

Anticipated joint venture between Cargill, Incorporated and Faccenda Investments Ltd

Decision on relevant merger situation and substantial lessening of competition

ME/6703-17

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 7 December 2017. Full text of the decision published on 5 January 2018.

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

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SUMMARY

1. Cargill Incorporated (**Cargill**) and Faccenda Investments Ltd (**Faccenda**) have agreed to form a new joint venture company (**the JV**) in which they will combine their UK-based fresh and added-value raw poultry businesses (**the Merger**). Cargill and Faccenda are together referred to as the **Parties**.

2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that, as a result of the Merger, the UK-based fresh and added-value raw poultry businesses of Cargill and Faccenda acquired by the JV will cease to be distinct. The UK turnover test is met. 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.
3. The Parties are vertically integrated suppliers of chicken and overlap in the supply of fresh and fresh added-value chicken to customers in the UK.¹ Cargill is also active in the sale of animal feed in the UK. The CMA has assessed the impact of the Merger within the following frames of reference:

Downstream

- (a) the supply of fresh chicken to: (i) retailers; (ii) caterers; and (iii) food manufacturers in the UK;
- (b) the supply of fresh added-value chicken to: (i) retailers; and (ii) caterers in the UK; and
- (c) the supply of category 3 chicken by-products in the UK.²

Upstream

- (d) the acquisition of broiler chickens from local 'grow-out' farms in the UK;
 - (e) the supply of non-grain animal feed ingredients: (i) rapeseed meal; (ii) soya bean meal in the UK; and
 - (f) the supply of crude seed oil ingredients: (i) crude rapeseed oil; and (ii) crude soya bean oil in the UK.
4. The CMA has assessed the horizontal unilateral effects of the Merger, both (i) downstream, in the supply of fresh chicken and fresh added-value chicken for each type of customer; and (ii) upstream in the acquisition of broiler chickens from 'grow-out' farms.

¹ See footnote 14 for the definition of fresh and fresh added-value chicken. For a discussion of the types of customer, see paragraphs 48 - 53.

² For a definition of category 3 chicken by-products, see paragraph 54.

5. The CMA believes that the Merger does not raise competition concerns in the supply of fresh chicken and fresh added-value chicken for each type of customer, because:
 - (a) The combined share of supply of the JV will be modest, being below 25% in all plausible downstream market segments.³
 - (b) The Parties do compete with each other but are not particularly close competitors, with few overlapping customer relationships, also competing with a number of alternative credible suppliers.
 - (c) Post-Merger, there will remain two poultry suppliers in the market that are larger than the JV, along with a significant number of smaller suppliers that are capable of supplying to each customer segment.
 - (d) While the CMA's investigation indicates that there is limited spare capacity in the chicken industry at present, there is no indication that the Parties' market position is more significant than is indicated by their share of supply based on sales (in particular because there is no evidence to suggest the Parties have more capacity than their competitors or are better placed to increase capacity).
6. The CMA noted the potential increase in the Parties' buyer power in relation to the acquisition of broiler chickens from 'grow-out' farms, but concluded that no concerns arise, in particular because the available evidence indicates that the Merger will not give the JV the ability to negotiate better supply terms from its 'grow-out' farm suppliers.
7. The CMA also assessed the vertical effects of the Merger in the supply of animal feed to the Parties' competitors downstream in the supply of chicken. The CMA found that Cargill does not have the ability to foreclose rival poultry suppliers by increasing the price of feed ingredients, given the nature of the product and the number of routes and alternative suppliers through which poultry suppliers can obtain their feed requirements.
8. The CMA therefore believes that the Merger does not give rise to a realistic prospect of a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects, a potential increase in buyer power, or vertical effects.

³ With regards to the supply of fresh added-value chicken to caterers, the share of supply is approximately [20-30]% with imported fresh added-value chicken included in the market segment, see paragraph 96.

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

ASSESSMENT

Parties

10. Cargill is a privately held company, headquartered in the USA. As the ultimate parent company of the Cargill Group, it is active, worldwide, in (i) grain and commodity merchandising, (ii) oilseed and grain processing and refining, (iii) flour milling, (iv) meat processing (including chicken) and (v) other food and agricultural-related services. The turnover of Cargill in financial year 2015/2016 was approximately £80 billion worldwide and £[REDACTED] in the UK.⁴
11. Faccenda is a UK company that, through its subsidiaries, supplies chicken, duck and turkey products, primarily in the UK. The turnover of Faccenda in financial year 2015/2016 was £608 million worldwide and £570 million in the UK.

Transaction

12. The Merger involves the creation of a JV to which the Parties will contribute their integrated UK-based fresh and added-value raw poultry businesses, including the Parties' integrated feed production, breeding, rearing, fattening, slaughtering and processing operations, along with related activities such as chicken feed production and a variety of business assets including back-office administration, distribution, marketing and sales.
13. Some poultry-related businesses will be retained by the Parties outside of the JV,⁵ and the JV will have limited supply relationships with each of the Parties.⁶
14. Following completion, the JV will be jointly controlled by Cargill and Faccenda. Each will own 50% of the shares in the JV in return for the transfer of their businesses and both Parties' agreement will be required for the JV to adopt any strategic decisions.

⁴ Turnover of \$107.16 billion with \$[REDACTED] in the UK. Calculation based on an average exchange rate for 2016 of 1 USD = 0.7406 GBP.

⁵ These include a joint venture between Faccenda and Dartmouth Foods for the production of cooked added-value duck products, Cargill's supply of pre-cooked and frozen breaded chicken nuggets [REDACTED], and Cargill's import and distribution business of cooked and frozen chicken products [REDACTED].

⁶ The JV will supply [REDACTED].

Jurisdiction

15. As a result of the Merger, the UK-based fresh and added-value raw poultry businesses of Cargill and Faccenda acquired by the JV will cease to be distinct.
16. The anticipated UK annual turnover of the JV is estimated at £[redacted]. Therefore, the turnover test in section 23(1)(b) of the Act is satisfied.
17. 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.
18. The Merger meets the thresholds under Council Regulation (EC) 139/2004 (the **EC Merger Regulation**) for review by the European Commission. The Parties submitted a reasoned submission to the European Commission on 25 September 2017 requesting a referral to the CMA under Article 4(4) of the EC Merger Regulation.⁷ The CMA informed the European Commission that it agreed with the referral request and considered the Merger capable of being reviewed in the United Kingdom under the Act. On 18 October 2017, the European Commission announced its decision to partially refer the Merger to the CMA for review. The preliminary assessment period for consideration of the Merger under section 34A(2) of the Act started on 18 October 2017 and the statutory 45 working day deadline for a decision is therefore 22 December 2017.

