Anticipated acquisition by Associated British Foods plc of Dorset Cereals Limited

ME/6452/14

The CMA's decision on reference under section 33(1) given on 6 October 2014. Full text of the decision published on 28 October 2014.

Please note that the square brackets indicate figures or text which have been deleted or replaced in ranges at the request of the parties for reasons of commercial confidentiality.

Summary

1. **Associated British Foods plc** (**ABF**) is a food, ingredients and retail group based in the UK. ABF owns the Jordans & Ryvita Company Limited (**Jordans**) which, among other things, manufactures cereals and cereal bars under the Jordans brand. Jordans generated approximately £[✂] million of sales in 2013.

2. **Dorset Cereals Limited** (**Dorset**) is based in the UK and manufactures a range of mueslis, granolas, porridges and cereal bars. Dorset had UK turnover of £29.4 million in 2013.

3. ABF's wholly owned subsidiary, ABF Grain Products Limited, will acquire the entire issued share capital of Dorset (the **Merger**).

4. ABF and Dorset (together the **parties**) overlap in the production and wholesale supply of breakfast cereals in the UK. Principally the parties overlap in the supply of branded muesli and the supply of branded granola. The CMA has, on a cautious basis considered each of muesli and granola separately and as distinct from other types of cereal.

5. The CMA considers that the evidence in this case shows that private label muesli and granola impose a strong competitive constraint on branded muesli and granola. The CMA's view in this case is based on:

   - The specific product characteristics which show a high degree of similarity between branded and private label muesli and granola, including the tiered

quality of products offered, the packaging, the flavours, the variety and the ability for private label products to innovate.

- Evidence of actual consumer behaviour from loyalty card and Homescan data.
- A review of the interaction between the market shares of branded and private label muesli and granola products.
- The views of third party customers and competitors.
- A review of the internal documents of the parties.

6. The CMA therefore assessed the impact of the Merger based on a frame of reference for the supply of muesli and granola in the UK, with each frame of reference including both branded and private label products.

7. The evidence reviewed by the CMA, in particular the parties' internal documents and evidence from third parties, suggest that the parties do compete closely in the supply of muesli and granola. However, Homescan data, Clubcard data and many internal documents show that the parties also face closer, or at least as close, competition from private label products. This constraint will remain post-Merger.

8. In regards to granola, the parties' combined share of supply in the supply of granola in the UK is [30-40]% by value with an increment of [0-10]%. The CMA considers the increment caused by the Merger to be low in the context of continuing competition from private label granola and other brands. In particular, the parties face continuing competition from two multinational, mainstream brands in Quaker and Kellogg's, both of which have shares of supply which are not dissimilar to the increment caused by the Merger. There are also a number of other brands such as Fuel, Rude Health and Lizi's who have entered the granola segment in recent years.

9. On this basis, the CMA finds that the Merger does not give rise to a realistic prospect of a substantial lessening of competition in the supply of granola in the UK.

10. The parties' combined share of supply in the muesli market is lower than granola at [30-40]% with an increment of [0-10]%. In addition, the parties submit that Jordans [%]. In addition to the strong constraint from private label muesli, the parties face significant competition from Alpen which has a share of supply equivalent to that of the parties combined. Other competitors include Rude Health and Sharpham Park.

11. On this basis, the CMA finds that the Merger does not give rise to a realistic prospect of a substantial lessening of competition in the supply of muesli in the UK.

12. In addition, the CMA considers that there is evidence of new entry into the muesli segment which may impose a significant additional constraint on the parties post-Merger. However, the CMA does not need to conclude on whether such entry is timely, likely and sufficient.

13. In summary, the CMA considers that no realistic prospect of a substantial lessening of competition will arise as a result of the Merger.

14. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).

Assessment

Parties

15. **ABF** is a food, ingredients and retail group based in the UK. It operates businesses in five segments: Sugar, Agriculture, Retail, Grocery and Ingredients. ABF's worldwide turnover for the year ended September 2013 was approximately £13 billion and its UK turnover was £6,344 million. ABF owns the Jordans & Ryvita Company Limited which, among other things, manufactures cereals and cereal bars under the Jordans brand. Jordans generated approximately £[%] million of sales in 2013.

16. **Dorset** is based in the UK and manufactures a range of mueslis, granolas, porridge and cereal bars. Dorset had worldwide turnover of £39.5 million and UK turnover of £29.4 million in 2013.

Transaction

17. The parties signed a share and purchase agreement on 29 May 2014 whereby ABF's wholly owned subsidiary, ABF Grain Products Limited, will acquire the entire issued share capital of Dorset. The Merger is conditional on UK merger clearance.

Jurisdiction

18. As a result of the transaction ABF and Dorset will cease to be distinct. The parties overlap in the supply of wholesale branded muesli and granola and have a combined share of supply in each of these segments in excess of

25%.[1] The CMA considers that the share of supply test in section 23(3) of the Act is therefore met.

19. The CMA commenced its investigation on 8 August 2014 following the receipt of a satisfactory submission by the parties. The deadline for the CMA's decision under section 34ZA(1) of the Act is 6 October 2014. The CMA therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

Relevant frame of reference

20. The CMA considers that market definition provides a framework for assessing the competitive effects of the merger and involves an element of judgement. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of the merger, as it is recognised that there can be constraints on merging parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others.[2]

Product scope

21. The parties overlap in the production and wholesale supply of breakfast cereals in the UK, known as 'ready to eat cereals'. Specifically, the parties are both active in the supply of muesli, granola and porridge. The parties also overlap in the supply of cereal bars.

22. The CMA has ruled out any realistic prospect of competition concerns arising in the wholesale supply of porridge and cereal bars given that the parties have a combined share of supply of less than 5% in each of these sectors.

23. The CMA's approach to market definition is to begin with the overlapping products of the parties, taking this as the narrowest plausible candidate product market and then to see if this can be widened on the basis of demand-side substitution.[3] Principally the parties overlap in the supply of branded muesli and the supply of branded granola.[4] While both parties are active in the wholesale supply of private label muesli the CMA can rule out

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[1] The parties submit that they have a combined share of supply of wholesale muesli of [30-40]% (by value) and a combined share of supply of wholesale granola of [30-40]% (by value).
[2] *Merger Assessment Guidelines*, paragraph 5.2.2.
[3] This approach is in line with the CMA's *Merger Assessment Guidelines*, paragraphs 5.26ff.
[4] The CMA notes that [✄]. According to the [✄].

competition concerns arising given the lack of any significant increment.[5] The parties do not overlap in the wholesale supply of private label granola.

24. The CMA considers below whether other cereal products should be considered to be part of the same market as muesli and granola, whether it should consider the supply of muesli and granola separately from each other and whether it should consider private label and branded muesli together and private label and branded granola together.

Overview of the market

25. The CMA understands, based on the parties' submissions that the manufacture of muesli and granola essentially consists of mixing oats and other cereals, dried fruits and nuts and packing the mixture in bags and/or boxes ready for sale. Granola manufacture includes the additional steps of mixing the dry ingredients with honey and baking them in an oven.

