

Completed acquisition by Genus plc of Local Breeders Limited

ME/3608/08

The OFT's decision on reference under section 33(1) given on 14 May 2008. Full text of decision published on 28 May 2008.

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

PARTIES

1. **Genus plc** (Genus) is active in the supply to farmers of products and services used in animal, principally bovine, genetics. It operates in three main areas (1) the production of bovine semen from its own stud bulls; (2) the distribution of bovine semen worldwide; and (3) the provision within the UK of artificial insemination (AI) services on cattle. In the financial year ending 31 June 2007, Genus' reported worldwide turnover was £234 million.
2. **Local Breeders Ltd** (LB) was a distributor of bovine semen and a supplier of AI services on cattle in a specific regional area in the UK comprising the South West of Wales (Dyfed). Prior to its acquisition by Genus, LB sourced its supplies of bovine semen primarily from one of Genus' competitors, Alta Limited (Alta). In the calendar year ending 31 December 2006, LB's turnover was £650,000.

TRANSACTION

3. Genus (through its subsidiary, Genus Breeding Limited (GBL)) acquired the business and assets (including premises, employees and customer lists) of LB under a Business Transfer Agreement that was both executed and completed on 10 August 2007. The parties to the agreement were GBL, LB and LB's sole shareholder, Mr Mervyn James. The consideration paid by GBL for the acquisition was £355,000.

4. On 22 August 2007, an article on the merger was published in the Western Telegraph newspaper, a paid-for newspaper distributed in Pembrokeshire, South Ceredigion and West Carmarthenshire. On 4 September 2007, LB wrote to its 667 customers to inform them of the recent merger. There is no evidence that the merger was reported in any publication other than the Western Telegraph newspaper or that mention was made of the acquisition on Genus' corporate website.¹
5. On 22 November 2007, the OFT was made aware of the merger by a third party. The OFT subsequently wrote to Genus requesting details of the merger on 29 November 2007.
6. Genus argued to the OFT that notice of material facts about the merger had been made public, within the meaning of section 24 of the Enterprise Act 2002 (the Act), by, at the latest, 4 September 2007 (the date of LB's letter to its customers). As a result, Genus considered that the merger had ceased to be a relevant merger situation capable of being referred to the Competition Commission (the CC), and by extension reviewed by the OFT, by 4 January 2008.
7. Notwithstanding its view on the application of section 24 of the Act, Genus ultimately agreed to assist the OFT with its substantive assessment of the impact of the merger, whilst maintaining its position that the OFT no longer had jurisdiction to review the merger.
8. Under section 22(1) of the Act, the OFT is under a duty to make a reference in completed mergers where it believes that 'it is or may be the case that a relevant merger situation has been created and the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition ...'. In making a decision on reference, the OFT's assessment therefore includes deciding whether it is or may be the case that 'two or more enterprises have ceased to be distinct enterprises at a time or in circumstances falling within section 24' (section 23(2)(a)). The statutory context of the Act means that, in the very rare cases where there is genuine uncertainty on the existence of a relevant merger situation, this question is one for resolution by the CC on the basis of a detailed investigation where the duty to refer is met.

¹ See <http://www.genusplc.com/>.

9. The OFT believes in this case that it is or may be the case that a relevant merger situation has been created for the purposes of the four month time limit imposed by section 24 of the Act. The OFT considers that the publication of the article in the regional Western Telegraph newspaper and the letter to LB's own customers were, either individually or collectively, insufficient for material facts about the merger to have been made public (that is, 'so publicised as to be generally known or readily ascertainable'²) by 4 September 2007. In making this assessment, the OFT considers that:

- the definition of 'made public' in the Act is to be assessed from the perspective of the OFT, acting reasonably and diligently in the context of its duties under the Act³
- given the regional nature of its circulation, it cannot be said that publication of outline details of the merger in the Western Telegraph was sufficient for the merger to have been 'so publicised as to be generally known or readily ascertainable'; in addition, the OFT considers it was unclear from the article whether the merger was anticipated or completed with the result that it did not include all material facts,⁴ and
- the fact that a target company's customers have been informed about a merger is, whilst potentially of relevance to the assessment of substantive concerns, insufficient for the merger to be necessarily regarded as having been 'so publicised as to be generally known or readily ascertainable'.

