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## Anticipated joint venture between the agricultural merchandising divisions of Associated British Foods plc and Cargill plc

The OFT's decision on reference under section 33 given on 16 March 2005. Full text of decision published 23 March 2005.

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Please note square brackets indicate information replaced by a range or excised at the request of the parties for reasons of commercial confidentiality.

### PARTIES

1. **Cargill PLC (Cargill)** is part of the Cargill group of companies which is active internationally in commodity trading and processing and the marketing of non-branded food ingredients. **Banks Cargill Agriculture Ltd (BCA)** is a UK agricultural merchandising business owned ultimately by Cargill.
2. **Associated British Foods plc (ABF)** is an international food, ingredients and retail group. **Allied Grain** is an operating division of ABNA Ltd (**ABNA**), which in turn is owned ultimately by ABF. Allied Grain is active in agricultural merchandising in the UK. **JK Kings and Sons Limited (Kings)**, a division of ABNA, is an agricultural merchant supplying mainly storage seed, game cover seed and salad rapeseeds. **KW Feeds**, an operational division of ABF, sells small amounts of seeds<sup>1</sup> in the UK. In the remainder of this decision, references to Allied Grain are deemed to include KW Feeds (see note 1) and, subject to paragraph 3 below, Kings.

### TRANSACTION

3. The proposed transaction will combine, in a 50/50 full-function joint venture between Cargill and ABF, Cargill's UK agricultural merchandising activities, comprised in its subsidiary BCA, with the UK agricultural merchandising operations comprised in ABF's operating division, Allied Grain. Subject to negotiation, the agricultural merchandising business carried on by ABNA's subsidiary Kings will also be contributed to the joint venture.<sup>2</sup> In the year ended 30 September 2004,

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<sup>1</sup> Less than 1 per cent of the GB market.

<sup>2</sup> This does not affect the jurisdictional test or the substantive analysis.

BCA's UK turnover was [...]. In the year ended 30 September 2004, Allied Grain's UK turnover was [...].

4. The transaction was notified to the OFT on 19 January 2005. The administrative deadline expires on 16 March 2005.

## JURISDICTION

5. As a result of this transaction BCA and Allied Grain will cease to be distinct. The transaction qualified for investigation by the European Commission under the EC Merger Regulation (ECMR) on the basis of turnover. However, on 8 December 2004 the European Commission adopted a decision pursuant to Article 4(4), ECMR to refer the entire transaction to the UK.
6. The turnover test in section 23(1)(b) of the Enterprise Act 2002 (the Act) is satisfied since, pursuant to section 28(1)(b) of the Act, the turnover test is met if the lower of the turnovers of the businesses being contributed to the joint venture exceeds £70 million. The OFT therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

## RELEVANT MARKET

7. The parties are active in agricultural merchanting in the UK. Agricultural merchanting consists of a number of discrete activities which can be split conceptually between the supply to farmers of certain agricultural inputs (e.g. seed, fertiliser, animal feed and agrochemicals) and the purchase from farmers of agricultural outputs (e.g. grains, pulses, oilseeds). Table 1 gives details of the parties' overlapping activities within the sector.

Table 1: Overlapping activities of the parties

Agricultural merchanting			
Supply to farmers of agricultural inputs	Overlap	Purchase from farmers of agricultural outputs	Overlap
• Supply of agricultural seed	✓	• Purchase of grain and pulses	✓
• Supply of fertiliser	✓	• Purchase of oilseed rape	✓
• Supply of animal feed <sup>3</sup>	✗		
• Agrochemicals & agronomy advice <sup>4</sup>	✗		

<sup>3</sup> The animal feed part of BCA's activities will be retained by Cargill. Similarly, ABF is not contributing to the joint venture the animal feeds business carried on under its ABNA division; the joint venture will not be active in the supply of animal feed.

