

Completed acquisition by Tulip Ltd of Easey Holdings Limited

Decision on relevant merger situation and substantial lessening of competition

ME/670917

The CMA's decision on reference under section 22(1) of the Enterprise Act 2002 given on 14 December 2017. Full text of the decision published on 25 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. On 8 September 2017, Tulip Ltd (**Tulip**) acquired Easey Holdings Limited (**Easey**) (the **Merger**). Tulip and Easey are together referred to as the **Parties**.
2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that the Parties' enterprises have ceased to be distinct and that the share of supply test is met. The four-month period for a decision has not yet expired. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.
3. There is a vertical relationship between the Parties' activities. Tulip is an integrated pig farmer and supplier of fresh and processed pork across different customer groups. Easey is a large pig farmer that supplies outdoor bred pigs to producers of fresh and processed pork across different customer groups. The CMA has therefore assessed the effects of the Merger within the following frames of reference:
 - (a) The supply of outdoor bred pigs for slaughter in GB;
 - (b) The supply of fresh outdoor bred pork to retailers in the UK;
 - (c) The supply of processed outdoor bred pork to retailers in the UK;
 - (d) The supply of fresh outdoor bred pork to caterers in the UK;
 - (e) The supply of processed outdoor bred pork to caterers in the UK; and
 - (f) The supply of outdoor bred pork for further processing in the UK.
4. The available evidence indicates that the Merger will result in Tulip using the pigs bred and farmed by Easey to satisfy its own customer demand and therefore that this source of supply will no longer be available to Tulip's downstream rivals in the supply of fresh and processed pork post-Merger. The CMA does not, however, believe that the Merger gives rise to vertical competition concerns because Tulip's rivals in the supply of fresh and processed pork will have access to sufficient alternative supplies of outdoor bred pigs to continue to be able to provide a competitive constraint on Tulip post-Merger. In addition, the supply of fresh and processed outdoor bred pork will continue to be constrained, at least to some extent, by the supply of indoor bred pork.
5. The CMA therefore believes that the Merger does not give rise to a realistic prospect of a substantial lessening of competition as a result of vertical effects.

6. The Merger will therefore **not be referred** under section 22(1) of the Enterprise Act 2002 (the **Act**).

ASSESSMENT

Parties

7. Tulip is a vertically-integrated pig farmer and supplier of fresh and processed pork. Tulip is owned by Danish Crown Group (**Danish Crown**), a Danish farmers' co-operative specialising in the breeding of pigs and the production and supply of fresh and processed pork and prepared food products. The turnover of Tulip in 2016 was approximately £1 billion worldwide, [§].
8. Easey is a Suffolk-based pig farmer. Its UK turnover in 2016 was around £67 million.

Transaction

9. On 8 September 2017, Tulip completed the acquisition of Easey.
10. Tulip informed the CMA that the Merger is not being notified to any other competition authority.

Jurisdiction

11. As a result of the Merger, the enterprises of Tulip and Easey have ceased to be distinct.
12. The Parties overlap in pig farming and the supply of outdoor bred pigs for slaughter and processing in GB. The estimated combined share of the Parties in the supply of outdoor bred pigs to abattoirs for slaughter in GB is [40-50]% (with an increment of [10-20]% brought about by the Merger).¹ The CMA therefore believes that the share of supply test in section 23 of the Act is met.
13. The Merger completed on 8 September 2017 and the CMA was informed about its completion on the same day. The four-month deadline for a decision under section 24 of the Act is 8 January 2018.
14. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.

¹ By volume. See Table 1, below. This includes Tulip's captive farming production.

15. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 19 October 2017 and the statutory 40 working day deadline for a decision is 14 December 2017.

Counterfactual

16. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For completed mergers the CMA generally adopts the pre-merger conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, it believes that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive than these conditions.²
17. Tulip submitted that the demand for outdoor bred pork in the UK has been increasing and is likely to continue to increase in the foreseeable future. This is driven by the interest of retailers and caterers to switch to outdoor bred pork. Most third parties that responded to the CMA's investigation also said that demand from consumers for outdoor bred pork had increased in recent years and expected this trend to continue.
18. The CMA has taken into account the expected increase in the level of demand for outdoor bred pork in its competitive assessment.

Background

19. The Merger involves the acquisition by Tulip – a vertically-integrated pig farmer, pork processor and producer of pork related products – of Easey – a large pig farmer that specialises in the production of British outdoor bred pigs. The CMA's investigation has therefore focussed on the change in market structure brought about by the Merger in relation to the supply of British outdoor bred pigs to producers of fresh and processed pork products. The CMA's assessment has considered, in particular, the potential impact on competition of the post-Merger diversion of Easey's supply of outdoor bred pigs, which are currently supplied to several fresh and processed pork producers, to Tulip, in order to meet Tulip's own procurement needs.

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

20. The supply chain in the UK pig sector includes:
- (a) Pig farmers, which breed and/or rear pigs for slaughter using a variety of production techniques;
 - (b) Abattoirs, which procure live pigs for slaughter;
 - (c) Processors, which convert slaughtered pigs into fresh meat and processed pork products; and
 - (d) Customers, which include grocery retailers and food service companies or caterers which procure fresh and processed pork.
21. Some companies (including the three main players in the sector, Tulip, Cranswick and Karro) are active at multiple levels of this supply chain (eg in relation to pig farming, slaughtering and processing). Easey is active in pig farming but is not active in pig slaughtering or pork processing.