10. By way of guidance, the OFT considers that material facts (which include whether the merger had actually completed) would have been made public for the purposes of section 24 of the Act where those facts had been publicised in the national or relevant trade press and where the acquiring party had itself taken steps to publicise the transaction at large, normally by

² Section 24(3) of the Act.

³ Section 5 of the Act describes positive functions for the OFT in relation to the acquisition of information. See also Enterprise Act 2002 Explanatory Notes to section 24, which state, inter alia, 'the section defines the term 'made public' as having the meaning of 'generally known or readily ascertainable'. The intention is that OFT would reasonably be expected to have known or found out about the merger if it has not been notified about it.'

⁴ See in this respect the CC's interpretation of 'material facts' in Icopal Holding A/S and Icopal a/s: A report on the merger situation (2001) Cm5089 and Archant Limited and the London newspapers of Independent News and Media Limited: A report on the acquisition by Archant Limited of the London newspapers of Independent News and Media Limited (2004).

publishing and prominently displaying on its own website a press release about the transaction.

11. On the basis of the considerations outlined above, the OFT considers that, for the purposes of section 24 of the Act, the merger had not been made public until receipt by the OFT of information from a third party on 22 November 2007. For this reason, the OFT considers that the statutory deadline, as extended under section 25(2) of the Act, expires on 14 May 2008.

JURISDICTION

12. As a result of this transaction, Genus and LB have ceased to be distinct. The share of supply test in section 23 of the Act is met on the basis of the parties' overlap in the supply of professional AI services on cattle in South West Wales (Dyfed) for which they will have a combined share of supply in excess of 25 per cent. The OFT therefore believes that it is or may be the case that a relevant merger situation has been created.

MARKET DEFINITION

13. The parties overlap in (1) the distribution of bovine semen and (2) the supply of professional AI services on cattle within the UK.⁵

Distribution of bovine semen

Product scope

14. Bovine semen is collected for retail sale from bulls with a proven track record of consistently siring offspring with genetic, physical and biological traits that are commercially advantageous to farmers. After collection, the semen is treated, diluted, frozen and then packed for distribution and retail in plastic straws and stored in flasks containing liquid nitrogen. On thawing, one straw is used to inseminate one cow at the optimum point during the cow's oestrus cycle. More than one straw may be required to result in the cow becoming pregnant.

⁵ Given that LB is not active in relation to the production of bovine semen, the merger has no impact at this level of the supply chain.

15. There are two specific types of bovine semen used for AI. One type (dairy semen) is used to impregnate dairy cattle. The other is used to sire beef cattle (beef semen).
16. The parties submit that the prices of the beef semen they distribute are constrained by their farmer customers' ability to switch from artificial to natural insemination (i.e. for a farmer to have his cows serviced by one or more farm yard bulls). The OFT understands that, in practice, as many as 97 per cent of cows used for the generation of beef cattle in the UK are serviced naturally by one or more bulls kept by the farmer for breeding purposes. This strongly suggests that natural insemination is a pricing constraint on beef semen.
17. Farmers' ability to switch to natural insemination in the case of beef semen also acts as a strong constraint on the supply of AI services for beef semen. To the extent that the combined price of beef semen and related AI services rise, a material proportion of farmers will switch to natural insemination. The OFT therefore considers that prices (and non-price factors such as service quality) in the market for the supply of beef semen and the supply of AI using beef semen will remain heavily constrained by farmers' continuing incentives to opt for natural service from the farm bull. In the absence of any competition concerns, this aspect of the merger is not considered any further in this analysis.
18. However, dairy semen from proven bulls retails on the basis of any particular bull's track record in consistently siring daughters with specific physical and genetic traits that are an advantage in dairy production. Such traits include udder capacity, teat length, teat alignment, longevity, milk yield and milk-fat content.
19. The available evidence indicates to the OFT that, to a dairy farmer, AI, relative to natural service by a bull, may be an attractive commercial proposition depending on cost and the farmer's prevailing business priorities. Depending to some extent on the price⁶ paid per straw of bovine semen, AI affords the farmer a probability factor - whenever a particular cow in his herd comes into oestrus – of successfully garnering from a global genetic

⁶ Retail prices that are either listed, or proposed to and finally accepted by the farmer, are not only on the basis of an understanding of the likelihood of success of the required genetics being bred into his dairy cows, but also of the likelihood of obtaining female offspring from the AI operation.

pool, specific genetics from one or more bulls statistically capable of passing on various genetic specifications the farmer wishes to have bred into a particular daughter calf from a particular mother cow.