## A. Agricultural merchanting

### Product market

8. Agricultural merchants, such as Allied Grain and BCA, sell to and purchase from farmers different agricultural products. They are also involved in the storage and transportation of products, some processing (cleaning, dressing and bagging of seeds; cleaning, drying and storage of cereals) and the provision of advice to farmers. The range of products and services offered may vary from merchant to merchant but, with the exception of crop protection advice (which requires BASIS qualification<sup>5</sup>) merchants are able to expand their activities to meet their customers' requirements. Farmers can and do trade directly with manufacturers and suppliers, as well as with agricultural merchants. Farmers also trade through cooperatives.
9. The competitive effects of the transaction in the various segments within the agricultural merchanting sector in which the activities of the parties overlap are considered in more detail below. This level of analysis provides a better understanding of the competitive constraints in the sector. The consideration of the narrower segments does not preclude a wider market definition, but is consistent with the approach adopted by the OFT of examining the narrowest possible frames of reference in the first instance.

### Geographic market

10. Agricultural merchants operate on a national, regional or local basis. The parties consider that increasingly merchants are located in regional offices to reduce their overheads and that sales team visits to farms are less and less important. The parties argue that transport costs are low and homogenous throughout Great Britain since contracts are frequently outsourced to regional contractors. There is no reason to believe that the geographic market is wider than the UK; no UK agricultural merchants operate in continental Europe and no continental merchants operate in the UK.
11. Since BCA and Allied Grain's activities in Northern Ireland are negligible, this area will not be considered further and the substantive analysis which follows focuses on Great Britain.
12. Consideration of regional markets provides a better understanding of the competitive constraints faced by the parties, therefore these are examined more

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<sup>4</sup> ABF/Allied Grain does not have activities in this segment.

<sup>5</sup> A qualification awarded by the British Agrochemical Standards Inspection Scheme.

fully below. BCA does not operate in Scotland and this area is not considered further.

#### Horizontal issues

13. The joint venture will create the largest national agricultural merchant in Great Britain, accounting for approximately [5-15] per cent of the market. It faces competition from other national merchants such as Grainfarmers ([0-10] per cent), Masstock Dalgety ([0-10] per cent), Gleadell ([0-10] per cent) and other regional and local players. One third party commented that there are around 300 agricultural merchants in the UK, supporting the parties' view that the market is highly fragmented.
14. Table 2 provides an overview of the parties' shares of supply on a national and regional basis in each of the segments comprised within the agricultural merchandising sector in which the activities of the parties overlap.

Table 2: Shares of supply (by value) in the year ended May 2004

	<b>Agricultural merchandising %</b>	<b>Fertiliser %</b>	<b>Seeds %</b>	<b>Grains &amp; pulses %</b>	<b>Oilseed rape %</b>
<b>Great Britain</b>	[5-15 (0-5)]	[15-25 (5-10)]	[5-15 (0-5)]	[15-25 (5-10)]	[15-25 (5-10)]
<b>Scotland</b>	[5-15]	[15-25]	[5-15]	[5-15]	[25-35]
<b>Yorkshire and the North</b>	[5-15 (0-5)]	[5-15 (5-10)]	[15-25 (5-10)]	[15-25 (5-10)]	[25-35 (10-15)]
<b>Lincolnshire and West</b>	[5-15 (0-5)]	[15-25 (0-5)]	[5-15 (0-5)]	[5-15 (5-10)]	[15-25 (5-10)]
<b>Anglia</b>	[5-15 (0-5)]	[25-35 (10-15)]	[15-25 (5-10)]	[15-25 (5-10)]	[15-25 (5-10)]
<b>Central and West</b>	[5-15 (0-5)]	[15-25 (0-5)]	[5-15 (5-10)]	[5-15 (5-10)]	[15-25 (0-5)]
<b>South East</b>	[5-15 (0-5)]	[15-25 (0-5)]	[5-15 (0-5)]	[15-25 (5-10)]	[15-25 (5-10)]
<b>South West</b>	[5-15 (0-5)]	[15-25 (0-5)]	[5-15 (0-5)]	[5-15 (0-5)]	[15-25 (5-10)]
<b>VOLUME (GB)</b>	[40-50] million tonnes	[3-5] million tonnes	[< 1] million tonnes	[20-25] million tonnes	[1-2] million tonnes
<b>VALUE (GB)</b>	£[...] million	£[...] million	£[...] million	£[...] million	£[...] million

Source: The parties' best estimates based on DEFRA census data.

Note: The lower share of supply (arising from the activities of either BCA or Allied Grain as the case may be) is stated in parentheses.

