coor referred to in paragraph (78) and following above, a number of national companies are active in one or more market segments in Denmark.

(166) Moreover, due to tax-deductibility of subsidies under the Danish tax law, employers, regardless of size, are incentivised to provide employees with a subsidised lunch scheme.

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[218] Replies to Q5 – Questionnaire to Customers in Sweden, question 89.
[219] Replies to Q5 – Questionnaire to Customers in Sweden, question 90.
[220] Replies to Q5 – Questionnaire to Customers in Sweden, question 45.
[221] Form CO, Annex 5.4.B-044 "Competitor Intelligence – […]", page 4.
[222] Form CO, Annex 5.4.B-042 "Competitor Intelligence – […]", page 4.
[223] Replies to Q5 – Questionnaire to Customers in Sweden, question 96.
[224] Form CO, para. 831.

(167) ISS is a global player with Nordic roots. In terms of the Danish business & industry segment, its 2018 annual report noted, in particular, that its organic growth in Northern Europe in the previous financial year was mainly supported by growth in Denmark due to, for example, the expansion of the Danish Defence contract. In 2017, ISS hired a new director of its Danish contract foodservices business from Tholstrup Group (which owns a portfolio of leading restaurants and retail food and drink businesses in Denmark).[225]

(168) Sodexo is one of the world's largest global providers of facility services. In the Danish business & industry segment, Sodexo serves approximately 12 000 employees in several of Denmark's leading companies. The Notifying Party submits that Sodexo operates at least 23 kitchens in Denmark, including for many large and sophisticated business & industry customers such as IBM, Tetra Pak, MHI Vestas and Danfoss.[226]

(169) Coor is a leading Nordic facility management provider and provides a range of services across a number of sectors. It has many business & industry customers such as Fujitsu, Fibertex, Velux, and various sites for the Danish Police and the Danish Tax Authority.[227]

(170) Meyers Kantiner, being part of the vertically integrated Løgismose Meyers Group, is one of the Parties' main competitors in the Danish business & industry segment. Its strong customer base in the Danish business & industry segment is also evident from […].[228]

(171) Gruppo Camst is a leading European contract foodservices company based in Italy, with operations in Italy, Spain, Germany and Denmark. It entered Danish contract foodservices in 2018 through its acquisition of controlling stakes in Cheval Blanc and Claus Tingstrøm.[229]

#### 7.1.5.2. Contract foodservices to business & industry customers in Denmark

(172) Table 9 presents the Parties' estimate of their market shares in 2018, 2017 and 2016 in the supply of contract foodservices to business & industry customers in Denmark based on the Parties' turnover and the estimation of the total market size by [third party consultant], as explained in Section 7.1.3 above.

[225] From CO, para. 397.
[226] From CO, para. 397.
[227] From CO, para. 397.
[228] From CO, para. 397.
[229] Form CO, para. 397.

**Table 9. The Parties' market shares in supply of contract foodservices to business & industry customers in Denmark in 2018, 2017 and 2016 ([third party consultant])**

| | 2018 | | 2017 | | 2016 | |
|---|---|---|---|---|---|---|
| | **Revenue (€ millions)** | **Share** | **Revenue (€ millions)** | **Share** | **Revenue (€ millions)** | **Share** |
| **Compass** | […] | [10-20]% | […] | [10-20]% | […] | [10-20]% |
| **Fazer FS** | […] | [10-20]% | […] | [10-20]% | […] | [10-20]% |
| **Combined** | […] | **[20-30]%** | […] | **[20-30]%** | […] | **[20-30]%** |
| **Total market** | […] | **100%** | […] | **100%** | […] | **100%** |

*Source: Form CO, para. 342.*

(173) The Parties verified the assumptions used in the [third party consultant] model and concluded the following: if one official source on the share of customers with access to a canteen is used, the Parties' combined market share would increase from [20-30]% to [20-30]%. If the Parties' price data instead of the assumptions by [third party consultant] would be used, the combined market share would increase from [20-30]% to [20-30]%. While alternative sources would exist on the question of canteen outsourcing, [third party consultant] assumption would be conservative.[230]

(174) Table 10 presents the Parties' estimate of their market shares in 2018 in the supply of contract foodservices to the business & industry customers in Denmark based on (i) the Parties' turnover, (ii) the Parties' estimate of their known competitors' turnover based on public sources and (iii) the total market size calculated as the total of the Parties' own turnover and the estimated known competitors' turnover.[231]

**Table 10. The Parties' market shares in supply of contract foodservices to business & industry customers in Denmark in 2018 (estimated competitor turnover)**

| | **Market shares estimated in 2018** |
|---|---|
| Compass | [10-20]% |
| Fazer | [20-30]% |
| **Parties combined** | **[30-40]%** |
| ISS | [10-20]% |
| Meyers | [10-20]% |
| Coor | [0-5]% |
| Sodexo | [0-5]% |

230 Form CO, Annex 7A-007, Table 1.
231 See Notifying Party's reply to RFI 12 of 14 January 2020.

| | **Market shares estimated in 2018** |
|---|---|
| Able (Frokost.dk) | [5-10]% |
| Gruppo Camst | [5-10]% |
| Catering Danmark | [0-5]% |
| 23 other competitors with an estimated market share of up to 2% each | [5-10]% |

*Source: Notifying Party's reply to RFI 12 of 14 January 2020.*

(175) The total market size used to estimate these market shares was around EUR […] million, whereas the total market size as estimated by the [third party consultant] model was EUR […] million. The Commission therefore acknowledges that the market share estimates provided by the Parties based on competitors' revenues might be overstated.

(176) In the course of the market investigation, the Commission has verified the market share estimates of the Parties. To do this, the Commission has contacted the majority of significant competitors who won tenders in which one of the Parties participated. The verification confirms the broader picture of the Parties' position as the market leader post-Transaction with a clear difference over the next in line competitors.[232]

(177) The Notifying Party submits that, following the Transaction, the merged entity will continue to be constrained by a number of significant competitors, including ISS, Gruppo Camst, and Coor. Moreover, according to the Notifying Party, the merged entity will continue to face competition from a large number of smaller, local competitors.[233] In addition, barriers to entry and expansion would be low and there would be strong constraints on the merged entity through buyer power as well as out-of-market constraints, such as restaurants.[234]

(178) The Commission considers that, despite the somewhat high combined market shares of the Parties following the Transaction, the Transaction is unlikely to raise serious doubts as to its compatibility with the internal market due to the following reasons.

(179) First, as shown by the market investigation and demonstrated in Table 10, the Danish market for contract foodservices to business & industry customers is featured not only by large multinational players such as Coor, ISS, Sodexo, but also by mid-size players like Gruppo Camst, Jespers Torvekøkken, and Forenede Service and a number of various sizes local suppliers such as Simply Cooking, Meyers Kantiner, Europa 1989, Københavns Kantine Service, and other rivals.[235] Demonstrative of this point is the fact that the Parties' tender data includes over [20-30] different competitors.[236] The market is characterised by a large number of smaller suppliers capable of

232 Replies to Q4 – Questionnaire to Competitors in Denmark, question 20.
233 Form CO, para. 330.
234 Form CO, paras. 333 *et seq*.
235 Among which are Madkastellet, Able (Frokost.dk), Kai Thor, Allianceplus and a number of others. See Notifying Party's reply to RFI 12 of 14 January 2020, Annex RFI 12-001.
236 Form CO, Table 34.

also serving larger customers. Indeed, as indicated in Fazer FS' internal documents, "*the lower end of B&I (up to 0.5 M €) have had many new competitors.* [Fazer FS's internal document].[237] The respondents to the Commission's market investigation also noted that *"[t]here are a lot of small companies that only has (sic) one local customers.*"[238] For example, the foodservices supplier Madkastellet won a very large contract for KLP Ejendomme A/S (a property management company) covering three large office buildings and up to 5 000 potential consumers which will start in February 2020. Fazer FS estimates that the contract is worth EUR […].[239] On the basis of the data submitted by the Notifying Party, it appears that of the [>100] Danish business & industry tenders that Compass participated in the past five years,[240] Compass encountered ISS in […] tenders (or [30-40]%), Meyers Kantiner in […] tenders (or [10-20]%), Jespers Torvekøkken in […] tenders (or [10-20]%), Gruppo Camst in […] tenders (or [20-30]%) and Forenede Service in […] tenders (or [10-20]%).[241]

(180) Furthermore, evidence collected during the market investigation shows that in selecting their contract foodservices supplier via tenders, Danish business & industry customers do not give preference to the historical relationship with the contract foodservices supplier. Customers give preference to the quality of the food, the price of the food, and the nutritional value of the food.[242] Indeed, on the basis of competitors' responses, it appears that in order to win tenders, contract foodservices suppliers try to differentiate their offering on the basis of similar parameters.[243] Moreover, the results of the market investigation show that both customers and competitors believe that the contract foodservices market in Denmark is shifting towards higher quality food preference over lesser quality but cheaper offering.[244] As one customer explains, "*quality is of essence and with growing focus on sustainability local/fresh/organic produce is of growing importance*".[245] A large number of respondents also confirmed that the key trend in the next three years in contract foodservices in Denmark will be healthy food with local ingredients and sustainable services.[246] A trend towards customers favouring smaller or independent suppliers was also confirmed to some extent.[247]

(181) Customers in the business & industry segment will therefore continue to benefit from the ability to choose from an extensive list of credible alternative bidders, which ranges from multi-national and national firms to smaller local rivals. The

[237] Form CO, Annex 7B-001, Gold Food Services Denmark Sales Plan 2017-2018, dated June 2016, at page 9.

