

CMA/48/2019

Anticipated acquisition by PepsiCo Inc. of Pipers Crisps Limited

Decision on relevant merger situation and substantial lessening of competition

ME/6781/18

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 30 January 2019. Full text of the decision published on 21 February 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. PepsiCo Inc. (**PepsiCo**) has agreed to acquire Pipers Crisps Limited (**Pipers**) (the **Merger**). PepsiCo and Pipers 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 PepsiCo and Pipers is an enterprise; that these enterprises will cease to be distinct as a result of the Merger; and that the share of supply 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 overlap in the supply of conventional and premium potato crisps to three categories of UK customers: (i) foodservice (**Away From Home**, or **AFH**), ii) large grocery retailers with national scope (**grocery retail**), and (iii) smaller retail outlets (**impulse**). Each of these channels serves differing end-user (**consumer**) demands, which affects their purchasing decisions. Evidence from third parties also indicated that end-users and therefore customers in each of the above sales channels distinguished between conventional and premium potato crisps on the basis of packaging, flavourings and the fact that potato crisps are hand-cooked to some extent.

4. The CMA has therefore assessed the impact of the Merger considering both (i) premium crisps only and (ii) all potato crisps sold in the UK through the (i) AFH, (ii) grocery retail, and (iii) impulse channels. It has considered whether the Merger could give rise to horizontal unilateral effects in these frames of reference.
5. The evidence available to the CMA indicates that:
 - (a) The Merger represents a limited increment to the Parties' existing position in the supply of all potato crisps and premium potato crisps across all channels;
 - (b) The Parties do not compete closely and there is no realistic prospect of them doing so in the foreseeable future absent the Merger;
 - (c) The Parties will continue to face sufficient competitive constraint from a number of credible competitors post-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 in the supply of potato crisps or premium potato crisps to UK customers of any type in any channel.
7. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).

ASSESSMENT

Parties

8. PepsiCo is a multinational company whose UK product portfolio consists of snacks, juices, grains and beverages. It produces, distributes and sells potato crisps to UK customers under the Walkers range, which includes Walkers Sensations and Walkers Market Deli. The UK turnover of PepsiCo in the financial year ended 31 December 2017 was £[REDACTED].
9. Pipers is a UK-headquartered company which produces, distributes and sells exclusively premium potato crisps under a single brand primarily to UK customers. For the financial year ended 31 January 2018, the turnover of Pipers was £11.4 million, £10.4 million of which was generated in the UK.

Transaction

10. Under the Merger, PepsiCo will buy the entire issued share capital of Pipers for £[REDACTED].

11. PepsiCo's stated rationale for the Merger was to allow it to compete more effectively in the premium potato crisp segment, especially in the AFH channel.

Jurisdiction

12. Each of PepsiCo and Pipers is an enterprise. As a result of the Merger, these enterprises will cease to be distinct.
13. The Parties overlap in the supply of potato crisps in the UK to (i) AFH customers, (ii) grocery retail, and (iii) impulse customers. PepsiCo's shares of supply surpass 25% in each of these areas of overlap, with the acquisition of Pipers resulting in an increment of between <1 and [5-10]% in each one.¹ The CMA therefore believes that the share of supply test in section 23 of the Act is met.
14. On this basis, the CMA 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.
15. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 17 December 2018 and the statutory 40 working day deadline for a decision is therefore 13 February 2019.

Counterfactual

16. 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.²

¹ PepsiCo provided shares of supply for the year to 1 September 2018, measured by retail sale value (**RSV**) for grocery retail and impulse, and net revenue for AFH customers. See competitive assessment below for further details.

² *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).

