

# Anticipated acquisition by ForFarmers UK Limited of the Feed and Forage business of Countrywide Farmers plc

**ME/6507/14**

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 13 April 2015. Full text of the decision published on 13 May 2015.

Please note that [X] indicates figures or text which have been deleted or replaced in ranges at the request of the parties for reasons of commercial confidentiality.

## SUMMARY

1. ForFarmers UK Limited (**ForFarmers**) has agreed to acquire the feed and forage business of Countrywide Farmers plc (**Manor**) (the **Merger**). ForFarmers and Manor are together referred to as the **Parties**.
2. The Competition and Markets Authority (**CMA**) considers that the Parties will cease to be distinct as a result of the Merger, that the turnover test is met and that accordingly arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
3. The Parties overlap in the supply and distribution of animal feeds and other agricultural products in the UK. The CMA has assessed whether the Merger will result in a realistic prospect of a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects against the separate candidate frames of reference for single, compound and blended feeds and compound and blended feeds were further segmented by type of animal: ruminant and monogastric animals (pigs and poultry). As to the geographic scope, the CMA has assessed the Merger on a UK-wide basis for single feeds, and on a regional basis for compound and blended feeds.
4. In most frames of reference, the CMA has found that the Parties' estimated market shares are relatively low, the increments arising from the Merger are not material, several other competitors will remain in the market and third parties did not raise any material concerns. Where the Parties have relatively higher shares, above 40%, as is the case for compound and blended feeds in

a few locations, the increment is less than [0–5]% and the CMA is satisfied that the Parties will face sufficient competitive constraints from other competitors.

5. The CMA considers that these constraints, taken together, are sufficient to ensure that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects.
6. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).

## **ASSESSMENT**

### **Parties**

7. ForFarmers (formerly trading as BOCM Pauls Ltd) produces and supplies animal feeds and other agricultural products at wholesale and retail level in the UK. The turnover of ForFarmers for the 2013 financial year was around £628 million worldwide and around £618 million in the UK.
8. Countrywide plc (**Countrywide**) supplies multiple goods and services to the rural community across the UK.<sup>1</sup> Manor comprises the feed and forage business of Countrywide, in particular its UK assets and businesses relating to the bulk farm animal feeds, grass and maize seeds, fertilisers and silage additives. Manor estimates that its UK turnover for the 2014 financial year was around £[~~8~~].

### **Transaction**

9. ForFarmers has agreed to acquire Manor by way of a 'business acquisition agreement' for a consideration of approximately £15.3 million. As a result of the Merger, ForFarmers will acquire Manor's assets and businesses, including goodwill, fixed assets, customer contracts and employees transferring under the Transfer of Undertakings (Protection of Employees) Regulations.

### **Jurisdiction**

10. The CMA believes that the combination of assets and businesses that form Manor constitute an enterprise within the meaning of section 129 of the Act.

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<sup>1</sup> Manor has a tolling agreement with ForFarmers, whereby ForFarmers manufactures compound and blend feeds for Manor, which Manor then supplies under its own brand name to its customers.

As a result of the Merger, the enterprises of ForFarmers and Manor will cease to be distinct.<sup>2</sup> Section 23(1)(a) of the Act is thereby satisfied.

11. The UK turnover of Manor exceeds £70 million, so the turnover test in section 23(1)(b) of the Act is satisfied.
12. 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 in accordance with section 23 of the Act.
13. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 20 February 2015 and the statutory 40 working day deadline for a decision is therefore 20 April 2015.

## Counterfactual

14. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (that is the counterfactual). For anticipated mergers, the CMA generally adopts the prevailing conditions of competition as the counterfactual against which to assess the impact of the merger on competition. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, it considers that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive than these conditions.<sup>3</sup>
15. In this case, there is no evidence supporting a departure from the prevailing conditions of competition. The CMA has therefore assessed the effects of the Merger against the prevailing conditions of competition.

## Frame of reference

16. 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

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<sup>2</sup> *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2), paragraphs 4.5-4.11.