Counterfactual

19. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For anticipated mergers, the CMA generally adopts the prevailing conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available, it believes that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive between the Parties than these conditions.⁸

⁷ The Parties identified a de minimis overlap in their activities in relation to the sale of fresh and frozen chicken in the Netherlands, the assessment of which was retained by the European Commission, and cleared under the simplified merger review procedure (case number M.8562).

⁸ *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).

20. In this case, there is no evidence supporting a different counterfactual, and the Parties and third parties have not put forward arguments in this respect. Therefore, the CMA believes the prevailing conditions of competition to be the relevant counterfactual.

Background

21. The Parties are vertically integrated suppliers of chicken, and the JV will operate at the following main stages of the supply chain for the production and supply of chicken:
- (a) chicken feed production (in-house production of compound poultry feed);
 - (b) farm-side operations (ie chicken suppliers both own/operate their own farms and contract with third party owned/operated farms to rear and fatten live birds for slaughter);
 - (c) fresh chicken processing (ie the slaughtering, butchering and packaging of fresh poultry products);⁹
 - (d) the supply of fresh chicken to retailers, caterers and food manufacturers; and
 - (e) the sale of category 3 by-products (ie ‘not fit for human consumption’ residual waste from poultry processing that is sold as an input to the pet food industry).
22. Cargill (but not Faccenda) is also active in the sale of animal feed and feed ingredients in the UK. This business is not being transferred to the JV.

Frame of reference

23. 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 merging 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.¹⁰

⁹ This may also include the preparation of raw “ready-to-cook” added-value chicken products which have been seasoned, spiced, flavoured, marinated, stuffed, or combined with a sauce and/or other ingredients.

¹⁰ [Merger Assessment Guidelines](#), paragraph 5.2.2.

24. The Parties overlap in: (i) the supply of fresh and fresh added-value chicken products to retailers, caterers and food manufacturers; (ii) the supply of category 3 chicken by-products in the UK; and (iii) the acquisition of broiler chickens from chicken 'grow-out farms' (ie farms to which the Parties outsource the fattening of chickens, with the Parties selling chicks and feed to third party farms and then buying back the broiler chickens at an agreed price).
25. The Parties' activities are also vertically related, because Cargill is active in the sale of animal feed and feed ingredients.

Product scope

Downstream: supply of chicken

26. The CMA (and its predecessor the Office of Fair Trading (**OFT**)) has considered a number of mergers involving poultry suppliers. In the most recent case, *Boparan/Bernard Matthews*,¹¹ the CMA assessed the supply of fresh, frozen, processed and unprocessed chicken and turkey to each of three customer types (retailers, caterers, and food manufacturers) separately, primarily based on each of these customer groups having very different requirements.
27. Based on the past decisional practice, the supply of poultry can be segmented in a number of different ways:
 - (a) by the type of bird (eg chicken, duck, turkey);
 - (b) by whether the bird is processed (eg uncooked/raw, cooked, 'added-value');
 - (c) by the state of the bird (eg fresh, frozen); and
 - (d) by the type of customer (eg retailer, caterer, food manufacturer).

The CMA has considered these potential segmentations below.

¹¹ *Completed acquisition by Boparan Private Office of the business formerly carried on by Bernard Matthews Limited (Boparan/Bernard Matthews)*, paragraph 48.

Type of bird

28. As noted above, Faccenda is active in the supply of turkey and duck but Cargill is not, and therefore the Parties' activities only overlap within the supply of chicken.
29. The past decisional practice of the CMA and the European Commission has consistently found limited demand-side substitution between chicken and other birds.¹²
30. The Parties submitted that there is limited supply-side substitutability between the supply of chicken and other poultry, as the conversion of capacity used for one type of bird to another requires significant capital investment because of the distinct requirements of each poultry type.
31. The CMA did not receive evidence during its investigation to justify departing from the approach adopted in previous CMA decisions.
32. Accordingly, the CMA has not considered turkey or duck further in this case, and has focused its analysis on the supply of chicken.

Processed or unprocessed chicken

33. The previous decisions noted above identified a distinction between:
(i) unprocessed fresh chicken, including primary fresh chicken and primary frozen chicken; and (ii) processed chicken, including fresh added-value chicken and cooked chicken products.
34. The Parties submitted that the supply of processed cooked chicken is a separate product market from unprocessed chicken because there is no supply or demand-side substitution between primary added-value raw 'ready-to-cook' products and cooked chicken products. In terms of supply-side substitution, the Parties stated that processed chicken requires separate cooking capabilities, which represent a significant investment, and are subject to specific technical and hygiene requirements.
35. Consistent with the approach adopted in previous cases, the CMA found no evidence to suggest that processed chicken should be considered within the same frame of reference as unprocessed chicken.¹³

¹² For example, see [Boparan/Bernard Matthews](#), paragraphs 42-46 and [Completed acquisition by Boparan Holdings Limited of Vion Poultry Limited \(now 2 Sisters Poultry Limited\) \(Boparan/Vion\)](#), paragraph 29.

¹³ In [Boparan/Vion](#) and [Boparan/Bernard Matthews](#), the OFT and CMA respectively, assessed the supply of different types of poultry separately, including processed cooked and uncooked poultry (paragraph 41 and paragraph 30).

36. As the JV's activities will not include the supply of cooked chicken products, the CMA has not considered cooked chicken further in this decision, focusing its assessment on the supply of unprocessed fresh chicken and processed fresh added-value chicken.