17. Prior to agreeing the Merger, the Parties were each considering growth opportunities, either by expanding or launching new products in certain sales channels.
18. PepsiCo submitted it had been considering launching a new premium potato crisp brand aimed at the AFH sales channel [REDACTED]. However, PepsiCo submitted that the proposal had not been approved and was unlikely to go ahead for a number of reasons, [REDACTED].
19. PepsiCo provided some documents intended to summarise the latest thinking in relation to these plans within PepsiCo. [REDACTED].³ However, none of these documents confirmed that the project had not been approved or was definitively abandoned. In addition, the CMA notes that discussions regarding this product launch were taking place at the same time as the Merger was in contemplation and it is not clear whether considerations regarding this product were influenced by the ongoing Merger discussions.
20. The CMA has therefore considered the implications of PepsiCo's plans in its competitive assessment at paragraph 62 below. Nonetheless, given that no competition concerns arise even when considering the possibility of a new product launch by PepsiCo, the CMA has not found it necessary to conclude on whether it was realistic that such plans would have been implemented absent the Merger.
21. Some of Pipers' internal documents discuss a plan to grow its position in grocery retail.⁴ The CMA has considered the implications of Pipers implementing these plans in its competitive assessment. The CMA found that even assuming a successful execution of these plans, Pipers would not have become a close competitor to PepsiCo in grocery retail in the foreseeable future (see paragraphs 76-78). The CMA has therefore not found it necessary to conclude on whether it is realistic that Pipers would have grown its position in grocery retail absent the Merger.
22. There is no evidence supporting a different counterfactual in relation to the impulse channel. Therefore, the CMA believes the prevailing conditions of competition to be the relevant counterfactual in relation to this channel.

Frame of reference

23. Market definition provides a framework for assessing the competitive effects of a merger and involves an element of judgement. The boundaries of the

³ [REDACTED].

⁴ [REDACTED].

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.⁵

Product scope

Introduction

24. PepsiCo supplies multiple potato crisp products under its Walkers range. PepsiCo submitted that only two of its brands are positioned as a higher-end or 'premium' offering: Walkers Sensations and Walkers Market Deli. However, PepsiCo submitted that [redacted] PepsiCo does not manufacture any potato crisps using the hand-cooked method, which is considered an important marker of a premium offering.
25. PepsiCo supplies potato crisps to customers active in three different sales channels serving different consumer needs: (i) AFH customers, (ii) grocery retail, and (iii) impulse customers. The AFH channel captures sales made to consumers primarily through (i) cafes, pubs and fast-food restaurants; and (ii) contract caterers. The grocery retail channel captures sales made to consumers through large grocery retailers with national scope. The impulse channel captures sales made to consumers through smaller retail outlets, such as stores being operated by independent retailers, and stores in petrol station forecourts. AFH and impulse customers typically either procure from the Parties directly or via wholesalers.
26. PepsiCo sells all its brands through all channels, though its sales of Walkers Market Deli have been relatively limited across all channels and its sales of Walkers Sensations have been particularly limited in the AFH channel.
27. Pipers supplies exclusively hand-cooked premium potato crisps in 10 different gourmet flavours under a single brand. It supplies these products predominantly to the AFH channel and does not currently supply the grocery retail channel.
28. The CMA considered whether the market for potato crisps should be (i) widened to include all savoury snacks, (ii) segmented by premium and

⁵ [Merger Assessment Guidelines](#), paragraph 5.2.2.

conventional (non-premium), (iii) segmented by branded and own-label, and (iv) segmented according to sales channel and customer type.

Potato crisps and other savoury snack products

29. The Parties submitted that potato crisps form part of a wider market for the supply of savoury snacks on the basis of relevant decisional practice.⁶ In previous cases, the European Commission (**EC**) and UK competition authorities have indicated that it may be appropriate to assess competition across all savoury snack products, without reaching a definite conclusion.⁷ However, on a cautious basis, relevant authorities have assessed the impacts of relevant mergers using a narrower frame of reference. In *Diamond Foods / Pringles*, for example, the Office of Fair Trading (**OFT**) used a frame of reference which included potato crisps and extruded potato snacks like Pringles.⁸
30. All competitors who responded to the CMA's Merger investigation indicated that potato crisp products compete against products across the entire savoury snacks category. Some competitors said that there was considerable consumer (end user) switching between potato crisps and other savoury snack products (and vice versa). Most competitors also indicated that customers replace potato crisps with other snack products, for example, in favour of healthier savoury snacks or other savoury snacks that yield higher margins.
31. However, a large majority of customers (in retail and AFH) who responded to the CMA's Merger investigation indicated that they were most likely to replace a premium potato crisp product with another premium potato crisp product, as opposed to another savoury snack product. When asked to list alternatives to the Parties, customers almost exclusively mentioned competing potato crisp products. A few mentioned extruded snack products made from potatoes (ie Pringles and Hula Hoops). None mentioned a product which was neither a potato crisp product nor an extruded snack product made from potatoes.

