

Completed acquisition by Whitby Seafoods Ltd of the Scampi Processing Business of Dawnfresh Seafoods Ltd

Decision on relevant merger situation and substantial lessening of competition

ME/6598/16

The CMA's decision on reference under section 22(1) of the Enterprise Act 2002 given on 20 June 2016. Full text of the decision published on 14 July 2016.

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

SUMMARY

1. On 12 January 2016, Whitby Seafoods Ltd (**Whitby**) acquired from Dawnfresh Seafoods Ltd its scampi processing business (**Dawnfresh**) (the **Merger**). Whitby and Dawnfresh are together referred to as the **Parties**.
2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that the Parties' enterprises have ceased to be distinct and that the share of supply test is met. The four-month period for a decision, as extended, has not yet expired. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.
3. The Parties overlap in the wholesale supply of own-label and branded scampi to retail customers, and own-label scampi to food service customers, in the UK. Whitby also sells branded scampi to food service customers. The CMA assessed the impact of the Merger in product frames of reference for the wholesale supply of own-label and branded scampi (separately) to retail and food service customers (separately), taking into account the competitive constraint from suppliers of other breaded seafood products in its competitive assessment. The relevant geographic frame of reference is the UK.
4. The CMA examined whether the Merger would give rise to horizontal unilateral effects in the wholesale supply of own-label and branded scampi

(separately) to retail and food service customers (separately) in the UK as a result of the loss of a competitor. This involved analysing the extent to which the Parties competed pre-Merger (so that the constraint lost as a result of the Merger could be identified) and then examining whether there would be sufficient competitors remaining post-Merger to prevent the merged entity from raising prices or reducing the quality of its products.

5. The CMA found that the Merger involves the combination of the largest scampi supplier (Whitby) with a significantly smaller scampi rival (Dawnfresh). Both Parties were strong in the supply of own-label scampi to both retail and food service customers, but Dawnfresh was considerably weaker in the supply of branded scampi, especially to food service customers where it had no sales. Other evidence, including tender data and third party feedback, suggested that the Parties closely competed prior to the Merger.
6. In terms of competitors remaining following the Merger, the evidence showed that the merged entity would continue to be constrained by a number of rivals. Young's Seafood and Five Star Fish have substantial operations and compete strongly in the supply of scampi, while there are several smaller rivals which have contracts with retail and/or food service customers and could easily expand. The merged entity will face competition in both branded and own-label scampi, and both to retail and food service customers. Additionally, the CMA believed that the merged entity would continue to face some competitive constraint from suppliers of other breaded seafood products which could transfer their operations easily into the supply of scampi.
7. Accordingly, the CMA concluded that the Merger does not give rise to a realistic prospect of a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects in the wholesale supply of own-label and branded scampi (separately) to retail and food service customers (separately) in the UK.
8. The Merger will therefore **not be referred** under section 22(1) of the Enterprise Act 2002 (the **Act**).

ASSESSMENT

Parties

9. Whitby is a supplier of a range of chilled and frozen seafood products to retail and food service customers in the UK. It has three factories, which are based in Whitby (England), Kilkeel (Northern Ireland) and Newton Stewart (Scotland) from which it produces scampi. Whitby's UK turnover in FY2015 was £41m, of which [X] was generated from the sale of scampi.

10. Dawnfresh Seafoods Ltd is also a supplier of a range of chilled and frozen seafood products to retail and food service customers in the UK. Before the Merger, Dawnfresh produced scampi from its factories in Uddingston and Arbroath in Scotland. Dawnfresh's UK turnover in FY2015 was £55m, of which [X] was generated from the sale of scampi.

Transaction

11. Whitby and Dawnfresh Seafoods Ltd entered into an asset purchase agreement under which Whitby agreed to acquire Dawnfresh from Dawnfresh Seafoods Ltd. The transaction completed on 12 January 2016.