*Primary fresh and fresh added-value chicken*¹⁴

37. Consistent with the past decisional practice of the CMA and the European Commission, the Parties also submitted that there are separate markets for primary fresh chicken and fresh added-value chicken.
38. The CMA found no evidence that would justify departing from the past decisional practice, and has therefore assessed the effects of the Merger within separate frames of reference for the supply of primary fresh chicken and fresh added-value chicken.¹⁵
39. Both Cargill or Faccenda supply different types of fresh added-value chicken, including rotisserie and BBQ.¹⁶ For turkey, the CMA has previously found breaded product to be a separate market to other types of processed product, but has not considered other types of processed turkey (or chicken). Neither Party supplies breaded chicken and therefore the CMA has not been required to consider whether this forms a separate frame of reference. The CMA has, however, considered whether other types of processed product (specifically rotisserie and BBQ chicken) should be considered within separate frames of reference.
40. The Parties submitted that there is a significant degree of supply-side substitutability between most types of processed chicken, as the time and cost of any switch in production would be minimal.
41. This was confirmed by responses received by the CMA from competitors, who agreed that switching between BBQ and rotisserie production was easy, noting that changing marinades was relatively commonplace and that the only costs of doing so come from the cleaning of the relevant equipment.

¹⁴ 'Primary fresh chicken' comprises raw (i.e. uncooked) slaughtered, plucked and packaged 'whole' chicken and/or slaughtered, plucked, butchered and packaged "parts" of chicken (wings, legs, breast, etc.), either 'bone in' or 'bone out'. Primary fresh chicken can be subject to various added-value further processing to produce a 'ready-to-cook' product, e.g. via spices, seasoning, marinades, flavouring, stuffing or the inclusion of other accompaniments or garnishes (**fresh added-value chicken**).

¹⁵ [Boparan/Bernard Matthews](#), paragraph 48.

¹⁶ In [Boparan/Bernard Matthews](#), the CMA considered, on a cautious basis, breaded turkey to be a separate product to other types of processed turkey, owing to the need for specialised equipment, paragraph 39. Other types of processed poultry have not been distinguished between in past decisional practice.

42. The CMA has therefore assessed the effects of the JV on the supply of fresh added-value chicken as a single product frame of reference.

Fresh or frozen

43. In *Boparan/Bernard Matthews*, the available evidence suggested limited substitutability demand-side between fresh and frozen poultry, given the properties of the meat, consumer preferences and price differences.¹⁷
44. The Parties stated that retail customers cannot legally de-frost chicken and sell it as 'fresh', and that frozen chicken is also substantially cheaper than fresh chicken. The Parties submitted, however, that other types of customer (eg caterers and food manufacturers) are able to substitute frozen and fresh chicken.
45. The evidence received by the CMA confirmed that retail customers would not switch to frozen chicken under any circumstances. The majority of customers within both the caterer and food manufacturer segments who responded to the CMA would not switch to frozen product to any extent (with one customer commenting that they would only do so where '*absolutely necessary*'). The CMA did not receive any responses from customers of any group that would readily substitute fresh chicken for frozen chicken.
46. The CMA therefore considers that there is a separate frame of reference for each of fresh chicken and frozen chicken (for all types of customer).
47. The Parties' activities in relation to the supply of frozen chicken (to any customer type) are extremely limited, and therefore the CMA has not considered further the effects of the Merger by reference to the supply of frozen chicken within this decision.¹⁸

Type of customer

48. 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.¹⁹

¹⁷ However, the CMA did not need to conclude on whether fresh and frozen processed turkey represented distinct markets, paragraph 35.

¹⁸ Any sales of frozen chicken arise only when the Parties have surplus supply of fresh chicken and therefore freeze the birds. In 2016, for example, [X], which would represent a retail-only share of [0-10]% (out of a total estimated frozen retail segment of [X]). In the catering and food manufacturing frozen segments, Cargill and Faccenda's combined shares do not exceed [10-20]%.

¹⁹ [Merger Assessment Guidelines](#), paragraph 5.2.28.

49. The Parties submitted that most chicken suppliers supply all customer groups and that it is easy to adapt and enter other customer segments.
50. The CMA and European Commission have consistently distinguished between the following customer types for the supply of poultry: retailer, caterer and food manufacturer customers.
51. Both customer and competitor responses received by the CMA supported the customer segmentation applied in previous decisions. Competitors submitted that demands of the different customer group could vary in relation to packaging sizes, the accuracy of pack weights, and welfare requirements. When asked by the CMA to rate the importance of various factors regarding the supply of chicken, caterer and food manufacturer customers consistently ranked price more highly than retailers, while retailers rated provenance (and, to an extent, welfare) more highly.²⁰
52. The CMA also notes that the price of chicken sold to retailers tends to be higher than that sold to caterer and food manufacturer customers. Furthermore, retail customers, by way of other customer groups, rely on longer-term relationships with suppliers, rather than annual tenders or spot price sales.
53. Overall, the evidence received by the CMA supports the approach adopted in previous decisions, and therefore the CMA has analysed the effects of the Merger within separate frames of reference for each customer type.

Downstream: Supply of category 3 chicken by-products

54. Category 3 poultry by-products comprise the 'not fit for human consumption' residual waste from poultry processing and are used primarily in the production of pet foods.²¹
55. The Parties submitted that category 3 chicken by-products are a separate market from other chicken and animal by-products. Specifically, renderers will pay to collect category 3 chicken by-products, which are used in pet foods and other products, whereas category 1 and category 2 by-products are high-risk by-products that the Parties pay to be collected. The Parties submitted

²⁰ Hygiene and security of supply were noted as being very important by all customers.

²¹ According to EU legislation, animal by-products not fit for human consumption are divided into Category 1, Category 2 and Category 3 materials depending on the risk that they pose to public and animal health (category 1 having the highest risk, and category 3 the lowest).

that category 3 chicken by-products are typically more expensive than other animal proteins in part because of the more palatable taste.

56. This evidence is consistent with the OFT's findings in *Boparan/Vion*, in which category 3 chicken by-products were considered to be a distinct product frame (for the reasons as set out above).²²
57. The CMA has therefore assessed the effects of the Merger by reference to the supply of category 3 chicken by-products.

Upstream: acquisition of broiler chickens from 'grow-out' farms

58. Most chicken suppliers (including the Parties) contract with third party 'grow-out' farms, who purchase chicks and feed from the chicken suppliers and then sell back the fattened chickens at an agreed price.
59. The Parties submitted that all chicken suppliers work with farms under long-term contracts to fatten some, or all, of their broiler chickens. As these activities are intended to support the supply of chicken, the Parties (and their competitors) would not substitute the purchase of fattened chickens for any other product.
60. The CMA has therefore assessed the effects of the Merger by reference to the purchase of broiler chickens from 'grow-out' farms.