⁶ The Parties submit that the savoury snacks category includes the following: potato crisps, extruded snacks (for example Pringles), tortilla chips (for example Doritos), popcorn, fruit and vegetable chips, pork snacks (for example pork scratchings), pretzels, pitta and bagel chips, nuts and seeds, bread snacks, other grains snacks, trail mix, salsa and dips, and meat jerky.

⁷ CMA Case, [Tayto Group / Real Pork Crackling Company](#), 13 November 2018; 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.2275 – [PEPSICO / QUAKER](#), 27 March 2001; EC Case No IV/M.232 – [PEPSICO / GENERAL MILLS](#), 5 August 1992.

⁸ Pringles, as well as Hula Hoops, are an extruded snack made from dough whose primary ingredient is dehydrated potato flakes.

32. In some of their internal documents, the Parties consider that they compete within a wider savoury snacks market.⁹ Nevertheless, most internal documents which assess competition focus on competitors' potato crisps products and, to a lesser extent, extruded products made from potatoes.¹⁰
33. Overall, evidence from third parties and internal documents suggests that other savoury snack products may constrain potato crisps, but they are not as close substitutes for potato crisps as potato crisps are for each other. As a result, on a cautious basis, the CMA has assessed the impact of the merger using a narrow frame of reference that excludes other savoury snack products. However, where necessary, the CMA has considered the constraint from other savoury snack products in its competitive assessment. Given that the CMA has identified no competition concerns on this cautious basis, it was not necessary for the CMA to conclude on the appropriate frame of reference.

Premium potato crisps and conventional potato crisps

34. The Parties submitted that while they considered the relevant product frame of reference to include all savoury snacks, within the potato crisps segment it was possible to identify a narrower subsegment of premium potato crisps. The Parties noted that, in contrast to conventional potato crisps, premium potato crisps are differentiated by inter alia methods of manufacture, branding with a focus on local produce and heritage, more esoteric flavours, high quality packaging, and different marketing. The Parties noted that the method of manufacture was a particularly important distinguishing point as the overwhelming majority of premium potato crisps are manufactured using a traditional kettle fryer which involves some element of human interaction and is therefore described or labelled as 'handmade' or 'hand-cooked'.
35. Consistent with this, in their internal documents the Parties distinguish between premium potato crisps and conventional, or non-premium, potato crisps.¹¹ In addition, PepsiCo has been attempting to create a successful premium potato crisp product for at least 10 years, [REDACTED] (see paragraph 57(a)). In its internal documents, Pipers places itself as a premium potato crisps company and primarily tracks its performance against that of competing premium brands, such as Kettle and Tyrrells.¹²
36. The Parties' customers confirmed that there was a distinction between premium and conventional potato crisps based on a range of features.

⁹ [REDACTED].
¹⁰ [REDACTED].
¹¹ [REDACTED].
¹² [REDACTED].

37. Consistent with the Parties' submissions, the most frequently cited distinguishing feature between premium and conventional potato crisps was that premium potato crisps are typically manufactured using a hand-cooked method. Customers also said that premium potato crisps are typically sold in higher-quality packaging which may contain references to the origin of the potatoes used as inputs. The range and composition of flavourings play an additional role in distinguishing premium potato crisps. Overall, according to customers, premium potato crisps are perceived by consumers as a high-quality and 'unique' product.
38. The majority of the Parties' customers also indicated that conventional crisps are not an alternative to premium potato crisps. Some customers noted that while consumers may switch from conventional to premium potato crisps if the latter's price decreased to the price of the former, there would be limited switching the other way around. For this reason, some customers stated that they would consider buying only premium potato crisps.
39. On a cautious basis, the CMA considered it appropriate to assess the impact of the Merger in relation to both (i) all potato crisps, including both conventional and premium crisps, and (ii) premium potato crisps. The CMA discusses the distinction between premium and conventional potato crisp products in more detail, including how third parties categorise the Parties' brands and competitor brands, in the competitive assessment. However, given that the CMA has identified no competition concerns on any basis, it was not necessary to conclude on the appropriate frame of reference.