<sup>3</sup> *Merger Assessment Guidelines* (OFT1254/CC2), September 2010, from paragraph 4.3.5. The *Merger Assessment Guidelines* have been adopted by the CMA (see *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2), January 2014, Annex D).

within the relevant market, or other ways in which some constraints are more important than others.<sup>4</sup>

### **Product scope**

17. The Parties overlap in the supply and distribution of:
- (a) animal feeds;
  - (b) silage additives;
  - (c) fertilisers (namely: nitrogen, phosphorous, potassium and compound fertilisers); and
  - (d) forage grass seeds and maize seeds.
18. In silage additives, fertilisers (including the individual components listed in 17(c) above), forage grass seeds and maize seeds the Parties' combined market shares are less than [20–30]% with an increment as a result of the Merger of less than [10–20]%. The CMA found that these products are relatively undifferentiated, and that the Parties have several competitors. In addition, no material third party concerns have been raised in respect of these products. As such, the CMA has not addressed overlaps in relation to 17(b), (c) and (d) further in this decision as it considers that the Merger will not give rise to a realistic prospect of an SLC insofar as these products are concerned.

### **Animal feed products**

19. There are different types of animal feed products: compound, blended and single feeds.<sup>5</sup> Single feeds comprise of one ingredient only and can be used to home mix feed or as an input into blended and compound feed. Blended and compound feeds are combinations of various ingredients which are mixed together in different proportions according to the animals' nutritional requirements. The CMA understands, on the basis of third party evidence and the Parties' submission, that blended and compound feeds are processed in different ways and that compound feeds can come in a pellet form.

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<sup>4</sup>*Mergers Assessment Guidelines*, paragraph 5.2.2.

<sup>5</sup> See for example previous European Commission cases: M.6740 [Baywa/Cefetra](#) 19 December 2012, [M.6573 ForFarmers/Agricola](#) 4 July 2012, [M.6468 ForFarmers/Hendrix](#) 16 March 2012, [M.5410 ForFarmers/Cefetra](#) 14 May 2009, [M.2271 Cargill/Agribands](#) 19 February 2001, [M.1362 Bay WA AG/RWA](#) 3 June 1999 and previous Office of Fair Trading (OFT) cases: [ME/4057/09 Anticipated acquisition by AB Agri Limited of certain business and assets of JE Porter Limited from the Porters Group](#) 17 April 2009, [ME/3637/08 Anticipated acquisition by John Thompson of the Northern Ireland Compound Animal Feed Business and Assets of AB Agri](#) 24 June 2008, [ME/2522/06 Completed acquisition by ABF Holdings Limited of Primary Diets Limited](#) 30 August 2006, and [ME/1518/02 Acquisition by W L Duffield & Sons Limited of the ruminant feed business of Bury Nutrition, part of ABNA Limited](#) December 2002.

20. It is the CMA's understanding on the basis of the Parties' submission and third party evidence that single feed resellers and compound and blended feed manufacturers source raw materials, straights,<sup>6</sup> co-products<sup>7</sup> and additives<sup>8</sup> either from wholesalers, processors or farmers. Subsequently, single feed resellers sell the feeds to end-users (farmers) and arrange the delivery of the feeds to the final destination. Single feed resellers do not necessarily store the products which they sell. In contrast, compound manufacturers process these raw materials at a local mill and sell the compound feeds or blends to wholesalers or directly to the end-user.<sup>9</sup>
21. The Parties submitted that all types of animal feeds formed part of a single frame of reference in the UK. The Parties explained that a farmer would not focus on the specific ingredients or product types. They aim at providing the correct nutritional value for their animals in the most cost effective manner, and, as such, there is a high degree of demand-side substitution between different types of feed. Moreover, the Parties submitted that there was, in effect, a chain of substitution between the different types of animal feeds in the relevant frame of reference. The Parties submitted that as a result prices for any one type of feed were constrained by prices of others, even where those types of feed were not directly substitutable for a given animal.
22. The Parties' activities overlap in relation to the resale of single feeds. Their activities also overlap in relation to the supply and distribution of:
- (a) compound feeds for:
    - (i) ruminant animals;
    - (ii) monogastric animals:
      - a. pigs;
      - b. poultry; and

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<sup>6</sup> Straights are raw materials which consist of a single substance and can be dry (such as grain) or moisture rich (such as beetroot pulp). Straights can be used by farmers as animal feeds or as raw materials by home-mixing farmers or manufacturers. Straights can either be imported or produced in the UK. The Parties buy in all their straights from third party suppliers.

<sup>7</sup> Co-products (or by-products) include by-products of the manufacturing process, farming activities and human food and drink processors (such as: rejected biscuits) and from the distilling and brewing industries (such as: residual spent barley). By-products can be in dry, moist or liquid form. Both parties procure by-products from third party suppliers and sell them onto farmers or for use in the manufacture of their own compound feed.