Jurisdiction

12. The CMA believes that the acquisition of Dawnfresh is an acquisition of an 'enterprise', as defined in section 129 of the Enterprise Act 2002.
13. The acquisition included eight scampi shelling machines, scampi raw material and finished product stock, a license to use the Kintyre brand for scampi, Dawnfresh Seafoods Ltd's scampi customer records and goodwill. The agreement refers to Whitby buying the assets "with a view to carrying on the Business as a going concern". It includes an obligation to pass on any ongoing customer queries and imposes on Dawnfresh Seafoods Ltd an obligation not to compete with Dawnfresh for five years. The CMA understands that Whitby has since negotiated supply contracts with each of the six customers that Dawnfresh previously served. Accordingly the CMA believes that there is economic continuity between the Dawnfresh business before and after the acquisition, so that it constitutes an enterprise.
14. Therefore, as a result of the Merger, the CMA believes that Whitby and Dawnfresh are enterprises which have ceased to be distinct.
15. The Parties overlap in the supply of chilled and frozen scampi products to retail and food service customers in the UK, for which Whitby estimates the Parties have a combined share of supply of [60-70]% (increment [10-20]%). The CMA therefore believes that the share of supply test in section 23 of the Act is met.
16. The Merger completed on 12 January 2016 and was made public on the same day. The four month deadline for a decision under section 24 of the Act is 22 June 2016, following an extension under section 25(2) of the Act.
17. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.

18. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 22 April and the statutory 40 working day deadline for a decision is therefore 20 June 2016.¹

Counterfactual

19. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (i.e. the counterfactual). For completed mergers the CMA generally adopts the pre-merger 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.²
20. Whitby and some third parties provided evidence to the CMA showing that sales of scampi in the UK have been in decline for the last few years. In addition, Whitby pointed to the losses which had been incurred by Dawnfresh over the last few years and suggested that Dawnfresh was failing and may have exited the market.
21. However, the CMA's discussions with Dawnfresh Seafoods Ltd indicated that, while its scampi business had suffered losses for some years, it was not clear that, in the absence of the Merger, it would inevitably have exited the market in the short-term. Both Parties also told the CMA that the business was not widely marketed, so it is possible that there could have been a less anti-competitive purchaser of the business.
22. In any event, as the CMA has not found any competition concerns with the Merger under the more competitive counterfactual of the pre-Merger conditions of competition, the CMA has not found it necessary to conclude on the relevant counterfactual.

¹ After starting an investigation, the CMA is in most cases required to decide whether the test for a reference is met within a timetable of 40 working days, failing which it loses its ability to refer. The CMA must also make its decision as to whether to make a reference not more than four months after the completion of a transaction, in some circumstances this four month period can be extended.

² *Merger Assessment Guidelines* (OFT1254/CC2), September 2010, from paragraph 4.3.5. The *Merger Assessment Guidelines* have been adopted by the CMA (see *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2), January 2014, Annex D).

Frame of reference

23. 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 important than others.³
24. The Parties overlap in the wholesale supply of own-label and branded scampi to retail customers, and own-label scampi to food service customers in the UK. Whitby also sells branded scampi to food service customers.
25. The wholesale supply of scampi typically involves suppliers buying raw scampi from third parties, which may either be the fishermen landing the scampi or intermediaries which purchase from the fishermen. When the supply is from an intermediary, the intermediary usually removes the shell of the scampi before supplying it to the wholesaler. Scampi cannot be labelled as scampi under food legislation unless comprised of *nephrops norvegicus*, which can only be fished around British waters. Raw scampi is processed by removing the shell from the flesh (either by hand or machine), cleaning the scampi tail, freezing the core and then adding a coating of batter or breadcrumbs. The scampi is then bagged in different weights and sizes, and sold to retail and food service customers. Chilled scampi is produced the same way, but the temperature is brought up to 0-4 degrees Celsius before sale. Whitby estimates that the wholesale market for scampi is worth approximately £66 million a year in the UK, of which £36 million is to food service customers and £30 million is to retail customers.
26. The CMA's approach to the frame of reference is typically to begin with the overlapping products of the parties in the narrowest plausible candidate frame of reference and then to see if this should be widened. The CMA will pay particular regard to demand-side factors (the behaviour of customers and its effects). However, it may also consider supply-side factors (the capabilities and reactions of suppliers in the short term) and other market characteristics.⁴

Product scope

27. Starting with the parties' overlap in the wholesale supply of own-label and branded scampi to retail customers, and own-label scampi to food service

³ [Merger Assessment Guidelines](#), paragraph 5.2.2.