Upstream: supply of animal feed ingredients

61. Cargill, but not Faccenda, is active in the supply of animal feed and feed ingredients worldwide, including within the UK.²³
62. Most poultry suppliers are vertically-integrated and purchase single feed ingredients in order to produce their own compound poultry feed using their proprietary feed mills. These suppliers also purchase small quantities of ready-made compound feed from animal feed millers (ie companies who produce complete/compound feed for various animals) in order to make up the balance of their supplies.
63. Vertically-integrated poultry suppliers purchase their single feed requirements (eg grain, non-grain ingredients) from (i) single feed suppliers (such as Cargill), and/or (ii) from traders, who import commodity single feed ingredients

²² *Boparan/Vion*, paragraph 34.

²³ Faccenda is active in producing animal feed from feed ingredients for use in its production of poultry, but does not sell any animal feed, and purchases some [0-10]% of its feed requirements from third party suppliers.

from all over the world into major ports in the UK, and re-sell them to integrators (including poultry suppliers) and animal feed millers.

64. A smaller number of poultry suppliers do not have their own feed mills and purchase all of their requirements for compound feed from animal feed millers.
65. The past decisional practice of the CMA and the European Commission has considered single feed and compound feed to be separate markets.²⁴ As Cargill does not supply compound poultry feed in the UK, this potential segmentation has not been considered further.
66. Single animal feeds are animal feed products which are made up of only one basic feed ingredient and are used as an input into blended and compound feed. There are four categories of single feed: grains, non-grains/oilseed meals, crude oils and refined oils. Within each type of feed ingredient there are different types of grain and oil, etc.
67. Previous European Commission cases have considered a possible sub-segmentation based on each type of feed ingredient, but have ultimately left market definition open in this regard.²⁵ For the purposes of this assessment, the CMA has distinguished between different categories for each type of feed ingredient (eg oilseed meals have been sub-segmented into rapeseed meal, soya bean meal and sunflower meal).
68. The Parties submitted that feed producers are able to switch between different types of grain or non-grain/oilseed meal ingredients in production, and that all ingredients can be used interchangeably to provide the necessary requirements for an animal's diet. For these reasons, the Parties submitted that these types of ingredient should be considered to form part of the same relevant product market.
69. Responses provided to the CMA from poultry suppliers indicated some ability to vary the components used in animal feed but that the main ingredients of wheat (as a grain feed ingredient) and soya bean meal (as a non-grain feed ingredient) could not be changed.

²⁴ See in particular, the European Commission Case COMP/M.6573 – *ForFarmers/Agricola*, paragraph 10; CMA Case ME/6507/14 – *ForFarmers UK Limited/Feed and Forage business of Countrywide Farmers plc (ForFarmers/Countrywide Farmers)*, paragraph 29; and OFT Case ME/5095/11– *AB Agri Limited/Uffculme Feed Mill*, paragraph 26.

²⁵ In European Commission Case COMP/M.6383 *Cargill/Korofrance*, the European Commission left open whether the market for grains should be subdivided by grain type, paragraph 22. Also, in *Cargill/Korofrance*, the European Commission considered whether non-grain feed ingredients (namely oilseed meals) should be further segmented, but left the market definition open, paragraph 37; The European Commission also considered whether separate markets exist for crude seed oils and refined oils, but concluded that in both instances the market could be left open, paragraphs 27 and 34.

70. The CMA has therefore considered each individual ingredient within a category as a separate frame of reference, focussing on the four ingredients for which Cargill has significant shares of supply in the UK market: these are two non-grain feed ingredients (rapeseed meal and soya bean meal) and two crude seed oil ingredients (crude rapeseed oil and crude soya bean oil). Cargill has a share of supply of below 30% in all other possible feed ingredient markets, and therefore these ingredients are not considered further in this decision. The CMA has not, however, needed to conclude on product frame of reference in this regard, as no competition concerns arise on any plausible basis.

Conclusion on product scope

71. For the reasons set out above, the CMA has considered the impact of the Merger within the following product frames of reference:
- (a) the supply of fresh chicken to: (i) retailers; (ii) caterers; and (iii) food manufacturers;
 - (b) the supply of fresh added-value chicken to: (i) retailers; and (ii) caterers;²⁶
 - (c) the supply of category 3 chicken by-products;
 - (d) the acquisition of broiler chickens from 'grow-out' farms;
 - (e) the supply of non-grain animal feed ingredients: (i) rapeseed meal; (ii) soya bean meal; and
 - (f) the supply of crude seed oil ingredients: (i) crude rapeseed oil; and (ii) crude soya bean oil.
72. However, it was not necessary for the CMA to reach a conclusion on the product frames of reference, since, as set out below, no competition concerns arise on any plausible basis.

Geographic scope

Downstream: Supply of chicken

73. In *Boparan/Vion*, the OFT found that the geographic frame of reference for the supply of chicken (including primary fresh and added-value chicken) to retailers was national.²⁷ The OFT also acknowledged that the geographic

²⁶ The CMA is not aware of food manufacturer customers purchasing fresh added-value chicken.

²⁷ *Boparan/Vion*, paragraph 43.

frame of reference for the supply of chicken to processors and caterers may be wider than national but did not find it necessary to conclude on this point.

74. The Parties submitted that having UK-origin chicken is important for retail customers, but that the market may be wider for caterer and food manufacturer customers, on the basis that these customers typically have weaker demand-side preferences, given that the origin of the product becomes less important once it is incorporated into a cooked meal or food product.
75. This was confirmed in the customer responses received by the CMA. No retail customers who responded to the CMA submitted they would consider chicken from outside the UK, while the majority (but not all) of the caterer and food manufacturer customers either did already buy from outside the UK (in addition to UK-origin supply) or would consider doing so.
76. The available evidence therefore suggests that the geographic frame of reference could be wider than national for caterer or food manufacturer customers (although not for retail customers). The CMA has nevertheless assessed the Merger, in relation to the supply of fresh chicken and added-value chicken, by reference to the supply of chicken on a UK-wide basis for all type of customers. As no competition concerns arise on any plausible basis, it has not been necessary to conclude on the geographic frame of reference.

Downstream: Supply of category 3 chicken by-products

77. The Parties submitted that the geographic scope of the supply of category 3 chicken by-products is no wider than national, because these products are low-value products which are required to be collected on a daily basis by UK-based renderers, and the market is therefore by necessity no greater than national in extent.
78. This is consistent with the findings of the OFT in *Boparan/Vion*, in which the effects of the merger on the supply of category 3 chicken by-products were considered at a national (UK) level.²⁸
79. The CMA has assessed the Merger on a UK-wide basis for the supply of category 3 chicken by-products. However, it was not necessary for the CMA to reach a conclusion on the geographic frame of reference, since, as set out below, no competition concerns arise on any plausible basis.

