

# **Anticipated acquisition by Samworth Brothers Limited of the Manton Wood manufacturing site of Boparan Holdings Limited**

## **Decision on relevant merger situation and substantial lessening of competition**

**ME/6769/18**

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 24 December 2018. Full text of the decision published on 24 January 2019.

**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. Samworth Brothers Limited (**Samworth Brothers**) has agreed to acquire the business, employees, lease and assets of the Manton Wood sandwich manufacturing site (the **Target Business**) from Solway Foods Limited, a wholly-owned subsidiary of Boparan Holdings Limited (the **Merger**). Samworth Brothers and the Target Business 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 Samworth Brothers and the Target Business is an enterprise; that these enterprises will cease to be distinct as a result of the Merger; and that the turnover test is met. 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 both manufacture and supply sandwiches, including triangular sandwiches, wraps and rolls, to retail customers, eg supermarkets and food service customers, in the UK.

4. The CMA assessed the impact of the Merger on the supply of manufactured sandwiches to customers in Great Britain.<sup>1</sup> On a cautious basis, the CMA also considered the supply of manufactured sandwiches to retail customers only.
5. While the Parties have a combined share of supply of around [20-30]% in the supply of manufactured sandwiches to retail customers in Great Britain, the CMA has found that the Parties are not close competitors. The evidence shows that the Target Business exerted only a very limited competitive constraint on Samworth Brothers pre-Merger. The CMA found that, post-Merger, the merged entity will face similar competitive constraints from other suppliers of manufactured sandwiches as prior to the Merger.
6. 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.
7. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).

## ASSESSMENT

### Parties

8. Samworth Brothers is a UK registered company active in the manufacture and supply of sandwiches, salads, savoury pastry, ready meals, sausages and cooked meats, desserts and cakes, bakery and sports nutrition. Samworth Brothers' turnover in 2017 was approximately £1.02 billion worldwide, of which all was generated in the UK.
9. The Target Business's Manton Wood manufacturing site is wholly-owned and operated by Solway Foods Limited, a wholly-owned subsidiary of the 2 Sisters Food Group, which is itself wholly owned by Boparan Holdings Limited (the **Seller**). The Target Business currently produces and supplies manufactured sandwiches to only one retail customer, Tesco.<sup>2</sup> The Target Business previously also supplied sandwiches to one food service customer, [REDACTED], but this contract expired in 2014.<sup>3</sup> The Seller also previously produced and supplied sandwiches, wraps and rolls at another production site (Gunstones) [REDACTED]. However, that production site [REDACTED] and is not part of the Merger. The

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<sup>1</sup> The Parties are also active in Northern Ireland, but due to their limited activity in Northern Ireland, the CMA has found no plausible basis for competition concerns arising from the Merger in Northern Ireland.

<sup>2</sup> The Target Business also produces manufactured sandwiches for Tesco's wholly-owned subsidiary OneStop [REDACTED].

<sup>3</sup> It also conducted a trial supply of self-service breakfast sandwiches in frozen form [REDACTED] in 2015.

turnover of the Target Business in the financial year ending July 2018 was approximately [X] million worldwide, of which all was generated in the UK.

## Transaction

10. The Merger involves the proposed acquisition by Samworth Brothers of the business, employees, lease and assets of the Target Business pursuant to a sale and purchase agreement entered into on 30 October 2018.

## Jurisdiction

11. Each of Samworth Brothers and the Target Business is an enterprise within the meaning of the Act. As a result of the Merger, these enterprises will cease to be distinct.
12. The UK turnover of the Target Business exceeds £70 million so the turnover test in section 23(1)(b) of the Act is satisfied.
13. 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.
14. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 26 November 2018 and the statutory 40 working day deadline for a decision is therefore 23 January 2019.

## Counterfactual

15. 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.<sup>4</sup>
16. In the present case, there is no evidence supporting a different counterfactual, and the Parties and third parties have not put forward arguments in this

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<sup>4</sup> *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).

respect. Therefore, the CMA believes the prevailing conditions of competition to be the relevant counterfactual.

## Frame of reference

17. 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.<sup>5</sup>
18. The Parties overlap in the manufacture and supply of sandwiches, wraps and rolls to retail and food service customers in the UK.

## Product scope

19. The Parties both supply manufactured sandwiches, including sandwich triangles, wraps and rolls, to grocery retailers. In addition, Samworth Brothers supplies manufactured sandwiches to food service customers, such as coffee shop chains and catering companies.

