



Section 57 of the Competition Act (Cap. 50B)

Grounds of Decision issued by the Competition Commission of Singapore

In relation to the notification for decision of the proposed acquisition by Ridgeback Acquisition LLC of the Pet Care Business of The Procter and Gamble Company in certain countries (including Singapore) pursuant to section 57 of the Competition Act

28 October 2014

Case number: CCS 400/008/14

Confidential information in the original version of this Decision has been redacted from the published version on the public register. Redacted confidential information in the text of the published version of the Decision is denoted by [X].
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I. Introduction

The Notification

1. On 8 September 2014, Ridgeback Acquisition LLC (“Ridgeback”), a wholly-owned subsidiary of Mars, Incorporated (“Mars, Inc”), and The Procter and Gamble Company (“P&G”) (collectively referred to as “the Parties”) filed a joint notification pursuant to section 57 of the Competition Act (Cap. 50B) (“the Act”) for a decision by the Competition Commission of Singapore (“CCS”) as to whether the proposed acquisition by Ridgeback of P&G’s pet care business – which consist of P&G’s business of sourcing, manufacturing, producing, marketing, selling, distributing and developing pet nutrition products including dry food, wet foods and treats, for dogs and cats – in certain countries, including Singapore¹ (the “Option Transaction”) will infringe the section 54 prohibition of the Act, if carried into effect.
2. The Option Transaction follows an agreement signed on 8 April 2014 in which Ridgeback acquired all P&G assets used and held in P&G’s pet care business in North America, Latin America, and other selected countries mainly in the Middle East and Asia² (“Main Transaction”).
3. In reviewing the Option Transaction, CCS contacted four distributors, 32 retailers and veterinary clinics, as well as seven competitors. CCS also contacted the Agri-Food and Veterinary Authority of Singapore (“AVA”) for information. Out of the third-parties contacted, nine replied and seven provided substantive responses to CCS’s questionnaires. The remaining two parties have indicated that they have no concerns with the Option Transaction.
4. At the end of the consultation process and after evaluating all the evidence, CCS concludes that the Option Transaction, if carried into effect, will not infringe section 54 of the Act.

II. The Parties

Ridgeback

5. Ridgeback is a holding company with no operational activities itself and was created for the purposes of the Main Transaction and the Option Transaction.

¹ These countries include Ukraine, Republic of South Africa and a number of selected countries in Middle East, Africa and Asia, including Singapore.

² [X]

Ridgeback is a wholly-owned subsidiary of Mars, Inc, which is a global privately-held company headquartered in McLean, Virginia, USA.

Mars, Inc

6. Mars, Inc operates in more than 74 countries and in 2013 had more than [X] in sales of which approximately [X] were from the pet care business. Mars, Inc has six business segments focused on consumer products:
 - a. Petcare. The Petcare business segment is engaged in the manufacture and sale of pet food and pet treats. Major brands include Pedigree, Whiskas, and Royal Canin.
 - b. Chocolate. The Chocolate business segment is engaged in the manufacture and sale of chocolate candies.
 - c. Wrigley. The Wrigley business segment is engaged in the manufacture and sale of chewing gum, mints, and hard/chewy candies.
 - d. Food. The Food business segment is engaged in the manufacture and sale of rice, pastas, ready-made meals, soups, sauces, gravies, marinades, grated cheese, and herbs and spices.
 - e. Drinks. The Drinks business segment is engaged in the manufacture and sale of single-serve coffee, tea, and hot chocolate products for proprietary FLAVIA® systems and KLIX® vending machines.
 - f. Symbioscience. The Symbioscience business segment is a health and life sciences business focused on evidence-based product development for human and animal health.
7. Mars Foods, Inc is registered in Singapore as a foreign company. The principal activity of Mars, Inc in Singapore (“Mars Singapore”) is the trading of snack food and pet care products in Singapore, including Pedigree and Whiskas. [X].
8. The total Singapore turnover of the Mars, Inc Group in its 2013 financial year was approximately [X].³

P&G

9. P&G is a global, publicly-traded company established in 1837 and headquartered in Cincinnati, Ohio, USA. P&G operates in approximately 80 countries and in its 2013 financial year had over US\$84 billion in sales of which [X] were pet food related. P&G has four Global Business Units focused on consumer products:

³ Paragraph 13.3 of Form M1.

- a. Global Fabric and Home Care. This segment is comprised of a variety of (i) fabric care products, including laundry detergents, additives and fabric enhancers; (ii) home care products, including dishwashing liquids and detergents, surface cleaners and air fresheners; and (iii) batteries.
 - b. Global Beauty. This unit comprises beauty care (with products ranging from deodorants to cosmetics to skin care), hair care and colour and prestige product categories.
 - c. Global Baby, Feminine and Family Care. In baby care, P&G focuses mainly in diapers, pants and baby wipes. Feminine care includes pads, tampons and liners. P&G's family care business is predominantly a North American business comprised largely of the Bounty paper towel and Charmin toilet paper brands.
 - d. Global Health and Grooming. This unit includes oral care, personal health care, and grooming. Oral care includes toothpaste and toothbrushes. In personal health care, P&G is active in non-prescription heartburn medications and in respiratory treatments. Grooming includes blades and razors, electric hair removal devices, face and shave products and home appliances.
10. P&G's pet care business is part of P&G's Global Health and Grooming segment. [X]. The vast majority of the pet care business is in North America [X].
11. P&G has four entities in Singapore⁴ and [X]. The total Singapore turnover of P&G in its 2013 financial year was approximately [X].⁵

III. The Transaction

12. This notification relates to the proposed Option Transaction, namely the proposed acquisition by Ridgeback of P&G's pet business – which consists of P&G's business of sourcing, manufacturing, producing, marketing, selling, distributing and developing pet-nutrition products in major markets, including dry foods, wet foods and treats, for dogs and cats – in certain countries, including Singapore (“Option Pet Business”).
13. The Option Transaction involves the acquisition of assets and control over the Option Pet Business exclusively, with all other P&G activities remaining unaffected.

⁴ P&G Northeast Asia Pte. Ltd, Procter & Gamble (Singapore) Pte. Ltd.; Procter & Gamble Asia Pte. Ltd. and Procter & Gamble International Operations Pte. Ltd.

⁵ Paragraph 13.4 of Form M1.

14. The Option Transaction follows the Main Transaction, namely an agreement signed on 8 April 2014 ("Main Transaction Agreement") in which Ridgeback acquired all the P&G assets used and held in P&G's pet business in North America, Latin America and other selected countries mainly in the Middle East and Asia ("Main Countries") for the value of approximately [X] in cash. The markets involved in the Main Transaction represented approximately [X] of the P&G pet care business worldwide by sales.
15. In addition to the [X], Mars, Inc paid [X] for the Option Transaction.
16. The Main Transaction closed on 31 July 2014. On [X], Ridgeback exercised its option to acquire the Option Pet Business (which consists of the remaining countries not already acquired in the Main Transaction ("the Option Countries")) [X].
17. P&G will retain its pet food business in European countries.

IV. Competition Issues

18. As set out in the *CCS Guidelines on the Substantive Assessment of Mergers*, CCS is generally of the view that competition concerns are unlikely to arise in a merger situation unless the merged entity will have a market share of 40% or more or the merged entity will have a market share of more than 20% with the post-merger CR3⁶ at 70% or more.⁷
19. For the Option Transaction, the Parties submitted that with respect to Singapore, the overlapping goods sold by the Parties consist of dry dog food, dry cat food and dog treats. In addition to these overlapping goods, Mars, Inc also sells wet dog food, wet cat food and cat litter in Singapore. Although P&G sells wet dog food, wet cat food and cat treats in other jurisdictions outside Singapore, it does not sell these products in Singapore. There are no internal board or management reports held by P&G since at least 2011 discussing any plans to produce or sell these products in Singapore.⁸
20. In each of these goods, the Parties submit that the brands with overlapping products are:
 - a. Pedigree and Royal Canin (Mars, Inc) and Eukanuba (Option Pet Business) for dry dog food;

⁶ Paragraph 5.14 of *CCS Guidelines on the Substantive Assessment of Mergers*. CR3 refers to the combined market shares of the three largest firms.