²⁸ [Boparan/Vion](#), paragraph 44.

Upstream: Acquisition of broiler chickens from 'grow-out' farms

80. The Parties submitted that farm location can be a factor when choosing which third party 'grow-out' farms to work with, given the costs of transporting both the feed and chickens (although UK legislation allows poultry to be transported for up to twelve hours per day, meaning that it is possible to transport chickens for significant distances between a farm and processing site).
81. The Parties provided the CMA with maps showing the locations of the 'grow-out' farms they contract with, which showed the farms tend to be located reasonably close to the Parties' processing facilities, but were spread through the south and east of England, and Wales. The farms contacted by the CMA commented that location was an important factor when considering which chicken supplier they could contract with, but that other factors, such as reliability and volume of chicken required, were also relevant.
82. The CMA considers that the geographic frame of reference for the acquisition of broiler chickens from 'grow out' farms is likely to be narrower than UK-wide. However, given no competition concerns arise under any plausible basis, it has not been necessary for the CMA to conclude on the geographic frame of reference.

Upstream: Supply of animal feed ingredients

83. The Parties submitted that the relevant markets for non-grain feed ingredients and crude seed oils are European Economic Area (**EEA**)-wide, as these are internationally-traded commodities that are widely traded across the EEA. The Parties noted that feed ingredients are often imported from outside the EEA, in particular from South America, but that the European Commission had previously found that the constraint imposed by non-EEA supply may be limited because of the transportation costs and the need for deliveries to be frequent. The CMA and European Commission have considered the supply of single feed in a number of previous cases. In *ForFarmers/Countrywide Farmers*, the CMA assessed the merger's impact on the basis of a UK-wide frame of reference for single feed.²⁹ In *Bunge/European Oilseed Processing Facilities*, the European Commission left the precise geographic market definition of soya bean meal open but found the market to be 'at least' national with evidence suggesting it may be wider than national.³⁰

²⁹ *ForFarmers/Countrywide Farmers*, paragraph 66.

³⁰ European Commission Case COMP/M.8199 *Bunge/European Oilseed Processing Facilities*, paragraphs 36-37.

84. The CMA has considered the Merger on a UK-wide basis for the supply of animal single feed ingredients but notes that the available evidence indicates that the supply of single feed from other parts of the EEA acts as a strong constraint on UK-based single feed suppliers. However, it was not necessary for the CMA to reach a conclusion on the geographic frame of reference, as no competition concerns arise on any plausible basis.

Conclusion on frame of reference

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

Downstream

- (a) the supply of fresh chicken to: (i) retailers; (ii) caterers; and (iii) food manufacturers in the UK;
- (b) the supply of fresh added-value chicken to: (i) retailers; and (ii) caterers in the UK; and
- (c) the supply of category 3 chicken by-products in the UK.

Upstream

- (d) the acquisition of broiler chicken from 'grow-out' farms in the UK;
- (e) the supply of the following non-grain animal feed ingredients: (i) rapeseed meal; (ii) soya bean meal in the UK; and
- (f) the supply of the following crude seed oil ingredients: (i) crude rapeseed oil; and (ii) crude soya bean oil, in the UK.

86. However, as no concerns arise on any plausible basis, it has not been necessary for the CMA to conclude on any of these frames of reference.

Competitive assessment

87. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices or to degrade quality on its own and without needing to coordinate with its rivals.³¹ Horizontal unilateral effects are more likely when the merging parties are close competitors.

³¹ [Merger Assessment Guidelines](#), from paragraph 5.4.1.

88. The CMA assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC in relation to horizontal unilateral effects in the supply of fresh and fresh added-value chicken to retail, caterer and food manufacturer customers in the UK.
89. The CMA also assessed whether the Merger could give rise to an SLC upstream, as a result of an increase of the Parties' buyer power in the acquisition of broiler chickens from 'grow-out' farms.

Horizontal unilateral effects - Supply of chicken

90. The Parties overlap in the downstream supply of fresh chicken to retailers, caterers and food manufacturers, fresh added-value fresh primary chicken to retailers and caterers, and category 3 chicken by-products. Each of these segments is considered below.
91. In a market with homogenous products, shares of sales and shares of capacity (including spare capacity) are a good proxy for the competitive constraint posed by firms on each other. Consistent with the CMA's established practice, competition concerns are unlikely to arise in such markets where the combined market share of the merged entity is low and/or competitors have significant spare capacity.³²
92. While the combined share of supply of the Parties is not high within any of the frames of reference identified above, third parties told the CMA that price is not the only relevant parameter of competition and that the offering provided by suppliers could also vary across other parameters. For this reason, the CMA has also considered how closely the Parties compete and to what extent alternative suppliers constrain the Parties.
93. In assessing whether horizontal unilateral effects may arise from the Merger, the CMA has considered: (i) the Parties' shares of supply; (ii) how closely the Parties compete with each other; and (iii) other competitive constraints on the Parties, in particular from alternative suppliers.

Shares of supply

94. The Parties have estimated their share of supply for each of the markets identified in the frame of reference section, as shown in Table 1.

³² [Merger Assessment Guidelines](#), paragraph 5.3.6.

Table 1: Shares of supply in overlapping markets

Market	Cargill share (%)	Faccenda share (%)	Combined (%)
Fresh chicken to retail	10-20%	10-20%	20-30%
Fresh chicken to catering	10-20%	0-5%	10-20%
Fresh chicken to food manufacturers	5-10%	10-20%	10-20%
Fresh added-value chicken to retail	5-10%	10-20%	20-30%
Fresh added-value chicken to catering	10-20%	5-10%	20-30%
Category 3 chicken by-products	5-10%	10-20%	20-30%

Source: Parties' estimates and competitor responses to CMA questionnaires (volumes).