## *Supply to retail customers and food service customers*

20. In the OFT's<sup>6</sup> investigation of Greencore Foods Limited's acquisition of Uniq plc (**Greencore/Uniq**), the OFT identified a separate frame of reference for the supply of manufactured sandwiches (including sandwich triangles, wraps and rolls) to retail customers based on the scale of production required by large retail customers.<sup>7</sup> In previous cases the OFT distinguished separate frames of reference for retail customers and food service customers due to differences such as pack sizes, service levels, brand sensitivity, and health and safety requirements, and a lack of common suppliers for these customer groups.<sup>8</sup>
21. In the present case, the Parties submitted that the segmentation between retail and food service customers is not appropriate for the following reasons:

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<sup>5</sup> *Merger Assessment Guidelines*, paragraph 5.2.2.

<sup>6</sup> The OFT, together with the Competition Commission, are the predecessors of the CMA.

<sup>7</sup> OFT decision of 23 September 2011 in case ME/5117/11, anticipated acquisition by *Greencore Foods Ltd of Uniq plc*, paragraph 14.

<sup>8</sup> OFT decision of 23 September 2011 in case ME/5117/11, anticipated acquisition by *Greencore Foods Ltd of Uniq plc*, paragraph 11.

- a) Manufactured sandwiches sold to retail and food service customers are directly substitutable from a demand-side perspective, as there are no material differences in quality, packaging, range or container size. There is also little brand-sensitivity in relation to manufactured sandwiches.
  - b) There is indirect demand-side substitution as manufactured sandwiches sold by retailers and food service customers compete at the end-consumer level.
  - c) There is also supply-side substitutability as the production process, equipment, safety regimes and delivery methods for manufactured sandwiches are the same regardless of customer type. The same firms supply both types of customer under the same conditions of competition and switch capacity regularly to serve the other customer type. Large retailers and large food service customers both require significant volumes, and the same suppliers with scale and capacity serve both segments. Moreover, it is not always the case that customers purchase all of their supply requirements from one supplier, so smaller suppliers can still supply large customers (in either retail or food service).
22. All competitors that responded to the CMA's merger investigation confirmed that they supply sandwiches to both retail and food service customers. However, customers and competitors also said that, with limited exceptions, retail customers source all of their demand for sandwiches from a single supplier, working closely with this supplier in a long-term relationship. The CMA notes that, as for the merging parties in Greencore/Uniq, the Parties are both suppliers which have the scale of production required to supply large retail customers. The CMA also notes that for the last four years, the Target Business has supplied only one customer, Tesco, and does not currently supply any food service customers.
23. For these reasons, and on a cautious basis, the CMA has considered the impact of the Merger on the supply of manufactured sandwiches to retail customers separately in its competitive assessment.
24. However, the CMA did not need to conclude on the product frame of reference as it identified no competition concerns on any basis.

### ***Geographic scope***

25. The Parties submitted that the market for the supply of manufactured sandwiches is national (UK-wide) given that both the main suppliers and their

main customers supply and procure manufactured sandwiches on a national basis. The Parties also said that, from the supply side, manufacturers' distribution capabilities mean that they can manufacture sandwiches at a single location and distribute them throughout the UK within 24-30 hours of production. Therefore, only one manufacturing site is required to deliver sandwiches across the UK.

26. The Parties' relevant activities mainly overlap in Great Britain and they generate only limited turnover in Northern Ireland.
27. Some third parties suggested that it could be appropriate to have separate geographic frames of reference for Great Britain and Northern Ireland. One competitor said that the short product life of sandwiches means that it is less practicable to supply Northern Ireland from a production site in England, and another competitor told the CMA that it is currently unable to supply customers in Northern Ireland. The majority of customers which responded to the CMA's market investigation and which procure manufactured sandwiches for sale in Northern Ireland said that they often source from a different supplier for their Northern Ireland sales.
28. For these reasons, and on a cautious basis, the CMA has assessed the impact of the Merger in Great Britain.
29. However, the CMA did not need to conclude on the geographic frame of reference as it identified no competition concerns on any basis.

### ***Conclusion on frame of reference***

30. For the reasons set out above, the CMA has assessed the impact of the Merger in the supply of manufactured sandwiches to customers, and separately to retail customers, in Great Britain.<sup>9</sup>
31. 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.

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<sup>9</sup> As the combined share of supply of the merged entity in Northern Ireland is limited (below [10-20]%), with an increment of less than 5%, the CMA believes that the Merger does not give rise to plausible competition concerns with regard to the supply of manufactured sandwiches in Northern Ireland. Therefore, this potential frame of reference is not discussed further in this decision.