[238] Replies to Q4 – Questionnaire to Competitors in Denmark, question 58.1.

[239] Notifying Party's reply to RFI 12 of 14 January 2020.

[240] I.e. between 2014 and 2018.

[241] Form CO, para. 396.

[242] Replies to Q4– Questionnaire to Competitors in Denmark, question 21; Replies to Q8 – Questionnaire to Customers in Denmark, question 16.

[243] Replies to Q4 – Questionnaire to Competitors in Denmark, questions 21 and 22.

[244] See Replies to Q4 – Questionnaire to Competitors in Denmark, question 25. Some competitors note that in general, the demand for high-end food quality is greater in Denmark compared to other Nordic countries. See Replies to Q4 – Questionnaire to Competitors in Denmark, question 16.1.

[245] Replies to Q8 – Questionnaire to Customers in Denmark, question 16.1.

[246] Replies to Q4 – Questionnaire to Competitors in Denmark, question 26; Replies to Q8 – Questionnaire to Customers in Denmark, question 25.

[247] Replies to Q4 – Questionnaire to Competitors in Denmark, question 26; Replies to Q8 – Questionnaire to Customers in Denmark, question 25.

Commission therefore considers that post-Transaction, the Parties will continue to face significant competition from the other companies active in the business & industry segment in Denmark.

(182) Second, barriers to entry into the market for contract foodservices to business & industry customers are low, especially for the companies that have been active in the food sector in Denmark. Indeed, the results of the market investigation show that a new market entry requires only limited resources given that staff is transferred to the winner of the tender, whereas kitchen facilities typically belong to the customer. The majority of competitors indicated that "*management staff with experience in the contract foodservices industry*" is by far the most important criterion for a new market entry.[248] As further explained by one of the Parties' competitors, *"it is key to have knowledge of the industry and know how to organise day-to-day operations. Central kitchens are not necessary, and often you will use the customer's kitchen equipment*."[249] The Commission's findings in relation to low entry barriers on the supply side are also supported by the fact that a majority of the Danish competitors responding to the market investigation believe that a company can enter the Danish market and start offering contract foodservices with a contract for a single canteen or only one customer.[250] Indeed, as already explained above, the Danish market is characterised by the existence of an extensive number of smaller contract foodservices suppliers who only have one local customer. One competitor gave an example of an entry through an existing relationship with a customer where a chef starts her/his own business, *"[i]t can typically be done due to relations. Eg a chef in a company makes his own business and starts as a contractor - often smaller companies*."[251]

(183) Third, on the demand side, there are no significant barriers to switching between contract foodservices suppliers in the business & industry sector in Denmark. Around half of the customers responding to the market investigation confirmed that it was (somewhat) easy for them to find a suitable supplier of contract foodservices or to switch to a different supplier of contract foodservices.[252] Indeed, the Notifying Party's submission includes concrete examples of recent customer switching to other contract foodservices providers. For instance, as explained by Compass, between March and July 2019, […] of its customers switched before their contractual end date by giving notice to terminate.[253] This ability to switch strengthens the competitive constraints on the Parties post-Transaction and contributes to the dynamic and competitive environment in the Danish business & industry segment.

(184) Fourth, the market investigation provided indications that customers of contract foodservices may sponsor new entry or expansion of other, in particular smaller, contract foodservices suppliers. This can be done by determining the contract details as well as the scope of the foodservices contract, for example, by splitting their tenders into smaller lots.

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248 Replies to Q4 – Questionnaire to Competitors in Denmark, question 56.

249 Replies to Q4 – Questionnaire to Competitors in Denmark, question 56.1.

250 Replies to Q4 – Questionnaire to Competitors in Denmark, question 58.

251 Replies to Q4 – Questionnaire to Competitors in Denmark, question 58.1.

252 Replies to Q8 – Questionnaire to Customers in Denmark, question 38. See also Replies to Q9 – Questionnaire to Brokers, question 19.

253 [Confidential information regarding the Notifying Party's customers]. See Form CO, para. 414 and footnote 362.

(185) The majority of respondents to the market investigation confirmed that in Denmark, the conditions of the contracts for foodservices (e.g. quality of the food, price, termination clauses) are typically determined by the business & industry customers rather than by the contract foodservices suppliers.[254] One of the local Danish competitors mentioned that "*today the contract is often made by the customer*".[255] In general, it seems that the larger the customer, the higher the ability to negotiate the conditions.

(186) As explained, customers also have the possibility to structure their tender in separate tenders for contract foodservices for each of their canteens or sites. Furthermore, they have the possibility to split their tender into smaller lots to increase competition and promote smaller contract foodservices suppliers. The market investigation showed that these possibilities had been used by some customers.[256] In addition, some of the respondents explained that in order to facilitate the tender process, some Danish business & industry customers also hire brokers who typically are capable to advise them on how to better structure tenders to extract more favourable terms.[257]

(187) Fifth, the Commission's assessment of the effects of the Transaction has also taken into account the fact that other lunch food options are available to the customer's staff in the business & industry sector compared to lunch in the on-site canteen. The majority of respondents to the market investigation considered that bringing lunch from home or eating lunch at home would be the preferred alternative option to the food served at an organisation's canteen.[258] As explained by one of the Parties' competitors, "*many end customers find it too expensive to buy food in a canteen and therefore bring their own lunch from home*".[259] Another important alternative for end customers is eating a snack or a sandwich that was not bought at the on-site canteen.[260] The Commission therefore considers that these out-of-market constraints will have an effect on the merged entity's continued incentive to deliver good quality and price ratio to their customers post-Transaction.

(188) Finally, the majority of respondents to the market investigation having expressed their view considered that the Transaction would have no effect on competition in the business & industry segment in Denmark.[261] While customers active in Denmark expressed mixed views, the majority of competitors were of the view that there would be sufficient competition in all sectors, including business & industry, follow-

[254] Replies to Q8 – Questionnaire to Customers in Denmark, question 37; Replies to Q4 – Questionnaire to Competitors in Denmark, question 43.

[255] Replies to Q4 – Questionnaire to Competitors in Denmark, question 43.1.

[256] Replies to Q4 – Questionnaire to Competitors in Denmark, questions 44 and 44.1. Also, as explained by Fazer FS, […] of its former customers have switched from outsourced catering to in-house catering: [confidential information regarding Fazer FS's customers]. See Form CO, para. 419. Furthermore, based on the submission of the Notifying Party, ISS has recently lost its Dansac (a medical equipment manufacturer) contract to the in-house bidder in 2019. See Form CO, para. 419.

[257] Replies to Q9 – Questionnaire to Brokers, questions 1 and 14.4.

[258] Replies to Q4 – Questionnaire to Competitors in Denmark, question 24; Replies to Q8 – Questionnaire to Customers in Denmark, question 19.

[259] Replies to Q4 – Questionnaire to Competitors in Denmark, question 24.

[260] Replies to Q4 – Questionnaire to Competitors in Denmark, question 24; Replies to Q8 – Questionnaire to Customers in Denmark, question 19.

[261] Replies to Q4 – Questionnaire to Competitors in Denmark, question 73; Replies to Q8 – Questionnaire to Customers in Denmark, question 69. This view was also supported by a broker active in Denmark, see Replies to Q9 – Questionnaire to Brokers, questions 26 and 26.1.

ing the Transaction.[262] Indeed, as noted by one of the competitors, "*there will still be adequate number of suppliers in the market*".[263]

(189) Taking the above considerations into account, the Commission considers that the Parties will face significant competition in the business & industry segment in Denmark post-Transaction and that the competitive constraints on the Parties in the supply of contract foodservices to business & industry customers in Denmark would be sufficient.

*Conclusion*

(190) In light of the results of the market investigation and considering the evidence available to it, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the market for the supply of contract foodservices to business & industry customers in Denmark.

7.1.5.3. Contract foodservices to education customers in Denmark

(191) In Denmark, both Compass and Fazer FS are active in the provision of contract foodservices to education customers, including universities, technical colleges, adult education colleges and other tertiary education establishments. These are predominantly public institutions, which typically tender under the European public procurement rules. While traditionally meals have been subsidised, the Notifying Party submits that there has been a recent trend towards "zero-subsidy" contracts.[264] The Parties are only active in the provision of contract foodservices to higher education customers and are not active in lower education.[265] The Notifying Party submits that the lower education segment is almost non-existent in Denmark,[266] therefore, there is no meaningful distinction between conducting the market share analysis on a whole Danish education basis or on a Danish higher education basis.[267]

(192) The results of the market investigation to some extent confirm that there is no material supply-side differences in serving a university canteen or a high school canteen,[268] therefore, given that the lower education segment is almost non-existent, the Commission will assess the impact of the Transaction in the supply of contract foodservices to Danish customers in the overall education segment.

[262] Replies to Q4 – Questionnaire to Competitors in Denmark, question 72.

[263] Replies to Q4 – Questionnaire to Competitors in Denmark, question 72.1.