95. The Parties used statistics produced by the Department for Environment, Food and Rural Affairs to obtain the total market size. Information on the volumes of fresh chicken sold by each retailer was based on data from Kantar, an independent research organisation. The Parties then conducted audits on a selection of stores in order to identify the suppliers of the chicken offered for sale by each retailer. The CMA considers the data from Kantar to be reliable, and was able to verify some of the Parties' estimates by obtaining information from competitors.
96. There is only one potential segment in which the combined shares of supply are above [20-30]%. Even within this segment – for the supply of fresh added-value chicken to caterers – the Parties' combined share of supply remains modest, at between [20-30]%. The Parties argue that imports provide a strong constraint in the supply of chicken to caterer customers, and that if imported fresh added-value chicken were to be included within the relevant frame of reference, their combined share of supply would be lower, at approximately [20-30]% (with imports accounting for around a third of the market supply). Evidence obtained from third parties indicates that imports are seen as a substitute, particularly by some caterer customers, and therefore do provide some constraint.
97. The Parties also estimated the shares of supply for competitors for each frame of reference, as well as for the overall supply of primary fresh chicken in the UK, which is shown in Table 2 below.

Table 2: Shares of supply in fresh chicken in the UK

Market	Share of supply (%)
Cargill	[10-20]%
Faccenda	[10-20]%
2 Sisters Food Group (2SFG)	[30-40]%
Moy Park	[20-30]%
Banham Poultry	[0-5]%
Cranswick/Crown	[0-5]%
Frank Bird	[0-5]%
Gafoor	[0-5]%
Highbury	[0-5]%
Jack Brand	[0-5]%
Others	[0-5]%
Total	100%

Source: Parties' estimates (volumes).

98. The evidence available to the CMA (including, in particular, data that the CMA was able to obtain directly from other suppliers) suggests that the Parties have over-estimated the sales of some competitors and under-estimated those of others. These disparities are, however, relatively limited, and therefore the CMA considers that these shares are sufficiently accurate for the purposes of its assessment.
99. The shares of supply for the various chicken suppliers tend to be similar across the different frames of references (although the shares of the smaller suppliers are typically smaller for retail customers). The shares of supply of Moy Park and 2SFG are substantially larger than either Party by any measure in each frame of reference (and will continue to be larger than those of the JV in most cases), and there are a number of smaller providers present in each frame of reference with shares of supply of 0-10%, such as Banham Poultry, Cranswick/Crown, Frank Bird and Gafoor.
100. Imports also account for a significant share (20-35%) of the supply of fresh and fresh added-value chicken for caterer and food manufacturer customers, which would further reduce the shares of supply of the Parties as set out in Table 1.

101. The CMA's assessment of shares of supply therefore highlights that:
- (a) Two other competitors (2SFG and Moy Park) will remain larger or be around the same size as the JV, with a share of supply of 20-40%; and
 - (b) at least two significant (but smaller) competitors also remain within each segment, namely Banham Poultry and Cranswick/Crown, along with a tail of smaller suppliers.

Closeness of competition

102. The Parties submitted that they are not close competitors and that all suppliers are able to meet customer requirements given the homogenous nature of the market. The Parties also argue they have different long-standing relationships, rarely compete head-to-head, and have never been the 'two most competitive bidders for a customer.'
103. The available evidence suggests that chicken production is a relatively homogenous market. While there are several drivers of customer decision-making in addition to price, including hygiene and quality standards, product provenance, and the continuity of supply, service levels and reliability provided by a supplier,³³ there is no evidence to suggest significant variation between different suppliers across these parameters.
104. The available evidence indicates that retail customers have long-standing relationships, switch rarely, generally do not tender and, importantly, punish and reward suppliers by decreasing or increasing volumes rather than switching completely. By contrast, many caterers (including wholesalers) and food manufacturers either tender annually, or purchase at spot prices.
105. Some competitors suggested that Cargill and Faccenda are particularly close because of they both focus on large retail customers. Competitors also noted, however, that the Parties have, in practice, rarely supplied the same retailers and seemed to focus on different relationships. [REDACTED]. The CMA is aware of only one other customer of any type shared by the Parties,³⁴ and is not aware of any recent switching of customers between the Parties in the past three years.

³³ Price is slightly more important for caterers and food service, and the other factors are slightly more important for retailers.

³⁴ Faccenda supply a limited amount of chicken to a food manufacturer customer who is also supplied by Cargill.

106. [REDACTED]. Given the low churn in the retailer segment, with any material changes being in the volumes that customers obtain from a given supplier rather than changes in suppliers, [REDACTED].
107. On the basis of the evidence available, the CMA considers that the Parties do compete, but are not closer competitors to each other than any other poultry suppliers.

Alternative suppliers

108. As highlighted in the assessment of shares of supply set out above, there are a number of alternative suppliers. The biggest chicken suppliers in all frames of reference, namely 2SFG (with shares of supply of around 25-35%) and Moy Park (with shares of supply of around 20-30%),³⁵ are both larger than the JV.
109. In practice, all big retailers tend to use multiple suppliers, supplementing the supply of chicken from the largest suppliers with supply from smaller players such as Banham and Cranswick/Crown.
110. The CMA asked customers which suppliers they either used, or would consider using as a credible alternative to either or both of the Parties. In summary:
- (a) 2SFG and Moy Park are credible alternatives for almost all customers (certainly all retailers). Banham was also noted as a potential supplier by the majority of retail customers and one caterer customer. Indeed, one retailer [REDACTED] considers it to be one of the 'big 5 chicken suppliers'. Caterer and food manufacturer customers, in particular, identified a number of smaller suppliers as alternatives.
- (b) In a limited number of cases, customers expressed reservations about some of the suppliers of chicken identified in Table 2 on the basis that these suppliers would not be able to accommodate additional customer demand (either because they were small producers or, in the case of larger producers, because of existing supply commitments).³⁶ With one exception,³⁷ customers did not suggest that the service, quality or hygiene standards of smaller suppliers were worse than those of the larger suppliers.

³⁵ For all fresh UK chicken (compared to [20-30]% for the JV). For shares to retail customers 2SFG and Moy Park have higher shares of supply still (while JV's share remains about the same).

³⁶ [REDACTED] for instance noted that Banham and Cranswick/Crown lacked scale. In a small number of cases, customers also considered that they did not know enough about the supplier to comment.

³⁷ [REDACTED] believe that [REDACTED] does not have Red Tractor standard.

