

Completed acquisition by Boparan Private Office of the business formerly carried on by Bernard Matthews Limited

Decision on relevant merger situation and substantial lessening of competition

ME/6649/16

The CMA's decision on reference under section 22(1) of the Enterprise Act 2002 given on 12 January 2017. Full text of the decision published on 9 February 2017.

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

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SUMMARY

1. On 20 September 2016, Boparan Private Office (**BPO**) acquired the business formerly carried on by Bernard Matthews Limited (**Bernard Matthews**) (the **Merger**). BPO and Bernard Matthews 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. Bernard Matthews is a vertically integrated producer of turkey and, to a lesser extent, chicken, based in the United Kingdom (**UK**). BPO and Boparan Holdings Limited (**Boparan Holdings**), which are under the common control of Mr Ranjit Singh Boparan (and his family interests), are also active in the supply of chicken and, to a lesser extent, turkey.
4. The CMA assessed the impact of the Merger in each of the following segments in the UK:
 - (a) by type of poultry: namely chicken and turkey;
 - (b) by type of product: each of (i) prime fresh (ie whole bird or cuts, fresh), (ii) prime frozen (ie whole bird or cuts, frozen), (iii) processed cooked, (iv) processed uncooked, (v) fresh breaded, and (vi) frozen breaded; and
 - (c) by customer: each of (i) retailers, (ii) caterers, and (iii) food processors.
5. In addition, the CMA also assessed the impact of the Merger on the supply of:
 - (a) fresh breaded turkey and fresh breaded chicken, taken together; and
 - (b) prime fresh turkey products sold in the Christmas season, as distinct from prime fresh turkey products sold during the rest of the year.
6. With regard to the supply of chicken products, the CMA did not identify competition concerns in any product or customer segment, given the small overlap between the Parties.
7. With regard to the supply of turkey products to food processors or caterers, the CMA did not identify competition concerns, given the small increment arising from the Merger, as well as the existence of a number of alternative suppliers.
8. With regard to the supply of turkey products to retailers, the only segment in which the Parties have a combined share of supply, which could indicate prima facie competition concerns, is the supply of prime fresh seasonal turkey to retailers. However, the CMA did not identify competition concerns in this segment as it found that the Parties are not close competitors, the increment arising from the Merger is relatively small and three large competing suppliers will remain (all of which are larger than BPO/Boparan Holdings in the UK).

9. With regard to the supply of fresh breaded turkey and fresh breaded chicken products, taken together, the CMA did not identify concerns given that Bernard Matthews' sales of breaded turkey and chicken [redacted], the Parties are not close competitors and Moy Park, as the largest supplier, will continue to exert a strong constraint on the Parties.
10. The CMA also considered whether the Merger might lead to conglomerate effects. However, the CMA found that the Parties do not have the ability to leverage market power in either chicken or turkey to foreclose competitors in any market.
11. For these reasons, the CMA does not believe that the Merger gives rise to a realistic prospect of a substantial lessening of competition (**SLC**) in any market or markets in the UK.
12. The Merger will therefore **not be referred** under section 22(1) of the Enterprise Act 2002 (the **Act**).

ASSESSMENT

Parties

13. BPO supplies turkey in the UK [redacted] through Grove Turkeys Limited (**Grove**), which is located in the Republic of Ireland, as well as distributing [redacted] through Lakeside Group Limited (**Lakeside**). Boparan Holdings, the parent company of 2 Sisters Food Group (**2SFG**) and 2 Sisters Poultry Limited (**2SPL**), produces chicken and, to a much lesser extent, turkey. Both BPO and Boparan Holdings are controlled by Mr Ranjit Singh Boparan (and his family interests).
14. Bernard Matthews was a vertically integrated producer of turkey and chicken based in the UK. The turnover of Bernard Matthews for the financial year ended June 2016 was £[redacted], of which around £[redacted] was generated in the UK.

Transaction

15. On 20 September 2016, BPO, through Amber Real Estate Investments Limited (**AREIL**), acquired Bernard Matthews as part of a pre-pack administration.
16. The Parties informed the CMA that the Merger is not the subject of review by any other competition authorities.

Jurisdiction

17. As a result of the Merger, the enterprises under the common control of Mr Boparan and his family interests (BPO and Boparan Holdings) and Bernard Matthews have ceased to be distinct. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.
18. The UK turnover of Bernard Matthews exceeds £70 million, so the turnover test in section 23(1)(b) of the Act is satisfied.
19. The Merger completed and was made public on 20 September 2016. The CMA opened an own-initiative investigation into the Merger by sending an Enquiry Letter to BPO on 30 September 2016.¹ The four-month deadline for a decision under section 24 of the Act is 16 February 2017, following extension under section 25(2) of the Act. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 22 November 2016. The statutory 40 working day deadline for a decision is therefore 19 January 2017.