[264] Under a "zero-subsidy" contract, the meals are not subsidised by the customer, and the costs of the meals are entirely covered by the price paid by end-consumers, like in a high street restaurant. See Form CO, para. 428 and footnote 369. As submitted by the Notifying Party, [information on the Notifying Party's business strategy], whereas [information on Fazer FS' business strategy]. See Form CO, para. 428 and footnote 369.

[265] Form CO, paras. 425 and 428.

[266] The Notifying Party submits that the education segment in Denmark is almost entirely comprised of higher education contracts. This is due to the cultural norm that most schools do not have on-site canteens and pupils tend to bring their own lunches to school, and the fact that Denmark does not have a state-funded lunch programme. See Form CO, para. 344. This is consistent with the Parties' internal documents. For example, Fazer FS notes that the lower education segment in Denmark is […]. See Form CO, Annex 5.4.B-037, page 67.

[267] Form CO, para. 344.

[268] Replies to Q4 – Questionnaire to Competitors in Denmark, questions 13.5, 13.6.2 and 13.6.2.1; Replies to Q8 – Questionnaire to Customers in Denmark, question 12.2. See also agreed non-confidential minutes of a conference call of 14 January 2020 with a customer in Denmark, para. 9.

(193) Table 11 presents the Parties' estimate of their market shares in 2018, 2017 and 2016 in the supply of contract foodservices to education customers in Denmark based on the Parties' turnover and their estimation of the total market size, as explained in Section 7.1.3 above.

**Table 11. The Parties' market shares in supply of contract foodservices to education customers in Denmark in 2018, 2017 and 2016 ([third party consultant])**

| | **2018** | | **2017** | | **2016** | |
|---|---|---|---|---|---|---|
| | **Revenue (€ millions)** | **Share** | **Revenue (€ millions)** | **Share** | **Revenue (€ millions)** | **Share** |
| **Compass** | […] | [10-20]% | […] | [10-20]% | […] | [10-20]% |
| **Fazer FS** | […] | [5-10]% | […] | [0-5]% | […] | [0-5]% |
| **Combined** | […] | **[10-20]%** | […] | **[10-20]%** | […] | **[10-20]%** |
| **Total market** | […] | **100%** | […] | **100%** | […] | **100%** |

*Source: Form CO, para. 343.*

(194) Table 12 presents the Parties' estimate of their market shares in 2018, 2017 and 2016 in the supply of contract foodservices (lunch only) to higher education customers in Denmark based on the Parties' turnover and their estimate of the total market size, as explained in Section 7.1.3 above.

**Table 12. The Parties' market shares in supply of contract foodservices to education customers (lunch only) in Denmark in 2018, 2017 and 2016 ([third party consultant])**

| | **2018** | | **2017** | | **2016** | |
|---|---|---|---|---|---|---|
| | **Revenue (€ millions)** | **Share** | **Revenue (€ millions)** | **Share** | **Revenue (€ millions)** | **Share** |
| **Compass** | […] | [10-20]% | […] | [30-40]% | […] | [30-40]% |
| **Fazer FS** | […] | [20-30]% | […] | [10-20]% | […] | [5-10]% |
| **Combined** | […] | **[40-50]%** | […] | **[40-50]%** | […] | **[30-40]%** |
| **Total market** | […] | **100%** | […] | **100%** | […] | **100%** |

*Source: Form CO, para. 353.*

(195) Table 13 presents the Parties' estimate of their market shares in 2018 in the supply of contract foodservices to higher education customers in Denmark based on (i) the Parties' turnover, (ii) the Parties' estimate of their known competitors' turnover based on public sources and (iii) the total market size calculated as the total of the Parties' own turnover and the estimated known competitors' turnover.[269]

[269] See Notifying Party's reply to RFI 12 of 14 January 2020.

**Table 13. The Parties' market shares in supply of contract foodservices to higher education customers in Denmark in 2018 (estimated competitor turnover)**

| | **Market shares estimated in 2018** |
|---|---|
| Compass | [10-20]% |
| Fazer | [20-30]% |
| **Parties combined** | **[40-50]%** |
| Sodexo | [5-10]% |
| ISS | [5-10]% |
| Coor | [5-10]% |
| Jespers Torvekøkken | [10-20]% |
| Spisestuerne | [5-10]% |
| Studenterhusfonden | [0-5]% |
| 8 other competitors with an estimated market share of up to 2% each | [10-20]% |

*Source: Notifying Party's reply to RFI 12 of 14 January 2020.*

(196) The Commission attempted to verify the robustness of the Parties' submission in the course of the market investigation, however, this was inconclusive and did not deliver credible results.

(197) The Notifying Party submits that, following the Transaction, the merged entity will continue to be constrained by a number of significant competitors, including ISS, Jespers Torvekøkken, Simply Cooking, DinnerdeLuxe, Forenede Services and Gruppo Camst.[270] In addition, barriers to entry and expansion would be low and there would be strong constraints on the merged entity through buyer power as well as out-of-market constraints, such as restaurants.[271]

(198) The Commission considers that the Transaction is unlikely to raise serious doubts as to its compatibility with the internal market for the following reasons.

(199) First, as shown by the market investigation and demonstrated in Table 13, the Danish market for contract foodservices to education customers is featured not only by large multi-national players such as Coor and ISS, but also by mid-size and smaller local players like Jespers Torvekøkken, Meyers Kantiner, Simply Cooking, Gruppo Camst, DinnerdeLuxe, and others.[272] Demonstrative of this point is the fact that the Parties' tender data includes close to [20-30] competitors in this segment.[273] In addition, the Parties will continue to face strong and intensifying competition from student cooperatives that, according to the Notifying Party, enjoy particular advantages in the education segment. Not only do they have no profit requirement (and are therefore more able to compete on price), but they have also proved recently to be

270 Form CO, paras. 439-440.

271 Form CO, paras. 465 *et seq*.

272 Among which are Europa 1989, De Grønne Kokke, Green Kitchen Kantiner and a few other players. See Notifying Party's reply to RFI 12 of 14 January 2020, Annex RFI 12-001. See also Form CO, para. 454.

273 Form CO, para. 434.

more attuned to the fast changing tastes and preferences of students, who have a strong voice in the contract award process. As a result, many of these student cooperatives (such as Spisestuerne, Studenterlauget, Studenterhusfonden, and Association of Students and Faculty at the Department of Mathematical Sciences) have been expanding rapidly in recent years.[274] Customers in the education segment will therefore continue to benefit from the ability to choose from a number of credible alternative bidders, which ranges from multi-national to smaller local rivals. The Commission therefore considers that, post-Transaction, the Parties will continue to face significant competition from the other companies active in the education segment in Denmark.

(200) Second, barriers to entry into the market for contract foodservices to education customers are low, especially for the companies already operating in the food sector in Denmark. A new market entry requires limited resources given that staff is typically transferred to the winner of the tender, whereas kitchen facilities typically belong to the customer. This is supported by the results of the market investigation, which show that the most important criteria for a new market entry are (i) the existence of management staff with experience in the contract foodservices industry and (ii) knowledge of the contract foodservices industry and how to organise day-to-day operations.[275] One of the Parties' competitors explained that "*it is key to have knowledge of the industry and know how to organise day-to-day operations. Central kitchens are not necessary, and often you will use the customer's kitchen equipment*."[276] In addition, the majority of competitors responding to the Commission's market investigation explained that it would be easy for them to find suitable food suppliers for their contract foodservices operations in Denmark.[277] Furthermore, the market investigation has shown that competitors that currently have a presence in the business & industry segment might also become a credible competitive force in the education segment in Denmark in the near future.[278]

(201) Third, on the demand side, there are no significant barriers to switching between contract foodservices suppliers in the education sector in Denmark. On the basis of the majority of customers' responses, it appears to be (somewhat) easy to find a suitable supplier of contract foodservices or to switch to a different supplier of contract foodservices in the education segment.[279] The majority of education customers responding to the market investigation confirmed that in the past five years, they have changed the supplier of contract foodservices.[280] This ability to switch strengthens

[274] On the basis of their annual reports, their 2018 income from contract foodservices in Denmark was in total around EUR 10 800 000, which exceeds the revenues of contract foodservices supplier Jespers Torvekøkken in the education segment. See Notifying Party's reply to RFI 12 of 14 January 2020, Annex RFI 12-001.

[275] Replies to Q8 – Questionnaire to Customers in Denmark, question 59; Replies to Q4 – Questionnaire to Competitors in Denmark, question 56.

[276] Replies to Q4 – Questionnaire to Competitors in Denmark, question 56.1.

[277] Replies to Q4 – Questionnaire to Competitors in Denmark, question 57. At the same time, competitors explain that the economies of scale also matter in acquiring ingredients from suppliers. See Replies to Q4 – Questionnaire to Competitors in Denmark, question 57.1.

[278] Agreed non-confidential minutes of a conference call of 14 January 2020 with a customer in Denmark, para. 14.

[279] Replies to Q8 – Questionnaire to Customers in Denmark, question 46; Agreed non-confidential minutes of a conference call of 14 January 2020 with a customer in Denmark, para. 15.

[280] Replies to Q8 – Questionnaire to Customers in Denmark, question 48.

the competitive constraints on the Parties post-Transaction and contributes to the dynamic and competitive environment in the Danish education segment.

