

Completed acquisition by Tayto Group Limited of The Real Pork Crackling Company Limited

Decision on relevant merger situation and substantial lessening of competition

ME/6767/18

The CMA's decision on reference under section 22(1) of the Enterprise Act 2002 given on 13 November 2018. Full text of the decision published on 30 November 2018.

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

SUMMARY

1. On 13 June 2018, Tayto Group Limited (**Tayto**) completed a series of connected transactions to acquire The Real Pork Crackling Company Limited (**RPCC**). The CMA refers to these transactions as the **Merger**. Tayto and RPCC are together referred to as the **Parties**.
2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that each of Tayto and RPCC is an enterprise; that these enterprises have ceased to be distinct as a result of the Merger; 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 both supply pork snacks to UK customers, primarily grocery retailers (**retailers**) and wholesalers. Pork snacks refers to snack products manufactured from pork rind (ie pork scratchings, pork crackling and pork crunch), as well as pork strips, which are made from fried pelleted pork meat.
4. The CMA has assessed the impact of the Merger in a frame of reference for the supply of pork snacks in the UK. It has considered whether the Merger could give rise to horizontal unilateral effects in this frame of reference.

5. The CMA found that the Parties have high combined shares of supply (over 70%) and that they compete closely. However, the CMA believes that the Merger does not give rise to competition concerns, for the following reasons:
6. First, at least four credible competitors – each with established brands and the ability to increase production quickly – will continue to constrain the merged entity post-Merger.
7. Second, customers have considerable negotiating power, and exhibit little loyalty to a supplier. Several customers have succeeded in rejecting proposed price increases by Tayto or negotiated significant reductions in the proposed increase. These customers are aware of rival pork snack suppliers and could switch to them in response to a worsening in the offer from the merged entity.
8. Third, the Parties will continue to be constrained by other savoury snacks suppliers. Most pork snack consumers buy other savoury snacks, and switch between them. Moreover, pork snacks account for a small proportion of customers' overall snack expenditure. In the wider snacks segment, the Parties' combined share of supply is just [0-5]%.
9. The vast majority of customers who responded to the CMA's merger investigation raised no concerns regarding the Merger, primarily for the three reasons set out above.
10. Accordingly, the CMA believes that the Merger does not give rise to a realistic prospect of a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects in the supply of pork snacks in the UK.
11. The Merger will therefore **not be referred** under section 22(1) of the Enterprise Act 2002 (the **Act**).

ASSESSMENT

Parties

12. Tayto is a crisps and savoury snacks manufacturer based in County Armagh in Northern Ireland. Tayto produces and sells pork snacks under the Mr Porky, Midland Snacks, and Jays brands throughout the UK. Tayto's UK turnover for the year ended 30 September 2018 was £[✂], of which £[✂] was generated from pork snacks.
13. RPCC is a pork snacks manufacturer based in Tamworth, Staffordshire. RPCC sells pork snack products under the RPCC brand throughout the UK and manufactures an own-label product for Marks & Spencer. RPCC's UK turnover for the year ended 30 September 2018 was £[✂].

Transaction

14. On 13 June 2018, Tayto completed a series of connected transactions to acquire RPCC for £[X].
15. Tayto's stated rationale for the Merger was to: (i) acquire a successful and growing business; (ii) benefit from production, storage, and transportation efficiencies, and from [X] (RPCC's CEO) expertise; and (iii) grow the pork snacks segment.

Procedure

16. The CMA's mergers intelligence function identified this transaction as warranting an investigation.¹
17. The Merger was considered at a Case Review Meeting.²

Jurisdiction

18. Each of Tayto and RPCC is an enterprise. As a result of the Merger, these enterprises have ceased to be distinct.
19. The Parties overlap in the supply of pork snacks in the UK, with a combined share of supply (measured by retail sales value) for the year to July 2018 of [70-80]% (increment of [10-20]% from RPCC). The CMA therefore believes that the share of supply test in section 23 of the Act is met.
20. The Merger completed on 13 June 2018. It was made public the same day. Following an extension under section 25(2) of the Act, the four-month deadline for a decision under section 24 of the Act is 28 November 2018.
21. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.
22. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 21 September 2018. The statutory 40 working day deadline for a decision is therefore 15 November 2018.

¹ See [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, paragraphs 6.9-6.19 and 6.59-60.