Counterfactual

20. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie 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 a 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
21. The Parties submitted that the appropriate counterfactual is one in which Bernard Matthews would have exited the market.
22. The CMA will only accept an exiting firm counterfactual if three conditions are met, namely that (i) the CMA believes, based on compelling evidence, that it was inevitable that the target business would have exited the market absent the merger; (ii) the CMA is confident that there was no substantially less anti-competitive purchaser for the target business or its assets; and (iii) the result of the exit of the firm and its assets would not be a substantially less anti-

¹ See [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, paragraphs 6.9-6.19 and 6.59-60.

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).

competitive outcome than the merger, having regard to what would have happened to the sales of the exiting firm absent the merger. If the CMA cannot reach a sufficient level of confidence in relation to each of these limbs, it will use the pre-merger situation as its counterfactual against which to assess the merger.³

23. The Parties submitted that Bernard Matthews had been experiencing serious financial difficulties for a sustained period of time and it was becoming extremely difficult for it to continue trading outside of insolvency.
24. In Summer 2016, PricewaterhouseCoopers (**PwC**) conducted a sale process for Bernard Matthews but this process did not result in a successful sale. Following a separate sales process conducted by Deloitte, [X] offers were received, from [X]. The administrators assessed the offer from [X] as likely to be below Bernard Matthews' liquidation value.
25. The administrators told the CMA that, in the absence of a pre-pack sale, and provided sufficient working capital funding could be obtained from lenders or customers, the most likely outcome would have been a trading administration in which the business (or specific sites) would have been sold. Deloitte did not believe that it was possible to rescue the business as a going concern.ⁱ Bernard Matthews was acquired by BPO out of administration on 20 September 2016.
26. The CMA assessed the exit of Bernard Matthews against the three criteria in paragraph 22. In particular, customers told the CMA that, had Bernard Matthews exited the market, other major suppliers would have recaptured [X], and [X] may have acquired some of Bernard Matthews' assets. This would suggest that there is some doubt as to whether criteria (ii) and (iii) in paragraph 22 are satisfied.
27. In light of the above, on a cautious basis, the CMA assessed the Merger against a counterfactual based on pre-Merger conditions of competition. As it did not identify any competition concerns on this basis, the CMA did not need to conclude on whether the Merger met the criteria for the exiting firm counterfactual.

Frame of reference

28. 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

³ [Merger Assessment Guidelines](#), 4.3.10.

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. The CMA will take these factors into account in its competitive assessment.⁴

29. The Parties overlap in the supply of turkey and chicken products in the UK to retailers, caterers and food processors.

Product scope

Introduction

30. Using the approach adopted in previous OFT cases⁵ as a starting point, the CMA identified the following product segments for each of turkey and chicken:
- (a) Prime fresh products: turkey or chicken that has not been processed, such as crowns, turkey steaks, mince, joints (drumsticks, thighs, etc) and diced turkey or chicken.
 - (b) Prime frozen products: prime (ie non-processed) turkey or chicken which is sold frozen.
 - (c) Processed cooked products: ‘ready to eat’ turkey or chicken products including hams and chunks, as well as cooked portions (such as drumsticks or wings), whether fresh or frozen.
 - (d) Processed uncooked products: ‘ready to cook’ turkey or chicken products including marinated or stuffed portions, whether fresh or frozen.
 - (e) Fresh breaded products.⁶
 - (f) Frozen breaded products.
31. Given the seasonal nature of demand for fresh turkey, the CMA also assessed, in line with past decisional practice,⁷ the impact of the Merger on the seasonal supply of prime fresh turkey (as distinct from the supply of all-year-round (**AYR**) fresh turkey).

⁴ [Merger Assessment Guidelines](#), paragraph 5.2.2.

⁵ See, in particular with respect to turkey, [Bernard Matthews / Lincs \(ME/4599/10\)](#) and with respect to chicken [Boparan Holdings / Vion Poultry \(ME/6013/13\)](#).

⁶ The Parties included breaded chicken within the ‘processed uncooked chicken’ segment. Breaded products have previously been assessed by the CMA within the processed chicken and turkey segment. The substitution of breaded and processed products is dealt with below.

⁷ [Bernard Matthews / Lincs \(ME/4599/10\)](#), para 18.

32. The CMA then assessed whether:
- (a) any of the individual product segments within each of turkey and chicken were sufficiently substitutable to form part of the same frame of reference;
 - (b) any segments of turkey products could be substitutable with the equivalent chicken product, or vice versa; and
 - (c) segmentation by type of customer was appropriate.