15. The market for agricultural merchandising is highly fragmented and the parties' shares of supply at this level are low. Some competitors were nevertheless concerned that the joint venture could use its strengthened position to link sales of inputs to purchase of farm outputs. While this would alleviate possible cash flow problems for farmer customers, it was contended that competition in the market could be reduced as a result. The assessment which follows clarifies that at current concentration levels, this approach would not reduce competition

because output prices are predominantly set in world markets and farmers prefer to buy from multiple suppliers.

## **B. Supply of agricultural seeds**

### Product market

16. Agricultural merchants typically sell a range of seeds to farmers. Arable farmers typically require a range of seeds. Farmers purchase small quantities of first generation (C1) seed from seed breeders but most of their retail seed requirements are met by supplies of second generation (C2) seed obtained from agricultural merchants. Many farmers partly meet their own seed requirements by way of farm-saved seed.<sup>6</sup>
17. While seed producers' skills may enable them to increase their supplies of a particular seed in the event of a small increase in the price of that seed, on the demand side, seeds are not substitutable: a farmer wishing to grow wheat cannot sow rye seeds, although different types of seed may be complementary since arable farmers will plant a mix of crops. Seeds for different varieties of the same crop type may be substitutable to a greater or lesser extent, depending, for example, on the growing conditions for which they are suitable.
18. The parties supply farmers with:
  - C2 cereal seed, i.e. wheat, barley and oats
  - certified rape seed
  - small quantities of linseed seed,<sup>7</sup> and
  - pea seed and bean seed.
19. Taking a cautious approach we examine separately the seed market as a whole and the shares of supply for each category of seed supplied by both parties.

### Geographic market

20. The location of the agricultural merchant may affect the types of seeds sold since farming needs vary throughout the UK. Any seed sold in the UK must appear on the National List or the Common Catalogue and C2 seeds must be certified, at the growing stage, by DEFRA/SEERAD licensed crop inspectors and then certified as seed following laboratory analysis. Royalties are collected

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<sup>6</sup> Farmers have the option of saving part of their crop for sowing the following year. This seed attracts a lower royalty payment. This option does not exist for new varieties in the first year they are marketed. It is illegal to trade farm-save seed.

<sup>7</sup> The parties' shares of supply of linseed are insignificant and will not be considered further.

nationally by the British Society of Plant Breeders (BSPB).

21. Seed imports (mainly of maize and rye) are estimated to be around 870 tonnes (less than 0.2 per cent by value and volume) although this may vary from year to year. No seeds are exported.
22. Farmers who were contacted in this inquiry generally considered that the location of their seed merchant was not as important as timely delivery and other service factors. Some third parties stated that markets are regional because high transport costs gave plants located in close proximity to farmers a material competitive advantage over those located further away. Other third parties contradicted this view, stating that location is not important because deliveries are infrequent and for large quantities. We will examine separately shares of supply in regional markets.

#### Horizontal issues

23. The parties will supply [5-15] per cent of the overall seed market in Great Britain, with an increment of [0-5] per cent. The parties estimate that Masstock Dalgety and Grainfarmers will supply [5-15] per cent and [0-5] per cent respectively.
24. The parties' shares of supply for individual seed types are set out in Table 3. The parties consider that their combined sales of seeds after the merger will be lower than the sum of their shares because farmers prefer to obtain seed supplies from more than one supplier. This view was supported by competitors.
25. The parties argue that farm-saved seed provides a competitive constraint on their activities in the seed market: approximately 40 per cent of all seed sown in Great Britain is farm-saved seed. This figure is corroborated by the Home Grown Cereals Association (HGCA), NIAB and by responses from farmers contacted by us in this inquiry, some of whom save well over 40 per cent of their seed requirements. Profit margins on C2 seed are in the region of 3-4 per cent. It is likely that low margins are due to the competitive constraint of farm-saved seed.
26. The key difference between farm-saved seed and certified seed produced by agricultural merchants is that agricultural merchants test and guarantee the quality of their seed. One third party noted that there is an increasing quality differential between certified and farm-saved seed which may provide an

incentive for farmers to increase their purchases of certified seed in future. Adopting a cautious approach, the GB shares of supply in Table 3 are exclusive of farm-saved seed.