26. The packets of muesli and granola are then sold to retailers. Wholesale pricing of cereal takes place as a result of bilateral negotiations between the suppliers and the retailers. The parties submit that these negotiations are [%].

27. The parties submit that suppliers of branded cereal negotiate over the basic wholesale price as well as agreeing a joint business plan with retailers which, among other things, sets out the promotional calendar (ie the promotions on the products to be offered in store) and certain other discounts/fixed payments some of which are referred to as 'investments' offered to the retailers such as:

- Payments to retailers in return for in-store advertising.
- Payments for listing new products.
- Overriders ie rebates on sales above certain thresholds or rebates payable on a percentage of overall level of wholesale supplies.
- 'Marketing pots', ie sums payable for targeting consumers via loyalty programmes.

Muesli and granola as distinct from other cereals

28. As noted in paragraph 23, the narrowest candidate markets in which the parties overlap are the supply of branded muesli and the supply of branded granola. The CMA has considered whether there is sufficient evidence to

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[5] The parties submit that the combined market share is [20-30]% with an increment of [0-10]%. Jordans has recently [✂]. No third parties raised concerns regarding private label muesli.

suggest that a hypothetical monopolist of either product would be prevented from increasing prices due to switching to other cereal products.

29. The parties submit that there is competitive interaction between the supply of different cereal products and argue that the correct frame of reference is the overall wholesale supply of cereal to retailers. They submitted econometric evidence which they claim shows significant substitution to cereal products outside the muesli and granola segments (see below). However, as set out in paragraph 98 the CMA has concerns regarding the robustness of the model and as such has only been able to place limited weight on it. As such, the econometric evidence provided by the parties is not sufficient in isolation to suggest that the relevant frame of reference should include all cereals.

30. The European Commission in *OEP/MPS-Stiftung*[6] considered the ready-to-eat cereals market and noted that the products can take various forms (flakes, rice puffs, muesli etc) and may also be grouped by target audience (eg 'family' or 'adult'). Although the European Commission did not conclude on market definition it noted that its market investigation suggested that segmentation may be necessary between different categories of products.

31. The CMA notes that most of the parties' customers who responded to the CMA's third party enquiries indicated that they group cereals into different categories which appear to relate to the type of consumer and/or type of cereal. Most consider muesli and granola as part of the same cereal category (often called 'wholesome', 'healthy' or 'tasty') which is distinct from other categories such as 'family' (cornflakes, Weetabix etc) or 'kids' (sweetened cereals such as Coco Pops).

32. Therefore the CMA has, on a cautious basis, assessed muesli and granola separately from other types of cereal and has considered evidence on any constraints from other cereals as part of its competitive assessment.

Muesli and granola

33. On the demand side, demand from retailers will be partly or wholly reflecting consumer preferences and as such be reflecting their demand. Third party retailers indicated that consumers consider muesli and granola to be different from one another mainly due to the difference in taste, texture and health properties (ie granola is higher in fat and sugar than muesli). However, a minority of retailers did note some substitutability between them (as indicated from the inclusion of both in the same cereal category (eg 'wholesome') and a number of third parties noted that many consumers will be unaware of the

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[6] Case No COMP/M.4738 *OEP / MSP-STIFTUNG /DVG / DAILYCER GROUP.*

differences between them. Two competitors told the CMA that muesli and granola were not close substitutes from a demand side perspective and considered each to have a different customer base.

34. The parties argue that the manufacturing process for granola is very similar to muesli and as such there is scope for supply side substitution between them. In particular, they submit that the only additional equipment needed to manufacture granola is an oven and that this additional step can also be outsourced ([%]) or that the entire manufacturing process can be outsourced (as the parties submit is done by Fuel).

35. However, third party manufacturers have not supported the parties' arguments around supply side substitution, emphasising that the different manufacturing processes used mean that switching between muesli and granola is difficult. In particular, third parties noted that the additional baking process for granola would require a significant additional investment for a muesli producer. Third parties also noted that moving from muesli to granola (or vice versa) would require the creation and marketing of a new brand or the expansion/repositioning of an existing brand into a new product segment.

36. In addition, the CMA notes that the parties have different market positions in each of muesli and granola and the competitor set for each differs substantially, suggesting that there is a different competitive dynamic for each product.[7]

37. On the basis of the above, the CMA has on a cautious basis considered muesli and granola separately in its competitive assessment.

The constraint on branded from private label

38. The parties submit that branded and private label muesli are part of the same market (as are branded and private label granola). The CMA has considered whether a hypothetical monopolist of branded muesli or branded granola would be prevented from increasing prices due to demand side substitution to private label muesli or granola. In *A.G. Barr / Britvic*[8] the Office of Fair Trading (OFT) considered that the constraint exercised on branded goods by private label goods depends on the extent to which branded products can be substituted by the customer for private label products, including the bargaining power of retailers and their ability to divert sales from branded to private label products.[9]

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[7] *Merger Assessment Guidelines*, paragraph 5.2.17.
[8] ME/5801/12 *Anticipated acquisition by A.G Barr Plc of Britvic Plc,* 2013.
[9] *Ibid*. paragraph 33.

39. The CMA may consider evidence on closeness of substitution when evaluating whether a SSNIP[10] by the hypothetical monopolist would be profitable. If the products in the candidate markets are close substitutes, the hypothetical monopolist test is more likely to be satisfied because the hypothetical monopolist will recapture a significant share of the sales lost in response to a SSNIP, making the price rise less costly. The closeness of substitution between products can be indicated by the diversion ratio or cross-price elasticity of demand between them. In addition, evidence used to assess the closeness of substitution between products may include:[11]

- Information about product characteristics such as physical properties and intended use that can indicate similarities between different products.
- Information about relative price levels and the extent to which prices of products within the candidate market are correlated with each other, as compared with the prices of products outside the candidate market.
- Information on prices and sales volumes over time or across areas that permit analysis of the way that customers respond to changes in prices or to firms entering and leaving the market.
- Responses from customers, competitors and interested and informed third parties to questions about customer behaviour and the hypothetical monopolist test.
- Documents such as marketing studies, consumer surveys prepared in the normal course of business, market analyses prepared for investors, and internal business analyses (eg board papers, business plans and strategy documents).

Such evidence is considered in turn below.

Product characteristics

40. The parties submit that private label and branded muesli and granola products are largely identical with similar packaging, formats and flavours. For example, private label muesli and granola and branded muesli and granola is sold in boxes, pouches and bags and come in almost identical flavours such as Jordans super berry granola and Tesco Finest red berry granola. The parties submit that while private label products in this sector do imitate innovations in branded products, they also, unlike many other private label

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[10] A small but significant and non-transitory increase in price. See Merger Assessment Guidelines paragraph 5.2.11.
[11] *Merger Assessment Guidelines*, paragraph 5.2.15.

categories, innovate themselves. For example, the parties submit that Sainsbury's 'lighter' and 'free from' granola were the first of their type to be launched. Retailers such as Sainsbury's and Waitrose also sell private label organic muesli and granola, reflecting a recent consumer trend for organic food.