Branded and own-label

40. Own-label potato crisps account for a very small proportion of sales of all potato crisps and premium potato crisps in both the AFH and impulse channels. Own-label potato crisps constitute a significant proportion of all potato crisps and premium potato crisps sold in grocery retail. However, the CMA's conclusions in relation to the grocery retail channel do not change if sales from own-label potato crisps are excluded. The CMA has therefore not found it necessary to reach a conclusion on the product frame of reference or to assess separately the impact of the Merger on own-label and branded products.

Segmentation by sales channel/customer type

41. In past decisions relating to food products the EC has distinguished between the retail and AFH channels.¹³ Among the reasons cited were differing consumer needs depending on whether they are buying food products in AFH or retail, which affects these customers' purchasing decisions. Neither the EC nor the UK competition authorities have concluded on this segmentation specifically for potato crisps.
42. Evidence received from third parties indicates, consistent with this decisional practice, that there may be a difference in the purchasing preferences of customers active in different sales channels. Specifically:
 - (a) Third parties indicated that whereas grocery retailers stock at least two potato crisp brands, AFH customers serving consumers directly typically stock just one or two brands of potato crisps, which means that they can be more selective about the types of potato crisps they stock.
 - (b) As a consequence, a significant number of third parties, including a wholesaler, a pub chain, and a competitor, indicated that some AFH customers may only or primarily consider premium potato crisps, especially ones marketed as being hand-cooked. AFH customers are therefore more likely to replace a premium potato crisp product with another premium potato crisp product.
 - (c) Third parties indicated that this preference for premium reflected the preferences of consumers which the AFH customer was serving. Consumers in some AFH outlets wanted a product that was high-quality and 'unique' in the sense that it was not widely available in retail. No third parties said that retail customers (whether grocery retail or impulse) would only or primarily consider purchasing premium potato crisps.
43. Accordingly, the CMA has assessed the impact of the Merger in three distinct customer channels: (i) AFH; (ii) grocery retail, and (iii) impulse. However, given that the CMA has identified no competition concerns on any basis, it was not necessary to conclude on the appropriate frame of reference.

¹³ 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.

Geographic scope

44. The Parties submitted that the geographic frame of reference for potato crisps is UK-wide, which is consistent with previous relevant UK merger decisions in relation to savoury snacks.¹⁴
45. Some third parties said that smaller suppliers of potato crisps, including Pipers, are stronger in certain parts of the UK where they have production and distribution facilities. Evidence from third parties indicates that smaller companies can rely on wholesalers and third-party distributors to reach customers nationwide in a sufficiently timely manner. Therefore, the degree of competition to supply potato crisps does not materially vary on a sub-national basis. For this reason, the CMA assessed the impact of the Merger using a UK frame of reference.

Conclusion on frame of reference

46. For the reasons set out above, the CMA has considered the impact of the Merger in the supply of:
- a) premium potato crisps only and all potato crisps sold in the UK through the AFH channel;
 - b) premium potato crisps only and all potato crisps sold in the UK through grocery retail channel; and
 - c) premium potato crisps only and all potato crisps sold in the UK through the impulse channel;

Competitive assessment – horizontal unilateral effects

47. 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.¹⁵ Horizontal unilateral effects are more likely when the merging parties are close competitors.
48. 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 both (i) premium crisps only and (ii) all potato crisps sold in the UK through (i) AFH, (ii) grocery retail, and (iii) impulse.

¹⁴ OFT Case, [Diamond Foods / Pringles](#), 27 July 2011.

¹⁵ [Merger Assessment Guidelines](#), from paragraph 5.4.1.

AFH

Shares of supply

49. The table below presents the Parties' estimated shares of supply, measured by net revenue, in both potato crisps overall and premium potato crisps only.¹⁶

Table 1. Parties and competitors' shares of supply in AFH

Supplier	All potato crisps	Premium potato crisps
PepsiCo	[30-40]%	[0-10]%
Pipers	[0-10]%	[15-25]%
Combined	[35-45]%	[20-30]%
KP Snacks	[10-20]%	[5-15]%
Campbell's	[5-15]%	[30-40]%
Tayto Group Limited (Tayto)	[5-15]%	[20-30]%
Burts Potato Chips		[0-10]%
Corkers Crisps		[0-10]%

Source: SalesOut data and market landscaping by PepsiCo.