111. The CMA asked competitors who they considered they competed closely with. Almost all competitors noted both Parties as competitors, but also noted a range of other competitors.
112. Most of internal documents provided by the Parties to the CMA refer to the largest four suppliers (the Parties, 2SFG and Moy Park) but also consistently refer to other suppliers.
113. The CMA received mixed evidence on the importance of economies of scale within the chicken supply industry. The Parties submitted that all chicken suppliers use essentially the same agricultural feed, rearing and fattening technology, processing and packaging equipment and technology and other know-how. On this basis, the Parties consider that a small chicken supplier operating with a modern processing line(s) can be as efficient and cost-effective as a larger producer. On the other hand, some competitors who responded to the CMA noted that the supply of chicken was a high-volume, low-margin business where a larger scale allows fixed costs and overheads to be more easily covered, leading to the supplier being able to offer more competitive prices.
114. In light of the evidence described above, the CMA considers that there are a number of credible alternative suppliers, including smaller competitors, which can be considered to provide a competitive constraint on the JV.

Shares of capacity

115. The Parties submitted that UK fresh chicken suppliers have spare capacity, inter alia, because they can divert supplies away from the lower value catering and food manufacturing segments to the retail segment, which offers higher margins, and submitted some examples of competitors (and themselves) recently increasing capacity.
116. The CMA obtained information from competitors, who all told the CMA that they have very limited spare capacity, and that expanding capacity involves time, capital investment and adhering to various regulations (eg planning permission, environmental) on both the agricultural and factory-side of production. Similarly, some customers also mentioned lack of capacity as a reason for their concern about the suitability of some suppliers and for not having switched suppliers in the past. On the other hand, both Parties and some of their competitors have recently increased capacity by making changes to their factories.
117. Overall, the available evidence indicates that chicken suppliers do not have significant spare capacity and that it is not easy to expand capacity at short

notice. There is, however, no evidence to suggest that Cargill or Faccenda have more spare capacity than their competitors or are better placed to increase capacity. The CMA therefore considers that there is no indication that the Parties' market position when capacity is taken into account is more significant than indicated by shares of supply based on sales.

Conclusion on horizontal effects in the supply of chicken

118. On the basis of the low combined shares of supply of the JV, and the evidence indicating a number of credible alternatives to the Parties, 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 either the supply of fresh chicken or added-value chicken for any type of customer in the UK.

Horizontal effects - Supply of category 3 chicken by-products

119. Category 3 is a by-product of the Parties' chicken operations, and the Parties do not purchase further category 3 chicken by-products. [REDACTED].³⁸
120. The combined share of the Parties in the supply of category 3 chicken by-products to renderers and other customers is [20-30]%.³⁹
121. All other competitors of the Parties in the supply of chicken submitted that they also produce category 3 chicken by-product.⁴⁰
122. As with the supply of fresh and fresh added-value chicken markets, the JV will have a relatively modest market position, based on combined shares of supply in the supply of category 3 chicken by-products, and the available evidence indicates a number of credible alternatives to the Parties. The CMA therefore also believes that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in the supply of category 3 chicken by-products in the UK.

Horizontal effects – Acquisition of broiler chickens from 'grow-out' farms

123. As explained above, the Parties are active in the outsourcing of the fattening of chickens to 'grow-out' farms, who sell back the broiler chickens at an agreed price.

³⁸ Given the Parties' low share of supply in category 3 chicken by-products, the CMA has not considered further any potential vertical concerns in relation to the supply of category 3 by-products to downstream renderers.

³⁹ The Parties note that their combined share of supply is usually below 20% however in 2016 [REDACTED].

⁴⁰ Moy Park has a reduced share of supply compared to its share of supply in fresh chicken, because they own their own in-house rendering facilities.

124. The CMA has assessed whether the Merger could give rise to increased buyer power in relation to these 'grow-out' farms that could result in harm in the downstream supply of fresh or fresh added-value chicken in the UK.
125. The CMA notes that in many cases, an increase in buyer power does not raise competition concerns.⁴¹ In order for an increase in buyer power to result in an SLC, a number of cumulative conditions would need to be met. These are the following:
- (a) the JV will need to be able to negotiate better supply terms from its 'grow-out' farm suppliers;
 - (b) the resulting lower prices will need to be passed on to customers (eg retailers), which in turn will allow the JV to attract additional business away from its competitors in the supply of chicken downstream;
 - (c) the competitive pressure on the JV from competing suppliers of chicken downstream will need to be substantially weakened as a result of these rivals losing customers to the JV to such a degree that they either exit the market or they remain but the cost of serving their remaining customers increases (eg because 'grow-out' farms increase prices to those rivals); and
 - (d) the JV will need to have the ability to increase prices or worsen its terms in the longer term as a result of substantially lessened competition in the supply of chicken downstream, with the prospect of entry or expansion of the remaining competitors not being sufficient to prevent any such price increases.
126. The CMA found that the Merger does not give the JV the ability to negotiate better supply terms with the 'grow-out' farms, as required by the first of the conditions set out in paragraph 125 above, for the following reasons:
- (i) The available evidence indicates that 'grow-out' farms do not offer volume discounts to poultry suppliers,⁴² and therefore an increase in purchase by the JV would not lead to lower prices;
 - (ii) The Parties' estimate that the JV accounts for only a [0-10]% share of 'grow-out' farms in the UK, which is well below the share at which buyer power concerns would typically arise;

⁴¹ [Merger Assessment Guidelines](#), paragraph 5.4.19.

⁴² 'Grow-out' farms told the CMA that they are not offered volume discounts (eg for growing a larger number of chickens for a poultry supplier) and that this is not a feature of the industry.

- (iii) The 'grow-out' farms contacted by the CMA indicated that they had at least one alternative customer who they would be able to switch to in the event of a change in the terms offered by the Parties; and
- (iv) The available evidence indicates that 'grow out' farms and chicken suppliers have a mutually dependent relationship in relation to the supply of chicken to the customer (eg retailers), which limits the ability of the JV to negotiate better terms with the 'grow-out' farms. One farm suggested that if the margins offered to 'grow-out' farms were not sufficient, farms would not continue to produce chickens and chicken suppliers would therefore not be able to supply enough birds.