20. In light of the above, in particular the possibility that natural insemination may not impose sufficient pricing constraint on dairy semen (particularly as compared to beef semen), the OFT has cautiously based its assessment on the impact of the merger on the distribution of dairy semen exclusively.

Geographic scope

21. In its assessment of a previous merger in this sector, Genus/Supersires⁷, the OFT considered that the geographic market for the distribution of bovine semen was at least national in scope. It was noted in the decision in that case that around 45 per cent of all bovine semen used for AI in the UK is imported and that the parties had estimated transport costs to be two per cent of the average retail price per straw.
22. Comment from third parties in this case suggested that, notwithstanding the high level of imports, farmers and smaller AI service providers are unable to source bovine semen direct from overseas suppliers and must purchase their supplies through import agents or distributors in the UK.
23. Furthermore, the shipment of bovine semen is subject to EC regulation. A farmer in the UK is prevented from importing semen directly from an overseas supplier unless he does so through an importing agent authorised by DEFRA⁸ or he obtains licensed authority from DEFRA himself.
24. For the purposes of this analysis, and consistent with its assessment in Genus/Supersires, the relevant frame of reference is the distribution of bovine semen for dairy cows in the UK.

Supply of professional AI services

Product scope

25. Cows may be artificially inseminated using straws of bovine semen collected from one or more stud bulls (which may be located anywhere in the world)

⁷ Anticipated acquisition by Genus plc of Supersires Limited - 8 July 2004

⁸ Department for Environment, Food and Rural Affairs.

that have been identified by the farmer as suitable sources of breeding genetics.

26. By one method, professional technicians visit farms and undertake the insemination service for the farmer (professional AI services). Alternatively, farmers may themselves perform insemination procedures on cows independently of a professional service provider – a process referred to in the industry as DIY.
27. A farmer generally arranges for the breeding females in his cattle herd to calve once a year. Cows each have their own individual 21 day fertility cycle that allows for a window of usually no more than 48 hours (sometimes significantly less) within which insemination is most likely to lead to pregnancy and beyond which the likelihood of success diminishes. If the farmer relies on professional AI service providers, he needs to schedule a prompt visit to the farm by an AI technician who ideally should undertake the insemination service on the cow either on the same day or shortly into the next.
28. Whilst noting the constraints posed by DIY (discussed further below), the OFT considers that it is appropriate to assess the impact of this merger cautiously on the supply of professional bovine AI services.

Geographic scope

29. After collection, bovine semen is treated, packaged in straws and preserved by freezing in flasks containing liquid nitrogen. Transportation and storage of the product in these controlled⁹ conditions are both important factors in the logistics of distributing bovine semen from the supplier ultimately to the farmer customer. Based on the evidence received, the OFT understands that a farmer who undertakes a substantial proportion of AI procedures on a DIY basis will find it cost-effective for his own stocks of bovine semen to be stored on the farm in a flask costing around £400. In other cases, the controlled storage facilities required for the stocks of semen – used when required for AI service provision as well as for DIY – are provided by third parties such as AI technicians.

⁹ Regulations currently applicable in Wales provide that supply and storage of the product is undertaken under licence from the Department of the Environment, Food and Rural Affairs (DEFRA).

30. Consistent with its reasoning in the Genus/Supersires case, the OFT considers that, in order to fulfil the requirement for prompt service, an AI technician must be based within a reasonable distance of a farm. Consequently, individual professional AI service providers serve only a relatively small area defined by a catchment of farms within an accessible radius, usually of their own home. Estimates provided by third parties indicated that the radius measures around 20 to 30 miles for smaller suppliers (those operating with only two or three technicians) and 50 miles for larger businesses with a greater number of technically qualified personnel.
31. For the purposes of this analysis, and consistent with its assessment in Genus/Supersires, the OFT considers that it is appropriate to assess the impact of this merger cautiously on the supply of professional bovine AI services at the local level.

