Anticipated joint venture between Dawn Meats and Dunbia

Decision on relevant merger situation and substantial lessening of competition

ME/6699-17

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SUMMARY

1. The notified transaction involves the creation of a joint venture company (the **Joint Venture**) which will acquire the beef and lamb businesses in the United Kingdom (**UK**) of Dunbia[1] and Dawn Meats[2] (the **Merger**). The Joint Venture will be jointly controlled, by Mr James George Dobson (the Group Chief

[1] Dunbia refers to the Dunbia group, which is owned by Dunbia Family (IOM) Limited and whose shareholders are Mr James George Dobson and associated persons.
[2] Dawn Meats refers to the Dawn Meats group, which is owned by QBD Holdings UC.

Executive of Dunbia) and Dawn Meats. Dawn Meats, Dunbia and Mr James George Dobson are jointly referred to as the **Parties**.

2. Simultaneously, Dawn Meats will also acquire sole control of the beef business in Ireland of Dunbia (the **Irish transaction**). These two operations are linked by mutual conditionality.

3. The Competition and Markets Authority (**CMA**) considered that, as the result of the Merger, the UK beef and lamb businesses of Dunbia and Dawn Meats acquired by the Joint Venture will cease to be distinct. The UK turnover test is satisfied. Therefore, the CMA 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.

4. The CMA also considered that, as a result of the Irish transaction, the companies involved in the acquisition by Dawn Meats of Dunbia's beef business in Ireland will cease to be distinct. However, neither the turnover test nor the share of supply test is satisfied. Therefore, the CMA believes that the Irish transaction will not result in the creation of a relevant merger situation.

5. The Parties are processors of meat and operate abattoirs, de-boning facilities and meat processing and packaging facilities across the UK and Ireland. They overlap upstream in the purchase of livestock (sheep and cattle) and downstream in the supply of various unprocessed and processed meat products (in particular, beef and lamb) to a variety of customers, including retailers, hotel, restaurants and caterers,[3] and industrial processors (such as food manufacturers). The Parties are also active in related activities, including the sale of animal skins and hides and the sale of animal by-products.

6. The CMA assessed the upstream purchase of cattle and sheep on a national (Great Britain (**GB**)) basis and on a narrower regional basis, where the Parties were identified as having potentially competing abattoirs. The CMA assessed the downstream supply of unprocessed and processed meat products across each of the different customer groups on a UK-wide basis.

7. The CMA did not identify concerns in respect of any frame of reference. Specifically, the CMA found that the Parties do not currently compete strongly for the purchase of livestock and that, in any event, the merged entity would not benefit from significantly increased buyer power in the procurement of livestock, either nationally or in respect of specific regions in the UK.

[3] This category is referred to in this decision collectively as "caterers". The CMA recognises that there may be an element of ambiguity as to which segment certain customers belong. In particular, where a customer did not identify as being a retailer or industrial processor, the CMA has classified these within the category of caterer. The CMA does not believe the classification of such customers materially impacts the assessment.

Downstream, the CMA found that the Parties would continue to face a strong constraint from alternative suppliers, which was supported by the responses of third parties to the CMA's investigation. The CMA also found that the Parties' customer bases do not overlap significantly, while many customers would in any event be able to switch supplier relatively easily.

8. The CMA believes that these constraints, taken together, are sufficient to ensure that the Merger does not give rise to a realistic prospect of a substantial lessening of competition as a result of horizontal unilateral effects.

9. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).

ASSESSMENT

Parties

10. Dawn Meats is a meat processor and operates beef and lamb processing facilities in the Republic of Ireland (**ROI**), GB and Continental Europe.[4] The turnover of Dawn Meats in financial year 2016 was approximately €[✂] worldwide and approximately €[✂] million in the UK.

11. Dunbia is a meat processor with nine beef and lamb processing facilities across the ROI, Northern Ireland (**NI**) and GB, with additional sales offices in France and Holland.[5] The turnover of Dunbia in financial year 2016 was approximately £[✂] million worldwide and approximately £[✂] million in the UK.

Transaction

12. The Merger involves the creation of the Joint Venture which will acquire the companies of Dunbia and Dawn Meats that carry on the UK beef and lamb businesses, namely Dunbia Family (IOM) Limited (and its subsidiaries) and Dawn Meats (UK).[6] The Joint Venture will be owned [✂]% by Dawn Meats (through Dawn Holdings), and [✂]% by James George Dobson (the Chief Executive of the Dunbia group) or family trusts. Dawn Meats and James

[4] Dawn Meats' pork activities are limited to processing a small amount of pork in GB. Dawn Meats does not have pig slaughtering facilities and all pork is purchased on the open market.
[5] Dunbia's activities in respect of pork are limited to processing pork sausages at Dungannon (NI) and Preston (England) and retail packaging in Dungannon and in Ayr (Scotland). Dunbia does not have pig slaughtering facilities and all pork is sourced on the open market.
[6] The CMA notes that the Parties' limited pork activities (see footnotes 4 and 5 above) will also be included in the Joint Venture. However, the Parties submitted that their activities relating to pork are minimal. This was supported by the views of third party views, who also identified a number of credible alternative suppliers of pork products. Given the marginal nature of these activities, the CMA has not considered the Parties' activities in the supply of pork further in this Decision.

George Dobson will have joint control over the Joint Venture as each will have veto rights over key commercial decisions affecting the company.

13. Simultaneously, under the Irish transaction, Dawn Meats (through Dawn Meats Ireland) proposes to acquire the Dunbia companies involved in the beef business in Ireland, namely, Dunbia (Ireland) Limited and its subsidiary Dunbia (Slane). These two transactions are linked by mutual conditionality.

14. The Parties informed the CMA that these transactions are also the subject of review by competition authorities in Germany, Ireland and the Netherlands.

Jurisdiction

15. The CMA considered that, as a result of the Merger, the companies involved in the UK beef and lamb businesses of Dunbia and Dawn Meats (namely, Dunbia Family (IOM) Limited and Dawn Meats (UK)) contributed to the Joint Venture, will cease to be distinct. The UK turnover of the assets contributed to the Joint Venture by Dawn Meats was €[✂] million in 2016. The UK turnover of the assets contributed to the Joint Venture by Dunbia was £[✂] million in 2016. Therefore, the turnover test in section 23(1)(b) of the Enterprise Act 2002 (the Act) is satisfied.

16. Therefore, the CMA 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.

17. The CMA also considered that, as a result of the Irish transaction, the companies involved in the acquisition of Dunbia's beef business in Ireland (namely, Dawn Meats and Dunbia (Ireland) Limited and its subsidiary Dunbia (Slane)), will cease to be distinct.[7] However, the turnover of the target companies does not exceed £70 million, so the turnover test in section 23(1) of the Act is not satisfied. In addition, the enterprises that will cease to be distinct do not satisfy the share of supply test in section 23(2) of the Act. Therefore, the CMA believes that the Irish transaction will not result in the creation of a relevant merger situation.[8]

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[7] The CMA notes that, in this case, even though the Irish transaction is linked by mutual conditionality with the creation of the Joint Venture, it qualifies as a separate merger situation because the levels of control acquired are different for the two operations (see Mergers: Guidance on the CMA's Jurisdiction and Procedure, footnote 12 to paragraph 4.3; see also approach in *Pork Farms Caspian / Kerry Foods* (17 December 2014), paragraph 26 *et seq*.).

[8] The Merger and the Irish transaction are linked by mutual conditionality. The CMA therefore assessed the Merger in the context of the Irish transaction being cleared.

18. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 11 August 2017 and the statutory 40 working day deadline for a decision is therefore 6 October 2017.