⁷ Paragraph 5.15 of the *CCS Guidelines on the Substantive Assessment of Mergers*.

⁸ Response from Parties dated 25 September 2014.

- b. Whiskas and Royal Canin (Mars, Inc) and Iams (Option Pet Business) for dry cat food; and
 - c. Pedigree (Mars, Inc) and Iams and Eukanuba (Option Pet Business) for dog treats.
21. CCS notes that P&G also sells dry cat food under the Eukanuba brand and dry dog food products under the Iams brands, but has made a strategic decision not to do so in Singapore.⁹
22. In evaluating the potential impact of the Option Transaction, CCS has considered whether the Option Transaction will lead to coordinated or non-coordinated effects that would substantially lessen competition in these three overlapping products segments.

V. Counterfactuals

23. As stated in paragraph 4.6 of the *CCS Guidelines on Substantive Assessment of Mergers*, CCS will, in assessing mergers and applying the Substantial Lessening of Competition (“SLC”) test, evaluate the prospects for competition in the future with and without the merger. The competitive situation without the merger is referred to as the “counterfactual”. The SLC test will be applied prospectively, that is, future competition will be assessed with and without the merger.
24. The *CCS Guidelines on Substantive Assessment of Mergers* also states that in most cases, the best guide to the appropriate counterfactual will be prevailing conditions of competition, as this may provide a reliable indicator of future competition without the merger. However, CCS may need to take into account likely and imminent changes in the structure of competition in order to reflect as accurately as possible the nature of rivalry without the merger.¹⁰
- (i) *The Parties’ submissions*
25. The Parties submitted that in the absence of the Option Transaction, the Parties will continue to operate separately and independently. However, there will be a loss in opportunity for the Parties to rationalise and achieve operational efficiencies in respect of Singapore.¹¹

⁹ Notes of Teleconference with [X] dated 20 October 2014.

¹⁰ Paragraph 4.7 of the *CCS Guidelines on Substantive Assessment of Mergers*.

¹¹ Paragraph 23.3 of Form M1.

(ii) *CCS's assessment*

26. CCS notes that the Main Transaction has already closed in the relevant jurisdictions, such that P&G's pet care business in the relevant jurisdictions has been transferred to Mars, Inc's control. Therefore the appropriate counterfactual is the competitive situation where the Main Transaction has been completed but the Option Transaction has not.
27. However, viewing the competitive situation in Singapore specifically, CCS accepts that in the absence of the Option Transaction, the Parties will continue to operate separately and independently. In particular, CCS notes that the Main Transaction does not include P&G's pet care business in Europe. As such, Mars, Inc and P&G will operate separately and independently in those jurisdictions. Further, P&G submitted that its main production facility for its Iams and Eukanuba branded pet food is [X]. Therefore in the absence of the Option Transaction, P&G will still be able to manufacture and supply its brands of pet food products to Singapore independent of Mars, Inc.
28. In light of the above, CCS is of the view that prevailing conditions of competition in Singapore would be the likely scenario without the merger and accordingly would be the counterfactual with which the SLC test will be applied to.

VI. Relevant Markets

29. The Parties have submitted that the relevant markets for the purposes of this notification are:¹²
- a. The market for dry dog food manufactured globally and supplied in Singapore;
 - b. The market for dry cat food manufactured globally and supplied in Singapore; and
 - c. The market for dog treats manufactured globally and supplied in Singapore.

(a) Product markets

(i) *The Parties' submission*

¹² Paragraphs 20.1 and 20.4 of Form M1.

Dog food and cat food constitute separate product markets

30. The Parties submitted that because dogs and cats have different nutritional requirements and consumers today will not consider substituting prepared pet food products across species, dog food and cat food are typically considered to belong to different product markets.¹³

Wet pet food and dry pet food constitute separate product markets

31. The Parties submitted that the two most significant formulations of dog and cat food by sales are dry and wet products. Prior decisions by the European Commission ("EC") have found that dry and wet pet food (for dogs and cats separately) constitute separate product markets as they do not appear to be substitutable on the demand side.¹⁴
32. The Parties further submitted that the production of wet and dry pet food differ on the supply side because these products require different raw materials, use different production processes, and are supplied in different pack sizes. In addition to production differences, dog food and cat food formulations (dry and wet) also differ in other recognisable attributes, including ingredients, appearance, texture, aroma, palatability, packaging, convenience, and average nutritional value. Focusing on these differences between dry and wet formulations, some jurisdictions (e.g., US, the European Union ("EU"), Brazil) have found that wet and dry foods are not substitutable on the demand side because the products satisfy different nutritional needs and differ significantly in price – wet is typically more expensive because of its higher nutritional value and packaging costs.
33. The Parties submitted that pet food products are sold across a continuum of price/quality points depending on the format and ingredients used in the products. In Singapore, there are significant price differences and product features across different brands of dry dog and dry cat food. In 2002, the EC concluded that different quality categories are not deemed to form separate relevant product markets.¹⁵ The EC explained that the evidence continued to support a view that price ranges across the quality categories follow a continuum, without clear break points, and that differences across the segments are blurred by promotional activities.

¹³ Paragraph 19.1 of Form M1.

¹⁴ *COMP/M.2337 – Nestle / Ralston Purina and COMP/M.2544 – Masterfoods / Royal Canin.*

¹⁵ *COMP/M.2544 – Masterfoods / Royal Canin.*

Dog Treats form a separate product market from dog food

34. In addition, aside from dry and wet pet food for dogs and cats, there is a broad variety of dog and cat snacks and treats, which are used between meals mainly as a reward. Prior decisions by the EC have found that such treats form a separate product market from pet food as they do not offer a complete and balanced diet and as such are not substitutable for pet food. Treats are typically also priced much higher.¹⁶

(ii) *CCS's assessment*

Dog food and cat food constitute separate product markets

35. Feedback received from third-parties confirms that dog and cat food constitute separate product markets, and dog treats are not substitutable with dog food.¹⁷

Wet pet food and dry pet food constitute separate product markets

36. With regard to whether wet and dry pet food for dogs and cats constitute separate product markets, third-party feedback suggests that equivalent products in dry and wet formulations have identical nutritional value, but it is generally agreed that there are differences between wet and dry food in terms of palatability and storage.¹⁸

Prescription pet food and other pet food constitute separate product markets

37. CCS finds that there is a category of dry dog food and dry cat food which caters to dogs and cats with specific medical conditions, and is only sold in veterinary clinics, when prescribed by veterinarians (“Prescription Dry Dog Food” and “Prescription Dry Cat Food”; together “Prescription Dry Pet Food”). Some of the medical conditions include, among others, diabetes, renal conditions and food hypersensitivity for dogs and cats.¹⁹ Feedback received suggests that pet food sold in retail outlets are not suitable alternatives to Prescription Dry Cat Food and Prescription Dry Dog Food for pets with medical conditions. [X] explained that pet food sold in retail outlets and grocery stores do not contain the necessary balance for the

¹⁶ COMP/M.2337 – Nestle / Ralston Purina and COMP/M.2544 – Masterfoods / Royal Canin.

¹⁷ Notes of Meeting with [X] dated 2 October 2014.