Pig farming

22. Pig farmers (i) breed piglets; and/or (ii) raise pigs to an age and weight at which they are slaughtered (a process that is referred to in the industry as 'finishing'). Pig farmers in the UK enter into supply contracts with abattoirs and/or processors to supply pigs (which they have bred and/or finished) for the production of fresh and processed pork products. UK pig farmers also enter into service contracts to breed and/or finish pigs on behalf of the ultimate owners of the pigs (pork processors and/or pig breeders). These pig farmers, which are known as 'agisters,' are required to supply the pigs to the ultimate owner (a model intended to ensure security of supply for the owners of the pigs).
23. Pigs are bred and/or finished in accordance with particular provenance standards. The vast majority of British pigs are either bred and finished indoors (**indoor bred pigs**), or bred outdoors and finished indoors (**outdoor bred pigs**). A small minority of British pigs are bred to other standards, such as the outdoor reared, free range or organic standards.
24. Two food assurance schemes, which confirm that the pork conforms to certain standards and specifications, are widely used in the UK. These – the **Red Tractor** scheme and the **RSPCA assured** scheme – affirm that the pork meets certain animal welfare, food safety and environmental protection standards.³ Almost all indoor bred pigs conform to the Red Tractor standard,

³ The RSPCA assured standard was previously known as the 'Freedom Food' scheme.

and most British outdoor bred pigs conform to RSPCA assured standard. Pigs bred outside the UK do not receive certification under either of these standards, but can be certified under the EU rules on pig production (**EU pigs**).⁴

Pig slaughtering, pork processing and supply to different customer groups

25. As noted above, some companies are active at multiple levels of the supply chain (ie within pig farming, slaughtering and processing). The data available to the CMA indicates that the three largest vertically-integrated companies – Tulip, Cranswick and Karro – slaughter [90-100]% of the outdoor bred pigs produced in GB (see Table 3 below).
26. These companies slaughter outdoor bred pigs which they have bred and finished themselves or through agisters. They also procure pigs for slaughter from independent pig farmers that meet these companies' welfare standards.
27. Once processed, the pork products are sold to retailers, caterers and other processors, typically but not exclusively located in the UK. The vast majority of pork sold in the UK is from outdoor bred or indoor bred pigs (produced in the UK) or from EU pigs.
28. The available evidence indicates that the importance of provenance and production standards for customers can vary between different customer types. Some retailers and caterers procure a range of fresh and processed pork products with different provenance and certification standards depending on the product range for which that meat will be used. Alternatively, several British grocery retailers and caterers have made public commitments to exclusively procure pork from a given provenance that meets a particular certification standard for all of the pork products that they supply.⁵

Reasons for the Merger

29. Tulip has submitted that it is acquiring Easey to ensure the procurement of outdoor bred pigs to meet the increased demand of these products by UK consumers and, in particular, [✂].

⁴ Tulip told the CMA that some pigs are reared in the EU following the UK rules of pig production. However, [✂].

⁵ 'About our pork', Waitrose, retrieved 14 December 2017; 'McDonald's to become first high street restaurant chain to serve 100% Freedom Food pork from RSPCA monitored British farms', McDonalds, retrieved 14 December 2017.

Frame of reference

30. 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.⁶
31. There is a vertical relationship between the Parties' activities. Tulip breeds and finishes pigs for its captive production of fresh and processed pork products. Easey supplies pigs, on the merchant market, to producers of fresh and processed pork products.

Upstream relevant candidate market

Supply of pigs for slaughter

32. Tulip is not currently active in the supply of pigs for slaughter to third parties in the UK.⁷ On the basis of the available evidence (primarily Tulip's internal documents), the CMA does not believe that Tulip will enter the merchant market in the foreseeable future, or that it would do so in response to a relatively small increase in outdoor bred pig prices, with all pigs continuing to be used to service internal demand.
33. Easey is currently active in the supply of pigs for slaughter to third parties in the UK. Easey primarily supplies British outdoor bred live finisher pigs, as well as small volumes of indoor bred live finisher pigs, to the merchant market.

Product scope

34. In *Cranswick/Bowes*, the Office of Fair Trading (**OFT**) identified a distinct market for the purchase of live pigs for slaughter.⁸ Consistent with this approach, more recent decisions by the CMA within the livestock sector have

⁶ [Merger Assessment Guidelines](#), paragraph 5.2.2.

⁷ Tulip ceased supplying to the merchant market in [§]. Up to that point, Tulip had sold a small proportion ([§]%) of its live finisher pigs to the merchant market.