(202) Fourth, the market investigation provided indications that customers of contract foodservices may sponsor new entry or expansion of other, in particular smaller, contract foodservices suppliers. This can be done by determining the contract details as well as the scope of the foodservices contract, for example by splitting their tenders into smaller lots.

(203) The majority of respondents to the market investigation noted that in Denmark, the conditions of the contracts for foodservices (e.g. quality of the food, price, termination clauses) are typically determined by the education segment customers rather than by the contract foodservices suppliers.[281] In general, it seems that the larger the customer, the higher the ability to negotiate the conditions.

(204) As explained, customers also have the possibility to structure their tender in separate tenders for contract foodservices for each of their canteens or sites. Furthermore, they have the possibility to split their tenders into smaller lots to increase competition and promote smaller contract foodservices suppliers. The market investigation has shown that Danish education customers typically split their tenders into smaller lots, e.g. by campus.[282] One of the education customers explained that in such smaller-scale contracts, smaller contract foodservices suppliers can also compete for their contracts, "*we consider splitting our contracts, to get bids from smaller suppliers/less mainstream canteen solutions*."[283] In addition, some of the respondents explained that in the majority of the Danish education tenders customers hire brokers who typically are capable to advise them on how to better structure tenders to extract more favourable terms.[284]

(205) Fifth, the Commission's assessment of the effects of the Transaction has also taken into account the fact that in the higher education segment in Denmark, other lunch food options are available to the customers of on-site canteens. The majority of respondents to the market investigation considered that bringing lunch from home or eating lunch at home would be the preferred alternative lunch food option.[285] A competitor explained, "*[i]t is cheaper for the students to bring lunch from home*".[286] The Commission therefore considers that these out-of-market constraints will have an effect on the merged entity's continued incentive to deliver good quality and price ratio to their customers post-Transaction.

281 Replies to Q8 – Questionnaire to Customers in Denmark, question 45; Replies to Q4 – Questionnaire to Competitors in Denmark, questions 48 and 48.1.

282 Replies to Q8 – Questionnaire to Customers in Denmark, question 44; Agreed non-confidential minutes of a conference call of 14 January 2020 with a customer in Denmark, paras. 2-3.

283 Replies to Q8 – Questionnaire to Customers in Denmark, question 46.1.

284 Replies to Q9 – Questionnaire to Brokers, questions 1 and 14.4; Replies to Q8 – Questionnaire to Customers in Denmark, questions 43 and 43.1; Replies to Q4 – Questionnaire to Competitors in Denmark, question 46.

285 Replies to Q8 – Questionnaire to Customers in Denmark, question 24; Replies to Q4 – Questionnaire to Competitors in Denmark, question 29.

286 Reply to Q4 – Questionnaire to Competitors in Denmark, question 29.1.

(206) Finally, the views of customers and competitors were mixed as to whether the Transaction will have an effect on competition.[287] While some of the Danish customers identified a concern about one competitor leaving the market,[288] at the same time, some of them confirmed that there will remain an adequate number of suppliers to maintain sufficient competition in the market post-Transaction.[289] Indeed, a large education customer explained that "*there would be sufficient suppliers to maintain sufficient competition in the market post-Transaction*" adding that it deemed that "*Forenede Kantiner and ISS [will] make for satisfactory competitors post-Transaction*."[290] Another customer noted that *"[i]n this contract period we don't see that it will have an impact on our company. And since we consider smaller contracts in the future, we don't see it will have an impact for us*."[291]

(207) Taking the above considerations into account, the Commission considers that the Parties will face sufficient competition in the education segment in Denmark post-Transaction and that the competitive constraints on the Parties in the supply of contract foodservices to education customers in Denmark would be sufficient.

*Conclusion*

(208) In light of the results of the market investigation and considering the evidence available to it, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the market for the supply of contract foodservices to education customers in Denmark.

### *7.1.6. Norway*

#### 7.1.6.1. Overview of the contract foodservices industry in Norway

(209) In addition to the multi-national companies such as ISS, Sodexo and Coor referred to in paragraph (78) and following above, several national companies are active in the provision of contract foodservices in Norway. Among the larger national suppliers are Toma Gruppen and 4Service.

(210) Toma Gruppen is one of Norway's largest facilities management companies, which entered the contract foodservices markets in 2006 through its acquisition of Albatross Kantine.[292]

(211) 4Service was established in 2010 and has expanded through four acquisitions of contract foodservices providers in the last years. 4Service employs around 2 700 employees with an annual turnover of NOK 1.6 billion (EUR 163 million) in 2018.[293]

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287 Replies to Q4 – Questionnaire to Competitors in Denmark, questions 74 and 75.

288 Replies to Q8 – Questionnaire to Customers in Denmark, question 70.1.

289 Agreed non-confidential minutes of a conference call of 14 January 2020 with a customer in Denmark, para. 13.

290 Agreed non-confidential minutes of a conference call of 14 January 2020 with a customer in Denmark, para. 13.

291 Replies to Q8 – Questionnaire to Customers in Denmark, question 68.

292 Form CO, para. 585.

293 Form CO, para. 585.

7.1.6.2. Contract foodservices to business & industry customers in Norway

(212) Table 14 presents the Parties' estimate of their market shares in 2018, 2017 and 2016 in the supply of contract foodservices to business & industry customers in Norway based on the Parties' turnover and the estimation of the total market size by [third party consultant] as explained above in paragraph (91) and following.

**Table 14. The Parties' market shares in supply of contract foodservices to business & industry customers in Norway in 2018, 2017 and 2016 ([third party consultant])**

| | **2018** | | **2017** | | **2016** | |
|---|---|---|---|---|---|---|
| | **Revenue (€ millions)** | **Share** | **Revenue (€ millions)** | **Share** | **Revenue (€ millions)** | **Share** |
| **Compass** | […] | [10-20]% | […] | [10-20]% | […] | [10-20]% |
| **Fazer FS** | […] | [5-10]% | […] | [10-20]% | […] | [10-20]% |
| **Combined** | […] | **[20-30]%** | […] | **[20-30]%** | […] | **[20-30]%** |
| **Total market** | […] | **100%** | […] | **100%** | […] | **100%** |

*Source: Form CO, para. 556.*

(213) The Parties verified the assumptions used in the [third party consultant] model and concluded that the average price per meal might be overstated. When using the Parties' price data instead of the [third party consultant] estimates, the Parties' combined market would increase from [20-30]% to [20-30]%.[294]

(214) Table 15 presents the Parties' estimate of their market shares in 2018 in the supply of contract foodservices to business & industry customers in Norway based on (i) the Parties' turnover, (ii) the Parties' estimate of their known competitors' turnover based on public sources and (iii) the total market size calculated as the total of the Parties' own turnover and the estimated known competitors' turnover.[295]

**Table 15. The Parties' market shares in supply of contract foodservices to business & industry customers in Norway in 2018 (estimated competitor turnover)**

| | **Market shares estimated in 2018** |
|---|---|
| Compass | [10-20]% |
| Fazer | [10-20]% |
| **Parties combined** | **[20-30]%** |
| ISS | [20-30]% |
| Coor | [10-20]% |

294 Form CO, Annex 7A-007, Table 1.
295 See Notifying Party's reply to RFI 13 of 20 January 2020.

| | **Market shares estimated in 2018** |
|---|---|
| Sodexo | [10-20]% |
| 4Service (including the companies it acquired in 2019)[296] | [10-20]% |
| Toma Gruppen | [0-5]% |
| 11 other competitors with an estimated market share of up to 2% each | [5-10]% |

*Source: Notifying Party's reply to RFI 13 of 20 January 2020.*

(215) The total market size used to estimate these market shares was EUR […] million, whereas the total market size as estimated by the [third party consultant] model was EUR […] million. The Commission therefore acknowledges that the market share estimates provided by the Parties based on competitors' revenues might be overstated.

(216) In the course of the market investigation, the Commission has verified the market share estimates of the Parties. To do this, the Commission has contacted the majority of significant competitors who won tenders in which one of the Parties participated. While the verification in general confirms the broader picture, the Parties' position seems to be stronger than the market share estimate provided in the table above.[297]

(217) The Notifying Party submits that, following the Transaction, the merged entity will continue to be constrained by a number of significant competitors, including ISS, Coor, Sodexo, Toma Gruppen and 4Service, amongst others.[298] Moreover, according to the Notifying Party, there has been a recent trend of market consolidation in the Norwegian business & industry segment, where competitors are strengthening their competition positions in contract foodservices, and will thereby exert an even stronger competitive constraint on the merged entity post-Transaction.[299]

(218) The Commission considers that the Transaction is unlikely to raise serious doubts as to its compatibility with the internal market for the following reasons.

