
Anticipated acquisition by Cranswick Country Foods plc of the pork processing business of Bowes of Norfolk Limited

CR/29/09

The OFT's decision on reference under section 33(1) given on 9 June 2009. Full text of decision published 22 June 2009

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

PARTIES

1. **Cranswick** supplies a range of fresh pork, gourmet sausages, premium cooked meats, traditional dry cured bacon, charcuterie and sandwiches to its customers from a number of production facilities in the UK. Cranswick Country Foods (CCF) is responsible for the fresh and processed pork operations of the Cranswick group.
2. **Bowes** is a third generation family-owned business based in Watton, Norfolk. Bowes produces in the region of [] pigs a week on its own farms for use in its own primary pork processing business, which supplies fresh pork to the food industry and to large food retailers (primarily []). It purchases in the region of a further [] pigs a week, also for primary processing. As with Cranswick, any prime meat not used in its own operations is sold to secondary pork processors for the production of sausages, etc. Bowes' total turnover in the financial year to 29 March 2008 was [].

TRANSACTION

3. On 3 April 2009, Cranswick plc, through CCF, entered into sale and purchase agreements by which Cranswick agreed to purchase the whole of the issued share capital of Bowes.
4. Cranswick will only be acquiring Bowes' pork processing division and, so, immediately prior to completion of the acquisition the arable farming and

pig rearing divisions will be sold off to companies owned by certain Bowes family members.

5. The OFT accepted the parties' submission on 7 April 2009 and the administrative deadline is 9 June 2009.

JURISDICTION

6. The OFT believes that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation. As a result of this transaction, Cranswick and the Bowes pork processing business will cease to be distinct.
7. The UK turnover of the business being acquired in the year to 29 March 2008, the last year for which audited accounts are available, was £[], which exceeds the £70 million UK turnover threshold set out in section 23(1)(b) of the Enterprise Act 2002.

MARKET DEFINITION

8. The parties overlap in the purchase of live pigs for slaughter, the supply of fresh pork for consumption and the supply of pig meat for further processing.

Product scope

9. In Danish Crown/Flagship Foods ('Flagship Foods')¹ the European Commission ('EC') found that separate product markets exist for the supply of pig meat for further processing and the supply of processed pork products including a number of sub-markets. In Tulip/George Adams,² which also analysed the market for the supply of fresh pork, the OFT also considered there to be a distinction between the supply of fresh pig meat for consumption and the supply of pig meat for further processing, without however concluding on the precise scope of the relevant market.
10. Further to the above, the parties submitted that the merger should be assessed according to the following product markets:
 - a) the supply of fresh pork for consumption (the 'fresh pork market'), and
 - b) the supply of pig meat for further processing (the 'secondary market').

¹ M.3401

² Anticipated acquisition by Tulip Limited of George Adams & Sons Limited and George Adams & Sons (Holdings) Limited, Decision of 6 December 2007

11. In addition, the parties submitted that they overlap in the market for the purchase of live pigs for slaughter, which has not been examined by previous EC or OFT cases.

Market for the purchase of live pigs for slaughter

12. The OFT considered whether there is a distinct market for the purchase of live pigs for slaughter or whether there is a wider market for the purchase of live animals for slaughter. The OFT's market investigation revealed that pig farmers supplying the merging parties would not switch to rearing other live animals for slaughter following a small but significant non-transitory reduction in price offered for live pigs. In addition, no comments were made during the OFT's market investigation to suggest that a narrower segmentation of the market was warranted.
13. Given a lack of evidence to suggest a wider market definition, the OFT has analysed the merger on the basis that the relevant frame of reference is that for the purchase of live pigs for slaughter. However, there has been no need to conclude on the scope of the relevant market given the lack of competition concerns in respect of this segment.

Supply of fresh pork for consumption

14. In Tulip/George Adams the OFT considered whether, in general, other meats are effective substitutes for pig meat. In that case, the OFT relied on evidence from the EC's market investigation in the Flagships Foods which led it to conclude that there is a separate market for pig meat.
15. The parties in this case have not suggested that there is substitution between pig meat and other types of meat (either from the demand or from the supply side) and this was broadly consistent with the OFT's market investigation.