Substitution within turkey or chicken products

Turkey products

33. The CMA assessed any evidence of substitution between different segments of turkey products to warrant treating them as part of the same frame of reference.
- *Substitution between fresh and frozen turkey products*
34. The CMA has previously assessed fresh and frozen turkey separately on the basis that they have different shelf-lives, cooking properties, texture, consumer preferences, and price differences.⁸ In the present case, evidence from customers supports this conclusion, in particular with respect to fresh seasonal turkey.
35. Therefore, on a cautious basis, the CMA assessed fresh and frozen prime turkey products separately. However, the CMA has not needed to conclude on whether fresh and frozen processed turkey represent distinct markets, given that, in light of the minimal overlap, competition concerns do not arise on either basis.
- *Substitution between processed and breaded turkey products*
36. The CMA considered whether breaded turkey products should be included in the same frame of reference as other processed turkey products.
37. From a demand-side perspective, evidence from customers indicated that there is limited substitutability between breaded products and other 'ready to cook' products (such as marinated or stuffed poultry).

⁸ See eg. [Bernard Matthews / Lincs \(ME/4599/10\)](#), para 15.

38. The Parties submitted that there is a high level of supply-side substitution between breaded turkey and other processed turkey products. According to the Parties, it would cost around [redacted] and take [redacted] to install new breeding equipment in a production line. However, one supplier, which supplies some processed chicken products (but not breaded chicken), told the CMA that the cost of entering the breaded chicken sector would be significant, as it would require dedicated capacity and specialised equipment.
39. Therefore, on a cautious basis, the CMA assessed breaded turkey and processed turkey separately.

Chicken products

40. The CMA found that, in common with its findings in relation to turkey products, the evidence did not support any meaningful degree of demand or supply-side substitution between different segments of chicken products. However, the CMA has not had to conclude on the extent to which individual chicken product segments are substitutable as competition concerns do not arise on any plausible basis.

Substitution between chicken and turkey products

41. The CMA also considered whether any chicken products could be substitutable with the equivalent turkey product, and vice versa.
42. On the demand side, the majority of retailers told the CMA that they see limited substitutability between most turkey and chicken products, and in particular for seasonal turkey, where consumers have a specific preference for turkey and are not price sensitive in relation to the choice between the two forms of poultry. One retailer told the CMA that its stocking decisions are made on a product-specific basis and other retailers told the CMA that a five per cent increase in the price of turkey would not have a significant effect on its mix of turkey products and other poultry or meats.
43. On the supply side, the CMA found that, while there are some suppliers of both chicken and turkey, the relative strength of these suppliers differs substantially between these products.
44. Retailers' views on breaded turkey and chicken products were more mixed, with some retailers seeing the products as substitutable, in particular for fresh products, while others said that they are not. Although the Parties submitted that breaded chicken and turkey are not substitutable, the CMA noted that [redacted] mention demand-side substitutability between these products.

45. The CMA found that, for most products, assessing the supply of chicken products and turkey products as part of the same frame of reference rather than separately would not have a material effect. However, in the case of fresh breaded products, the Merger gives rise to a material overlap only if turkey and chicken are assessed as part of the same frame of reference.
46. For these reasons, the CMA assessed the Merger considering turkey and chicken products as separate frames of reference and, on a cautious basis, it also assessed the Merger in a separate frame of reference for fresh breaded products (including chicken and turkey together).

Customer segmentation

47. In previous cases,⁹ the OFT assessed the supply of turkey or chicken products to each of retailers, caterers and food processors separately. In the present case, the CMA's market testing indicated that this approach remained appropriate. Therefore the CMA assessed the impact of the Merger in each of these customer segments.

Conclusion on product scope

48. For the reasons set out above, the CMA assessed the impact of the Merger on the supply of turkey and chicken separately in each of the following segments:
 - (a) by type of product: each of (i) prime fresh (ie whole bird or cuts, fresh), (ii) prime frozen (ie whole bird or cuts, frozen), (iii) processed cooked, (iv) processed uncooked, (v) fresh breaded, and (vi) frozen breaded; and
 - (b) by customer: each of (i) retailers, (ii) caterers, and (iii) food processors.
49. In addition, the CMA also assessed the impact of the Merger on the supply of:
 - (a) fresh breaded turkey and fresh breaded chicken, taken together; and
 - (b) prime fresh turkey products sold in the Christmas season as distinct from prime fresh turkey products sold during the rest of the year.

Geographic scope

50. The Parties submitted that the markets for the supply of turkey and chicken are at least European Economic Area (EEA) wide. The Parties estimated that,

⁹ See for example [Boparan Holdings / Vion Poultry \(ME/6013/13\)](#) and [Bernard Matthews / Lincs \(ME/4599/10\)](#).

for example, [20-30]% of turkey products by value in the UK are accounted for by imports.¹⁰ The Parties told the CMA that fresh turkey and chicken is mostly imported from other European countries, while frozen turkey and chicken is mostly imported from outside the EEA (eg Brazil).