⁸ [Anticipated acquisition by Cranswick Country Food of the pork processing business of Bowes of Norfolk Limited \(CR/29/09\)](#), Decision of 9 June 2009, paragraphs 12–13. The OFT did not consider competitive conditions in relation to the supply of pigs because of the different position of the merging parties in Cranswick/Bowes in the supply chain.

also found that the purchase of particular species of livestock should be assessed separately.⁹ The EC has also assessed a separate product market for the purchase of live pigs for slaughter.¹⁰

35. Tulip submitted that the CMA should assess the supply of live finisher pigs for slaughter, without distinguishing between the supply of outdoor bred pigs for slaughter and the supply of indoor bred pigs for slaughter. Tulip suggested that there is very high demand-side and supply-side substitution between outdoor bred, indoor bred and European pork (certified under the EU rules on pig production).
36. On the demand-side, the CMA notes that demand preferences from producers of fresh and processed pork products in relation to pigs for slaughter (as concerns provenance and other certifications) are likely to be driven by the demand preferences of UK consumers in relation to fresh and processed pork. For the reasons explained below (see paragraphs 44 to 52), the CMA considers that outdoor bred pork products should be assessed separately from indoor bred pork in relation to the supply of fresh and processed pork. The CMA therefore considers that there are also significant demand-side differences between the supply of outdoor bred pigs for slaughter and the supply of indoor bred pigs for slaughter.
37. The CMA has also considered the scope for supply-side substitution in the supply of indoor and outdoor bred pigs. Third parties that responded to the CMA's investigation (including pig farmers) identified key differences in the techniques used to produce pigs from different provenances. Third parties highlighted, in particular, the high sunk costs involved in establishing an indoor bred pig farm and the higher labour costs (and different skills required) in the production of outdoor bred pigs. Third parties also told the CMA that there is limited scope for converting indoor bred farms to outdoor bred farms, as the production assets required for indoor pig breeding are different from those required for outdoor pig breeding.
38. The available evidence indicates that switching between indoor bred and outdoor bred pig production is not as straightforward as Tulip suggested. The CMA is therefore not able to conclude that the supply of outdoor bred pigs for slaughter and the supply of indoor bred pigs for slaughter should be

⁹ See, for example, [Anticipated joint venture between Dawn Meats and Dunbia \(ME/6699-17\)](#), Decision of 29 September 2017, paragraphs 34–39.

¹⁰ M.1313 – [Danish Crown / Vestjyske Slagterier](#), paragraphs 20–21; and M.2662 – [Danish Crown / Steff Houlberg](#), Art 9 referral decision, paragraph 21.

considered within a single frame of reference on the basis of supply-side substitution.¹¹

39. As explained above, Easey primarily supplies British outdoor bred live finisher pigs. The CMA has therefore considered the impact of the Merger on the supply of outdoor bred pigs for slaughter.

Geographic scope

40. In *Cranswick/Bowes*, the OFT analysed the purchase of live pigs for slaughter by reference to a GB-wide market, on the basis that pigs are not generally imported or exported overseas for slaughter due to health and animal welfare concerns.¹²
41. Tulip submitted that the CMA should consider the relevant geographic market for the supply of live finisher pigs for slaughter to be GB-wide.
42. Third parties that responded to the CMA's merger investigation said that pigs are transported throughout GB, but that pigs are not transported for slaughter over journeys of more than 8 hours, due to the relevant regulations.¹³ Some third parties told the CMA that they prefer not to transport pigs for more than 3-5 hours, in part to avoid any risk that a delay could extend the journey time beyond 8 hours. Third parties also told the CMA that longer journeys are more expensive due to increased transport and logistical costs, but that this is a low percentage of the total cost and that processors can easily incentivise suppliers to supply pigs over longer distances.
43. The CMA notes that pigs reared in GB, while often slaughtered locally, are also transported throughout GB for slaughter (within the constraints imposed by the relevant regulations). The CMA has therefore assessed the supply of outdoor bred pigs on a GB-wide basis while taking into account the fact that pigs are often slaughtered locally, to the extent relevant, within its competitive assessment.

¹¹ Products are considered supply-side substitutes when production assets can be used by firms to supply different products that are not demand-side substitutes, and the firms have the ability and incentive quickly (generally within a year) to shift capacity between these different products depending on demand for each (*Merger Assessment Guidelines*, 5.2.17).

¹² *Anticipated acquisition by Cranswick Country Food of the pork processing business of Bowes of Norfolk Limited (CR/29/09)*, Decision of 9 June 2009, paragraphs 24–26.

¹³ See [Live transport: welfare regulations](#), Department for Environment, Food and Rural Affairs, 29 August 2012.

Downstream relevant candidate market

Supply of fresh and processed pork

Product scope

Segmentation by provenance (outdoor bred, indoor bred and EU pork)

44. Tulip submitted that the CMA should not assess the supply of outdoor bred pork separately from the supply of indoor pork and EU pork in particular because:
- (a) there is high demand-side substitutability, which Tulip considers is demonstrated by retailers switching between these three types of products in the past. Tulip noted, for example, that the Co-op and Morrisons have moved away from providing entirely outdoor bred pork in the past and that several retailers are now expressing a desire to move from indoor bred to outdoor bred pork.
 - (b) there is high supply-side substitutability, which Tulip considers is demonstrated by the pork processors' readiness to switch between processing pigs of different provenance as necessary to meet the demands of the market. As noted above (paragraph 29), this is part of the rationale for the Merger: Tulip's goal to secure the procurement of enough outdoor bred pigs to meet an increase in demand of fresh and processed outdoor bred pork.
45. Tulip also submitted that there has been a close correlation between the trends in the prices of indoor and outdoor bred pigs over time.
46. Tulip's submissions on demand-side substitutability are not, however, entirely consistent with the Parties' internal documents. For example, [REDACTED].¹⁴ This research suggested, in particular, that [REDACTED].
47. The Parties' internal documents and responses from third parties also showed a correlation between provenance (supported by the use of food assurance schemes) and the quality tiers used by retailers. According to Tulip's internal documents, [REDACTED].

