

Completed acquisition by Meadow Foods (Holdings) Limited of Roilvest Limited

Decision on relevant merger situation and substantial lessening of competition

ME/6747/18

The CMA's decision on reference under section 22(1) of the Enterprise Act 2002 given on 18 June 2018. Full text of the decision published on 27 July 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. On 20 February 2018, Meadow Foods (Holdings) Limited (**Meadow**) acquired Roilvest Limited (**Roil**) (the **Merger**). Meadow and Roil are together referred to as the **Parties**.
2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that, prior to the Merger, Meadow and Roil constituted two separate enterprises which have now ceased to be distinct and that the share of supply test is met. The four-month period for a decision, as extended, 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. The Parties overlap in the manufacture and supply of dairy-based food ingredients and, in particular, in the supply of anhydrous milk fat (**AMF**)¹, primarily in the UK and the EEA. The CMA has assessed the impact of the Merger in the supply of AMF in the EEA but has also, on a cautious basis, considered the supply of AMF in the UK.

¹ Based on the available evidence, the CMA believes that AMF is similar to 'non-fractionated butter oil', a food ingredient assessed by the Commission in its decision COMP/M.5046 *Friesland/Campina*. (*Friesland/Campina*).

4. The CMA found that:
 - (a) The Parties are two of a very limited number of UK-based manufacturers of AMF. However, competition between the Parties is limited, as evidenced by customers' views, the Parties' different business models and their respective portfolio of customer types, and the very limited number of examples of competitive bidding or benchmarking by customers between the Parties in negotiations;
 - (b) Post-Merger, the Parties will be constrained by other AMF manufacturers in the EEA, and from traders operating in the UK and the EEA, as evidenced by data on imports and by customers' and competitors' views; and
 - (c) A new supplier of AMF in the UK is expanding and will provide an increasing competitive constraint on the Parties.
5. In view of these findings, the CMA believes that the Merger does not give rise to a realistic prospect of a substantial lessening of competition (**SLC**) in the supply of AMF in either the EEA or the UK.
6. The Merger will therefore **not be referred** under section 22(1) of the Enterprise Act 2002 (the **Act**).

ASSESSMENT

Parties

7. Meadow² manufactures and supplies dairy-based food ingredients, (including AMF) globally, including in the UK and across the EEA. It also supplies bulk milk. Meadow operates from three UK factories³ and procures milk from over 500 farmers around the UK. Its global turnover in 2017 was £271 million, of which £[~~2~~] million was generated in the UK.
8. Roil⁴ manufactures and supplies dairy fat ingredients in the UK and the EEA. Its global turnover in 2017 was £58.49 million, of which £[~~2~~] million was generated in the UK.

² Meadow also includes all associated companies in its sphere of control or material influence.

³ Located in Chester, Holme on Spalding Moor and Peterborough.

⁴ Roil also includes all associated companies in its sphere of control or material influence. These include Roil Foods Limited.

Transaction

9. On 20 February 2018, Meadow completed the acquisition of Roil.

Procedure

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

Jurisdiction

11. Prior to the Merger, Meadow and Roil constituted two separate enterprises which now have ceased to be distinct as a result of the Merger.
12. The Parties overlap in the supply of AMF, with a combined share of supply of [30-40]% by volume in the UK in 2016 (following a [5-15]% increment resulting from the Merger). The CMA therefore believes that the share of supply test in section 23 of the Act is met.
13. The Merger completed on 20 February 2018 and was made public on the same day. The four month deadline for a decision under section 24 of the Act is 23 June 2018, following extension under section 25(2) of the Act.
14. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.
15. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 27 April 2018 and ends on 23 June 2018 due to this date being the expiry of the four month deadline set out in paragraph 13 above.⁶

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

⁵ See [Guidance on the CMA's mergers intelligence function](#) (CMA56), 17 June 2016; and [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, paragraphs 6.9-6.19 and 6.59-60.

⁶ Otherwise the initial period would expire on 25 June 2018.

a realistic prospect of a counterfactual that is more competitive than these conditions.⁷

17. In this case, the CMA has seen no evidence supporting a different counterfactual, and Meadow and third parties have not put forward arguments in this respect. Therefore, the CMA believes the pre-Merger conditions of competition to be the relevant counterfactual.