Table 3: GB shares of supply by seed type (by volume) (2003)

	Officially Certified 2003 (tonnes)		BCA %	Allied Grain %	Combined %
<b>CEREALS</b>	Winter wheat	187,535	[0-10]	[5-15]	[20-30]
	Winter barley	48,327	[0-10]	[5-15]	[20-30]
	Winter hybrid barley	438	[0-10]	-	[0-10]
	Winter oats	6,905	[0-10]	[0-10]	[5-15]
	<b>Total winter</b>	243,205	[0-10]	[5-15]	[20-30]
	Spring wheat	76,185	[< 5]	[0-10]	[5-15]
	Spring barley	65,834	[< 5]	[0-10]	[5-15]
	Spring oats	3,394	[< 5]	[< 5]	[< 5]
	<b>Total spring</b>	76,185	[< 5]	[0-10]	[5-15]
<b>PULSES</b>	Winter field beans	5,047	[0-10]	[0-10]	[5-15]
	Spring field beans	6,657	[0-10]	[0-10]	[5-15]
	<b>Total field beans</b>	11,704	[0-10]	[0-10]	[5-15]
	Rye <sup>8</sup>	893	-	[50-60]	[50-60]
	Triticale	2,315	-	[< 5]	[< 5]
	Peas	9,855	[0-10]	[0-10]	[5-15]
<b>OILSEEDS</b>	Oilseeds	2,551	[20-30]	[5-15]	[20-30]
	Linseeds	5,083	[< 5]	[< 5]	[< 5]
	<b>Total oilseeds</b>	7,634	[20-30]	[0-10]	[25-35]
<b>HERBAGE</b>	Ryegrass mixtures	5,639	[< 5]	-	[< 5]
	Herbage seeds	7,943	-	[< 5]	[< 5]
	<b>Total herbage</b>	5,639	[< 5]	[< 5]	[< 5]
<b>FODDER</b>	Fodder maize (ha)	101,215	-	[< 5]	[< 5]
	Fodder roots	766	-	[0-10]	[0-10]
	<b>Total fodder</b>	101,981	-	[< 5]	[< 5]

Source: The parties' best estimates.

27. Very occasionally, agricultural merchants will conclude exclusive distribution agreements with seed breeders for a new variety. Depending on the success of the variety, this may give the relevant merchant a higher share of supply for the duration of the contract. For example, BCA had an exclusive contract to supply *Winner*, an oilseed rape variety that recently became quite successful. BCA jointly supplied this seed variety with Allied Grain in Scotland and the parties consequently had relatively high market shares for oilseed rape. However, the parties consider that *Winner* is no longer the preferred oilseed rape variety and that their share of supply in this subsegment is likely to be considerably lower

<sup>8</sup> There is no overlap in the sale of rye seeds.

this year (at [5-15] per cent), compared to [20-30] per cent in 2003.

28. Exclusive contracts are relatively rare in the industry and normally seed breeders sell their (C1) seeds on a non-exclusive basis. Exclusive contracts carry some risk for the merchants because, at the time the arrangements are entered into, the likely success of the new variety is unknown. Where there are exclusive contracts, however, we are of the view that price and availability of other seed varieties, capacity constraints on the ability of seed producers to supply the entire market, the price earned from the crop grown, the limited duration of the exclusive contract (usually one year) and the ability of farmers to self-save seed will act as competitive constraints in the longer term.
29. Some seed breeders expressed concern that the increased buyer power of the joint venture would mean that the parties would be able to negotiate exclusive contracts with seed breeders on particularly advantageous terms. However, the market for breeding of seeds is relatively concentrated, and profit margins are higher, as compared to agricultural merchanting. This effectively counteracts any buyer power on the part of the joint venture. Moreover, the concern was not shared by a number of other third parties contacted by us in this inquiry, one of whom commented that the proposed joint venture would in fact counter the power of seed breeders.
30. It is unlikely that agricultural merchants who have exclusive arrangements in respect of a particular seed variety will be able to tie the purchase of that seed to the purchase of other seeds/commodities. Any market power resulting from the exclusive arrangements will be checked by the factors outlined above at paragraph 27. In addition, farmers are sophisticated purchasers of farm commodities and generally have a preference to purchase from more than one supplier.
31. Although some third parties (competitors and suppliers) raised concerns about the parties' combined shares of supply (and corresponding HHI) in respect of individual seed types, the factual evidence – in terms of shares of supply, concentration levels and customer comment - does not support these concerns. Some competitors were generally concerned that the joint venture would benefit from economies of scale and scope. However, since farmers are able (and willing) to switch to competing suppliers if they can buy inputs more cheaply (and sell outputs at higher prices), there are clear economic incentives for the merging parties to pass on any efficiencies to their customers in the form of lower prices, thus encouraging competition in the market.