50. Premium potato crisp sales include shares of Walkers Market Deli but exclude shares of Walkers Sensations. However, sales of Walkers Sensations and Market Deli through the AFH channel are very limited and therefore adding or excluding these does not materially alter PepsiCo's share of supply in premium potato crisps.
51. The CMA notes that the Merger represents a limited increment to the Parties' existing positions in the supply of all potato crisps and premium potato crisps through the AFH channel. In addition, as set out more fully below, the evidence provided to the CMA indicates that Pipers and PepsiCo are not otherwise competing closely across all potato crisps or in relation to any premium offering.

Closeness of competition

52. In assessing the closeness of competition between the Parties, the CMA has considered evidence both on the current competitive constraint between the Parties based on: (i) direct competition between the Parties to win customers; (ii) the Parties' internal documents; (iii) third-party evidence; and (iv) evidence that PepsiCo's constraint may have increased absent the Merger based on its attempts to grow its presence in the premium category in AFH.

¹⁶ Third parties' evidence was consistent with the estimated market shares.

Tenders to customers

53. As discussed in paragraph 25, the Parties reach consumers in the AFH channel either through supply agreements with customers serving consumers directly or through wholesalers who supply these customers.
54. Wholesalers very seldomly buy from the Parties through tenders, and AFH customers serving consumers directly only occasionally use tenders. The revenues associated with tenders (including won, lost or pending tenders) accounts for a relatively small share of the Parties' total AFH revenues in 2018: roughly [0-5]% for PepsiCo and [10-20]% for Pipers. As a result, bidding data only captures a small fraction of competition between the Parties. Nevertheless, this data indicates that when customers procure via tenders, the Parties do not compete closely.
55. The bidding data indicates that competitors win more often when bidding against the Parties than the Parties win against each other. Between 2016 and 2018, Pipers lost to other competitors significantly more times than it lost to PepsiCo. Out of 19 tenders which Pipers lost in this period, Campbell's (through Kettle) won five times, KP Snacks (through Tyrrells and McCoys) won five times, five tenders have an unknown or unconfirmed winner, while PepsiCo won only once.

Internal documents

56. The CMA did not identify internal documents where PepsiCo discusses competitors specifically within the AFH channel. However, PepsiCo's internal documents, apart from those prepared for the Merger, do not refer to Pipers, as a competitor or otherwise.
57. Moreover, PepsiCo's internal documents indicate that PepsiCo does not consider [redacted] or [redacted] to be [redacted] competing strongly in the premium potato crisps segment, especially in the AFH channel. Specifically:
 - (a) PepsiCo's internal documents indicate that it has attempted to market [redacted] as a premium product, [redacted].^{17 18}
 - (b) PepsiCo's internal documents also regularly note the poor performance [redacted] both generally and as a premium offering.¹⁹ [redacted].

¹⁷ [redacted].
¹⁸ [redacted].
¹⁹ [redacted].

58. There are limited references in Pipers' internal documents to PepsiCo (specifically to Walkers and Walkers Market Deli). However, throughout its internal documents, Pipers consistently identifies Tyrrells and Kettle as its main competitors.²⁰ Pipers' internal documents also show that Pipers [REDACTED] does not identify Walkers Sensations as a premium product. [REDACTED].²¹

