

Anticipated acquisition by Aviagen Group Holding Inc. of Hubbard Holding SAS

Decision on relevant merger situation and substantial lessening of competition

ME/6727-17

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SUMMARY

1. Aviagen Group Holding Inc. (**Aviagen**) has agreed to acquire most of the business of Hubbard Holding SAS (**Hubbard**) (the **Merger**). Aviagen and Hubbard 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 will cease to be distinct as a result of the Merger, that the share of supply test is met and that, accordingly, 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 overlap in the supply of chicken parent stock¹ in the UK. The CMA found limited demand-side substitutability between conventional chicken parent stock² and slow-growing³ chicken parent stock and therefore assessed the impact of the Merger in:

¹ The production of chickens for meat production (also called “broilers”) is the result of a crossing breed in three main steps: first at the “great-grandparents” level, second at “grandparent” level, and third at “parent” stock level to produce day-old chicks that will become commercial broilers. Chicken parent stock can be either a) broiler parent stock for the production of meat or b) layer parent stock for the production of eggs. In this decision all references to chicken parent stock refer to broiler parent stock, which is where the parties overlap in the UK.

² These chickens are bred for maximum meat production efficiency, and grow to their target weight quickly in 35-45 days.

³ These chickens are bred for other considerations including welfare and local demand for ‘traditional’ appearance, and grow more slowly, reaching their target weight in 50-81 days.

- (a) The supply of conventional chicken parent stock in the UK; and
 - (b) The supply of slow-growing chicken parent stock in the UK.
4. The CMA found that Aviagen has a high share of supply in conventional chicken parent stock but the increment brought about by the Merger is very small. Hubbard does not currently provide a material constraint on Aviagen for this product and the CMA found that there is no realistic prospect that it will do so in the foreseeable future. Cobb is the closest competitor to Aviagen in the supply of conventional chicken parent stock and will remain the main competitive constraint post-Merger.
 5. The CMA found that Hubbard has a high share of supply in slow-growing chicken parent stock. However, Aviagen does not currently supply this type of product in the UK and the CMA found that there is no realistic prospect that it will significantly constrain Hubbard for this product in the foreseeable future. After the Merger, Hubbard will remain constrained in the supply of slow-growing chicken parent stock by Sasso (Hendrix/Cobb) and other smaller competitors.
 6. For these reasons, the CMA believes that the Merger does not give rise to a realistic prospect of a substantial lessening of competition (**SLC**).
 7. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).

ASSESSMENT

Parties

8. Aviagen, a company registered in Alabama (USA), is a wholly owned subsidiary of EW Group GmbH. Aviagen is active in 130 countries in the production of pure lines of chickens with specific genetic characteristics - primarily in conventional chicken parent stock. In 2016, the turnover of Aviagen was approximately £[700-800]m worldwide, of which around £[20-40]m was generated in the UK.
9. The target business constitutes most of the business of Hubbard,⁴ which is also active in the production and sale of chicken parent stock. Hubbard's only activity in the UK is the supply of slow-growing chicken parent stock. In 2016,

⁴ The companies that will be acquired are: Hubbard France SAS (Hubbard SAS), Hubbard US (Hubbard LLC), Hubbard Brazil (Hubbard Do Brasil Avicultura Ltda.), Hubbard Poland (Hubbard Polska sp. z o.o), and Avicompost France (Avicompost SARL).

the turnover of Hubbard was approximately £[70-90]m worldwide, of which around £[0-10]m was generated in the UK.

Transaction

10. The transaction is the acquisition of Hubbard by Aviagen pursuant to a Share Purchase Agreement entered into by the Parties on 31 July 2017.
11. Aviagen informed the CMA that the Merger has also been reviewed by competition authorities in Portugal, Spain and the USA, and has been cleared unconditionally by these authorities.

