

Anticipated acquisition by Sysco Corporation of Kent Frozen Foods Limited

Decision on relevant merger situation and substantial lessening of competition

ME/6717/17

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 16 March 2018. Full text of the decision published on 27 March 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.

SUMMARY

1. Sysco Corporation (**Sysco**) has agreed to acquire Kent Frozen Foods Limited (KFF) (the **Merger**). Sysco and KFF 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 wholesale supply a broad range of food products and other related products (such as catering equipment) across all temperature ranges to foodservice customers (ie those who prepare meals away from home for retail supply to end-consumers) in Great Britain (**GB**). Their activities overlap, in particular, in the South East of England (including London). Foodservice suppliers procure food through different channels, using a variety of commercial and logistic arrangements.
4. Without concluding on the exact definition of the frame of reference, the CMA has assessed the impact of the Merger in the wholesale delivery of food and other related products to the foodservice sector (**delivered wholesale**) in GB, and in particular in the South East of England.

5. The CMA has not been able to place significant weight on the estimated share of supply data available due to uncertainty about its accuracy. For this reason, the CMA has placed more weight and focused its assessment on evidence of the closeness of competition between the Parties pre-Merger and the competitive constraints which will remain post-Merger.
6. The analysis of tender and contractual data and feedback from customers and competitors shows that, while the Parties compete for some customers, they are not each other's closest competitor, in particular given their different geographic, size and customer focus; and other competitors will continue to provide a sufficient competitive constraint on the merged entity.
7. The CMA's assessment concluded that most foodservice customers multi-source with multiple combinations of different types of wholesalers. These may include broadline (ie those suppliers offering a broad range of food products) and 'specialist' suppliers (ie those more narrowly focused on specific products, such as meat, fish, continental condiments, etc); and both wholesalers with a national network and those with local/regional focus. The CMA found that large, national wholesalers, such as Sysco (most notably through its Brakes brand), compete most intensively with other large, national wholesalers (eg Bidfood). Customers of the Parties told the CMA that there are many alternatives of a relatively similar size and local/regional nature to KFF, and other forms of distribution of food and related products, such as cash and carry, will continue to provide some competitive constraint on the merged entity.
8. For these reasons, the CMA believes that the Merger does not give rise to a realistic prospect of a substantial lessening of competition (**SLC**) in delivered wholesale in GB, or in the South East of England.
9. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).

ASSESSMENT

Parties

10. Sysco wholesale supplies a broadline of food products to foodservice suppliers through multiple brands in the UK and some European countries. Its UK brands include Brakes, Woodward, Prime Meats, La Boulangerie, Pauleys, Freshfayre, Fresh Direct, M&J Seafood and Wild Harvest. Its global turnover in 2017 was US\$ 55.4 billion, of which £2.3 billion was generated in the UK. See endnote.

11. KFF wholesale supplies a broadline of food products to foodservice customers across the South East of England, including London. Its turnover in 2016 was £46.6 million, all of which was generated in the UK.

Transaction

12. Sysco has agreed to acquire KFF.
13. The Merger has not been notified to competition authorities in any other jurisdiction.

Jurisdiction

14. As a result of the Merger, the enterprises of Sysco and KFF will cease to be distinct.
15. The Parties overlap in the supply of food products to business and industry customers, with a combined share of supply [exceeding 25]% (increment [<5]%) in GB by value. The CMA therefore believes that the share of supply test in section 23 of the Act is met.
16. 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.
17. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 29 January 2018 and the statutory 40 working day deadline for a decision is therefore 23 March 2018.

Counterfactual

18. 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.¹
19. In the present case, the CMA has seen 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.

Frame of reference

20. 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.²
21. The Parties overlap in delivered wholesale in GB, in particular in the South East of England. They both supply a broadline of products, across the ambient, frozen and fresh/chilled temperature ranges.

¹ [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).

² [Merger Assessment Guidelines](#), paragraph 5.2.2.