¹⁸ [X]'s Response to CCS's Request for Information dated 9 October 2014; Notes of Meeting with [X] dated 2 October 2014.

¹⁹ [X]'s Response to CCS's Request for Information dated 13 October 2014.

medical conditions of the pets.²⁰ [X] explained that substituting between specific diets is not nutritionally sound. If a pet is on a specific diet due to allergies or medical conditions, diets suited for general consumption or targeted towards other conditions would not be appropriate.²¹

38. Royal Canin explained that its prescription pet food are not sold in pet shops because they are for pets that are sick, and a veterinarian's advice is needed for purchase of prescription pet food. Royal Canin also observed that the alternative to prescription pet food that removes certain ingredients was for pet owners to prepare such food themselves.²² Royal Canin's correspondence with DTEM Pte. Ltd., its distributor in Singapore, suggests that it perceived competition to be different between prescription pet food business and its other pet food business:

[X]²³

39. [X] explained that its [X] products, unlike its other brands, are a range of diets formulated for the nutritional management of various disease conditions in dogs and cats (such as gastrointestinal, obesity, urinary, skin and other conditions). These therapeutic products are recommended for use under the supervision of a veterinary professional and the labelling recommends veterinary care.²⁴
40. In contrast, Mars Food Singapore explained that its Pedigree, Whiskas and other general pet food have an emphasis on healthy dogs and cats, rather than a specific breed or medical condition. Mars Food Singapore also observed that, for pets that have a specific need such as dermatological or gastrointestinal issues, its general pet food products are not substitutes for prescription products that address such specific medical conditions.²⁵
41. [X] indicated that its closest competitors are other research-based premium foods such as [X] as they represent global brands that are known and used by pet care professionals globally.²⁶ [X] emphasised that it chose to distribute a high-end premium brand with quality and research behind it, and

²⁰ [X]'s Response to CCS's Request for Information dated 13 October 2014.

²¹ Notes of Meeting with [X] dated 2 October 2014.

²² Notes of Meeting with Royal Canin Malaysia Sdn. Bhd dated 9 October 2014.

²³ Annex E to Form M1 on correspondence between Royal Canin and its distributor in Singapore (DTEM Pte. Ltd.) [X].

²⁴ Response from [X] dated 22 October 2014.

²⁵ Notes of Meeting with Mars Food Singapore dated 10 October 2014.

²⁶ [X]'s Response to CCS's Request for Information dated 9 October 2014.

that [X] is a premium brand with a wide range of products catering to many specific needs of cats and dogs.²⁷

42. Therefore CCS concludes that Prescription Dry Cat Food is a distinct market from dry cat food for general diets (“General Dry Cat Food”), and Prescription Dry Dog Food is a distinct market from dry dog food for general diets (“General Dry Dog Food”).
43. General pet food is generally sold through two retail channels, namely pet specialty outlets, including pet stores and veterinary clinics, and grocery outlets, including supermarkets. It has been highlighted that pet food sold in pet specialty outlets may cater to certain health benefits for the pet and would therefore need the sales assistant to explain these benefits to the pet owners.²⁸ It has been indicated that the pet food sold in grocery outlets are value for money, aimed to meet the basic needs of pets and do not need much explanation with regard to its product offerings.²⁹

Dog treats and dog food constitute separate product markets

44. CCS agrees with the Parties’ submission that dog treats forms a separate product market from dog food. [X] shared that treats are not meant to be meals and dogs cannot live on treats as a substitute for dog food.³⁰ [X] also mentioned that dog treats do not require any prescriptions and any treats can be fed in conjunction with dog food.³¹

(b) Geographic Market

(i) The Parties’ Submission

45. The Parties submitted that the relevant geographic markets for dry dog food, dry cat food and dog treats are worldwide in respect of the manufacturing of the products, and Singapore in respect of the supply of the products.³²
46. The Parties submitted that pet food supplied in Singapore is generally manufactured globally and imported to Singapore for sale. The Parties further submitted that distributors and retailers of pet food in Singapore

²⁷ [X]’s Response to CCS’s Request for Information dated 10 October 2014.

²⁸ Notes of Meeting with Mars Food Singapore dated 10 October 2014; Notes of Meeting with Royal Canin Malaysia Sdn. Bhd. dated 9 October 2014.

²⁹ Notes of Meeting with Mars Food Singapore dated 10 October 2014; [X]’s Response to CCS’s Request for Information dated 13 October 2014.

³⁰ Notes of Meeting with [X] dated 2 October 2014.

³¹ Notes of Meeting with [X] dated 2 October 2014.

³² Paragraph 20.2 of Form M1.

typically source for their products from suppliers globally. Lastly, the Parties noted that end-customers typically will not travel outside Singapore to purchase pet food.

(ii) *CCS's assessment*

47. Based on the Parties' submissions and third-parties' comments, CCS is in agreement with the geographic market definition provided by the Parties.

48. CCS is therefore of the view that the relevant markets for the purposes of this notification are:

- (a) Global supply of General Dry Dog Food to Singapore;
- (b) Global supply of General Dry Cat Food to Singapore;
- (c) Global supply of Prescription Dry Dog Food to Singapore;
- (d) Global supply of Prescription Dry Cat Food to Singapore;
- and
- (e) Global supply of dog treats to Singapore.

VII. Market Structure

(a) Market shares and market concentration

(i) *Parties submissions*

49. The Parties submitted data in relation to the estimated market share of dry dog food (inclusive of both General Dry Dog Food and Prescription Dry Dog Food), dry cat food (inclusive of both General Dry Cat Food and Prescription Dry Cat Food), and dog treats by retail sales value in Singapore. The data is extracted from a market research report obtained from Euromonitor.³³

³³ Paragraphs 21.4(a), 21.5(a) and 21.6(a) of Form M1.

Table 1: Estimated Market Share for Dry Dog Food by Retail Sales Value

	Percentage Market Share (based on estimated retail sales value)				
Competitor	2009	2010	2011	2012	2013
Mars, Inc	[10-20]	[10-20]	[10-20]	[10-20]	[10-20]
P&G	[10-20]	[10-20]	[10-20]	[10-20]	[10-20]
Mars, Inc + P&G	[25-35]	[25-35]	[25-35]	[25-35]	[25-35]
Nestle	[0-10]	[0-10]	[0-10]	[0-10]	[0-10]
Colgate-Palmolive Co	[20-30]	[20-30]	[20-30]	[20-30]	[20-30]
Texas Farm Products Co Inc	[0-10]	[0-10]	[0-10]	[0-10]	[0-10]
Eagle Professional Pet Products Pty Ltd	[0-10]	[0-10]	[0-10]	[0-10]	[0-10]
Others	[20-30]	[20-30]	[20-30]	[20-30]	[20-30]
Pre-Merger CR3	[50-60]	[50-60]	[50-60]	[50-60]	[50-60]
Post-Merger CR3	[60-70]	[60-70]	[60-70]	[60-70]	[60-70]

Table 2: Estimated Market Share for Dry Cat Food by Retail Sales Value

	Percentage Market Share (based on estimated retail sales value)				
Competitor	2009	2010	2011	2012	2013
Mars, Inc	[20-30]	[20-30]	[20-30]	[20-30]	[20-30]
P&G	[10-20]	[10-20]	[10-20]	[10-20]	[10-20]
Mars, Inc + P&G	[30-40]	[30-40]	[30-40]	[30-40]	[30-40]
Nestle	[40-50]	[40-50]	[40-50]	[40-50]	[40-50]
Colgate-Palmolive Co	[0-10]	[0-10]	[0-10]	[0-10]	[0-10]
Texas Farm Products Co Inc	[0-10]	[0-10]	[0-10]	[0-10]	[0-10]
Others	[10-20]	[10-20]	[10-20]	[10-20]	[10-20]
Pre-Merger CR3	[70-80]	[70-80]	[70-80]	[70-80]	[70-80]
Post-Merger CR3	[80-90]	[80-90]	[80-90]	[80-90]	[80-90]

