

Anticipated acquisition by Shearwell Data Limited of the entire issued share capital of Ketchum Manufacturing Limited

Decision on relevant merger situation and substantial lessening of competition

ME/6643/16

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 23 January 2017. Full text of the decision published on 10 March 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.

SUMMARY

1. Shearwell Data Limited (**Shearwell**) has agreed to acquire Ketchum Manufacturing Co Limited (**Ketchum**) (the **Merger**). Shearwell and Ketchum are together referred to as the **Parties**. The share of supply test is met in relation to the supply of engraved livestock identification tags (**engraved tags**) for cattle and sheep in the UK. Accordingly, arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
2. The Parties overlap primarily in the supply of engraved tags for cattle and sheep. Given limited demand side substitution and differing conditions of competition, the CMA found the supply of engraved tags for cattle and sheep to each form distinct product frames of reference.
3. Engraved tags can be plastic or metal and electronic or non-electronic. Whilst regulations prescribe the type of engraved tag that may be used as the first or 'primary' tag, there is no such restriction for any management or 'secondary' tags that the customer chooses to use (for example, to store additional information about the animal). Therefore, within each animal

segment, the CMA distinguished between those tags suitable for use as a primary tag and those that may be used as a secondary tag.

4. With regard to the supply of engraved tags for cattle, the Parties have a combined share of supply of [25-40]% for primary tags (increment [5-10]%) and [30-50]% for secondary tags (increment [10-20]%). With regard to engraved tags for sheep, the Parties have a combined share of supply of [30-45]% in primary and secondary tags (with an increment of [0-5]%).
5. With regard to the supply of engraved tags for both cattle and sheep, the CMA found that the Parties were not close competitors and a number of alternative suppliers, with substantial spare capacity, would continue to constrain the Parties post-Merger.
6. In light of its findings, the CMA does not believe that the Merger gives rise to a realistic prospect of a substantial lessening of competition in any market or markets in the UK. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).

ASSESSMENT

Parties

7. **Shearwell** supplies engraved tags for cattle, deer, pigs and sheep, as well as farm management software, livestock handling systems, tag readers and a full range of animal husbandry equipment. Shearwell also manufactures blank plastic tags for sheep for its own use but does not supply to other engravers. Shearwell's turnover for the year to 30 September 2015 was approximately £8.7 million worldwide and approximately £7.7 million in the UK.
8. **Ketchum** also supplies engraved tags for cattle, goats, pigs, poultry and sheep and manufactures blank metal tags for cattle, poultry and pigs. Ketchum also supplies tag applicators, readers and a variety of miscellaneous equipment. Ketchum's turnover for the year to 31 March 2015 was approximately £1 million worldwide, almost all of which was generated in the UK.¹

¹ Ketchum's turnover for sales outside of the UK amounted to [REDACTED] in 2015.

Transaction

9. The transaction involves the proposed acquisition by Shearwell of the entirety of Ketchum's authorised and issued share capital for £1,250,000, payable in cash on completion.

Jurisdiction

10. As a result of the Merger, the enterprises of Shearwell and Ketchum will cease to be distinct.
11. In the UK, the Parties mainly overlap in the supply of engraved tags for cattle and sheep, with a combined share of supply for cattle primary tags of around [25-40]%, with an increment of [5-10]%, a combined share of supply for cattle secondary tags of around [30-50]%, with an increment of [10-20]% and a combined share of supply for sheep primary and secondary tags of around [30-45]%, with an increment of [0-5]%. The CMA therefore believes that the share of supply test in section 23 of the Act is met.
12. The CMA therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
13. The initial period for consideration of the Merger under section 34ZA(3) of the Act commenced on 2 December 2016 and the statutory 40 working day deadline for a decision on whether to refer the Merger for Phase 2 investigation is therefore 31 January 2017.

Counterfactual

14. 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.² In this case, there is no evidence supporting a different counterfactual and, therefore, the CMA has adopted the prevailing conditions of competition.