² See [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, from paragraph 7.34.

Counterfactual

23. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For completed mergers, the CMA generally adopts the pre-merger conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, it believes that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive than these conditions.³
24. In the present case, there is no evidence supporting a different counterfactual and neither the Parties nor third parties have put forward arguments in this respect. Therefore, the CMA believes the pre-Merger conditions of competition to be the relevant counterfactual.

Frame of reference

25. Market definition provides a framework for assessing the competitive effects of a merger. It 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. 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.⁴

Product frame of reference

Pork snacks and other snack products

26. The Parties overlap in the supply of pork snacks in the UK to retailers and wholesalers. Wholesalers supply the pork snacks to convenience stores and foodservice companies (primarily pub operators).
27. The Parties submitted that pork snacks form part of a wider market for the supply of crisps, snacks, nuts, and popcorn (**CSNP**) because: (i) pork snacks fulfil the same purpose as all CSNP products; (ii) all CSNP products are bought for the same categories of eating occasion; (iii) CSNP products are

³ [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).

⁴ [Merger Assessment Guidelines](#), paragraph 5.2.2.

typically displayed side-by-side in stores, in direct competition with each other; (iv) consumers switch between pork snacks and other CSNP products; and (v) for suppliers, there are low barriers to entering new CSNP product areas.

28. In previous cases, the European Commission (**EC**) and UK competition authorities have indicated that there may be a market for CSNP products, without reaching a definite conclusion.⁵ No cases have examined specifically the substitutability of pork snacks with other types of snacks.
29. The CMA has assessed whether pork snacks are demand or supply-side substitutes for other CSNP snacks. The CMA found that the Parties' internal documents and evidence from third parties indicated that non-pork snack products do constrain pork snacks (as set out in paragraphs 83 to 106 below), albeit less than pork snacks constrain each other. Some third parties also indicated that consumers would continue to buy pork snacks in the event of a small price increase. Therefore, non-pork snacks are not as close substitutes for pork snacks as pork snacks are for each other.
30. On a cautious basis, the CMA has assessed the impact of the Merger in the supply of pork snacks. However, the CMA has considered the constraint from other CSNP products in its competitive assessment. Given that the CMA has identified no competition concerns on any basis, it has not had to conclude on the appropriate frame of reference.

Segmentation by customer type

31. Past EC decisions have considered the sale of snacks through retail and foodservice channels to be separate markets.⁶
32. In the present case, the CMA does not consider this segmentation is necessary. A similar set of pork snack suppliers sells to retailers and other customers, and the nature of competition is similar between these suppliers to the different customer groups. Differences in the products sold through the alternative channels are minimal, consisting mainly of different presentation styles (ie pub cards) and packaging (ie multipacks). These differences do not create any significant barriers on the supply side in substituting between the two channels.

⁵ OFT Case, [Diamond Foods / Pringles](#), 27 July 2011; OFT Case, Frito / Golden Wonder, 8 July 2002; OFT Case, Longulf Trading / Golden Wonder, 21 June 2002; EC Case No COMP/M.5633 – [PEPSICO / THE PEPSI BOTTLING GROUP](#), 26 October 2009; EC Case No COMP/M.2275 – [PEPSICO / QUAKER](#), 27 March 2001; EC Case No IV/M.232 – [PEPSICO / GENERAL MILLS](#), 5 August 1992.

⁶ EC Case No COMP/M.3658 – [ORKLA / CHIPS](#), 3 March 2005; EC Case No COMP/M.1990 – [UNILEVER / BESTFOODS](#), 28 September 2000; EC Cas No COMP/M.1802 – [UNILEVER / AMORAMAILLE](#), 8 March 2000.

Segmentation by branded or own-label

33. Tayto's three pork snack brands (Mr Porky, Midland Snacks, and Jays) [8]. Evidence from customers showed that own-label products constitute a small proportion of the overall pork snacks segment. The CMA has therefore not found it necessary to assess separately the impact of the Merger on own-label and branded products.

Geographic scope

34. The Parties submitted that the geographic frame of reference for pork snacks is UK-wide.
35. The CMA has not found evidence to indicate an alternative geographic frame of reference. Some third parties stated that pork snacks are more popular in some parts of the UK than others, but retailers with branches across the UK said they stock pork snacks nationwide and do not take any regional differentiation into account when making purchasing decisions.