## Competitive assessment

### *Horizontal unilateral effects*

32. 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.<sup>10</sup> Horizontal unilateral effects are more likely when the merging parties are close competitors.
33. 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 manufactured sandwiches to customers in Great Britain. The CMA considered the Parties' shares of supply, the closeness of competition between the Parties, and the remaining competitive constraints.

### *Shares of supply*

34. The Parties submitted that their combined share of supply of manufactured sandwiches to retail and food service customers in Great Britain in 2017 was around [20-30]%, with an increment of [5-10]% (as shown in Table 1).

**Table 1 Share of supply in GB of manufactured sandwiches to all customer types, 2017**

<b>Supplier</b>	<b>Value (£million)</b>	<b>Share of supply (%)</b>
Samworth Brothers	[X]	[10-20]
Target Business	[X]	[5-10]
<i>Combined Entity</i>	<i>[X]</i>	<i>[20-30]</i>
Greencore	[X]	[50-60]
Adelie Foods	[X]	[10-20]
Bakkavor	[X]	[0-5]
Others	[X]	[5-10]
<b>Total</b>	<b>[X]</b>	

Source: Samworth Brothers' estimates.

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<sup>10</sup> [Merger Assessment Guidelines](#), from paragraph 5.4.1.

35. In the supply of manufactured sandwiches to retail customers only, the Parties submitted that they had a combined share of supply in Great Britain in 2017 of around [20-30]%, with an increment of [10-20]% (as shown in Table 2).

**Table 2 Share of supply in GB of manufactured sandwiches to retailers, 2017**

Supplier	Value (£million)	Share of supply (%)
Samworth Brothers	[X]	[10-20]
Target Business	[X]	[10-20]
<i>Combined Entity</i>	[X]	<i>[20-30]</i>
Greencore	[X]	[60-70]
Adelie Foods	[X]	[0-5]
Bakkavor	[X]	[0-5]
Others	[X]	[0-5]
<b>Total</b>	<b>[X]</b>	

Source: Samworth Brothers' estimates.

36. The Parties submitted that shares of supply can fluctuate as retailers tender their contracts and suppliers win and lose volumes of supply from one another. However, the CMA believes that the presence of long term rolling contracts for the supply of manufactured sandwiches means that substantial changes in shares of supply do not happen frequently.
37. Although the Parties' combined share of [20-30]% in the supply of manufactured sandwiches to retail customers is not particularly high (and is lower when including all customers), the CMA notes that the market is highly concentrated, in particular with one very large competitor.

### ***Closeness of competition***

38. The Parties submitted that they are not each other's closest competitor in the supply of manufactured sandwiches to retail and food service customers. While Samworth Brothers supplies customers across retail and food service channels, the Target Business only supplies Tesco, with whom it has had a long-standing relationship for 18 years. Although the Target Business supplied small volumes of manufactured sandwiches to [X] until 2014, it has not supplied any customer other than Tesco for four years.
39. In assessing the closeness of competition between the Parties, the CMA has considered (i) the degree to which the Parties compete for customers; (ii) the Parties' internal documents; and (iii) third party evidence.



### *Competition for customers*

40. Bidding data supplied by the Parties, customers and competitors showed that Samworth Brothers and the Target Business are not close competitors. The Target Business competed against Samworth Brothers in only two out of around 20 tenders in the past five years.<sup>11</sup> The Target Business was only successful in [REDACTED]. The Target Business has not bid successfully to supply [REDACTED].
41. The data shows that Samworth Brothers has more frequently competed for retail and food service customers against Greencore and Adelle Foods. Greencore has been particularly successful in winning retail and food service customers. [Information gathered] from Samworth Brothers indicates that Greencore won [a significant number] [REDACTED] for which Samworth Brothers bid.
42. Whilst the Seller has also been active historically in the supply of manufactured sandwiches from its Gunstones site, the bidding data received by the CMA shows only one example of the Seller's Gunstones site competing against Samworth Brothers. Moreover, [REDACTED] bids from the Gunstones site in the last five years were [REDACTED]. The Seller stated that it has [REDACTED], and it has not [REDACTED].