Counterfactual

19. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). On occasion, the CMA may be required to consider a merger at a time when there is the prospect of another merger in the same market (**a parallel transaction**).[9] When considering a parallel transaction, the CMA is likely to consider whether the statutory test for reference would be met if the parallel transaction proceeds and also consider whether the statutory test would be met if the parallel transaction does not proceed.[10] If the statutory test for reference is met on either basis, the case should be referred.[11]

20. On 21 June 2017, ABP Food Group (**ABP**) and Fane Valley Co-Operative Society Limited (**Fane Valley**) announced plans for ABP to acquire a 37.7% interest in Linden Foods Limited (**Linden**) from Fane Valley (the **ABP/Fane Valley/Linden transaction**). The result of the ABP/Fane Valley/Linden transaction will be that Linden will be jointly controlled by ABP and Fane Valley, with each owning a 50% stake.[12] Completion of the transaction is subject to merger approval by the European Commission (**EC**).

21. The parties to the ABP/Fane Valley/Linden transaction operate in a number of the same markets as the Parties, including beef and lamb processing in GB and in NI.

22. The CMA believes that the ABP/Fane Valley/Linden transaction is a parallel transaction, notwithstanding that it is the subject of investigation by the EC rather than the CMA. This is consistent with the Merger Assessment Guidelines and the CMA's previous decisional practice.[13]

23. The CMA recognises that there are different possible outcomes of the EC's assessment of the ABP/Fane Valley/Linden transaction, including an outright

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[9] *Merger Assessment Guidelines*, footnote 46. The footnote explains that a parallel transaction is considered as part of the counterfactual on the basis that it would occur whether or not the merger takes place.
[10] *Merger Assessment Guidelines*, paragraphs 4.3.5, 4.3.25, 4.3.26 *et seq*. See also *BT Group plc/EE Limited* (9 June 2015), at paragraph 38 of the reference decision; and *Xchanging/Agencyport Software Europe* (8 December 2014), at paragraph 69 of the reference decision.
[11] *Merger Assessment Guidelines*, paragraph 4.3.26.
[12] Previously, Linden was solely controlled by Fane Valley and ABP held a 12.3% non-controlling interest by virtue of a transaction between ABP and Fane Valley in respect of the Slaney JV (a full-function joint venture processing beef and lamb in the ROI and Belgium), which was approved by the European Commission on 7 October 2016 (see COMP/M.7930 – *ABP Group / Fane Valley / Slaney Foods*).
[13] See *Merger Assessment Guidelines*, paragraphs 4.3.5 and 4.3.25 to 4.3.26 and *BT Group plc/EE Limited* (9 June 2015), at paragraph 38 *et seq*. of the reference decision.

prohibition, an unconditional clearance, or a conditional clearance (with a range of possible remedies).

24. For the purposes of this Decision, it has not been necessary for the CMA to conclude on the counterfactual because, as described below, the test for reference is not met on the most cautious basis. The CMA has, where appropriate in its competitive assessment, considered the Merger against the conditions of competition that would exist in the most cautious counterfactual, ie if the ABP/Fane Valley/Linden transaction were to be approved unconditionally.

Industry background

25. The Parties are both meat processors that operate multiple facilities across the UK and the ROI that variously: slaughter and de-bone livestock and process and package meat. There are other related activities including the sale of skins and hides and rendering. A map showing the location of the Parties' facilities in the UK and the ROI is shown in Figure 1 below.

26. Figure 1: Parties' processing facilities in the UK and the ROI

Key: Dunbia (blue tags); Dawn Meats (red tags)
Source: Parties' data

27. In this section, the CMA outlines the structure of the supply chain of the meat processing industry in the UK. The supply chain includes the following stages:

(a) Farmers rear livestock (such as cattle and sheep);

(b) Meat processors (with abattoirs) purchase livestock either: direct from farmers; via agents representing multiple farmers; or at auction;

(c) Livestock is slaughtered, de-boned and packed into meat products or processed further (i.e. ingredients added or cooked); and

(d) Meat products are supplied to customers (supermarkets, caterers, food manufacturers, etc.).

28. The UK also imports significant volumes of lamb (around one third of total consumption in 2016) from the ROI and non-EU countries, mainly New Zealand.

29. The price paid by meat processors for individual cattle and sheep is determined by a grading process. After slaughter, animals are graded

according to: (i) conformance (which indicates the meat yield); and (ii) fat cover (which has to be trimmed and is therefore an indicator of waste).[14] These two parameters are used to determine where an animal is referenced on a grading grid. [15] The processor will set a weekly pricing table (price per kg for the carcass) by reference to the grading grid, although these pricing structures may still be negotiated during individual transactions. A further dimension of the pricing system is the livestock age. As older livestock typically have a poorer meat yield, a separate pricing table will be applied to the grading grid.

30. Meat products may be unprocessed (e.g. carcass, primal cuts, sliced, minced, etc.) or processed, meaning the meat has undergone processing with external ingredients (eg sausages, burgers, meatballs, etc.) or has been dried or smoked.

31. Customers of meat products include: retailers (eg national multiples, butchers, etc.); caterers (eg restaurants, hotels, caterers, etc.), and industrial processors (eg manufacturers of food products).

Frame of reference

32. 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.[16]

33. The Parties overlap primarily in the purchase of cattle and sheep for processing and the supply of unprocessed and processed beef, lamb and pork products to a variety of customers in the UK and abroad. The CMA considered the appropriate frame of reference at both the upstream level (purchase of livestock), assessing possible differentiation in terms of species and type of livestock, and the downstream level (supply of meat), assessing

[14] Grading is based on standardised scales for muscle (E, U, R, O, P) and fat (1, 2, 3, 4, 5), Commission Regulation (EC) No 1249/2008 of 10 December 2008 lays down detailed rules on the implementation of the Community scales for muscle and fat, for the classification of beef, pig and sheep carcasses and the reporting of prices for each.

[15] In GB, grading in the Parties' processing facilities is conducted independently by an official of the Meat and Livestock Commission. In NI, grading at Dunbia's processing facility is conducted independently by an automated video image analysis grading system administered by the Department of Agriculture.

[16] *Merger Assessment Guidelines*, paragraph 5.2.2.

possible differentiation in terms of the type of meat, its level of processing, and the type of customers to which it is sold.

Product scope

Purchase of livestock for slaughter

34. The CMA predecessor (the Office of Fair Trading (**OFT**)) has previously assessed the purchase of different types of livestock as part of separate product frames reference. For instance, in *ABP Food Group / RWM Food Group Holdings Limited* (**APB/RWM**) the OFT assessed the purchase of live cattle and the purchase of live sheep for slaughter separately. While this approach was supported by third party comments in the merger investigation, the OFT did not conclude on whether these were separate relevant markets.[17]

35. The EC has taken a similar approach in *ABP Group / Fane Valley Group / Slaney Foods* (**Slaney JV**),[18] where it decided that the purchase of all types and breeds of cattle should be assessed as a distinct product market,[19] without further segmentation.[20] The EC considered the purchase of lamb[21] and other sheep[22] separately, but did not conclude whether these were separate product markets.[23]

36. The Parties submitted that, following these precedents, the purchase of cattle and sheep should be considered separately. The Parties also argued that the purchase of all live cattle and sheep, respectively, for slaughter should be considered together and should not be further segmented (eg by type, age or breed).

37. Cattle is used to describe all bovine animals, including calves, prime cattle (ie steers, heifers, young bulls) and adult cattle (ie cows and adult bulls). The Parties submitted that while cattle may be bred and reared for different

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[17] ABP/RWM (24 January 2012), paragraph 7.
[18] M.7930, 7 October 2016.
[19] The EC noted precedents which distinguished cattle from other species of animals due to the absence of supply-side and demand-side substitutability.
[20] In particular, the EC noted the demand-side substitutability whereby slaughterhouses are able to process various types and breeds of cattle (see, for example, paragraphs 89 and 92).
[21] Ie ovine animals aged one year or younger (paragraph 108).
[22] Ie ovine animals aged over one year (including ewes and rams, which are older breeding stock)(paragraph 108).
[23] In this regard, the EC's market investigation indicated that the large majority of slaughterhouses are able to process all types of live sheep, without making additional investment or incurring significant time delays (paragraph 112).

purposes,[24] they can be processed at any stage in their lifecycle and there is also no difference in consumer markets for prime and adult beef.