Procedure

12. The CMA's mergers intelligence function identified this transaction as warranting an investigation.⁵

Jurisdiction

13. As a result of the Merger, the enterprises of Aviagen and Hubbard will cease to be distinct.
14. The Parties overlap in the supply of chicken parent stock. Aviagen estimates that the Parties will have a combined share of supply in all types of chicken parent stock of [70-80]% by volume,⁶ with an increment of [5-10]% arising from the Merger, and [80-90]% by value, with an increment of [5-10]%. The CMA therefore believes that the share of supply test in section 23 of the Act is met.
15. 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.
16. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 22 January 2018 and the statutory 40 working day deadline for a decision is therefore 16 March 2018.

⁵ See [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, paragraphs 6.9-6.19 and 6.59-60.

⁶ Volume measured by number of day-old parent stock chicks.

Counterfactual

17. 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 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.⁷
18. Aviagen submitted that [✂].
19. However, the CMA has not found it necessary to conclude on the relevant counterfactual because the CMA does not believe that there is a realistic prospect that the Merger will result in an SLC within a market or markets in the UK on the basis of any realistic counterfactual. The CMA conducted its assessment on the basis of the prevailing conditions of competition.

Background

20. Poultry genetics involves the maintenance of pedigree poultry lines, with the aim of selectively breeding to achieve certain desirable characteristics in chicken broilers (ie meat birds). The production process can be broken down into three stages:
 - (a) Pedigree lines: poultry genetics firms maintain pedigree poultry lines, and continually increase and improve the meat production qualities of the poultry by applying selection pressure;
 - (b) 'Great grandparent' stock: birds taken from these pedigree lines are crossed and multiplied to produce 'grandparent stock'; and finally
 - (c) Parent stock: the grandparent stock is crossed and multiplied to produce 'parent stock' poultry, which is then sold to commercial breeders to produce broilers.
21. Poultry genetics firms invest heavily in R&D in order to improve their pedigree lines by identifying and enhancing desirable heritable traits. Aviagen has spent over £[20-40]m per year on R&D in chicken parent stock over the past

⁷ [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).

three years, while Hubbard has spent €[0-10 to 10-20]m per year over the same period.

22. The vast majority of chicken parent stock sold in the UK is 'conventional chicken'. These chickens are bred principally for maximum meat production efficiency, and grow to their target weight quickly (ie in 35-45 days).
23. There is a premium market for 'slow-growing chicken'. These birds are bred for meat but other considerations, such as the birds' welfare or a local demand for a 'traditional' appearance, are also important. Slow-growing chickens reach maturity later than conventional chickens, growing to their target weight in 50-81 days. Slow-growing chicken represents about 5% of chicken meat consumed in the UK, and less than 2% worldwide, although demand for this product is much higher in some countries, such as France.
24. There are three main suppliers of chicken parent stock in the UK: Aviagen, Cobb and Hubbard. All are active in both conventional and slow-growing chicken parent stock,⁸ although each focuses on one of these segments.
25. Parent stock is sold to commercial breeders, who multiply the parent stock to produce broilers. The purchase of parent stock in the UK is also concentrated, with the top customer for each of the Parties accounting for [50-60]% or more of that supplier's total sales by volume in 2017.
26. Customers of chicken parent stock conduct bilateral negotiations with their suppliers, making spot purchases rather than contracting for regular volumes over a longer period. Prices are typically renegotiated on an annual basis.

Frame of reference

27. 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.⁹

⁸ Cobb's activity in slow-growing chicken is through a strategic partnership with Hendrix/Sasso

⁹ [Merger Assessment Guidelines](#), paragraph 5.2.2.