(219) First, as shown by the market investigation and demonstrated in Table 15 above, the Norwegian market for contract foodservices to business & industry customers is featured not only by large multi-national players such as ISS, Sodexo and Coor, but also by national foodservices suppliers like 4Service and Toma Gruppen as well as a number of smaller or local players. Demonstrative of this point is the fact that the Parties' tender data includes over [10-20] competitors, [information on the Parties' bidding data].[300] The large number of smaller suppliers is also capable of serving larger customers. For example, smaller competitors won several tenders worth up to EUR […] each. Furthermore, one national competitor won tenders worth EUR […] between 2014 and 2018.[301] As demonstrated by the Parties' data, these tenders are

296 See Notifying Party's reply to RFI of 21 January 2020.
297 Replies to Q3 – Questionnaire to Competitors in Norway, question 19.
298 Form CO, para. 585.
299 Form CO, para. 586.
300 Form CO, paras. 568 *et seq.*
301 Form CO, paras. 568 *et seq.*

substantially based on value of the tender.[302] For example, the average value of a tender lost by the Notifying Party between 2014 and 2018 was around EUR […].[303]

(220) Furthermore, evidence collected during the market investigation has shown that in selecting their contract foodservices providers via tender processes, Norwegian business & industry customers do not give preference to criteria such as historical relationship with the contract foodservices supplier. Customers give preference to the quality of the food, the price of the food and the nutritional value of the food, but also to reputation and track-record of the supplier and efficient day-to-day operations.[304] Contract foodservices suppliers try to differentiate themselves from each other to win tenders on these parameters.[305] Moreover, the results of the market investigation have shown that both competitors and customers see as the most important trends in the contract foodservices in Norway in the next three years the following: customers prefer high-quality food over low-cost food offering; customers prefer high-quality food over multi-service solutions where food is provided together with other services such as cleaning; customers demand healthy food with local ingredients and sustainable services; and customers see their canteen as a possibility to attract and retain employees.[306] A trend towards customers favouring smaller or independent suppliers was also confirmed to some extent.[307]

(221) Customers in the business & industry segment will therefore continue to benefit from the ability to choose from an extensive number of credible alternative bidders, which ranges from multi-national and national firms, to smaller local rivals. The Commission therefore considers that post-Transaction, the Parties will continue to face significant competition from the other companies active in the business & industry sector in Norway.

(222) Second, barriers to entry into the market for contract foodservices to business & industry customers are low, especially for the companies already operating in the food sector in Norway. A new market entry requires limited resources given that staff is typically transferred to the winner of the tender, whereas kitchen facilities typically belong to the customer. This is supported by the results of the Commission's market investigation, which show that the most important criteria for a new market entry are (i) the existence of management staff with experience in the contract foodservices industry and (ii) knowledge of the contract foodservices industry and how to organise day-to-day operations.[308] In addition, the majority of competitors responding to the Commission's market investigation explained that it would be easy for them to find suitable food suppliers for their contract foodservices operations in Norway.[309]

302 Form CO, paras. 568 *et seq.*

303 Own calculation based on Form CO, para. 568.

304 Replies to Q3 – Questionnaire to Competitors in Norway, question 20; Replies to Q7 – Questionnaire to Customers in Norway, question 14.

305 Replies to Q3 – Questionnaire to Competitors in Norway, question 21; Replies to Q7 – Questionnaire to Customers in Norway, question 15.

306 Replies to Q3 – Questionnaire to Competitors in Norway, question 24; Replies to Q7 – Questionnaire to Customers in Norway, question 18.

307 Replies to Q3 – Questionnaire to Competitors in Norway, question 24; Replies to Q7 – Questionnaire to Customers in Norway, question 18.

308 Replies to Q3 – Questionnaire to Competitors in Norway, question 35; Replies to Q7 – Questionnaire to Customers in Norway, question 31.

309 Replies to Q3 – Questionnaire to Competitors in Norway, question 36.

The Commission's findings in relation to low entry barriers on the supply side are also supported by the fact that all of the Norwegian competitors responding to the Commission's market investigation believe that a company can enter the Norwegian market and start offering contract foodservices with a contract for a single canteen or only one customer.[310]

(223) Third, on the demand side, there are no significant barriers to switching between contract foodservices suppliers in the business & industry sector in Norway. The majority of competitors responding to the market investigation explained that the majority of business & industry customers switches their contract foodservices supplier after the contract is terminated, when the contract would be re-tendered and awarded to another supplier.[311] While the majority of customers responding to the market investigation explained that they had not switched their contract foodservices supplier in the last five years,[312] it was confirmed that it was easy for them to find a suitable supplier of contract foodservices or to switch to a different supplier of contract foodservices.[313] This ability to switch strengthens the competitive constraints on the Parties post-Transaction and contributes to the dynamic and competitive environment in the Norwegian business & industry segment.

(224) Fourth, the market investigation provided indications that customers of contract foodservices may sponsor new entry or expansion of other, in particular smaller, contract foodservices suppliers. This can be done by determining the contract details as well as the scope of the foodservices contract, for example, by splitting their tenders into smaller lots.

(225) The majority of respondents to the market investigation confirmed that the conditions of the foodservices contracts (i.e. quality of the food, price, termination clauses) are determined by the customers in the business & industry segment in Norway.[314] In general, it seems that the larger the customer, the higher the ability to negotiate the conditions.[315]

(226) As explained, customers also have the possibility to structure their tender in separate tenders for contract foodservices for each of their canteens or sites. Furthermore, they have the possibility to split their tenders into smaller lots to increase competition and promote smaller contract foodservices suppliers. The market investigation has shown that these possibilities are used by some customers.[316] The majority of respondents to the market investigation also confirmed that Norwegian customers in the business & industry sector use one or more of the following tactics to achieve better contract terms: the suggestion to take the foodservices in-house, to terminate

310 Replies to Q3 – Questionnaire to Competitors in Norway, question 37.

311 Replies to Q3 – Questionnaire to Competitors in Norway, question 34.

312 Replies to Q7 – Questionnaire to Customers in Norway, question 28.

313 Replies to Q7 – Questionnaire to Customers in Norway, question 26.

314 Replies to Q3 – Questionnaire to Competitors in Norway, question 32; Replies to Q7 – Questionnaire to Customers in Norway, question 25.

315 Replies to Q3 – Questionnaire to Competitors in Norway, question 32; Replies to Q7 – Questionnaire to Customers in Norway, question 27.

316 Replies to Q3 – Questionnaire to Competitors in Norway, question 31; Replies to Q7 – Questionnaire to Customers in Norway, question 24.

the contract and retender and/or to split the tender into smaller lots which may be tendered to different suppliers.[317]

(227) Fifth, the Commission's assessment of the effects of the Transaction has also taken into account the fact that other lunch food options are available to the staff in the business & industry sector compared to lunch in the on-site canteen. The majority of respondents to the market investigation considered that bringing lunch from home would be the preferred alternative lunch food option, followed by eating lunch at an outside restaurant or eating a snack or sandwich that was not bought at the on-site canteen.[318] The Commission therefore considers that these out-of-market constraints will have an effect on the merged entity's continued incentive to deliver good quality and price ratio to their customers post-Transaction.

(228) Finally, the majority of respondents to the market investigation having expressed a view considered that the Transaction would have no effect on competition in the business & industry segment in Norway.[319] The majority of competitors having expressed a view considered that there would be sufficient competition in the Norwegian business & industry sector following the Transaction.[320] This was confirmed by the majority of customers responding to the market investigation, who did not consider that the Transaction would have an impact on their company. One customer explained that *"based on the last tender it held in the fall of 2019, [the company] sees the market as very competitive. As a result, it does not foresee any impact on competition as a result of the Transaction."*[321]

(229) Therefore, taking the above considerations into account, the Commission considers that the Parties will face significant competition in the business & industry segment in Norway post-Transaction and that the competitive constraints on the Parties in the supply of contract foodservices to business & industry customers in Norway would be sufficient.

*Conclusion*

(230) In light of the results of the market investigation and considering the evidence available to it, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the market for the supply of contract foodservices to business & industry customers in Norway.

### *7.1.7. Finland*

#### 7.1.7.1. Overview of the contract foodservices industry in Finland

(231) In addition to the multi-national companies ISS and Sodexo referred to in paragraph (78) and following above, several national companies are active in the provision of

[317] Replies to Q3 – Questionnaire to Competitors in Norway, question 33; Replies to Q7 – Questionnaire to Customers in Norway, question 30.

[318] Replies to Q3 – Questionnaire to Competitors in Norway, question 23; Replies to Q7 – Questionnaire to Customers in Norway, question 17.

[319] Replies to Q3 – Questionnaire to Competitors in Norway, question 46; Replies to Q7 – Questionnaire to Customers in Norway, question 37.

[320] Replies to Q3 – Questionnaire to Competitors in Norway, question 45.

[321] Replies to Q7 – Questionnaire to Customers in Norway, question 36.

contract foodservices in Finland. Among the larger national suppliers are Antell-Catering and Palmia.

(232) Antell-Catering was founded in Finland in 1880. According to the Notifying Party, it is one of most well-known family-owned food brands in Finland. In 2017, Antell-Catering had a group turnover of EUR 524 million.[322]

(233) Palmia was founded in 2003 and is active in providing facilities management and contract foodservices. It has expanded in 2018 and 2019 and acquired two contract foodservices and facilities management providers.[323]

7.1.7.2. Contract foodservices to business & industry customers in Finland

(234) Table 16 presents the Parties' estimate of their market shares in 2018, 2017 and 2016 in the supply of contract foodservices to business & industry customers in Finland based on the Parties' turnover and the estimation of the total market size by [third party consultant] as explained above.