¹⁴ [REDACTED].

48. Third parties consistently told the CMA that consumers' interest in pork's provenance is because of the perceived differences in the welfare of indoor and outdoor bred pigs.
49. Responses to the CMA's investigation produced mixed evidence on the willingness of retailers, caterers and consumers to switch away from outdoor bred pork in response to a price increase. Although many respondents said that UK consumers have a preference for pork of UK origin, others said that the price of British indoor bred pork is constrained by the price of imports, and that the price of outdoor bred pork is constrained by the price of indoor bred pork.
50. Overall, the evidence on the extent to which indoor bred pork is a demand-side substitute for outdoor bred pork is mixed. The majority of third parties considered that there was separate demand for outdoor bred pork as a premium product. On the other hand, two of the major supermarkets do not currently sell any outdoor bred pork and some retailers indicated that consumers would be willing to switch away in response to a price increase.
51. In regard to supply-side substitutability, third parties told the CMA that a wider set of pork processors engage in indoor pork production compared to outdoor pork production. The ability of pork processors to substitute between indoor bred pork and outdoor bred pork also depends on their ability to obtain pigs of the relevant provenance. As described above (see, in particular, paragraphs 37 and 38), the CMA believes that switching between indoor bred and outdoor bred pig production is not straightforward, and therefore that these two segments cannot be aggregated on the basis of supply-side substitutability. Consistent with this position, the CMA considers that there is not sufficient supply-side substitutability to aggregate the supply of outdoor bred pork and the supply of indoor bred pork on this basis.
52. On this basis, the CMA has assessed the supply of outdoor bred pork separately from the supply of indoor bred pork. The constraint that the supply of indoor bred pork poses on the supply of outdoor bred pork has been taken into account, to the extent relevant, within the CMA's competitive assessment.

Segmentation by processing level (fresh pork for direct consumption, pork for further processing and processed pork)

53. In *Cranswick/Bowes*, the OFT distinguished between the supply of fresh pork for consumption, the supply of pig meat for further processing and the production of processed pork products.¹⁵
54. The EC has considered the supply of fresh and processed pork in a number of cases.¹⁶ In *Danish Crown/Tican*, the EC distinguished between the sale of fresh meat for direct human consumption, the sale of fresh pig meat for further processing and the sale of processed meat products. In assessing the sale of processed meat products, the EC considered further segmenting processed meat products between bacon, raw sausage, cooked sausage, pate and pies, canned meat and convenience products, but ultimately left market definition open in this regard.¹⁷
55. Tulip submitted information on the basis of distinct product frames of reference for the supply of fresh pork for direct human consumption, the supply of processed pork products and the supply of pork for further processing. Tulip submitted, however, that all types of processed pork products should be considered together, on the basis that fresh pork is the primary input.
56. In the context of the current case, outdoor bred pigs are the upstream input for all of these product segments. Moreover, as described above, the vast majority of slaughtering and processing activity in relation to outdoor bred pork is carried out by the three main pig processors – Cranswick, Tulip and Karro – which are active across all three segments. Accordingly, while the CMA has, consistent with the approach adopted in previous cases, considered the the supply of fresh pork for direct human consumption, the supply of processed pork products, and the supply of pork for further processing within separate frames of reference, the vertical effects of the Merger are likely to be very similar within each of the three potential segments. For this reason, the CMA has largely been able to consider the vertical effects of the merger within all three potential segments on a consolidated basis. The CMA has, of course, also considered any factors that could change the impact of the Merger within each separate frame of reference, to the extent relevant, within its competitive assessment.

¹⁵ *Anticipated acquisition by Cranswick Country Food of the pork processing business of Bowes of Norfolk Limited* (CR/29/09), Decision of 9 June 2009, paragraphs 9–23.

¹⁶ For example, M.3401 – *Danish Crown / Flagship Foods* (2004), M.1313 – *Danish Crown / Vestjyske Slagterier*; and M.2662 – *Danish Crown / Steff Houlberg*; **M.7565 – *Danish Crown/Tican* (2015)**

¹⁷ **M.7565 – *Danish Crown/Tican* (2015)**, paragraphs 49–55.

Segmentation by customer (retailers and caterers)

57. In *Cranswick/Bowes*, in assessing the supply of fresh pork for consumption, the OFT considered whether there were separate markets for retail and catering channels, although market definition was ultimately left open in this regard (as this did not affect the OFT's competitive assessment). In *Danish Crown/Tican*, in assessing the supply of fresh pork for direct consumption and the supply of processed pork, the EC assessed the home and out-of-home segments separately.
58. The Parties submitted that the supply of fresh pork for consumption and the supply of processed pork products should not be further segmented. The CMA has, however, followed the approach taken in previous cases by the OFT and EC, and in the absence of evidence that an alternative approach would be more appropriate has considered the impact of the Merger separately within the retail and catering channels.
59. In this case, the CMA found that [X] and has taken this into account in its competitive assessment. This [X] was not present for customers purchasing pork for further processing, and accordingly the CMA did not consider it necessary to segment the supply of pork for further processing by customer type.