41. In addition, the parties submit that, unlike many other private label products, private label muesli and granola are not simply cheaper alternatives to the branded products. Instead, private label mueslis and granolas are sold at different tiered price points and target different demographics in the same way that branded mueslis and granolas do. For example, Tesco sells an 'everyday value' muesli and a premium, 'Tesco finest' muesli. This is the case in most of the large multiple retailers. Private label muesli and granola therefore compete side by side on the shelf and online. The parties submitted evidence of retailers stocking their private label muesli and granola next to branded muesli and granola (including Dorset and Jordans) both on the physical shelves and on their online stores. The parties also note that retailers, who are both a competitor (through their own private label products) and a customer of the branded suppliers, act as 'gatekeeper' over the allocation of shelf space, distribution points and promotions.

42. The particular characteristics identified above support the view that there are significant similarities between private label muesli and granola and branded muesli and granola.

Private label muesli and granola strong across the six large multiple retailers

43. The constraint from private label products may not be homogenous across all retailers as the offering and the strength of the product may differ between retailers. The OFT considered this to be a reason for not widening the product scope to include private label products in previous decisions.[12] The CMA in the present case therefore considered the extent to which the private label muesli and granola could be considered to compete with the parties' branded products in each of the big six multiple retailers (Waitrose, Asda, Morrisons, Co-op, Tesco and Sainsbury's) which account for approximately [90-100]% of the parties' sales.

44. The parties submit that private label muesli represents a share of at least 25% of the sales of muesli in each of these retailers and over 35% in each of Sainsbury's, Asda and Tesco. The position in granola varies more from retailer to retailer with shares of supply varying from 5% to over 40% in

[12] See ME/5801/12 *Barr / Britvic*, paragraph 36.

individual retailers. However, the CMA notes that in the majority of cases private label is one of the top three by share of supply (along with, generally Jordans, Dorset and/or Kellogg's). Regarding Morrisons, in which private label accounts for a more limited share of supply, the CMA notes that Morning Foods, Morrisons's supplier of wholesale private label granola, is stocked as a brand and has a share in excess of 25% in granola. In regards to Co-op, although private label accounts for just over 10% of granola sales, its private label sales have grown by around 50% in the last two years. In addition, the parties submit that this retailer accounts for just 4% of total granola sales.

45. On the basis of this specific retailer by retailer evidence, the CMA considers that private label granola and muesli have a strong and growing presence in the six largest customers of the parties and therefore may compete with branded muesli and granola for consumers in these stores.

Consumer preferences

46. The parties have performed an econometric demand estimation in an attempt to determine diversion ratios between the parties and other cereals including private label muesli and granola. As discussed in paragraph 98 the CMA has identified a number of issues with the modelling, which mean it has only been able to attach limited weight to the results.

47. The parties have also submitted information based on the Nielsen Homescan consumer panel and loyalty data from Tesco Clubcard and Sainsbury's Nectar card (discussed in detail below). The Homescan data suggests that of the subset of households who purchase Jordans muesli in one time period, more buy private label muesli than branded muesli in a subsequent period. While it is not possible to identify whether this is a complementary or substitute purchase, the CMA considers that this evidence suggests that a substantial number of customers purchasing Jordans muesli is willing to purchase private label muesli instead. The loyalty card data also suggests that, of those households who purchase either Jordans or Dorset cereal, more also buy private label muesli or granola (as applicable) rather than the branded product of the other merger party.

Pricing and market share analysis

48. The parties submitted information on prices which they suggest shows that private label and branded muesli and granola are sold for the same price and therefore compete for consumer purchases. The parties' evidence suggests that although private label products tend to be slightly cheaper than branded products on average, they are sold across the quality spectrum (eg budget, mid-range and premium), with the average price of private label goods

increasing in recent years. The parties submit that this is due to the introduction of higher quality private label products, citing Tesco Finest as a particular example. The CMA considers that the evidence on pricing is consistent with private label and branded muesli and granola being in the same market, as they often occupy similar price points. The CMA notes that some private label products in the muesli and granola segments are priced higher than some of the parties' products. In any event, in a differentiated product market such as this, price differentials may reflect perceived differences in quality and do not necessarily suggest that there would not be switching between products.

49. The parties also submitted information on how shares of supply by volume have changed over time. These suggest a significant degree of interaction between private label and branded muesli and granola products. This is particularly the case between Jordans granola and private label granola with changes in market share of one tending to be reflected in an equal and opposite change in the other.[13] This is consistent with consumers being willing to substitute between branded and private label muesli and granola products.

Third party evidence

50. The CMA received submissions from the parties' customers on the extent to which private label products compete with the parties' brands. Responses were relatively mixed, retailers suggested many customers are brand loyal and would not generally switch to private label, while other customers prefer to purchase private label as a matter of course. However, many retailers also noted that private label purchasing customers do switch to brands, especially if they are on promotion. One customer considered that private label products closely compete with the parties' brands, particularly with Dorset in muesli. Another considered that private label products in other retailers drove competition in granola.

51. Three competitors considered that private label cereals imposed a constraint on branded cereals with one submitting that private label cereal accounted for 21.5% by value (based on Nielson data) of the overall cereals market (shares were not given for muesli and/or granola separately). Another competitor noted that private label was available as an alternative in almost every cereal category. However, one competitor told the CMA that branded and private label cereals are marketed differently and have different promotional and branding mechanisms.

[13] Between January 2011 and January 2014 shares of supply by volume based on Nielson Scantrack data aggregated across all SKUs in a brand and private label aggregated across supermarkets.

Internal documents

52. The parties' internal documents support the parties' submission that private label products impose a strong competitive constraint on the parties' branded products. In general, in analysing the market the internal documents consistently refer to private label products alongside branded products. More specifically, Jordans' internal documents discuss consumers switching from its products to private label products, for example in response to increased quality and competitiveness in private label offerings.[14] For example, the CMA notes the following quotes from internal documents which expressly refer to switching to private label muesli and granola:

- '[%].'[15]
- '[%].'[16]
- '[%]'[17]
- [%].'[18]

53. Documents also list private label as a direct or main competitor, alongside other brands. For example, one document states that '[%]'[19] and another states that '[%]'.[20]

Conclusion

54. On the basis of the evidence available, the specific features and competitive dynamics relating to both muesli and granola products and the particular characteristics of private label muesli and granola support the view that the constraint from private label products on branded products is such that it is appropriate for the CMA in the present case to consider branded and private label products to form part of the same product frame of reference in respect of each of muesli and granola.

55. As such, the relevant product frames of reference for the purposes of the CMA's assessment in this case are the supply of muesli and the supply of granola.

