

Anticipated acquisition by Fenland Laundries Limited of the cleanroom laundry business of Fishers Services Limited

ME/6557/15

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 16 December 2015. Full text of the decision published on 4 January 2016.

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

SUMMARY

1. Fenland Laundries Limited (**Fenland**) provides cleanroom laundry services of high and low classifications, namely Class 4 and 5 (hereafter referred to as **full cleanroom**) and Class 6, 7 and 8 (hereafter referred to as **intermediate cleanroom**), to customers who operate within sterile environments controlled for particular contaminants. Fenland operates under a joint venture agreement with Berendsen plc (**Berendsen**) under which Fenland and Berendsen jointly control Micronclean Limited, which licenses the use of the Micronclean trademark to Fenland and Berendsen for allocated territories in Great Britain (the **JV agreement**).
2. Under the terms of the JV agreement, Fenland serves an area north of a line broadly between London and Anglesey (the **North**). Berendsen provides full and intermediate cleanroom services to customers located to the south of that line (the **South**).
3. Fishers Services Limited (**Fishers Cleanroom**) provides full and intermediate cleanroom laundry services throughout Great Britain from its cleanroom laundry in Livingston, Scotland. Fenland and Fishers Cleanroom are together referred to as the **Parties**.
4. Fenland has agreed to acquire Fishers Cleanroom and as a condition precedent to the closing of this acquisition, it will terminate the JV agreement (the **Merger**) such that following the Merger Fenland and Berendsen will become two independent competitors for cleanroom laundry services in Great

Britain, with Fenland retaining the Micronclean trademark. Fenland submitted that there is no scenario in which Fenland would acquire Fishers Cleanroom and continue to operate under the JV agreement.

5. The Competition and Markets Authority (**CMA**) considers that enterprises will cease to be distinct as a result of the Merger, that the share of supply test is met and that accordingly arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
6. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie, the counterfactual). In this case, the CMA assessed the Merger against the prevailing conditions of competition. However, as discussed further below, the CMA also considered whether it would be more appropriate to assess the Merger against a more competitive realistic counterfactual (that is, absent the JV agreement).
7. In its competitive assessment, the CMA considered whether, as a result of horizontal unilateral effects, the Merger may lead to an increase in prices and/or reduction in quality in the supply of full cleanroom laundry services and intermediate cleanroom laundry services respectively in Great Britain.
8. In relation to full cleanroom laundry services, the CMA believes that, based on the evidence available, Fishers Cleanroom is Fenland's closest competitor and that Fenland, operating under the Micronclean trademark, is Fishers Cleanroom's closest competitor in the North, with a combined share of supply of [70–80]% in Great Britain. This is not disputed by the Parties. In response to the CMA's market testing, customers in the North, in particular pharmaceutical manufacturers and NHS pharmacies that require a certain classification of cleanroom laundry services, told the CMA that they consider Micronclean, the trademark under which Fenland (along with Berendsen in the South) provides full cleanroom services, and Fishers Cleanroom to be the only two suppliers of the type of cleanroom laundry services they require and that there is no alternative option available to them.
9. The CMA also assessed whether Berendsen, following the termination of the JV agreement, would have the ability, incentive and intention to expand its supply of full cleanroom laundry services into the North in a timely, likely and sufficient manner. Whilst the CMA believes that Berendsen would have the ability to expand into the North, based in particular on Berendsen's spare capacity, strong brand and existing transport network, it considers that there is insufficient evidence of Berendsen's incentive and intention to do so. The CMA therefore found that Berendsen's expansion would not prevent the Merger from giving rise to a substantial lessening of competition (**SLC**).

Consequently, the CMA believes that it is or may be the case that the Merger may be expected to result in an SLC within the supply of full cleanroom laundry services in Great Britain, which may lead to price rises and/or a reduction in service quality provided to customers, in particular the pharmaceutical manufacturers and NHS pharmacies.

10. In relation to the supply of intermediate cleanroom laundry services, including barrier laundries, the CMA found that for those customers who do not require a similar high level of cleaning standard as pharmaceutical manufacturers and NHS pharmacies, there is a choice between the use of intermediate cleanroom laundry services and barrier laundries. Further, the Parties' combined share of supply is below [5–10]% and there is a sufficient number of alternative suppliers available to customers. Therefore, based on the evidence available to it, the CMA does not believe that it is or may be the case that the Merger may be expected to result in an SLC in the supply of intermediate cleanroom laundry services including barrier laundries in Great Britain.
11. The Parties have until 23 December 2015 to offer undertakings in lieu of a reference (**UILs**) to the CMA in order to remedy the identified SLC. If such UILs are offered, the CMA will consider whether to accept these under section 73 of the Enterprise Act 2002 (**the Act**). If no such UILs are offered, then the CMA will refer the Merger to phase 2 pursuant to sections 33(1) and 34ZA(2) of the Act.