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).

Background

15. Cattle and sheep in the UK must have an engraved tag³ with a unique number for each animal.⁴ An animal can only be sold or taken to slaughter if it is tagged accordingly.
16. The manufacturers of engraved tags must meet certain standards, which differ between cattle and sheep,⁵ and must be accredited either with DEFRA in Great Britain and/or DAERA in Northern Ireland. Accreditation (which usually takes 6 to 8 weeks)⁶ gives engravers access to the database of animals' unique identification numbers. Customers (such as farmers) may also use additional blank tags to record their own information, which are known as management or 'secondary' tags.
17. The CMA reviewed the acquisition by Allflex of Cox Agri Limited in June 2015 (*Allflex/Cox*), which also related to the supply of engraved tags for cattle and sheep, as well as the supply of blank tags for cattle.⁷ As part of its investigation in the present case, the CMA has sought to confirm whether its findings in *Allflex/Cox* still apply and refers to this case where relevant in this decision.

Frame of reference

18. 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. The CMA will take these factors into account in its competitive assessment.⁸

³ The Department for Environment, Food and Rural Affairs (DEFRA) is responsible for enforcing the relevant regulations in England, Scotland, and Wales. The Department of Agriculture, Environment and Rural Affairs (DAERA) manage this process for Northern Ireland. DAERA regulations do not differ significantly from regulations in Great Britain and the tag engravers that are accredited to supply cattle and sheep tags in Northern Ireland do not significantly differ from those that are accredited to supply tags in Great Britain and include Caisley, Quick Tag, Cox and Allflex.

⁴ <https://www.gov.uk/animal-identification-movement-and-tracing-regulations>

⁵ Specifically, publically available specifications (PAS) state the physical criteria that tags must meet. These standards are PAS44 for cattle and PAS66 for sheep. These standards specify features such as the tag size, strength and resistance to weathering. The PAS standards apply across the United Kingdom. See further: <https://www.gov.uk/guidance/guidance-for-suppliers-of-cattle-sheep-and-goat-ear-tags>.

⁶ Source: DEFRA.

⁷ <https://www.gov.uk/cma-cases/-allflex-holding-france-alfred-cox-merger-inquiry>

⁸ *Merger Assessment Guidelines*, paragraph 5.2.2.

Product frame of reference

19. The Parties overlap in the supply of engraved tags for cattle, pigs and sheep in the UK.⁹
20. The CMA estimates that the Parties have a negligible combined share of supply of engraved tags for pigs (ie less than [5-10]%). This share of supply does not give rise to *prima facie* competition concerns and therefore the potential impact of the Merger on the supply of engraved tags for pigs is not discussed further in this decision.

Cattle vs sheep tags

21. The CMA's investigation in this case was consistent with its findings in *Allflex/Cox* that customers are unable to switch between engraved tags for cattle and those for sheep. Therefore, as a starting point, the CMA established separate frames of reference for the supply of engraved tags for use on each of cattle and sheep.
22. The CMA then investigated whether further segmentation might be appropriate, including:
 - (a) by whether the engraved tag was sold for use as the primary tag (for which the type of tag is prescribed by regulation) or the secondary tag (where there is no such restriction); and
 - (b) within secondary tags, by type (ie either metal or plastic) and, within each of those types, either electronic or non-electronic.