Third party evidence

59. All competitors who responded to the CMA's Merger investigation said that they either considered Walkers Sensations a premium product, or that consumers perceived it as such. However, competitors did not indicate that the Parties' could be considered close alternatives in respect of their premium offering and competitors acknowledged the poor performance of Walkers Market Deli generally and as a premium product.
60. Approximately half of the customers responding to the CMA's merger investigation who are active in the AFH segment (either directly or as wholesalers) said they did not consider Walkers Market Deli a premium potato crisp product or otherwise a close alternative to Pipers. The majority of AFH customers indicated Walkers Sensations is not a significant constraint on Pipers as they typically do not consider it a premium product and its sales through the AFH channel are limited.
61. The fact that Walkers Market Deli and Walkers Sensations are not hand-cooked was the most commonly cited reason for not considering Walkers Market Deli and Walkers Sensations premium potato crisp products, with a major wholesaler adding that it considered being hand-cooked a necessary condition for premium status. Other reasons cited included the connection of Walkers Market Deli and Walkers Sensations with the Walkers range and the consequent association with mass production. One large wholesaler indicated that Walkers Market Deli relied considerably on being priced lower and promoted more heavily than competitors like Pipers which are perceived as '*more premium*' and endowed with a '*point of difference*' which Walkers Market Deli is lacking. Another customer, a large wholesaler which is an important customer of PepsiCo, said it had recently delisted Walkers Market Deli because of its poor performance.

PepsiCo's potential growth in premium AFH

62. As noted above (see paragraph 20), the CMA received some evidence to indicate that PepsiCo was considering launching a new product to compete

²⁰ [REDACTED].

²¹ [REDACTED].

more effectively in AFH. [REDACTED]. Based on the evidence above about the importance attributed by AFH customers to being hand-cooked and disassociated from mainstream products, the CMA does not believe that this new product, even if launched, would have been considerably more successful [REDACTED]. Therefore, the CMA believes that PepsiCo is not and would not have become a more significant competitor in relation to premium potato crisps in the AFH channel in the foreseeable future absent the Merger.

Conclusion on closeness of competition

63. Overall, the CMA believes that the Parties do not compete closely in the supply of (i) all potato crisps, or (ii) premium potato crisps, in AFH. When the Parties compete to supply customers via tenders, Pipers competes more closely against at least two other suppliers of more similar products than it does against PepsiCo. The majority of AFH respondents did not consider Walkers Market Deli a close alternative to Pipers, if even a premium product at all. The Parties' internal documents indicate they do not compete closely for reasons consistent with third party feedback. Lastly, the CMA believes that PepsiCo's concept product, even if launched, would not have materially changed PepsiCo's competitiveness in AFH.

Competitive constraints

64. The Parties' AFH customers were almost unanimously unconcerned by the Merger, primarily because they perceived there to be sufficient alternatives to the Parties available, in premium or otherwise. The products mentioned most often as premium alternatives, by both customers and competitors, are Kettle, Tyrrells, Burts Chips and Real Crisps (owned by Tayto). Other premium products mentioned include Jonathan Crisps (owned by Tayto), Corkers Crisps, Brown Bag Crisps, Kent Crisps, and Salty Dog Crisps. The most frequently mentioned alternatives to conventional Walkers were KP Snacks' McCoys and Tayto's Golden Wonder. A major wholesaler and a major fast food chain said they considered extruded potato snacks like Pringles and KP Snacks' Hula Hoops as alternatives to Walkers conventional crisps.
65. As noted above, the CMA did not identify internal documents where PepsiCo discusses competitors specifically within the AFH channel. When PepsiCo does discuss or track competitors, it consistently recognises Kettle and Tyrrells as its two main competitors in the premium segment,²² and McCoys as its closest competitor in the conventional segment. It regularly tracks the performance of these products, as well as that of other large competitors like

²² [REDACTED].

Tayto. In some internal documents, PepsiCo also tracks the performance of its potato crisp products against that of other savoury snack products, particularly extruded savoury snack products made from potatoes like Pringles and Hula Hoops.²³

66. As noted above (see paragraph 58) Pipers refers more regularly to other competitors.
67. Overall, the evidence above indicates that the Parties will continue to face sufficient constraint from a number of credible suppliers post-Merger.

Conclusion on AFH

68. For the reasons set out above, the CMA believes that: (i) the Merger represents a limited increment to the Parties' existing position in the supply of all potato crisps and premium potato crisps in the AFH channel; (ii) the Parties are not, and absent the Merger would not have been, competing closely in relation to all or premium potato crisps; and (iii) the Parties will continue to face sufficient competitive constraint from a number of credible competitors post-Merger, especially in the premium potato crisps segment. This indicates that the Merger would not increase the merged entity's ability to leverage its existing position in relation to potato crisps to limit AFH customers' access to alternative products. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an SLC in relation to all potato crisps and premium crisps sold in the UK through the AFH channel.