ASSESSMENT

Parties

12. Fenland provides full and intermediate cleanroom laundry services to customers who operate within sterile environments controlled for particular contaminants. These include the pharmaceutical manufacturing industry, NHS pharmacies and manufacturers of semi-conductors, micro-electronics, medical devices and precision engineering in Great Britain. Fenland operates from its full cleanroom laundry located in Skegness and its intermediate cleanroom and barrier laundries located in Grantham and Louth. Its transport hubs are in Perth, Newcastle, Manchester and Letchworth. Fenland's turnover for the financial year 2014 was approximately £20.2 million in Great Britain.¹
13. Fenland operates under the terms of its JV agreement with Berendsen, under which Fenland and Berendsen jointly control Micronclean Limited, which

¹ Fenland subsequently acquired Micronclean Products Limited (**MPL**) on 26 May 2015. MPL's turnover in the financial year 2014 was £2.8 million.

licenses the use of the Micronclean trademark to Fenland and Berendsen for allocated territories in Great Britain. Micronclean Limited provides technical and marketing services to Fenland and Berendsen to build and protect the Micronclean trademark. The Parties submitted that it was set up in the early 1980s to enable the then shareholders, including Fenland and Micronclean (Newbury) Limited, the entity acquired by Berendsen in 2014, to enter the nascent market on a national basis. They submitted that the JV agreement also enabled the shareholders to continue operating when the market gradually contracted from its peak in the early 1990s.

14. Under the terms of the JV agreement, Fenland serves customers in the North and Berendsen serves customers in the South (as determined by customers' postcodes). Both parties to the JV agreement operate under the Micronclean trademark and present themselves as a single entity to customers. The JV agreement restricts Berendsen from actively selling to customers located in the North and Fenland from actively selling to customers located in the South. While the JV agreement allows for passive sales by both parties into the other's territory, very limited sales take place in practice into each other's territory.
15. Fishers Cleanroom provides full and intermediate cleanroom laundry services throughout Great Britain from its cleanroom laundry in Livingston, Scotland, and from a sub-contracted distribution hub in Northampton.² Earlier in 2015, Fishers Services Limited acquired the full cleanroom laundry business of Clean Linen Service, which is now part of Fishers Cleanroom. Fishers Cleanroom's turnover in the financial year 2014 was approximately [REDACTED] in Great Britain, with a turnover of approximately [REDACTED] forecast for the financial year 2015.³

Industry background

16. The CMA has recently assessed the supply of cleanroom laundry services in Great Britain when it investigated the completed acquisition by Micronclean Limited of Guardline Technology Limited (**Micronclean/Guardline**).⁴
17. The demand for cleanroom laundry services arises as a result of certain types of manufacturing, in particular in the pharmaceutical and micro-electronics sectors, which are undertaken in a controlled environment, ie, a cleanroom, to prevent contamination of the item being manufactured with particulates such

² The distribution hub in Northampton is not transferred as part of the Merger.

³ The full cleanroom laundry business of Clean Linen Service generated a turnover of approximately [REDACTED] in the financial year 2014, which is expected to increase Fishers Cleanroom's revenues.

⁴ [CMA's decision of 20 May 2014](#) in relation to the completed acquisition by Micronclean Limited of Guardline Technology Limited, ME/6353/13.

as skin or dirt. Employees working in such controlled environments are required to wear garments that prevent skin, hair particles and fibres from normal clothing being released into the cleanroom environment. Such cleanroom garments need to be laundered in a cleanroom environment adequate for the cleanroom environment in which they are used.

18. Once the used garments are collected from customers, they are processed using a barrier laundry system, in which the used garments are loaded into a washing machine through a door located in an uncontrolled environment, they are then washed and decontaminated and unloaded through a different door located in a controlled environment.⁵
19. The garments are then dried in a pressurised tumble drier, which prevents the entry of contaminated air, with a feed of air that meets the required cleanroom standard. The dried garments are then unloaded back into the controlled environment, folded and hermetically sealed in a bag, before being delivered back to the customer (full and intermediate cleanroom laundry depending on the different classification and specification levels).⁶

Transaction

20. The Merger involves the acquisition by Fenland of Fishers Cleanroom. This includes Fishers Cleanroom's laundry facility in Livingston and employees, its customer contracts in relation to textile rental, laundry and garment sales, and goodwill. As a condition precedent to that acquisition, Fenland will terminate the JV agreement and acquire Berendsen's shares in Micronclean Limited such that, following the Merger, Fenland and Berendsen will become two independent competitors for cleanroom laundry services with Fenland retaining the Micronclean trademark. Fenland submitted that there is no scenario in which Fenland would acquire Fishers Cleanroom and continue to operate under the JV agreement.
21. The articles of association of Micronclean Limited give both shareholders (ie, Fenland and Berendsen) the pre-emptive right to acquire the other's shares in Micronclean Limited in the event of a change of control in that shareholder. As a result of Berendsen's acquisition of Micronclean (Newbury) Limited, now renamed Berendsen Cleanroom Services Limited, in September 2014, Fenland has the right to acquire Berendsen's shares in Micronclean Limited and termination of the JV agreement is therefore not dependent on

⁵ This process refers to barrier laundries, which do not operate to certified cleanroom laundry standards.