<sup>8</sup> Additives (such as amino acids, caustic soda, limestone) are used by home mixing farmers and compound feed manufacturers to add specific nutritional value to the compound feeds. Both parties supply additives to farmers.

<sup>9</sup> The Parties have submitted that approximately [50-60]% of total feed sold in the UK is compound feeds, where compound feeds makes up a substantial portion of the total feeds provided to pigs and poultry. Single feeds and roughage constitute the remaining [40-50]% of animal feeds sold in the UK.

- (b) blended feeds for:
- (i) ruminant animals;
  - (ii) monogastric animals:
    - a. pigs;
    - b. poultry.

### *Compound feeds*

23. The Parties submitted that compound feeds were composed of different single raw materials which were blended together in different proportions to suit the specific dietary requirements of the animal or the demands of the individual farmer.<sup>10</sup> Compound feeds could be manufactured in meal, pellet or crumble form, and could be a complete or supplementary feed. The pellets could be fed to livestock through auto-feeders.

- *Compound feeds – substitutability with other types of feeds?*

24. The CMA considered whether farmers can switch from compound to single feeds in response to a price increase or quality reduction. Third party responses indicated that switching from compound to single feed (for example, using home mixing) involved different logistical and time requirements for farmers.<sup>11</sup> Also, not all farms would be of sufficient size to find an investment in the necessary facilities feasible and even where the farm is large, storage capacity might still be limited. In addition, farmers might not be able to switch from compound to single feeds due to different equipment used to feed animals.<sup>12</sup>

25. At least for some farmers, it may not be economically viable to switch from compound to single feed. Given that feed prices are negotiated bilaterally between suppliers and farmers, it is likely that a hypothetical monopolist in the compound feeds frame of reference could raise its price for captive farmers without them being able to switch to single feeds.

26. The CMA also considered whether farmers can switch from compound to blended feeds in response to a 5% price increase or quality reduction. Third party responses indicated that farmers of some types of animals, such as

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<sup>10</sup> Compound feeds mainly, but not exclusively, consists of: wheat, maize, soymeal, rapeseed meal, wheat feed, barley, sunflower and citrus cake) and vitamins and minerals.

<sup>11</sup> For example, it would require additional time to buy the feeds, appropriate storage and mixing facilities.

<sup>12</sup> One third party also noted that it was easier to switch between feeds for different types of ruminants than it was for monogastric animals.

poultry, might prefer compound over blended feeds. Third parties commented that the pellet form was more consistent in its nutritional value, easier to handle and less dusty. Also, farmers might not be able to switch from compound to blended feeds without changing the feeding equipment that they use.

27. In view of the above evidence, the CMA therefore considers that there are some limitations on demand-side substitution between compound and single feeds, and between compound and blended feeds.
28. In regards to supply-side substitution, the CMA did not receive any evidence suggesting that suppliers had the ability and the incentive to quickly shift resources between the supply of compound feed to blended and/or single feeds.<sup>13</sup>
29. Consequently, the CMA considers compound feeds to constitute a separate frame of reference for the purposes of assessing the Merger.
  - *Compound feeds – further segmentation based on types of animals?*
30. The OFT previously considered that the market for compound feed can be segmented into compound feed for ruminants and monogastric animals and further assessed whether monogastric feed could be segmented between feed for pigs and poultry from a demand-side perspective.<sup>14</sup>
31. The Parties submitted that there was no demand-side substitution between compound feed for ruminants and monogastric animals.<sup>15</sup> This was confirmed by third party evidence. Third parties also submitted that within monogastric feed, the feed for pigs and poultry was not interchangeable from a demand-side perspective.
32. The CMA considered whether, despite the lack of demand-side substitution between compound feeds for monogastric and ruminant animals, the frame of reference could be widened to cover compound feeds for both types of animal on the basis of supply-side substitution.

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<sup>13</sup> In [AB Agri Limited/JE Porter Limited](#), paragraph 36, the OFT received evidence that there may be ability to switch, but one third party commented that it is unlikely to be a commercially attractive option. In that case, the OFT considered compound feed and straights separately.