## C. Sale of fertiliser

### Product market

32. Fertiliser is sold either as 'straights' (nitrogen, phosphates or potash) or as blended mixtures or compounds. The type of soil and the crop grown will determine the choice of fertiliser; the different components are unlikely to be substitutable for each other on the demand side, although they may be complementary. On the supply side, all manufacturers supply the full range of straights and blends/compounds.

### Geographic market

33. In the UK there are two fertiliser manufacturers, who supply an estimated 50 per cent of the market, and one major importer. The parties estimate that imports of fertiliser are approximately 1, 260,000 tonnes (31.7 per cent by value and volume) and exports are approximately 50,000 tonnes (1.3 per cent by value and volume). One fertiliser manufacturer considered that imports accounted for no more than 25 per cent of purchases.
34. Fertiliser manufacturers set prices on a national basis, although in practice there is considerable price variation regionally, particularly where farmers can buy directly from importers (because they are located near ports) or blenders (because of their proximity to processing plants), reflecting lower distribution costs.

### Horizontal issues

35. Farmers can purchase fertiliser from agricultural merchants or from blenders (who generally import their supplies) or directly from the manufacturers. The parties estimate that 17 per cent of sales are made directly from manufacturers or blenders to farmers, rather than via agricultural merchants such as the parties.
36. The parties do not manufacture fertiliser, but in common with other agricultural merchants they blend and bag fertilisers. In the supply of fertilisers, the parties estimate their combined share nationally will be [15-25] per cent, with Masstock Dalgety supplying approximately [15-25] per cent nationally. In Anglia, the joint venture will supply [25-35] per cent of the region with fertiliser (see Table 2 above); there are a number of other sizeable competitors in the region: Grainfarmers ([5-15] per cent), Bunns ([5-15] per cent) and Harlow ([5-15] per cent).

37. Direct purchases from manufacturers and blenders represent a strong competitive constraint on the parties. Fertiliser is a commodity and farmers are likely to be price sensitive and to switch to other suppliers in the event of an increase in price. In addition, one fertiliser blender noted that there was excess supply and prices were unlikely to rise. No third party raised concerns about the sale of fertiliser.
38. The parties' relatively high combined share of supply in Anglia is not problematic, although third parties in the region did not respond to (repeated) requests to comment. There are a number of other fertiliser suppliers in Anglia, and in any event fertiliser manufacturers who were contacted in this inquiry considered the market to be wider than regional. Merchants in neighbouring regions can enter the market in response to a price increase by the parties and farmers can also switch to obtaining supplies directly from manufacturers.

#### **D. Purchase of grains and pulses**

##### Product market

39. The parties consider that all purchases of grains, pulses and oilseed rape, are made by agricultural merchants and these commodities should be considered as constituting one market since arable farmers are able to grow all of these crops and merchants are easily able to switch to purchasing these (and other) crops. For the purpose of this assessment, the purchase of grains and pulses is considered separately to the purchase of oilseed rape.
40. The parties purchase wheat, barley and oats (grains) to be sold on to users/processors of cereals (such as millers and maltsters) and international grain merchants. The parties purchase peas and beans (pulses) to be sold mainly to animal feed compounders to make animal feed or for export.
41. Farmers are able to sell their produce to co-operatives (such as Grainfarmers) or to regional or local merchants. Some farmers expressed concern that selling to smaller merchants entails a greater financial risk than selling to larger merchants and this might dissuade them from selling to smaller players. Selling to end users might not be an option for farmers if the specification of the crop does not meet requirements. Selling to co-operatives allows blending of crops but the farmer will receive a price for his crop at the time the crop is sold to the final purchaser, which might entail some risk.