⁶ Laundry facilities may be certified as meeting certain non-industry specific standards (such as ISO46446). The ISO46446 classifications state the maximum number of particles per cubic meter of space within the controlled environment and classifies them from ISO1 (cleanest) to ISO9 (less clean). ISO46446 would be a specific ISO Class 4 standard. The similar applies to a Class 6 standard.

Berendsen's cooperation. Under the JV agreement, Berendsen's right to use the Micronclean trademark will automatically terminate once Fenland acquires Berendsen's shares in Micronclean Limited. The Parties have publicly announced that Fenland's proposed acquisition of Fishers Cleanroom will entail the termination of the JV agreement.

22. The CMA considers that the termination of the JV agreement is an integral part of the Merger for the reasons set out above, in particular because it is a precondition to Fenland's acquisition of Fishers Cleanroom and is not dependent on third-party consent. The CMA has therefore taken this termination into account in its assessment of the impact of the Merger, and has considered whether Berendsen has the ability, incentive and intention to expand its services in the North to replace the competitive constraint exercised pre-Merger by Fishers Cleanroom such that the Merger does not result in a reduction in the number of suppliers of cleanroom laundry services, which remains at two, but the composition of these suppliers will change from Fenland/Berendsen and Fishers Cleanroom (pre-Merger) to Fenland/Fishers Cleanroom and Berendsen (post-Merger).
23. Fenland submitted that the rationale for the Merger was to create efficiencies by combining [redacted]. The seller, Fishers Services Limited, decided to sell Fishers Cleanroom in order to [redacted].

Jurisdiction

24. As a result of the Merger, the enterprises of Fenland and Fishers Cleanroom will cease to be distinct.
25. The Parties overlap in the supply of full cleanroom laundry services, with a combined share of approximately [70–80]% post-Merger and an increment of approximately [10–20]% in Great Britain.⁷ Therefore, the CMA considers that the share of supply test in section 23 of the Act is met and 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.
26. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 22 October 2015 and the statutory 40 working day deadline for a decision is therefore 16 December 2015.

⁷ As shown in Table 1 below.

Counterfactual

27. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie, the counterfactual). For anticipated mergers the CMA generally adopts the prevailing conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, it believes that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive than these conditions.⁸
28. Fenland submitted that the relevant counterfactual in this case should be the current competitive situation in the market.
29. In this case, the CMA considered whether to assess the Merger against a counterfactual absent the JV agreement. On the face of it, the JV agreement appears to impose horizontal territorial restrictions on active sales, resulting in a territorial partitioning of the market (see paragraphs 13 and 14 above). The CMA will not apply a counterfactual that involves violations of competition law.⁹ In this case, the CMA considers that in the light of the potential justifications for these territorial restrictions given the use by both JV parties of the Micronclean trademark, it is not clear that the JV agreement infringes competition law. As a result, the CMA has not disregarded the existence of the JV agreement in its analysis of the counterfactual.¹⁰
30. Therefore, the CMA considers the prevailing conditions of competition to be the relevant counterfactual in this case.

Frame of reference

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

⁸ [Merger Assessment Guidelines](#) (OFT1254/CC2), September 2010, paragraph 4.3.5. The [Merger Assessment Guidelines](#) have been adopted by the CMA (see [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, Annex D).

⁹ [Merger Assessment Guidelines](#) (OFT1254/CC2), September 2010, paragraph 4.3.3. See also the Competition Appeal Tribunal's judgment in *Stagecoach/Preston*, [2010] CAT [14] at paragraph 20.

¹⁰ In [Micronclean/Guardline](#), the CMA did not have to address whether the JV agreement violated competition law as it did not make a difference to the outcome of the merger inquiry in that case.

important than others. The CMA will take these factors into account in its competitive assessment.¹¹

Product scope

32. Fenland submitted that the CMA's assessment of the product scope in Micronclean/Guardline was still relevant for assessing the Merger.
33. In Micronclean/Guardline, the CMA assessed the transaction on the basis of separate frames of reference for full and intermediate cleanroom laundry services, with intermediate cleanroom laundry services including laundry services supplied by barrier laundries.¹²
34. In response to the CMA's investigation of the present case, customers supported the CMA's previous findings, as customers did not consider intermediate cleanroom laundry services to constitute a substitute for full cleanroom laundry services, as the lower cleaning specifications are unsuitable for the end use requirements of certain customers, for example pharmaceutical manufacturers and NHS pharmacies.
35. In line with Micronclean/Guardline, and in the absence of any contrary evidence, the CMA therefore assessed the impact of the Merger under two separate frames of reference, namely:
 - (a) the supply of full cleanroom laundry services; and
 - (b) the supply of intermediate cleanroom laundry services including laundry services supplied by barrier laundries.