51. However, several third parties, in particular retailers, told the CMA that they either buy exclusively, or have a strong preference for, British-reared turkey and chicken, especially for fresh products. Customer responses were mixed on whether the prices of British reared turkey and chicken were influenced by the international prices of these products.
52. In light of this evidence, and on a cautious basis, the CMA assessed the impact of the Merger on the supply of chicken and turkey products in the UK (including Northern Ireland). The CMA has taken into account the possible constraint from imports in its competitive assessment.

Conclusion on frame of reference

53. For the reasons set out above, and on a cautious basis, the CMA assessed the impact of the Merger in the following segments for each of turkey and chicken, in the UK:
 - (a) by type of product: each of (i) prime fresh (ie whole bird or cuts, fresh), (ii) prime frozen (ie whole bird or cuts, frozen), (iii) processed cooked, (iv) processed uncooked, (v) fresh breaded, and (vi) frozen breaded; and
 - (b) by customer: each of (i) retailers, (ii) caterers, and (iii) food processors.
54. In addition, the CMA also assessed the impact of the Merger (in the UK) on the supply of:
 - (a) fresh breaded turkey and fresh breaded chicken taken together; and
 - (b) prime fresh turkey products sold in the Christmas season as distinct from prime fresh turkey products sold during the rest of the year.

¹⁰ The Parties estimate that, of the overall £130 million of turkey imports into the UK, seasonal turkey accounts for £[§] million. Of this, £[§] million is sold to retailers, with the remaining sold to caterers and food processors.

Competitive assessment

55. 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 to degrade quality on its own and without needing to coordinate with its rivals.¹¹ Horizontal unilateral effects are more likely when the merger parties are close competitors.
56. 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 supply of chicken and/or turkey products in the UK.¹²

Horizontal unilateral effects in the supply of chicken

57. Bernard Matthews is principally focussed on turkey, while BPO/Boparan Holdings largely focusses on chicken.
58. Table 1 shows the Parties' shares of supply of chicken to UK customers across all customer and product segments.

Table 1 – Share of supply of chicken products

<i>Party</i>	<i>Share of supply (%)</i>
Bernard Matthews	[0-5]%
BPO/Boparan Holdings	[20-30]%
<i>Combined</i>	[20-30]%

Source: Parties' estimates (revenues)

59. The CMA assessed whether concerns could arise in relation to the different customer segments or product frame of references mentioned in paragraph 48 and found that:
- (a) in relation to the supply of chicken to retailers, the Merger leads to an overall increment of [0-5]% and under [0-5]% in any product category; and
- (b) in relation to the supply of chicken to caterers and food processors, the Merger leads to an overall increment of [0-5]%, and combined shares of supply are also low.¹³

¹¹ [Merger Assessment Guidelines](#), from paragraph 5.4.1.

¹² Although the Parties are vertically integrated, being both poultry suppliers and food processors, the CMA does not believe that the Merger will give rise to vertical foreclosure as BPO [X] and it would also be possible for other processors to source product elsewhere.

¹³ The Parties estimated their combined share of supply in chicken to caterers and food processors to be [0-5]% and [10-20]% respectively by value.

60. In light of the minimal overlap between the Parties in all customer and product segments, the CMA did not identify competition concerns arising from the Merger in relation to the supply of chicken.

Horizontal unilateral effects in the supply of turkey

61. Bernard Matthews is the largest supplier of turkey in the UK. BPO/Boparan Holdings is also active in the supply of turkey, though to a much lesser extent, through the following companies:
- (a) Grove rears and processes prime fresh turkey in the Republic of Ireland and supplies seasonal turkey in the UK;
 - (b) Lakeside is a distributor of a range of meats, including turkey, which is [redacted];¹⁴ and
 - (c) 2SFG makes some sales of turkey to retailers and caterers.¹⁵
62. The CMA investigated the impact of the Merger in the supply of turkey products to each of retailers, food processors and caterers, as set out below.

Retailers

63. The Parties estimated their shares of supply of different turkey products to retailers, as shown in Table 2.

¹⁴ Lakeside [redacted], which the Parties submitted was not controlled by Mr or Mrs Boparan. However, on a cautious basis, the CMA assessed it as part of the overlap arising from the Merger.

¹⁵ In addition, Bernard Matthews delivers some AYR turkey [redacted]. However, given that Bernard Matthews contracts directly with [redacted], the CMA attributed these sales to Bernard Matthews [redacted].