⁴ [Merger Assessment Guidelines](#), section 5.2.

customers, the CMA considered whether to widen the frame of reference to include other seafood products. The CMA also considered whether own-label and branded scampi products should be considered in the same frame of reference, and whether retail and foodservice customers should be considered together.

Other breaded seafood products

28. Whitby submitted that scampi is not a discrete market and that other fish products coated with batter and breadcrumbs (including calamari, prawns, fish goujons, fish bites and fish fingers) are substitutes. It provided an email from a frozen food distributor which said that *'scampi is not an isolated category but is part of a seafood offering in relation to starters and main course and is in competition not only with seafood products but other categories such as meat, chicken, etc'*.
29. Whitby also said that, in a period when the volume of scampi landed by fishermen had declined, the price realised by fishermen for this scampi did not increase, and had even declined at times, which indicated a broader market where consumers were substituting away from scampi.
30. Whitby gave examples of scampi being sold by retailers along with fish cakes, fish fingers, goujons, calamari and prawns; and examples from food service providers where scampi was removed from specific menus and replaced with warm-water prawns. They submitted that this indicates that scampi is not considered a sufficiently important stand-alone market segment and competes against other breaded seafood.
31. The CMA sought views from third parties in order to understand the extent to which scampi and other breaded seafood products are substitutes. All customers (both retail and food service) which responded to the CMA's questions indicated that they and the consumers they serve do not view other seafood products as a close substitute for scampi.
32. The majority of competitors which responded to the CMA indicated that other seafood products are substitutes for scampi. One competitor said that consumers readily switch between scampi and other fish products. Another competitor explained that the seafood market in general is very price sensitive and consumers would switch to other seafood products in the event of a price increase.
33. The CMA also considered the ease of supply-side substitution. One competitor said that the equipment required to process (i.e. bread and fry) other seafood products can also be used to process scampi. The Parties said

that this equipment is also readily available, with many parties involved in the supply of breaded or battered food products. One competitor also told the CMA that a supplier with an established brand in other seafood may be able to relatively easily extend it to scampi. Consistent with this observation, the CMA noted recent entry into the wholesale supply of scampi from suppliers which were already active in the supply of other seafood products.

34. Overall, although there is evidence that the frame of reference may also include other breaded seafood products, on a cautious basis the CMA has assessed the impact of the Merger within a frame of reference limited to scampi. However, the CMA has taken into account the constraint imposed by suppliers of other seafood products in its competitive assessment.

Own-label and branded scampi

35. Before the Merger, Whitby supplied scampi under the 'Whitby' brand as well as a variety of own-label products, and Dawnfresh Seafoods Ltd supplied scampi under the 'Kintyre' brand as well as an own-label product. Whitby did not give its view on whether own-label and branded scampi are part of the same frame of reference.
36. Whitby told the CMA that the majority of the supply of scampi in the UK is own-label, for which customers each have their own individual specifications, and that there is also differentiation within branded scampi products, e.g. the Whitby product contains polyphosphate, while the Young's product does not, and the Kintyre (Dawnfresh) product is a 'value brand' as it contains meat recovered from shell waste using a pressing device.
37. The CMA and its predecessors have previously assessed the distinction between own-label and branded products.⁵ This decisional practice shows that there is no general rule as to whether own-label and branded products are likely to be considered as forming part of the same product market. Each case needs to be considered on its own facts, and the CMA and its predecessors have reached different conclusions in different cases.
38. Retail customers told the CMA that branding in scampi is important to some consumers, which may imply limited demand-side substitutability between branded and own-label products. One retailer told the CMA that "both branded and own label products are very important to our business", and another commented that "branding is reasonably important to the customer". The four