Segmentation between primary and secondary tags

23. In relation to the supply of engraved tags for use as the primary tag, regulations overseen by DEFRA and DAERA require that:
 - (a) for cattle these tags must be plastic and non-electronic; and
 - (b) for sheep these tags must be plastic and electronic.
24. As customers do not therefore have a choice as to the nature of the primary tag, the CMA established, on a cautious basis, a distinct frame of

⁹ As the Parties also manufacture blank tags, the CMA considered whether any competition concerns could arise from the Merger in relation to this product. However, whilst Shearwell manufactures blank plastic tags for sheep for self-supply, Ketchum manufactures blank metal tags for cattle, pigs and poultry. There is therefore no overlap in the Parties' manufacturing activities and the vertical relationship between the manufacture of blank tags and engraving remains unchanged. Further no third parties raised concerns and so the CMA does not believe the Merger to give rise to potential competition concerns in relation to the manufacture of blank tags.

reference for each of primary and secondary tags for each of sheep and cattle.¹⁰

Further segmentation within secondary tags

25. Where customers use secondary tags, they are not restricted by regulation in the type of tag they choose. In *Allflex/Cox*, the CMA found that all engraved tag types were in the same frame of reference. In the present case, the CMA investigated whether further segmentation may be appropriate by type of tag (metal vs plastic) and, as both types of tag can be either electronic or non-electronic, whether further delineation within tag type on this basis was appropriate.

Metal vs plastic

26. Evidence from third parties indicates that there is limited switching between metal and plastic engraved tags. One competitor explained that customers do not tend to switch between different engraved tag types as they are not a significant purchase and once a farmer finds an engraved tag with good retention they tend to '*stick with what they know*'.
27. Notwithstanding the above, the Parties provided evidence suggesting that suppliers may offer both metal and plastic engraved cattle tags for use as a secondary tag. Further, most competitors responding to the CMA stated that metal and plastic tags are fully interchangeable. In addition, customers stated that they do not tend to have a preference between metal and plastic tags (although customers noted benefits and drawbacks to both types of tag, for example, metal tags have better durability, whilst plastic tags are easier to read and do not rust).
28. In light of the above and, in particular, the interchangeability of metal and plastic tags, and consistent with the CMA's findings in *Allflex/Cox*, the CMA did not further delineate between metal and plastic engraved tags supplied for use as secondary tags.

EID vs non-EID

29. Some customers noted that electronic identification (or 'EID') engraved tags have benefits over non-electronic (or 'non-EID') engraved tags for the information that they contain but that the two tags are nonetheless

¹⁰ This differs from the CMA's approach in *Allflex/Cox*, where all cattle tags were included in the same frame of reference and all sheep tags were included in the same frame of reference.

substitutes. Competitors responding to the CMA confirmed these views, noting that EID and non-EID tags are fully interchangeable.

30. Most competitors told the CMA that they could switch capacity from supplying EID engraved tags to supplying non-EID engraved tags and provided evidence that supply-side substitution is cheap, quick and easy, with only minor alterations to the engraving procedure required.¹¹ Further, DEFRA has noted that the same competitor set are able to offer engraved EID and non-EID tags.
31. In light of the above, and consistent with the CMA's findings in *Allflex/Cox*, the CMA did not further delineate between the supply of EID engraved tags and non-EID engraved tags.

Geographic scope

32. In *Allflex/Cox* the CMA adopted a national frame of reference for the supply of engraved tags due to the need of customers for a fast and reliable service, particularly in relation to replacement tags. In the present case the CMA did not receive any evidence to suggest that it was appropriate to expand the frame of reference and no submissions were received to this effect.
33. Notwithstanding the above, for completeness, the CMA investigated whether Northern Ireland and Great Britain should be treated as being in the same or different geographic frames of reference. In Northern Ireland DAERA accredits livestock tag engravers. The CMA found that all major suppliers active in Great Britain are also active in Northern Ireland (for example, Allflex, Caisley, Datamars, Ketchum and Shearwell) as well as smaller suppliers such as Countryside and Dalton.¹² A customer in Northern Ireland noted that they had a wide range of choice in Northern Ireland, including Allflex and Countryside.
34. The Parties' estimates suggest that they hold similar shares in Northern Ireland as compared with Great Britain in the supply of engraved tags for sheep (around [30-40]% combined, increment of [0-5]%) and lower shares in the supply of engraved tags for cattle (around [10-20]% combined, increment of [0-5]%).