Table 2 – Shares of supply of turkey products to retailers

<i>Turkey segment</i>	<i>Bernard Matthews (%)</i>	<i>BPO / Boparan Holdings (%)</i>	<i>Total</i>
<i>All turkey</i>	[40-50]%	[0-5]%	[40-50]%
<i>Prime fresh AYR turkey</i>	[50-60]%	[0-5]%	[50-60]%
<i>Prime frozen AYR turkey</i>	<i>No overlap</i>		
<i>Prime fresh seasonal turkey</i>	[30-40]%	[10-20]%	[40-50]%
<i>Prime frozen seasonal turkey</i>	<i>No Overlap</i>		
<i>Processed cooked turkey</i>	[40-50]%	[0-5]%	[40-50]%
<i>Processed uncooked turkey</i>	<i>Parties unable to estimate</i>		
<i>Fresh breaded turkey</i>	<i>No overlap</i>		
<i>Frozen breaded turkey</i>	<i>No overlap</i>		

Source: Parties' estimates (revenues). The results of the CMA's investigation confirmed the small size of the increment in relation to fresh AYR turkey and processed cooked turkey. The Parties were unable to estimate shares of supply for processed uncooked turkey but submitted that this is not a focus of either of the Parties.

64. As shown in Table 2, the Parties do not overlap in relation to frozen turkey products or fresh breaded turkey (where Bernard Matthews is the only UK supplier).
65. With regard to the supply of prime fresh AYR turkey and processed cooked turkey, the Merger gives rise to a negligible increment [0-5]%. No third party raised any concerns in relation to the supply of these categories.
66. With regard to the supply of processed uncooked turkey, the Parties were unable to estimate shares of supply for sales to retailers. The CMA attempted to calculate shares of supply by sourcing data directly from retailers and suppliers; however, few were able to provide data separately for this segment. Nevertheless, retailers told the CMA that processed uncooked turkey could be sourced from several alternative suppliers (including Faccenda, Gressingham, Moy Park, and Traditional Norfolk Poultry) and also from overseas (such as through Mastergood), such that they will continue to have a number of alternative options post-Merger. No third party raised any concerns in relation to the supply of processed uncooked turkey.
67. In light of the above evidence, there was only one category remaining in which the Parties' combined share of supply could raise prima facie competition concerns, which was the supply of prime fresh seasonal turkey to retailers. This is discussed in more detail below.

Prime fresh seasonal turkey to retailers

- *Share of supply*

68. By value, Bernard Matthews is the largest supplier of seasonal turkey in the UK and BPO/Boparan Holdings is the fifth largest supplier, through its Irish-based subsidiary Grove. The CMA estimated that the Parties will have a

combined share of supply of prime fresh seasonal turkey of around [30-40]%, with an increment of approximately [5-10]% (see Table 3).¹⁶

Table 3: Shares of supply of prime fresh seasonal turkey to retailers in 2015/16

<i>Competitor</i>	<i>Share (%)</i>
BPO/Boparan Holdings	[5-10]%
Bernard Matthews	[20-30]%
<i>Combined</i>	[30-40]%
Faccenda	[20-30]%
Moy Park	[10-20]%
Gressingham	[10-20]%
Capestone	[5-10]%
Traditional Norfolk Poultry	[0-5]%
Kelly Turkeys	[0-5]%
Total	100

Source: CMA calculations (revenues)

69. The CMA believes that the shares of supply shown in Table 3 (estimated by the CMA) are more reliable than those shown in Table 2 (estimated by the Parties), as the CMA has been able to obtain revenue data directly from other suppliers. This evidence indicates that the Parties underestimated the extent of their competitors' revenues and therefore over-estimated their own shares of supply in prime fresh seasonal turkey.
70. The CMA considered whether it was appropriate to assess free-range and non free-range fresh seasonal turkey separately, recognising that a number of third parties included in the above calculations are free-range specialists.
71. The CMA calculated the Parties' shares of supply for free-range and non free-range seasonal turkey, as shown in Table 4.

Table 4 – Shares of supply of prime fresh seasonal turkey to retailers 2015/16, split between non free-range and free-range

<i>Company</i>	<i>% Share of supply (Non free-range)</i>	<i>% Share of supply (Free-range)</i>
Bernard Matthews	[30-40]	[5-10]
BPO/Boparan Holdings	[5-10]	[5-10]
<i>Combined</i>	[40-50]	[10-20]
Faccenda	[30-40]%	[5-10]%
Moy Park	[20-30]%	[10-20]%
Gressingham	[5-10]%	[20-30]%
Traditional Norfolk Poultry	[0-10]%	[10-20]%
Capestone	[0-10]%	[20-30]%
Kelly Turkeys	[0-10]%	[0-5]%

Source: CMA calculations (revenues). These figures include sales by free-range specialists.

¹⁶ These estimates do not take into account the reduction in Bernard Matthews' volumes for the 2016 Christmas season.