⁵ For example, ME/6585/16 Hain Frozen Foods UK Limited/Orchard House Foods Limited (8 June 2016), ME/6472/14 *Pork Farms/Kerry Foods* (17 December 2014), ME/6452/14 Associated British Foods Plc/ Dorset Cereals (28 October 2014)

largest supermarkets all stock both branded and own-label scampi. Similarly, all food service customers sell both branded and own-label scampi.

39. Competitors told the CMA that it is important for scampi producers to have a branded product and they need a dual strategy of own-label and branded to meet large supermarkets' requirements. All of the largest wholesalers of scampi supply both own label and branded scampi.
40. Competitors said that it would probably be easier for a supplier of branded scampi to supply own-label scampi than for a supplier of own-label scampi to begin supply of a branded product. This is because it would be difficult to establish a scampi brand from nothing, although it would be much easier if a supplier had an existing seafood brand.
41. The CMA notes that Whitby's management accounts record branded and own label sales separately, indicating that management sets separate targets for these product lines.
42. On the basis of this evidence, and on a cautious basis, the CMA has assessed the impact of the Merger on the wholesale supply of own-label and branded scampi separately.

Retail and food service customers

43. Both Whitby and a competitor told the CMA that the process to supply retail customers is almost the same as for food service customers, except that scampi for retail customers has an additional step of being fried before it is frozen.
44. One competitor said that there is no significant product difference between scampi for retail and food service customers, and that any supplier to the retail sector would be able easily to supply the food service sector. It also noted that, traditionally, food service customers had a preference for large whole tail scampi, whereas retail customers had a preference for formed scampi and scampi bites, but added that this difference is disappearing.
45. The CMA notes that, notwithstanding the comments above, some of the smaller suppliers of scampi sell exclusively either to food service customers or to retail customers. One competitor which supplies the retail sector told the CMA that it had not considered expanding into the food service sector because there was more focus on price rather than quality in that sector and it would require product development costs. Another competitor also said that food service customers are generally more price sensitive than retail customers, as retail customers tend to have more of a focus on origin and quality. On the other hand, the CMA notes that there does not appear to be

any impediments to a supplier to one sales channel choosing to use its assets to begin supplying the other sales channel. Moreover, it is clear that there are major suppliers of scampi which supply to both channels.

46. On the basis of this evidence, the CMA does not believe that there is much distinction between the wholesale supply of scampi to retail and food service customers but, on a cautious basis, it assessed the impact of the Merger on retail and food service customers separately. Given that it did not find any competition concerns on this basis, it did not need to conclude on this aspect of the frame of reference.

Geographic scope

47. Prior to the transaction Whitby and Dawnfresh both supplied scampi products across the UK. No evidence has been submitted either by Whitby or by third parties to suggest that the market should be either any wider than the UK or based on regions within the UK.
48. Whitby told the CMA that scampi cannot be labelled as scampi under food legislation unless comprised of *nephrops norvegicus*, which can only be fished around British waters. This limits the extent of overseas production, and imports into the UK are very small. Third parties also indicated that the only credible scampi suppliers are in the UK.
49. The CMA also noted that the largest customers for wholesale supply of scampi are national.
50. For the reasons set out above, the CMA believes that the appropriate geographic frame of reference is the UK.

Conclusion on frame of reference

51. For the reasons set out above, the CMA has assessed the impact of the Merger in frames of reference for the wholesale supply of own-label and branded scampi (separately) to retail and food service customers (separately) in the UK.⁶

⁶ Although, prior to the Merger, the Parties did not overlap in the supply of branded scampi to food service customers (where Dawnfresh had no supplies), in light of the possible ease of Dawnfresh moving into this supply (see paragraph 46), the CMA considered this frame of reference alongside the other three frames of reference in which there was pre-Merger competition between the Parties.