Table 3: Estimated Market Share for Dog Treats by Retail Sales Value

Competitor	Percentage Market Share (based on estimated retail sales value)				
	2009	2010	2011	2012	2013
Mars, Inc	[0-10]	[0-10]	[0-10]	[0-10]	[0-10]
P&G	[0-10]	[0-10]	[0-10]	[0-10]	[0-10]
Mars, Inc + P&G	[0-10]	[0-10]	[0-10]	[0-10]	[0-10]
Nestle	[0-10]	[0-10]	[0-10]	[0-10]	[0-10]
Colgate-Palmolive Co	[0-10]	[0-10]	[0-10]	[0-10]	[0-10]
Marukan Co Ltd	[20-30]	[20-30]	[20-30]	[20-30]	[20-30]
Bow Wow Korea Co	[20-30]	[20-30]	[20-30]	[20-30]	[20-30]
Charoen Pokphand Group	[10-20]	[10-20]	[10-20]	[10-20]	[10-20]
DoggyMan HA Co Ltd	[0-10]	[0-10]	[0-10]	[0-10]	[0-10]
Private Label	[0-10]	[0-10]	[0-10]	[0-10]	[0-10]
Others	[0-10]	[0-10]	[0-10]	[0-10]	[0-10]

Note: The Option Transaction will not have any effect on the CR3 in the dog treats market in Singapore. This is because Mars, Inc and P&G are not amongst the firms with the three largest shares of this market.

50. The Parties did not provide a breakdown of the market share figures in terms of:

- a. Global supply of General Dry Dog Food to Singapore;
- b. Global supply of General Dry Cat Food to Singapore;
- c. Global supply of Prescription Dry Dog Food to Singapore;
- d. Global supply of Prescription Dry Cat Food to Singapore; and
- e. Global supply of dog treats to Singapore.

(ii) *CCS's assessment*

51. Based on the 2013 figures, CCS notes that in relation to dry dog food, the Parties would be the biggest player post-merger with a combined market share of [25-35]% in 2013, and the post-merger CR3 would be [60-70]%. From 2009 to 2013, both Parties' dry dog food grew in market shares, while Nestle, Colgate-Palmolive, and Texas Farm Products all declined in market share over the same period. Among the other dry dog food competitors, only Eagle Professional Pet Products increased its market share over the same period.

52. In relation to dry cat food, the Parties would be the second biggest player post- merger, with a combined market share of [30-40]% and the post-merger CR3 would be [80-90]%. The biggest player would be Nestle, with a market share of [40-50]%. From 2009 to 2013, P&G's dry cat food grew in market share but Mars, Inc declined in market share. Among the dry cat food competitors, Colgate-Palmolive grew in market share, while Nestle and Texas Farm Products declined in market share over the same period.
53. In relation to dog treats the Parties would be the fifth biggest player post-merger, with a combined market share of [0-10]%. The biggest player would be Marukan Co Ltd with a market share of [20-30]%. From 2009 to 2013, Mars, Inc's market share declined, while P&G's market share remains at only [0-10]% over the same period. Smaller players in the market appear to have expanded the most over the same period.
54. The estimated market share of the Parties for dog treats would be small post-merger, with many players with bigger market shares. Feedback has also suggested that the market for dog treats is very fragmented with many players.³⁴ Therefore CCS is satisfied at this point of the assessment that the Option Transaction will not lead to a substantial lessening of competition in the global market for dog treats supplied to Singapore and will not proceed with the in depth analysis of this relevant market.
55. CCS notes that the market share figures for dry dog food and dry cat food in Singapore is not broken down into the defined relevant markets.

(b) Barriers to entry and expansion

56. Entry by new competitors or expansion by existing competitors may be sufficient in likelihood, scope and time to deter or defeat any attempt by the merger parties or their competitors to exploit the reduction in rivalry flowing from the Option Transaction (whether through coordinated or non-coordinated strategies).³⁵

(i) The Parties' submission

Capital expenditure

³⁴ [S&P]'s Response to CCS's Request for Information dated 9 October 2014.

³⁵ Paragraph 7.2 of *CCS Guidelines on Substantive Assessment of Mergers*.

57. The Parties submitted that in order to enter the Singapore market, a pet food manufacturer would just need to set up an office space for operation, and the size of the office would depend on whether the pet food manufacturer wishes to distribute its pet food directly in Singapore.³⁶

Advertising and Promotion

58. In terms of level of promotion and advertising, the Parties submitted that expenditure required would differ depending on the sales channels. For speciality shops, less expenditure is required as a speciality chain (e.g. Pet Lovers Centre) is able to switch their customers from one brand to the other if they are sufficiently incentivised. These speciality stores are able to do this as they are able to train and utilise their staff to directly explain the benefits of a new brand to their customers in order to "push" a particular product.³⁷ For grocery shops, it is likely more challenging to gain a 5% market share and the Parties estimated annual advertising / promotion funds of around [X] will be required to gain a 5% market share.³⁸

Availability of distributors

59. The Parties submitted that it is generally not difficult for a potential entrant to secure a distribution arrangement with local distributors. [X].³⁹ [X].⁴⁰

Low brand loyalty among end-customers

60. The Parties also submitted that end-customers in Singapore do not have a significant degree of brand loyalty in respect of pet food, and tend to be adventurous to try and move between brands according to market trends at any particular point in time. The Parties cited the frequency new products and brands that pet shops bring in despite the fairly mature market in Singapore.⁴¹

Regulations

61. The Parties submitted that the import, manufacture and sale of pet food in Singapore is regulated by the AVA under the Feeding Stuffs Act (Cap. 105 of Singapore). The Parties understood that such regulation is focused on

³⁶ Paragraphs 26.1 and 26.2 of Form M1.

³⁷ Paragraph 27.2 of Form M1.

³⁸ Paragraph 27.3 of Form M1.

³⁹ Response from Parties dated 25 September 2014, Annex B-1 to B-3.

⁴⁰ Response from Parties dated 25 September 2014.

⁴¹ Paragraph 28.3 of Form M1.

ensuring food safety, and generally does not present a barrier of entry to pet food suppliers who wish to enter the Singapore market.⁴²

(ii) *CCS's assessment*

Advertising and marketing expenditure

62. Third-party feedback suggests that pet food manufacturers initiate the rebates and promotions available to distributors and retailers, particularly for Prescription Pet Food⁴³ and supermarket products⁴⁴. Mars, Inc spent about [X]⁴⁵ in 2013 on trade promotional investments for pet food in Singapore, while Royal Canin spent [X] for advertising and promotion expenses in respect of Singapore.⁴⁶ CCS also notes that the total estimated amount that P&G spent on advertising and promotions for pet food in Singapore in its 2013/2014 financial year was approximately [X].⁴⁷ These amounts of advertising and promotions expenditures for pet food in Singapore are consistent with the need to compete in markets with differentiated products, but are unlikely to constitute a significant barrier for global pet food brands seeking to enter or expand in Singapore.⁴⁸

Distribution

63. CCS notes that [X].⁴⁹ [X].⁵⁰ However, CCS notes that there are over 100 importers of pet food products into Singapore,⁵¹ and there are 61 live companies, 93 businesses and 11 limited liability partnerships registered in the wholesale of pet birds and animals (including food and accessories) category on ACRA.⁵² Therefore there are likely to be multiple distributorship options for pet food products for new entrants. It is also possible for a new entrant to partner with specialist pet shops or supermarkets to enter the market as a “home brand”.⁵³ [X] predicted that post-Option Transaction Mars, Inc would continue to use more than one distributor for their products because it would be difficult for only one distributor to handle all the brands

⁴² Paragraph 18.8 of Form M1.