<sup>14</sup> See [ME/1518/02 Acquisition by W L Duffield & Sons Limited of the ruminant feed business of Bury Nutrition, part of ABNA Limited December 2002](#), [ME/2522/06 Completed acquisition by ABF Holdings Limited of Primary Diets Limited 30 August 2006](#), [ME/3637/08 Anticipated acquisition by John Thompson of the Northern Ireland Compound Animal Feed Business and Assets of AB Agri 24 June 2008](#), and [ME/4057/09 Anticipated acquisition by AB Agri Limited of certain business and assets of JE Porter Limited from the Porters Group 17 April 2009](#).

<sup>15</sup> The Parties instead considered that there was a chain of substitution by virtue of which prices for any one type of feed are constrained by prices of other types of feed, even where those latter types of feed are not directly capable of being fed to a particular species of animal.

33. The Parties submitted that there is sufficient spare capacity within the industry and compound feed manufacturers can switch between the production of compound feed for ruminant and monogastric animals (pigs and poultry) relatively easily and at a low cost.
34. Third party evidence on this point was mixed. One competitor agreed with the Parties' arguments. However, some third parties disagreed and explained that:
- (a) UK legislation bans certain types of feed for ruminants. This requires monogastric feed to be heavily medicated and cannot be given to ruminants.
  - (b) Producers must run a cleaning batch to prevent cross-contamination, which may be impractical and may result in loss of productive efficiencies.
  - (c) Different compound feeds requires different nutritional knowledge.
  - (d) Different compound feeds requires different equipment to manufacture ruminant and monogastric feed.
35. On the basis of this evidence, the CMA considers that compound feed manufacturers may not have the ability and incentive to switch capacity quickly between compound feed for ruminants and monogastric animals, or between pig and poultry feeds. As such, the criteria required for aggregating different markets based on supply-side substitution may not be met in this case.
36. Accordingly, the CMA considers the impact of the Merger separately in relation to compound feeds for ruminant animals and monogastric animals, the latter of which is segmented further into compound feeds for pigs and poultry.

#### *Blended feeds*

37. The CMA's market investigation indicated that blended feeds consist of a combination of various raw materials that have not been ground or granulated in the same way as compound feed. Blended feeds are designed to meet the complete or a substantial part of the nutritional needs of an animal.<sup>16</sup>

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<sup>16</sup> It is the CMA's understanding that these raw materials are placed in a mixer to create a blend or meal, which is then fed to the animals. In some instances, blends are added to other feed items, such as forage. Blends may consist of anything from a combination of two raw materials, to a combination of various raw materials plus a mineral pack.



- *Blended feeds – substitutability with other types of feeds?*

38. The CMA assessed whether end-users (farmers) have the ability and incentive to respond to a price increase of blended feed by switching to another type of feed. Third parties indicated that farmers might need different equipment for blended and compound feeds. The CMA notes that this may limit the ability and incentive of farmers to switch to compound feeds in some circumstances.
39. It may be possible for farmers to switch from blended feed to home-mixing single feeds in order to meet the nutritional requirements of their animals to a certain extent. However, farmers may be reluctant to switch from blended feed to purchasing single feed for home mixing for the reasons as set out above in paragraph 24.
40. On a cautious basis the CMA considers that there may be some limitations on demand-side substitution between blended and compound feed on the one hand and blended and single feed on the other hand.
41. From a supply-side perspective, it is the CMA's understanding that an investment in new machinery would be required to switch from blended to compound feed.<sup>17</sup> Overall, the CMA did not receive sufficient evidence suggesting that manufacturers of blended feed had the ability and the incentive to quickly shift resources between the supply of blended feed to compound and/or single feed.

- *Blended feeds – further segmentation based on type of animal?*

42. The Parties have submitted that from a demand-side perspective, blended feeds are not interchangeable between ruminants and monogastric animals and within monogastric animals, blended feeds are not interchangeable between pigs and poultry.
43. The CMA assessed whether the frame of reference should be widened to cover both ruminant and monogastric animals on the basis of supply-side substitution.<sup>18</sup>
44. Blended feed products are manufactured by brand owners or by third parties under tolling agreements. For example, ForFarmers manufactures its own

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<sup>17</sup> This was also confirmed by third parties in ME/3637/08 [Anticipated acquisition by John Thompson of the Northern Ireland Compound Animal Feed Business and Assets of AB Agri](#) 24 June 2008, paragraphs 19–22.

<sup>18</sup> [Merger Assessment Guidelines](#), paragraphs 5.2.17–5.2.19

blended feed which it supplies to farmers and Manor has a tolling agreement with ForFarmers to manufacture blended feed at three sites.