**Table 16. The Parties' market shares in supply of contract foodservices to business & industry customers in Finland in 2018, 2017 and 2016 ([third party consultant])**

| | **2018** | | **2017** | | **2016** | |
|---|---|---|---|---|---|---|
| | **Revenue (€ millions)** | **Share** | **Revenue (€ millions)** | **Share** | **Revenue (€ millions)** | **Share** |
| **Compass** | […] | [0-5]% | […] | [5-10]% | […] | [0-5]% |
| **Fazer FS** | […] | [20-30]% | […] | [20-30]% | […] | [20-30]% |
| **Combined** | […] | **[30-40]%** | […] | **[30-40]%** | […] | **[30-40]%** |
| **Total market** | […] | **100%** | […] | **100%** | […] | **100%** |

*Source: Form CO, para. 620.*

(235) The Parties verified the assumptions used in the [third party consultant] model and concluded that the average price per meal might be overstated. When using the Parties' price data instead of the [third party consultant] estimates, the Parties' combined market would increase from [30-40]% to [30-40]%.[324]

(236) Table 17 presents the Parties' estimate of their market shares in 2018 in the supply of contract foodservices to business & industry customers in Finland based on (i) the Parties' turnover, (ii) the Parties' estimate of their known competitors' turnover based on public sources and (iii) the total market size calculated as the total of the Parties' own turnover and the estimated known competitors' turnover.[325]

322 Form CO, para. 522.
323 Form CO, para. 522.
324 Form CO, Annex 7A-007, Table 1.
325 See Notifying Party's reply to RFI 12 of 14 January 2020.

**Table 17. The Parties' market shares in supply of contract foodservices to business & industry customers in Finland in 2018 (estimated competitor turnover)**

| | **Market shares estimated in 2018** |
|---|---|
| Compass | [5-10]% |
| Fazer | [40-50]% |
| **Parties combined** | **[40-50]%** |
| Sodexo | [10-20]% |
| Antell-Catering | [10-20]% |
| Leijona Catering | [5-10]% |
| ISS | [5-10]% |
| Palmia | [0-5]% |
| 9 other competitors with an estimated market share of up to 2% each | [5-10]% |

*Source: Notifying Party's reply to RFI 13 of 20 January 2020.*

(237) According to the Parties, Leijona Catering Oy was founded in 2012 and is 100% owned by the Finnish Government. Leijona Catering would hold a number of high profile contracts, including all catering contracts for the Finnish Armed Forces and the Criminal Sanctions Agency.[326] Since Leijona Catering is 100% owned by the Finnish Government, it might be questionable if Leijona Catering is active on a contract foodservices market providing services to third parties or rather an in-house provider of contract foodservices. The Commission has therefore recalculated the market share estimates provided by the Parties by excluding the estimated turnover of Leijona Catering. Without Leijona Catering's turnover, the Parties' combined market share amounts to [50-60]%, the biggest competitors being Sodexo with an estimated market share of [10-20]% and Antell-Catering with an estimated market share of [10-20]%. Considering that the market share estimates and therefore the position of the Parties in the Finnish market for the supply of contract foodservices to business & industry customers does not change significantly, irrespective of whether Leijona Catering is included or not, the question whether or not Leijona Catering is a competitor of the Parties can be left open.

(238) The total market size used to estimate these market shares was around EUR [...] million, whereas the total market size as estimated by the [third party consultant] model was EUR […] million. The Commission therefore acknowledges that the market share estimates provided by the Parties based on competitors' revenues might be overstated.

(239) In the course of the market investigation, the Commission has verified the market share estimates of the Parties. To do this, the Commission has contacted the majority

[326] See Notifying Party's reply to RFI of 21 January 2020.

of significant competitors who won tenders in which one of the Parties participated. The verification confirms the broader picture of the Parties' position as the market leader with a clear difference to the next in line competitors.[327]

(240) The Notifying Party submits that, following the Transaction, the merged entity will continue to be constrained by a number of significant competitors, including Sodexo, ISS, Antell-Catering and Palmia. Moreover, according to the Notifying Party, the merged entity will continue to face competition from a large number of smaller, local competitors.[328] In addition, barriers to entry and expansion would be low and there would be strong constraints on the merged entity through buyer power as well as out-of-market constraints, such as restaurants.[329]

(241) Despite the somewhat high combined market shares of the Parties post-Transaction and the clear lead over the next in line competitors, the Commission considers that the Transaction is unlikely to raise serious doubts as to its compatibility with the internal market for the following reasons.

(242) First, the increment brought about by the Transaction is moderate. In addition, as shown by the market investigation and demonstrated in Table 17 above, the Finnish market for contract foodservices to business & industry customers is featured not only by large multi-national players such as Sodexo and ISS, but also by national foodservices suppliers like Antell-Catering as well as a number of smaller or local players like Palmia, Juvenes, and Theron Group. Demonstrative of this point is the fact that the Parties' tender data includes over [10-20] competitors, [information on the Parties' bidding data].[330] The large number of smaller suppliers is also capable of serving larger customers. For example, smaller competitors won several tenders worth more than EUR […] between 2014 and 2018.[331] As demonstrated by the Parties' tender data, these tenders are substantially based on value of the tender.[332] For example, the average value of a tender lost by the Notifying Party between 2014 and 2018 was around EUR […].[333]

(243) Furthermore, evidence collected during the market investigation shows that in selecting their contract foodservices providers via tender processes, Finnish business & industry customers do not give preference to the historical relationship with the contract foodservices supplier. Customers give preference to the quality of the food, the price of the food and the nutritional value of the food, but also to reputation and track-record of the supplier, efficient day-to-day operations and a contract foodservices package that is adapted to the customer's specific needs.[334] Contract foodservices suppliers try to differentiate from each other to win tenders on these parameters.[335] Moreover, the results of the market investigation have shown that both com-

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[327] Replies to Q2 – Questionnaire to Competitors in Finland, question 19.

[328] Form CO, para. 522.

[329] Form CO, paras. 528 *et seq*.

[330] Form CO, paras. 502 *et seq.*

[331] Form CO, para. 527.

[332] Form CO, para. 502.

[333] Own calculation based on Form CO, para. 502.

[334] Replies to Q2 – Questionnaire to Competitors in Finland, question 20; Replies to Q6 – Questionnaire to Customers in Finland, question 14.

[335] Replies to Q2 – Questionnaire to Competitors in Finland, question 21; Replies to Q5 – Questionnaire to Customers in Finland, question 15.

petitors and customers see as the most important trends in the contract foodservices in Finland in the next three years the following: (i) customers prefer high-quality food over low-cost food offering; (ii) customers demand healthy food with local ingredients and sustainable services; and (iii) customers see their canteen as a possibility to attract and retain employees.[336] A trend towards customers favouring smaller or independent suppliers was also confirmed to some extent.[337] One customer explained that "*[t]he importance of small local service providers is increasing and the importance of big once (sic) decreasing*."[338]

(244) Customers in the business & industry segment will therefore continue to benefit from the ability to choose from an extensive number of credible alternative bidders, which ranges from multi-national and national firms, to smaller local rivals. The Commission, therefore, considers that post-Transaction, the Parties will continue to face significant competition from the other companies active in the business & industry segment in Finland.

(245) Second, barriers to entry into the market for contract foodservices to business & industry customers are higher in Finland than in Denmark, Norway and Sweden. In Finland, contrary to Sweden, Norway and Denmark, the chefs and staff do not necessarily transfer with the contract. According to the Notifying Party, in Finland, the transfer of the contract does not necessarily constitute the transfer of an undertaking because assets (including kitchen equipment) are not transferred to the new operator. The Parties have, for example, explained that they remove their tills, ovens etc. in Finland following the termination of a contract.[339] However, the barriers to entry into the market for contract foodservices to business & industry customers in Finland are still low, especially for the companies already operating in the food sector in Finland.

(246) According to the Notifying Party, the recruitment of staff would not be a barrier to entry or expansion because there is sufficient time to plan for recruitment between the tender announcement and the start of the contract, which would be at least 6 to 20 weeks, depending on the tender. In the Parties' experience, the usual length of time needed for hiring a head chef would be four to eight weeks. In addition, there would be a wide range of low-cost recruitment methods.[340] This has been broadly confirmed by the Commission's market investigation, which shows that the most important criteria for a new market entry in Finland are (i) the existence of management staff with experience in the contract foodservices industry and (ii) knowledge of the contract foodservices industry and how to organise day-to-day operations.[341] In addition, the majority of competitors responding to the Commission's market investigation explained that it would be easy for them to find suitable food suppliers for their contract foodservices operations in Finland.[342] The Commission's findings in relation to low entry barriers on the supply side are also supported by the fact that

336 Replies to Q2 – Questionnaire to Competitors in Finland, question 24; Replies to Q5 – Questionnaire to Customers in Finland, question 18.

337 Replies to Q2 – Questionnaire to Competitors in Finland, question 24; Replies to Q5 – Questionnaire to Customers in Finland, question 18.

338 Replies to Q6 – Questionnaire to Customers in Finland, question 38.

339 Form CO, para. 1075.

340 Form CO, para. 1075 *et seq.*

341 Replies to Q2 – Questionnaire to Competitors in Finland, question 35; Replies to Q6 – Questionnaire to Customers in Finland, question 31.