### *Internal documents*

43. Samworth Brothers' internal documents confirmed that it does not consider the Target Business as a close competitor. Several of Samworth Brothers' competitor analysis documents name Greencore as the market leader and as its [REDACTED]. The Seller is mentioned in some documents but always below Greencore and alongside or below other competitors, including Adelle Foods and Bakkavor.
44. Several of Samworth Brothers' internal documents indicate that Adelle Foods is a closer competitor than the Seller. Adelle Foods is consistently referred to as either a [REDACTED] or [REDACTED] competitor and one of the documents refers to Samworth Brothers competing with Adelle Foods [REDACTED]. Other Samworth

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<sup>11</sup> The CMA is aware of around 20 tenders based on the bidding data supplied by the Parties, customers and competitors. The Parties submitted bidding data covering the last five years. Bidding data from customers and competitors covered the last three years.

Brothers' internal documents show that it was not successful in winning [REDACTED]<sup>12</sup> and [REDACTED]<sup>13</sup> tenders against Greencore and Adelle Foods.

45. The internal documents provided by the Seller similarly indicate that Samworth Brothers was not, generally, seen as a close competitor. A document from the Target Business dated 2017, which contains an overview of the strengths and weaknesses of its competitors in sandwiches, wraps and rolls, mentions Greencore, Bakkavor, Samworth Brothers and Meal Solutions, but indicates clearly that [REDACTED] is the biggest constraint. [REDACTED] and [REDACTED] are identified next, and then [REDACTED].
46. The Seller's documents also make some comparisons of its service against its rivals. The Seller's strategic plan documents refer to its relatively small size compared to [REDACTED]. Other documents note that the Seller's delivery capability does not match that of [REDACTED].
47. Some of the Seller's internal documents showed that the Seller viewed Samworth Brothers as a close competitor to the Target Business with regard to sales to Tesco, which used both suppliers. For example:
  - (a) In 2015, Tesco undertook a Supplier Base Review for sandwiches, in which both Parties participated. The internal documents supplied by the Seller show that the Target Business considered Samworth Brothers and Bakkavor as competitors for Tesco. The Seller's objectives included '[REDACTED]'.<sup>14</sup> The Seller needed to demonstrate that '[REDACTED]'.<sup>15</sup>
  - (b) An internal document from [REDACTED] stated that '2SFG [2 Sisters Food Group] has gained ground in [REDACTED], pushing its [REDACTED]'.<sup>16</sup>
48. This evidence suggests that the Target Business competed closely with Samworth Brothers and Bakkavor to supply Tesco. These suppliers all had long-term supply relationships with Tesco, which unlike most other retailers, continued to multi-source its manufactured sandwiches from different suppliers. The CMA understands that these different suppliers competed to gain an increasing share of Tesco's demand for manufactured sandwiches.

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<sup>12</sup> See document 31. [REDACTED]. 'We have had feedback today on the [REDACTED] tender. [REDACTED] - we are between [REDACTED] - according to the buyer we are dealing with. The current situation is that circa [REDACTED] sits with [REDACTED] and circa [REDACTED] sits with [REDACTED]. The buyer has told us that [REDACTED] have crashed their prices to gain 100% of the business. From what he has said we believe [REDACTED].'

<sup>13</sup> 1. Re [REDACTED]: 'Will be [REDACTED] as [REDACTED] will be [REDACTED] and [REDACTED] should have some kind of [REDACTED] especially given the [REDACTED] - so we are [REDACTED].'

<sup>14</sup> [REDACTED].

<sup>15</sup> [REDACTED].

<sup>16</sup> [REDACTED].

49. On the basis of the internal document evidence, and consistent with the evidence from tender data, the CMA believes that Samworth Brothers and the Target Business did not perceive each other as close competitors, other than with regard to sales to Tesco.