Distinction between retail and catering channels

16. In Tulip/George Adams, the OFT also considered whether there were separate markets for the retail and catering channels (although it did not find it necessary to conclude on this issue).
17. Third party responses with respect to the distinction between the supply to retail and catering channels were mixed. Some third parties indicated that abattoirs will seek to maximise the value of the total carcass and that the same inputs are provided to both which would point to a single market for the supply of fresh pork for consumption. Others pointed out that the distinct supply chains to both channels and the different size of cuts would point to a distinct market.

18. The OFT's market investigation has not indicated that the transaction would create any competition concerns in either the retail or the catering channel. As the competitive assessment in this case does not change should a distinction be drawn between retail and catering channels, the OFT has not found it necessary to draw a distinction in this case.

Conclusion

19. Based on the evidence, the OFT has, on a conservative basis, taken the appropriate frame of reference to be the supply of fresh pork for consumption without drawing definite conclusions as to whether there is a distinction between the supply of fresh pork to the retail and catering channels.

Supply of pig meat for further processing

20. Pig meat sold for further processing is used to produce processed pork products such as bacon and sausages. The EC in Flagship Foods defined the market as pig meat for further processing. The conclusion that the product market did not include other meats was based on consumer preferences for specific types of meat, and also empirical evidence showing that customers were unlikely to switch between different types of meat. This was confirmed by the OFT in Tulip/George Adams.
21. In this case, third parties agreed that the relevant frame of reference should be the supply of pig meat for further processing. The OFT therefore sees no reason to depart from previous EC and OFT decisional practice.

Production of processed pork products

22. The parties do not overlap in the production of processed pork products, as it is only Cranswick that is active in the production of processed pork products. However, as this is an activity that is downstream to the market for supply of pig meat for further processing, the OFT has also considered its scope.
23. While it is possible that a further segmentation by pork products may be appropriate (as concluded by the EC in Flagship Foods), the OFT does not consider that it is necessary in this case since (a) the input for all processed products is identical (namely fresh pork); and (b) the potential concerns the OFT is examining in this decision are of a vertical nature and relate to fresh pork as an input.

Geographic scope

Purchase of live pigs for slaughter

24. The parties submit that the appropriate geographic frame of reference for the purchase of live pigs for slaughter is Great Britain (that is, excluding Northern Ireland) as pigs are not generally imported or exported over sea for slaughter due to health and animal welfare concerns. However, pigs reared in Great Britain, although usually slaughtered locally, are also transported throughout Great Britain for slaughter. Therefore, the parties do not consider that this merger gives rise to local or regional issues.
25. The OFT's market investigation largely confirmed the parties' views on the geographic scope of the market. Third parties stated that pigs could be transported nationwide but that it was difficult to import live pigs from outside Great Britain. The British Pig Executive ('BPEX') also stated that virtually all live pig imports into the UK are imports of live pigs from the Irish Republic into Northern Ireland.
26. Based on the evidence, therefore, the OFT considers that the geographic market for the purchase of live pigs for slaughter is Great Britain.

Fresh pork for consumption

27. The parties submitted that the geographic frame of reference for fresh pork for consumption is larger than national and probably European-wide. Although live pigs are not imported, a significant proportion of fresh pork for consumption is imported into the UK and competes with the domestic production. The parties also provided figures from DEFRA, estimating that imports in 2007 represented 46 per cent of domestic pork consumption compared to 15 per cent in 1997.
28. Against this, supermarkets emphasised their 'Buy British' policy according to which they would seek to sell fresh British pork and the OFT notes that there have, recently, been numerous campaigns emphasising this. The OFT notes that it is not clear that the import figures quoted by the parties necessarily relate to fresh pork which is used for consumption and it is possible that this pork is largely used for further processing or indeed relates to processed pork products. In addition, British pork is more expensive due to the higher welfare standards for pig rearing in the UK.
29. Although the OFT considers that imports could impose a constraint on the prices of fresh pork for consumption, it will, on a conservative basis analyse the competitive effects of the merger on the basis of a national market. The OFT does not, however, need to conclude on the exact scope of the geographic market as no competition concerns arise on this basis.