Product scope

22. The wholesale supply of food and related products³ has been considered by the European Commission⁴, the CMA⁵ and its predecessors, the Office of Fair Trading (**OFT**)⁶ and the Competition Commission (**CC**).⁷
23. Generally, there has been no conclusion on exact frames of reference in these cases but they considered the following possible segmentations by:
- (a) distribution channel – how customers procure their food supplies (eg delivered wholesale, contract delivery (third party logistics), from cash and carry, from retailers (eg supermarkets/others));⁸
 - (b) food and/or non-food;
 - (c) product range (broadline, as opposed to specialist suppliers, such as fruit and vegetable suppliers, fishmongers, meat suppliers, etc);⁹
 - (d) food temperature range (frozen, chilled/fresh and ambient);
 - (e) end-use industry (eg hotels, hospitals, education);
 - (f) customer type (eg national or local/regional customers (sometimes referred to as independent customers)).
24. The Parties submitted that they overlap in the distribution of food to the foodservice industry. Foodservice providers (such as pubs, restaurants, caterers, hotels, etc) can procure their food supplies via many different channels. Consistent with this view, the Parties told the CMA that, due to the rapid evolution of the food distribution industry in the UK, the relevant product

³ 'Related products' include items such as catering equipment. The turnover of KFF in non-food products is negligible and therefore any increment would be insignificant. Moreover, no third party raised any competition concerns in relation to the delivered wholesale supply of these products. As a result, this decision does not consider non-food products any further.

⁴ Case No COMP/M.7986 – *Sysco/Brakes*, Decision of 9 June 2015 (**Sysco/Brakes**)

⁵ Case ME/6490/14 - *Cucina Acquisition (UK) Limited/certain assets of Fresh Holdings Limited*, Decision of 16 February 2015 (**Brakes/Fresh Direct**)

⁶ Case ME/3727/08 - *Brake Bros Limited/Woodward Foodservice Limited*, Decision of 19 August 2008 (**Brakes/Woodward**)

⁷ Competition Commission Report – *Booker Group PLC/Makro Holding Limited*, 19 April 2013 (**Makro Report**)

⁸ [Sysco/Brakes](#), paragraph 15; [Brakes/Fresh Direct](#), paragraph 50; [Brakes/Woodward](#), paragraph 17; [Makro Report](#), paragraph 7.31.

⁹ In [Brakes/Fresh Direct](#), paragraph 38, the CMA defined the market narrowly as the market for fresh fruit and vegetables. Fresh Direct was, however, a 'specialist' supplier of fresh fruit and vegetables to the foodservice industry whereas both Brakes and KFF are broadline suppliers.

frame of reference should be the supply of food products to the foodservice industry with no further segmentation.

25. The CMA considered the applicability of each of the possible segmentations in paragraph 23 to its analysis of the Merger, as discussed in turn below.

Distribution channel

26. The Parties described four wholesale distribution channels:

- (a) delivered wholesale: a distributor which purchases products for wholesale and handles the physical delivery to the customer's premises;
- (b) contract distribution: where the customer negotiates supplies directly with manufacturers and the distributor provides a logistics solution for deliveries;
- (c) cash and carry: wholesalers offering a self-service model where the customer makes purchases at the store and transports the purchased goods itself (unless the cash and carry offers a delivery service);
- (d) retail: this includes supermarkets, other retailers, fresh produce and markets, farms and direct supply by manufacturers.

27. Sysco supplies via delivered wholesale and contract distribution, whilst KFF supplies via delivered wholesale only. The CMA considered the extent to which other distribution channels constrain delivered wholesale.

28. The Parties submitted that foodservice customers regularly switch between distribution channels as switching costs are low. The Parties submitted that all four delivery channels exert a competitive constraint on their activities and should therefore be included in the frame of reference.

29. Previous cases have concluded that there is some demand and supply-side substitution between different supply channels but not to the extent to justify a frame of reference broader than delivered wholesale.