Background

18. AMF is a fatty product derived from fresh sweet cream or sweet cream butter. It must contain a minimum milkfat content of 99.8% by mass and a maximum water content of 0.1% by mass.⁸
19. AMF is used by food manufacturers, for example in the production of ice cream, chocolate, baking products and confectionery. Meadow submitted, and most third parties who replied to the CMA questionnaire confirmed, that AMF is a commodity product where provenance is not typically important to customers.
20. AMF is procured directly from manufacturers or via traders in the UK, EEA and worldwide. The Parties sell AMF in various pack sizes (from 10kg to bulk tankers).
21. AMF has essentially two customer types:
 - (a) traders (intermediary customers who procure from manufacturers to sell to end users (or arrange sales without taking title of the AMF product)); and
 - (b) end-user customers (ie food manufacturers).

Frame of reference

22. 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

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).

⁸ CODEX STAN 280-1973 (Standard for Milk Fat Products). This is one of several minimal standard requirements.

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

23. The Parties overlap in the supply of AMF in the UK and the EEA.

Product scope

24. Meadow submitted that AMF and butter may be in the same product frame of reference as: (i) AMF is a commodity product that generally tracks the publicly-traded price of butter; (ii) AMF and butter are generally interchangeable ingredients for food manufacturing; and (iii) these products are considered as one product category in statistical reports.
25. In contrast, most third party customers told the CMA that they procure AMF for specific production lines and they cannot switch easily to butter. A small number of third party customers, while noting that it is technically possible to switch from AMF to butter, stressed that switching would require considerable time and changes to current operations (eg modifying recipes and consumer testing).
26. These views are consistent with the European Commission's finding in *Friesland/Campina*.¹⁰ The European Commission found limited substitutability between basic butter and non-fractionated butter oil (akin to AMF) as they differ in taste, functionality and performance, and any switching would require resource-intensive recipe alterations.
27. In view of the above evidence, the CMA believes that the appropriate product frame of reference for its assessment of the Merger is the supply of AMF.

Geographic scope

28. Meadow submitted that the geographic frame of reference is at least EEA-wide. It told the CMA that AMF has a long shelf-life and can be transported under temperature-controlled conditions over long distances.¹¹
29. The CMA found that the majority of the Parties' AMF production is for export and both Parties sell to customers in Europe and the rest of the world. Third parties confirmed that AMF is traded across the EEA, as well as worldwide,

⁹ *Merger Assessment Guidelines*, paragraph 5.2.2.

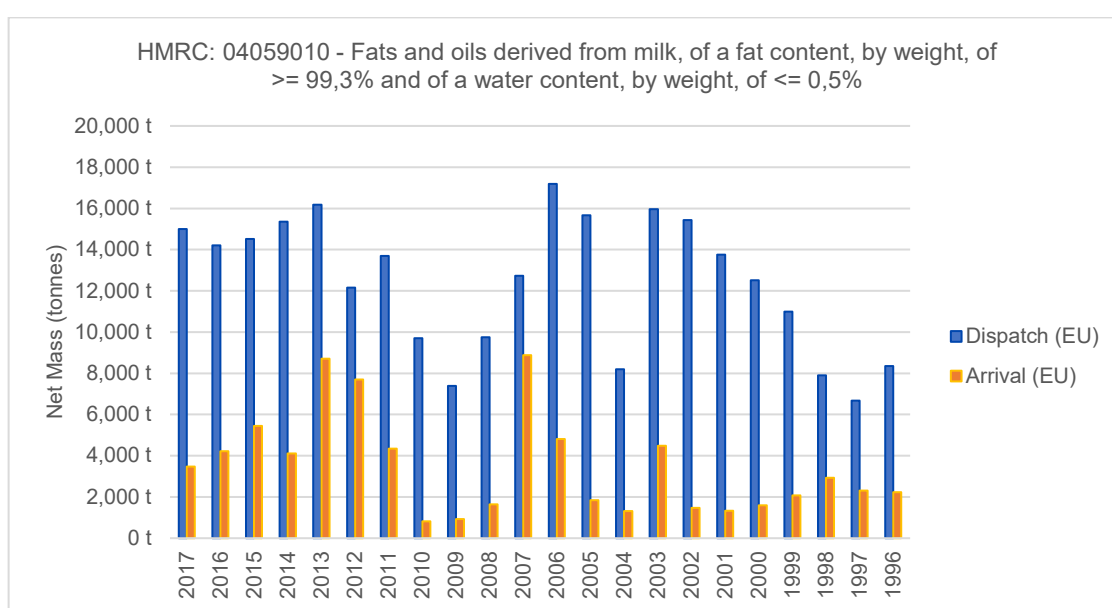
¹⁰ See footnote 1 above. COMP/M.5046 *Friesland/Campina*. The Commission found that there was a dairy bulk butter market which could be divided into basic butter, non-fractionated butter oil and fractionated butter oil.