Pig meat for further processing and production of processed pork products

30. As noted above, the parties believe the geographic frame of reference for pig meat for further processing to be larger than national and probably European-wide.
31. In Tulip/George Adams, there was strong evidence to suggest that the markets in this instance were wider than the UK. However, as above, the emphasis by third parties of the need to 'Buy British', alongside the higher prices of British pork have led the OFT, on a conservative view, to analyse the transaction on the basis that the geographic market for pig meat for further processing and the production of processed pork products is national.

HORIZONTAL ISSUES

Unilateral effects

Purchase of live pigs for slaughter

32. In Table 1 below, the market shares of the parties are shown for both the slaughter and purchase of live pigs for slaughter:

Table 1: Slaughter of live pigs and purchase of live pigs for slaughter in Great Britain (2007/8) – Shares of supply

Competitor	Slaughter of pigs		Purchase of live pigs	
	Pigs per week	Share of supply (%)	Pigs per week	Share of supply (%)
Cranswick	[]	[]	[]	[]
Bowes	[]	[]	[]	[]
Combined	[]	[]	[]	[]
Tulip	[]	[]	[]	[]
Woodhead ³	[]	[]	[]	[]
FA Gill	[]	[]	[]	[]
			[]	
Other	[]	[]	[]	[]
Total	[]		[]	

Source:[OFT's market investigation]

33. In respect of the purchase of live pigs for slaughter, the parties have a combined share of [15-25] per cent with an increment of [0-10] per cent. If the pigs that are currently self-supplied to Bowes are included in the above

³ This was a mothballed abattoir acquired by Morrisons in 2007.

figures (given that post-merger, these pigs would now also be purchased) the relevant combined markets shares would be [15-25] per cent (increment of [0-10] per cent) for slaughter of pigs and [15-25] per cent (increment of [0-10] per cent) for purchase of live pigs for slaughter.

34. One third party [] raised some concerns that the merger will reduce the effective competitors for the purchase of live pigs from five to four (Cranswick, Bowes, Tulip, Vion and Woodheads). This particular customer currently sells [] per cent of its pigs to the parties []. No other suppliers raised any concerns in respect of the merger and stated the following reasons as to why they do not see the merger as impacting negatively on their interests:
- Vion and Tulip are Cranswick's largest competitors but there are also numerous other small abattoirs to which they could sell their pigs
 - their negotiating strength would not be impacted by the merger
 - there are minimal switching costs involved in switching abattoirs, and
 - they consider that if the merged entity tried to push through a small but significant non-transitory reduction in price they could easily switch to other customers.
35. In conclusion, the OFT notes that the combined market share of the parties for the purchase of live pigs for slaughter (taking the most conservative basis) is [15-25] per cent with an increment of [0-10] per cent. This is below a level where the parties would normally be expected to have unilateral buyer power post merger and this is indeed confirmed by the results of the OFT's market investigation.

Ability to manipulate the Deadweight Average Pig Price (DAPP)

36. The DAPP was developed by the Meat and Livestock Commission and BPEX, in order to give a fuller reflection of the different contracts now within the pig marketplace. The pig price reporting sample is used as the basis for the weekly DAPP and the weekly EU reference price report to the EC. However, Tulip withdrew from the BPEX voluntary pig price reporting sample, which is used to calculate average deadweight pig prices, in February 2009. The remaining sample only accounts for only approximately [] per cent of all pigs slaughtered in Great Britain each week and is based on contributions from Bowes, Cranswick, Morrisons (Woodheads), Vion and Whitely Bay Meat Supply Co.
37. [] submitted to the OFT that the merged entity may be able manipulate the DAPP (and therefore market prices) in future given its strong market position and the fact that DAPP is not based on information from all

suppliers. [] uses the DAPP in their negotiations with suppliers and was therefore concerned about any potential scope which the merger may create to allow the DAPP to be manipulated.

38. In this respect, however, the OFT notes the following:

- the usefulness of DAPP as a benchmark will have been compromised much more by Tulip's withdrawal rather than by the proposed merger
- even if Tulip's data was removed from the market shares of pigs slaughtered weekly, the parties' combined market share would be [15-25] per cent with an increment of [0-10] per cent which hardly indicates any increased ability to manipulate the DAPP
- it is not clear to the OFT how the parties could manipulate DAPP other than through partial withdrawal
- no other retailers have raised this issue, and
- the OFT does not see why [] could not use alternative methods of pricing if it considers DAPP to be prejudicial to its interests.