HORIZONTAL ISSUES

Distribution of bovine semen for dairy cows

32. Genus is the largest distributor of bovine semen in the UK. By contrast, LB was a very small operator, distributing bovine semen in a small and localised area of the UK, the South West of Wales (Dyfed). Although the parties did not provide any market shares at the national level, on the basis of there being around 30 other professional AI providers operating in the UK, the OFT considers that LB's share of the distribution of bovine semen in the UK would not have represented a significant increment in market share to Genus. Consequently, the OFT considers that the merger would have had no significant impact on competition for the distribution of bovine semen for dairy cows in the UK, and this issue is not considered any further in the analysis.

Supply of professional AI services

33. The only region in which the parties overlap is in Dyfed. Genus submits that there is no detailed information available on the relative size of the market for the supply of AI services in this area. However, it estimates that there are some 150,000 dairy cows in the region, of whom around 37,500 (25 per cent) are artificially inseminated using professional services, 60,000 (40

per cent) are artificially inseminated on a DIY basis and 45,000 (35 per cent) are inseminated naturally by bulls.

34. On the basis that each cow requires on average 2.7 straws of semen in order to become pregnant by artificial insemination, Genus estimates that of the approximately 100,000 (i.e. 37,500 multiplied by 2.7) individual AI services undertaken in Dyfed by professional technicians over the previous year, Genus undertook 63,275 and Local Breeders carried out some 26,000, giving the combined firm (on a historic basis) a share of supply of approximately 90 per cent. These estimates of market share were supported by a third party. According to Genus, two sole traders, Peter Barco and Churchvale AI Services, between them accounted for the remaining 11,000 (approximately 10 per cent) inseminations undertaken in the region prior to the merger.
35. Clearly, on this *prima facie* basis, the merger combines the two largest AI providers in Dyed and raises unilateral effects concerns. Accordingly, the OFT has considered whether the prospects of entry and/or expansion are sufficient to provide a competitive constraint on the merged entity post-merger.

Barriers to entry and expansion

36. Genus argued that there is the potential for new entry for the supply of AI services due to barriers to entry and expansion being low. They pointed in particular to set up costs being low and the existence of a light regulatory regime (in terms of gaining a licence to provide these services).
37. The OFT accepted similar arguments in Genus/Supersires, and concluded that the evidence in that case (which related to a different region of the UK) pointed strongly towards new entry (or expansion) being a real continuing constraint on the merging parties.
38. In this case, Genus also points to evidence of actual and substantial entry. As of September 2007, there has been a new entrant into the AI market in Dyfed, Alta Cymru, a subsidiary of Alta in the UK and ultimately of Alta, Inc: a global supplier of bovine semen and operator in animal genetics. Prior to the merger, LB sourced its supplies of bovine semen primarily from Alta. Genus submits that, shortly before its acquisition of LB, a director of both LB and of Alta left LB to establish Alta Cymru as a competitor to Genus. On the

basis of the available evidence, the OFT believes that the entry of Alta Cymru into the market is causally linked to the merger (such that it would not have happened had the merger not gone ahead).

39. Despite having entered the market only recently (and hence not being reflected in the historic share of supply figures discussed in paragraph 34 above), evidence before the OFT indicates that Alta Cymru has already recruited at least five AI technicians (Genus submits that it understands that a sixth has recently been taken on¹⁰). By way of comparison on the basis of capacity, the OFT understands that LB had six technicians pre-merger, in other words Alta Cymru has become in a short period of time of similar or even equal size to LB. Alta Cymru informed the OFT that its current workforce of technicians was at full capacity, such that the business was, at least in terms of customer demand, well placed to expand further in the future.
40. Comment from a third party customer indicates that Alta Cymru is actively touting for business in Dyfed and, in the opinion of a representative of the National Farmers Union in Wales, competition conditions in the area are now perceived as being keener than those that prevailed prior to the merger. This is as a result of Alta Cymru's entry into the market (not least given that its parent company Alta, Inc is also active in the upstream production of bovine semen) and also having regard to the fact that LB had not been considered in a strong financial position for some time in the run-up to the acquisition.
41. The same NFU representative submitted that some of Alta Cymru's technicians are ex-employees of LB and that these technicians will have built up (as individuals) a considerable proportion of customer good-will. This, combined with the evidence from Alta Cymru that it is operating at full capacity is, in the view of OFT, an indication that at least some market share is already attributable to Alta although this is not yet quantifiable given that it is such a recent market entrant.
42. [X – (a competitor)] commented that Genus' employees are bound by restrictive covenants in their employment contracts which require them to give three months notice before moving to another employer and to undertake not to deliver services in competition with Genus for a further six months. [X] contended that the effect of this policy is to raise substantially barriers to expansion faced by competitors by keeping scarce experience,