45. The CMA notes that as a result of UK legislation which bans certain types of feed for ruminants, the need for a cleaning batch to prevent cross-contamination, the requirement of different nutritional knowledge and equipment,<sup>19</sup> blended feed manufacturers may not have the ability or the incentive to switch in a timely and sufficient manner between producing blended feeds for ruminants and monogastric animals, or between pig and poultry.
46. As such, the CMA considers the impact of the Merger separately in relation to blended feeds for ruminant animals and monogastric animals, the latter of which is segmented further into blended feeds for pigs and poultry.

### *Single feeds*

47. The Parties submitted that single feeds comprise a feed ingredient only and these can be in the form of straights, co-products or additives. These products are used to meet the nutritional requirements of animals.<sup>20</sup> It is the CMA's understanding that single feeds are not a complete feed on their own, but rather can be an input into home mixing, blended or compound feeds.<sup>21</sup>
  - *Single feeds – substitutability with other types of feed?*
48. The CMA assessed whether end-users (farmers) have the ability and incentive to respond to a price increase on single feeds<sup>22</sup> by switching to either blended or compound feeds. Third parties indicated that farmers purchased single feed ingredients to add to existing feed that the farmers already grow on their farm. However, they also submitted that farmers who purchased single feed for home-mixing, might consider purchasing blends or compound feeds if they had insufficient storage capacity for single feeds. The CMA recognises that some farmers who purchase single feed may also be able to purchase compound feed in order to meet their feed requirements.
49. On a cautious basis, the CMA considers that substitutability between single and compound feeds on one hand and single and blended feeds on the other hand is limited.

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<sup>19</sup> As set out further in paragraph 34 in relation to compound feed.

<sup>20</sup> Raw materials are feed products which require further treatment before supplying them to the customer (and form a small proportion of the overall volumes of single feed for ForFarmers).

<sup>21</sup> These types of feed are discussed further below.

<sup>22</sup> As set out in paragraph 57 the CMA is assessing single feeds on an aggregate basis.

50. The CMA did not receive any evidence that suggested that suppliers had the ability and incentive to quickly shift resources between the supply of single feeds to compound and/or blended feeds.
- *Single feeds – further segmentation based on type of animal?*
51. The CMA examined the extent to which demand-side substitutability<sup>23</sup> existed between different types of single feeds, specifically insofar as nutritional requirements of monogastric<sup>24</sup> and ruminant<sup>25</sup> animals were concerned.<sup>26</sup>
52. The Parties submitted that farmers select feed ingredients to meet the nutritional requirements of their animals. In this respect, the CMA understands that there may be one or more single feed products that could be combined to fulfil the desired nutritional requirements of the particular animal. Similar views were also shared by third parties who indicated that farmers often sourced the cheapest mix of single feed products to fulfil the desired nutritional requirements.
53. There may be differences in the feed provided to ruminant and monogastric animals as not all single feeds can be used for both types of animals. For example, legislation prevents certain feeds, such as fishmeal, from being given to ruminants while they may be fed to monogastric animals.<sup>27</sup> Similarly, it is the CMA's understanding that some single feeds are seen as being more suitable for ruminant than monogastric animals.<sup>28</sup>
54. Despite these limitations the CMA believes that, based on the CMA's assessment of the evidence submitted by the Parties' and third parties', there is considerable scope for demand-side substitution between different single feed products, in particular because the animals' nutritional needs can be satisfied by a combination of a range of different single feeds.
55. The Parties and third parties submitted that single feed resellers did not produce or manufacture single feed themselves. They could, and did, source animal feed directly from a range of different suppliers and arranged for delivery of the product to the customers farm. One competitor to the Parties indicated that it would often call a variety of suppliers in order to source a particular order placed by a farmer. Consequently, in regards to supply-side substitution, the Parties, as resellers, could easily switch to provide a range of

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<sup>23</sup> [Merger Assessment Guidelines](#), paragraphs 5.2.7–5.2.16.

<sup>24</sup> Monogastric animals have a single compartment stomach, such as horses, pigs and poultry.

<sup>25</sup> Ruminant animals have stomachs with several compartments, such as cows, goats and sheep.

<sup>26</sup> The Parties submitted that the most significant distinction between different types of animals in terms of their nutritional requirements, occurs between ruminant and monogastric animals.

<sup>27</sup> [Guidance: Supplying and using animal by-products as farm animal feed](#).