Product scope

28. Aviagen and Hubbard overlap in the supply of chicken parent stock in the UK.
29. Aviagen submitted that the supply of conventional and slow-growing chicken parent stock are two separate frames of reference because, from the demand side:
 - (a) there are significant price differences between these products at all levels of the supply chain;
 - (b) as the production costs for slow-growing chicken are significantly higher than for conventional chicken (eg a longer grow time requires more space and more feed per bird), replacing conventional chicken with slow-growing chicken would not be economically viable for the Parties' customers even with a significant increase in the price of conventional chicken parent stock;
30. Aviagen also submitted that, on the supply side:
 - (a) entering the slow-growing market would require a long period of selective breeding of pedigree lines which are different from those used for conventional chicken parent stock, and would also require different production facilities – conventional chickens are typically kept in closed housing systems with a controlled supply of feed and water while slow-growing chickens are typically kept in a free-range environment with permanent access to an outdoor area; and
 - (b) gaining approval for a new line of chicken parent stock in the UK is a time-consuming process.
31. Aviagen noted that the European Commission in *Merck/Rhone-Poulenc/Merial*¹⁰ assessed the merger by reference to a single product market for all chicken parent stock.¹¹ However, Aviagen submitted that slow-growing parent stock was not considered in that case, and the description of the market was only consistent with conventional chicken parent stock.
32. In the present case, evidence gathered during the CMA's investigation supported a distinction between the supply of conventional and slow-growing chicken parent stock. The Parties' sales data showed that no customers

¹⁰ European Commission decision on the case No IV/M.885 *Merck/Rhone-Poulenc/Merial*, of 2 July 1997 (*Merck/Rhone-Poulenc/Merial*)

¹¹ The Spanish Competition Authority, in its decision on C/0334/11: *Aviagen/Ross Breeders* of 9 March 2011, assessed the merger by reference to a single product market for all chicken parent stock. (*Aviagen/Ross Breeders*)

switched between conventional and slow-growing parent stock, and no customer told the CMA that it would switch between the two types of chicken parent stock in response to price changes. Third parties said that, although demand for slow-growing chicken grew following campaigns encouraging consumers to purchase free-range chicken, it declined again following the recession in 2008/2009 and has been stable since; meanwhile, demand for conventional chicken has grown continuously.

33. On the supply side, third parties indicated that the costs associated with switching from conventional chicken parent stock to slow-growing parent stock, or vice versa, are significant and it would take more than four years to develop different genetic stock.
34. On the basis of this evidence, the CMA has assessed the impact of the Merger by reference to separate product frames of reference for the supply of each of conventional and slow-growing chicken parent stock.¹²

Geographic scope

35. Aviagen submitted that the appropriate geographic frame of reference for the supply of conventional chicken parent stock is at least EEA-wide, as the same product is consumed worldwide, transport costs do not have a significant impact on final prices, and the regulatory burden is low. This is consistent with the decision of the European Commission in *Merck/Rhone-Poulenc/Merial* and the decision of the Spanish competition authority in *Aviagen/Ross Breeders*.¹³
36. Third party evidence suggests the quality of conventional birds supplied by parent stock producers differs between countries. In particular, customers told us that UK production facilities are generally of a higher quality than some other countries and therefore UK customers require a higher quality conventional bird. Some customers referenced Hubbard's ability to supply their conventional product to customers in other countries, whereas they have recently been unsuccessful in the UK as described further in paragraph 49 below.
37. For slow-growing chicken parent stock, Aviagen submitted that the appropriate geographic frame of reference is national, as local requirements vary significantly. In the UK, it is important for slow-growing chicken to be

¹² This conclusion is in line with the decision of the Portuguese Competition Authority of 21 December 2017 and of the Spanish Competition Authority of 7 November 2017 regarding this Merger.

¹³ See the European Commission decision on *Merck/Rhone-Poulenc/Merial* and the Spanish Competition Authority decision on *Aviagen/Ross Breeders*.

suitable for 'free range' farming, while in continental Europe it is often grown indoors. Moreover, regulation and approval is conducted at the national level.

38. Customers confirmed that, in the UK, a key requirement for slow-growing chicken stock is for it to be suitable for free-range farming. In addition, some customers also pointed out that demand for slow-growing chicken was influenced by changes in consumer views and preferences (eg regarding animal welfare), and that these changes occur differently and at different times from country to country.
39. On a cautious basis, the CMA has assessed the impact of the Merger for all product frames of reference in the UK. 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.