Conclusion on product scope for the supply of fresh and processed pork

60. For the reasons set out above, the CMA has considered the impact of the Merger within the following product frames of reference:
- The supply of fresh outdoor bred pork to retailers;
 - The supply of processed outdoor bred pork to retailers;
 - The supply of fresh outdoor bred pork to caterers;
 - The supply of processed outdoor bred pork to caterers; and
 - The supply of outdoor bred pork for further processing.

Geographic scope

61. In *Cranswick/Bowes*, the OFT assessed the competitive effects of the merger on fresh and processed pork products in the UK, but noted the strength of the competitive constraint from European imports.

62. In this case, Tulip submitted that the appropriate geographic frame of reference for fresh and processed pork products should be based on Europe-wide supply.
63. For the reasons set out above (see, in particular, paragraphs 44 to 52) the CMA considers, however, that the supply of outdoor bred, indoor bred and EU pork should be assessed separately, in particular because of the evidence indicating that UK consumers have a preference for pork of UK origin. The CMA's market test confirmed that the geographic market should be no narrower than UK-wide, as customers source pork from producers across the UK (and, in practice, also from producers located in continental Europe).
64. The CMA has therefore considered the impact of the Merger in each frame of reference involving the supply of fresh and processed pork in the UK. The CMA has also taken into account the constraint from EU pork produced in the remainder of Europe, to the extent relevant, within its competitive assessment.

Conclusion on frames of reference

65. For the reasons set out above, the CMA has considered the impact of the Merger within the following frames of reference:
- The supply of outdoor bred pigs for slaughter in GB;
 - The supply of fresh outdoor bred pork to retailers in the UK;
 - The supply of processed outdoor bred pork to retailers in the UK;
 - The supply of fresh outdoor bred pork to caterers in the UK;
 - The supply of processed outdoor bred pork to caterers in the UK; and
 - The supply of outdoor bred pork for further processing in the UK.

Competitive assessment

Vertical effects in the supply of fresh and processed outdoor bred pork

66. 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 competitor of the supplier's customers.

67. Vertical mergers may be competitively benign or even efficiency-enhancing. However, in certain circumstances they can weaken rivalry. The theories of harm raised by such mergers typically involve the merged firm harming the ability of its rivals to compete post-merger, for example by raising prices to rivals or by refusing to supply them completely. Such actions may harm the ability of the merged firm's rivals to provide a competitive constraint on the merged entity in future.
68. The CMA only regards such foreclosure to be anticompetitive where it results in a substantial lessening of competition in the foreclosed market(s), not merely where it disadvantages one or more competitors.¹⁸ In this case, the CMA considered an input foreclosure theory of harm, and has assessed whether, as a result of the Merger, Tulip would be able to increase the cost or reduce the supply of outdoor bred pigs to its competitors (ie abattoirs and processors), reducing competition in any downstream frame of reference.
69. The CMA's 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. In practice, the analysis of these questions may overlap and many of the factors may affect more than one question.¹⁹

¹⁸ In relation to this theory of harm, 'foreclosure' means either foreclosure of a rival or to substantially competitively weaken a rival.

¹⁹ [Merger Assessment Guidelines](#), paragraph 5.6.6-7.

Ability

70. In assessing the ability of Tulip to foreclose its competitors, the CMA has considered three main factors:
- (a) the importance of the supply of the foreclosed input (Easey's outdoor bred pigs) to competing pork processors' ability to supply fresh and processed outdoor bred pork (within the individual frames of reference set out above);
 - (b) the ability of competitors to switch to alternative existing suppliers of outdoor bred pigs; and
 - (c) the extent to which suppliers could expand (or enter) the supply of outdoor bred pigs in the near future, in response to any reduction in supply by Tulip.

The Parties' supply of outdoor bred pigs for slaughter

71. For the reasons set out above, the CMA has considered the supply of outdoor bred pigs for slaughter in GB separately from the supply of pigs for slaughter from other provenances. The shares of supply for this segment are set out in Table 1 below.

Table 1: Shares of supply of outdoor bred pigs in Great Britain, by volume, Oct 2016 – Sept 2017

Producer	Share (%)
Tulip	[20-30]%
Easey	[10-20]%
Combined	[40-50]%
Cranswick	[10-20]%
Karro	[5-10]%
Thames Valley (co-operative)	[10-20]%
Others	[20-30]%
Total	100%

Source: CMA estimates using the Parties' and third parties' data.

This includes processors' captive farming production.

Pigs subject to agister contracts (and similar arrangements) have been treated as belonging to the original owner, as this original owner can expect to receive the finished pig for supply for slaughter.

72. As noted above, Tulip is not currently active in the supply of pigs for slaughter to third parties in the UK (and the CMA does not believe that it will enter the merchant market within the foreseeable future). The CMA has therefore also considered Easey's shares of supply in the merchant market for outdoor bred pigs, ie the pigs that are produced by farmers independent of the vertically integrated processors and therefore would, in principle, be available for

purchase by competing processors. Shares of supply on this basis are set out in Table 2 below.