skill-set and goodwill acquired by individual employees tied to Genus and effectively unavailable to its competitors. [X] stated to the OFT that the effect of these provisions of Genus' employment contracts was to limit [X's] ability to grow its workforce further.

43. However, the NFU representative contacted by the OFT submitted that he considered there had never been any shortfall in AI expertise in Dyfed given the importance of dairy farming within the region and the high demand for that particular skill.
44. Further, the OFT has been informed that the time and cost involved in training new technicians is relatively small. Genus submits that individuals can obtain a licence to undertake AI after attending a one week accredited training course at a cost of approximately £200 - £300. The training is regulated by DEFRA and is widely available both from Skills Sector Councils licensed by the UK Government and from a number of semen suppliers, including Semex and Cogent (the NFU representative informed the OFT that Alta had also begun offering AI training in Dyfed).
45. The short lead times and low costs involved in training new technicians is also evidence of the ease of third party entry into the market. Genus submits that the requirements for market entry are minimal, consisting of a vehicle and a liquid nitrogen flask for storage of the bovine semen. The cost of start-up technical equipment is approximately £500 of which £400 is attributable to the flask and £100 for other consumables such as AI guns, sheaths, lubrication gel, sleeves, paper towels and waterproof clothing. Genus considers that the total cost of entry remains unchanged from the time of the Genus/Supersires decision, in which a new entrant at that time had estimated his costs of entry to be around £5,000.
46. On the basis of the evidence available to it, the OFT does not consider that the restrictions within Genus' contracts provide a material barrier to further expansion by [competitors]. First, a delay of nine months in obtaining a Genus employee, whilst commercially undesirable, remains a relatively short period of time and well within the OFT's two year criteria for timely entry. Second, Alta Cymru has already succeeded in acquiring five (possibly six) technicians within a relatively short period of time. Third, as discussed above, new technicians can be trained at relatively low cost and within a short space of time. Fourth, the importance of dairy farming in the area

¹⁰ The OFT contacted Alta Cymru in order to confirm this fact but Alta Cymru did not respond.

means that there is a high degree of local knowledge which [X] could exploit should it wish to hire additional technicians.¹¹

Countervailing buyer power

47. Genus has argued that their farmer customers are able to discipline their post-merger competitive behaviour by switching away from professional bovine AI to other DIY or natural service in the event of a price increase (or service deterioration).
48. DIY is not considered to be a viable AI option for farmers who maintain small herds (approximately 70 cows or less) because of scarce resourcing and manpower on small farms, and the need to have these assets available to fit in with the individual oestrus cycles of all the cows in the herd used for breeding.
49. However, for the 47 per cent of Genus' customers' herds in Dyfed with 70 cows or more, DIY is a feasible (and in some cases a preferred) alternative to professional AI services. In addition, Genus submits that 25 per cent of dairy cows in Dyfed were inseminated naturally by the farm bull.
50. Genus argued that it also continues to be the case (as noted in Genus/Supersires) that farmers of all sizes are aware of the different prices charged by Genus, and that it is unable in practice to price discriminate, even in relation to small farmers.
51. These arguments are generally supported by evidence from third parties. Most customers pointed out that they feel able to keep Genus under pressure by switching or threatening to switch either to alternative methods of insemination or to another supplier. Further, as noted elsewhere, no customers had any concerns regarding the merger.