Grocery retail channel

Shares of supply

69. In grocery retail, the Parties estimate that PepsiCo's share of supply of all potato crisps is [45-55]%, whereas Pipers' is [<1]%.²⁴ In terms of premium potato crisps, the Parties estimate that PepsiCo's share of supply is approximately [0-5]%, whereas Pipers' is [<1]%.²⁵
70. Based on the Parties' estimates, KP Snacks and Campbell's each have shares of supply of approximately [5-15]% when all potato crisps are considered. Own-label products collectively account for [15-25]% of supply.

²³ [REDACTED].

²⁴ Measured by RSV for the year ended 1 September 2018; includes sales of private label potato crisps; excludes sales of extruded potato snacks, such as Pringles.

²⁵ Measured by RSV for the year ended 1 September 2018; includes sales of private label potato crisps; these estimates include sales of Walkers Market Deli brand but not Walkers Sensations.

Campbell's and KP Snacks have the highest shares of supply in premium potato crisps ([45-55]% and [20-30]%, respectively), while own-label products collectively account for [25-35]% of supply in premium potato crisps.²⁶

71. This includes sales of Walkers Market Deli but excludes sales of Walkers Sensations. If sales of Walkers Sensations are included in the supply of premium crisps, PepsiCo's share of supply is approximately [25-35]%, whereas Pipers' is approximately [<1]%.²⁷
72. These shares indicate that Pipers represents a very limited increment to PepsiCo's position in relation to all potato crisps and premium crisps in the grocery retail channel. In addition, as set out more fully in paragraphs 73 to 78 below, the evidence provided to the CMA indicates that Pipers and PepsiCo are not otherwise competing closely across all potato crisps or in relation to any premium offering.

Closeness of competition

73. Evidence from grocery retail customers responding to the CMA's merger investigation indicates that the Parties are not competing closely currently.
74. Grocery retail customers did not consider the Walkers brands to be an adequate alternative to Pipers. Grocery retail customers noted that Walkers Sensations and Walkers Market Deli may not constitute a 'full' premium offering, as they lack some important features associated with premium potato crisps, like being hand-cooked. Grocery retail customers also indicated that Pipers competes more closely against Tyrrells and Kettle than it does against Market Deli.
75. As noted above (see paragraphs 56 to 58), the Parties' internal documents are consistent with these observations.
76. The CMA also considered evidence that Pipers' current shares of supply in relation to grocery retail customers might understate its constraint in the foreseeable future absent the Merger. As noted above (see paragraph 21), the CMA received some evidence that Pipers was interested in growing and expected to grow its position in the grocery retail channel absent the Merger. Specifically:

²⁶ Sales of Walkers Sensations are not included. Third parties' evidence was consistent with the estimated shares of supply.

²⁷ Exclusion of Walkers Market Deli sales would have a limited impact on these shares of supply as sales from this brand are relatively limited.

- (a) Pipers' internal documents indicate that it was [REDACTED].²⁸
- (b) Pipers' estimated projected revenue for the year ended 31 January 2020 from sales to grocery retailers it was already supplying totalled £[REDACTED] (up from £[REDACTED] for the year ended 31 January 2018).
- (c) One grocery retailer, not currently stocking Pipers, [REDACTED].

77. However, one of the four largest grocery retailers said it had been approached by Pipers in the past two years concerning a supply agreement but had decided not to pursue Pipers' offer for the foreseeable future because it was satisfied with the portfolio of potato crisps it was presently stocking. [REDACTED]. This suggests that while Pipers would have increased its share of supply in all potato crisps and premium potato crisps in the short term, neither increase would have been material.
78. For the reasons set out above, the CMA believes that Pipers is not and would not have become a significant competitor in the grocery retail channel in the foreseeable future absent the Merger.

Competitive constraints

79. The CMA believes that post-Merger the Parties would face sufficient competitive constraints from other potato crisp brands overall and premium potato crisp brands. None of the grocery retailers the CMA contacted in the course of its Merger investigation expressed any concern with the Merger, citing the range and strength of options available in potato crisps overall and in premium potato crisps.