39. In light of the above, the OFT does not, therefore, consider that the merger will impact on the ability of retailers to obtain competitive prices for their pork supplies.

Supply of fresh pork for consumption

40. As discussed above in the product frame of reference, the supply of fresh pork for consumption is to both retailers and caterers. Table 2 below, gives estimates of the market shares for both groups of customers and for all customers:

Table 2: Supply in the UK of fresh pork for consumption in 2007

	Retail		Catering/ Food Services		Total			
	Value		Value		Volume		Value	
Supplier	£m	Share (per cent)	£m	Share (per cent)	Tonnes (000's)	Share (per cent)	£m	Share (per cent)
Cranswick	[]	[]	[]	[]	[]	[]	[]	[]
Bowes	[]	[]	[]	[]	[]	[]	[]	[]
Combined	[]	[]	[]	[]	[]	[]	[]	[]
Tulip	n/a	n/a	n/a	n/a	[]	[]	[]	[]
Woodheads	n/a	n/a	n/a	n/a	[]	[]	[]	[]
Vion	n/a	n/a	n/a	n/a	[]	[]	[]	[]
Kerry Foods	n/a	n/a	n/a	n/a	[]	[]	[]	[]
Other	n/a	n/a	n/a	n/a	[]	[]	[]	[]
Total	[]		[]		[]		[]	

Source:

[OFT's market investigation]

41. As can be seen from Table 2 above, the combined market share of the parties for all channels by volume is [10-20] per cent and [10-20] per cent by value with an increment of [0-10] per cent by volume and [0-10] per cent by value. These market shares are consistent with the data available to the OFT in Tulip/George Adams where the parties' combined market shares by volume in 2007 was [10-20] per cent (and the increment on these market shares would have been [0-10] per cent). Bowes' market share appears to have risen slightly since the OFT's last decision but it is heavily reliant on sales to [], which accounts for almost [] per cent of Bowes' total sales of fresh pork by turnover.
42. If the market is further divided into the retail and catering channels, the shares of supply are [10-20] per cent ([0-10] per cent increment) and [0-10] per cent ([0-10] per cent) respectively which again are below the level which would cause concerns in respect of unilateral effects.
43. In addition to the small increment in market shares and the relatively low combined market shares of the parties, the OFT also notes the following factors which enable it to conclude that the merger will not result in a substantial lessening of competition in respect of the supply of fresh pork for consumption:
- no third parties have raised concerns regarding the supply of fresh pork, with the exception of [] which is discussed below

- Cranswick is considered to be a 'premium' fresh pork supplier whereas Bowes is a 'standard' fresh pork supplier (which is closer to Tulip's product). The parties are therefore not perceived to be each other's closest competitors in terms of product quality
- one third party ([]) was reluctant to supply from Bowes because of its reluctance to invest in the gas-stunning of pigs which further indicates some differentiation between Cranswick and Bowes
- one customer ([]) has indicated that the parties compete closely due to the fact that their abattoirs are in close proximity. However, no other customer raised the location of the abattoirs as a relevant consideration. In addition, given the dispersed location of locations to which fresh pork is transported (even for large retailers), the OFT does not consider that this is a relevant consideration, and
- the parties and some third parties have mentioned that Bowes' facilities are in need of investment so that its position as a competitive constraint on Cranswick is somewhat weak.

44. Given the parties' relatively low combined market shares, the small increment of [0-10] per cent in the market shares and the factors discussed in paragraph 43 above, the OFT does not consider that there is a realistic prospect of a substantial lessening of competition in the supply of fresh pork for consumption to any channel.

Pig meat for further processing

45. Table 3 below sets out the market shares of the parties for the supply of pig meat for further processing in the UK both in terms of value and volume. The table also includes separate market shares for the merchant market:

Table 3: Supply of pig meat for further processing in the UK (2007/8)

	Total		Supply to Third parties	
	Value		Value	
	£m	Share (per cent)	£m	Share (per cent)
Cranswick	[]	[]	[]	[]
Bowes	[]	[]	[]	[]
Combined	[]	[]	[]	[]
Tulip	[]	[]	[]	[]
Woodheads	[]	[]	[]	[]
Vion	[]	[]	[]	[]
		[]		[]
Other	[]	[]	[]	[]
Total	[]		[]	

Source: [OFT's market investigation]