Conclusion on frame of reference

36. For the reasons set out above, the CMA has assessed the impact of the Merger in the supply of pork snacks in the UK. However, given that the CMA has identified no competition concerns on any basis, it has not had to conclude on the appropriate frame of reference.

Competitive assessment – horizontal unilateral effects

37. 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.⁷ Horizontal unilateral effects are more likely when the merging parties are close competitors.
38. The CMA assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC in relation to horizontal unilateral effects in the supply of pork snacks in the UK.

⁷ [Merger Assessment Guidelines](#), from paragraph 5.4.1.

Shares of supply

39. The Parties stated that their combined share of supply of pork snacks in the UK for 2018 (to July 2018) was [70-80]%, with an increment of [10-20]% from RPCC.
40. In the wider CSNP segment, the Parties submitted that their combined share of supply would be [0-5]%, with an increment of [0-5]% from RPCC.
41. While the CMA has, on a cautious basis, considered a narrow frame of reference for the supply of pork snacks, it believes in this case that pork snacks are constrained by the wider CSNP sector (see paragraphs 83 to 106 below), albeit less than pork snacks constrain each other.

Closeness of competition

42. The CMA found that Tayto and RPCC are close competitors in the supply of pork snacks:
 - (a) Tayto's internal documents show that [✂].
 - (b) Customers told the CMA that the Parties' products are similar in terms of taste and content, although RPCC was considered a slightly more premium product and less present in the wholesale channel.
 - (c) Almost all competitors said that the Parties' products are similar in terms of price and quality.
 - (d) According to data from Information Resources Incorporated (**IRI**), 21 retailers stock Tayto's and RPCC's products. Half of wholesalers that responded to the CMA's questionnaire said that they stock both Tayto's and RPCC's pork snacks. However, Tayto could not identify any instance where a Tayto pork snack product had replaced an RPCC pork snack product in a retailer or wholesaler, or vice versa.

Competitive constraints

43. Unilateral effects are more likely where customers have little choice of alternative suppliers or where these alternative suppliers cannot compete effectively.
44. To assess the competitive constraints on the merged entity, the CMA analysed the in-the-market constraints as follows: (i) the competitive strength of the remaining pork snack suppliers; (ii) third-party evidence on the competitiveness of the pork snacks sector; (iii) the extent of brand loyalty in

pork snacks; and (iv) customers' negotiating power. The CMA also assessed the strength of out-of-market constraints from the wider CSNP sector.

In-the-market constraints

Pork snack competitors

45. The Parties identified around 12 pork snacks competitors. According to the Parties, three of these rivals, in particular, have strong brands and are expanding capacity: Freshers Foods (**Freshers**), RayGray / Ace Pub, and G J Simmons & Sons (**Simmons**). The Parties also identified Snaffling Pig as a growing supplier that has won listings in major retailers despite only being founded four years ago.

- *Freshers*

46. Freshers, also known as Openshaws, is a manufacturer of pork snacks. It sells most of its pork snack products through its brands: Freshers, Openshaws, Pub Original, and Butchers.

47. Freshers has an estimated share of supply in Great Britain of [5-10]%.⁸

48. According to IRI data, 11 retailers stock both Freshers' and Tayto's pork snacks. Freshers has listings in major retailers and wholesalers, including Tesco, Asda, Spar, Costcutter & Mace, Londis, Bestway Landmark and Booker.

49. Freshers told the CMA that it is expanding production and could easily increase output in response to an increase in demand for its product, within approximately three months.

50. The CMA believes that Freshers is a credible and significant competitor and that, while it currently has a considerably smaller share of supply than the Parties, it could quickly increase production in response to increased demand for its products.

- *RayGray / Ace Pub*

51. RayGray and Ace Pub share a manufacturing facility and have common directors. RayGray and Ace Pub sell pork snacks through brands including Ray Gray, Mr Trotters, T&J, Uncle Albert, and Black Country. They also

⁸ The Parties could not provide an estimate for the UK but the CMA found no reason to believe that Freshers has a particularly strong position in Northern Ireland.

provide manufacturing capability for co-pack brands, including Alf Turner, Sams, Apollo, Ginco, Pinoys Choice, Mrs Piggy, Evans, Black Country, and Serious Pig.