¹¹ The Parties gave examples of exports of their AMF to Dubai, Lebanon and Singapore. In particular, Roil sells [%] of its AMF ([%] by revenue) to [%] in [%].

and noted that transport costs constitute a relatively low proportion of the cost of AMF.

30. HMRC statistics for imports and exports (Figure 1 below)¹² show that significant volumes of AMF are imported to the UK and exported from the UK, with intra-Community trade representing the vast majority of cross-border movements to and from the UK (69% to 100% from 2014 to 2017). This is consistent with the European Commission’s findings in *Friesland/Campina*, where the Commission found that the market for non-fractionated butter oil was EEA wide.¹³

Figure 1: HMRC data on imports and exports of fats and oils derived from milk



Source: HMRC

31. The CMA has also found instances of AMF being traded on a wider-than-EEA basis. However, the CMA notes that, although transport costs are a small proportion of the cost of AMF, they become a more significant cost over longer distances and may limit the distance over which AMF can profitably be traded.
32. Customers and competitors told the CMA that AMF is routinely imported from and exported to other EEA Member States and occasionally to other third countries. Traders explained that they buy and sell AMF within and sometimes

¹² The HMRC data covers fats and oils derived from milk of a fat content, by weight, of at least 99.3% and of a water content, by weight, of no more than 0.5%. It therefore may include some products with slightly lower fat content than AMF. It is also possible that some AMF could be imported under another code comprising a wider set of fats and oils derived from milk without a specific content. However, the CMA considers that the HMRC data is broadly indicative of AMF imports and exports.

¹³ COMP/M.5046 *Friesland/Campina*, recital 837.

outside the EEA seeking opportunities to take advantage of price differences between different markets. Customers told the CMA that they would not commonly consider suppliers from outside the EEA as viable.

33. On the basis of the evidence set out above, the CMA has assessed the impact of the Merger on the supply of AMF in the EEA. However, on a cautious basis, the CMA has also assessed the Merger on the supply of AMF in the UK. It has not been necessary for the CMA to reach a conclusion on the appropriate geographic frame of reference since no competition concerns arise on any plausible basis.

Conclusion on frame of reference

34. For the reasons set out above, the CMA has assessed the impact of the Merger in the the supply of AMF in both the EEA and the UK.

Competitive assessment

Horizontal unilateral effects

35. 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.¹⁴ Horizontal unilateral effects are more likely when the merging parties are close competitors.
36. 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 the supply of AMF in the EEA and/or the UK as a result of horizontal unilateral effects.
37. In assessing the effects of the Merger, the CMA looked at shares of supply, how closely the Parties competed prior to the Merger, and the strength of remaining competitive constraints post-Merger, including from imports, traders and other competitors.

Shares of supply

Share of supply at EEA level

38. In *Friesland/Campina*, the notifying parties in that case estimated that the Parties each had a share of supply of non-fractionated butter oil in the EEA of [0-5]%. The European Commission further stated that the combined

¹⁴ [Merger Assessment Guidelines](#), paragraphs 5.4.1. ff

Friesland-Campina had a share 'well below' [40-50]% and Corman had [20-30]% share, Lactalis [10-20]%, each of Beurrelia and Uelzena [5-10]%, and nine other suppliers (including Meadow and Roil) [0-5]% each.

39. The CMA has not able to make more accurate estimates of the Parties' shares of supply at the EEA level. However, the CMA has not seen any evidence to suggest that the Parties' shares of supply have materially increased at the EEA level since *Friesland/Campina*. The Parties and third parties told the CMA that there are a 'large number' of AMF manufacturers (at least 10 to 15) and many traders of AMF across the EEA. In view of this evidence, the CMA believes that the Parties remain relatively small suppliers of AMF at an EEA level, competing with several substantially larger competitors.