Table 2: Share of supply of outdoor bred pigs (excluding captive production), by volume, Oct 2016 – Sept 2017

Producer	Share (%)
Easey	[20-30]%
Other	[70-80]%
Total	100%

Source: CMA estimate using Parties' and third parties' data.

73. The share data set out in the tables above indicates that Easey currently accounts for a material proportion of the upstream market for the supply of outdoor bred pigs within GB. Consistent with this position, the available evidence indicates that Easey is currently a material supplier of outdoor bred pigs to Tulip's closest UK competitors; for example, [REDACTED].

Alternative suppliers of outdoor bred pigs

74. As Easey is a material supplier of outdoor bred pigs in GB, the CMA has considered the extent to which Tulip's competitors would be able to switch to alternative sources of supply post-Merger (in order to assess whether the loss of access to Easey's supply could harm their ability to compete effectively against Tulip in the downstream markets).
75. As described above, pork processors purchase pigs from pig farmers (some part of larger vertically integrated organisations) and agisters.²⁰ Tulip submitted that its competitors could procure outdoor bred pigs currently supplied by third party contractors to Tulip and Easey. The CMA notes, however, that the pigs currently supplied to Tulip and Easey pursuant to agister arrangements (or similar arrangements) would not be contestible for downstream competitors.
76. [REDACTED].
77. The available evidence indicates, however, that other alternative sources of supply are available to the Merged Entity's downstream rivals. In particular:
- (a) Since the announcement of the Merger, [REDACTED].
 - (b) The Parties provided evidence showing that [REDACTED];

²⁰ For further information on the contractual arrangements for the breeding and supply of pigs in GB, see paragraph 22 and 26 .

(c) Several other third parties that currently supply the Parties confirmed that they would be able to supply other customers (within 6 months) if better terms were offered to them.

78. [REDACTED]. The CMA furthermore believes, on the basis of the evidence which it has received from third parties, that several thousand additional pigs per week are available to Tulip's competitors in the short term. Moreover, as these alternative sources of supply are located in broadly similar geographic locations to the sources of supply currently provided by Easey, this conclusion is not affected by the regulations that could restrict the ability of some suppliers within GB to supply all processors (or the preference for local slaughter).

Entry and expansion in the supply of outdoor bred pigs

79. The CMA has also considered the extent to which entry and expansion over the short- to medium-term could impact on the ability of the Merged Entity's competitors to be able to switch to alternative sources of supply post-Merger.

80. Tulip submitted that the Parties' competitors would, in the short- to medium-term, be able to increase their own production of outdoor bred pigs or fund the increase of their suppliers' production of outdoor bred pigs.

81. Third parties told the CMA that the supply of outdoor bred pigs has grown over the last 5-10 years. Most third parties told the CMA that this was due to a long-term increase in consumer demand for outdoor bred pork. Several third parties commented that pig farmers frequently respond to fluctuations in the price of pigs by changing the quantities of pigs which they produce, and that this typically takes place within 18 months of the original price change.

82. Almost all third parties (including pig farmers) consulted by the CMA agreed that large-scale expansion of outdoor bred pig farming could be achieved.

83. Some third parties submitted there are a number of factors limiting the rate at which outdoor bred pig farmers can expand their production, and that this would be expensive to achieve in practice. In particular, some third parties consider that the availability of suitable land (including free-draining soils) can restrict entry and expansion and that pig farmers competing to procure this type of land from crop farmers can delay expansion until after the existing crops have been harvested and make it more expensive. Third parties also noted that biosecurity concerns (which limit how close pig farms can be located to each other) can make securing appropriate land more difficult. One third party also submitted that a shortage of gilts and skilled farming personnel would also limit entry and expansion.

84. Other third parties told the CMA, however, that entering or expanding outdoor bred pig production is relatively simple and cheap, as it is much less capital intensive than indoor bred pig farming, which requires the construction of a large facility (and securing appropriate planning permission). Third parties also told the CMA that the appropriate land can be found, and that it would not be unduly problematic to make a sufficiently attractive offer to crop farmers.
85. Indeed, almost all the third parties that the CMA contacted as part of its investigation said that they expected outdoor bred pig farmers to expand their production of outdoor bred pigs over time, and that Karro and Cranswick would be able to replace Easey's supply by encouraging this expansion over time.
86. The CMA received a range of estimates in relation to the time it would take to expand production in outdoor bred pigs. [REDACTED]. Two other farmers said they plan to expand production by 400 pigs per week over a one-year period.
87. One internal document from the Parties [REDACTED].²¹ However, the Parties submitted that [REDACTED]. This is consistent with submissions from several third parties, which told the CMA that it can take 12-18 months for an individual pig farm to expand its production significantly (for example, by developing a herd capable of producing 400 outdoor bred pigs per week). The available evidence suggests that a large number of farms currently produce outdoor bred pigs in the UK, and that many of these farms could form part of a broader expansion of capacity to meet increased consumer demand for outdoor bred pork.²²
88. Accordingly, the CMA believes that the available evidence indicates that a sufficient additional volume of outdoor bred pigs is likely to become available over the short- to medium-term.
89. In addition to the expansion in production which would have taken place absent the Merger, the CMA notes that Tulip's rival processors would be well-placed to accelerate the expansion of outdoor pig farming by third parties. In particular, Tulip's main competitor, Cranswick, reported an operating profit of £76.1m, after making £47m of investment in its asset base, on turnover of over £1.2 billion in 2016/17.²³ [REDACTED]. This was consistent with [REDACTED].²⁴ Another

²¹ [REDACTED].