¹¹ Namely, the 'plates' or 'jigs' have to be changed over.

¹² <https://www.daera-ni.gov.uk/articles/ear-tag-information>

35. In light of the above, and consistent with the approach in *Allflex/Cox*, the CMA adopted a geographic frame of reference in this case that was UK-wide.

Conclusion on the frame of reference

36. The CMA has conducted its competitive assessment in relation to the following frames of reference:

(a) For cattle:

- (i) the supply of engraved tags for use as primary tags (comprising solely plastic non-EID tags) in the UK; and
- (ii) the supply of engraved tags for use as secondary tags (including all types of tags) in the UK.

(b) For sheep:

- (i) the supply of engraved tags for use as primary tags (comprising solely plastic EID tags) in the UK; and
- (ii) the supply of engraved tags for use as secondary tags (including all types of tags) in the UK.

Competitive assessment

Horizontal unilateral effects

37. 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.¹³ Horizontal unilateral effects are more likely when the merger parties are close competitors.
38. The CMA assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in a substantial lessening of competition, as a result of unilateral horizontal effects, in each of the frames of references identified above.

¹³ [Merger Assessment Guidelines](#), from paragraph 5.4.1.

Engraved tags for cattle

Shares of Supply

39. Shares of supply are based on ETAS data provided to the CMA by DEFRA.¹⁴ This information records the number of tags for use both as primary and secondary engraved tags purchased and the identity of the engraver. This information is summarised in

¹⁴ ETAS data only covers Great Britain. The CMA has received no evidence to suggest the competitive environment in Northern Ireland is significantly different to Great Britain.

40. Table 1.

Table 1: shares of supply in engraved tags for cattle, GB¹⁵

	Number of primary tags engraved	Share of supply (%)	Number of secondary tags engraved	Share of supply (%)
Allflex companies	[X]	[20-30]	[X]	[20-30]
Caisley	[X]	[0-5]	[X]	[0-5]
Countryside	[X]	[0-5]	[X]	[0-5]
Dalton	[X]	[5-10]	[X]	[0-5]
Datamars	[X]	[10-20]	[X]	[10-20]
Denimex	[X]	[0-5]	[X]	[0-5]
Earlsmere	[X]	[0-5]	[X]	[0-5]
J&M Anderson	[X]	[0-5]	[X]	[0-5]
Ketchum	[X]	[5-10]	[X]	[10-20]
Nordic Star	[X]	[5-10]	[X]	[5-10]
Shearwell	[X]	[20-30]	[X]	[20-30]
Symtag	[X]	[0-5]	[X]	[0-5]
Tenbury	[X]	[0-5]	[X]	[0-5]
Total	[X]	100	[X]	100

Source: CMA analysis of ETAS data from DEFRA

41. In relation to engraved tags for use as primary tags, post-Merger Allflex will remain the largest supplier with a share of supply of [20-30]%. The merged entity will be the second largest engraver of primary tags, with a combined share of supply of [25-40]% and an increment of [5-10]%.
42. In relation to engraved tags for use as secondary tags, the merged entity will be the largest supplier with a combined share of supply of [30-50]% and an increment of [10-20]%. Allflex will be the second largest engraver, with a share of supply of [20-30]%.
43. Ketchum has a relatively larger position in the supply of engraved tags for secondary use as compared to primary use, which may be explained by the fact that Ketchum initially entered the market by offering a metal tag, which predated engraved plastic tags, and continues to offer this as a secondary tag.

Closeness of competition

44. Customers provided some information in relation to their preferred suppliers of engraved tags for cattle but did not provide information as to whether they have different preferences for suppliers of primary and secondary tags. Some customers stated that Shearwell was a preferred

¹⁵ Data provided to the CMA was available only for the first ten months of 2016.

supplier but no customer named Ketchum as a preferred supplier.¹⁶ One customer noted that Ketchum offers a very outdated product and they had not used Ketchum cattle tags for many years. Ketchum itself noted that its metal tag had been the first product on the market and predated plastic tags.