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[14] Jordans SWOT analysis dated 4 December 2012.
[15] Jordans SWOT analysis dated 4 December 2012.
[16] Ibid.
[17] Jordans Switching Summary Analysis Muesli
[18] Ibid.
[19] Jordans Leaky Bucket Summary Deck March 2014.
[20] Jordans Switching Summary Analysis COG and Super.

Geographic scope

56. The parties submit that there is a significant international competitive constraint on the supply of cereal in the UK. They note that a number of the large manufacturers, such as Kellogg's, Weetabix and Cereal Partners Worldwide, are active both in the UK and internationally.

57. However, the CMA notes that the parties negotiate contracts with retailers on a national basis and do not set terms for supply to branches outside of the UK in these contracts. The CMA also notes that the parties' internal documents do not appear to support the existence of a significant international constraint.

58. Third party competitors have confirmed that even where they operate across multiple countries they agree contracts with retailers on a national basis, with differences in prices and promotional activity in different countries. Retailers have indicated that they only source from brands active in the UK in the relevant products markets and would not consider importing brands from outside of the UK.

59. Regarding the wholesale supply of private label muesli and granola, retailers have indicated that they either do, or are willing to, source private label goods from firms active outside of the UK. However, since no competition concerns arise for private label supply alone, the CMA has not found it necessary to conclude on this. In addition, the constraint imposed by private label on branded muesli and granola (as discussed above) emanates from those private label products sold nationally in retailers.

60. Therefore, the CMA believes that the geographic scope of the relevant frames of reference should be UK-wide in respect of both the supply of muesli and granola.

Conclusion

61. The CMA assesses the Merger on the basis of the following frames of reference:

- the supply of muesli in the UK; and
- the supply of granola in the UK.

Counterfactual

62. The CMA assesses the Merger's impact relative to the situation that would prevail absent the merger (that is, the counterfactual). In practice, the CMA generally adopts the pre-merger conditions of competition as the

counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, there is a realistic prospect of a different counterfactual.[21] In this case, there is no evidence supporting a different counterfactual, and the Parties have not put forward arguments in this respect. Therefore, the CMA considers the prevailing conditions of competition to be the relevant counterfactual.

Competitive assessment

Horizontal unilateral effects

63. Since many arguments apply to both muesli and granola, the assessment below applies to both, although the CMA has noted differences in evidence where appropriate.

64. The CMA has examined the possibility that the merged entity could unilaterally raise prices above the pre-merger level or deteriorate its competitive offering. This could occur in different ways including but not limited to an increase in wholesale prices, a deterioration in quality, a reduction in the extent or number of promotions or a reduction in fixed payments paid by manufacturers to retailers.

65. The CMA notes that the parties' brands are differentiated. Where products are differentiated, unilateral effects are more likely if the brands of the merging parties are close substitutes. Where this is the case, the parties will recapture a significant share of the sales lost in response to a price increase post-merger, making the price rise less costly.[22]

66. The CMA has therefore considered in particular the closeness of competition between the parties' products and the competitive constraint from other products.

Shares of supply

67. The parties have a combined market share by value in the supply of muesli of [30-40]% with an increment of [0-10]%.[23] The parties estimate that their biggest branded competitor, Alpen (owned by Weetabix), has a share of supply by value of [30-40]% and private label products account for [30-40]%.

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[21] See *Mergers Assessment Guidelines*, paragraph 4.3.5 *et seq.*
[22] See *Merger Assessment Guidelines*, paragraph 5.4.9.
[23] Source: parties' estimates based on Nielsen data. Due to the average lower price of private label goods, the parties combined share of supply by volume (in kgs) is [20-30]% with an [0-10]% increment.

Other competitors include Rude Health and Sharpham Park with market shares under 5%.[24]

68. In granola, the combined market shares are slightly higher at [30-40]% with an increment of [0-10]% by value. The parties estimate that the main branded competitor, Quaker, accounts for [0-10]% and private label for [30-40]%.[25] Other competitors include Kellogg's, Lizi's, Fuel, Rude Health with market shares under 10%.[26]

Other branded competitors

69. In its assessment the CMA has also considered what other branded competitors exist, alongside competition from private label products, and the extent to which they may continue to constrain the parties post-merger.

Granola

70. The parties submit that there are numerous branded competitors in the granola market which has been growing significantly. The CMA understands that the parties' key branded competitors are Quaker and Kellogg's. The parties submit that Kellogg's expanded into the granola sector in the last two years and has achieved a share of approximately 8% within this time.[27] The CMA notes that Kellogg's is referred to as a competitor in the granola sector in a number of Jordans' internal documents. One customer told the CMA that it considered the Kellogg's offerings to be most similar to Jordans' mainstream granola products.

71. There are also a large number of smaller granola brands including Fuel, Morning Foods, Nature's Path, Perfekt Nutrition, Rude Health, Sharpham Park, The Food Doctor and Whites Speedicook. Some of these brands have grown quite quickly in retailers which have acted as an 'incubator' for them.

Muesli

72. The parties and some third parties identified Alpen (owned by Weetabix) as the parties' largest branded competitor in muesli with a share of supply by value of approximately [30-40]% (which can be compared to the parties'

[24] Based on Nielsen data as at the week ending 28 December 2013.
[25] Source: parties' estimates based on Nielsen data. The parties have an estimated share of supply by volume of 30.6% with an increment of 4.9%.
[26] Based on Nielson data as at the week ending 28 December 2013.
[27] The CMA has not been able to verify this estimated share. However, it considers that Kellogg's Crunchy Nut granola had a market share of approximately 4% and also sells a Special K granola product for which full data was not available.

combined share of supply of approximately [30-40]%).[%].

73. There are some other examples of brands competing with the parties in the supply of muesli. Other competitors include Rude Health and Sharpham Park with market shares under 5%. The CMA notes that, as the parties submit (and internal documents indicate), the muesli segment has not seen the recent growth of the granola segment.

Closeness of competition

74. The parties submit that they are not close competitors to each other and that switching between Dorset and Jordans by consumers is limited in both muesli and granola. They claim that the parties compete much more closely with private label products than with each other. They also argue that the parties compete with other branded muesli and granola suppliers and also are constrained by other cereal products outside the muesli and granola markets.

75. To support this, the parties submitted information based on the Nielsen Homescan consumer panel and loyalty data from Tesco Clubcard and Sainsbury's Nectar card as well as performing an econometric demand estimation in an attempt to determine diversion ratios between the parties and other cereals, including private label muesli and granola. The CMA considers each of these pieces of evidence, in addition to evidence from third parties and the parties' internal documents, in turn below.