Conclusion on frame of reference

40. For the reasons set out above, the CMA assessed the impact of the Merger in the following frames of reference:
 - (a) The supply of conventional chicken parent stock in the UK; and
 - (b) The supply of slow-growing chicken parent stock in the UK.

Competitive assessment

Horizontal unilateral effects

41. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm unilaterally and profitably to raise prices or to degrade quality.¹⁴ Horizontal unilateral effects are more likely when the merging parties are close competitors.
42. 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 a) the supply of conventional chicken parent stock in the UK, and b) the supply of slow-growing chicken parent stock in the UK.
43. For each frame of reference, the CMA considered the Parties' shares of supply, their current closeness of competition and whether this was likely to change in the foreseeable future, and other constraints on the Parties.

¹⁴ [Merger Assessment Guidelines](#), from paragraph 5.4.1.

The supply of conventional chicken parent stock

Shares of supply

44. Aviagen estimated that, in 2016, its share of supply of conventional chicken parent stock in the UK was [70-80]%, both by volume and by value, with Cobb accounting for the remaining [20-30]%.¹⁵ These shares of supply have not varied significantly in the last ten years.
45. Hubbard sells conventional chicken parent stock in other European countries but has had a very small share of supply in the UK. In the period 2014-2016, Hubbard did not have any sales in the UK, and it made only one sale in 2017 of [10,000-20,000] units, which represents a share of less than [0-5]%.¹⁶
46. The shares of supply of the Parties indicate that the overlap between the Parties in the supply of conventional chicken parent stock in the UK is minimal.

Closeness of competition between the Parties' current products

47. Aviagen submitted that the Parties are not close competitors because Hubbard's conventional chicken parent stock [✂]. Hubbard's conventional bird lags behind Aviagen's Ross 308 in nearly every economically relevant aspect, including feed conversion ratio (FCR)¹⁶, breast yield, and number of chicks per hen.
48. Aviagen submitted an economic model which showed that customers earned significantly higher margins using Aviagen's commercial chicken (or Cobb's) than Hubbard's.
49. All customers confirmed that Hubbard's conventional bird is not currently economically viable. They said that Hubbard's conventional parent chicken stock was less efficient than Aviagen's, with several saying that Hubbard's birds have not been competitive for some time. Customers told the CMA that Cobb is the best alternative to Aviagen's conventional stock.
50. This evidence also indicates that the Parties do not currently compete closely in the supply of conventional chicken parent stock in the UK.

¹⁵ This estimate was based on Aviagen's sales data and its best estimates of Cobb's sales.

¹⁶ This measures the efficiency with which the bodies of livestock convert animal feed into the desired output.

Dynamic competition in the supply of conventional chicken parent stock

51. The CMA found that innovation is an important aspect of competition in the supply of conventional chicken parent stock. In particular:
- (a) Aviagen explained that it competes continuously to improve the characteristics of its chicken parent stock, with small changes in these characteristics having a significant effect on the costs of meat production for its customers.
 - (b) The majority of customers confirmed that price is secondary to the performance of chicken parent stock. They said that they generally prefer to use a single breed of conventional chicken parent stock and will switch their demand depending on the best product available. However, although some customers indicated that they can switch small volumes in a matter of months at no significant cost, most customers stated that more substantial changes to supply require around a year and involve a significant risk.¹⁷
52. Given the significant impact of parent stock innovations on the cost of meat production, the CMA found that customers face strong incentives to use the highest quality product available, and to switch if this changes, causing suppliers to compete strongly in R&D.
53. Therefore, the CMA considered the extent to which Hubbard could still exercise a constraint on Aviagen in the supply of conventional chicken parent stock in the UK despite its current and recent historic lack of a competitive product.