Conclusion on horizontal issues

52. The OFT believes that Alta Cymru's entry into the market would not have happened absent the merger, and that there is persuasive evidence that, even as a comparatively recent new entrant, Alta Cymru already poses a competitive constraint on Genus as strong as that provided pre-merger by

¹¹ [X] declined to meet with the OFT's request for further dialogue and information on market expansion and on other issues specific to the merger.

LB. Further, in the absence of any restrictions that might provide a material barrier to its expansion, the OFT considers that Alta Cymru is able to expand further. The OFT also believes that there continues to be evidence that the threat of new entry as the result of low barriers to entry will provide a real continuing constraint on the merged entity. Finally, farmers' ability to switch to DIY or natural insemination by the farm bull is a further constraint on prices for professional AI services.

53. Accordingly, the OFT does not believe that it is or may be the case that the merger has resulted or may be expected to result in a substantial lessening of competition in relation to the provision of AI services in the Dyfed area.

VERTICAL ISSUES

54. Genus is active in the production and distribution of bovine semen as well as the provision of AI services. Genus argues that the merger does not raise any vertical concerns on the basis that these are distinct services which farmers can, and do, take separately. A farmer that approaches Genus to provide it with AI services is not obliged to use semen supplied by Genus for the purposes of the AI service and may source the semen from any supplier he wishes. According to Genus, approximately [5 to 30] per cent of the total insemination operations currently undertaken by Genus' own AI technicians use bovine semen sourced from Genus' upstream competitors. Genus is aware that it would lose customers if it were to attempt to compel customers to use only Genus supplied bovine semen.
55. While the OFT accepted similar arguments in Genus/Supersires, [Y] raised concerns that the merger would risk foreclosing Alta and other competitors of Genus in the upstream supply of bovine semen. In particular, [Y] argued that:
- a) Genus has through the acquisition of LB now introduced a levy on semen producers (between £2.25 and £2.50) if a farmer in Dyfed requires a Genus technician to provide AI services using semen sourced from a competitor's stud. In addition Genus has begun also attempting to charge a similar levy on farmers (between £2.00 to £2.50 per insemination) for undertaking the service using non-Genus semen.

b) Genus has through the acquisition now introduced an additional business policy that has an adverse effect on competition by impacting on the ability of Genus' competitors to sell bovine semen to farmers. This is in the form of a 10 working day notice for stocks of non-Genus semen to be packed and made ready for delivery to farmers.¹² One of the competitors gave the OFT to understand that this policy has an adverse impact on the route to market for non-Genus semen.

56. One other competitor in the supply of semen, [Z], also raised similar concerns with regard to Genus' pricing policies.

57. The evidence available to the OFT indicates that Genus does indeed levy on its competitors a distribution charge for every straw of semen sourced from non-Genus studs that it delivers to a farmer customer. The level of the charge varies by a relatively small amount depending on whether the farmer customer uses Genus' AI service to inseminate the cow using non-Genus semen (£2.50 per straw) or whether the farmer customer undertakes the insemination operation himself on a DIY basis (£2.25 per straw). In either case, the total distribution charge payable by the competitor is capped at £130 per visit to any particular farm.

58. Evidence, however, also points to the fact that the amounts of these distribution charges are applied nationally and were last increased in September 2006, no increase having taken place in Dyfed or elsewhere in the UK since the merger. Accordingly, on this basis, the levy cannot be considered to be merger-specific – in other words, it cannot be considered to be causally linked to the merger.

59. Additionally, in relation to any distribution levy imposed on farmers, the standard terms and conditions which Genus applies to its bovine semen distribution service state (Clause 19) that 'Genus will not make any additional charge on its farmer customers for delivery of your semen through the Genus AI Technician Service'. On the basis that these terms contradict the contentions set out at paragraph 55(a) above – and that [X] and [Z]

¹² On the basis that it is relatively common for a farmer's order for the supply of non-Genus semen to be routed – for technical and regulatory reasons – to a Genus service centre and subsequently transferred to a Genus AI supplier's field flask.

were either unable or disinclined to substantiate their arguments, the OFT considers that it can attribute little or no weight to them.