Share of supply at UK level

40. In 2016, there were three AMF manufacturers in the UK: the Parties and Key Food Ingredients Ltd (**Key Food**). Key Food went into administration and ceased production in 2017. This resulted in the Parties becoming the only manufacturers of AMF in the UK, with an estimated share of supply in the UK of about [50-60]% (and imports accounting for the remaining [40-50]%).
41. In December 2017, County Food Ingredients Ltd (County Food)¹⁵ acquired the assets for the production of ghee and AMF previously owned by Key Food. County Food has since begun manufacturing AMF in the UK.
42. County Food told the CMA that the business is [REDACTED].

Closeness of competition

43. Meadow submitted that the Parties had very few common customers and there was very limited competition between them. The CMA found that this was supported by evidence on customer contracts and contractual negotiations.
44. Most UK customers told the CMA that they have been procuring from one or other of the Parties for a long time but had not attempted or considered switching due to long-term business relationships.
45. The CMA found that Meadow and Roil operate very different business models:

¹⁵ A subsidiary of County Milk Products Ltd

- (a) Meadow produces a wider range of dairy-based food ingredients and sources its raw materials from its own contracted farmers. It supplies to multiple large customers, traders and end-users.
- (b) Roil has its focus on the manufacture of butterfats only. It buys its raw material from different suppliers and processes it to make AMF and ghee.
- (c) Very few end-user customers have been buying directly from both Meadow and Roil, and few end-user customers are supplied by traders which source from both Meadow and Roil.
- (d) [REDACTED] of Roil's AMF supply goes to a trader called [REDACTED], located in [REDACTED], who then distributes to end-users across the EEA, including in the UK. Very few end-user customers have direct supply from Roil. Meadow's AMF is supplied to a much larger pool of end-user customers and traders in the UK, EEA and globally.
- (e) Many small end-user customers appear to have a strong relationship with Meadow, employing single-source procurement strategies, without ever considering alternative suppliers. The CMA found only one end-user customer who bought from both Parties and considered that they were viable alternatives to each other.
- (f) Some traders noted the Parties' differing market offerings, saying that Meadow has a network of dairy farmers, from whose milk it produces a wide range of products, while Roil's sole focus is on the production of butterfats.

End-user customer procurement

- *End-user customers with large volume needs*
46. Third parties told the CMA that end-user customers in the UK with large AMF requirements can source AMF and other ingredients from multiple suppliers across the EEA. They said that this would ensure continuity of supply, and provided a constraint on the price offered by their UK supplier.
 47. From all the third party views received in relation to the Merger, the CMA found only one end-user customer who purchases from both Parties directly, and this was only for small ad-hoc quantities from Roil (compared with large regular purchases from Meadow), and only one end-user customer who buys from Meadow and also buys from a trader who sources from Roil.
 48. Some large multi-sourcing customers expressed concerns that the Merger would result in the loss of one of their potential suppliers. However, they noted

that they were addressing these concerns by considering other suppliers, including County Food.

- *End-user customers with small/medium volume needs*

49. End-user customers in the UK with small and medium AMF requirements had mixed views about the effect of the Merger. Most of the respondents said that their procurement of AMF was based on long-lasting, informal, good-faith relationships with a particular supplier. These end-users told the CMA that they are confident they get good value for money by benchmarking the price for AMF against the publicly-available butter price, and with other AMF suppliers available.
50. One small end-user customer raised concerns about security of supply as a result of the Merger. However, another similar sized end-user considered that it would be able to source from the EEA in response to any price increase.

Trader procurement

51. Traders tend to source AMF from a diverse range of EEA-wide AMF manufacturers, and in a range of packaging sizes.
52. Those traders who responded to the CMA's questionnaire and who do not already obtain AMF from Roil did not indicate that they would consider Roil an alternative supplier to Meadow.
53. None of the EEA traders the CMA contacted had significant concerns about the Merger. One voiced concerns regarding the reduction in UK suppliers, as it specialises in UK-originated products, but most traders who responded noted the existence of several viable alternative suppliers across the EEA, particularly in north-west Europe.¹⁶ One trader said that the Merger was a positive development as it would increase the range of products available.