Competitive assessment

Horizontal unilateral effects

52. 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.⁷ Horizontal unilateral effects are more likely when the merger parties are close competitors.
53. The CMA assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC in relation to horizontal unilateral effects in the wholesale supply of own-label and branded scampi (separately) to retail and food service customers (separately) in the UK.
54. In order to assess the likelihood of the Merger resulting in unilateral effects, the CMA has considered:
- (a) Shares of supply;
 - (b) The closeness of competition between the Parties; and
 - (c) Competitive constraints from alternative suppliers.

Shares of supply

55. Whitby submitted that the Parties' combined share of the overall supply of scampi in the UK is [60-70]%, with an increment of [10-20]% arising from the Merger.
56. The CMA has estimated shares of supply for each of the four frames of reference based on evidence gathered from the Parties and their competitors. This is shown in Table 1.

⁷ [Merger Assessment Guidelines](#), from paragraph 5.4.1.

Table 1 – estimated shares of supply in the wholesale supply of scampi in the UK

	Branded				Own-label			
	Whitby	Dawnfresh	Other	Total	Whitby	Dawnfresh	Other	Total
Food service (£m)	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]
Food service (%)	[60-70]	[0-5]	[30-40]		[80-90]	[10-20]	[0-5]	
Retail (£m)	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]
Retail (%)	[20-30]	[0-5]	[70-80]		[40-50]	[10-20]	[40-50]	

Source: parties and competitors (figures are for financial year 2015/16)

57. The CMA notes that, in the overall supply of scampi in the UK, the Merger involves the combination of the largest supplier (Whitby) with a significantly smaller rival (Dawnfresh).
58. Both Parties had significant sales of own-label scampi to both retail and food service customers, and their combined share of supply in these segments is high. However, the CMA notes that these frames of reference were defined on the most cautious basis and, in particular, combining the retail and food service segments sees the Parties' combined market shares fall significantly for both branded and own-label products.
59. The shares of supply indicate that there was relatively limited competition between the parties in the wholesale supply of branded scampi to either retail customers (where the Parties' combined share of supply is low, at [20-30]% with a [0-5]% increment) or to food service customers (where Dawnfresh had no sales at the time of the Merger).

Closeness of competition

60. Where products or services are differentiated, for example by branding or quality, unilateral effects are more likely where the merger firms' offerings compete closely.⁸ Accordingly, the CMA analysed the extent to which the Parties competed against each other pre-Merger.
61. Internal documents from Whitby identified Dawnfresh Seafoods Ltd as a competitor.
62. Also, customers and competitors told the CMA that the Parties competed closely. In particular, the majority of customers rated the Parties as strong suppliers, although some customers did not rate Dawnfresh as highly as Whitby.

⁸ [Merger Assessment Guidelines](#), paragraph 5.4.6.

63. The CMA obtained a limited amount of tender data from customers, which showed that Whitby and Dawnfresh often tendered for the same contracts. Additionally, one customer told the CMA that, post-Merger, it had experienced a price increase by Whitby when its contract with Dawnfresh had terminated and Whitby had begun supply. Whitby explained the necessity of this price rise being due to Dawnfresh's prices being unsustainable as demonstrated by its history of losses.
64. On the basis of this evidence and the market share data, the CMA believes that the Parties were close competitors for the wholesale supply of own-label scampi to retail and food service customers (separately) in the UK.
65. The CMA separately considered the extent of competition between the Parties in the wholesale supply of branded scampi. Given the Parties' relatively low combined share of supply of branded scampi to retail customers ([20-30]%), the CMA believes that the extent of competition between the Parties in this product appears to have been limited. Dawnfresh Seafoods Ltd told the CMA that it also had no plans, pre-merger, of moving into the wholesale supply of branded scampi to food service and the CMA notes that, even if it had, its small share of supply in the wholesale supply of branded scampi to retail ([0-5]%) would indicate that it would have been unlikely to capture many customers in the short term. This is supported by the fact that Dawnfresh Seafoods Ltd's brand (Kintyre) was perceived as a 'value brand' which is unlikely to have been seen as attractive to food service customers which typically seek to use branded products to drive premium prices. For these reasons, the CMA does not believe that the Parties either were pre-Merger, or in the absence of the Merger were likely to become, close competitors in the wholesale supply of branded scampi to retail and food service customers (separately) in the UK.