30. The Parties submitted that delivered wholesalers face increasing competition from logistics companies as more customers directly negotiate with food manufacturers. The Parties submitted that this is particularly true for national customers, and cited a number of their customers who have moved from delivered wholesale to contract distribution. The Parties said that, since the OFT's Brakes/Woodward decision, 'small' independent customers also now see contract distribution as a viable option too. However, third party responses indicated that, whilst negotiating with food manufacturers directly

may be possible for (large) national customers, food manufacturers are generally unwilling to negotiate directly with local/regional customers.

31. With regard to cash and carry and retail, the Parties submitted that many foodservice customers use their own transport to collect goods from producers or from cash and carry and retailers. They said that retailers and cash and carry are also increasingly offering delivered services. The Parties noted that, according to Horizon's data (see footnote 19 below), around 29% of caterers' purchases are from cash and carry and retailers. Third party responses confirmed that, although foodservice customers satisfy the majority of their requirements for food products through delivered wholesale, some customers (in particular smaller customers) make some use of other delivery channels, especially for ad hoc purchases.
32. Most competitors indicated that delivered wholesale distribution faces competition from other supply channels, in particular from cash and carry. However, they acknowledged that the extent to which a customer considers other supply channels as an alternative to delivered wholesale distribution depends on the customer type, their procurement policies and business needs.
33. On the basis of this evidence, the CMA believes that there may be some demand-side substitution between delivery channels, but it is not clear that it is appropriate to consider all delivery channels in the same frame of reference.
34. Given that the Parties only overlap in delivered wholesale, the CMA has, on a cautious basis, assessed the impact of the Merger in the supply of food products by delivered wholesale, though it has taken into account other delivery channels in its competitive assessment where relevant. In any event, the CMA did not identify competition concerns on any basis.

Product range and food temperature range

35. The Parties only overlap in the supply of food products. On a cautious basis, and consistent with previous cases, the CMA did not consider broadening the frame of reference in this case to include non-food products.
36. The Parties submitted that, given they are both broadline suppliers, offering a full product range across different temperature ranges (enabled by their use of multi-temperature storage and transport technology),¹⁰ there is no reason to

¹⁰ The Parties noted that, even though KFF generates a large portion of its turnover from frozen products (which they submitted is the case for most broadline wholesaler suppliers), products supplied by KFF include ambient food, chilled/fresh food, and catering supplies. As such, they submitted, KFF is not specialised in any temperature or other area but is a genuine broadline wholesaler.

consider the market by reference to hypothetical segmentations by product category or temperature range. The Parties submitted that it would be inappropriate to segment the market by temperature since customers source a variety of products from a single supplier, delivered in a single load.

37. Customers indicated that the ability of a delivered wholesale distributor to supply a full product range is important, though the extent to which it is important depends on the customer's business requirements. Many customers said that they prefer to use specialist suppliers¹¹ for some or all product categories. The CMA found that most broadline competitors and many specialist competitors offer multi-temperature deliveries.
38. On the basis of this evidence, and for the purposes of its assessment of the Merger, the CMA has considered the delivered wholesale supply of all food products and across all temperatures, but taken into account specialist delivered wholesale in its competitive assessment. In any event, the CMA did not identify competition concerns on any basis.

End-use industry

39. Customers and competitors indicated that some suppliers may focus on particular industries (eg fast food retailing or education) due to different commercial or logistical reasons. Some sectors, especially public sectors, are subject to tenders and these tenders are generally open to all suppliers. However, most competitors noted that, while some companies might be particularly strong in a particular sector, perhaps for historical reasons, most large competitors can switch easily between sectors. Customers confirmed that they do not see any material difference between suppliers as long as the supplier can provide the products and services they require.
40. On the basis of this evidence, and for the purposes of its assessment of the Merger, the CMA has considered the delivered wholesale supply of products across all food products and across all end-use industries. In any event, the CMA did not identify competition concerns on any basis.

Customer type

41. In Brakes/Woodward, the OFT considered national and independent (ie local/regional) customers both separately and together¹². The OFT noted that

¹¹ The Parties submitted that there is no industry-wide definition, but 'specialist' refers to suppliers with a particular product focus (eg meat), or a particular area of expertise, rather than a specific temperature of delivery (eg frozen). They submitted that most, if not all, delivered wholesalers can supply products across all temperature ranges or are specialist suppliers associated with a specific product range, eg fresh produce on a chilled/ambient basis.