38. Similarly, in respect of sheep, the Parties submit that there is no difference in the competitive conditions when sourcing any type of live sheep from farmers and that, similar to their main competitors and the industry more generally, the vast majority of sheep slaughtered by the Parties is lamb.[25] DEFRA statistics[26] only distinguish ewes and rams from the broader category of lambs and other sheep; these statistics show that lamb and other sheep make up just under 90% of all sheep slaughtered in 2016.[27] The DEFRA statistics also show that calves account for just 4% of all cattle slaughtered in 2016.

39. The CMA did not receive evidence during its investigation to suggest that lamb should be considered separately to other types of sheep. As such – and given the evidence of demand-side substitutability of sheep (noted above) and that, in any event, lamb accounts for the vast majority of all sheep slaughtered – the CMA does not believe it is necessary to depart from OFT precedent and has therefore assessed the merger against the following frames of reference:

(a) the purchase of all live cattle for slaughter; and

(b) the purchase of all live sheep for slaughter.

Supply of beef and lamb

40. The Parties both supply beef and lamb meat products.[28] The OFT and EC have previously distinguished between meats of different species of animal, based on the lack of both demand-side and supply-side substitution.[29] The Parties followed this approach in the Merger Notice, which was not disputed by third parties. The CMA therefore considered it appropriate to assess the supply of each of beef and lamb separately.

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[24] Eg calves for veal meat, prime cattle for beef meat, cows for milk production and bulls to act as sires.
[25] In 2016 over 99% of all sheep slaughtered by Dunbia were lambs. No ewes or rams were slaughtered in the UK by Dawn Meats in 2016.
[26] Available at https://www.gov.uk/government/statistics/cattle-sheep-and-pig-slaughter.
[27] In this regard, the Parties note that the function of ewes and rams is to breed and produce lambs, which are then slaughtered for meat. Nevertheless, a time comes when the breeding sheep are also slaughtered for consumption rather than being wasted.
[28] For convenience, and given that lambs account for the vast majority of all sheep slaughtered, the CMA has adopted the term lamb to describe all meat from sheep.
[29] In APB/RWM, the OFT assessed the supply of beef and lamb separately (without concluding if these were separate markets). In Slaney JV, the EC assessed the supply of beef separately, and the supply of lamb and mutton both together and separately (without concluding as to the product market definition). In *Cranswick Country Foods plc / pork processing business of Bowes of Norfolk Limited* (**Cranswick/Bowes**) the OFT considered the supply of pork meat separately.

41. The Parties submitted that it is not necessary to further segment the supply of beef and lamb. The Parties stated that meat from all breeds of cattle is used to supply all customer types and while certain breeds can develop increased popularity from time to time (eg Aberdeen Angus, Hereford), this relates only to a few cuts of meat (eg steaks) and the majority of the meat is sold as standard, undifferentiated product.[30] On the supply-side, processors are typically able to process all breeds and ages of livestock.[31] This indicates that different types of cattle are substitutable from the perspective of processors.

42. As described at paragraph 28 above, on the demand-side, the quality and hence price paid for meat depends on a number of interlinked factors related to the livestock, including age, sex, breed, weight, fat cover, and conformance (shape). In response to the CMA's investigation, up to half of customers indicated that provenance (sourcing region) was important and that they have a preference to source at least some meat from particular regions or countries within the UK (eg Welsh lamb, Scottish beef, etc.).[32] Several customer responses indicate that this derives from some consumer preferences to eat meat produced in their own region.[33] This is supported by a Dunbia presentation,[34] which states that large multiples require their suppliers to provide regional products (eg Scottish beef and Welsh lamb).

43. The CMA considers the issue of provenance is more appropriately dealt with within the geographic market section. The CMA did not otherwise receive evidence in its investigation to suggest that it would be appropriate to define separate markets for the sale of meat based on any of the narrower segments described above. Consequently, it is not necessary to delineate any product frame of reference by the provenance of meat.

Processed vs unprocessed meat

44. Meat products may be unprocessed (e.g. carcass, primal cuts, sliced, minced, etc.) or processed, meaning the meat has undergone processing with external ingredients (eg sausages, burgers, meatballs, etc.) or has been dried or smoked. The OFT[35] and EC[36] have previously distinguished the supply of

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[30] For example, national multiples will occasionally develop a campaign for a specific livestock breed to develop a point of difference from their competitors.
[31] Slaney JV, paragraphs 89 and 147.
[32] [✂], for instance, indicated that it preferred to stock Scottish meat within its Scottish stores.
[33] Eg a demand for Scottish meat from Scottish consumers, a demand for Welsh meat from Welsh consumers, etc.
[34] Information Memorandum on Dunbia and Presentation on the Joint Venture, Annex 9 to the Merger Notice.
[35] ABP/RWM, paragraph 10; Cranswick/Bowes, paragraph 15.
[36] Slaney JV, paragraphs 185 and 186; M.7565 *Danish Crown /Tican* (17 July 2015), paragraphs 21 *et seq*.

processed meat from the supply of unprocessed meat, based on a lack of both demand-side and supply-side substitution.

45. From a supply-side perspective, in this case the majority of customers, including five national multiple retailers ([✂], [✂], [✂], [✂] and [✂]), indicated that they face the same, or a similar, choice of credible suppliers for both processed and unprocessed meat. One such retailer, [✂], told us that they try to source a type of meat from one supplier and that as far as they are aware most large abattoirs can supply both unprocessed and processed meat. Another retailer, [✂], said that it combines supplier contracts across unprocessed and processed meats to allow for better commercial deals on the basis that the carcass can be used more efficiently. Conversely, some (non-retailer) customers identified different credible suppliers for unprocessed and processed meats.

46. While the large majority of the Parties' sales of processed meats are to retailers,[37] taking into account past precedent and that some customers indicated that their supply options vary for processed and unprocessed meats, the CMA believes it is appropriate to assess the impact of the Merger separately for each.

Supply to different customer groups

47. The CMA may define relevant frames of reference for separate customer groups if the effects of the merger on competition to supply a targeted group of customers may differ from its effects on other groups of customers, and require a separate analysis.[38]

48. In ABP/RWM the OFT analysed the merger on the basis of separate markets for the supply of fresh (unprocessed) beef, delineating between: (i) retailers; (ii) caterers; and (iii) processors (although the OFT did not conclude on these).[39] Reasons for assessing these separately included differing customer requirements (e.g. a need to produce retail packs or requirement to cut/mince for caterers). The EC considered a similar segmentation in Slaney JV with regard to the supply of fresh (unprocessed) beef and lamb. In the above cases the supply of processed meat was not split by customer type.

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[37] In 2016, around [✂]% of Dawn Meats' sales of processed lamb were to retailers ([✂], [✂], [✂], and [✂]), while all of Dunbia's sales of processed lamb were to retailers. Over 99% of Dunbia's sales of processed beef were to retailers and, while Dawn Meats sold primarily to non-retailers, its overall sales were small at around £[✂].
[38] Merger Assessment Guidelines (CC2 and OFT1254), paragraph 5.2.28.
[39] ABP/RWM, paragraph 16.

49. In light of the above precedents, the CMA has assessed the impact of the Merger on the supply of unprocessed meat across different customer groups. It was not necessary, however, to undertake an entirely separate competitive assessment for each different group and, for convenience, the assessments are presented together.

Related activities

50. The Parties overlap in the supply of some related activities to the supply of meat, including the supply of by-products such as natural casing and skins and hides.[40]

51. In ABP/RWM the OFT found no evidence that the merged parties' market position in relation to skins and hides was different to beef and lamb processing. In addition, some evidence indicated that the market for hides and skins may be wider than the UK. The CMA did not receive any evidence to indicate that competition concerns arise in the supply of any of these related activities. The CMA therefore does not consider these activities further in this decision.

Conclusion on product scope

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

- The purchase of live cattle for slaughter
- The purchase of live sheep for slaughter
- The supply of unprocessed beef to each of: (i) retailers; (ii) caterers; and (iii) industrial processors
- The supply of unprocessed lamb to each of: (i) retailers; (ii) caterers; and (iii) industrial processors
- The supply of processed: (i) beef; and (ii) lamb.