72. As shown in Table 4, the Parties' combined share of supply of free-range prime fresh seasonal turkey ([10-20]% is low and does not indicate prima facie concerns. [X] is the largest supplier of free-range turkeys and there are also three other large providers ([X]) which supply free-range prime fresh seasonal turkey. In contrast, the Parties' combined share of supply of non free-range prime fresh seasonal turkey is higher (ie [40-50]%, with [5-10]% increment) and a smaller set of competitors remain post-Merger.
73. The Parties submitted that there is a high degree of supply-side substitution between the two products and, [X]. However, the CMA found that there is a significant price differential between the two products, which may suggest limited demand substitutability.¹⁷ Further, the CMA noted that several suppliers offer only one of either free-range or non free-range turkey.
74. In light of the above evidence, the CMA focussed its assessment on the supply of non free-range prime fresh seasonal turkey to retailers.
- *Closeness of competition*
75. The Parties submitted that they do not see Grove as a key competitor to Bernard Matthews in the supply of prime fresh seasonal turkey to UK retailers. The Parties told the CMA that Grove [X], limiting the strength of the competitive constraint it imposed on Bernard Matthews pre-Merger. In particular, the Parties submitted that Grove [X].
76. The CMA asked retailers which suppliers they would consider for prime fresh non free-range seasonal turkey. Three large retailers included both Bernard Matthews and Grove in their list of current or potential suppliers, although none of them currently source from both Parties. One expressed a concern that the Merger would result in a loss of competition; however, most large retailers told the CMA that they do not consider Grove to be an alternative supplier of fresh seasonal turkey. In particular, some retailers said that Grove would not be a credible alternative as they only source British-reared turkey.
77. Grove's [X]. [X] told the CMA that [X]. The Parties told the CMA that Bernard Matthews [X].
78. On the basis of this evidence, the CMA believes that the Parties are not close competitors in the supply of prime fresh non free-range seasonal turkey to retailers.

¹⁷ The Parties estimate the price differential to be around [X] at the wholesale level and [X] at the retail level.

- *Competitive constraints*

79. The CMA assessed the other competitors that supply prime fresh non free-range seasonal turkey to retailers and the extent to which they would constrain the Parties post-Merger. The CMA identified three competing suppliers:
- a) Faccenda produces 100 million turkeys and chickens per year and supplies a number of large retailers, including [REDACTED].
 - b) Moy Park is one of Europe's leading poultry suppliers, based in Northern Ireland, with sales to many large retailers. Moy Park is a large supplier of fresh seasonal turkey, including to [REDACTED].
 - c) Gressingham is a smaller supplier of chicken and turkey, with farms in Suffolk and Norfolk. Gressingham supplies [REDACTED] and is currently the [REDACTED] supplier of seasonal turkey, [REDACTED].
80. Most third parties identified Moy Park and Faccenda as the major competitors to Bernard Matthews in the supply of prime fresh seasonal non free-range turkey. In contrast to these suppliers, Grove is a much smaller player in the UK market (number five supplier of prime fresh seasonal turkey and number four supplier of prime fresh non free-range seasonal turkey).
81. Some third parties raised concerns regarding the capacity of existing suppliers to compete for additional customers. However, the CMA found that capacity for seasonal turkey is generally constrained across the industry, including for Grove.
- *Conclusion on horizontal unilateral effects in the supply of prime fresh seasonal turkey to retailers*
82. As set out above, the CMA found that the only possible concern from the Merger in relation to the supply of turkey to retailers could arise in the supply of prime fresh seasonal turkey and, in particular, the supply of prime fresh non free-range seasonal turkey.
83. However, the CMA found that the combination of Bernard Matthews and BPO/Boparan Holdings results in only a small increment in the share of supply for prime fresh seasonal turkey to retailers in the UK (also in prime fresh non free-range seasonal turkey). The CMA also found that the Parties are not close competitors in the supply of this product and three competing suppliers (Faccenda, Moy Park and Gressingham) will remain (all of which are larger suppliers than Grove in the UK).

84. 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 the supply of prime fresh seasonal turkey to retailers in the UK.

Food processors

85. The CMA also considered the impact of the Merger in the supply of turkey products to food processors. BPO/Boparan Holding's sales of turkey to food processors in the UK are principally made through Lakeside, a distributor using [redacted], while Grove supplies turkey [redacted] food processor.¹⁸
86. In relation to the supply of turkey to food processors, the Parties estimated their combined share of supply to be c.[40-50]%, with an increment of c.[10-20]%, although the Parties submitted that this estimate would overstate their share of supply as the calculation did not include the revenues of all their competitors. Data received by the CMA from the Parties' competitors and food processors suggest that the Parties have a combined share of supply of at most [40-50]%, with an increment of c.[10-20]%. However, the CMA also notes that it received data from only a limited number of suppliers and food processors, such that this estimate is likely also to overstate the Parties' actual shares.
87. Food processors told the CMA that a number of alternative producers of turkey would remain post-Merger, in particular Moy Park, Faccenda and Gressingham. The CMA believes that these suppliers are, or would be capable of, supplying turkey products to food processors and would therefore continue to constrain the Parties post-Merger.
88. The CMA also understands that UK food processors source significant volumes of turkey from overseas, including from Europe and South America, and in particular from Brazil. [redacted] told the CMA that Heidemark (which is significantly larger than Lakeside) is the main importer of fresh turkey to food processors, and Sprehe group was mentioned as a key supplier, as well as Stoller, A.I.A, Superdrobe and Oakfield UK.
89. All food processors told the CMA that the Parties are not close competitors, in particular given that their poultry is not generally of the same origin material (ie Lakeside generally supplies European poultry and other meat) and Grove has a limited UK presence.