²² While data on the number of outdoor bred pig farms in the UK is not available, the CMA notes that there are approximately 10000 pig farms in the UK (<https://pork.ahdb.org.uk/pig-production/>) and that approximately 40% of total UK pig production consists of outdoor bred pigs.

²³ Cranswick plc Annual Report & Accounts, year ended 31 March 2017.

²⁴ [REDACTED].

major competitor to Tulip, Karro, reported an operating profit of £21.8m on turnover of £524.7m in 2016, after having invested in a ‘*Significant expansion of the Brydock pig herd for new and existing customers*’.²⁵ [✂].

90. The CMA therefore expects that the expansion in the supply of outdoor bred pigs available to Tulip’s competitors will further mitigate the loss of Easey’s pigs, in the short-term.

Conclusion on ability

91. The CMA notes that the Merged Entity will have the ability to deny its competitors access to the source of supply of outdoor bred pigs that Easey currently provides to the merchant market. The CMA believes, however, that the Merged Entity’s downstream rivals will continue to have access to sufficient alternative sources of supply, both from existing sources of supply and from entry and expansion in the short- and medium-term.
92. In particular, while downstream rivals may not be able to immediately replace all of the supply currently provided by Easey, the CMA believes that downstream rivals will be able to access sufficient alternative supplies of outdoor bred pigs to be able to continue to effectively compete against the Merged Entity in the downstream markets. This is consistent with the CMA’s finding that the Merged Entity foreclosing access from Easey’s merchant supply of outdoor bred pigs will not have anti-competitive effects within any downstream market (as explained further in paragraphs 96 to 120 below).

Incentive

93. Notwithstanding the finding above that the Merged Entity will lack the ability to foreclose its downstream rivals, the CMA has, for completeness, also considered its incentive to do so.
94. The available evidence (from both the Parties and third parties) indicates that Tulip currently intends to process the Easey pigs itself in order to increase its supply of outdoor bred pork to retailers and other pork processing customers. Given Tulip’s stated intention [✂], it is not necessary for the CMA to conclude on whether it has the incentive to do so.
95. The CMA has therefore focussed its additional analysis on the effects that a cessation of Easey’s supply to third parties could have within the downstream markets.

²⁵ Karro Food Group Limited, Annual Report and Financial Statements for the period ended 31 December 2016.

Effect

96. Notwithstanding the finding above that the Merged Entity will lack the ability to foreclose its downstream rivals, the CMA has, for completeness, also considered the potential impact of Tulip pursuing a hypothetical total and/or partial foreclosure strategy on competition in the downstream markets.

Market context

97. As explained above, the supply of fresh and processed outdoor bred pork is a relatively concentrated sector, with the three large vertically-integrated abattoirs and processors – Cranswick, Tulip and Karro – accounting for the vast majority of supply.

Table 3: shares of supply of fresh and processed outdoor bred pork (by revenue) 2017

Producer	Revenues (£m)	Share
Tulip	[REDACTED]	[20-30]%
Cranswick	[REDACTED]	[50-60]%
Karro	[REDACTED]	[10-20]%
Others	[REDACTED]	[0-5]%
Total	[REDACTED]	100%

Source: CMA estimate on the basis of the Parties' and third parties' data.

98. Almost all customers (retailers, caterers and processors) told the CMA that these three companies are credible suppliers of outdoor bred pork products.²⁶ Some customers told the CMA that there are a few other smaller processors of outdoor bred pork, such as Brown Brothers, Broadoak and Direct Table, but considered that these competitors cannot compete at scale and across a large range of products.
99. [REDACTED].
100. Cranswick, which is currently Easey's largest customer, has the most significant overall market position in the supply of fresh and processed outdoor bred pork (accounting for over 50% of supply on this basis). Almost all customers that provided a ranking of competitors' strengths to the CMA considered Cranswick to be the strongest supplier of outdoor bred pork products in the UK. Third parties consistently emphasised its strength as a competitor, including on the basis of its profitability, to the CMA.

²⁶ By way of exception, one customer told the CMA that the smaller size of Karro's production facilities mean that it is unable to compete as strongly at scale in processed pork products.

Competitive dynamics in the supply of fresh and processed outdoor bred pork

101. Many customers told the CMA that consumer demand for outdoor bred pork has increased in recent years and that they expect this to continue. For this reason, many customers are currently looking to increase their purchases of fresh and processed outdoor bred pork products. [✂].
102. The available evidence indicates that there is currently insufficient supply of outdoor bred pigs to accommodate this growth in consumer demand. [✂].
103. Given the context of high consumer demand relative to existing supply, and the time-scales required to develop additional supply capacity, the CMA considers that there will, irrespective of the Merger, likely be insufficient supply of outdoor bred pigs to satisfy the input demands of all the downstream players. The CMA's competitive assessment has therefore not focussed on whether the Merged Entity's downstream rivals will be able to fully replace their existing supply from Easey, but rather on whether the downstream rivals will be able to obtain sufficient access to alternative sources of supply over the short- to medium-term in order to be able to compete effectively against the Merged Entity within the downstream frames of reference.