53. However, it was not necessary for the CMA to reach a conclusion on the product frame of reference, since, as set out below, no competition concerns arise on any plausible basis.

[40] With regard to rendering, the Merger does not give rise to an overlap. Dawn Meats operates one rendering plant in the ROI and has a [✂]% share in renderer Lincoln Proteins. Dunbia does not own any rendering facilities and Mr James George Dobson only holds a minority shareholding of [✂]% in rendering company Linergy. No third parties contacted during the CMA's investigation raised concerns over the supply of rendering services.

Geographic scope

The purchase of live cattle and live sheep for slaughter

54. Previous decisions of the OFT have assessed the purchase of livestock at a sub-national level. In ABP/RWM the OFT's investigation suggested that, while it is not uncommon for live cattle and sheep to be transported up to 400 miles, typically they will be transported around 100 to 200 miles. The OFT assessed the impact of the merger on the purchase of live cattle and live sheep both in respect of GB and separately in the South West of England, where the impact of the transaction was concentrated due to the location of the merging parties' processing facilities.[41]

55. The EC has also assessed the purchase of livestock at a sub-national level. In previous decisions, the EC has left open the potential geographic scope of markets for the purchase of live cattle and sheep for slaughter and assessed transactions on both a national level and on the basis of large regional markets based on catchment areas.[42] Most recently, in Slaney JV, the EC assessed the merger applying a 60 miles radius from cattle processing plants in the ROI. The EC considered that the geographic market for the sale of live sheep and live lambs was the island of Ireland. This was on the basis of its market investigation, which indicated that the price of lamb does not differ significantly between the ROI and NI and that half of abattoirs slaughter live lamb and live sheep supplied by farmers based both in the ROI and in NI. Further evidence also suggested that the majority of live lambs may be sold outside a 60 mile radius.

56. The Parties submitted that the relevant frame of reference for the purchase of both live cattle and live sheep is GB. In particular, the Parties stated that:

    (a) livestock can be transported long distances (up to 8 hours) without the need to be unloaded, so farmers can sell to abattoirs across GB; and

    (b) regional prices[43] for cattle do not differ significantly from abattoir to abattoir or area to area.

57. The Parties explained that, while farmers tend to sell cattle to nearby abattoirs for logistical reasons, there are no barriers to any livestock being sold further afield if local prices are low. Therefore, if an abattoir offers a particularly weak price it will not be supplied and farmers will instead supply an alternative

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[41] ABP/RWM, paragraph 19. The OFT did not reach a conclusion in respect of the precise geographic market definition, given the lack of competition concerns.
[42] M.5935 *Vion/Weyl* (20 August 2010), paragraphs 14 to 19.
[43] Which are reported weekly and published in, for example, the Farmers Guardian and Farmers Weekly.

abattoir (all of which, the Parties argue, have excess slaughtering capacity). The Parties further submitted that these considerations are the same also in respect of the purchase of live sheep, although sheep are in any event typically transported longer distances.

58. Responses from farmers indicated that the typical distance travelled by livestock varied from 20 miles to 150 miles (and over half of farmers indicated that the typical distance travelled would be under 100 miles). The majority of farmers indicated that the maximum distance travelled by livestock would be between 100-200 miles.

59. Consistent with third party responses the CMA believes that the maximum distance livestock would travel in practice may suggest the relevant frame of reference is sub-national (ie smaller than GB) and that meat processors will compete regionally to purchase livestock. Having in mind the typical distance for the transportation of livestock, the only region where the Parties' abattoirs are likely to compete is in the North West of England, which the CMA has assessed separately.

60. Even if the CMA were to consider a broader region of the North of England, the CMA does not believe this would alter the conclusions of the competitive assessment that there is not reasonable prospect of a substantial lessening of competition. This would be the case even in respect of the purchase of live sheep, an activity in which the Parties' facilities in the North West of England do not otherwise overlap (see footnote 56 below).

61. The Parties do not consider that NI is a relevant frame of reference as the Parties do not both operate abattoirs in NI. However, Dunbia does operate an abattoir in Dungannon, NI (which slaughters sheep) and both Dunbia and Dawn Meats operate abattoirs in the ROI (which also slaughter sheep). Given that sheep can travel long distances, including between NI and the ROI,[44] it appears likely that both Parties compete to purchase sheep from farmers across the island of Ireland, including in NI.

62. As no competition concerns arise with regard to the purchase of livestock on any plausible basis, it was not necessary to conclude on the distance over which meat processors compete to purchase live cattle and live sheep. As such, on a cautious basis, the CMA assessed the impact of the Merger for the purchase of sheep in NI, GB and in narrower geographical regions around the Parties' abattoirs.

[44] The Parties state that [✂]% of live sheep in NI are exported to the ROI.

The supply of meat products (unprocessed beef and lamb; and processed meat)[45]

63. In ABP/RWM, the OFT assessed the supply of beef and lamb on the basis of a UK market, although it did not reach a conclusion on the geographic scope.[46] Similarly, in Slaney JV, while the EC left open the exact geographic market for the supply of various fresh (unprocessed) and processed meat products, it did not consider any sub-national geographic frame of reference.[47]

64. The Parties argue that the relevant frame of reference against which to assess the supply of meat products is at least UK-wide. The Parties submitted that fresh meat can be delivered anywhere within two to three days' drive and, when vacuum packed, it can be transported practically anywhere in the world. By way of example, the Parties note that significant quantities of New Zealand lamb is chilled and delivered to the UK.[48] In addition, the CMA's investigation indicated that the distance over which competitor meat processors make 80% of sales ranged from 200 to 600 miles.

65. The CMA received mixed customer views on the importance of meat provenance. Some customers told the CMA that they preferred to source meat locally and/or of a specific provenance (e.g. Scotch beef for Scottish consumers), however, it was also stated that the important distinction was British meat.[49] The CMA considers it plausible that a region or country within the UK could constitute a separate geographic frame of reference, however, as no customers raised concerns relating to the supply of local meat or meat of a specific provenance, the CMA does not believe it is necessary to conclude on this issue.[50]

66. The CMA has assessed the impact of the Merger on the supply of various meat products on a UK-wide basis. However, as no competition concerns arise on any plausible basis, it is not necessary to conclude on the geographic frame of reference.[51]

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45 The CMA has aggregated the discussion of the geographical market definition for these meat products, due to the similarity of the relevant considerations.
46 ABP/RWM, paragraph 21.
47 Slaney JV, paragraphs 156, 176, 182 and 186.
48 In this regard, Dunbia notes that [✂]% of the lamb that Dunbia supplies to [✂] is from New Zealand, [✂]% of the lamb that Dunbia supplies to [✂] is from New Zealand, and [✂]% of the lamb that Dunbia supplies to [✂] is from New Zealand. Similarly, Dawn meats estimates that imports from New Zealand represent approximately [✂]% of its unprocessed lamb sales in the UK.
49 The Parties submitted that the term "British" can be applied to any animal that is born, reared and slaughtered within England, Scotland, Wales and NI.
50 One retailer indicated that it is more efficient to have suppliers close to regional distribution centres, although this is not an essential requirement.
51 The CMA has, on a cautious basis, included the Parties' imports of lamb from New Zealand within the competitive assessment.

Conclusion on frame of reference

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

Upstream markets

- The purchase of live cattle for slaughter in: (i) GB; and (ii) the North West of England.
- The purchase of live sheep for slaughter in: (i) GB; and (ii) NI.

Downstream markets

- The supply of unprocessed beef to each of: (i) retailers; (ii) caterers; and (iii) industrial processors, in the UK.
- The supply of unprocessed lamb to each of: (i) retailers; (ii) caterers; and (iii) industrial processors, in the UK.
- The supply of processed: (i) beef; and (ii) lamb, in the UK.

Competitive assessment

Horizontal unilateral effects

68. 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.[52] Horizontal unilateral effects are more likely when the merger parties are close competitors.