¹² [Brakes/Woodward](#), paragraph 20.

it might be the case that local/regional customers have a wider range of potential suppliers given that they will more likely consider sourcing from regional suppliers. In Brakes/Fresh Direct, the CMA adopted a similar approach. In those cases, it was noted that national customers are typically also high value customers.¹³ Although there are many local/regional customers, they are typically much smaller, often one-site operators.¹⁴

42. In the present case, third party responses indicated that there are differences in the purchasing behaviour of national and local/regional customers. They said that national customers' purchasing tends to be more consolidated, with national coverage being important, whereas local/regional customers tend to have many suppliers.
43. However, the evidence was mixed, with many national customers multi-sourcing from both national and local/regional delivered wholesale suppliers. These customers said they did this as: (i) they sometimes wanted to source a specialist product or a locally sourced product; (ii) provenance is increasingly important to customers; and (iii) some customers wish to reduce food miles. Some local/regional customers indicated that they liked to use a supplier that was the same size as them to have a stronger negotiating position, rather than using a much larger national supplier. Some also said that they found a local supplier to be more responsive to their needs.
44. The CMA believes that, for some national customers, it may be the case that their choice of potential suppliers may be limited to those suppliers with adequate geographic reach, whereas other national or local/regional customers may value local presence.
45. On the basis of this evidence, and for the purposes of its assessment of the Merger, the CMA has considered the delivered wholesale supply of food products to national customers and local/regional customers both separately and together. In any event, the CMA did not identify competition concerns on any basis.

Conclusion on product scope

46. For the reasons set out above, and on a cautious basis, the CMA has assessed the impact of the Merger in the delivered wholesale supply of a broad range of food products across all temperature ranges to national and local/regional customers (considered separately and together) in all end-use

¹³ [Brakes/Woodward](#), paragraph 19 and [Brakes/Fresh Direct](#), paragraph 55.

¹⁴ Many local/regional customers are members of purchasing consortia, who negotiate deals and agreements for their members. These customers might be more similar to national customers in terms of their purchasing patterns and buyer power.

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

Geographic scope

47. Sysco has nationwide coverage, having a large network of depots and serving customers across the UK. KFF has a regional focus, with two depots in Aylesford, Kent and Witney, Oxfordshire. From these depots KFF serves London, Essex and East Anglia, Kent, East and West Sussex, Surrey, Hampshire, Oxfordshire, and the surrounding areas (**the South East of England**). As a result of its membership of a consortium branded Caterforce, and the geographic reach of its members, KFF has also supplied at least one national customer.
48. The Parties submitted that the relevant geographic frame of reference is national (ie UK or at least GB) as it would not be meaningful to focus on smaller geographic areas. In particular, they submitted that both Parties supply customers in several regions across the UK, as do most of their competitors. Nevertheless, the Parties also considered the market on a local basis, focusing on those depots where an isochrone analysis (based on a distance radius within which 80% of customers are based)¹⁵ indicated that there are overlaps between KFF's two depots and Brakes' depots in the South East of England.
49. Some national customers who require a supplier to deliver across all their outlets told the CMA that they do not consider regional or local distributors to be a credible alternative. However, the CMA notes that regional suppliers may join together in consortia such as Caterforce to bid together for such national (or larger regional) contracts.
50. Given this mixed evidence, KFF's geographic area of operations, and on a cautious basis, the CMA has considered the impact of the Merger both in GB as a whole and, in the South East of England where the Parties compete for local/regional and some national foodservice customers. However, it was not necessary for the CMA to reach a conclusion on the precise geographic frame

¹⁵ The Parties estimated that, for each of their depots, at least 80% of customers are located within a 50 mile radius. The Parties considered the 60 minute drive time assessment used by the CC in the [Makro Report](#), which is a narrower isochrone than the 50 mile radius isochrone, and data submitted in the context of the earlier [Brakes/Fresh Direct](#) merger; however, in the present case, the Parties have focused their assessment on the basis of a 50 mile radius as, in their view, this is the most relevant parameter. One regional competitor told the CMA that its aim is to be no more than ~~30~~ miles from customers, which is broadly consistent with the Parties' submission.

of reference, since, as set out below, no competition concerns arise on any plausible basis.