Neilsen Homescan data

76. The Nielsen Homescan data is put together using a panel of consumers who have been provided with a handheld scanning device by Nielsen. The consumer's scan their household's shopping when they get home and transmit the results to Nielsen on a weekly basis. As such, the Homescan data is able to provide information about the basket of goods that a household has purchased at a point in time and over time.[28]

77. The CMA understands that this data may be subject to 'dynamic stocking effects' given that cereal is non-perishable and unlikely to be purchased on a weekly basis.[29] Therefore, any changes in purchase patterns from one week to the next are not necessarily reflective of substitution from one cereal to another. Changes in cereal purchases week by week could be reflecting the different preferences of different members of the household and therefore be

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[28] See Nielsen website
[29] For instance a 1kg bag of Jordans Muesli contains 22 45 gram servings, suggesting it will be purchased by an individual every 3 to 4 weeks.

complementary rather than substitute purchases. Nevertheless the CMA considers that households who have purchased a different muesli product after purchasing Jordans muesli in the previous time period are more likely to reflect true switching rather than purchasing for different members of the household (as would be likely if the purchase had been of, for example, a cereal in the 'kids' category). In these households switching from Jordans to private label accounted for around 55% of purchases, Dorset around 25% and Alpen around 20%. Of households in the panel who have purchased Jordans muesli when they previously purchased an alternative muesli, around 70% previously purchased private label, around 20% Alpen and around 10% Dorset.

78. The Homescan data therefore suggests that a substantial number of customers purchasing Jordans muesli may be willing to purchase private label instead and while some may also be willing to purchase Dorset they are similarly willing to purchase Alpen.[30]

79. The CMA was unable to conduct a similar analysis in relation to granola given the small sample size and the lack of sub-segmentation for either Dorset (although Dorset may have been included in the category labelled 'other') or private label. However, the parties submit that the data shows Jordans customers mostly purchasing from outside the granola segment when no longer purchasing a Jordans product and similarly most new Jordans customers coming from other segments.

Tesco Clubcard data

80. The parties also submitted conclusions regarding the closeness of competition between the parties based on their analysis of Tesco Clubcard data which tracks consumer's purchasing choices in Tesco.

81. The Tesco Clubcard data shows, out of all consumers/households who bought a particular brand offered by one of the parties (eg Dorset muesli) at least once during a 26 week period, the proportion of those customers/households that also bought the other party's brand in the same segment (eg Jordans muesli) at least once during the same period. The parties submit that the results are as follows:

[30] However, caution should be exercised when interpreting the results as the panel is made up of a self-selected sample of consumers who may have different preferences to the population in general and shows purchases over time rather than switching.

a. out of all Dorset muesli buyers, less than 10% also bought Jordans muesli (on one or more occasion) and out of all Jordans muesli buyers, just over 20% also bought Dorset (on one or more occasion);

b. out of all Jordans granola buyers only 4% also bought Dorset granola (on one or more occasion) and out of all Dorset granola buyers just over 20% also bought Jordans (on one or more occasion);

c. in all cases the proportion of consumers/households also buying private label products (on one or more occasion) is materially higher (approximately between 10 and 25% higher) than the proportion of consumers buying from the other merging party.

82. The CMA notes that whilst the loyalty data suffers from similar issues to the Homescan data, it does suggest that consumers/households are more likely also to buy a private label product than the other party's respective branded product during the 26 week period that the data covers.

Econometric analysis

83. The parties have also used an econometric model to estimate retail diversion ratios between their brands of muesli and granola. Although the parties compete in the wholesale market, the CMA considers that retail diversion ratios are informative on closeness of competition at the wholesale level. The parties note that the OFT and the Competition Commission (CC) have previously found that 'the extent of substitution between the merger parties' products [at the retail level] affects the strength of their incentives to change prices [at the wholesale level] as a result of the merger', provided retailers' purchasing decisions are driven by consumer purchasing preferences,[31] although even if the products are not substitutes at the retail level, they may be 'substitutes for shelf space' at the upstream wholesale level.[32]

84. In their model, the parties use an 'Almost Ideal Demand System' (AIDS) methodology, basing the analysis on five years of weekly Nielsen ScanTrack scanner data (2009-2013) across the main UK multiple retailers (Tesco, Asda, Morrisons, Sainsbury's, Waitrose and Co-op). In the base specification, they have adopted a multi-layered budgeting approach, looking at substitution patterns first within the muesli and granola segments individually and, separately, across cereal segments (muesli, granola and other cereals). Within

[31] Barr/Britvic OFT ME/5801/12, 13 February 2013, para 36; Barr/Britvic CC, 9 July 2013, para 6.36; Diageo/United Spirits, paragraph 88
[32] Lactalis/Lubborn Cheese OFT ME/4163/09, para 43

each segment they have aggregated the various SKUs[33] into the following categories:

a. Dorset

b. Jordans

c. Private label across all retailers

d. The largest other brand within the segment (ie Weetabix in muesli and Quaker Oats in granola)

e. All other brands

85. The parties rely on the econometric analysis to find that the estimated diversion ratios between the parties are low, suggesting that they are not particularly close competitors, and that both the merging parties compete more closely with other brands and with private label products than with each other.

Econometric Results

86. The parties submit that in muesli the estimated diversion ratio from Dorset to Jordans (excluding out of segment substitution) is [10-20]% and from Jordans to Dorset is [20-30]%. In granola the estimated diversion ratio from Dorset to Jordans is [20-30]% and from Jordans to Dorset is [0-10]%. In muesli, diversion from Dorset to Weetabix (Alpen) and to private label are both larger than to Jordans at [20-30]% and [0-20]% respectively; diversion from Jordans to private label is also larger than to Dorset at [30-40]%. In granola, diversion from either party's products to private label ([60-70]% from Dorset and [30-40]% from Jordans) and to Quaker Oats ([40-50]% from Dorset and [10-20]% from Jordans) are larger than the diversion to the other party's products. If out of segment substitution to other cereal products is included in muesli the estimated diversion ratio from Dorset to Jordans is [0-10]% and from Jordans to Dorset is [10-20]%. In granola the estimated diversion ratio from Dorset to Jordans is [10-20]% and from Jordans to Dorset is [0-10]%.The parties submit that irrespective of the specification used diversion between the parties is low.

[33] Stock Keeping Units (ie distinct products)

87. The parties also submit that the econometric evidence shows that there is significant substitution to cereal products outside of the muesli and granola segments. In muesli, almost [60-70]% of diversion is to cereals outside of the muesli segment. Diversion outside of the segment is also large for Jordans granola ([30-40]%).

88. The parties have performed a series of sensitivity tests on the results of their model, partly in response to ongoing discussions with the CMA on the robustness of the model. Table 1 below (provided by the parties) illustrates the estimated diversion ratios from sensitivities.