69. The CMA has assessed horizontal unilateral effects in both the upstream markets for the purchase of livestock (cattle and sheep) for slaughter and in the downstream markets for the sale of unprocessed and processed meats (beef and lamb) to various customer groups. In the upstream markets, the CMA has considered whether the Merger could give rise to a substantial lessening of competition as a result of waterbed effects, while in the downstream markets the CMA has considered whether a substantial lessening of competition could arise from an increase in prices or a reduction in quality.

[52] *Merger Assessment Guidelines*, from paragraph 5.4.1.

Purchase of livestock for slaughter

Theories of harm

70. The Parties to the Merger are each active in the markets for the purchase of live cattle and sheep as buyers. An increase in buyer power of merging firms does not often raise a competition concern based on unilateral effects.[53] Nevertheless, the CMA has assessed whether the Merger could give rise to increased buyer power vis-à-vis suppliers of cattle and sheep that could result in harm in the downstream supply of beef meat or lamb meat via waterbed effects.

71. A waterbed effect could occur where, as a result of increased buyer power brought about by the Merger, the Parties are able to negotiate lower prices (or other purchasing terms) for live cattle or live sheep from suppliers which may lead those suppliers to increase prices to the Parties' competitors in order to recoup the loss from the lower prices achieved by the merged entity. This may give rise to competition concerns if, as a result, the merged entity's competitors exit the market or otherwise cut back their operations leading to a substantial lessening of competition in the supply of meat products. This would therefore potentially reduce the competitive pressure on the merged entity sufficiently to offset any pro-competitive effects of its buyer power.[54]

72. This theory of harm relies on the Merger significantly increasing the Parties' buyer power. As explained below this theory of harm is not credible in this case due to the presence of alternative competing processors downstream and the presence of spare capacity, which means rivals have the ability to increase purchases of livestock for slaughter to facilitate suppliers switching away from the Parties.

Share of purchases

Purchase of livestock (cattle and sheep) in GB

73. The Parties' GB-wide shares for the slaughter of livestock are [10-20]% (increment of [5-10]%) for cattle and [10-20]% (increment of [0-5]%) for sheep.[55] The CMA believes these shares indicate that the Merger would not give the merged entity significantly increased buyer power at a national level.

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[53] *Merger Assessment Guidelines*, paragraph 5.9.14.
[54] See reference decision in *Anticipated acquisition by Tesco plc of Booker Group plc* (12 July 2017), paragraph 215.
[55] Based on the Parties' own data on livestock throughput and DEFRA statistics on the total GB slaughter volumes.

Purchase of cattle in the North West of England

74. The evidence received by the CMA regarding the typical distance over which livestock will be transported (described at paragraph 58 above) indicates that certain of the Parties' abattoirs may compete to procure cattle, particularly in the North West of England, where:

(a) Dunbia has a beef and lamb processing plant at Preston and a beef processing plant at Sawley; and

(b) Dawn Meats has a beef processing plant in Cumbria.[56]

75. The CMA notes that Dawn Meats' Cumbria abattoir is relatively small, processing up to [✂] cattle/week, while Dunbia's abattoirs at Preston and Sawley can process up to [✂] and [✂] cattle/week, respectively.[57]

76. The CMA believes that the Parties may account for a significant proportion of total demand for cattle among abattoirs in this region.

Purchase of NI sheep

77. There is no increment in respect of the slaughter of livestock in NI. However, Dunbia operates a lamb processing plant in NI (Dungannon) and Dawn operates a lamb processing plant in the ROI (Ballyhaunis). These processing facilities are 112 miles apart.

78. In 2016, a total of approximately 760,000 NI sheep were either slaughtered in NI or exported to ROI.[58] In the same year, Dunbia Dungannon slaughtered approximately [✂] sheep in NI, all of which were purchased from farmers in NI, meaning its share of the total slaughter of NI sheep was about [✂]%. While Dawn Meats slaughtered around [✂] sheep in 2016, only approximately [✂] of these were imported from NI, meaning the Parties' combined share of slaughter of NI sheep was about [✂]%, with a small increment. The CMA believes these shares indicate that the Merger will not

[56] Dawn Meats also has a beef and lamb processing facility at Carnaby, in the North East of England. The CMA believes that, even extending the region to include this facility (and the purchase of live sheep for slaughter) would not alter the competitive assessment, as the Parties' provided numerous examples of other large abattoirs within a similar distance (128 miles from Dunbia, Preston, which also slaughters sheep) that would continue to act as a constraint on the Parties, including: Riley, Burnley; Linden, Burradon; Woodheads, Colne; Randall Parker Food Group, Llanidloes; Euro Quality, Craven Arms, and others. The Parties' facilities are further away from each other than some of these competitor facilities.

[57] Dunbia notes that in practice the capacity at its Preston abattoir is split between cattle and sheep. Cattle kills are typically [✂]/week.

[58] In 2016, around 420,000 sheep were slaughtered in NI, approximately 340,000 more sheep were exported to the ROI. Only a small number of sheep are exported in the opposite direction (source: DEFRA NI slaughter statistics and the Parties' estimates of exports of livestock from NI to ROI).

give the merged entity a significantly increased buyer power in respect of NI sheep.

Alternative options available

Purchase of livestock (cattle and sheep) in GB

79. The Parties submitted that there are numerous alternative competitors for the acquisition of cattle and sheep at a national level, including ABP, 2SFG, Scotbeef, Foyle, Randall Parker Food Group (**RPFG**), Hilton Food Group (**HFG**), Dovecote, Woodheads and Kepak.[59] The Parties also submitted that there are numerous additional small local abattoirs across the UK for each meat species.

80. In addition, the Parties submitted that the industry generally has significant spare capacity (specifically that it operates at around [✂]% capacity).

Purchase of cattle in the North West of England

81. The Parties submit that there are significant competing third party owned abattoirs that constrain the Parties' facilities in this region, including ABP at York and Ellemere,[60] Woodheads at Colne[61] and Fitton in Oldham.[62] Given these alternative options, the CMA does not believe that, as a result of the Merger, the Parties would be able to significantly increase their buyer power in respect of cattle.

82. Even if the Parties do increase their buyer power in the North West of England, in the context of the national shares described at paragraph 73 above, it is not plausible that any increased buyer power of the Parties post-Merger would extend beyond the North West of England. Following the OFT's analysis in ABP/RWM, because a number of competing beef processors (eg ABP) also source cattle for abattoirs in other regions of the country, a price rise to such rivals within one region would not significantly weaken their overall business.

[59] The CMA notes that Woodheads is vertically integrated with the retail multiple Morrisons, while HFG exclusively supplies retail multiple Tesco in the UK and Ireland and Dovecote exclusively supplies Waitrose in the UK. As such, the CMA considers that these competitors are not as strong a competitive constraint on the Parties as they are unlikely to be a credible alternative for at least some customers.
[60] The Parties estimate these abattoirs each slaughter approximately 800-1,000 cattle/week.
[61] The Parties estimate this abattoir slaughters approximately 1,000 cattle/week.
[62] The Parties estimate this abattoir slaughters approximately 500-600 cattle/week.

Purchase of NI sheep

83. The CMA notes that there are a number of alternative sheep abattoirs in the Northern half of Ireland (even assuming the consolidation of ABP and Linden), including ABP, McGavin Meats, Dunleave Meats, Kepak Athleague, Martin Jennings, Moyvalley Meats and ICM Navan.

84. The CMA notes that in Slaney JV, the EC found that capacity utilisation rates at sheep and lamb processing facilities throughout the island of Ireland were around 62-76%, indicating that there is sufficient spare capacity for additional slaughter.[63] The CMA does not have reason to believe that the market has changed materially since then.

Evidence from contemporaneous documents

85. One document prepared in the context of the Merger, when discussing synergies, indicates that post-Merger the Parties may be able to secure a significant saving from a reduction in the price of cattle.[64] The CMA considered this document in the context of the other evidence described above. Based on the evidence available to the CMA – including estimates of the Parties' combined shares of supply in the procurement of cattle, the alternatives available to farmers, the level of spare capacity in the industry, and the ability to switch quickly and easily – the CMA does not believe the Merger will result in higher prices for cattle to rivals.