46. According to the above, the parties' market share by value in the UK is [0-10] per cent with an increment of [0-10] per cent. The OFT notes that the parties have also provided an estimate for volume data according to which the combined market share would be [20-30] per cent with an increment of [0-10] per cent. The OFT observes that in this respect that (a) this is an estimate from the parties and may not be an accurate reflection of market shares; (b) according to the 2007 information available in Tulip/George Adams, the parties' combined market share by volume is [0-10] per cent with an increment of [0-10] per cent; and (c) the OFT has been unable to obtain estimates of or actual volume data for Vion that is one of the larger market participants. The OFT therefore considers that the value data is more accurate in this instance. It notes, however, that even if the volume data were to be taken into consideration, the OFT would not have prima facie concerns given the small increment in the market shares of the parties.
47. If only the merchant market supply is taken into account, the respective shares of supply by value would be [0-10] per cent with an increment of [0-10] per cent. The parties submit that if it would be more profitable for Cranswick to sell higher quantities to the open market, it would do so which would lead to both the merchant and third party supplies being included in the assessment. In addition, the parties submit that contrary to the supply of fresh pork for consumption, in the supply of pork for processing there is additional constraint from frozen pork (which is primarily imported) or fresh British pork which has been acquired in the past.

48. With respect to pig meat for further processing, two customers expressed some concern that there would only be limited providers remaining and were concerned by the effects this might have on the market, in the form of raised prices. In this respect, however, the OFT notes the following:
- the combined market shares of the party are low and the increment resulting as a result of the merger is very small
 - there are two significant other suppliers of fresh pork for processing in the UK, namely Tulip and Vion as well as Morrisons []
 - other customers have expressed no concerns in respect of the merger and indeed view it as a welcome development, and
 - customer responses indicate that imported pork can be a constraint in the event of an increase in prices. This is also supported by BPEX, that estimates that 61 per cent of all pork and pork products consumed in the UK are imported. The OFT considers that this supports the parties' argument that there is some constraint from imports.
49. In light of the above, the OFT does not consider that the merger will result in a substantial lessening of competition in respect of the supply of fresh pork for processing.

Conclusions on unilateral effects

50. Overall, the available evidence suggests that given the small increment to Cranswick's market share, there is no realistic prospect of a substantial lessening of competition in respect of the purchase of pigs for slaughter, the supply of fresh pork for consumption or the supply of pig meat for further processing.

Coordinated effects

51. The OFT considers that there are three conditions that must be met for a merger to create or strengthen coordinated effects: (i) firms need to be able to reach and monitor the terms of coordination; (ii) coordination must be internally sustainable; and (iii) coordination must be externally sustainable. Further, for coordinated behaviour to take place as a result of a merger, the merger must strengthen pre-existing coordination or make coordination more likely.

Reaching and monitoring the terms of coordination

52. For coordinated behaviour to take place there needs to be a high degree of transparency in the market. Some characteristics of the markets analysed above, such as the relatively limited number of main suppliers in these

markets and the homogeneity of the product supplied, could indicate that the market is susceptible to co-ordination. In terms of pricing, however, while prices appear to be related to DAPP both in relation to the purchase of pigs for slaughter and the sale of fresh pork for consumption, there is some direct negotiation in respect of spot prices which can make achieving coordination more difficult. In the secondary market also, there are no written contracts and negotiations are conducted on a weekly or monthly basis.

Internal sustainability

53. For coordinated behaviour to persist, firms must have sufficient incentives not to deviate from the coordinated outcome. Symmetry of market shares can assist internal stability. While the transaction may result in more symmetric shares in all affected markets, in that it strengthens Cranswick's position vis-à-vis Tulip and Vion, it is clear both from the parties' submissions and from the OFT's market investigation that Tulip and Vion are considered by far the strongest players.

External sustainability

54. For coordinated behaviour to take place there must be insufficient constraints to prevent it. Principal amongst these are barriers to entry and buyer power. As discussed below in paragraphs 74 to 79, where barriers to entry and buyer power are discussed in more detail, the OFT considers that the entry by Morrisons in the supply of fresh pork (for consumption and processing) through Woodheads, a mothballed abattoir, indicates that barriers to entry are low. In addition, given that the ultimate customers of fresh pork suppliers are supermarkets, the OFT considers that buyer power would be sufficient to prevent co-ordination in these markets. Morrisons' entry in the upstream market is an indication of how buyer power can actually be exercised in this context – supermarkets can threaten to self-supply by integrating upwards, this threat becoming all the more credible through Morrisons' recent entry.