Table 1. Estimated diversion ratios

	Single-layered model	Three-layered model	Retailer-level models		
			Tesco	Sainsbury's	Waitrose
In muesli					
Dorset to Jordan	[0-10]%	[10-20]%	[0-10]%	[10-20]%	[0-10]%
Jordan to Dorset	[10-20]%	[10-20]%	[0-10]%	[20-30]%	[-10-0]%
In granola					
Dorset to Jordan	[10-20]%	[10-20]%	[30-40]%	[40-50]%	[10-20]%
Jordan to Dorset	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[-10-0]%
	AIDS specification for aggregate model	Quarterly dummies		Monthly dummies	
		Segment and aggregate level	Aggregate level only	Segment and aggregate level	Aggregate level only
In muesli					
Dorset to Jordan	[0-10]%	[0-10]%	[0-10]%	[10-20]%	[10-20]%
Jordan to Dorset	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%
In granola					
Dorset to Jordan	[10-20]%	[0-10]%	[10-20]%	[-10-0]%	[10-20]%
Jordan to Dorset	[0-10]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%

89. The base model followed a two-layered approach, with muesli and granola as separate segments. The parties also considered a single-layer model and a three-layer model, the latter one including an intermediate 'healthy cereals' group (muesli, granola, and other healthy cereals).[34] The implied diversion ratios for these sensitivities are very close to the base model in the case of muesli, but a larger difference is shown for granola (especially with respect to the diversion from Dorset to Jordans). However, the parties note that that there are still relatively low diversion ratios from Dorset granola to Jordans granola of [30-40]%.

90. In previous cases, including *Barr / Britvic* and *Diageo / United Spirits* the CC and OFT have estimated the AIDS model at the level of a retailer, either using a pooled model or separate models for each supermarket. This approach controls for consumer heterogeneity across supermarkets, since customers at different retailers are likely to have different preferences across brands and between brands and private label products. A retailer level model also allows for the constraint of private label on branded goods to vary between supermarkets, as it is likely to differ with some supermarket having stronger private label offerings than others. Lastly, the CMA note that most of the price variation in the data appears to be due to promotional activities; aggregation across retailers may therefore eliminate a significant part of this variation and mask the impact of price changes on expenditure shares.

91. The parties have argued that aggregating the data across the main UK multiple retailers was the best approach for estimation of the demand for cereals. They submit that:

   a. Wholesale negotiations were not independent across retailers, as each retailer wants to remain price competitive against the others.

   b. Retailer-level data was driven by the timing of promotions and was, therefore, more volatile. In promotion-driven data, it would be difficult to separate between long-run and short-run elasticities, where the short-run effect may be driven by customers choosing to stock up on a product during a promotion and buying less of it in subsequent periods (inventory effect).[35] The CMA note that this can be overcome by considering longer time periods.

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[34] High fibre, oat clusters, porridge, heart health and diet cereals.
[35] The parties have shown that inventory effects are not present in the aggregate data.

92. Nevertheless, the parties have estimated retailer-level models for their three largest retail customers (Tesco, Sainsbury's and Waitrose) and a pooled model across these three retailers. The parties submit that when they use a LAD (least absolute deviation) estimator[36], to diminish the impact of outliers, the estimated diversion ratios are consistent with the base specification.

93. The CMA has analysed in detail the underlying econometric results of the retailer models. These show that many of the elasticities returned by both the pooled and the individual retailer models have inconsistent signs, with a number indicating that the products are complementary rather than substitutable. Regarding in particular private label, the problem seems more pronounced in muesli than in granola. Both in the pooled estimation with all retailers and in the estimates of the models with only Tesco, Sainsbury's and Waitrose, cross price elasticities for private label have the wrong sign. As for granola, although this issue is present for the pool estimation with all retailers, it's not there when considering only Tesco, Sainsbury's and Waitrose. At the retailer level, only Waitrose has the wrong signs for private label. The CMA note that the signs are also incorrect on Weetabix, Quaker and the All Other cereals category in several estimations.

94. Although robust demand estimation models can sometimes return the incorrect sign on elasticities, this is normally only the case for a limited number of products out of a large product pool, rather than the majority of the products being estimated. These results suggest that the model is not robust and is suffering either from poor data quality, endogeneity, or other issues.

Endogeneity

95. The CMA considers that endogeneity may be a concern for the econometric analysis. Endogeneity occurs when there is correlation between the parameter/variable and the error term. Endogeneity can arise due to a number of factors, but most commonly for demand estimation it is due to a link in causality between the regressor and the dependent variables of the model. For example price may be endogenous because producers change their price in response to demand and consumers change their demand in response to price. The existence of endogeneity causes estimates of the relationship between the variables to be biased.

[36] Used to diminish the importance placed on outliers.

96. In *Barr / Britvic*, the CC received evidence suggesting that promotions at the large multiple retailers are set well in advance meaning that prices do not respond to short-term demand shocks. On this basis endogeneity was not considered to be a particular concern.[37] The parties suggested that such reasoning also applies to the present case.

97. To test this the CMA has sought evidence from retailers and the parties on the degree to which promotions are altered from the promotional plan. The majority of retailers have indicated that the plans are frequently adjusted through the year sometimes to respond to either high or low demand. Therefore, the CMA is concerned that endogeneity may be present in the demand estimation in the present case, such that the estimated cross-price elasticities and diversion ratios may be biased.

98. The parties submit that almost 90% of promotions planned are implemented and those which were not implemented were the result of inability to secure the necessary promotional space from the retailer, not as a result of short run shocks to demand for the parties' products. However, the CMA saw evidence of additional promotions being run throughout the year which it cannot rule out as being in response to changes in demand. In addition, the parties did not provide evidence showing that there were no alterations to the promotions that were run. The CMA also note that there could be other sources of endogeneity.

Conclusion on econometric analysis

99. The CMA has concerns over the robustness of the model due to the model returning inconsistent signs at the retailer level and the likely presence of endogeneity. However, the CMA considers that this is only one piece of evidence which must be considered in the round, together with evidence from third parties, internal documents, market share information, Homescan and loyalty card data as well as other evidence relating to competitive dynamics, including potential entry and expansion (considered further below). Given that no competition concerns arise based on a review of the entirety of the evidence available to the CMA, it has not been necessary to conclude on the extent to which the CMA is able to place weight on the econometric evidence provided by the parties.

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[37] *Barr/Britvic*: CC Report of 9 July 2013 Appendix C paragraphs 45 – 47.

Internal documents

100. As set out in paragraph 52 above, the parties' internal documents support the conclusion that private label products impose a strong competitive constraint on the parties' branded products.

101. There is also a suggestion in some internal documents that there may be a constraint from the wider cereals market, particularly from Kellogg's Cornflakes and from Weetabix which one internal document ranks as the first and second product most likely to be purchased in place of Jordans. Other internal documents point to a significant proportion of lost customers switching to other cereal segments. There may also be a degree of seasonality with, for example, customers switching to porridge in the winter months.

102. Looking only at competition with other brands, the branded competitors most often cited in Jordan's internal documents are Alpen and Dorset in muesli and Quaker and Dorset in granola. Kellogg's granola is also referred to. Such references include the following quotes:

- '[%]'.[38]
- '[%]'.[39]
- '[%]'.[40]
- '[%]'.[41]
- '[%]'.[42]

103. This appears to be consistent with the estimated market shares of the parties and their competitors. The parties also submit that [%]. The CMA notes that from January 2013 to January 2014 Jordan's market share in muesli [%] from around [10-20]% [%]. Jordans internal documents consistently refer [%].