Third party views

86. The CMA received views from farmers' unions. The National Farmers' Union (**NFU**) told the CMA, *inter alia*, that, while it does not object to the Merger, the newly formed entity would be likely to possess a significant increase in buying power, particularly in geographic regions where there are few other red meat processors, which could lead to lower prices for farmers. The NFU did not specify any particular regions or type of cattle that could be so affected. The NFU also noted that a level of competition is still provided (particularly in the sheep industry) through livestock markets and small and medium sized abattoirs.

87. The Ulster Farmers' Union (**UFU**) submitted that the Merger would reduce options for farmers and greatly increase the buying power of the Parties in the UK and ROI, with the potential to have adverse consequences for farmers, such as in the form of reduced prices for livestock or through the imposition of

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[63] Slaney JV, paragraphs 356-358.
[64] Attachment "Synergies.xls" to email from IBI Corporate Finance Limited to Jim Dobson sent 3 February 2017.

new specifications at short notice. The UFU notes that both Parties have processing plants across the island of Ireland and that while Dunbia is the largest slaughterer of sheep in NI, Dawn Meats in Ballyhaunis (ROI) also purchases lamb produced in NI. In the context of the ABP/Fane Valley/Linden transaction, the Merger would leave processing of sheep in the northern half of the island of Ireland in very few hands.

88. The NFU Scotland also raised a general and non-merger specific concern that unmanaged consolidation could lead to lower prices being paid for livestock, which could have a detrimental impact of farm income. However, the NFU Scotland did not express specific concerns relating to the Merger.

89. The CMA notes the general concerns of the farmers regarding the increased consolidation in the purchase of livestock. However, as explained above, the evidence available to the CMA in relation to the effects of this specific Merger does not indicate that the Merger will substantially increase the merged entity's buyer power to an extent that would significantly affect the price of the different types of livestock, either nationally or in the regions in which the Parties both have facilities.

90. Competitors also indicated that capacity utilisation[65] across all their meat facilities generally ranged between 70% and 90%. This evidence, along with that described in paragraphs 84 above, suggests there is available spare capacity among abattoirs to accommodate the slaughter of further livestock.

91. The CMA also contacted suppliers of livestock to the Parties throughout UK. Most farmers sell only to one Party or the other. One [✂] farmer from the North West of England ([✂]) responded that they did not think the Merger would have an impact on their business. Specifically, they listed three other abattoirs they could supply to and indicated there were plenty more viable options, although not in the local area. The responses of farmers to the CMA's investigation are therefore consistent with the Parties' buyer power not being significantly increased at either a national or regional level.

Conclusion

92. For the reasons explained above, the CMA does not believe that post-Merger the Parties will have significantly greater buyer power in any region within UK. Therefore, the CMA does not believe that the Merger will give rise to a realistic prospect of a substantial lessening of competition (**SLC**) with regard

[65] I.e. average utilisation over the previous 12 months.

to the purchase of cattle and sheep for slaughter in GB, NI or the North West England.

Supply of unprocessed beef

93. The CMA has assessed whether horizontal unilateral effects are likely to arise as a result of the Merger with regard to the supply of unprocessed beef to customers in the UK. In particular, the CMA has considered to what extent the Parties currently constrain each other and the constraint from alternative suppliers that will remain on the Parties post-Merger.

94. In this assessment, the CMA has primarily taken into account shares of supply, the Parties' submissions and third party customer and competitor views.

Shares of supply

95. The Parties estimated their shares of supply to each customer group, however, due to the limitations of their access to accurate third party data, the CMA calculated shares of supply using revenue data collected from the Parties and their main competitors.

96. As not all competitors provided the CMA with revenue information, the data used to estimate the shares of supply was incomplete. Based on the available data, the CMA considers that a reasonable conservative estimate of the Parties' combined share of supply of unprocessed beef in the UK is approximately [20-30]% (with an increment of [10-20]%).[66] The CMA recognises that this estimate is likely to be overstated as the CMA has not taken account of any abattoirs other than the Parties' main competitors.

97. In terms of competitor constraints post-Merger, the CMA found that the merged entity will continue to be constrained by a number of other significant competitors in the supply of unprocessed beef in the UK. On the basis of the CMA's assessment of shares of supply:

    (a) ABP will remain larger than the merged entity with a share of around [20-30]%;

[66] These shares of supply include a conservative attribution of revenue to [✂] (based on the revenues of rivals believed to be of a comparable size), whose revenues were not otherwise available to the CMA.

(b) three competitors (2 Sisters Food Group (**2SFG**), HFG and Woodheads)[67] will remain of a similar size to the increment; and

(c) at least two smaller, but still material, competitors also remain.[68]

98. Based on the same methodology described above, the CMA has also estimated shares of supply for unprocessed beef in respect of different customer groups (retailers, caterers and industrial processors). The estimated post-Merger market share of the Parties in respect of the supply of unprocessed beef to each of these customer groups (under [20-30]% with an increment of around [5-10]% for retailers; under [40-50]% with an increment of around [0-5]% for caterers; and under [30-40]% with an increment of around [10-20]% for industrial processors) does not indicate that competition concerns are likely to arise in the absence of evidence to the contrary.

99. The CMA further assessed the supply of unprocessed beef, including with regard to different customer groups, on the basis of the Parties' submissions and third party customer and competitor views. These are considered together in the assessment below as the evidence was consistent across all customer groups.

Closeness of competition

Parties' views

100. The Parties argued that they are not close competitors in the supply of unprocessed beef and, in particular, that:

(a) the Parties' sales are focussed on different customer groups. Figures provided to the CMA by the Parties indicate that around two-thirds of Dunbia's UK sales of unprocessed beef are to retailers, compared to only around a quarter for Dawn Meats; and

(b) the Parties do not have any shared national multiple retailer customers for unprocessed beef, except for an overlap in the supply to [✄].

Third party views

101. The CMA received responses from 23 customers of unprocessed beef. These spanned all customer groups and included Dawn Meats customers, Dunbia

[67] Woodheads is vertically integrated with the retailer Morrisons, while HFG exclusively supplies retailer Tesco in the UK and Ireland. As such, the CMA considers that these competitors are not as strong a competitive constraint on the Parties as they are unlikely to be a credible alternative for at least some customers.
[68] Scotbeef and Foyle, both with shares of around [5-10]%.

customers and customers of both Parties. The responses indicate that a majority of customers from across the customer groups do consider the Parties to be close competitors.

Competitive constraints from alternative suppliers

Third party views

102. The CMA considered that the customers most likely to be affected by the Merger are those who consider the Parties to be close competitors. Of the 15 customers that fall into this category one third were retailers, one third were caterers and one third were industrial processors. These customers were asked to name credible alternative suppliers for their business needs. In response:

(a) All 5 retail customers contacted by the CMA identified at least 3 credible alternative suppliers.

(b) 4 out of 5 caterers named at least 3 credible alternative suppliers. The fifth caterer had no concerns about the Merger.

(c) 4 out of 5 industrial processors named at least 3 credible alternative suppliers. The fifth industrial processor had no concerns about the Merger (having no commercial relationship with Dunbia).

103. More generally, at least three customers named 10 credible suppliers of unprocessed beef and around 30 rivals were named at least once as a credible alternative. Of these, 2SFG, ABP, Scotbeef and Foyle were the most commonly cited alternatives. The significant majority of customers multi-source their unprocessed beef requirements.

104. The CMA asked competitors if they believe they compete strongly with each of the Parties. Four out of five that responded ([✂], [✂],[69] [✂] and [✂]) said that they compete closely against both Dunbia and Dawn Meats.

105. Over half of all customers had no concerns about the Merger regarding their purchases of unprocessed beef. Of the customers that consider the Parties to be close alternatives, about half had no concerns, while only one customer ([✂]) had a strong and substantiated concern related to a lessening of competition.

[69] [✂].

106. This complainant [✂] and was concerned that the Merger might result in an increase in prices due to its inability to switch supplier in a timely and cost-effective manner.