Third party views on the impact of the Merger on the supply of fresh and processed outdoor bred pork

104. A number of pork processors expressed concerns in relation to the supply of outdoor bred pork (including for further processing) on the basis that Tulip would, post-Merger, control a larger proportion of outdoor bred pork in the market.
105. [✂].
106. [✂].
107. Most customers of outdoor bred fresh and processed pork that responded to the CMA's investigation had no concerns about the Merger. Only one grocery retailer expressed concerns about the Merger. Another grocery retailer told the CMA that it might result in a short-term price rise but this would be resolved within 18 months (as additional supply of outdoor bred pigs comes on stream).
108. No caterers had any concerns on the impact on competition in the supply of outdoor bred fresh and processed pork.

109. In fact, two retailers and one caterer said that they were actively in favour of the Merger, to support investment in UK pig farming and to ensure security of supply.
110. Tulip submitted that the rationale for the merger was to meet the demands of Tulip's customers ([REDACTED]), which could not otherwise be met in the short-term. This was supported by evidence from the Parties' internal documents [REDACTED]. The CMA believes that Tulip would not have been able to supply [REDACTED] in the short-term through its existing outdoor bred pig supplies absent the Merger and would instead have been required to obtain additional supplies in alternative ways (as described in paragraphs 78 to 92 above) – ie from both existing sources of supply (ie pig farms that currently supply its upstream rivals) and from entry and expansion in the short- and medium-term.
111. [REDACTED].

Out-of-market constraints

112. For the reasons described in paragraphs 44 to 52 above, the CMA has assessed the effects of the Merger within a separate frame of reference for the supply of outdoor bred pork products (which therefore does not include the supply of indoor bred or EU pork products).
113. The CMA notes, however, that the available evidence indicates that the supply of indoor bred pork products also provides some constraint on the supply of outdoor bred pork products.
114. Retailers told the CMA that consumers are sensitive to the price of outdoor bred pork (although the views submitted on the extent of price rise in outdoor bred pork products which would be required in order to drive consumers to switch to indoor bred pork were mixed).
115. [REDACTED],²⁷ and one third party, suggested that the constraint from indoor bred pork is stronger in the supply of processed pork products (and therefore, by implication, pork for further processing) than in the supply of fresh outdoor bred pork products.

²⁷ [REDACTED]

Conclusion on effect

116. In the round, the CMA considers that the Merger will not have anti-competitive effects within any downstream frame of reference for the supply of fresh or processed pork.
117. The available evidence supports [X]. The available evidence does not, however, support [X] that Tulip will be able to increase its prices as a result. This is primarily because Tulip's downstream rivals will be able to access sufficient alternative supplies of outdoor bred pigs to be able to continue to compete effectively against the Merged Entity within the downstream markets.
118. The CMA notes that this position is generally supported by the customers of outdoor bred fresh and processed pork producers, the vast majority of which have not raised concerns about the Merger.
119. The evidence available to the CMA indicates that any short-term shortage in the supply of outdoor bred pigs would likely have occurred irrespective of the Merger. In this regard, the Merger enables Tulip to increase its supply of outdoor bred pork in the short-term, rather than being required to develop alternative sources of supply over the short- to medium-term (as Tulip's competitors are now likely to in order to have access to alternative supplies of outdoor bred pigs). There is no indication that the Merger – by, in effect, shifting the short to medium-term burden of increasing the supply of outdoor bred pigs between different suppliers – will harm the ability of Tulip's rivals to compete in the supply of outdoor bred fresh and processed pork products. The CMA notes, in this regard, that Tulip's principal rivals in the supply of fresh and processed pork – Karro and Cranswick – are large and well-resourced players, with strong market positions, that have a track record of investing to support customer demand.
120. Finally, the CMA notes that the ability of customers to switch to indoor bred and EU pork products will also continue to constrain the Merged Entity in relation to the supply of outdoor bred pork products, at least to some extent.

Conclusion on vertical effects

121. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of a substantial lessening of competition as a result of vertical effects in relation to:
 - (a) The supply of fresh outdoor bred pork to retailers in the UK;
 - (b) The supply of processed outdoor bred pork to retailers in the UK;

- (c) The supply of fresh outdoor bred pork to caterers in the UK;
- (d) The supply of processed outdoor bred pork to caterers in the UK; or
- (e) The supply of outdoor bred pork for further processing in the UK.

Third party views

122. The CMA contacted customers and competitors of the Parties. A few customers and competitors, raised concerns that the Merger would increase Tulip's strength in the supply of products downstream of the supply of outdoor bred pigs. One supplier said that the Merger would increase Tulip's strength as a purchaser of outdoor bred pigs for slaughter; however, Easey is not active in the slaughter of pigs. No other third parties raised concerns about the Merger.
123. Third party comments have been taken into account where appropriate in the competitive assessment above.

Decision

124. Consequently, the CMA does not believe that it is or may be the case that the Merger has resulted, or may be expected to result, in a substantial lessening of competition within a market or markets in the United Kingdom.
125. The Merger will therefore **not be referred** under section 22(1) of the Act.

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