<sup>28</sup> For example, such as rapeseed meal as it may be a better protein meal.

alternative single feed products to farmers which would also meet the nutritional requirements of their animals.

56. It is the CMA's understanding that resellers of single feeds are able to source single feeds from multiple suppliers and locations at regional, national and international level. While the type of single feed products which are available may vary by region, no third parties indicated that a particular type of single feed was difficult to source. In this respect, it is easy for resellers to switch between selling different single feed products. On this basis, it is likely that, if prices were to increase by 5% for one particular type of feed, at least some suppliers could start supplying this feed.<sup>29</sup>
57. In view of the above evidence, the CMA considers that there is sufficient scope for demand- and supply-side substitution between different types of single feed to aggregate them into one frame of reference for the purpose of assessing the Merger.

#### *Conclusion on product scope*

58. The CMA has adopted a cautious approach to assess the Merger on the basis of the following frames of reference:
- (a) compound feeds for:
    - (i) ruminants;
    - (ii) monogastric:
      - a. pigs;
      - b. poultry; and
  - (b) blended feeds for:
    - (i) ruminants;
    - (ii) monogastric:
      - a. pigs;
      - b. poultry; and
  - (c) single feeds.

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<sup>29</sup> [Mergers Assessment Guidelines](#), paragraphs 5.2.10–5.2.16.

### ***Geographic frame of reference***

59. The Parties submitted that the geographic scope was no narrower than the UK in relation to any of the above candidate frames of reference.

### ***Compound and blended feeds***

60. The CMA assessed the relevant geographic frame of reference for compound and blended feeds.
61. The CMA notes that in *AB Agri Limited/JE Porter Limited*,<sup>30</sup> the OFT concluded that the relevant geographic market was 100 miles from the mill. In the present case, the Parties submitted that while there were geographical limitations on where they could supply the feeds, they submitted that the narrowest candidate market for compound and blended feeds was the UK. The Parties submitted that this was because of the existence of a chain of substitution between mill catchment areas such that there was a national market for blended and compound feeds.<sup>31</sup> Third parties also submitted that there were geographical limitations to supplying the feeds,<sup>32</sup> that the average distance which feeds are delivered from the mill was 60–100 miles and that the geographical area which could be covered by a mill was linked to the value of the feed.<sup>33</sup>
62. In view of the above evidence, the CMA has found no reason to depart from the approach taken in *AB Agri Limited/JE Porter Limited*<sup>34</sup> and has used as the geographic scope an area with a 100 mile radius from each of the mills owned by ForFarmers producing compound feeds in its assessment for this case.<sup>35</sup> The CMA also adopted, for similar reasons, a 100 mile radius from each of the ForFarmers mills producing blended feeds as the geographic scope for blended feeds.

### ***Single feed***

63. The Parties submitted that the geographic market for single feed was no narrower than the UK and that typically single feed suppliers operated quite

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<sup>30</sup> ME/4057/09 [Anticipated acquisition by AB Agri Limited of certain business and assets of JE Porter Limited from the Porters Group](#) 17 April 2009.

<sup>31</sup> The Parties submitted that by virtue of the chain of substitution, feed mills outside a particular mill's catchment area exert a strong constraint on that mill within its own catchment area.

<sup>32</sup> Note for example that compound feed manufacturers may focus their business on producing feed for particular types of livestock depending on the livestock present within the manufacturer's area.

<sup>33</sup> More expensive feeds could be delivered further than cheaper feeds.

<sup>34</sup> The Parties further submitted that they saw no reason to depart from this approach if the market was considered to be local.

<sup>35</sup> Note that ForFarmers also produce compound and blended feed for Manor based on a toll manufacturing agreement.

centralised operations, with national call centres and price setting being controlled at a national level. The European Commission (the **Commission**) has previously considered single feeds at a European level although it did not conclude on the geographic market.<sup>36</sup> However, in one case the Commission considered that the relevant geographic market was at least EEA wide.<sup>37</sup>

64. The Parties and third parties identified a number of single feed competitors who resell single feed products on a national or regional basis.<sup>38</sup> The Parties also submitted that single feed resellers<sup>39</sup> operated from a centralised trading floor, and were able to source feeds and arrange delivery anywhere in the UK (either through their own fleet of vehicles or through outsourced logistics).
65. [X]. The same third party also indicated that smaller single feed resellers could choose to operate at either a local, regional or national level. One third party also submitted that competitive conditions were largely similar across the UK for the sale of straights. During the course of the CMA's market investigations, no third party concerns were raised regarding the ability of sourcing single feeds across the UK.