Competitive constraints

66. Unilateral effects resulting from a merger are more likely where customers have little choice of alternative suppliers.⁹ Accordingly, the CMA assessed the extent to which the merged entity would continue to be effectively constrained by other suppliers following the Merger.
67. The Parties identified several competitors currently supplying scampi in the UK, all of which are also active in the supply of other breaded seafoods. These are: Young's Seafoods (**Young's**), Five Star Fish (**Five Star**), Sealord Caistor (**Sealord**), Bannerman Seafoods (**Bannerman**), Kilhorne Bay

⁹ [Merger Assessment Guidelines](#), paragraph 5.4.12.

Seafoods (**Kilhorne Bay**), Thistle Seafoods (**Thistle**), Joseph Robertson (Aberdeen) (**Joseph Robertson**) and Icelandic Seachill (**Icelandic Seachill**). These competitors are discussed in the following paragraphs.

68. Young's is a UK producer and distributor of seafood, supplying a number of chilled and frozen seafood products to retail and food service customers. [REDACTED]
69. Most customers which responded to the CMA's questions rated Young's as a strong scampi supplier, particularly in relation to branded scampi. Several competitors said that they believed that Young's competes closely against Whitby. Whitby's internal documents also confirm that it identifies Young's as a significant competitor.
70. Five Star is part of the 2 Sisters Food Group. [REDACTED]. Whitby told the CMA that Five Star is an aggressive competitor in the supply of scampi and Whitby's internal documents confirm that it identifies Five Star as a significant competitor.
71. Several customers (including retail and food service customers) indicated that Five Star is a capable scampi supplier. [REDACTED].
72. Thistle supplies many seafood products in the UK. [REDACTED].
73. Joseph Robertson supplies many seafood products, including own-label scampi. [REDACTED].
74. Icelandic Seachill is a supplier of chilled fish to the UK retail market. [REDACTED].
75. Bannerman Seafoods specialises in the processing of prawn tails and langoustines into peeled frozen and breaded products, including scampi. [REDACTED] larger food service customers told the CMA that they had either used Bannerman in the past or had heard of them. [REDACTED].
76. Kilhorne Bay supplies seafood products to a broad range of UK customers. [REDACTED]. Whitby's internal documents note Kilhorne Bay as a small competitor, but customers which responded to the CMA's questions were generally unaware of Kilhorne Bay. Responses from other scampi suppliers indicated that they did not consider Kilhorne Bay to be a significant competitor.
77. Sealord Caistor is the UK division of the New Zealand fishing and processing company Sealord. [REDACTED].
78. The CMA notes that this evidence suggests that there is a relatively long list of suppliers of both branded and own-label scampi to both retail and food service customers. Young's is the closest competitor to the Parties and, [REDACTED].

Five Star is also a significant large competitor, [REDACTED], establishing new scampi suppliers which are now seeking to expand.