104. Overall, the internal documents suggest that the parties do currently compete closely with one another but also compete more closely, or at least just as closely, with private label products as well as facing competition from, among others, Alpen in muesli and Quaker in granola.

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[38] Jordans SWOT analysis dated 4 December 2014.
[39] Ibid.
[40] Jordans Cereals April 2013 Business Review
[41] Dorset UK Commercial Operation of Dorset Cereals
[42] Leaky Bucket Summary Deck 14.03.14

Impact of the Merger on negotiations

105. Third party retailers indicated that the Merger may have an effect on their ability to negotiate with the parties. In particular, third parties indicated that there may be competition between suppliers when negotiating over promotional slots, or in store positioning (eg shelf space or advertising space). They suggested that this competition would be reduced as a result of the Merger, reducing the fixed payments flowing to retailers or reducing their ability to negotiate the best possible promotional deals for end consumers.

106. Two third parties have indicated that they would be very unlikely to place Jordans and Dorset on promotion at the same time and as such the two parties are competing against each other to win promotional slots. An additional third party indicated that both the parties' products would not often be promoted at the same time, although they occasionally may run category-wide promotions in which both products are included. A third party stated that the total number of promotional slots in a year is fixed and these are divided between each category of cereal (eg wholesome, kids). They stated that a supplier would be more likely to win a promotional slot if it either had a bigger range of SKUs (depending on the type of promotion) or offered better discounts or greater promotional support.

107. The parties submit that Jordans has no experience of competing head-to-head with Dorset for promotional space. They submit that over the last three years approximately [20-30]% of Dorset and Jordans granola and [30-40]% of Dorset and Jordans muesli promotions were carried out at the same time in the same retailer.[43] They also submit that competition for promotional space takes place at least at the cereals category level, and often favours the multinationals with products in more than one segment. Further, the parties submit that the large multiple retailers control their own shelf space and have competing private label products that they can favour. As such, any attempt to reduce elements of their competitive offering, such as promotions, can lead to their products being delisted, or competitor products being promoted.

108. The parties provide evidence of a number of occasions where products were delisted or stocking points reduced, for instance [%], [%] and [%]. However, other than in one instance, the parties did not indicate why the

[43] Based on weeks in which at least one third of volume sold for each brand was sold on promotion.

products were delisted and whether it was in response to their or a competitor’s actions as opposed to factors such as poor sales.

109. The CMA notes that several customers did not express concern. In particular, one customer considered that its private label muesli and granola was a close competitor to the parties’ muesli and granola and also considered that there were other brands in muesli and granola available for it to stock. Another customer believed that the Merger would not impact their negotiating position despite the parties being close competitors.

Third party evidence

110. The CMA received evidence from a number of customers, including all of the larger multiple retailers. Such evidence is referred to where relevant in this decision. References to customers or competitors refer to those that responded to the CMA’s enquiries. All customers responded that the parties’ brands were close competitors and the majority responded that they were each other’s closest competitor in both muesli and granola.

111. Most customers considered that there were other competitors. Several noted Alpen (Weetabix) as a competitor in muesli, although some considered that Alpen was a less premium product. Some customers noted Special K Granola (Kelloggs) as a competitor in granola. One considered that muesli and granola competed in a wider cereal market, not just with other products in their category or adjacent categories. It further noted that recent entry from big brands had increased competition.

112. While the views of customers are mixed, the CMA has taken account of the concerns raised (see above) while also noting that the large multiple retailers should be properly considered to be both customers and competitors (through their private label offering) of the parties.

Conclusion on closeness of competition and horizontal unilateral effects

Granola

113. The evidence reviewed by the CMA, in particular internal documents and evidence from third parties suggest that the parties do compete closely in the supply of granola. However, Homescan data, Clubcard data and the parties’ internal documents show that they also face close, if not closer competition from private label products. This constraint will remain post-Merger.

114. The parties' combined share of supply in the supply of granola in the UK is [30-40]% with an increment of [0-10]% by value. The CMA considers the increment caused by the Merger to be low in the context of continuing competition from private label granola and other brands.

115. In particular, the parties face continuing competition from two multinational, mainstream brands in Quaker and Kellogg's, both of which have shares of supply which are not dissimilar to the increment caused by the Merger. There are also a number of other brands such as Fuel, Rude Health and Lizi's who have entered the granola segment in recent years. Such brands will continue to provide a constraint on the parties in their negotiations with retailers on prices and promotional slots.

116. On this basis, the CMA finds that the Merger does not give rise to a realistic prospect of a substantial lessening of competition in the supply of granola. In addition, the possibility of new entry and expansion is considered further below.

Muesli

117. The parties also compete closely in the supply of muesli but again face significant competition from private label products as indicated by internal documents and the Homescan and loyalty card data reviewed by the CMA. In addition, Alpen is a strong branded supplier of muesli which is identified by the parties as a close competitor in internal documents as well as by third parties. [%].

118. The parties' combined share of supply in the muesli market is lower than granola at [30-40]% with a low increment of [0-10]%. In addition, the parties submit that [%]. Alpen will continue to impose a strong competitive constraint on the parties post- Merger with a market share equivalent to the parties' combined market share. Other competitors include Rude Health and Sharpham Park with market shares under 5%.

119. The CMA considers that these constraints, taken together, are sufficient to ensure that there is no realistic prospect of a substantial lessening of competition in the market for the supply of muesli as a result of the Merger. In addition, the CMA has considered the possibility of new entry and expansion below.

Barriers to entry and expansion

120. Entry, or expansion of existing firms, can mitigate the initial effect of a merger on competition, and in some cases may mean that there is no substantial lessening of competition. In assessing whether entry or expansion might prevent a substantial lessening of competition, the CMA considers whether such entry or expansion would be timely, likely and sufficient. In terms of timeliness, the CMA's guidelines indicate that the CMA will look for entry to occur within two years.[44]

121. Potential (or actual) competitors may encounter barriers which adversely affect the timeliness, likelihood and sufficiency of their ability to enter (or expand in) the market. Where entry barriers are low, the merged firm is more likely to be constrained by entry; conversely, this is less likely where barriers are high.[45]

122. The parties consider that there are relatively low barriers to entry in both the muesli and granola segments due to the relatively straightforward production process meaning that it would not be difficult for a new entrant to enter and develop a 5% share. In addition, the parties submit that expansion by existing cereal suppliers into the muesli and granola markets is easy. They provide examples of branded suppliers moving into the granola segment (see the Kellogg's example below in regards to granola) and also private label suppliers Morning Foods and Bokomo (under the 'Perfekt for' brand) launching branded granola and muesli products.