52. Ray Gray and Ace Pub have a share of supply to UK retailers of approximately [10-20]%.
53. According to IRI data, 12 retailers stock RayGray / Ace Pub's and Tayto's pork snack products. Some wholesalers also told the CMA that that they stock Ray Gray / Ace Pub's products.
54. [✂].
55. Like Freshers, the CMA believes that Ray Gray / Ace Pub is a credible and significant competitor to the Parties, with scope to expand in response to increased demand.
 - *Simmons*
56. Simmons is also a manufacturer of pork snacks. Simmons sells most of its pork snacks through its brands, including Simmons, Simmons Black Country, JT Bostin, and My Tubs.
57. Simmons has a share of supply to UK retailers of approximately [0-5]%.
58. According to IRI data, 6 retailers stock both Simmons' products and Tayto's products.
59. Simmons has been investing in expanding its capacity. Between February 2016 and February 2018, Simmons secured 6 new contracts and hired 3 new members of staff and, between 2017 and 2018, it invested around £400,000.
60. Simmons told the CMA that it has considerable spare capacity and could double its capacity in approximately six months at a cost of £1 million. Simmons also said that it is working with several new customers, as well as expanding its range of products.
61. The CMA believes that Simmons is a credible and growing competitor, and that it would be able to expand in response to further increases in demand for its products.
 - *Snaffling Pig*
62. Snaffling Pig was founded in 2015, and in 2016 secured an investment of £70,000 after appearing on the entrepreneurial TV program, Dragon's Den. Its

founders have successfully marketed Snaffling Pig to wholesalers and retailers, distinguishing themselves through original packaging and new flavourings. They have also created innovative products, such as the *Pig Night In* gift set and pork crackling advent calendars. Snaffling Pig outsources the manufacture of its products to Freshers and Simmons.

63. For the year ending July 2018, Snaffling Pig had a share of supply to retailers of around [0-5]%. However, in 2018, Snaffling Pig won new listings in Sainsbury's, Tesco and Greene King [✂]. The CMA believes that Snaffling Pig's historic share is therefore likely to underrepresent the extent of its competitive constraint on the merged entity.
64. Snaffling Pig is stocked in 14 retailers alongside Tayto's pork snacks. Half of the wholesalers that responded to the CMA's questionnaire also said they stock both Tayto's and Snaffling Pig's pork snacks.
65. Of 51 new listings for pork snack products in retailers over the last three years, Snaffling Pig has won 11, more than any other rival to the Parties. This includes a recent listing in Sainsbury's alongside both Tayto and RPCC.
66. The Parties submitted Kantar data focused on pork snacks that tracked net changes in spend over two years. The data showed that Tayto's Mr Porky brand has lost the largest proportion of spend to Snaffling Pig, with Tayto's Jays brand and RPCC coming second and third in terms of their proportion of spend lost to Snaffling Pig.
67. Snaffling Pig frequently features in Tayto's recent internal documents. [✂].
68. When asked to identify alternative pork snack producers, half of retailers who responded to the CMA's questionnaire mentioned Snaffling Pig, though only a minority of wholesalers mentioned it. A primary competitor of the Parties commended the strength of Snaffling Pig's brand, which it considered to be very popular with consumers.
69. Overall, the CMA believes that Snaffling Pig is a credible, innovative, and growing competitor.

Competitiveness of the pork snacks sector

70. Of the 28 customers who responded to the CMA's merger investigation, just 2 expressed any concerns about the Merger. Customers cited various reasons for their lack of concern, including the constraint from pork snack competitors, the constraint from the wider snack segment, and their negotiating strength due to the large portfolio of snack products they buy from Tayto.

71. Customers repeatedly told the CMA that the pork snacks sector is competitive and that sufficient alternatives would remain post-Merger. For example, they said:
- *‘Given that [a major retailer] only [stocks] one pork product, it is confident it could still find the right product for [...] if it were to move away from Tayto/RPCC and deal with a new supplier, notwithstanding Tayto’s existing market share.’*
 - *‘Because the pork snacks category is so small, [a major retailer] does not think there would need to be many competitors to keep prices low.’*
 - *‘There are a number of potential suppliers of “carded” pork products that [a large wholesaler] could switch to in order to satisfy their customer (professional caterers) requirements.’*
 - *‘We [a major wholesaler] still believe there is competition within the pork snack category to keep the area competitive.’*
 - *‘Overall, [a medium-sized wholesaler] would say that the market to supply pork snacks is a competitive one.’*
72. One of the retailers who expressed a concern said that the Merger may mean that smaller brands would be less able to compete. The other retailer who raised a concern said there may not be enough choice. However, as set out above, the overwhelming response from customers was that, post-Merger, there will remain several credible pork snacks rivals to the merged entity.
73. Of the eight competitors who responded to the CMA’s merger investigation, half expressed no concerns, saying that the market would remain competitive. Those competitors who did raise concerns did not express concern about increased prices or lower quality due to horizontal unilateral effects, but due to other factors in the supply of pork snacks (as discussed at paragraphs 109-110 below).