342 Replies to Q2 – Questionnaire to Competitors in Finland, question 36.

a majority of the Finnish competitors responding to the Commission's market investigation believe that a company can enter the Finnish market and start offering contract foodservices with a contract for a single canteen or only one customer.[343]

(247) Third, on the demand-side, there are no significant barriers to switching between contract foodservices suppliers in the business & industry sector in Finland. The majority of competitors responding to the market investigation explained that the majority of business & industry customers switches their contract foodservices supplier after the contract is terminated, when the contract would be re-tendered and awarded to another supplier.[344] While the majority of customers responding to the market investigation explained that they had not switched their contract foodservices supplier in the last five years,[345] they confirmed that it was (somewhat) easy for them to find a suitable supplier of contract foodservices or to switch to a different supplier of contract foodservices.[346] This ability to switch strengthens the competitive constraints provided by customers and contributes to the dynamic and competitive environment in the Finnish business & industry segment.

(248) Fourth, the market investigation provided indications that customers of contract foodservices may sponsor new entry or expansion of other, in particular smaller, contract foodservices suppliers. This can be done by determining the contract details as well as the scope of the foodservices contract, for example by splitting their tenders into smaller lots.

(249) The majority of respondents to the market investigation confirmed that the conditions of the foodservices contracts (i.e. quality of the food, price, termination clauses) are determined by the customers in the business & industry segment in Finland.[347] In general, it seems that the larger the customer, the higher the ability to negotiate the conditions.[348]

(250) As explained, customers also have the possibility to structure their tender in separate tenders for contract foodservices for each of their canteens or sites. Furthermore, they have the possibility to split their tenders into smaller lots to increase competition and promote smaller contract foodservices suppliers. The market investigation has shown that these possibilities are used by some customers.[349] The majority of respondents to the market investigation confirmed that Finnish customers in the business & industry sector use the tactic of suggesting the potential termination of the contract, re-tendering and award of the contract to other suppliers.[350] In addition, some of the respondents explained that in order to facilitate the tender process, Finn-

[343] Replies to Q2 – Questionnaire to Competitors in Finland, question 37.

[344] Replies to Q2 – Questionnaire to Competitors in Finland, question 34.

[345] Replies to Q6 – Questionnaire to Customers in Finland, question 28.

[346] Replies to Q6 – Questionnaire to Customers in Finland, question 26; Replies to Q9 – Questionnaire to Brokers, question 19.

[347] Replies to Q2 – Questionnaire to Competitors in Finland, question 32; Replies to Q6 – Questionnaire to Customers in Finland, question 25; Replies to Q9 – Questionnaire to Brokers, question 16.

[348] Replies to Q2 – Questionnaire to Competitors in Finland, question 32; Replies to Q6 – Questionnaire to Customers in Finland, question 27; Replies to Q9 – Questionnaire to Brokers, question 18.

[349] Replies to Q2 – Questionnaire to Competitors in Finland, question 31; Replies to Q6 – Questionnaire to Customers in Finland, question 24; Replies to Q9 – Questionnaire to Brokers, question 15.

[350] Replies to Q2 – Questionnaire to Competitors in Finland, question 33; Replies to Q6 – Questionnaire to Customers in Finland, question 30; Replies to Q9 – Questionnaire to Brokers, question 20.

ish business & industry customers tend to hire brokers that are capable to advise them on how to better structure tenders to extract more favourable terms.[351]

(251) Fifth, the Commission's assessment of the effects of the Transaction also takes into account the fact that other lunch food options than on-site canteens are available to the staff in the business & industry sector. The majority of respondents to the market investigation considered that bringing lunch from home would be the preferred alternative lunch food option, followed by eating lunch at an outside restaurant or eating a snack or sandwich that was not bought at the on-site canteen.[352] The Commission therefore considers that these out-of-market constraints will have an effect on the merged entity's continued incentive to deliver good quality and price ratio to their customers post-Transaction.

(252) Finally, the majority of respondents to the market investigation having expressed a view considered that the Transaction would have no effect on competition in the business & industry segment in Finland.[353] The majority of competitors were also of the view that there will be sufficient competition in the Finnish business & industry sector following the Transaction.[354] Indeed, as noted by one of the competitors, "*[t]he transaction does not change the competitive situation in the market significantly since Compass is small today*."[355] This was confirmed by the majority of customers responding to the market investigation who considered that the Transaction would have no impact on their company.[356] Furthermore, as noted by one respondent "*I think in Finland there might be more possibilities for the smaller catering companies to win more tender processes. Fazer has had a very good name and reputation on the market based on the Fazer heritage (mainly chocolate). Compass does not have such a good reputation in Finland*."[357]

(253) Therefore, taking the above considerations into account, the Commission considers that the Parties will face significant competition in the business & industry segment in Finland post-Transaction and that the competitive constraints on the Parties in the supply of contract foodservices to business & industry customers in Finland would be sufficient.

*Conclusion*

(254) In light of the results of the market investigation and considering the evidence available to it, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the market for the supply of contract foodservices to business & industry customers in Finland.

351 Replies to Q2 – Questionnaire to Competitors in Finland, question 30; Replies to Q6 – Questionnaire to Customers in Finland, question 23.

352 Replies to Q2 – Questionnaire to Competitors in Finland, question 23; Replies to Q6 – Questionnaire to Customers in Finland, question 17.

353 Replies to Q2 – Questionnaire to Competitors in Finland, question 46; Replies to Q6 – Questionnaire to Customers in Finland, question 37; Replies to Q9 – Questionnaire to Brokers, question 26.

354 Replies to Q2 – Questionnaire to Competitors in Finland, question 45.

355 Replies to Q2 – Questionnaire to Competitors in Finland, question 45.

356 Replies to Q6 – Questionnaire to Customers in Finland, question 36.

357 Replies to Q9 – Questionnaire to Brokers, question 26.

### 7.1.8. *The Transaction's effects on public tenders*

(255) For Sweden and Denmark, a concern regarding public tenders was expressed by some respondents in the market investigation. It was claimed that public tenders would be awarded based on lowest price. Post-Transaction, the Parties would be able – due to their increased size – to obtain food products at lower prices than their competitors and to offer, ultimately, lower prices to customers, making it difficult for competitors to compete with them on price in the public tenders. Finally, competitors would have to leave the market(s).[358]

(256) The market investigation confirmed that it is easy for the providers of contract foodservices to find suitable food suppliers for their contract foodservices operations in their respective country[359] and that the Parties would not have the ability and/or the incentive to restrict their competitors' access to food suppliers necessary to provide contract foodservices post-Transaction.[360]

(257) The market investigation also confirmed in general that the foodservices supplier's size is important when acquiring food products from suppliers in their respective country.[361] One competitor explained the following "*Volume drives price up or down. Volume is essential in order to obtain best price which, as emphasized above, is the greatest competitive edge for suppliers.*" On the other hand, the size of the foodservices supplier is not the only decisive factor when negotiating good price conditions from food product suppliers. In that regard, another competitor explained that volumes are not the only factor to obtain good prices: "*It is easier to negotiate good prices if you have a substantial size but it also depends on how good you are at negotiating ;-)*".[362]

(258) The Commission considers that the allegation according to which the merged entity would be able to force competitors out of the market because of their ability to offer lower prices in public tenders is unfounded for the following reasons.

(259) First, out of the Parties' total revenue in the business & industry sectors in Sweden and Denmark, the Parties only achieve around […]% of their total revenue in 2018 as well as 2017 with contracts following public tenders (public administration and public companies).[363] It can therefore be concluded, that a very big proportion of the business & industry contract foodservices revenues of the Parties in Sweden and Denmark is made with private companies, which, even if the above-mentioned claim were correct, would be open to competitors.

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358 Replies to Q1 – Questionnaire to Competitors in Sweden, question 88; Replies to Q4 – Questionnaire to Competitors in Denmark, question 61.

359 Replies to Q1 – Questionnaire to Competitors in Sweden, question 84; Replies to Q2 – Questionnaire to Competitors in Finland, question 36; Replies to Q3 – Questionnaire to Competitors in Norway, question 36; Replies to Q4 – Questionnaire to Competitors in Denmark, question 57.

360 Replies to Q1 – Questionnaire to Competitors in Sweden, question 88; Replies to Q2 – Questionnaire to Competitors in Finland, question 40; Replies to Q3 – Questionnaire to Competitors in Norway, question 40; Replies to Q4 – Questionnaire to Competitors in Denmark, question 61.

361 Replies to Q1 – Questionnaire to Competitors in Sweden, question 87; Replies to Q2 – Questionnaire to Competitors in Finland, question 39; Replies to Q3 – Questionnaire to Competitors in Norway, question 39; Replies to Q4 – Questionnaire to Competitors in Denmark, question 60.

362 Replies to Q1 - Questionnaire to Competitors in Sweden, question 87; Replies to Q4 – Questionnaire to Competitors in Denmark, question 60.