⁴³ Notes of Meeting with [X] dated 2 October 2014.

⁴⁴ Response from [X] dated 13 October 2014.

⁴⁵ Response from Parties dated 21 October 2014.

⁴⁶ Response from Parties dated 24 October 2014.

⁴⁷ Response from Parties dated 21 October 2014.

⁴⁸ P&G's Profit and Loss Figures for Target Pet Business in Singapore (FY2013/2014) in Annex D(4) to Form M1.

⁴⁹ Response from Parties dated 25 September 2014, Annex B-1 to B-3.

⁵⁰ Response from Parties dated 25 September 2014.

⁵¹ Notes of Meeting with [X] dated 29 September 2014.

⁵² ACRA Search – Statistics on Industry.

⁵³ Notes of Meeting with Mars Food Singapore dated 10 October 2014.

in their portfolio.⁵⁴ CCS did not receive any feedback from competitors indicating that they would have any difficulties in obtaining a distributor for pet food post-Option Transaction.

Brand loyalty

64. CCS received mixed feedback on the level of brand loyalty of end-customers in Singapore in respect of pet food. In response to enquiries from CCS, the Parties were not able to provide specific examples of new competing products and brands on sales of their products.⁵⁵ Third-party feedback indicated that end-customers demonstrate lower brand loyalty for dog food and higher brand loyalty for cat food due to the natural pickiness of the different species of pets.⁵⁶
65. Specifically for Prescription Dry Pet Food, [X] stated that clients would generally stick with the same brand even if there was a price increase. The [X] shared that the more likely cause of a client changing brands of pet food was when the preferred product was out of stock. It is not uncommon for a product to be out of stock for one to two months. Clients would then ask about alternatives and would pick a product that is similar to the one they have been buying for their pets. [X] would then give his clients a range of options and let the clients make their own decisions.⁵⁷ [X] mentioned that Royal Canin and Hill's Prescription diets are considered good alternatives for each other should one not be available or out of stock.⁵⁸

Reputation

66. CCS finds that the reputation of a brand might be an important barrier to entry for a pet food manufacturer that is not established globally, particularly for Prescription Pet Food. P&G mentioned that it had originally planned to sell its [X].⁵⁹ [X] also mentioned that it would feel comfortable recommending any brand with the accreditation from the Association of American Feed Control Officials.⁶⁰ It further stated that Royal Canin did not have a significant

⁵⁴ Notes of Teleconference with [X] dated 20 October 2014.

⁵⁵ Response from Parties dated 25 September 2014.

⁵⁶ Notes of Meeting with [X] dated 2 October 2014.

⁵⁷ Notes of Meeting with [X] dated 2 October 2014.

⁵⁸ [X]'s Response to CCS's Request of Information dated 13 October 2014.

⁵⁹ Response from Parties dated 25 September 2014.

⁶⁰ Notes of Meeting with [X] dated 2 October 2014. The Association of American Feed Control Officials (AAFCO) is a voluntary membership association of American local, state and federal agencies charged by law to regulate the sale and distribution of animal feeds and animal drug remedies. While the AAFCO is not a regulatory body, many states in the United States of America follow the model pet food regulations. See <http://www.fda.gov/ForConsumers/ConsumerUpdates/ucm164473.htm>.

presence in Singapore until it increased its marketing efforts to improve its brand recognition.⁶¹ Mars, Inc stated that in general customers choose brands they are familiar with, and although they might experiment with new brands, they usually will return to established brands such as those by Mars, Inc or Nestle.⁶² [X] also shared that a halal brand of pet food from Thailand had entered the market, but has since disappeared.⁶³ Therefore, it may be hard for a new entrant with no track record in other major countries to enter into the relevant markets and gain market share. However, established international brands would likely be able to supply to Singapore without having difficulty in relation to reputation.

Regulations

67. CCS finds that regulatory barriers are low. AVA approval for the import of pet food can be obtained within one month of application, with an administrative fee of S\$22.⁶⁴ With regard to the manufacture of pet food in Singapore, a licence from AVA is required and would take about one month to process.⁶⁵

Evidence of actual entry

68. In terms of evidence of actual entry, CCS notes that while the Parties are not able to identify any significant entrants over the past five years, there are instances of retailers entering the General Pet Food markets via the introduction of their own private label products, e.g. VitaPet branded pet food (owned by Giant) and Burp branded pet food (owned by Pet Lovers Centre).⁶⁶

69. In light of the ability of new entrants to contract with distributors or directly with retailers, availability of numerous distributors and low regulatory barriers, CCS agrees that barriers to entry and expansion may be relatively low for established brands such as Nestle's Purina Vet Diets which have yet to enter Singapore. Although it may be hard for a new entrant with no track record in other major countries to enter into the relevant markets and gain market share, established brands would likely be able to supply to Singapore without much difficulty.

(c) Countervailing buyer power

⁶¹ Notes of Meeting with [X] dated 2 October 2014.

⁶² Notes of Meeting with Mars Food Singapore dated 10 October 2014.

⁶³ Notes of Teleconference with [X] dated 20 October 2014.

⁶⁴ Notes of Meeting with [X] dated 29 September 2014.

⁶⁵ Notes of Meeting with [X] dated 29 September 2014. There is currently no cat or dog food manufacturer in Singapore.

⁶⁶ Paragraph 29.1 of Form M1.

(i) *Parties' submission*

70. Mars, Inc's submitted that the bulk of Mars, Inc's sales of the relevant products in Singapore are made to large supermarket and specialty store chains (via its third-party distributor). The five largest customers of Mars, Inc in relation to the sale of dry dog food, dry cat food and dog treats in Singapore through its distributor respectively accounted for [X] of its total turnover.⁶⁷ The top five customers of Mars, Inc (excluding Royal Canin) in respect of the sale of dry dog food, dry cat food and dog treats in Singapore through its distributor are:

- a. [X];
- b. [X];
- c. [X];
- d. [X]; and
- e. [X].⁶⁸

(ii) *CCS's assessment*

71. Third-party feedback indicated that pet food is an insignificant portion of the supermarket business, and primarily provided as a convenience to customers.⁶⁹ As such, Mars, Inc and its competitors initially faced resistance from supermarkets to allocate shelf space to its products.⁷⁰ As customer demand for pet food has risen, supermarkets have become more willing to allocate shelf space to pet food, but have also begun to import and retail their own house brands of pet food.⁷¹ Supermarkets make their shelf allocation decisions based on sales and are open to changing vendors or distributors at any time. Brands which do not sell well in the supermarkets are also liable for removal when the product range is reviewed.⁷²

72. At the pet specialty retailer level, there also appears to be concentration in market share among a few pet store chains such as Pet Lovers Centre Pte Ltd and Pets' Station Holdings Pte Ltd, possibly up to or more than 50% of the pet care business in Singapore.⁷³ These pet specialty retailers do import and

⁶⁷ Paragraph 34.12 of Form M1.

⁶⁸ Paragraph 31.1 of Form M1. Royal Canin and P&G do not have information regarding their top five customers in the relevant markets.

⁶⁹ Response from [X] dated 13 October 2014.

⁷⁰ Notes of Meeting with Mars Food Singapore dated 10 October 2014.

⁷¹ For example, Dairy Farm Group has introduced its own brand of pet food.

⁷² Response from [X] dated 13 October 2014.