127. As the first of the conditions set out in paragraph 125 is not met, the CMA has not considered the other conditions in detail. However, the CMA notes the third and fourth conditions also appear not to be met. In particular:

- (a) In practice, individual 'grow-out' farms tend, for health and efficiency reasons, to supply all of their chickens to a single supplier (ie to only one of the Parties).⁴³ As the Parties (and their competitors) therefore typically do not have common 'grow-out' suppliers, a theoretical increase in buyer power for one supplier (ie the JV) would not have any impact on pricing to other suppliers.
- (b) As explained above, the JV will not have a share of supply of over 25% in either fresh or fresh added-value chicken, and there are a number of credible competitors who currently supply fresh and/or fresh added-value chicken to the same or similar customers. The JV's modest market position downstream makes it particularly unlikely that it would have the ability to increase prices or worsen its terms over the longer-term.

128. For completeness, the CMA notes that the farms that it has contacted in its investigation and the National Farmers' Union have not expressed concerns about the potential impact of the Merger.

Conclusion on buyer power in relation to 'grow-out' chicken farms

129. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of an increase of buyer power in relation to the purchase of chickens from 'grow-out' farms.

⁴³ Although contract growers can create supply agreements with different poultry suppliers across their farm estate (ie different farms within an estate can supply different suppliers but each farm can only supply one poultry producer), the CMA has not received evidence of any third party farm that grows chickens for multiple poultry suppliers.

Conclusion on horizontal unilateral effects

130. For the reasons set out above, the CMA believes that the Parties' combined shares of supply are not at a level that gives rise to competition concerns (and that the Parties' market position is not more significant when spare capacity or the ability to expand is taken into account). The CMA found that there are a number of credible suppliers post-Merger, who compete as closely as the Parties do to win customers. The CMA also believes that, for the same reasons as given in relation to the lack of competition concerns in the supply of fresh and fresh added-value chicken, no competition concerns could also arise in the supply of category 3 chicken by-products.
131. 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 the:
- (a) the supply of fresh chicken to: (i) retailers; (ii) caterers; and (iii) food manufacturers, in the UK.
 - (b) the supply of fresh added-value chicken to: (i) retailers; and (ii) caterers, in the UK, or the
 - (c) the supply of category 3 chicken by-products in the UK.
132. The CMA also found that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal effects in the acquisition of broiler chickens from 'grow-out' farms.

Vertical effects

133. Vertical effects may arise when a merger involves firms at different levels of the supply chain, for example a merger between an upstream supplier and a downstream customer or a downstream competitors of the supplier's customers.
134. Vertical mergers may be competitively benign or even efficiency-enhancing, but in certain circumstances can weaken rivalry, for example when they result in foreclosure of the merged firm's competitors. The CMA only regards such foreclosure to be anticompetitive where it results in an SLC in the foreclosed market(s), not merely where it disadvantages one or more competitors.⁴⁴
135. In the present case, the CMA has considered whether Cargill's presence in the supply of animal feed could result in input foreclosure, whereby

⁴⁴ In relation to this theory of harm 'foreclosure' means either foreclosure of a rival or to substantially competitively weaken a rival.

competitors in the supply of chicken could be made less competitive as a result of Cargill no longer supplying them with animal feed (or raising prices of animal feed).

136. The CMA's standard approach to assessing vertical theories of harm is to analyse (a) the ability of the merged entity to foreclose competitors, (b) the incentive of it to do so, and (c) the overall effect of the strategy on competition.⁴⁵
137. The CMA understands that animal feed and ingredients are quite homogenous (within each relevant product category) and the CMA has not received any evidence that suggests there is a difference between Cargill's feed and that of other feed suppliers. The CMA also understands that vegetable crude seed oils are fully substitutable from the perspective of poultry suppliers and can also be substituted by other animal fat blends, indicating they are not an essential input for chicken suppliers.⁴⁶
138. Cargill has a share of supply of more than [30-40]% in the UK in the supply of four single feed products: rapeseed meal ([30-40]%), soya bean meal ([30-40]%), crude rapeseed oil ([40-50]%), and crude soya bean oil ([40-50]%).⁴⁷ If the supply for each feed ingredient is considered on an EEA-wide basis, Cargill's share of supply for individual feed ingredients would be below 30% in all cases.⁴⁸
139. As explained above, chicken suppliers have a number of channels through which they can buy their feed requirements, with some purchasing directly from suppliers (such as Cargill) and others purchasing through millers and traders. This indicates Cargill would have a limited ability to price discriminate between chicken suppliers and other customers, given the availability of other channels for buying feed.
140. The available evidence indicates that there are a number of alternative suppliers for all feed ingredient types that are either active in the UK market or already possess the capability to supply into the UK.⁴⁹ Competitors in chicken

⁴⁵ [Merger Assessment Guidelines](#), paragraph 5.6.6.

⁴⁶ One competitor commented that it does not use crude rapeseed oil as an input for its chicken feed.

⁴⁷ The shares of supply provided to the CMA by the Parties refer to the supply of all customers, including animal feed mills, traders and producers of other types of animals. The Parties provided data suggesting only [0-10]% of Cargill's rapeseed and soya bean meal and [0-10]% of its crude rapeseed and soya bean oil sales are directly to poultry suppliers.

⁴⁸ See *Frame of reference* section.

⁴⁹ For example ADM, Cefetra and Glencore in soya bean and rapeseed meal, and ADM, W&R Barnett/Precision, and MW Beer in crude rapeseed and soya bean oil. Potential competitors include RCMA, who has recently started producing rapeseed oil, and Louis Dreyfus and Nidera, who are active in Continental Europe.

production identified a range of suppliers from which they could obtain their feed requirement.

Conclusion on vertical effects

141. For the reasons set out above, the CMA does not believe that Cargill has the ability to foreclose rival poultry suppliers. Given the lack of ability of Cargill to foreclose rivals, the CMA has not considered the incentives or effect of any such foreclosure in detail.⁵⁰
142. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of vertical effects in the supply of any of the oilseed meal and crude seed oil feed ingredients supplied by Cargill to the Parties' competitors downstream in the UK.

Third party views

143. The CMA contacted customers, competitors and suppliers ('grow-out' farms) of the Parties. Third party comments have been taken into account where appropriate in the competitive assessment above.

Decision

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

Colin Raftery
Director of Mergers
Competition and Markets Authority
07 December 2017

⁵⁰ The CMA does however note that (i) the size of Cargill's chicken operations are significantly smaller than its grain and oilseed operations and it cannot price discriminate to charge a higher price to just poultry suppliers, and (ii) Cargill would only retain half of any increase in chicken sales as a result of entering into the JV, which limit its incentives to adopt an input foreclosure strategy.