The extent of brand loyalty

74. Having a strong brand to which consumers are loyal can limit other suppliers’ ability to compete, because consumers may be unwilling to switch away.
75. The CMA found that both Parties promote their brands. In addition, in 2011, when Chris Cunliffe took over RPCC – at that time, principally an own-label business – he developed the RPCC brand as part of his strategy for growing the company.

76. However, the Parties submitted that brand awareness and loyalty are low in the pork snacks sector. The CMA found several pieces of evidence that supported the Parties' submission:
- (a) Kantar data showed that only 12% of total expenditure on pork snacks was accounted for by consumers for whom most of their pork snack spend was on a single pork snack brand. This suggests a high proportion (88%) of pork snack spend is accounted for by consumers who spread their spend across brands, indicating that brand loyalty is relatively weak.
 - (b) Most customers and half of competitors said that there are no must-stock pork snack brands. Most customers said that they would be willing to stock a new brand made by a new entrant if its offer was sufficiently attractive.
 - (c) Research on pork snacks behaviour commissioned by Tayto from [redacted] indicated that *'there is little brand awareness and true affinity, meaning brand is not a big influencer.'* The research also found that, if the product type and packaging are appealing, any pork snack brand stands a good chance of being selected.
 - (d) Tayto's internal documents note that it is hard to determine whether there is any brand loyalty in the pork snacks sector and that [redacted].
77. For these reasons, the CMA believes that, while brand attractiveness is important for customers, brand loyalty is relatively weak in the pork snacks sector. Accordingly, the CMA believes that brand loyalty would not represent a significant barrier for competitors seeking to expand.

Customers' negotiating power

78. The Parties submitted that their customers were able to resist price increases due to low brand loyalty in pork snacks and the existence of credible alternatives with spare capacity, and that this would continue after the Merger.
79. The Parties also provided several examples of customers successfully negotiating down price increases proposed by Tayto. [redacted].
80. The Parties did not provide evidence of any smaller customers resisting price increases. However, the CMA noted that wholesalers (which represent a high proportion of the Parties' smaller customers) generally stock a wider range of brands than retailers (ranges for wholesalers are typically between 3 and 9 pork snack products, compared with between 1 and 3 for retailers). Moreover, no wholesalers expressed any concerns with the Merger.

81. Wholesalers' customers (ie independent retailers, symbol groups and pub chains) typically require a single brand. While Mr Porky has the highest awareness of any pork snack brand among these customers, this would have continued to be the case absent the Merger. Post-Merger, these customers will continue to have a range of alternative brands available through wholesalers as an alternative to Mr Porky.

Conclusion on in-the-market constraints

82. Overall, the CMA believes the Parties will continue to be constrained by four credible competitors, three of which have their own manufacturing facilities and [REDACTED: *Both Simmons and Freshers confirmed that they have considerable spare capacity; Ray Gray / Ace Pub confirmed that there is significant spare capacity among pork snacks manufacturers as a whole*]. The relative lack of brand loyalty in pork snacks, combined with some customers' negotiating strength, reinforces the constraint from these competitors.

Out-of-market constraints

83. As discussed at paragraphs 26 to 30 above, on a cautious basis the CMA assessed the Merger in a frame of reference for pork snacks as the product area where the Parties' activities overlap. To assess the strength of out-of-market constraints from the wider CSNP sector, the CMA also considered the extent of demand- and supply-side substitutability between pork snacks and other types of snack.