## Geographic market

42. Imports of grains and pulses amount to approximately 2,500,000 tonnes (11 per cent) while exports are approximately 3,600,000 (15.7 per cent). Several third parties noted that the grain market was a world wide market with prices set by world supply and demand.

## Horizontal issues – purchase of grains and pulses

43. The joint venture will purchase [15-25] per cent of grains and pulses in Great Britain. Some of the grain is to be sold to companies owned by the joint venture parents (the animal feed business of ABNA, and Sun Valley, a poultry business owned by Cargill). This issue is considered in more detail below.
44. Regionally, the joint venture will purchase [15-25] per cent of grains and pulses in Yorkshire and the North with Grainfarmers ([10-20] per cent), Grainco ([10-20] per cent) and Gleadell ([0-10] per cent) all active in the same area. In the South East, the joint venture will purchase [15-25] per cent of grains and pulses, Grainfarmers accounts for around [10-20] per cent of purchases. Centaur and Glencore are also active (accounting for [0-10] per cent each). Shares of supply and levels of concentration do not raise concerns at a national or regional level.
45. Third party concern focused on the possibility for the joint venture to exercise (increased) buyer power to the detriment of farmers. However, prices for grains and pulses are set in world wide markets. Farmers can access up-to-date price information through commodity markets or via trade bodies (such as the HGCA). As part of the service offered to their customers, agricultural merchants offer advice and information about grain prices. Given the level of price transparency and the number of significant competitors it would be difficult for the merging parties to persuade farmers to accept lower prices from the joint venture.
46. Farmers can also sell directly to end users. End users confirm that they buy from farmers directly, but farmers noted that there were problems with this where the crop did not meet the exact specification of the end user. An alternative is for the farmer to sell to a cooperative who sells a mixed crop to the end user that meets the required specification.
47. Some third parties expressed concern that the joint venture would be able to agree contracts with farmers based on their purchases of inputs from the joint venture. Where farmers agree such contracts this is likely to reduce their risk from poor harvests and fluctuations in world prices. It is unlikely that farmers would enter into such contracts if it were detrimental to do so. Moreover, other agricultural merchants could offer similar arrangements to farmers and the

merger does not result in any unique advantage for the parties in this respect.

#### Horizontal issues – purchase of oilseed rape

48. Imports of oilseed rape account for 176,000 tonnes (9.9 per cent) while exports account for 290,000 tonnes (16.2 per cent). One oilseed processor noted that in the event of a price increase in Great Britain he would source oilseed from continental Europe, which indicates that markets are wider than national. Several third parties noted that prices are set in European and/or world wide markets.
49. The joint venture will purchase [15-25] per cent of oilseed rape nationally; regionally the highest share of supply occurs in Yorkshire and the North (around [25-35] per cent, see Table 2 above). There are a number of sizeable competitors in this region, notably Grainfarmers ([10-20] per cent), Grainco ([5-15] per cent) and Gleadell ([5-15] per cent). Barriers to entry and expansion in the segment are low and markets are likely to be wider than regional.
50. As for grain, prices are set in world wide markets and the joint venture is unlikely to be able to exercise control over prices paid to farmers. Third parties were unconcerned about the impact of this transaction on this segment.

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

51. The parties note that barriers to entry for agricultural merchandising are low and that a new entrant could achieve a 5 per cent share of the market for an outlay of less than £5 million in a period of three to five years. In their view, advertising and promotional expenditure would be between £50,000 and £200,000. Storage facilities can be leased and distribution requirements outsourced so there are few sunk costs. Set-up costs for entry into any of the segments comprised within the agricultural merchandising sector would be proportionately lower.
52. There is evidence that regional agricultural merchants have expanded their activities by moving into new regional areas. The sector has recently been characterised by significant consolidation, perhaps because economies of scale and scope mean that retail and distribution activities are more viable.
53. Comments from farmers suggest that reputation may be a key factor: farmers want their seeds delivered on the day specified and prefer not to sell their crops to smaller companies whose financial security may be at risk. Scale and scope economies may mean that farmers can purchase commodity products from larger suppliers at better rates and reduce their overall delivery costs.