Geographic scope

36. In Micronclean/Guardline, the CMA assessed the transaction on a Great Britain-wide basis, but did not consider it necessary to conclude on the geographic scope of the market.
37. In line with Micronclean/Guardline, Fenland submitted that competition for full and intermediate cleanroom laundry services takes place across Great Britain.¹³
38. To assess the geographic scope in this case, the CMA considered:

¹¹ [Merger Assessment Guidelines](#), paragraph 5.2.2.

¹² [Micronclean/Guardline](#), paragraphs 32 to 42.

¹³ The Parties do not supply cleanroom laundry services in Northern Ireland.

- (a) the Parties' and competitors' locations as well as their respective customers' locations;
- (b) tender data;
- (c) transport cost models/cost of different routes; and
- (d) customer views on the importance of location.

39. The CMA found that:

- (a) Fishers Cleanroom services customers and participates in tenders for customers located across Great Britain, although it has a higher concentration of customers in the northern part of Great Britain, where its cleanroom laundry is based;¹⁴
- (b) the Parties' pricing models reflect transport costs only to a limited extent. [REDACTED]; and
- (c) customers do not generally consider location of the laundry facility to be an important factor when choosing a supplier.

40. Based on the above evidence, the CMA considers that whilst transport costs might affect the competitiveness of suppliers over long distances, this is not to the extent that it precludes them from competing throughout Great Britain. The CMA has therefore assessed the Merger on a Great Britain-wide basis. However, the location of suppliers is considered, where relevant, in the competitive assessment.

Conclusion on frames of reference

41. For the reasons set out above, the CMA considered the impact of the Merger in the following frames of reference:

- (a) the supply of full cleanroom laundry services in Great Britain; and
- (b) the supply of intermediate cleanroom laundry services, including laundry services supplied by barrier laundries, in Great Britain.

¹⁴ See Figure 1 below.

Competitive assessment

Horizontal unilateral effects

42. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices or degrade quality on its own and without needing to coordinate with its rivals.¹⁵ Horizontal unilateral effects are more likely when the merger parties are close competitors. The CMA assessed whether it is or may be the case that the Merger may be expected to result, in an SLC in relation to unilateral horizontal effects in the frames of reference set out above.

Full cleanroom laundry services in Great Britain

Shares of supply

43. There are currently three providers of full cleanroom laundry services in Great Britain, as set out at Table 1 below. As noted above, currently Fenland and Berendsen both operate under the Micronclean trademark in the supply of full cleanroom laundry services.

Table 1: Shares of supply for full cleanroom laundry services in Great Britain

<i>Entity</i>	<i>Turnover</i>	<i>Share of supply</i>
Fenland	[X]	[50–60]%
Fishers Cleanroom	[X]	[10–20]%
Parties combined	[X]	[70–80]%
Berendsen	[X]	[20–30]%
Total	[X]	100%

Source: Fenland's submission 19 October 2015.

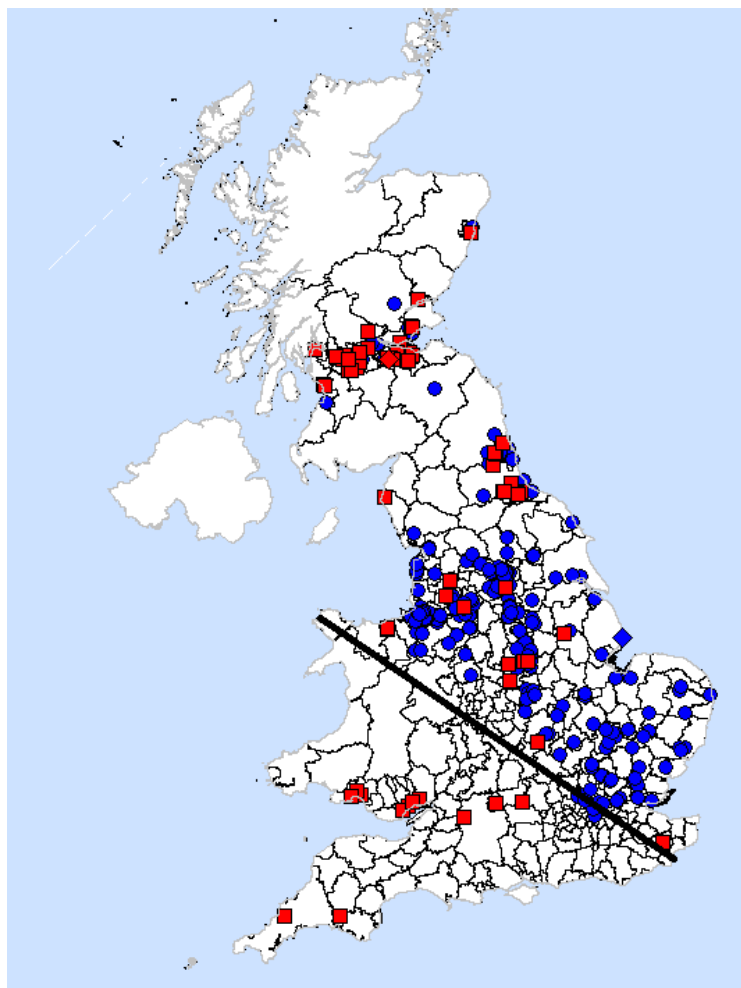
Closeness of competition between the Parties