363 Notifying Party's reply to RFI 12 of 14 January 2020.

(260) Second, as explained above, in selecting their contract foodservices supplier, customers in general take into account several parameters, of which price is only one.[364] This is further evidenced by the general trend towards high-quality food over low-cost food offering and healthy food with local ingredients and sustainable services as confirmed in the market investigation.[365]

(261) Third, it is uncertain whether the merged entity will have the ability to obtain lower prices on food products and therefore offer lowest prices in public tenders. The Transaction envisages an annualised purchasing synergy of EUR […] million in the entire Nordic region.[366] The Notifying Party explained that this was based on an assumption [Notifying Party's internal business strategy].[367] However, the cost base for the provision of any foodservices contract would include not only the cost of ingredients, but also labour cost at the restaurant level and other restaurant level administrative costs (for example site-specific IT or rent). Of these costs, in most cases labour costs would be the highest cost. The Parties explained that many of their competitors would already offer prices […] in public bids.[368]

(262) Fourth, smaller competitors have the possibility to achieve cost savings when buying ingredients by joining purchasing cooperatives. For Denmark, the Parties explained that they are aware of the Samhandel purchasing cooperative, which could be joined by paying an enrolment fee of less than EUR 1 500.[369] For Sweden, the Parties explained that they are aware of three large purchasing cooperatives in Sweden that foodservices providers could join: Nores, Svenska Krögare and Krogdirekt. These purchasing cooperatives would be easy to join and had thousands of members including small restaurants and contract foodservices suppliers. The purchasing cooperative Nores would have more than 1 000 members in Sweden, including the foodservices provider Sodexo. Members of Nores would be expected to pay a deposit of around EUR 2 000 and to have certain annual purchasing volumes through the purchasing cooperative. Krogdirekt would claim that its members benefit from purchasing savings of up to 30%. To join Krogdirekt, only a small annual fee of less than EUR 600 would need to be paid.[370]

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[364] Replies to Q1 – Questionnaire to Competitors in Sweden, questions 22, 27, 32, 37 and 40; Replies to Q5 – Questionnaire to Customers in Sweden, questions 17, 22, 27, 32 and 35; Replies to Q 4 – Questionnaire to Competitors in Denmark, questions 21 and 26; Replies to Q8 – Questionnaire to Customers in Denmark, question 16 and 21. This is further confirmed by the Parties' analysis of the judging criteria of the total public contracts tendered in 2018 in the business & industry segments in Sweden and Denmark and the education segment in Denmark as well as the analysis of the tenders won by one of the Parties in the healthcare & welfare segment and the education segment in Sweden. This data shows that in less than 50% of the respective contracts in the respective segment, the award of the contract was explicitly solely based on price or price had the highest weighting (but even in those tenders where price had the highest weighting, price was not necessarily the decisive factor), see Notifying Party's reply to RFI 12 of 14 January 2020, question 2.

[365] Replies to Q1 – Questionnaire to Competitors in Sweden, questions 26, 31, 36, 39 and 42; Replies to Q5 – Questionnaire to Customers in Sweden, questions 21, 26, 31, 37 and 34; Replies to Q4 – Questionnaire to Competitors in Denmark, question 25 and 30; Replies to Q8 – Questionnaire to Customers in Denmark, question 20 and 25.

[366] See Form CO, Annex 5.4.A-002, Compass, [Notifying Party's internal document] of 26 May 2019.

[367] Notifying Party's reply to RFI 12 of 14 January, question 3.

[368] Notifying Party's reply to RFI 12 of 14 January, question 4.

[369] Notifying Party's reply to RFI 12 of 14 January, question 5.

[370] Notifying Party's reply to RFI 12 of 14 January, question 5, based on the following public sources: https://www nores.se/, https://krogare.se/, https://krogdirekt.com/,https://www.samhandel.dk/forside.aspx.

## 7.2. Conglomerate effects

(263) Pursuant to the Non-Horizontal Merger Guidelines,[371] in most circumstances, conglomerate mergers do not lead to any competition problems. However, foreclosure effects may arise in conglomerate mergers when the combination of services in related markets may confer on the merged entity the ability and incentive to leverage a strong market position from one market to another by means of tying or bundling or other exclusionary practices. Those practices are common and often have no anti-competitive consequences, as companies may engage in tying and bundling in order to provide their customers with better products or offerings in cost-effective ways.[372] However, in certain specific cases, conglomerate effects may harm competition.

(264) In the present case, as contract foodservices are sometimes tendered out together with non-food related services (i.e. other support services such as cleaning services), the Transaction may have a conglomerate dimension. Compass supplies contract foodservices together with other support services in Sweden, Denmark, Norway and Finland. However, Fazer FS does not provide multi-service contracts in Denmark, Sweden and Norway and Fazer FS is only marginally active in multi-service contracts in Finland.[373]

(265) In order to assess the likelihood of such possible anticompetitive foreclosure strategies, the Commission will examine whether the merged entity has (i) the ability to foreclose and (ii) the incentives to foreclose competing suppliers from providing contract foodservices to customers. Lastly, the Commission will assess whether such practices may have a significant negative impact on competition by limiting more cost-effective suppliers, and/or reducing choice for customers.[374]

### *7.2.1. Ability to foreclose*

(266) The Commission considers that the Parties will not gain any ability, post-Transaction, to engage in a strategy of tying or bundling its contract foodservices with other support services in Denmark, Finland, Norway or Sweden. First, the merged entity will lack the market power on any of the markets concerned to engage in such a strategy. More specifically, in any of Denmark, Finland, Norway or Sweden, the Parties' combined share of supply in support services (or any potential segment thereof, such as cleaning) is below 10%,[375] and although the Parties' combined share is significant in some markets for contract foodservices, customers will continue to have the ability to choose from an extensive list of credible contract foodservices suppliers. Second, there is a small proportion of multi-service contracts in Sweden, Denmark, Norway and Finland. The majority of customers in Denmark, Finland, Norway and Sweden indicated that they tender out contract foodservices separately from other support services.[376] By way of example, the table below shows

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371 Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings ('Non-Horizontal Merger Guidelines'), OJ C 265/6, 18.10.2008.

372 Non-Horizontal Merger Guidelines, para. 93.

373 The support services provided by Fazer in Finland amounted to […] of its annual sales in Finland.

374 Non-Horizontal Merger Guidelines, para. 94.

375 See Notifying Party's reply to RFI 9 of 18 December 2019, question 2.

376 Replies to Q8 – Questionnaire to Customers in Denmark, question 62; Replies to Q6 – Questionnaire to Customers in Finland, question 34; Replies to Q7 – Questionnaire to Customers in Norway, question 34; Replies to Q5 – Questionnaire to Customers in Sweden, questions 98, 100, 102, 104, 106 and 108.

the number of foodservice-only contracts and the number of multi-service contracts provided by Compass in the fiscal year 2017/2018.

**Table 18 - Compass food-only contracts and multi-service contracts in fiscal year 2017/2018**

| Segment | Norway | | Sweden | | Denmark | | Finland | |
|---|---|---|---|---|---|---|---|---|
| | Food-only contracts | Multi-service contracts | Food-only contracts | Multi-service contracts | Food-only contracts | Multi-service contracts | Food-only contracts | Multi-service contracts |
| Business & industry | […] | […] | […] | […] | […] | […] | […] | […] |
| Education | […] | […] | […] | […] | […] | […] | […] | […] |
| Healthcare & welfare | […] | […] | […] | […] | […] | […] | […] | […] |
| Defence | […] | […] | […] | […] | […] | […] | […] | […] |

*Source: Form CO, Table 127.*

### 7.2.2. *Incentive to foreclose*

(267) The incentive to foreclose rivals through bundling or tying depends on the degree to which this strategy is profitable. The Commission considers that the merged entity would have no incentive post-Transaction to favour any tied or bundled offer to the detriment of foodservices-only contracts in any of Denmark, Finland, Norway or Sweden. Indeed, the value of the support services part of multi-service contracts is small relative to the foodservices part and they are often only provided for the customer's convenience rather than profitability reasons.[377] The Parties have no reason to risk losing foodservices-only contracts by trying to link them with support services for such a small return. Second, the Parties have no incentive to tie or bundle contract foodservices with other support services, because customers have the power to design their tenders to achieve the best competitive outcome for them. If the merged entity insisted on tying or bundling support services to contract foodservices, in most cases, it would not fulfil the tender requirements and the customer would likely reject the merged entity from the tender process and choose among the large number of credible alternatives available.

### 7.2.3. *Overall impact on competition*

(268) The Commission considers that the Transaction is unlikely to have an overall negative impact on competition in the markets for contract foodservices and other support services, as any bundling or tying strategy is unlikely to reduce the ability and incen-

[377] Form CO, para. 870.

tives to compete of the significant competing providers that are active in the EEA. Customers will continue to have immediate access to competitive contract foodservices and other support services on a standalone basis. For example, there are more than 2 000 cleaning service suppliers in Sweden and 4 000 cleaning companies in Finland.[378] Even if the customer did accept the tied or bundled products, the merged entity would still face competition from other firms with the same capacity to provide multi-service contracts, such as ISS, Sodexo and Coor. Overall, the Commission is of the view that the effects of any hypothetical tying or bundling strategy is unlikely to have a negative impact on prices and choice in any of Denmark, Finland, Norway or Sweden.

*Conclusion*

(269) In light of the above considerations and taking account of the results of the market investigation, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to conglomerate effects in Denmark, Finland, Norway and Sweden as the merged entity would have neither the ability, nor it is likely to have the incentive, to foreclose competitors through a bundling/tying strategy.

## 8. CONCLUSION

(270) For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation and Article 57 of the EEA Agreement.

*For the Commission*

*(Signed)*
*Margrethe VESTAGER*
*Executive Vice-President*

[378] Form CO, para. 873.