## Buyer power

54. Third parties noted that the proposed joint venture could exercise increased buyer power in the purchase of seeds and fertilisers. However, seed breeders and fertiliser manufacturers (and blenders) can thwart this buyer power by selling to other agricultural merchants or directly to farmers. Moreover, the large number of national and regional competitors will ensure lower prices are passed on to consumers. In addition most seed breeders operating in Great Britain are part of multinational organisations that have considerable countervailing buyer power.
55. In respect of purchases from farmers (grain, pulses, oilseeds), the joint venture's increased buyer power is counteracted by the ability of farmers to sell directly to processors either in Great Britain or abroad. Moreover prices are generally set on world markets and are transparent. Farmers have the reputation of being sophisticated traders of agricultural inputs and outputs.

## VERTICAL ISSUES

56. ABNA is one of three national feed producers in the UK, manufacturing and supplying compound animal feed and ingredients for animal feed to farmers. ABNA produces feed for monogastric animals<sup>9</sup> using grain sourced from Allied Grain. The joint venture will supply this feed plant with grain [details of supply agreement]. Cargill also produces animal feed.
57. Some third parties expressed a concern that the joint venture would supply inputs to the parent companies engaged in animal feed manufacturing on preferential terms and this would adversely affect competition in the market. However, the overlap between the parties in this area is minimal, with ABNA producing between [15-25] of animal feed in Great Britain and Ireland and Cargill producing less than 2 per cent. Therefore the supply agreements (which are on an 'arms-length' basis) do not give rise to competition concerns.
58. Oilseed purchased by the joint venture will be crushed to produce seed oil and oilseed meal. Cargill has two oilseed crushing facilities in the UK and there is only one other UK crushing facility, owned by ADM. It should be noted the activities of the joint venture parents do not overlap in oilseed processing.
59. The hypothetical concern that the joint venture would be able to control access to oilseed for crushing is not substantiated because prices are set on world markets and while the joint venture could, in theory, restrict the supply of

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<sup>9</sup> Animal feed may be intended for consumption by monogastric animals (pigs, poultry) or ruminants (cattle, sheep).

oilseed by withholding it from the market, imports would be able to make up any difference. The parties noted that in a poor harvest, oilseed is imported to meet the processing needs and if there is excess supply, oilseeds will be transported to continental Europe for crushing there. This indicates that there are no incentives for the parties to foreclose supply; third parties' views support this conclusion.

### **THIRD PARTY VIEWS**

60. The OFT contacted a substantial number of suppliers (farmers, fertiliser producers, seed breeders) as well as customers and competitors in the agricultural merchanting sector, in particular customers and competitors in regions where the parties' shares of supply are relatively high. We also contacted competitors of the joint venture parents in markets upstream and downstream of the activities of the joint venture and sought to obtain the views of the HGCA and DEFRA.
61. Most concerns related to the supply of seed and were raised by some competitors and suppliers in this market. These concerns have been addressed in the competitive assessment above. For the most part, farmers were unconcerned, noting that alternative suppliers/purchasers are available. DEFRA (with input from NIAB and the HGCA) noted that all markets for agricultural merchanting are highly competitive with no significant barriers to entry.

### **ASSESSMENT**

62. Although the proposed joint venture will result in the creation of the largest agricultural merchant in Great Britain, this sector is characterised by low levels of concentration and the resulting combined shares of supply are low.
63. The substantive assessment has focused on various segments within the agricultural merchanting sector in which the activities of the parties overlap. Due to concerns expressed by third parties, particular attention was given to the effect of the proposed transaction on competition in the supply of seeds in Great Britain. This detailed investigation did not lead to substantiation of the concerns expressed and, to the extent that market power may arise in particular situations (such as exclusivity arrangements between seed breeders and merchants), this is not sustainable over time.
64. In all segments and regions that were analysed there are sufficient numbers of national and regional competitors, and the merging parties are also constrained by the possibility of self-supply (in the case of seeds) and direct supply (in the other segments). In addition, barriers to entry and expansion are low and there

is evidence of regional merchants expanding into other regions.

65. The competitive constraints identified mean that there are incentives for the parties to pass on to their customers any savings resulting from efficiencies and increased buyer power.
66. Shares of supply of the joint venture parents in the markets upstream and downstream from those of the joint venture are not such as to give rise to vertical competition concerns.
67. 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**

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

## **NOTE**

- 1 The parties note that KW Feeds will not form part of the joint venture.