44. Fisher Cleanroom is active across Great Britain, although it has a greater concentration of customers in the North near its laundry. Currently, Fenland's customers are virtually all in the North and Berendsen is hardly active in the North at all (see Figure 2 below), in line with the JV agreement.¹⁶ The Parties are therefore currently the only two suppliers of full cleanroom laundry services in the North.

¹⁵ [Merger Assessment Guidelines](#), from paragraph 5.4.1.

¹⁶ The line set out in Figure 1 represents the territorial partitioning under the JV agreement. However, it only accounts for an approximation of the postcodes served by each party to the JV agreement.

Figure 1: Location of Fenland's and Fishers Cleanroom's full cleanroom customers



Blue circles – Fenland's full cleanroom laundry customers
Blue diamond – Fenland's full cleanroom laundry facility
Red squares – Fishers Cleanroom's full cleanroom laundry customers
Red diamond – Fishers Cleanroom's full cleanroom laundry facility

45. The evidence gathered by the CMA from the Parties during its investigation shows that recently,¹⁷ out of [redacted] customers that switched to another provider, Fenland lost [redacted] customers to Fishers Cleanroom and Fishers Cleanroom lost [redacted] customers to Fenland. For the other three customers that switched, the new supplier was unknown. Most of the customers lost by the Parties ([redacted] out of [redacted]) ceased using cleanroom laundry services because of the closure of their manufacturing operations.
46. In response to the CMA's market testing, in relation to full cleanroom laundry services virtually all of the Parties' customers raised concerns about the Merger, noting that the Parties compete closely for the supply of full cleanroom laundry services. Several customers told the CMA that the Merger

¹⁷ The data provided by Fishers Cleanroom dates from November 2013 to July 2015 and the data provided by Fenland dates from February 2014 to August 2015.

would remove all competition in the market, resulting in increased prices and/or quality deterioration. In particular, 25 customers raised strong concerns about the Merger, including pharmaceutical manufacturers and NHS pharmacies. In addition, two customers in the semiconductor sector and two customers in the electronics sector also raised concerns.

47. Based on the evidence set out above, the CMA considers that currently Fishers Cleanroom is Fenland's closest competitor and that Fenland, operating under the Micronclean trademark, is Fishers Cleanroom's closest competitor in the North. Therefore, based on the current conditions in the market, the CMA believes that the Merger raises significant competition concerns as a result of horizontal unilateral effects in relation to the supply of full cleanroom laundry services in Great Britain.
48. As set out above, as a condition precedent to Fenland acquiring Fishers Cleanroom, Fenland will terminate the JV. The CMA has therefore assessed whether the termination of the JV agreement and hence, Fenland and Berendsen becoming two independent competitors (without the restrictions currently imposed by the JV agreement), could prevent a realistic prospect of an SLC resulting from the Merger.