45. The CMA notes that, to the extent that customers may have a preference for a particular type of secondary tag, the only overlap between the Parties in the supply of engraved cattle tags is in relation to plastic non-EID cattle tags. Ketchum offers a metal non-EID engraved cattle tag, whilst Shearwell does not, and Shearwell offers a plastic EID engraved cattle tag, whilst Ketchum does not.
46. Competitors provided information to show which company they considered to be their closest competitors in the engraving of cattle tags. The majority of competitors that responded to the CMA considered Shearwell to be one of their three closest competitors in the supply of engraved cattle tags, whilst one competitor identified Ketchum as one of their three closest competitors
47. In light of the above, the Parties do not appear to be particularly close competitors and in particular the constraint that Ketchum exerted on Shearwell pre-Merger appears to have been limited.

Competitive constraints

48. As set out at Table 1 above, the CMA identified a number of competitors to the Parties, including in particular Allflex and Datamars (that are larger than Ketchum) that would continue to exert a constraint post-Merger.
49. The CMA also identified a number of smaller competitors (including Nordic Star, Dalton and Caisley) that were of a similar size to Ketchum. For completeness and as part of its assessment as to the extent to which these smaller competitors could exert a credible constraint on the merged entity, the CMA assessed whether these competitors could easily expand capacity and also whether customers would face any difficulties in switching to an alternative supplier.

¹⁶ One third party customer that resells engraved tags noted that they do not deal with engravers who also sell direct to customers. This customer felt that as a reseller they are unable to make sufficient margin on engraved tags. Accordingly, this customer does not deal with Shearwell as Shearwell sells direct. The customer is concerned that post-Merger they will also be unable to make sufficient margin on reselling Ketchum tags. The CMA believes that customers have sufficient choice remaining and that lower retailer margins, through competition between tag engravers, may benefit end customers.

50. With regard to ease of switching, in *Allflex/Cox*, third party evidence suggested that customers could switch between suppliers of engraved tags relatively simply, quickly and cheaply for both primary and secondary tags.¹⁷ The outcome of the CMA's investigation in the present case was consistent with *Allflex/Cox*. The CMA observed that shares of supply have changed to some extent since its investigation of *Allflex/Cox*. For example, Caisley has been able to double its share of supply from [0-5]% to [0-5]% and Datamars has been able to significantly increase its share from [0-5]% to [10-20]%.¹⁸ On the other hand, Allflex has seen its share of supply decline. The CMA believes that this may be evidence of customer switching.
51. With regard to expanding capacity, the CMA estimates that [X] has spare capacity to engrave significant quantities of tags for cattle (for either primary or secondary uses). Another competitor has noted that adding capacity is very simple and it can add additional shifts to engrave more tags for use as primary or secondary tags.
52. The CMA believes therefore that switching is relatively simple and that competitors have spare capacity or may be able to easily expand capacity, such that post-Merger the remaining competitors together would exert a strong constraint on the merged entity.

CMA conclusion on the supply of engraved tags for cattle

53. Overall the CMA believes that, whilst the merged entity will be the second largest engraver of primary tags, there are a number of other competing engravers of these tags, supplying both primary and secondary tags, that will continue to constrain the merged entity. Similarly, whilst the merged entity will be a large engraver of secondary tags, a sufficient number of other competitors will remain as an effective constraint to the merged entity. Some large competitors will remain (notably Allflex and Datamars) and the long tail of smaller competitors do not appear to face any significant constraints on supplying tags to customers.
54. The CMA therefore does not believe that the Merger will give rise to a realistic prospect of a substantial lessening of competition as a result of horizontal unilateral effects in the supply of engraved tags for cattle (for use either as primary or secondary tags) in the UK.

¹⁷ See paragraphs 68-69 of *Allflex/Cox*.

¹⁸ The CMA believes this growth was primarily on an organic basis.