Demand-side substitution

- *Third-party evidence*

84. The CMA asked retailers for evidence on the extent to which consumers considered other snacks as alternatives to pork snacks. Most retailers said that pork snacks were a very small part of the overall CSNP market. One major retailer said that adding RPCC and Snaffling Pig to their pork snack offering had little impact on Mr Porky sales. Instead, the listing led to a growth in sales of the overall pork snack category.
85. A large wholesaler explained its lack of concern with the Merger by saying that consumers would be willing to switch to other snack products (ie nuts and pretzels), and that this would constrain any price increase from the Merger. Similarly, a major supplier of CSNP said that there is a high degree of substitutability between all savoury snacks, including pork snacks.

86. However, several retailers, including two major retailers, indicated that there was a loyal consumer base for pork snacks, who would actively seek out pork snacks rather than another kind of snack.
87. Wholesalers who supply the pub industry, and a large pub operator, told the CMA that pork snacks are an important or essential product to stock for pubs. These wholesalers also said that consumers of pork snacks are loyal to the product. Two wholesalers and a pork snacks competitor said that a recent 10% retail price increase for pork snacks (due the increase in the price of pork rind) had a limited impact on the volume of pork snacks sold to pubs.
88. Overall, the third-party evidence suggests that CSNP products provide some constraint on pork snacks, but that at least some pork snack consumers are loyal to pork snacks and would not switch to other CSNP products.
- *Listings and de-listings*
89. Retailers' behaviour in listing and delisting pork snacks may indicate whether retailers view pork snacks as substitutes for other types of snack.
90. The CMA asked retailers whether, in the event they listed a new pork snack product, they would be more likely to replace another pork snack product or a non-pork snack product. Most retailers said they would be more likely to replace a pork snack product with another pork snack product.
91. However, the Parties provided data from IRI on the listings and de-listings of pork snacks in retailers between July 2015 and July 2018. This data shows that, out of 74 delistings of pork snacks, 15 were replaced directly by other pork snacks and 3 were replaced by non-pork snacks. In the remaining cases, there was no clear replacement product. The Parties' analysis of these delistings shows that in 13 delistings, a pork snack of the same pack size was listed within 4 weeks, and in an additional 14 cases a pork snack of a different pack size was listed within four weeks. The Parties consider that in these cases, and in the remaining 29 delistings where no pork snack of any pack size was listed in the following four weeks, it is improbable that other pork snack products would have replaced these products.
92. The CMA believes that the listings and de-listings evidence generally indicates that retailers will replace a major pork snack product with another pork snack product. Pork snacks do, however, compete for shelf space with other types of snack, which replace them on the shelves to a material degree. The evidence is consistent with non-pork snack products constraining pork snacks, albeit to a lesser degree than the constraint from within pork snacks.

- *Kantar Worldpanel data*

93. The Parties submitted an analysis of Kantar Worldpanel consumer survey data. The Kantar Worldpanel data tracks the buying decisions of a panel of consumers to understand their purchasing habits. The Parties compared individual households' purchasing data from the 52 weeks prior to 16 July 2017 (period 1) with data from the 52 weeks prior to 15 July 2018 (period 2) at four major retailers, using the Parties' products as focal points.
94. The Parties' analysis showed the net volumes gained or lost by their products between periods 1 and 2 through net switching within the CSNP category,⁹ as well as the 20 snack products that accounted for the greatest volumes gained or lost. Pork snacks other than the Parties' snacks did not feature among these 20 snack products. The Parties' analysis indicated that net switching by pork snacks consumers is primarily to and from other types of snack product, indicating a constraint from CSNP products.
95. The CMA has two main reservations with this analysis. First, the analysis considered net switching, and therefore did not reflect any switching by consumers between individual snack brands that was offset by switching in the opposite direction by other consumers. Second, because the analysis does not relate to the effects of specific changes in price or other competitive variables, the results are not determinative for demand-side substitution.
96. Nonetheless, the analysis did show that, in some cases, there were considerable volume changes in the Parties' sales of pork snack products that were not associated with net switching between pork snack brands. For example, the data for one retailer showed volume gains by one Party and volume losses by the other Party that were not associated to any extent with net switching between them. Rather, the gaining Party's increased sales came mainly from net switching from non-pork snacks and from increases in total CSNP purchases. The losing Party's volumes were lost mainly to non-pork snacks.
97. The Kantar evidence is therefore consistent with consumers choosing from a wider group of CSNP products than just pork snacks.