107. This complainant also indicated that the post-Merger, it would still have access to 4 other potential suppliers of beef (the complainant named [✂], [✂], [✂] and [✂] as alternatives).[70] In addition, while this complainant said that in order to switch it would have to review its supply structure and long term sourcing strategy, the CMA did not receive evidence to suggest that there are significant barriers to switching (see paragraphs 110 *et seq*, below). Furthermore, this complainant stated that it would potentially look to switch supplier should the Parties attempt to increase any prices by 5%.

108. Even if the Parties compete closely to supply unprocessed beef to most customers, the evidence above indicates that, after the Merger, the merged entity would continue to be sufficiently constrained by other competitors in the supply of unprocessed beef.

Contemporaneous documents

109. In one contemporaneous document discussing synergies,[71] the Parties' expressed an aspiration to increase prices of beef supplies post-Merger in respect of one customer. The CMA found this evidence should be considered in the context of other evidence available to the CMA, which indicates that the Parties, after the Merger, will continue to be constrained in their ability to significantly increase prices to customers.

Ability to switch

110. The Parties submitted that customers can and do switch (or threaten to switch) supplier. In support the Parties noted that retailers routinely tender their requirements (eg [✂] every 6 months). Evidence of tenders provided by the Parties also indicate that both Parties typically compete against a number of alternative suppliers, including for the supply unprocessed beef. In the latest tender for beef by [✂], Dunbia lost business worth over £[✂] million to competitors.[72] Dawn Meats used to supply [✂]% of Asda's beef requirements until ASDA switched to sourcing 100% from ABP in 2014.

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[70] [✂]. Given ABP/Fane Valley/Linden is a parallel transaction, the CMA has considered ABP and Linden as a single competitor.
[71] See footnote 64 above.
[72] Dunbia listed as other competitors in this tender: Dawn Meats, Linden, Foyle and 2SFG. Dawn Meats submitted tender information indicating that it was not a beneficiary in this tender.

111. In response to the CMA's investigation, customers indicated that they could switch supplier relatively quickly and easily, the exception being that a retailer would incur additional time and costs should it be required to approve a new supplier to its supply chain. This exception would also apply were a supplier to raise prices absent the Merger.

112. The CMA assessed the ability of the complainant to switch supplier. In 2016, [✂] spent approximately [✂][73] [✂] on beef products, the majority of which was unprocessed beef. Information on capacity provided by those competitors to the Parties identified by the complainant as being credible alternatives indicates that spare capacity is likely to be able to accommodate the complainant's unprocessed beef demand.[74]

113. The CMA considered to what extent a pre-existing commercial relationship between a supplier and a national multiple retailer is likely to prevent a commercial relationship with a rival national multiple/supplier, respectively. In this regard, each of Dunbia and ABP appear to supply unprocessed beef across multiple closely competing supermarkets, suggesting that this is not necessarily an issue.[75]

114. Overall, the evidence available to the CMA indicates that there is available spare capacity among suppliers if the complainant wished to switch away from (or reduce dependence on) the Parties post-Merger.

Conclusion

115. For the reasons stated above, the CMA does not believe that the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of unprocessed beef to any customer groups in the UK.

Supply of unprocessed lamb

116. The CMA has assessed whether horizontal unilateral effects are likely to arise as a result of the Merger with regard to the supply of unprocessed lamb in the UK. In particular, the CMA has considered to what extent the Parties currently constrain each other and the constraints that will remain on the Parties post-Merger.

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[73] [✂].
[74] In particular, the CMA estimated that the spare capacity of competitors would equate to [✂] in sales.
[75] The Parties submitted that both Dunbia and ABP supply beef to [✂], [✂], and [✂].

117. In this assessment, the CMA has primarily taken into account shares of supply, the Parties' submissions and third party customer and competitor views.

Shares of supply

118. Similar to the assessment of the supply of unprocessed beef, due to the limitations of the Parties' access to accurate third party data, the CMA calculated its own shares of supply of unprocessed lamb using revenue data from the Parties and their main competitors. Based on the available data, the CMA considers that a reasonable conservative estimate of the Parties' combined share of supply for unprocessed lamb in the UK would be [30-40]-[40-50]% (with an increment of [5-10]%).[76] The CMA again recognises that this estimate is likely to be overstated as the CMA has not taken account of any abattoirs other than the Parties' main competitors.[77]

119. In terms of competitor constraints post-Merger, the CMA found that the merged entity will continue to be constrained by a number of other significant competitors in the supply of unprocessed lamb in the UK. On the basis of the CMA's estimates of shares of supply:

(a) 2SFG and ABP would both be significant competitors, each having around [10-20]% share of supply;

(b) HFG and Woodheads would each have a share of supply around the same size as the increment; and

(c) at least two smaller rivals remain each with a [0-5]% share each.[78]

120. Based on the same methodology described above, the CMA has also estimated shares of supply for unprocessed lamb in respect of different customer groups (retailers, caterers and industrial processors). The estimated post-Merger market share of the Parties in respect of the supply of unprocessed lamb to caterers (under [20-30]% with an increment under [10-20]%) and industrial processors (under [30-40]% with an increment of around [5-10]%) does not indicate that competition concerns are likely to arise in the absence of evidence to the contrary. However, the estimated share of supply

[76] These shares of supply include a conservative attribution of revenue to [✂] (based on the revenues of rivals believed to be of a comparable size), whose revenues were not otherwise available to the CMA.
[77] The Parties submitted that calculating shares of supply purely on the basis of sales to customers will overstate the Parties' competitive position, particularly in the retail segment (where the overlap is greatest). This is because the Parties both purchase significant quantities of New Zealand lamb for onward sale to retail customers (the main driver of which is bone-in lamb legs used in seasonal promotions at Easter and Christmas). In this regard, the Parties submit that they act merely as facilitators of the supply chain. The Parties submitted that they only account for around [10-20]% of the national sheep kill (with an increment of [0-5]%).
[78] RPFG and Scotbeef.

in respect of retailers (around [40-50]% with an increment of around [10-20]%) is significant.

121. While the CMA believes that the Merger would strengthen Dunbia's position in the supply of unprocessed lamb, and the estimated share of supply of the merged entity is significant, the evidence assessed below indicates that the merged entity will continue to be sufficiently constrained by other suppliers of unprocessed lamb.

122. The CMA assessed the supply of unprocessed lamb, including with regard to different customer groups, on the basis of the Parties' submissions and third party customer and competitor views. These are considered together in the assessment below as the evidence was consistent across all customer groups.

Closeness of competition

123. The shares of supply described above indicate that the competitive constraint the Parties exert on one another pre-Merger may be asymmetric, given Dunbia has a much larger share than Dawn. Furthermore, the Parties do not have any shared national multiple retail customers for lamb except [✂].

Third party views

124. The CMA received responses from 20 of the Parties' customers for unprocessed lamb, across all customer segments. The responses indicate that around half of customers consider the Parties are close competitors in the supply of unprocessed lamb in the UK.

Alternative competitors

125. As described at paragraph 119 above, the merged entity will continue to be constrained by a number of other significant competitors, including ABP and 2SFG.

Third party views

126. The CMA considered that the customers most likely to be affected by the Merger are those customers who consider the Parties to be close alternatives. Of the customers that fall into this category, the large majority indicated that there are three or more credible alternative suppliers of unprocessed lamb.

127. More generally, customers named a number of different alternatives to the Parties: over half named ABP; around a third named 2SFG and Scotbeef;

while multiple customers also named RPFG, Woodheads, Kildare and Jasper. The majority of customers multi-source their unprocessed lamb requirements.

128. The CMA asked competitors if they believe they compete strongly with each of the Parties. Four out of five that responded ([✂], [✂], [✂] and [✂]) said that they compete closely against Dunbia. The smaller of these ([✂] and [✂]) said they competed closely against Dawn Meats too.