#### *Conclusion on geographic frame of reference*

66. For the reasons set out above, the CMA has assessed the Merger's impact on the basis of a UK-wide frame of reference for single feeds and separate regional frames of reference for the supply of compound and blended feeds to ruminant and monogastric animals, the latter being further segmented into pigs and poultry.

## **Competitive assessment**

### ***Horizontal unilateral effects***

67. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices or degrade quality on its own and without needing to coordinate with its rivals.<sup>40</sup> Horizontal unilateral effects are more likely when the merger parties are close competitors. The CMA assessed whether it is or may be the case that the Merger has resulted, or

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<sup>36</sup> See for example, M.6573 [ForFarmers/Agricola](#) 4 July 2012, M.5410 [ForFarmers/Cefetra](#) 14 May 2009, M.1362 [Bay WA AG/RWA](#) 3 June 1999, M.2271 [Cargill/Agribands](#) 19 February 2001.

<sup>37</sup> See M.6740 [Baywa/Cefetra](#) 19 December 2012.

<sup>38</sup> Such as, AB Agri, Carrs Billington Agriculture, Cressy's Grains, Mole Valley Farmers, NWF Agriculture, SugaRich and Wynnstay.

<sup>39</sup> Single feed resellers are generally traders and distributors rather than producers of animal feed.

<sup>40</sup> [Merger Assessment Guidelines](#), from paragraph 5.4.1.

may be expected to result, in a substantial lessening of competition in relation to unilateral horizontal effects in the supply and distribution of:

- (a) compound feeds for ruminants;
- (b) compound feeds for monogastric animals (pigs);
- (c) compound feeds for monogastric animals (poultry);
- (d) blended feeds for ruminants;
- (e) blended feeds for mongastric animals (pigs);
- (f) blended feeds for monogastric animals (poultry); and
- (g) single feeds.

### Compound feed

#### Shares of supply

68. The Parties submitted their estimated shares of supply for compound feed in regards to the different animals and mills. The shares of supply at national level were confirmed by the Parties' internal documents and the CMA took steps to confirm the underlying sources and methodology for these internal documents.

**Table 1: Market overlap analysis: Compound feed market share by animal type<sup>i</sup>**

Mill	Market Overlap Analysis: Compound Feed Market Share (%) by Animal Type								
	Ruminant			Pig			Poultry		
	Total	ForFarmers	Manor	Total	ForFarmers	Manor	Total	ForFarmers	Manor
	Ruminant (%)	Ruminant (%)	Ruminant (%)	Pig (%)	Pig (%)	Pig (%)	Poultry (%)	Poultry (%)	Poultry (%)
Blandford	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%
Carmarthen	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%
Crewe	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%
Exeter	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%
Newcastle	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%
Portbury	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%
Preston	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%
Radstock	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%
Selby	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%	[REDACTED]%

Source: Parties' submission based on their 2014 figures.

69. The CMA notes that the combined market shares of the parties are below 40% for all regions with respect to ruminants and poultry feed and the increment for poultry is very low. No concerns were raised by third parties in

respect of these possible candidate frames of reference and therefore they are not considered further.<sup>41</sup>

70. The CMA notes that in certain regions (Carmarthen, Exeter, Portbury and Radstock) the estimated combined market shares for compound feeds for pigs are greater than 40%. However, the marginal increment is less than [0–5]% in each of these local regions.
71. Internal documents from the Parties and responses from third parties indicated that there were a number of mills across the country which the parties compete against.<sup>42</sup> In each of the regions as listed in Table 1 above, the Parties face competition from competitors including AB Agri<sup>43</sup> and W J Watkins & Son Ltd.<sup>44</sup>
72. During the CMA's market investigation, no material concerns were raised by third parties. The only issues raised by two third parties related to general concerns associated with increased consolidation within the market as a whole. These concerns have been properly considered in assessing the competitive impact of the Merger in relation to overlapping products.

### *Blended feeds*

#### *Shares of supply*

73. The Parties submitted their estimated share of supply for blended feed and it is set out in Table 2 below.

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<sup>41</sup> [Merger Assessment Guidelines](#), paragraph 5.3.5.

<sup>42</sup> [REDACTED].