Engraved tags for sheep

Shares of Supply

55. Shares of supply are based on data provided to the CMA by DEFRA. DEFRA records the number of engraved tags purchased and the identity of the engraver.¹⁹

Table 2: shares of supply in engraved sheep tags, GB²⁰

Supplier	Total tags engraved	Share of supply, %
Allflex	[X]	[20-30]
Dalton	[X]	[0-5]
Datamars	[X]	[20-30]
Denimex	[X]	[0-5]
Ketchum	[X]	[0-5]
Others	[X]	[0-5]
Shearwell	[X]	[30-40]
Symtag	[X]	[5-10]
Tenbury	[X]	[0-5]
Total	[X]	

Source: CMA analysis of DEFRA data

56. Post-Merger, the combined entity will be the largest engraver of tags for sheep with a combined share of supply of [30-45]%, although the increment resulting from the merger is small at [0-5]%.
57. Due to data limitations the CMA was unable to split shares of supply between engraved tags for use as primary or secondary tags. However, the CMA has gathered information from the Parties and third parties on the number of different types of tags engraved, which suggests that the Parties shares of supply in primary and secondary tags are not significantly different to those reported in Table 2. Furthermore the CMA notes that in the majority of cases farmers do not use secondary tags on sheep and, as such, the vast majority of tags supplied for use on sheep are primary tags.

¹⁹ This data also includes the supply of engraved goat tags (in which the Parties do not overlap). Excluding goat tags does not lead to a material difference given that goat tags account for less than 1% of all tag sales recorded under sheep/goats. As before, this data does not include Northern Ireland, although as explained above the CMA believes that it is a fair indication of the likely competitive strength of the Parties across the UK.

²⁰ Data provided to the CMA was for the first ten months of 2016 only

Closeness of competition

58. Competitors provided information regarding which suppliers they considered to be their closest competitors in relation to the supply of engraved tags for sheep. The majority of competitors that responded to the CMA's questionnaires believed Shearwell to be one of their three closest competitors in the supply of these tags. However, no competitors believed Ketchum to be a close competitor in the supply of engraved tags for sheep.
59. Customers provided information in relation to their preferred suppliers of engraved tags for sheep. Some customers stated that Shearwell was a preferred supplier but no customers named Ketchum.
60. In light of the above, and in common with the CMA's findings in relation to engraved tags supplied for cattle, the Parties do not appear to be particularly close competitors and in particular the constraint that Ketchum exerted on Shearwell pre-Merger appears to be limited.

Competitive constraints

61. The CMA identified a number of competitors (as set out in Table 2 above) that compete with the Parties pre-Merger, most notably Allflex and Datamars ([REDACTED]) and Syntag ([REDACTED]). A long tail of smaller competitors will also remain post-Merger and, in common with its findings with regard to the supply of engraved tags for cattle, the CMA found that customers can switch simply, easily and quickly between suppliers of engraved sheep tags for both primary and secondary tags.

Conclusion on engraved primary and secondary sheep tags

62. The CMA found that the increment arising from the Merger is small in relation to engraved sheep tags and overall there is a sufficient number of other competitors (notably Allflex and Datamars) to provide a constraint on the merged entity.
63. The CMA therefore does not believe that the Merger will give rise to a realistic prospect of a substantial lessening of competition as a result of horizontal unilateral effects in the supply of engraved tags for sheep (for use either as primary or secondary tags) in the UK.

Third-party views

64. The CMA contacted customers and competitors of the Parties and received responses from five customers and five competitors. One customer and

one competitor raised concerns that the Merger would lead to less choice for customers. The CMA has addressed these concerns where relevant in the competitive assessment.

Decision

65. Consequently, the CMA does not believe that it is or may be the case that the Merger may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.
66. The Merger will therefore **not be referred** under section 33(1) of the Act.

Joel Bamford
Director, Mergers
Competition and Markets Authority
23 January 2017