Effect of the merger

55. The OFT has received no evidence of pre-existing coordination in the purchase of live pigs for slaughter, the supply of fresh pork for consumption or the supply of pig meat for further processing. The OFT's market investigation has also not revealed any concerns in relation to the creation of coordinated effects.

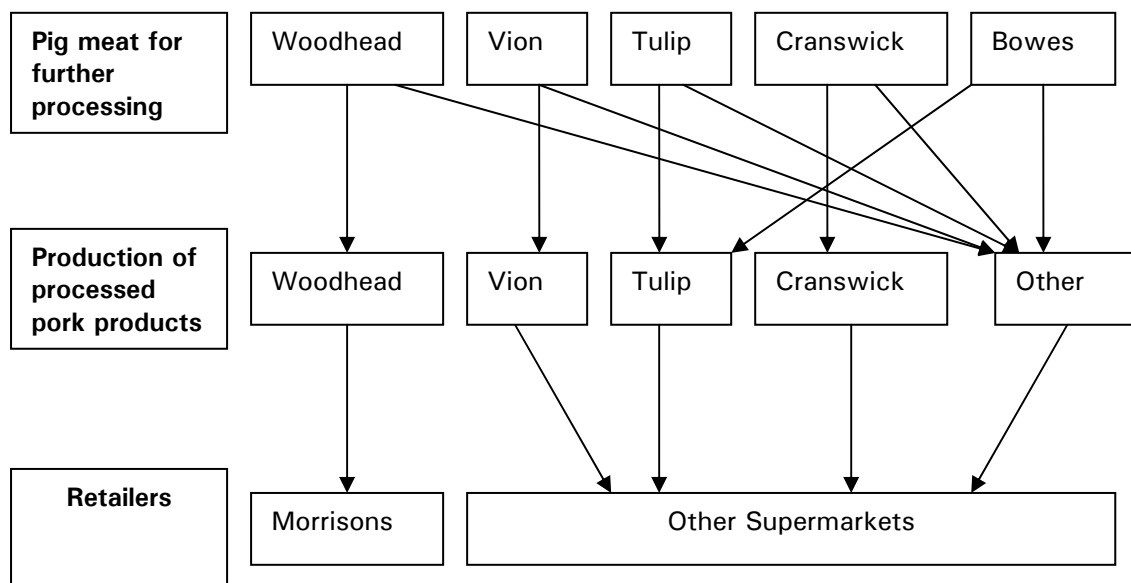
Conclusion on coordinated effects

56. Based on the above, the OFT does not consider that the merger would increase the likelihood of coordination in respect of the purchase of pigs for slaughter, the supply of pork for consumption and the supply of pork for processing.

VERTICAL ISSUES

57. Figure 4 below shows the current interdependencies in the supply of fresh pork. Apart from Bowes, all the other suppliers of pig meat for further processing are vertically integrated and produce processed pork products. Tulip and Vion especially are significant competitors in these markets. All fresh pork suppliers also supply other competitors in this sector. At the final stage of the supply chain, integrated pork processors sell to supermarkets downstream (with the exception of Morrisons that obtains its processed pork products from its upstream integrated arm, Woodheads).

Figure 4: Supply chain of processed pork products to retailers



Input foreclosure

58. Input foreclosure arises when the merged firm with market power raises the costs of its non-vertically-integrated downstream rivals by restricting their access to an important input (total foreclosure), or by increasing the cost to them of that input (partial foreclosure). An 'important' input is one that, if foreclosed, would adversely affect the competitiveness of the merged firm's rivals in the downstream market. Input foreclosure is therefore only anticompetitive if it adversely affects competition in the downstream market as a whole, rather than merely adversely affecting one or a few downstream competitors of the merged firm.

59. In assessing the likelihood of input foreclosure, the OFT looks at the merged firm's ability to foreclose access to inputs, the merged firm's incentive to do so, and whether a foreclosure strategy would have a significant detrimental effect on competition downstream.
60. One [third party] was concerned that the parties could, following the merger, stop supplying [] British pork [] downstream. The incentive for the merged entity to do this would be to strengthen Cranswick's position in the downstream pork processing segment []. [] also voiced this concern to the OFT. The OFT has therefore examined the merged entity's ability and incentive to foreclose access to pork for further processing.