60. As to [X's] contention on delivery lead times raised at paragraph 55(b) above, Genus submits that its terms and conditions are similar to those applied by its own competitors, and that this particular term was in keeping with normal practice in the industry prior to the merger. It further submits that, where third party bovine semen is stored at Genus' local service centre in Dyfed, Genus is committed to ensuring that, where stocks of a third party's bovine semen are stored at a local Genus service centre, it is transferred to the relevant farmer customer (the driver of demand for both Genus and non-Genus semen alike and for AI service provision generally) within three working days at most. Given that this was already contained within its standard terms and conditions (Clause 7) of its semen distribution service, the OFT considers that this term is also not merger-specific, and therefore does not attribute any weight to it.
61. The OFT has considered whether the merger provides Genus with the ability and incentive to foreclose other competitor producers of bovine semen in Dyfed. In relation to Alta, this concern is substantially reduced by the fact of its subsidiary Alta Cymru's entry into the downstream AI market subsequent to the merger. However, the OFT has considered whether foreclosure concerns might arise in relation to bovine semen from other suppliers.
62. The OFT notes first that there is evidence that, pre-merger, farmers multi-sourced from different semen producers. The OFT has seen documented market research produced by Genus in 2006 which indicates that, whilst 35 per cent of dairy farmers choose to procure bovine semen supplies from one supplier, 30 per cent procure bovine semen from at least two suppliers, 22 per cent procure from at least three suppliers and 14 per cent procure from four or more suppliers.¹³ Second, [X] and [Y] have been either unable or disinclined to substantiate their stated concerns regarding the merger's impact on their route to market. Third, customers contacted by the OFT considered that bovine semen can indeed be sourced from several upstream suppliers other than Genus. Fourth, there is evidence that a significant proportion of Genus' AI services use bovine semen sourced from Genus' upstream competitors.

¹³ Due to rounding, figures sum to more than 100 per cent.

63. On the basis of these reasons, the OFT does not consider that there is a realistic prospect of vertical concerns arising from the merger.

THIRD PARTY VIEWS

64. Customers did not raise concerns on the merger and overall were content with the functioning of the market.
65. Two competitors raised some issues with regard to their perception of Genus' commercial policies and behaviour. These issues, which the OFT does not consider to be merger-specific, have already been addressed above.

ASSESSMENT

66. The parties overlap in (a) the UK distribution of bovine semen bought by dairy farmers for the purposes of breeding genetic specifications into their dairy cattle, and (b) the supply of artificial insemination (AI) services on cattle in the Dyed area.
67. As far as the distribution of bovine semen is concerned, LB was a very small operator on a UK-wide basis, and therefore the OFT does not consider that the acquisition has had any material impact on the UK distribution market.
68. With regard to the supply of professional AI services, Genus will continue to face competitive constraint from three other suppliers: two sole traders and a larger new entrant, Alta Cymru – a UK subsidiary of a global operator in animal genetics, Alta, Inc. The OFT believes that Alta Cymru's entry into the market occurred as a result of the acquisition of LB by Genus. Third party comment indicates that as a result of this entry (and the fact that LB had not been a particularly strong constraint on Genus for some time) post-merger competitive conditions are, if anything, keener than those that prevailed prior to the merger.
69. Particularly given the absence of any restrictions that might provide a material barrier to Alta Cymru's expansion, the OFT considers that Alta Cymru poses as much of a constraint on Genus as did LB pre-merger. Further, the OFT believes that further constraint is posed on incumbent AI service providers by the prospect of new entry and by farmers' ability to

switch or threaten to switch either to undertaking AI procedures on cattle themselves (DIY) or to natural insemination by the farm bull.

70. No customers raised any concerns regarding the acquisition, and overall were content with the functioning of the market. Two competitors raised concerns about the acquisition, [] in Dyfed. In particular, [X] and [Y] raised issues regarding their perception of Genus' commercial policies and behaviour post-merger. However, these issues were, on further investigation, not considered to be merger-specific. The OFT has ruled out the prospects of vertical foreclosure concerns on the basis that the OFT does not believe that the merger provides Genus with the ability and incentive to foreclose other providers of bovine semen.
71. Consequently, the OFT does not believe that it is or may be the case that the merger has resulted or may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

DECISION

72. This merger will therefore not be referred to the Competition Commission under section 22(1) of the Act.