Expansion by existing competitors

79. The CMA notes that [REDACTED] competitors of the Parties, [REDACTED], told the CMA that they intend to expand their scampi supply. [REDACTED].
80. Given the stated intentions of some suppliers to expand, the CMA tested whether there were any significant barriers to such expansion.
81. Whitby and its competitors identified access to raw scampi material as the key challenge facing scampi suppliers. Scampi material, which is ready to be coated, can be obtained in two ways: either by purchasing raw scampi from fishermen and carrying out the shelling, or by purchasing already-shelled scampi. In relation to accessing raw scampi, Whitby and third parties told the CMA that there are few or no long-term exclusive supply arrangements between fishing businesses and scampi suppliers, and no significant volume discounts. Whitby and several competitors said that landings of scampi had been in decline for several years, as many fishermen had moved to fish other products, but the CMA notes that this is a factor affecting all suppliers of scampi including Whitby, and therefore does not represent a barrier to smaller providers competing to expand. Several wholesale suppliers of scampi told the CMA that they purchase already-shelled scampi from businesses such as [REDACTED].
82. The CMA also considered whether access to shelling machines represented a barrier to expansion. However, given the option of purchasing already-shelled raw scampi, the CMA did not believe this was important. Moreover, competing suppliers which carry out the shelling themselves indicated that obtaining shelling machines is not difficult. A new shelling machine costs around £60,000 and can be acquired more cheaply second-hand.
83. Lastly, the CMA considered the need for production facilities to process the raw scampi. The CMA notes that all recent new entrants to the supply of scampi had existing breasting and processing lines for use with other seafoods and they have used these same machines to breast and process scampi. Competitors told the CMA that it is easy to enter the scampi market in this way and other companies with the necessary breasting lines which are not currently active in scampi would be able easily to enter the market.
84. On the basis of this evidence, the CMA believes that there are limited barriers to expansion for the several small current wholesale suppliers of scampi, including those which indicated to the CMA an intention to expand.

Conclusion on horizontal unilateral effects

85. Prior to the Merger, the Parties were clearly close competitors in the wholesale supply of own-label scampi and, to a lesser extent, they were competitors in branded scampi. However, the CMA notes that there are several other scampi suppliers, some of which are very strong in branded scampi but a few of which are currently supplying own-label product to retail and food service customers. In particular, Young's and Five Star have substantial operations and are competing strongly in the supply of scampi across all segments, and the CMA notes that there appear to be no significant barriers limiting the ability of smaller suppliers to expand. The CMA also notes that it appears relatively easy to shift supply from branded scampi to own-label scampi. [✂] which indicates that the barriers to entry by suppliers of products in related markets are not particularly high.
86. For these reasons the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the wholesale supply of own-label and branded scampi (separately) to retail and food service customers (separately) in the UK.

Countervailing buyer power

87. In some circumstances, an individual customer may be able to use its negotiating strength to limit the ability of a merged firm to raise prices. If all customers of the merged firm possess countervailing buyer power post-merger, then an SLC is unlikely to arise. However, often only some customers of the merged firm possess countervailing buyer power. In such cases, the CMA assesses the extent to which the countervailing buyer power of these customers may be relied upon to protect all customers.¹⁰
88. The Competition Commission's Groceries Market Investigation (2008) concluded that large grocery retailers, wholesalers and buying groups have buyer power in relation to at least some of their suppliers. Such buyer power may manifest in conduct such as threatening to reduce available shelf-space or refusing to buy other products produced by the supplier.
89. Whitby provided evidence of some customers quoting third parties' pricing or moving to alternative suppliers as evidence of customer buyer power. A number of competitors also submitted that customers have buyer power and gave examples based on the ease of switching between competing suppliers of scampi.

¹⁰ [Merger Assessment Guidelines](#), paragraph 5.9.1.

90. Given that the CMA has not found any competition concerns with the Merger, it was not necessary to reach a view on countervailing buyer power.

Third party views

91. The CMA contacted customers and competitors of the Parties. Some raised concerns about the Merger while others had no concerns.
92. Third party comments have been taken into account where appropriate in the competitive assessment.

Decision

93. Consequently, the CMA does not believe that it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC within a market or markets in the UK.
94. The Merger will therefore **not be referred** under section 22(1) of the Act.

Dr Andrea Coscelli
Executive Director, Markets & Mergers
Competition and Markets Authority
20 June 2016