¹⁸ Grove's supplies [redacted] food processor [redacted].

90. In light of the above evidence, and in particular the limited competition between the Parties pre-Merger and the existence of several alternative suppliers post-Merger, and the lack of customer concerns, 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 the supply of turkey products to food processors in the UK.

Caterers

91. The CMA also considered the impact of the Merger in the supply of turkey products to caterers.
92. In this customer segment, the Parties estimated their combined share of supply to be [10-20]%, with an increment of [0-5]%. Faccenda is a large supplier of turkey to caterers and several other suppliers are active in this segment, including Smithfield Food Ltd and Dawn Farm.
93. On the basis of evidence from third parties, the CMA confirmed the small combined share of the Parties and increment arising from the Merger. In light of this small share and increment, and given the existence of several alternative current and potential suppliers, and the lack of customer concerns, 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 the supply of turkey products to caterers in the UK.

Horizontal unilateral effects in the supply of fresh breaded chicken and turkey (taken together)

94. As set out above, the CMA found no concerns arising from the Merger in relation to either the supply of fresh breaded chicken or the supply of fresh breaded turkey as:
- (a) with regard to fresh breaded turkey, BPO/Boparan Holdings does not supply this product and Bernard Matthews is [redacted] supplier in the UK; and
 - (b) with regard to fresh breaded chicken, Bernard Matthews makes very few sales, though BPO/Boparan Holdings (through 2SFG) is one of the major suppliers.¹⁹ Bernard Matthews began selling breaded chicken in 2000, [redacted], and its sales have remained very low.

¹⁹ Bernard Matthews' sales of fresh breaded chicken are around £[redacted] per year out of a total segment size of approximately £[redacted].

95. However, some retailers indicated that there may be some substitutability between fresh breaded turkey and fresh breaded chicken. Therefore, on a cautious basis, the CMA assessed the impact of the Merger in a frame of reference for these products together.

Share of supply

96. The Parties' estimated shares of supply of fresh breaded chicken and fresh breaded turkey (separately and together) are set out in Table 5.

Table 5: Shares of supply of fresh breaded chicken and fresh breaded turkey products to UK customers in 2015/16

<i>Competitor</i>	<i>Turkey</i>	<i>Chicken</i>	<i>Turkey and chicken</i>
BPO/Boparan Holdings	[0-5]%	[30-40]%	[30-40]%
Bernard Matthews	[90-100]%	[0-5]%	[0-5]%
<i>Combined</i>	[90-100]%	[30-40]%	[30-40]%
Moy Park	[0-5]	[50-60]	[40-50]
Others	[0-5]	[0-5]	[10-20]
Total	100	100	100

Source: Parties' estimates (revenues). These estimates were broadly consistent with the data collected by the CMA from third parties.

97. As shown in Table 5, due to the small volume of fresh breaded turkey sales relative to fresh breaded chicken sales, despite Bernard Matthews being [X] supplier of fresh breaded turkey, the increment in the Parties' share of supply of fresh breaded chicken and turkey together is only [0-5]%, leading to a combined share of [30-40]%.

Closeness of competition

98. As noted in paragraph 44, retailers' views on fresh breaded turkey and chicken were mixed, with some retailers seeing the products as substitutable, while others said that they are not. The CMA also noted that [X] mention demand-side substitutability between these products. However, most retailers told the CMA that fresh breaded turkey would be a substitute for fresh breaded chicken for only a limited number of customers.

Competitive constraints

99. Moy Park is the largest supplier of fresh breaded chicken in the UK and the closest competitor to BPO/Boparan Holdings for this product. BPO/Boparan Holdings is the second largest supplier of fresh breaded chicken, but only has half the share of supply of Moy Park. Retailers told the CMA that there are also several smaller suppliers of fresh breaded chicken, such as Nicco Foods, the Fresh Chicken Company or Capestone. One customer identified Cargill (a

vertically integrated chicken supplier headquartered in the US) as an alternative supplier.

Conclusion on horizontal unilateral effects in fresh breaded chicken and turkey

100. In light of the above evidence, and in particular the small increment arising from the Merger, the limited competition between the Parties pre-Merger and the existence of several alternative suppliers post-Merger, and the lack of customer concerns, 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 the supply of fresh breaded chicken and turkey (taken together) in the UK.