Conclusion on closeness of competition

54. The CMA believes that, prior to the Merger, competition between the Parties was limited, as evidenced by customers' views, the Parties' different business models and their respective portfolio of customer types, and the very limited number of examples of competitive bidding or benchmarking by customers between the Parties in negotiations.

¹⁶ One respondent, [X] noted that it requires UK-originated AMF to be able to claim that the end-product is sourced from UK-only ingredients.

Competitive constraints

55. Meadow submitted that there are a number of manufacturers and traders of AMF in the EEA, many of which are large multinational dairy businesses. It said that no competition concerns would arise from the Merger due to the strength and number of manufacturers and traders which are willing and able to sell and trade AMF on an EEA-wide, if not global, basis.
56. Third parties confirmed that there are many suppliers of AMF in the EEA, and that the Parties had a small share in this wider geographic frame of reference.

Imports

57. The Parties submitted that they are constrained in their UK supply of AMF by, among other things, imports into the UK from manufacturers and traders. As shown in Figure 1, a significant volume of AMF is imported into the UK from the EU.
58. While the distance from which AMF can be profitably imported to the UK may be affected by various factors, the CMA believes that customers (end-users and traders) are able to import AMF from the EEA into the UK.
59. Third parties told the CMA that, while UK or Irish supply of AMF can provide greater flexibility (eg to meet ad hoc urgent needs), some large EEA manufacturers, and traders, can and do provide considerable flexibility in their supply to the UK too.

Traders

60. The CMA received responses from traders who serve different customer segments (eg large requirements or small, niche requirements).
61. The majority of traders indicated that they are able and willing to supply AMF to customers in the UK. These traders offer different package sizes, as small as 12.5kg, and small volumes. The CMA, therefore, believes that this allows end-user customers in the UK with small AMF requirements, as well as those with larger requirements, to source through EEA traders.

Competitor producers

62. Competitors and customers noted that, in order to supply a customer with AMF, both the producer and the AMF must be accredited and/or approved. While this means that switching suppliers can take some time and investment, some customers said that they multi-source across the EEA for their EEA

requirements (and not only in the UK) to mitigate risks of discontinuity of supply.

63. Some end-user customers of the Parties in the UK indicated an awareness of other AMF suppliers, in particular manufacturers in the EEA, and said that these alternative suppliers were viable for their AMF requirements. The CMA noted that this was supported by the fact that most traders supplying into the UK source their AMF from a number of producers across the EEA.
64. In addition, several end-user customers noted the entry of County Food as a viable future UK-based supplier of AMF. The CMA found that County Food's business plans [REDACTED]. While the CMA believes that, currently, imports from traders and other EEA manufacturers exert a more significant competitive constraint on the Parties in the supply of AMF in the UK, the constraint from County Food is growing as it establishes its business.

Conclusion on competitive constraints

65. The CMA believes that, post-Merger, the Parties will be constrained by other AMF manufacturers in the EEA, and from traders operating in the UK and the EEA, as evidenced by data on imports and by customers' and competitors' views. In addition, a new supplier of AMF in the UK is expanding and will provide an increasing competitive constraint on the Parties.

Conclusion on horizontal unilateral effects

66. Based on the evidence set out above, the CMA believes that the Parties did not compete closely prior to the Merger and, post-Merger, there will be sufficient competitive constraints on the merged entity. In view of these findings, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC in the supply of AMF in either the EEA or the UK.

Barriers to entry and expansion

67. 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.
68. In the present case, the CMA has not had to consider barriers to entry and expansion as the CMA has identified no competition concerns arising from the Merger on any basis.

Third party views

69. The CMA contacted end-user customers, trader customers and competitors of the Parties. Most third parties did not raise concerns in relation to the Merger. Some third parties raised concerns, in particular regarding the limited options for UK-based supply of AMF.
70. Third party comments have been taken into account where appropriate in the competitive assessment above.

Decision

71. 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 an SLC within a market or markets in the UK.
72. The Merger will therefore **not be referred** under section 22(1) of the Act.

Andrew Wright
Director
Competition and Markets Authority
18 June 2018