⁷³ [X]'s Response to CCS's Request for Information dated 9 October 2014.

retail “house brands” of pet food due to the very high gross margins involved.⁷⁴

73. CCS notes that Pet Lovers Centre Pte Ltd charges its suppliers a listing fee, which is uncommon at the pet specialty retailer level in the pet food industry. [S<] also stated that pet stores often will come to them for assistance when the stores are seeking to establish new branches.⁷⁵
74. While retailers might be able to negotiate with pet food manufacturers and/or their distributors to offer better rates, such benefits might not be passed on to end customers, given that they are fragmented in nature. This is especially true for the Prescription Dry Pet Food where choices are limited and any increase in prices from the manufacturer will be passed on from the retailer to the end-customers.
75. In light of the above, veterinary clinics would likely not be able to exert strong countervailing buyer power with respect to Prescription Pet Food. Although big retailers like Pet Lovers Centre Pte Ltd and the Dairy Farm Group may have the ability to import and sell pet food through their house brands, these brands may have limited competitive constraint on the premium segment of the relevant markets for General Pet Food. Further, there may not be a strong incentive for the big retailers to exert countervailing buyer power on the merged entity as it could also benefit from charging higher prices for its house brands.

VIII.Competition Assessment

(a) Non-coordinated effects

76. Non-coordinated effects may arise where, as a result of the Option Transaction, the merged entity finds it profitable to raise prices (or reduce output or quality) because of the loss of competition between the merged entities.⁷⁶ Other firms in the market may also find it profitable to raise their prices because the higher prices of the merged entity’s product will cause some customers to switch to rival products, thereby increasing demand for the rivals’ products.⁷⁷

(i) Parties’ submission

⁷⁴ [S<]’s Response to CCS’s Request for Information dated 9 October 2014.

⁷⁵ Notes of Teleconference with [S<] dated 20 October 2014.

⁷⁶ Paragraph 6.3 of *CCS Guidelines on the Substantive Assessment of Mergers*.

⁷⁷ Paragraph 6.3 of *CCS Guidelines on the Substantive Assessment of Mergers*.

77. The parties submitted that the Option Transaction will not result in a SLC in any markets to Singapore for the following reasons:

- a. Constraints from existing and potential competitors in the relevant markets: The Parties submitted that the merged entity will remain constrained by strong well-established existing competitors in the dog treats market, dry dog food market and dry cat food market.⁷⁸ The Parties further submitted that the Parties would face potential suppliers which are likely to be able to enter the Singapore market by supplying their products through a Singapore distributor. The Parties cited examples of such potential entrants to be Blackwood pet food, and Fressnapf, a German pet store chain that produces its own private label pet food.⁷⁹ In addition, local retailers could also potentially enter the relevant markets by introducing their own private labels.⁸⁰ Lastly, end-customers in Singapore are able to obtain pet food from local and overseas suppliers through online web stores. As such, this further constraints the ability of the Parties from increasing prices as end-customers are able to turn to such alternative sources of supply.⁸¹
- b. Significant buyer power: As mentioned above, the five largest customers of Mars, Inc in relation to the sale of dry dog food, dry cat food and dog treats in Singapore through its distributor respectively accounted for a very large proportion of the total turnover. The Parties further submitted there is limited shelf space in both grocery and specialty shops and as such both types of retailers are able to switch between stocking different brands; and retailer often charge listing fees for displaying their products on sale.⁸²
- c. Low barriers to entry: The Parties submitted that given the low barriers to entry, there is realistic threat from potential entrants.⁸³

(ii) CCS's assessment

Global supply of General Dry Dog Food to Singapore

⁷⁸ Paragraphs 34.3 to 34.5 of Form M1.

⁷⁹ Paragraph 34.7 of Form M1.

⁸⁰ Paragraph 34.8 of Form M1.

⁸¹ Paragraph 34.10 of Form M1.

⁸² Paragraph 34.15 of Form M1.

⁸³ Paragraph 34.18 of Form M1.

78. Mars, Inc sells its General Dry Dog Food through the brands Pedigree and Royal Canin, while P&G sells through its Eukanuba brand.
79. CCS notes that Eukanuba and Pedigree do not compete aggressively with each other and instead seeks to target different segments of customers. Under the distribution agreement with its authorised distributor in Singapore, DHKS, P&G's pet food products will only be sold to [X] in Singapore, and will not be sold in [Y]. In contrast, about [Z] of Mars, Inc's pet food products (excluding Royal Canin) are sold through non-pet specialty channels.⁸⁴ This limits the potential loss of competition in the General Dry Dog Food market due to the Option Transaction.
80. CCS notes that while Royal Canin has been identified as one of Eukanuba's main competitors in the sale of dry dog food, there are other international brands listed as close competitors with Eukanuba, including Purina Pro Plan of Nestle and Hill's. Hill's is also listed as one of Eukanuba's closest competitors, and is the biggest brand in Singapore for the dry dog food industry in Singapore. **Table 4**, extracted from a market research report obtained from Euromonitor⁸⁵, shows the estimated market share by brand for dry dog food in Singapore.

Table 4: Estimated Market Share by Brand for Dry Dog Food by Retail Sales Value

Brand	Percentage Market Share (based on estimated retail sales value)				
	2009	2010	2011	2012	2013
Pedigree (Mars, Inc)	[0-10]	[0-10]	[0-10]	[0-10]	[0-10]
Royal Canin (Mars, Inc)	[0-10]	[0-10]	[0-10]	[0-10]	[0-10]
Eukanuba (P&G)	[10-20]	[10-20]	[10-20]	[10-20]	[10-20]
Purina Alpo (Nestle)	[0-10]	[0-10]	[0-10]	[0-10]	[0-10]
Purina Pro Plan (Nestle)	[0-10]	[0-10]	[0-10]	[0-10]	[0-10]
Hill's Science Diet (Colgate-Palmolive Co)	[20-30]	[20-30]	[20-30].0	[20-30]	[20-30]
ANF (Texas Farm Products Co Inc)	[0-10]	[0-10]	[0-10]	[0-10]	[0-10]

⁸⁴ Notes of Meeting with Mars Food Singapore dated 10 October 2014.

⁸⁵ Paragraphs 21.4(b) of Form M1.

Eagle Pro (Eagle Professional Pet Products Pty Ltd)	[0-10]	[0-10]	[0-10]	[0-10]	[0-10]
Others	[20-30]	[20-30]	[20-30]	[20-30]	[20-30]

Global supply of General Dry Cat Food to Singapore

81. Mars, Inc sells its General Dry Cat Food through the brands Whiskers and Royal Canin, while P&G sells its products in Singapore through its Iams brand.
82. Similar to the reasons stated in paragraph 79 CCS notes that Eukanuba and Whiskers do not compete aggressively with each other and instead seeks to target different segment of customer. This limits the potential loss of competition in the General Dry Cat Food market due to the Option Transaction.
83. CCS notes that while Royal Canin has been identified as one of Iams's main competitor of the sale of dry cat food, there are other international brands listed as close competitors with strong presence in Singapore, including Hill's Science Diet and Purina Pro Plan. **Table 5** below, extracted from a market research report obtained from Euromonitor⁸⁶, shows the estimated market share by brand for dry dog food in Singapore

Table 5: Estimated Market Share by Brand for Dry Cat Food by Retail Sales Value

Brand	Percentage Market Share (based on estimated retail sales value)				
	2009	2010	2011	2012	2013
Whiskas (Mars, Inc)	[20-30]	[20-30]	[20-30]	[20-30]	[20-30]
Royal Canin (Mars, Inc)	[0-10]	[0-10]	[0-10]	[0-10]	[0-10]
Iams (P&G)	[10-20]	[10-20]	[10-20]	[10-20]	[10-20]
Purina Friskies (Nestle)	[30-40]	[30-40]	[30-40]	[30-40]	[30-40]
Purina Pro Plan (Nestle)	[0-10]	[0-10]	[0-10]	[0-10]	[0-10]
Hill's Science Diet (Colgate-Palmolive Co)	[0-10]	[0-10]	9[0-10]1	[0-10]	[0-10]

⁸⁶ Paragraphs 21.5(b) of Form M1.