Conglomerate effects

101. Notwithstanding the CMA's findings in relation to horizontal unilateral effects, the CMA also considered whether the Merger might give rise to conglomerate effects.
102. Conglomerate effects may arise in mergers of firms that are active in the supply of goods or services that do not form part of the same market but which are nevertheless related in some way, either because their products are complements (so that a fall in the price of one good increases a customer's demand for another) or because there are economies of scale in purchasing them (so that customers buy them together).²⁰
103. Most non-horizontal mergers are considered to be benign or even efficiency-enhancing (when they involve complementary products) and do not raise competition concerns. However, in certain circumstances, a conglomerate merger can result in the merged entity foreclosing rivals, including through a tying or bundling strategy.
104. The CMA's approach to assessing conglomerate theories of harm is to analyse (a) the ability of the merged entity to foreclose competitors, (b) the incentive of it to do so, and (c) the overall effect of the strategy on competition.²¹
105. In the present case, the CMA considered whether the Parties might have the ability and incentive to leverage a strong market position from chicken products to turkey products, or vice versa, to foreclose its competitors.

²⁰ [Merger Assessment Guidelines](#), paragraph 5.6.2.

²¹ [Merger Assessment Guidelines](#), paragraph 5.6.6.

106. In assessing the ability of the merged entity to foreclose competitors through tying or bundling sales, the CMA considered the extent to which the Parties share a pool of common customers, the evidence on customer preferences for joint or single product sales, and the duration of any tie / the ability of customers to switch.

Leveraging from turkey to chicken

107. Post-Merger, the Parties will have a share of supply of turkey products in the UK of [X] but will continue to face competition from other large suppliers, including in particular Faccenda and Moy Park.
108. Ability in a conglomerate theory of harm is highly influenced by the willingness of customers to buy bundled products.²² The CMA found that the Parties have a pool of common customers for chicken and turkey and certain customers procure chicken and AYR turkey together. However, the evidence the CMA gathered from retailers indicated that retailers do not appear to have a preference for dealing with a one-stop shop solution and many choose to multi-source. With respect to seasonal turkey, the CMA found that this is typically contracted separately from other (chicken or turkey) products and at different times of the year.
109. The CMA also found that customers tend to negotiate annual contracts, meaning that the duration of any tie-in is likely to be limited. Retailers also told the CMA that [X]. Finally, the CMA notes that the Parties' closest competitors in the supply of chicken are large, further limiting the Parties' ability to foreclose.
110. On the basis of this evidence, the CMA found that the Parties will not have the ability to foreclose competing suppliers of chicken. In light of this conclusion, the CMA has not needed to assess whether the Parties would have the incentive to do so or the effects of such a strategy.

Leveraging from chicken to turkey

111. Post-Merger, the Parties will have a moderate share of supply of chicken products (around [30-40]%), with a number of large competitors remaining.
112. The CMA believes that all of the factors listed in paragraph 108 in relation to the Parties' ability to foreclose competitors in the supply of chicken also apply to the Parties' ability to foreclose competitors in the supply of turkey.

²² See [Merger Assessment Guidelines](#), paragraph 5.6.13.

113. On the basis of this evidence, the CMA found that the Parties will not have the ability to foreclose competing suppliers of turkey. In light of this conclusion, the CMA has not needed to assess whether the Parties would have the incentive to do so or the effects of such a strategy.

Conclusion on conglomerate effects

114. For these reasons, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of conglomerate effects in relation to the supply of chicken or turkey in the UK.

Barriers to entry and expansion

115. Entry, or the 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.
116. In the present case, the CMA has not had to conclude on barriers to entry or expansion as the Merger does not give rise to competition concerns on any basis.

Countervailing buyer power

117. The Parties told the CMA that its customers, including large retailers, are strong, sophisticated purchasers which can readily create competitive tension by switching, or threatening to switch, between producers.
118. In the present case, although the CMA noted in its competitive assessment the ability of customers to switch between suppliers, the CMA has not had to conclude on countervailing buyer power as the Merger does not give rise to competition concerns on any basis.

Third party views

119. The CMA contacted customers and competitors of the Parties. Most third parties did not express concerns regarding the Merger but some customers and competitors raised concerns regarding horizontal unilateral effects in the supply of fresh seasonal turkey and conglomerate effects.
120. Third party comments have been taken into account where appropriate in the competitive assessment above.

Decision

121. 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.
122. The Merger will therefore **not be referred** under section 22(1) of the Act.

Andrew Wright
Director
Competition and Markets Authority
12 January 2017

ⁱ Paragraph 25: Deloitte confirmed that it did not believe that it was likely the company itself could be rescued.