Conclusion on frame of reference

51. For the reasons set out above, the CMA has considered the impact of the Merger in the delivered wholesale supply of a broad range of food products across all temperature ranges to national and local/regional customers (considered separately and together) in all end-use industries in GB and, in particular, in the South East of England. However, it was not necessary for the CMA to reach a conclusion on the precise frame of reference, since, as set out below, no competition concerns arise on any plausible basis.

Competitive assessment

Horizontal unilateral effects

52. 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.¹⁶ Horizontal unilateral effects are more likely when the merging parties are close competitors.
53. The CMA assessed whether the Merger would give rise to horizontal unilateral effects in the frame of reference set out in paragraph 51.
54. In its assessment the CMA considered:
- (a) shares of supply;
 - (b) closeness of competition between the Parties; and
 - (c) constraints from alternative suppliers.

Shares of supply

55. The Parties provided an estimate of national shares of supply in the wholesale distribution of food products.¹⁷ These shares were calculated combining different public and commercial data sources,¹⁸ which, as acknowledged by

¹⁶ [Merger Assessment Guidelines](#), paragraphs 5.4.1. and *ff.*

¹⁷ The Parties also estimated their shares of supply by: distribution channel; customer type; temperature and end-use industry. The Parties told the CMA that it was not possible to provide credible and meaningful estimates for competitors given the narrow scope of those segments.

¹⁸ The estimated market size is based primarily on commercial data from an external data provider, Horizon.

the Parties, may not be accurate (eg the underlying data may include other delivery channels and/or non-food products).

56. According to the Parties' data, the largest overall wholesale distributor of food to foodservice customers is Bidvest, followed by Sysco and Booker. These three suppliers jointly account for 47% of the UK market. A long list of other suppliers have market shares between 1 and 2%. The Parties said that they believed this data over-stated their position as the total market size was likely to be under-estimated.
57. The CMA notes that these figures could indicate that the Merger will have little effect on competition in the overall wholesale supply of food products on a GB-wide basis. However, in view of the unreliability of these estimates and their national nature, the CMA has not placed significant weight on them.

Closeness of competition

58. The Parties submitted that they are not close competitors, mainly because they focus on different customer types and different geographic areas. In particular, the Parties submitted that KFF is primarily active in the South East of England with a strong presence in London, where Sysco is under-represented. They also told the CMA that KFF is popular with independent (ie local/regional) foodservice customers, with which KFF maintains a longstanding commercial relationship. In contrast, the Parties said that Sysco is stronger in relation to national customers. In support of this submission, the Parties provided share of supply data based on their turnover and the total market size split between national and local/regional customers, though they were not able to supply accurate share estimates for their competitors.
59. The Parties' estimated their combined share in the supply to national customers to be [20-30]% (increment [<5]%), and to local/regional customers between [15-25]% (increment [<5]%) and [25-35]% (increment [<5]%), depending on the source of the underlying data.¹⁹ This data indicates the relatively small share of supply, both nationally and locally regionally, of KFF but, it does not provide any compelling evidence on the (lack of) closeness of competition between the Parties, and in any case, given the unreliability of the estimates, the CMA has not placed significant weight on them. It was not feasible in the context of its Phase 1 merger investigation for the CMA to estimate precise shares of supply in the region of interest, given that different suppliers define regions in different ways and not all suppliers (in particular

¹⁹ The Parties' internal sources estimate [15-25]% while data from Horizon estimates the Parties have [25-35]%.

smaller, regional suppliers) have available data on sales at the necessary granular level.