129. Over half of all customers raised no concerns about the Merger with regard to their purchases of unprocessed lamb. Of the customers that consider the Parties to be close alternatives about half had no concerns, while about a half raised some general concerns. Overall, the CMA does not consider that these concerns indicate that competition issues arise with respect to the supply unprocessed lamb. Only one customer ([✂]) expressed a strong and substantiated concern related to a lessening of competition.

130. The complainant currently sources unprocessed lamb from various suppliers ([✂], [✂], [✂] and [✂]). [✂] also identified [✂] as another potential supplier of lamb. In addition, while the complainant said that in order to switch it would have to review its supply structure and long term sourcing strategy, the CMA did not receive evidence to suggest that there are significant barriers to switching (see paragraphs 131 *et seq*, below). Furthermore, the complainant indicated that it would potentially look to switch supplier if the merger parties attempted to increase any prices by 5%.

Ability to switch

131. As described at paragraph 111 above, customers indicated that they could switch supplier relatively quickly and easily, the exception being that retailers would incur additional time and costs should it be required to approve a new supplier to its supply chain. Again, this exception would also apply were a supplier to raise prices absent the Merger.

132. The CMA assessed the ability of the complainant to switch some or all of the volumes supplied by the Parties to a different supplier. As noted above, the complainant told the CMA that [✂] are also current suppliers of unprocessed lamb and that [✂] is also a credible alternative supplier. A number of other retailers identified [✂] as a further credible supplier. The complainant did not consider [✂] to be a credible alternative because it supplies a competitor national multiple ([✂]). Evidence provided to the CMA indicates that the same processor is able to supply competing national multiples.[79] During the CMA's investigation, both [✂] and [✂] indicated that they would compete to supply

[79] The Parties provided tender evidence which indicates that [✂].

major retailers wishing to switch away from the Parties. The CMA notes that both [✄] and [✄] have spare capacity which could accommodate the complainant's requirements (if it were to switch some or all of its volumes from the Parties).

133. In this regard, the Parties submitted that it is relatively straightforward for competitors in general to import New Zealand lamb into the UK and that most major lamb plants in New Zealand are approved for supply to UK retail multiples and are capable of managing a global supply chain. This indicates that access to lamb is not a significant constraint to competitors' capacity.

134. The evidence from third parties is consistent with the Parties' submissions. In particular, competitors confirmed that it is not costly or difficult to import large volumes of lamb meat from New Zealand to supply UK customers.[80]

135. On the basis of the above, the CMA believes that the complainant does have credible alternative options to which it could switch (or threaten to switch) its supply and alternative suppliers have sufficient capacity to meet its demand.

Conclusion

136. The CMA believes that on the basis of the above evidence, the Merger does not give rise to a realist prospect of an SLC as a result of horizontal unilateral effects in the supply of unprocessed lamb in the UK.

Supply of processed beef

Shares of supply

137. Both Parties sell processed beef products. In 2016, Dunbia supplied approximately £[✄] million of processed beef (over 95% of this was to retailers). By contrast, in the same year Dawn Meats supplied only approximately £[✄] of processed beef (customer data indicates that the majority of this was to non-retail customers). As a result, the extent of the overlap appears small and the evidence suggests that that the Parties do not compete closely.

138. The Parties could not provide reliable share of supply estimates for the supply of processed beef. The CMA estimated shares of supply using revenue data collected from the Parties' main competitors. Based on this data, the CMA considers that a reasonable conservative estimate of the Parties' combined

[80] In this regard, one customer ([✄]), noted that the supply chain to source lamb from New Zealand was straight forward.

share of supply of processed beef in the UK is below [10-20]% (with an increment of under [0-5]%). The CMA recognises that the combined share of the Parties is also likely to be overstated as the CMA has not taken account of any suppliers other than the Parties' main processing competitors. The share of supply is therefore not at a level that would be expected to give rise to competition issues in the absence of evidence to the contrary.

139. In terms of competitor constraints post-Merger, the CMA found that the merged entity will continue to be constrained by a number of other significant competitors in the supply of processed beef in the UK, including:

(a) ABP, which is the market leader with a share around [30-40]%;

(b) Scotbeef with a share of around [10-20]%;

(c) Dovecote, with a share of around [10-20]%; and

(d) at least two (2SFG and Woodheads) smaller competitors, with shares around [5-10]%.

Third party views

140. Responses to the CMA's merger investigation indicated that retail customers consider the credible supplier set for processed beef is the same (or similar) as for unprocessed beef. Given this, the CMA believes that the competitive assessment for unprocessed beef described at paragraphs 102 *et seq*. above has probative value with regard to processed beef and is indicative that no competition concerns are likely to arise with regard to the supply of processed beef.

Conclusion

141. The CMA believes that on the basis of the above evidence, the Merger does not give rise to a realist prospect of an SLC as a result of horizontal unilateral effects in the supply of processed beef in the UK.

Supply of processed lamb

Shares of supply

142. The Parties both sell processed lamb products and in 2016 Dunbia made sales of £[✄] million while Dawn Meats made sales of £[✄] million. The Parties' sales were predominantly to multiple retail chains (at least [✄]% of Dawn Meat sales and [✄]% of Dunbia sales). Therefore, the only overlap arises in respect of sales to retail customers.

143. The Parties could not provide reliable share of supply estimates but submitted that their combined share of supply of processed lamb would be very small. The CMA considered that it should construct shares of supply using revenue data collected from the Parties' main competitors.

144. As not all competitors provided the CMA with revenue information, the data used to estimate the shares of supply was incomplete. Based on the available data, the CMA considers that a reasonable conservative estimate of the Parties' combined share of supply of processed lamb in the UK is below [40-50]% (with an increment of around [10-20]%).[81] The CMA recognises that the combined share of the Parties is likely to be overstated as the CMA has not taken account of any suppliers other than the Parties' main processing competitors.

145. In terms of competitor constraints post-Merger, the CMA found that the merged entity will continue to be constrained by a number of other significant competitors in the supply of processed lamb in the UK. On the basis of its assessment of shares of supply:

(a) 2SFG will be a strong, second largest, competitor with a share above [30-40]%;

(b) Scotbeef will have a share between [10-20]%; and

(c) at least two (Woodheads and ABP) smaller competitors also remain.

146. As noted at paragraph 133 above, the Parties submitted that it is relatively straightforward for competitors in general to import New Zealand lamb into the UK, which indicates that access to lamb is not a significant constraint to competitors' capacity.

Third party views

147. The CMA received responses from five major retailers with regard to processed lamb. These responses indicated that retailers consider their supply options for processed lamb are often very similar to their supply options for unprocessed lamb. In particular:

(a) [✄] considered that most large abattoirs can adequately supply both unprocessed and processed meat.

[81] Revenues of [✄] were not available to the CMA. The Parties combined share of supply will be under 40% if only a small (£0.5 million) amount is attributed to [✄].

(b) [✄] told the CMA that it combines supplier contracts across unprocessed and processed meats to allow for better commercial deals, on the basis that the carcass can be used more efficiently.

Conclusion

148. Given the evidence above, and in light of the CMA's assessment in respect of unprocessed lamb above, the CMA believes that the Merger does not give rise to a realist prospect of an SLC as a result of horizontal unilateral effects in the supply of processed lamb in the UK.

Conclusion on horizontal unilateral effects

149. As set out above, the CMA believes that, in general, the Parties' combined shares of supply are not at a level at which competition concerns are likely to arise in the absence of evidence to the contrary. The exception is sales of unprocessed lamb to retailers, although the CMA notes that the Parties' shares are likely to be overstated.

150. The CMA believes that the Parties will continue to face significant competition post-Merger and that customers not only have credible alternative suppliers but that there is sufficient spare capacity to ensure switching is a viable strategy. In this regard the CMA does not believe that there are significant barriers to switching for customers (albeit retail customers may experience some inconvenience in terms of time and costs of approving a new supplier), while competing suppliers are willing to compete for additional demand.

151. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to any of the abovementioned plausible frames of reference.

Third party views

152. Third party comments have been taken into account where appropriate in the competitive assessment above.

Decision

153. 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.

154. The Merger will therefore **not be referred** under section 33(1) of the Act.