⁹ Net switching for a brand represents the net change in purchases by consumers already buying the category in period 1, excluding those due to changes in the volume of category purchases and consumers starting or stopping buying the category.

- *Internal documents*

98. The CMA reviewed the Parties' internal documents. The CMA found that Tayto's internal documents generally suggested that it makes commercial decisions relating to pork snacks as a distinct product segment. Tayto typically considers its three brands of pork snacks together, but separately from its other snack brands.¹⁰
99. On the other hand, in several documents, Tayto considers competition for its pork snack products in a wider CSNP segment, and is seeking to grow the pork snacks sector by attracting new pork snacks consumers:
- (a) An internal strategy document notes Tayto's concern about the wide range of alternative snack products available in retailers, and pork snacks failing to stand out within this broad range.
 - (b) In presentations to retailers, Tayto says that its pork snack brands can and do attract new pork snack consumers. For instance, in a promotional presentation made to a major retailer, Tayto says that '*new category arrivals into [major retailer] pork scratchings have also driven contribution to growth.*' Similarly, in a promotional presentation made to another major retailer, Tayto claims that its Mr Porky crispy strips product will '*bring new shoppers in to the pork category,*' while its Mr Porky crackles product would be a '*great entry point for new consumers.*'
100. Third-party consumer reports commissioned by Tayto also suggest that pork snacks and other types of snacks compete:
- (a) [REDACTED].
 - (b) Another consumer research report commissioned by Tayto found that, among pork snacks consumers, one of the top three reasons for choosing pork snacks was that it was '*an alternative to crisps.*'
101. Overall, the evidence from the Parties' internal documents indicates that pork snacks are the strongest constraint on other pork snacks, but that the wider CSNP segment does constrain the Parties' pork snacks to some extent.

¹⁰ RPCC's internal documents indicated that it compares its pork snacks against rivals' pork snacks. However, this is unsurprising given that it only produces pork snacks and does not produce other CSNP products.

Supply-side substitution

102. Demand-side substitution provides the most immediate and effective constraint on suppliers of a given product.¹¹ However, supply-side factors can expand the market where (i) firms outside the market can quickly (generally within a year) shift production to products within the market, and (ii) the same firms compete to supply these different products, and the conditions of competition are the same.¹²
103. In the present case, the CMA found that different firms compete in the pork snack segment compared with the wider CSNP sector. Moreover, different production assets and raw materials are required to produce pork snacks compared with other savoury snacks.
104. Major CSNP suppliers who do not currently produce pork snacks told the CMA that they had no plans in the short- to medium-term to enter the supply of pork snacks. One of these potential entrants said that, if it were to enter the pork snacks market in the UK, it would do so via a co-manufacturing agreement rather than converting existing facilities currently being used to make other snack products.
105. The CMA believes this evidence consistently suggests that there is little constraint on pork snacks producers from the producers of other CSNP products based on supply-side substitution.

Conclusion on out-of-market constraints

106. Overall, based on demand-side substitutability for many customers, the CMA believes that non-pork snack products constrain the Parties' pork snack products, additional to the primary constraint from rival pork snack products.

Conclusion on horizontal unilateral effects

107. For the reasons set out above, the CMA believes that, although the Parties have a high combined share of supply and are close competitors in the supply of pork snacks, sufficient competitive constraints will remain post-Merger.
108. Accordingly, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in the supply of pork snacks in the UK.

¹¹ *Merger Assessment Guidelines*, paragraph 5.2.6.

¹² *Ibid*, paragraph 5.2.17.

Third-party views

109. The CMA contacted customers, competitors and a supplier of the Parties, and has taken their views into account in its assessment above. The vast majority of customers raised no concerns with the Merger.
110. Of the 8 competitors that responded to the CMA's merger investigation, half expressed concerns, but none about horizontal unilateral effects arising from the Merger. Rather, these competitors raised a concern that the Merger would affect access to pork rind, especially from Danish Crown. Danish Crown told the CMA that pork snack producers account for a very small proportion of its sales of pork rind. Accordingly, even the enlarged merged entity would not be able to exert control over rind supply. For this reason, the CMA does not believe the Merger will have a material impact on rivals' access to pork rind (from Danish Crown or otherwise).

Decision

111. 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.
112. The Merger will therefore **not be referred** under section 22(1) of the Act.

Mike Walker

Chief Economic Adviser

Competition and Markets Authority, 13 November 2018