60. To identify sales to regional/local customers, the CMA reviewed the customer data submitted by the Parties. Over a period of 13 weeks, Sysco's sales to 'independent' customers from its depots falling within or just outside the catchment areas defined within 50 miles of KFF's Aylesford and Witney depots amounted to £[REDACTED] million (£[REDACTED] million annualised). KFF's sales to its independent customers (which it refers as 'base' customers) for 2017 amounted to approximately £[REDACTED] million. This shows that, even though independent customers may not be the focus of Sysco's (and in particular Brakes') business, Sysco is a significant supplier to these customers in the relevant geographic area.
61. The Parties submitted some information about what competitors they monitor. Sysco explained that [it monitors competitors' prices, but that it monitors KFF's prices to a significantly lesser extent than it does many other competitors' prices]. KFF told the CMA that it does not systematically monitor competitors' prices.
- *Tender data*
62. The tender data submitted by the Parties was incomplete, limiting the conclusions which could be drawn from it.²⁰ However, it indicated:
- (a) [REDACTED] broadline and [REDACTED] specialist suppliers have been involved in bids against KFF over the period 2012-2017; and
 - (b) at least [REDACTED] suppliers have participated in bids against Sysco (Brakes) in the period 2013-2017.
63. The CMA found that KFF had bid against Sysco (primarily Brakes) for a high-value contract (ie above £[REDACTED]) in only [REDACTED] of the [REDACTED] tenders Brakes had recorded (ie less than [REDACTED]%). Brakes, on the other hand, had bid against KFF in [REDACTED] of the [REDACTED] tenders KFF had recorded (ie 20%).
64. The CMA also collected tender data from third parties. This data showed Brakes and KFF occasionally competing, in particular for independent foodservice customers in KFF's catchment areas. However, the data also showed that those customers buying through tenders had many supply options. Consistent with this data, those customers who purchase through

²⁰ In particular: (i) the bidding data submitted was only a subset of the tenders in which the Parties have participated; (ii) for Brakes, [REDACTED]; (iii) for a large number of the recorded tenders (for both Parties) the identity of the competing bidders was unknown ([REDACTED]% of Brakes' data and 55% of KFF's data); and (iv) the list of the competing bidders that have been identified may be incomplete.

tenders said that they were satisfied that the number of bidders participating in their tenders post-Merger will remain high enough to ensure sufficient competition.

- *Third party views*

65. The CMA received mixed evidence as to the extent to which customers see Sysco (Brakes) and KFF as close alternatives, depending principally on the customer's characteristics and requirements. For example, national customers who prefer a supplier able to serve all their outlets, did not consider KFF a close competitor to Sysco (Brakes). Most customers said that both Sysco (Brakes) and KFF could supply a wide range of food products. However, Sysco (Brakes) was seen as having significantly more resources, and was therefore better able to handle larger supply contracts with high-volumes. KFF was perceived as being more flexible and able to supply niche products.
66. Most competitors confirmed that both Sysco (Brakes) and KFF are broadline wholesalers offering a broad range of food products. However, competitors also confirmed that KFF is a 'small competitor' to Sysco (Brakes), focusing on 'independent' foodservice customers.

- *Conclusion on closeness of competition*

67. On the basis of this evidence, noting in particular the relatively low number of occasions in which both Parties competed for the same tenders and the views of customers and competitors on the size and strengths of each of the Parties, the CMA believes that the Parties are not close competitors. Bidvest (now Bidfood) appears to be Sysco's closest competitor and some local/regional suppliers, such as Philip Dennis (and others listed below), appear to be closer competitors to KFF than Sysco, as discussed below.

Alternative suppliers

68. The Parties submitted that the food distribution market is very fragmented, with a large number of distributors competing for business. The Parties also said that it is characterised by multi-sourcing and high switching rates.
69. Almost all customers told the CMA that they multi-source, either from different broadline wholesalers, a combination of specialist suppliers, or from both broadline wholesalers and specialist suppliers. The reasons mentioned for multi-sourcing included taking advantage of the choice available and reaching a broader set of products.