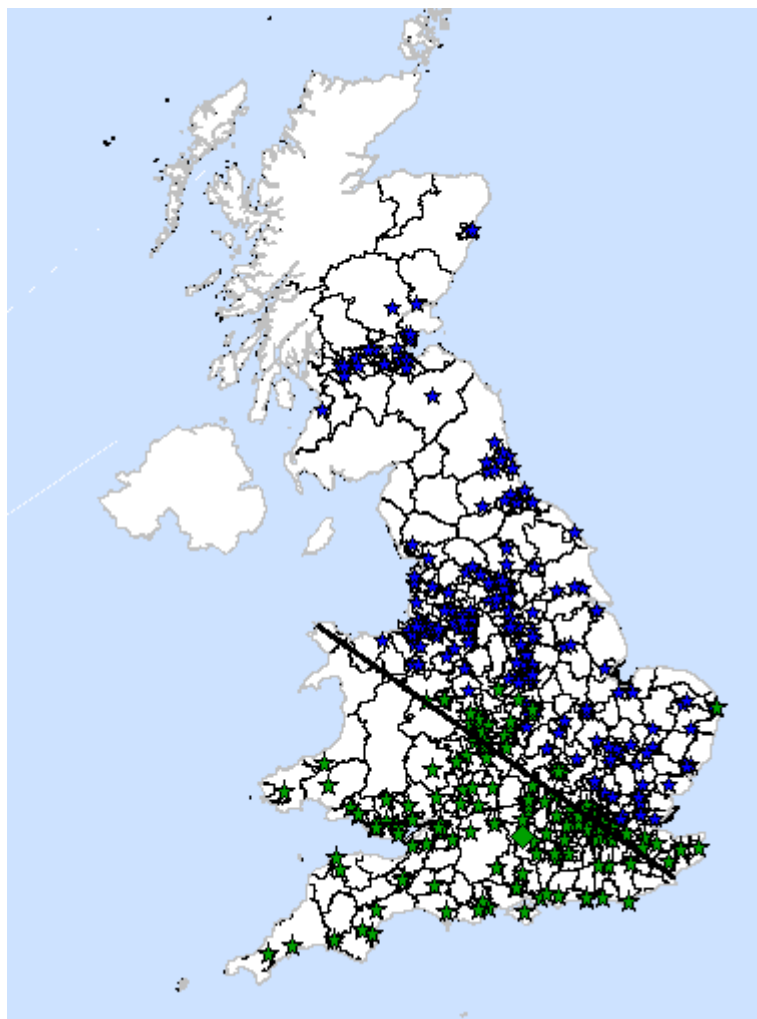
Berendsen's expansion

49. Entry, or expansion of existing firms, can mitigate the initial effect of a merger on competition, and in some cases may mean that there is no SLC. Generally, in assessing whether entry or expansion might prevent an SLC, the CMA considers whether such entry or expansion would be timely, likely and sufficient.¹⁸ The CMA will generally consider expansion within two years as timely.¹⁹ In this case, the CMA therefore considered whether Berendsen's expansion into the North following the termination of the JV agreement would be timely, likely and sufficient to prevent the Merger giving rise to a realistic prospect of an SLC.
50. As shown in Figure 2 below, Berendsen currently serves customers in the South and Fenland serves customers in the North, in line with the JV agreement. Therefore, the CMA assessed whether Berendsen would have the ability, incentive and intention to expand to serve customers in the North in a timely, likely and sufficient manner and hence prevent an SLC arising from the disappearance of Fishers Cleanroom's pre-Merger constraint in relation to the supply of full cleanroom laundry services on Fenland.

¹⁸ [Merger Assessment Guidelines](#), from paragraph 5.8.1.

¹⁹ [Merger Assessment Guidelines](#), paragraph 5.8.11.

Figure 2: Location of Fenland's and Berendsen's full cleanroom customers



Blue stars – Fenland's full cleanroom customers
Blue diamonds – Fenland's full cleanroom laundry facility
Green stars – Berendsen's full cleanroom customers
Green diamonds – Berendsen's full cleanroom laundry facility

Ability

51. Fenland submitted that Berendsen is a large, full-service, well-funded and listed business with a strong reputation in the laundry sector generally and full cleanroom laundry operations elsewhere in Europe. As a result, Fenland's view is that, once the JV agreement has been terminated, Berendsen can be expected to compete vigorously with Micronclean (ie, Fenland) throughout Great Britain.
52. To assess Berendsen's ability to expand into the North (to replace the competitive constraint currently exercised by Fishers Cleanroom), the CMA considered:
 - (a) Berendsen's spare capacity for the supply of full cleanroom laundry services;

- (b) Berendsen's transport network;
 - (c) Berendsen's brand and current dual-branding;
 - (d) customer responses to the CMA's market testing; and
 - (e) Fishers Cleanroom's expansion in recent years.
53. In relation to Berendsen's capacity for the supply of full cleanroom laundry services, Berendsen told the CMA that it had adequate spare capacity.²⁰
54. In relation to Berendsen's transport network and transport costs, Berendsen told the CMA that it has an existing courier network that enables it to deliver and collect from anywhere in Great Britain, with the budget for the deployment of an extra transport van for 2016, and that its current transport costs account for a limited proportion of its total cost.²¹ The CMA also notes that, as set out in paragraph 40 above, transport costs do not generally preclude cleanroom laundry suppliers from competing across Great Britain.
55. The CMA therefore considers that whilst transport cost may affect Berendsen's competitiveness as a supplier operating over longer distances, it would not preclude Berendsen from competing throughout Great Britain.
56. In the summer of 2015, Berendsen started operating in the South under its own name alongside the Micronclean brand, rebranding its website, delivery vans, drivers' uniforms and informing customers of its dual-branding.
57. As part of its market testing, the CMA asked the Parties' customers in the North whether they would consider Berendsen as a credible supplier, explaining that Berendsen, as the owner of Micronclean (Newbury) Limited, was already operating in the South under the Micronclean trademark. Customer responses were mixed, which is not surprising given that Berendsen only recently started to dual brand itself and customers in the North may therefore not have heard of Berendsen as a cleanroom laundry supplier due to the fact that it currently operates as Micronclean under the JV agreement. However, a substantial number of customers told the CMA that they would consider Berendsen as a credible supplier for full cleanroom laundry services and one NHS pharmacy stated that 'the company meets the standards specified by the NHS National Pharmaceutical Quality Assurance Committee'.