ANF (Texas Farm Products Co Inc)	[0-10]	[0-10]	[0-10]	[0-10]	[0-10]
Others	[10-20]	[10-20]	[10-20]	[10-20]	[10-20]

Global supply of Prescription Dry Dog Food to Singapore

84. CCS understands there currently there are three brands supplying Prescription Dry Dog Food: Royal Canin, Eukanuba and Hill's. Royal Canin mentioned that, other than Hill's, Royal Canin and Eukanuba, no other brands are supplying prescription pet food products in Singapore.⁸⁷ There are no Iams branded Prescription Dry Dog Food sold in Singapore. Based on feedback, Hill's and Royal Canin cover a similar range of products, while the Eukanuba range in Singapore is limited as compared to the other two brands.⁸⁸ [X] mentioned that both Hill's and Royal Canin cover a wide range of products while Eukanuba is more limited and only has products dealing with skin and intestine issues.⁸⁹ Royal Canin also mentioned that Hill's provide the same range of products as Royal Canin, while Eukanuba's range of Prescription Pet Food available in Singapore is more limited compared to Hill's and Royal Canin.⁹⁰ [X] mentioned that Royal Canin's range of Prescription Pet Food is much wider than that of Eukanuba, which has fewer than 10 diets available and has a very small market share in Prescription Pet Food.⁹¹ Hill's has Prescription Dry Dog Food products for 11 types of medical conditions.⁹² Based on P&G's response, Eukanuba has Prescription Dry Dog Food products for five types of medical conditions.⁹³
85. Furthermore, Hill's has been referred to as the market leader for Prescription Dry Dog Food, followed by Royal Canin and Eukanuba. Eukanuba does not appear to be a strong competitor in the Prescription Dry Dog Food market. [X] indicated that 50% of its sale of Prescription Dry Dog Food comes from Hill's 35%-40% from Royal Canin, and about 10% from Eukanuba.⁹⁴ Based on sales figures provided by [X], out of the five Prescription Dry Dog Food products, Hill's has higher sales figures in three of them while Royal Canin has higher sales figures in two of them. It is noteworthy that [X] does not stock Eukanuba Prescription Dry Dog Food products due to the fact that it

⁸⁷ Notes of Meeting with Royal Canin Malaysia Sdn. Bhd. dated 9 October 2014.

⁸⁸ Notes of Meeting with Royal Canin Malaysia Sdn. Bhd. dated 9 October 2014; Notes of Meeting with [X] dated 2 October 2014.

⁸⁹ Notes of Meeting with [X] dated 2 October 2014.

⁹⁰ Notes of Meeting with Royal Canin Malaysia Sdn. Bhd. dated 9 October 2014.

⁹¹ Note of teleconference with [X] dated 20 October 2014.

⁹² Response from [X] dated 22 October 2014.

⁹³ Response from Parties dated 21 October 2014.

⁹⁴ Notes of Meeting with [X] dated 2 October 2014.

deems Eukanuba Prescription Dry Dog Food to be far inferior to both Royal Canin and Hill's.⁹⁵

86. Lastly, Purina Veterinary Diet of Nestle has been mentioned as a potential alternative to Royal Canin and Eukanuba, but is currently not available in Singapore.⁹⁶

Global supply of Prescription Dry Cat Food to Singapore

87. Similar to Prescription Dry Dog Food, CCS understands that currently there are three brands supplying Prescription Dry Cat Food: Royal Canin, Eukanuba and Hill's. There are no Iams branded Prescription Dry Cat Food sold in Singapore. Based on feedback, Hill's and Royal Canin cover similar range of products, while the Eukanuba range in Singapore is limited as compared to the other two.⁹⁷ Hill's has Prescription Dry Cat Food products for seven types of medical conditions.⁹⁸ In fact, Eukanuba sells only two Prescription Dry Cat Food products in Singapore.⁹⁹
88. Based on veterinary clinics' feedback, it seems that Hill's and Royal Canin have similar market presence in the Prescription Dry Cat Food Market, while Eukanuba appears to have the smallest. [X] mentioned that 40% of its sales of Prescription Dry Cat Food comes from Hill's, 35% from Royal Canin, and about 15-20% from Eukanuba.¹⁰⁰ Based on sales figures provided by [X], out of the three Prescription Dry Cat Food products, Royal Canin has higher sales figures in two of them while Hill's has higher sales figure in one of them.¹⁰¹ Similarly, [X] do not stock Eukanuba Prescription Dry Cat Food products due to the fact that it deems Eukanuba Prescription Dry Cat Food to be inferior to both Royal Canin and Hill's.¹⁰²
89. [X] explained that Muslim clients tend to choose Royal Canin and Eukanuba over Hill's as Hill's has Prescription Dry Cat Food contains pork

⁹⁵ [X]'s Response to CCS's Request of Information dated 13 October 2014.

⁹⁶ [X]'s Response to CCS's Request of Information dated 13 October 2014; Notes of Meeting with [X] dated 2 October 2014.

⁹⁷ Notes of Meeting with Royal Canin Malaysian Sdn. Bhd. dated 9 October 2014; Notes of Meeting with [X] dated 2 October 2014.

⁹⁸ Response from [X] dated 22 October 2014.

⁹⁹ Response of the Parties dated 21 October 2014.

¹⁰⁰ Notes of Meeting with [X] dated 2 October 2014.

¹⁰¹ [X]'s Response to CCS's Request of Information dated 13 October 2014. For diabetic prescription cat food, Royal Canin accounts for 15% of sales while Hill's accounts for 85% of sales. For food hypersensitive prescription cat food, Royal Canin accounts for 65% of sales while Hill's accounts for 35% of sales. For renal prescription cat food, Royal Canin accounts for 69% of sales while Hill's accounts for 31% of sales.

¹⁰² [X]'s Response to CCS's Request of Information dated 13 October 2014.

in most of its products, while Royal Canin and Eukanuba do not.¹⁰³ [X] acknowledged that some Muslim customers were sensitive to having pork in their cat's food. However, [X] explained that although pork could be a differentiating factor between pet foods, most pet food contain pork and the absence of pork is not used as a marketing tool. Further, pet food formulae change over time so it would not be comfortable using the absence of pork as a marketing tool. [X] added that Royal Canin pet food contains pork but that this is not listed in its ingredients, while Eukanuba's pet food generally does not contain pork, though it could not be guaranteed that there are no traces of pork in the food.¹⁰⁴ Based on the information obtained from third-party feedback, CCS has not found evidence of the Parties differentiating their pet food products from their competitors on the basis of the absence of pork.

90. Lastly, Purina Veterinary Diet of Nestle has been mentioned as a potential alternative to Royal Canin and Eukanuba, but is currently not available in Singapore.¹⁰⁵

CCS's Conclusion on Non-coordinated effects

91. For the Global supply of General Dry Dog Food to Singapore, CCS finds that the loss of competition due to the Option Transaction would be limited due to the fact that Mars, Inc's Pedigree brand and P&G's Eukanuba brand do not compete aggressively with each other, and the presence of other strong competing brands is likely to offset any potential loss of competition between Royal Canin and Eukanuba post-Option Transaction.
92. For the Global supply of General Dry Cat Food to Singapore, CCS finds that the loss of competition due to the Option Transaction would be limited due to the fact that Mars, Inc's Whiskers brand and P&G's Iams brand do not compete aggressively with each other, and the presence of other strong competing brands is likely to offset any potential loss of competition between Mars, Inc's Royal Canin brand and P&G's Iams brand post-Option Transaction.
93. For the Global supply of Prescription Dry Pet Food to Singapore, CCS finds that the potential loss of competition due to the Option Transaction is limited due to the fact the Eukanuba has very limited range of products compared to the other two brands and feedback from customers does not suggest that Eukanuba is a strong competitor in this market.