Ability to foreclose access to pig meat for further processing

61. Anticompetitive input foreclosure will generally be more likely where the merged firm has significant market power and where it concerns an important input for processed pork products. Pig meat is the main input for processed pork products and is the most costly input into the process.
62. From Table 3 above, however, it is evident that the parties' combined market share for pig meat for further processing sold to third parties will be [0-10] per cent with an increment of [0-10] per cent. [] submitted that [].
63. The OFT's view is, however, that the low market shares of the parties and the low increment would not give the parties the ability to foreclose their competitors downstream. For completeness, however, the OFT also considers whether the parties would have the incentive to foreclose their competitors downstream.

Incentive to foreclose

64. The merged firm's incentive to engage in input foreclosure depends on whether input foreclosure is profitable. Overall, this would depend on the trade off between the profit lost by the merged firm in sale of pig meat (because it sells less to its downstream rivals) and the profit gained by the merged firm in sale of processed pork products, because business diverts to the merged firm from the rivals whose costs it has raised (and who have raised their processed pork product's prices or exited the market).
65. In particular, this trade-off will in general depend on (i) the merged firm's profit margins on pig meat for further procession; (ii) the merged firm's profit margins on processed pork products; (iii) the extent to which processed pork product competitors of the merged firm increase their prices or otherwise worsen their competitive offers in response to the merged firm's input foreclosure; and (iv) the volume of business that consequently diverts from the downstream competitors to the merged firm.

66. Currently, Cranswick sells £[] worth of pig meat to other processors despite having its own processing facilities. The parties submit that currently, if Cranswick can make more sales to the open market, it will do so and buy in cheaper pork from the market for its processed pork business. This benefits the primary processor selling at a better price, the secondary business purchasing at a cheaper price and the management teams of both businesses who are incentivised to maximise their net profit.
67. While the parties have not provided margin data, they have provided information in respect of the relative value of the business at the different levels of supply. In particular, the parties submit that it would be impossible for Cranswick's secondary processing business to absorb the additional £[] million worth of pig meat inputs sold by Cranswick in the secondary market, let alone the additional £[] million worth of fresh pork currently supplied by Bowes. Finally, the parties submit that Cranswick's current processing facilities for sausages and cooked meats are running close to capacity, although they did concede that there is some spare capacity for bacon.
68. It seems reasonable to assume that without expansion of their current secondary processing facilities, the parties' incentive to foreclose downstream competitors is limited, especially since they already supply third parties £[] million worth of pig meat, pre-merger. In this respect, the OFT notes the following:
- the parties submit that they would not be building secondary processing facilities on the Bowes site due to both the lack of space, and due to the lack of knowledge of this sector by Bowes staff
 - the parties also submit that Cranswick has not considered building secondary processing facilities in Watton, and
 - in its response to the OFT Tulip also confirmed that expanding processing capacity to a significant extent is very costly.
69. In addition, the OFT considers the following factors as relevant indicators of the merged entity's lack of incentive to foreclose downstream competitors:
- Cranswick's rationale for the transaction (as evidenced by internal documents) is also not consistent with the merged entity foreclosing downstream competitors,⁴ and

⁴ Cranswick Board Papers, 2 February 2009 state that '[]'

- no customers other than [] have raised a concern in respect of vertical foreclosure by the parties.

70. Given the above, therefore, the OFT does not consider that there is any incentive for the merged entity to foreclose competitors in the downstream market.

Effect of input foreclosure

71. As the OFT has found that there is no ability or incentive on behalf of the merged entity to foreclose its downstream competitors, it does not need to conclude on the absence of anticompetitive effect. The OFT notes, however, that the final point of sale of processed pork products is to supermarkets that have (with the exception of []) indicated that they have no concerns in respect of this merger.

72. Given the strong position of supermarkets in the retail chain (as discussed below) the OFT considers that the merged entity could not (even if they were able and willing to foreclose downstream competitors) impose price increases on supermarkets and, by implication, to consumers.