²⁰ [REDACTED].

²¹ Approximately [REDACTED]%.

58. As set out in the Micronclean/Guardline decision, Fishers Cleanroom's expansion (ie, its investment in a new fleet of vehicles, its appointment of a new sales manager based in Swindon and its creation of a distribution hub in Northampton)²² assisted Fishers Cleanroom in successfully serving customers throughout Great Britain from its cleanroom laundry facility in Livingston, as shown in Figure 1 above. The CMA considers that this shows that expansion within Great Britain is feasible.

Incentive and intention

59. In addition to Berendsen's ability to compete, the CMA also considered whether Berendsen would have the incentive and intention to expand into the North in a timely, likely and sufficient manner.

60. Berendsen told the CMA that [redacted] to be able to react to the potential termination of the JV agreement. This [redacted] is intended to be deployed in the North. Berendsen also told the CMA that it had a sales target of [redacted] of new contract value for 2016.²³

61. The CMA considers that Berendsen's plan for the North for 2016 translates to a limited proportion of the expected value of contracts coming up for renewal²⁴ and does not support the Parties' submission that Berendsen will compete vigorously with Micronclean, ie, Fenland post-Merger, throughout Great Britain.

62. Whilst Berendsen told the CMA that it was considering investment plans for its laundry facility in Newbury, Berendsen also told the CMA (which is evidenced in Berendsen's internal documents) that Berendsen will primarily focus on continuing to grow its existing customer portfolio.²⁵

63. In relation to Berendsen's intention to compete with Fenland in the North once the restrictions on active sales are removed, the CMA considered whether in practice, Berendsen and Fenland currently already compete for passive sales, which is allowed under the JV agreement.

64. Fenland submitted that the restrictions on passive sales in the JV agreement were removed in 2012 and the removal was confirmed by letter in March

²² [Micronclean/Guardline](#), paragraph 97.

²³ [redacted].

²⁴ The Parties told the CMA that the market in the North is worth about [redacted], and on the assumption that the contracts come up for renewal about once every three years, this allows for a [redacted] opportunity per year. [redacted] per year is [redacted]% of the expected value of contracts coming up for renewal.

²⁵ [redacted].

2015. Since March 2015, Berendsen has only participated in one full cleanroom laundry tender in the North.

65. On the basis of the evidence set out above, the CMA believes that it has not received sufficient evidence that Berendsen will have sufficient incentive and/or intention to strongly compete against Fenland in the North. Hence, the CMA believes that there is a realistic prospect that Berendsen's post-Merger constraint will not be sufficient to prevent the Merger giving rise to an SLC within a two-year timeframe.

Conclusion on horizontal unilateral effects

66. As set out above, the CMA believes that Fishers Cleanroom is Fenland's closest competitor and that Fenland, operating under the Micronclean trademark, is Fishers Cleanroom's closest competitor in the North and that absent the Merger, the Parties would continue to compete. On the basis of the evidence available to it, as set out above, although the CMA believes that Berendsen would be able to successfully expand into the North, the CMA believes that there is at least a realistic prospect that Berendsen does not have the incentive and intention to do so in a timely and sufficient manner such that it prevents the Merger giving rise to an SLC.
67. Therefore, the CMA believes that there is a realistic prospect that the Merger will give rise to an SLC in relation to the supply of full cleanroom laundry services in Great Britain.

Intermediate cleanroom laundry services including laundry services supplied by barrier laundries in Great Britain

68. Fenland submitted that the intermediate cleanroom laundry market including barrier laundries is worth approximately £85 million. The suppliers of intermediate cleanroom laundry services including barrier laundries are set out in Table 2 below.

Table 2: Shares of supply for intermediate cleanroom laundry services including laundry services supplied by barrier laundries in Great Britain

<i>Entity</i>	<i>Estimated shares of supply</i>
Fenland	[5–10]%
Fishers Cleanroom	[0–5]%
Parties combined	[5–10]%
Johnsons Apparelmaster	[40–50]%
Berendsen (as part of Micronclean)	[0–5]%
Berendsen (outside of Micronclean)	[30–40]%
Paragon	[5–10]%
Clean Linen Services	[5–10]%
Other	[5–10]%
Total	100%

Source: Fenland’s submission 19 October 2015.