Constraint from Hubbard in R&D for conventional chicken parent stock

54. The CMA considered the extent to which, in the absence of the Merger, Hubbard would have been able, through investment in R&D, to develop a conventional chicken parent stock product to rival that of Aviagen.
- *Parties' submission*
55. Aviagen submitted that improvements in conventional chicken parent stock come about through the selective breeding of existing pedigree lines. Aviagen said that, given the issues with Hubbard's existing conventional chicken stock, it would take a significant amount of time for it to develop a product to rival the

¹⁷ While larger customers may use two breeds for purposes of comparison and ensuring continuity of supply, the best performing breed account for the majority of their purchases.

products of Aviagen and Cobb, even if Aviagen and Cobb made no further improvements. Aviagen added that Hubbard had underinvested in the technologies which had allowed Aviagen to make rapid improvements, such as CT scanners and genomics. Aviagen said that there is no realistic prospect that Hubbard would have been in a position to make such investments in the future, absent the Merger, [REDACTED].

- *Internal documents*

56. Hubbard's internal documents indicate that, absent the Merger, [REDACTED], it would have explored the option of only producing slow-growing chickens and no longer producing, or developing, conventional chickens.¹⁸
57. Based on the economic model mentioned above (see paragraph 48), the CMA considered how long it might take for each of Hubbard and Cobb to catch up with Aviagen in developing a product with the same customer margins.¹⁹ This indicated that, while Cobb would be able to surpass Aviagen in under a year were Aviagen to stop innovating, it would take almost five years for Hubbard to achieve the same level of efficiency.

- *Third parties' submissions*

58. Some customers told the CMA that they would be willing to use Hubbard for conventional chicken parent stock in the future but only if it improved its competitive offering.
59. One customer told the CMA that consolidation in the poultry breeding market has been driven by the need to have sufficient sales volume to support the required investments in R&D to remain competitive. This customer did not believe that Hubbard had the commitment and financial resources to become competitive in the supply of conventional chicken parent stock in the foreseeable future.

- *Conclusion*

60. On the basis of this evidence, the CMA concluded that it is not realistic that Hubbard, absent the Merger, would have improved its conventional chicken parent stock to become competitive with that of Aviagen and, therefore, any

¹⁸ See Hubbard internal document entitled "CR CE 29 Sept 17" (Annex 35)

¹⁹ This analysis assumed that Hubbard and Cobb were each able to improve the FCR and breast yield of their conventional chickens at the same rate as Aviagen, and Aviagen's chicken remained at its current level of efficiency. It did not take account of the fact that Hubbard was investing significantly less than Aviagen in R&D pre-Merger, and therefore would be very unlikely to achieve the same rate of improvement as Aviagen. The analysis assumes similar success rates in R&D across Hubbard, Cobb and Aviagen.

R&D activity of Hubbard would not have spurred on Aviagen's innovation in this product.

Conclusion on horizontal unilateral effects – conventional chicken parent stock

61. For the reasons set out above, the CMA believes that Aviagen and Hubbard are not close competitors in the supply of conventional chicken parent stock in the UK. Cobb is the closest competitor to Aviagen and will remain the main competitive constraint on Aviagen post-Merger. There is no realistic prospect that, absent the Merger, Hubbard would have been able to improve its conventional product to rival Aviagen. Therefore, 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 the supply of conventional chicken parent stock in the UK.

The supply of slow-growing chicken parent stock

Shares of supply

62. Aviagen is not currently active in the supply of slow-growing chicken parent stock in the UK and therefore the Parties do not overlap in this segment.
63. Aviagen estimated that, in 2016, Hubbard's share of supply was [80-90]% by volume and value, Sasso's (Hendrix/Cobb) was [5-10]%, with other smaller competitors having a combined [5-10]% share of the market.
64. While Aviagen has not made any sales of slow-growing chicken parent stock in the UK for the last three years, it has previously been active in this segment. In 2014, Aviagen sold [50,000-70,000] units of the Rowan Ranger, amounting to a share by volume of [20-30]%. Since then, Aviagen has been continually attempting to develop a slow-growing product which would be attractive to customers in the UK, but has been largely unsuccessful (as set out below).