Conclusion on input foreclosure

73. On the balance of evidence before it, the OFT considers that there is no realistic prospect that the merged firm will have the ability to foreclose downstream pork processing competitors.

BARRIERS TO ENTRY AND EXPANSION

74. Entry or expansion in the markets affected by the merger relates to entering abattoir operations or expanding abattoir capacity so as to purchase pigs for slaughter and supply pork in the primary and secondary markets. The OFT also notes that abattoir capacity expansion does, to some extent, relate to the availability of pigs for slaughter and notes that Danish Crown, Tulip's parent company, announced on 2 May 2009 that it will be expanding its UK pig production by 25 per cent.⁵

75. [] In 2007, Morrisons, via its subsidiary Woodhead, purchased a mothballed abattoir in Spalding and now supplies both fresh pork for consumption and pig meat for processing to Morrisons supermarkets. The parties and competitors thought that this is a possible form of entry.

76. The OFT considers, in light of recent evidence of entry, that it is possible for supermarkets to integrate upwards, even if this would be less likely to happen from independent entrants. Since the OFT has concluded that there

⁵ <http://www.thegrocer.co.uk/articles.aspx?page=articles&ID=199558>

is no reasonable prospect of a substantial lessening of competition, however, it is not necessary for it to conclude on the prospects for entry or expansion in this case.

BUYER POWER

77. The parties submit that purchasers, particularly supermarkets and major food industry caterers, are all sophisticated buyers exercising significant countervailing buyer power. None is locked in to long-term supply deals so each can switch supplier with ease. In addition, purchasers dual and triple source and already regularly switch supplier.
78. In addition, the parties submit that fresh pork suppliers are aware that it is always open to the supermarkets to self-supply their pre-packaged fresh pork requirements, while contracting out the actual slaughter. The OFT considers that example of Morrisons integrating upwards provides evidence of this already having occurred and provides more force to the parties' argument.
79. However, the OFT does not need to conclude on whether buyer power exists in this case as it has not found a realistic prospect of a substantial lessening of competition arising in this case.

THIRD PARTY VIEWS

80. Third party comments have been discussed above, where relevant.
81. In general, third parties were positive towards the merger, stating that it would create a better competitor to Tulip and Vion, or they did not believe it would have a negative impact on them.
82. Concerns were raised in respect of the merger by [], [] and []. Generally, third parties were concerned that the merger would reduce the suppliers of British pork and could potentially result in total or partial foreclosure of competitors in the downstream market.
83. [].
84. In addition, [] argued that the merged entity may be able manipulate the DAPP in future.

ASSESSMENT

85. The parties overlap in the supply of live pigs for slaughter, the supply of fresh pork for consumption and the supply of pig meat for further

processing. The geographic frame of reference for the former is Great Britain, while the OFT has assessed the latter two markets, on a conservative basis, on a national market assumption.

86. In the purchase of live pigs for slaughter, the merger will increase the parties' market share to [10-20] per cent with an increment of [0-10] per cent. In the supply of fresh pork for consumption, the merger will increase the parties' market share by volume to [10-20] per cent with an increment of [0-10] per cent. In the supply of pig meat for further processing the merger will increase the market share of the parties to [0-10] per cent with the increment of [0-10] per cent. The levels of market shares and the small increments are not normally at levels that would cause the OFT to be concerned. In addition, there remain two strong competitors in fresh pork supply following the merger and there are also a number of additional smaller competitors that are active in the supply of fresh pork.
87. There have been some concerns in relation to the parties' ability and incentive to foreclose competitors in the downstream market. As discussed above, the parties' ability to foreclose in this market would be limited by its low upstream market power which would not enable it to partially or totally foreclose competitors. In addition, given that [a significant proportion] of Cranswick's sales are currently to its downstream competitors it is not likely that it will have the incentive to foreclose a downstream competitor, especially given the difficulties in expanding its capacity.
88. Consequently, the OFT 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.

DECISION

89. This merger will therefore **not be referred** to the Competition Commission under section 33(1) of the Act.

ENDNOTES

90. Subsequently to the OFT's decision, the parties have noted, in relation to Figure 4 above, that Morrisons is not supplied exclusively by Woodhead. The OFT has not received confirmation of this fact but notes that its assessment remains the same regardless of whether or not Morrisons is supplied by multiple pork processors.