69. In Micronclean/Guardline, the CMA explained why it did not consider intermediate cleanroom laundry services in great detail in its competitive assessment. The CMA stated: ‘Customer concerns related to full cleanroom laundry services or to customers who obtain full and intermediate cleanroom laundry services. Standalone intermediate cleanroom laundry services are not, therefore, considered further in the competitive assessment.’²⁶
70. Fenland submitted that the Merger could not be expected to give rise to competition concerns as the Parties’ shares of supply are small, the increment to Fenland’s market share is very small and there are a number of alternatives for customers.
71. Based on the CMA’s market testing, the CMA considers that the requirements of customers of intermediate cleanroom laundry services form an almost continuous spectrum of requirements through the various cleanroom standards (Class 6, 7 or 8) to barrier laundries, depending on the industry in which the customer operates.
72. Customers active in the automotive and food industry told the CMA that they were not concerned about the Merger, as they could switch to a number of alternative suppliers of barrier laundry services, with the most commonly mentioned suppliers being Johnsons Apparelmaster and Sunlight. Sunlight is now owned by Berendsen.²⁷ This is also supported by the Parties’ competitors, who told the CMA that they actively compete with the Parties for the supply of laundry services to customers active in the food and automotive industries.

²⁶ [Micronclean/Guardline](#), paragraph 75.

²⁷ For clarification, this is a non-cleanroom laundry and hence, does not operate under the Micronclean trademark.

Conclusion on horizontal unilateral effects

73. The CMA considers that the Parties' combined share of supply for intermediate cleanroom laundry services including laundry services supplied by barrier laundries is low and that the Parties face competitive constraints from a number of non-cleanroom laundry providers, in particular from Johnsons Apparelmaster and Berendsen. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to supply of intermediate cleanroom laundry services including laundry services supplied by barrier laundries.

Third party views

74. The CMA contacted the Parties' customers and competitors. The large majority of the Parties' customers raised strong competition concerns regarding the Merger.
75. Third party comments have been taken into account where appropriate in the competitive assessment above.

Conclusion on SLC

76. Based on the evidence set out above, the CMA believes that it is or may be the case that the Merger may be expected to result in an SLC as a result of horizontal unilateral effects in relation to the supply of full cleanroom laundry services.

Exceptions to the duty to refer

77. Where the CMA's duty to refer is engaged, the CMA may, pursuant to section 33(2)(a) of the Act, decide not to refer the merger under investigation for a phase 2 investigation on the basis that the market(s) concerned is/are not of sufficient importance to justify the making of a reference (the **de minimis exception**). In considering whether to apply the de minimis exception, the CMA will consider, in broad terms, whether the costs involved in a reference would be disproportionate to the size of the market(s) concerned, taking into account also the likelihood that harm will arise, the magnitude of competition potentially lost and the duration of such effects. The CMA considers that the

market(s) concerned will generally not be of insufficient importance if their annual value in the United Kingdom exceeds £10 million.²⁸

78. The Parties have asked the CMA to consider whether it is appropriate to apply the de minimis exception to the present case and submitted that the size of the full cleanroom laundry service market could be construed to be below £10 million, if the supply of full cleanroom laundry services and the supply of full cleanroom garments were considered separately.
79. The CMA found no evidence to support the view that cleanroom laundry services and the supply of full cleanroom garments should be considered separately. In addition, Fenland told the CMA that the majority of its customers purchased cleanroom laundry services and cleanroom garments together. The size of the relevant market on which the CMA assessed the Merger is therefore above £10 million.

Decision

80. Consequently, the CMA believes that it is or may be the case that the Merger may be expected to result in an SLC within a market or markets in the United Kingdom.
81. The CMA therefore considers that it is under a duty to refer under section 33(1) of the Act. However, the duty to refer is not exercised²⁹ whilst the CMA is considering whether to accept UILs.³⁰ The Parties have until 23 December 2015³¹ to offer UILs to the CMA.³² The CMA will refer the Merger for a phase 2 investigation³³ if the Parties do not offer UILs by this date; if the Parties indicate before this date that they do not wish to offer UILs; or if the CMA decides³⁴ by 4 January 2016 that there are no reasonable grounds for believing that it might accept the UILs offered by the Parties, or a modified version.

Andrea Coscelli
Executive Director, Markets & Mergers
Competition and Markets Authority
16 December 2015

²⁸ *Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance* (OFT1122), December 2010, chapter 2. The *Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance* were adopted by the CMA (see *Mergers: Guidance on the CMA's jurisdiction and procedure*, Annex D).

²⁹ Section 33(3)(b) of the Act.

³⁰ Section 73 of the Act.

³¹ Section 73A(1) of the Act.

³² Section 73(2) of the Act.

³³ Sections 33(1) and 34ZA(2) of the Act.

³⁴ Section 73A(2) of the Act.