Closeness of competition

65. Aviagen introduced its first slow-growing 'Rowan Ranger' chicken in the UK in 2012. Aviagen submitted that it intended this chicken to be suitable for higher-welfare rearing but to also provide some of the economic advantages of Aviagen's conventional products (eg high breast yield). It was approved by the RSPCA at the end of 2013. The Parties' internal documents show that, from this time, customers switched some of their slow-growing volumes from Hubbard to Aviagen.

66. However, Aviagen said that these customers soon found that the Rowan Ranger was inferior to Hubbard's slow-growing products in a number of key traits, in particular that the bird did not actually 'range' (ie go outside). Aviagen submitted that this was problematic for customers who wanted to offer 'free-range chicken', noting that, in the UK, almost all slow-growing chicken is reared 'free range'.
67. Aviagen continued selectively breeding to produce two new types of slow growing chickens: the 'Ranger Gold' and 'Ranger Classic'. [REDACTED]. The Ranger Classic was not approved for outdoor rearing by the RSPCA.
68. The main customers of the Parties confirmed that they had significant issues with Aviagen's slow-growing products, such as a smaller number of chicks per hen, chickens which were too small to hang on the processing line and chickens which did not range. For these reasons, all these customers ceased purchasing slow-growing chicken parent stock from Aviagen and switched back to Hubbard.
69. Current customers of Hubbard confirmed that they do not view Aviagen's slow-growing products as a suitable alternative. [REDACTED] account for [90-100]% of Hubbard's slow-growing chicken parent stock sales in the UK and [REDACTED] stated that Aviagen's slow-growing chickens are not an alternative. [REDACTED]. Smaller customers, who only purchase slow-growing stock, also said that they did not view Aviagen's Ranger lines as a suitable alternative to Hubbard's slow-growing parent stock.
70. Aviagen's internal documents show that its launch of the Rowan Ranger in the UK was unsuccessful because of (i) the bird's lack of ranging and (ii) the difference between Aviagen and Hubbard's weight uniformity, with a larger percentage of Aviagen birds at the smaller end of the scale, causing them occasionally to fall off the shackles in the factory. These documents confirm the customer complaints and concerns regarding the Rowan Ranger set out above.²⁰ An internal document states clearly that Aviagen had [REDACTED]
71. This evidence indicates that the Parties do not currently compete closely in the supply of slow-growing chicken parent stock in the UK.

Dynamic competition in the supply of slow-growing chicken parent stock

72. For the same reasons as in conventional chicken parent stock (see paragraphs 51-52), the CMA considered the extent to which Aviagen could

²⁰ See, for instance, Aviagen's internal document entitled "[REDACTED]" (Annex 116) and the email between Aviagen and [REDACTED] (Annex 117 and 118).

still exercise a constraint on Hubbard in the supply of slow-growing chicken parent stock in the UK despite its current and recent historic lack of a competitive product.