123. The parties also point to the ability and willingness of retailers to sponsor new entry given that retailers see a benefit in making themselves attractive to consumers with new products. For example, the parties submit that Morrisons supported its private label supplier, Morning Foods, in launching a branded granola product in its stores. One other large multiple retailer also told the CMA it would be willing to sponsor entry through, for example, support with in store advertising. As well as sponsoring new entry, retailers may act as 'incubators' to new brands which later expand into other retailers. Dorset, for example, launched in Waitrose before transferring to other stores and, according to the parties' submissions, Fuel, a relatively recent entrant into the granola market, was initially launched in Tesco.

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[44] *Merger Assessment Guidelines*, para. 5.8.11.
[45] *Merger Assessment Guidelines*, para. 5.8.4.

Granola

124. The parties submit that it is easy to enter into the granola segment. Similar equipment and expenditure is needed as for muesli with only the addition of an oven for baking the product. They therefore submit that it is particularly easy for an existing muesli manufacturer to expand into the wholesale supply of granola. Not all third party competitors agreed with this submission, saying that quite a high degree of investment would be needed in order to expand from muesli to granola. However, the parties also noted that granola production could be outsourced, either in its entirety (which is the approach taken by new entrant Fuel) or for the baking of the product ([%]).

125. The parties submit that the granola segment is an area of growth which has encouraged recent entry and expansion. In particular, the CMA notes that Kellogg's has leveraged its Crunchy Nut and Special K brands into the granola segment and achieved a share of approximately 8-9% in less than 2 years, with over 20% in the latest 12 week period[46] in each of Asda, Coop and Morrisons. Nature Valley (owned by General Mills) has also very recently launched a granola product this year.[47] In addition there are a number of new entrants who have been able to grow market shares similar to the increment of the Merger. For example, Fuel which launched in 2011 and has an estimated market share of approximately 3.4%[48] and Rude Health which also launched in 2011.

Muesli

126. The parties submit that entry into the muesli segment is not expensive, with Jordan's estimating that developing a new fully automated muesli production line from scratch could cost as little as £[%] . The cost of food safety certification is minimal (around £1,500) and can be obtained within a couple of days. The parties submit that were a new entrant to purchase the necessary equipment from scratch, the first muesli products could be made within [%] months.

127. Some third parties considered that the cost of entry would be higher and, in particular, highlighted the costs associated with branding, marketing and advertising a new product which would apply to both new entrants and producers of other cereal expanding into the muesli market for the first time.

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[46] As at 22 September 2014.
[47] Protein granola launched in September 2014.
[48] As at December 2013.

The parties argued strongly that a substantial advertising budget is not required and noted that Dorset itself entered the market without any advertising spend and successfully grew its volume share from approximately [0-10]% to [10-20]% in 2 years between 2006 and 2008 with less than £[%] in advertising spend. The parties also provided evidence of Jordans' advertising spend on muesli and granola products being between £[%] and £[%] per year in the last six years.

128. In the muesli segment the parties noted that Eat Natural, Rude Health and Sharpham Park had all entered between 2008 and 2012. The parties submit that these brands were able to launch with minimal advertising spend. However, the CMA notes that together these brands account for only slightly above 5% in the supply of branded muesli.[49] In addition, [%].

129. However, the CMA received evidence [%].

Conclusion on entry and expansion

130. The CMA considers that there are relatively low barriers to entry and expansion in both the muesli and granola segments given the ease of production and the evidence of successful entry and expansion with limited budgets (in particular, the CMA has seen evidence of entry with limited advertising and marketing budgets). The CMA also notes the growth of the granola segment and the recent examples of entry from both large multinational cereal brands such as Kelloggs and from new, more niche entrants, such as Fuel. In both cases, new entrants have achieved a market share comparable to the size of the increment in this Merger. However, given that no competition concerns arise in the supply of granola in any event, the CMA does not need to conclude on whether entry or expansion is timely, likely and sufficient in the granola market.

131. The muesli segment has not seen such growth and the new entrants identified by the parties have not grown a market share similar in size to the increment caused by the Merger in the last two years. However, the CMA considers the evidence provided by [%] indicates that its entry into the muesli segment may impose a significant additional constraint on the parties post-Merger [%].

[49] Estimates provided by the parties. Eat Natural has [0-10]%, Rude Health [0-10]% and Sharpham Park [0-10]%.

132. However, the CMA has not found it necessary to conclude on whether this entry is timely, likely and sufficient given that no competition concerns arise in relation to the supply of muesli in any event.

Buyer power

133. The parties submit that they are subject to strong countervailing buyer power since they are dependent on a small number of large multiple retailers as customers for their muesli and granola products. The big six multiple retailers represent approximately [90-100]% of each party's branded sales of muesli and granola. They submit that a number of levers are available to these customers to exercise their buyer power including allocation of shelf space, decisions on range and distribution levels as well as promotions. Based on the parties' submissions, these large retailers essentially act as gatekeepers to consumers and it is not uncommon for them to threaten to, or indeed actually, delist the parties' SKUs. The parties provided the CMA with examples of such de-listing by three retailers.

134. The CMA's market investigation did not fully support the parties' arguments. Some customers, including some of the larger multiple retailers, do not consider themselves to have sufficient buyer power to counteract the reduction in competition they perceived from this Merger. The parties noted that the retailers are also competitors through their private label offering and could favour their own product over the parties'. However, the parties did not provide any evidence of retailers referring to their own private label offering during negotiations with the parties.

135. A customer's buyer power will be stronger if it can easily switch its demand away from the supplier. Its ability to do so depends on the extent to which there are several alternative suppliers to which the customer can credibly switch. Although the CMA recognises that the parties do compete with private label products in the relevant frames of reference, this is not necessarily indicative of the extent to which retailers can substitute away from branded products to their own label.[50] In particular some customers said that it was essential for them to stock the parties' brands, limiting their ability to negotiate with the supplier and fully switch away.

136. However, the CMA has not found it necessary to conclude on the extent to which customers may exercise buyer power given that no competition concerns arise in any event.

[50] ME/5801/12 Barr/Britvic, OFT, February 2013.

Third party views

137. The CMA has sought views on the Merger from customers and competitors of the merging parties. Third party comments have been given due consideration by the CMA, and have been referenced in this issues letter where relevant.

138. A small majority of customers that responded to the CMA's questions raised concerns about the Merger to some degree, in particular that it would reduce their negotiating strength and may lead to increases in price and worse promotional offerings. Such concerns have been taken into account by the CMA in its assessment.

139. Third party competitor views were mixed with some noting that the Merger combined two of the leading brands in muesli and granola. Others, however, noted the constraint from private label products as well as from wider cereal categories.

Decision

140. Consequently, the CMA does not believe that it is or may be the case that the Merger may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

141. The Merger will therefore **not be referred** under section 33(1) of the Act.

Andrea Coscelli
Executive Director, Markets and Mergers
Competition and Markets Authority
6 October 2014

ENDNOTES

I With regards to paragraphs 1 and 15 the parties note that the sales generated were from Jordans branded products.