¹⁰³ Notes of Meeting with [X] dated 2 October 2014.

¹⁰⁴ Notes of teleconference with [X] dated 20 October 2014.

¹⁰⁵ [X]'s Response to CCS's Request of Information dated 13 October 2014; Notes of Meeting with [X] dated 2 October 2014.

94. Therefore, CCS is of the opinion that the Option Transaction is unlikely to lead to non-coordinated effects that would lead to competition concerns in all relevant markets.

(b) Coordinated effects

95. A merger may also lessen competition substantially by increasing the possibility that, post-merger, firms in the same market may coordinate their behaviour to raise prices, or reduce quality or output. Given certain market conditions, and without any express agreement, tacit collusion may arise merely from an understanding that it will be in the firms' mutual interests to coordinate their decisions. Coordinated effects may also arise where a merger reduces competitive constraints in a market, thus increasing the probability that competitors will collude or strengthen a tendency to do so.¹⁰⁶

(i) Parties' submission

96. The Parties submitted that coordinated effects will further not arise as a result of the Option Transaction. This is in view of the following:
- a. The relevant products are differentiated. As mentioned above, apart from price, pet food suppliers compete based on the features of their products. The Parties also noted that there are significant differences in product features across different brands of dry dog and dry cat food in the Singapore market. Given the wide variety of the overlapping products that are available, the Parties submitted that it would be difficult for coordinated effects to arise.
 - b. Low barriers to entry and presence of countervailing buyer power would render coordination among competitors difficult. The Parties submitted that these factors would mean that coordinated effects are unlikely to arise, as potential entrants may enter the market to disrupt any such coordination or buyers may exert countervailing buyer power against any attempt to exert market power by the suppliers.

(ii) CCS's assessment

¹⁰⁶ Paragraph 6.7 of CCS Guidelines on Substantive Assessment of Mergers.

97. CCS notes that for the dry cat food industry, the CR3 will increase from [70-80]% to [80-90]% post-merger. A high CR3 level indicates a high level of market concentration. A highly concentrated industry may allow the industry players to better align their behavior in the market, thereby increasing the possibility of coordinating their behavior to raise prices or reduce output.
98. CCS further notes that for the Prescription Dry Pet Food, the Option Transaction reduces the suppliers of Prescription Dry Pet Food from three to two – just Mars, Inc (with the brands Royal Canin, Eukanuba, and Iams) and Colgate-Palmolive (with the brand Hill's).
99. However, CCS notes that there exists many players in the global supply of General Dry Dog Food to Singapore, global supply of General Dry Cat Food to Singapore and the global supply of dog treats to Singapore. CCS further notes that the relevant products are differentiated, which reduces the ability for market players to align their behavior. Based on feedback, taste matters for pets and each brand would have different tastes. Further, as entry barriers are not high, any price increase arising from the coordination can potentially be eroded by the timely entrance of the new player, thereby rendering any possible coordination unsustainable.
100. Further, [X] shared that Hill's has been employing an aggressive marketing strategy, while Royal Canin has started promoting its products recently and the third most popular brand, Eukanuba focuses more on the Malaysian market than Singapore.¹⁰⁷ This shows that Hill's and Royal Canin have been competing aggressively in Prescription Pet Food and given that Eukanuba is a weak competitor in Prescription Pet Food, the remaining players in the Prescription Pet Food market are likely to remain competitive post-Option Transaction.
101. CCS further notes that there have been no cases of enforcement against anti-competitive agreements in the pet food industry. Nestle, Mars, Inc and Colgate-Palmolive have been fined for anti-competitive vertical agreements with their respective distributors in France. However, the case did not uncover collusion between Mars, Inc and Colgate-Palmolive.¹⁰⁸ CCS further notes that P&G and Colgate-Palmolive have been previously fined for horizontal coordination and price fixing in the laundry detergent industry in France. However, Mars, Inc, the acquiror in this Option Transaction, was not a party to that horizontal agreement in France.¹⁰⁹

¹⁰⁷ Notes of Meeting with [X] dated 2 October 2014.

¹⁰⁸ http://www.autoritedelaconurrence.fr/user/standard.php?id_rub=418&id_article=1826.

¹⁰⁹ http://www.autoritedelaconurrence.fr/user/standard.php?id_rub=389&id_article=1735.

102. In light of the above, CCS concludes that the Option Transaction does not raise concerns in terms of coordinated effects on competition.

IX. Efficiencies

103. The Parties submitted that the merged entity will be able to enjoy cost savings as:

- a. Mars, Inc's current pet care team in Singapore services similar customers as the Option Pet Business; and
- b. Other logistical and support functions such as warehousing, delivery and finance can be consolidated.¹¹⁰

104. As CCS has concluded that the Option Transaction will not lead to a SLC in all the relevant markets, it is not necessary for CCS in its assessment of the Option Transaction to assess the efficiencies gained from the Option Transaction, as claimed by the Parties.

X. Ancillary Restraints

(i) Parties' submissions

105. The Parties submitted that [X], which contains a non-compete obligation, is directly related and necessary to the Option Transaction insofar as it relates to Singapore because it is necessary for Mars, Inc to obtain the full benefit of the goodwill acquired with the Option Pet Business in Singapore, and the scope and duration of the non-compete obligation do not exceed what is necessary for this purpose.

106. [X].¹¹¹

107. [X].¹¹²

(ii) CCS's assessment

108. The *CCS Guidelines on the Substantive Assessment of Mergers* state that non-compete clauses, if properly limited, are generally accepted as essential

¹¹⁰ Paragraph 42.1 of Form M1.

¹¹¹ Response from Parties dated 23 October 2014.

¹¹² [X].

if the purchaser is to receive the full benefit of any goodwill and/or know-how acquired with any tangible assets. CCS will consider the duration of the clause, its geographical field of application, its subject matter and the persons subject to it. Any restriction must relate only to the goods and services of the acquired business and apply only to the area in which the relevant goods and services were established under the previous/current owner.¹¹³

109. In the circumstances of this case, CCS is of the view that the non-compete obligation is directly related to and necessary for the Option Transaction and that the product scope of the non-compete obligation is reasonable. We also consider that the relevant objective cannot be achieved in a less restrictive way. CCS considers that a [X] duration is generally sufficient to ensure that an acquirer obtains the full benefit from the goodwill and know-how acquired as part of a transaction and we did not identify compelling reasons why this should be different in this case.

110. For the same reasons, CCS is also of the view that the geographical scope of [X] is necessary and reasonable for the Option Transaction insofar as it relates to Singapore.

111. Accordingly, [X], constitutes an ancillary restriction and consequently falls within the exclusion under paragraph 10 of the Third Schedule of the Act insofar as it relates to Singapore.

XI. Conclusion

112. For the reasons above and based on the information available, CCS assesses that the Option Transaction is unlikely to lead to a SLC in Singapore and accordingly is unlikely to infringe the section 54 prohibition.



Toh Han Li
Chief Executive
Competition Commission of Singapore

¹¹³ Paragraph 10.15 of the *CCS Guidelines on the Substantive Assessments of Mergers*.