Constraint from Aviagen in R&D for slow-growing chicken parent stock

73. The CMA considered the extent to which, in the absence of the Merger, Aviagen would have been able, through investment in R&D, to develop a slow-growing chicken parent stock product to rival that of Hubbard.
- *Parties' submissions*
74. Aviagen submitted that the characteristics which are important for slow-growing breeds, including welfare aspects and behavioural aspects, have low heritability, which means that the possible improvement with each generation is low. This means it takes longer to improve a line of slow-growing parent stock than conventional parent stock.
75. Aviagen also explained that the [REDACTED], which is not something that Aviagen measures on an individual bird basis. As it is only possible to select for particular traits if those traits can be measured, it will take Aviagen significant time to select for this specific trait.
76. Aviagen also noted that its R&D spend on slow-growing chicken parent stock is less than [5-10]% of its total R&D spend. Aviagen said that it had no incentive to reduce its focus on the conventional market to the slow-growing market as the conventional market in the EEA is about 11.5 times larger in terms of value than the slow-growing market, and the margins earned in slow-growing parent stock are lower than the margins earned in conventional parent stock.
- *Internal documents*
77. Aviagen's internal documents show [some issues with the Rowan Ranger].²¹
78. The CMA reviewed Hubbard's internal documents to examine whether Hubbard perceived Aviagen as a competitive threat in slow-growing stock. Hubbard's internal documents from shortly after the period when UK customers trialled Aviagen's Rowan Ranger indicate that Hubbard viewed Aviagen as a threat at that time, noting that Hubbard was 'looking at how to

²¹ See, for instance, "[REDACTED]" (Annex 115).

counter'.²² A more recent Hubbard global overview of the slow-growing market also identifies new competitors (ie Aviagen and Hendrix) as a threat.²³ However, the CMA did not find evidence that the perceived threat of Aviagen developing a competitive slow-growing bird had resulted in any significant change in Hubbard's strategy or R&D spend. Moreover, the weaknesses of Aviagen's product had become increasingly apparent to customers since this time.

- *Third party submissions*

79. Some customers said that they might use Aviagen for slow-growing parent stock in the future as the quality of a supplier's chickens and market demands can change. However, most customers said that their previous experience with Aviagen's slow-growing birds had made them less likely to trial them again. The majority of customers indicated that Aviagen would need to resolve the issues with its slow-growing chickens before they would ever consider using Aviagen's slow-growing product, and they noted that Aviagen's reputation in slow-growing chicken parent stock had been seriously damaged from supplying poor quality birds.
80. Some customers noted that the quality of Hubbard's birds had remained stable over time rather than improving. Those customers which had switched from Hubbard to Aviagen in the past, switched back to Hubbard without Hubbard needing to innovate because of the flaws in the Aviagen product.

- *Conclusion*

81. On the basis of this evidence, the CMA concluded that it is not realistic that Aviagen, absent the Merger, would have improved its slow-growing chicken parent stock to become competitive with that of Hubbard for many years and, therefore, any R&D activity of Aviagen would not have spurred on Hubbard's innovation in this product.

Conclusion on horizontal unilateral effects – conventional chicken parent stock

82. For the reasons set out above, the CMA believes that Aviagen and Hubbard are not close competitors in the supply of slow-growing chicken parent stock in the UK. Sasso (Hendrix/Cobb) is the closest competitor to Hubbard and will remain the main competitive constraint on Hubbard post-Merger. There is no

²² See Hubbard internal document entitled "Hubbard sous groupe complet rapport" (Annex 5)

²³ See Hubbard internal document entitled "2017 06 21 GSM Premium Market Summary of Survey" slide 26 (Response to CMA's RFI 1 19 December 2017 Question 1)

realistic prospect that, absent the Merger, Aviagen would have been able to improve its slow-growing product to rival Hubbard for many years. Therefore, 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 the supply of slow-growing chicken parent stock in the UK.

Barriers to entry and expansion

83. Entry, or the expansion of existing firms, can mitigate the initial effect of a merger on competition, and in some cases may mean that there is no SLC.
84. In the present case, the CMA has not had to conclude on barriers to entry or expansion as the Merger does not give rise to competition concerns on any basis.

Third party views

85. The CMA contacted customers and competitors of the Parties. Two customers raised concerns regarding a reduction in the number of suppliers of chicken parent stock or a narrowing of the genetic spectrum of chicken parent stock available for cross-breeding. The possibility of the Merger resulting in a reduction in the Parties' ability and incentive to innovate has been addressed in the competitive assessment above. No other third parties raised concerns about the Merger.

Decision

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

Andrew Wright
Director of Mergers
Competition and Markets Authority
13 February 2018