70. The Parties identified 85 and 61 competing delivered wholesale depots within 50 miles of KFF's depots in Aylesford and Whitney respectively. Of these, for the Aylesford depot, 37 belong to 'specialist' suppliers and for the Witney depot 30 belong to 'specialist' suppliers.
71. The CMA's analysis focused on whether, and to what extent, these depots, and other suppliers identified by customers, provide a credible alternative to the Parties' offering and would therefore constrain the merged entity post-Merger.
- *Customer views*
72. The CMA asked customers to indicate which suppliers they would consider to be a credible alternative to either Sysco (Brakes) or KFF in the South East of England and to rate their suitability. The responses revealed a wide range of views, reflecting each customer's specific characteristics and requirements.
73. All customers said that Bidfood was a strong competitor. In particular, all the customers who indicated that KFF is a very suitable alternative to Sysco also rated Bidfood as highly. Many customers indicated KFF to be unsuitable as an alternative to Brakes, but these customers also rated Bidfood highly. These customers considered KFF to be too small and/or local for their requirements.
74. Booker, despite being regarded by some customers as focused on cash and carry, was cited by many customers as a strong alternative (with or without a delivery service).
75. Customers who are either using or considering using both Parties identified several other alternative suppliers, including Reynolds, Philip Dennis, Metrow, Pilgrim Foodservices, Holdsworth and Thomas Ridley. Overall, these local/regional wholesale suppliers cover a similar geographic area to KFF. All the customers who considered KFF to be a good alternative to Brakes also considered Philip Dennis as another good alternative.
76. In terms of the constraint offered by specialist suppliers, most customers told the CMA that they already use (or would/could use) 'specialist' suppliers for part of their requirements. Only two customers told the CMA that they would not want to incur the extra effort, bureaucracy, cost or risk associated with having multiple suppliers. One national customer said that it could move some of its requirements to specialist suppliers but the minimum order quantity and delivery times would be an issue if it overlapped with other suppliers.
77. This evidence indicates that:

- (a) Large national customers using mostly Sysco (Brakes) see other large national headline wholesalers, such as Bidfood, as their next best alternative, and do not consider KFF as a suitable alternative.
- (b) Customers currently using KFF, which are often 'independents' operating primarily at a local/regional level in the South East of England, have several other local/regional delivered wholesale supply options and see Sysco (Brakes) as just one alternative.
- (c) Some companies using (or considering to use) both Parties have options at both the national level (eg Bidfood) and local/regional level (eg Philip Dennis).

78. In addition, many customers noted other food supply options to meet their needs. Some larger, national customers saw contract distribution as an alternative, while some smaller, local/regional customers saw cash and carry and retail as an alternative.

- *Competitors' views*

79. Most competitors did not express any concerns about the Merger. Most also said that headline suppliers, such as the Parties, face competition from 'specialists'. Only a small minority disagreed, one explaining that headline suppliers are very price competitive compared with specialist suppliers.

80. Two competitors were concerned that the Merger would increase the market power of Sysco (Brakes) in the South East of England, while reducing the options for customers. However, the CMA has found that customers in the South East of England have many alternative delivered wholesale suppliers (as well as other food supply options) (eg Thomas Ridley, Philip Dennis, Metrow and Pilgrim Foodservice).

- *Conclusion on alternative suppliers*

81. On the basis of this evidence, the CMA believes that customers have many supply options, which will continue to constrain the merged entity post-Merger.

Conclusion on horizontal unilateral effects

82. For the reasons set out above, the CMA believes that the Parties are not close competitors, and that other competitors will continue to provide a sufficient constraint on the merged entity post-Merger.

83. 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 delivered wholesale in GB, and, in particular, in the South East of England.

Barriers to entry and expansion

84. Entry, or 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.²¹

85. 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

86. The CMA contacted 67 customers and 39 competitors of the Parties. Around 29% replied.

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

Decision

88. 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.

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

Andrew Wright
Director, Mergers
Competition and Markets Authority
16 March 2018

Endnote: Sysco operates worldwide, with significant turnover in the United States.

²¹ [Merger Assessment Guidelines](#), from paragraph 5.8.1.