<sup>43</sup> AB Agri is a large national supplier of compound feed and is seen by many third parties as an effective competitor.

<sup>44</sup> At least one of these competitors has a market share in excess of [REDACTED]% in all of these areas.



**Table 2: Market overlap analysis: blended feed market share by animal type<sup>i</sup>**

Market Overlap Analysis: Blended Feed Market Share (%) by Animal Type									
	Ruminant			Pig			Poultry		
	Total	ForFarmers	Manor	Total	ForFarmers	Manor	Total	ForFarmers	Manor
Mill	Ruminant (%)	Ruminant (%)	Ruminant (%)	Pig (%)	Pig (%)	Pig (%)	Poultry (%)	Poultry (%)	Poultry (%)
Glasson	[<]%	[<]%	[<]%	[<]%	[<]%	[<]%	[<]%	[<]%	[<]%
Whitchurch	[<]%	[<]%	[<]%	[<]%	[<]%	[<]%	[<]%	[<]%	[<]%
Avonmouth	[<]%	[<]%	[<]%	[<]%	[<]%	[<]%	[<]%	[<]%	[<]%

Source: Parties' submission based on their 2014 figures

74. The CMA notes that the Parties combined market share is below 40% in all regions in respect of ruminants and poultry feed and the increments in respect of these are relatively low. In regards to pigs, the Parties have market shares below 40% except in Avonmouth where the increment is negligible. Furthermore, no third parties raised any material concerns in relation to these candidate frames of reference. Two third parties mentioned general concerns relating to increased consolidation in the market as a whole, as noted in paragraph 72 above. These concerns have been properly considered in assessing the competitive impact of the Merger in relation to overlapping products.

### *Single feed*

#### *Shares of Supply*

75. The Parties estimated their combined market share for single feeds to be [20–30]%, with an increment of [0–5]%.
76. The data submitted by the Parties was based on their estimates of the specific volumes sold by major competitors in the industry. The market size estimate does not include estimates of volumes sold by smaller competitors. The Parties note that there was no public independent information available in relation to volumes in this candidate frame of reference because of the opacity of sources of supply.<sup>45</sup>
77. The CMA notes that the Parties' combined share of supply is relatively low. Furthermore, the CMA has not received any material concerns in relation to single feed products. The CMA also received evidence from the Parties and third parties confirming the existence of effective competitors such as AB Agri,

<sup>45</sup> For example, the Parties noted that volumes of co-products, which are often the waste products from manufacturing processes, are particularly difficult to estimate given the reluctance of the manufacturing companies to publicise how much waste they generate.

Carrs Billington Agriculture, Cressy's Grains, Mole Valley Farmers, NWF Agriculture, SugaRich and Wynnstay which will constrain the merged entity in relation to the resale of single feed.

### *Conclusion on horizontal unilateral effects*

78. As set out above, the CMA considers that the increments are not material, the Parties face constraints from other competitors in the different candidate frames of reference and third parties have not raised any material concerns. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of a substantial lessening of competition as a result of horizontal unilateral effects in relation to compound feeds for ruminant or monogastric animals (specifically pigs and poultry), blended feeds for ruminant and monogastric animals (specifically pigs and poultry) and single feeds.

### **Barriers to entry and expansion**

79. 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.<sup>46</sup>
80. However, the CMA has not had to conclude on barriers to entry or expansion as the Merger does not give rise to competition concerns on any basis.

### **Third party views**

81. The CMA contacted customers and competitors of the Parties as well as animal feed consultants. Some third parties raised concerns regarding the merger, such as one customer raised a concern that mergers, such as this one, will reduce farmer choice and are detrimental to smaller customers (in regards to single feed, compound feed or both) and two animal feed competitors raised concerns about consolidation in the market and a competitor (in regards to forage grass and maize seeds) indicated that mergers are not necessarily good for farmers. No other third parties raised concerns about the Merger.
82. Third party comments have been taken into account where appropriate in the competitive assessment above.

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<sup>46</sup> [Merger Assessment Guidelines](#), from paragraph 5.8.1.

## Decision

83. 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.

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

**Nelson Jung**

**Director, Mergers Group**

**Competition and Markets Authority**

**13 April 2015**

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<sup>i</sup> **End note:** Data in Table 1 and Table 2 are combined figures for both blended and compound feeds. The other reasons stated in the decision for excluding a realistic prospect of an SLC are unaffected by this correction, as are the overall findings of the CMA in this case.