*Third party evidence*

50. The majority of third parties that responded to the CMA's questionnaire said that the Target Business is not a close competitor to Samworth Brothers.
51. No customer identified the Parties as each other's closest competitor. For the Target Business, four customers listed Samworth Brothers as its second closest competitor, behind Greencore, and three listed it as its third closest competitor, behind Greencore and either Adelle Foods or Bakkavor. For Samworth Brothers, one customer listed the Target Business as its second closest competitor and four listed it as its third closest competitor.
52. A minority of customers raised concerns about the Merger. However, in every case these customers had either not considered the Target Business as a supplier in the past five years or had found that it did not meet their requirements.
53. Tesco told the CMA that it did not have any competition concerns about the Merger. Rather, Tesco said that it supported the Merger [REDACTED].
54. Several third parties noted that the Target Business had a weakness in its limited distribution network. For example, one customer [REDACTED] said that, in its tender process in [REDACTED] it had found that the Target Business lacked the required distribution network, subsequently awarding the contract to [REDACTED]. Similarly, another third party [REDACTED] said that, following a very competitive tender in [REDACTED], it decided not to progress with the Target Business due to its limited supply chain capability. Another third party confirmed that the order management and distribution capability of Samworth Brothers is a key point of difference compared with the Target Business.
55. With regard to the supply of manufactured sandwiches to retail customers only, the Parties submitted that Samworth Brothers and the Target Business competed for one retail customer, Tesco. The Parties submitted that the Target Business's focus on supplying Tesco, and its incentive to retain Tesco as a customer, meant that it has not been a credible potential supplier to any other retail customer. The Seller's internal documents broadly confirm this view. In the context of [REDACTED]'s tender in [REDACTED], the option to supply manufactured sandwiches from the Target Business's site was considered but ruled out on the basis that the Target Business's production volume was [REDACTED].

56. The CMA also received evidence to suggest that the Target Business's limited distribution capability (discussed above) may be a particularly important point of difference between the Parties in the context of supply to retail customers. A competitor explained that large retail customers want suppliers to be responsible for order management and distribution, as their central distribution systems are set up for out-of-town delivery but are not as effective for their smaller, less accessible stores.

*Conclusion on closeness of competition*

57. On the basis of this evidence, the CMA believes that the Parties are not close competitors. The evidence indicates that the Target Business exerted only a very limited competitive constraint on Samworth Brothers pre-Merger, whether for all retail and food service customers, or for retail customers only. The only customer for which the Parties competed to gain share from each other was Tesco, which has stated that it has no concerns about the Merger.

***Competitive constraints***

58. The Parties submitted that, post-Merger, Greencore will remain the clear market leader, with over 50% of the supply of manufactured sandwiches to retail and food service customers. Greencore has a comparable product offering to the Parties and has won many retail and food service tenders at both large and small volumes. The Parties said that Greencore would have the requisite capacity and distribution infrastructure to serve Tesco, and therefore will exercise a constraint on the merged entity for this customer. They noted that Greencore currently supplies other products to Tesco (in the prepared meals category).
59. The Parties also said that they will continue to face competitive constraints from Adelie Foods and Bakkavor, and from a large number of smaller suppliers, eg On a Roll and The Brunch Box Sandwich Co. The Parties submitted that these suppliers have the potential to expand their production and thereby increase their constraint on the Parties post-Merger.
60. The bidding data supplied by the Parties and third parties confirmed that Greencore and Adelie Foods are both highly active in bidding for retail and food service contracts and other suppliers, such as On a Roll and Tasties, are present.
61. A large majority of the third party customers who responded to the CMA's questionnaire said that Greencore and Adelie Foods are close competitors to the Parties.

62. With regard to supply to retail customers only, the Parties submitted that they will face strong competition from Greencore, as well as from Adelle Foods, Bakkavor and several smaller providers with the ability to expand capacity.
63. The CMA has received evidence that [X] is currently considering the possibility of expanding its production through investing in a new facility, and another smaller supplier [X] told the CMA that it has built a large production facility, it has plans to build another factory to gain national coverage, and it is improving its distribution network. It said that it is now actively seeking larger supply contracts from retail and food service customers.
64. On the basis of this evidence, the CMA believes that the merged entity will continue to face competition from other suppliers of manufactured sandwiches post-Merger, in particular from Greencore and Adelle Foods. Given the limited competition between the Parties, these constraints will be similar to prior to the Merger.

#### *Conclusion on horizontal unilateral effects*

65. 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 manufactured sandwiches to customers, or in the supply of manufactured sandwiches to retail customers, in Great Britain.

#### ***Barriers to entry and expansion***

66. 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.
67. 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.

#### ***Countervailing buyer power***

68. The Parties submitted that most of their customers possess significant countervailing buyer power.
69. Some third party customers said that they could manage their supplier relationships in the event of a price increase by, for example, supporting and sourcing alternative suppliers.
70. However, given the conclusions above, the CMA did not consider it necessary to conclude on countervailing buyer power.

## **Third party views**

71. The CMA contacted customers and competitors of the Parties. Only very few third parties who responded to the CMA's merger investigation raised competition concerns.
72. Third party comments have been taken into account where appropriate in the competitive assessment above.

## **Decision**

73. 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.
74. The Merger will therefore not be referred under section 33(1) of the Act.

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**Competition and Markets Authority**  
**24 December 2018**