Conclusion on grocery retail channel

80. For the reasons set out above, the CMA believes that: (i) the Merger represents a limited increment to the Parties' existing position in the supply of all potato crisps and premium potato crisps in the grocery retail channel; (ii) the Parties are not, and absent the Merger would not have been, competing closely in relation to all or premium potato crisps; and (iii) the Parties will continue to face sufficient competitive constraint from a number of credible suppliers post-Merger. This indicates that the Merger would not increase the merged entity's ability to leverage its existing position in relation to potato crisps to limit grocery retail customers' access to alternative products. Accordingly, the CMA found that the Merger does not give rise to a realistic

²⁸ [REDACTED].

prospect of an SLC in relation to all potato crisps and premium crisps sold in the UK through grocery retail channel.

Impulse

Shares of supply

81. In the impulse channel, the Parties estimate that PepsiCo's share of supply of all potato crisps is [65-75]%, whereas Pipers' is [<1]%.²⁹ In terms of premium potato crisps, the Parties estimate that PepsiCo's share of supply is [<1]%, whereas Pipers' is approximately [0-10]%.³⁰
82. Based on the Parties' estimates, after PepsiCo, KP Snacks (the owner of the Tyrrells and McCoys brands) and Campbell's (the owner of the Kettle brand) have the highest shares of supply when all potato crisps are considered: [10-20]% and [0-10]% respectively. In premium, Campbell's share of supply is [65-75]%, while KP Snacks' is [10-20]%.
83. The premium potato crisp share of supply estimates includes the Walkers Market Deli brand but exclude the Walkers Sensations brand. Including the Walkers Sensations brand raises PepsiCo's share of supply in premium to [40-50]% but reduces Pipers' share to [0-10]%.³¹
84. These shares indicate that Piper's represents a very limited increment to PepsiCo's position in relation to all potato crisps and premium crisps in the impulse channel. In addition, as set out more fully below, the evidence provided to the CMA indicates that Pipers and PepsiCo are not otherwise competing closely across all potato crisps or in relation to any premium offering.

Closeness of competition

85. A large majority of wholesalers who supply impulse customers indicated they did not consider Walkers Sensations or Walkers Market Deli a premium product for a range of reasons, including that Walkers Sensations and Market Deli potato crisps are not hand-cooked and carry the Walkers logo, which is considered mainstream, rather than 'premium'. One wholesaler also noted

²⁹ Measured by RSV for the year ended 1 September 2018; excludes sales of extruded potato snacks, such as Pringles.

³⁰ Measured by RSV for the year ended 1 September 2018; sales of Walkers Sensations are not included.

³¹ Exclusion of Walkers Market Deli sales would have a limited impact on these shares of supply as sales from this brand are relatively limited.

that it considered Pipers 'way above' both Walkers Market Deli and Walkers Sensations.

86. As noted above at paragraphs 56 to 58, the Parties' internal documents are consistent with these customers' observations.

Competitive constraints

87. Overall, customers in the impulse segment were generally unconcerned with the Merger and did not consider the Parties to be close competitors. Most of these wholesalers also indicated that credible competitors will continue to constrain the Parties in the supply of all potato crisps and premium potato crisps.

Conclusion on Impulse channel

88. For the reasons set out above, the CMA believes that: (i) the Merger represents a limited increment to the Parties' existing position in the supply of all potato crisps and premium potato crisps in the impulse channel; (ii) the Parties are not competing closely in relation to all or premium potato crisps; and (iii) the Parties will continue to face sufficient competitive constraint from a number of credible suppliers post-Merger. This indicates that the Merger would not increase the merged entity's ability to leverage its existing position in relation to potato crisps to limit impulse customers' access to alternative products. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an SLC in relation to all potato crisps and premium crisps sold in the UK through the impulse channel.

Conclusion on horizontal unilateral effects

89. For the reasons set out above, the CMA believes that: (i) the Merger represents a limited increment to the Parties' existing position in the supply of all potato crisps and premium potato crisps; (ii) the Parties do not compete closely and there is no realistic prospect of them doing so in the foreseeable future; (iii) the Parties will continue to face sufficient competitive constraint from a number of credible competitors. 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 relation to all potato crisps or premium potato crisps in any sales channel in the UK.

Barriers to entry and expansion

90. Entry, or expansion of existing firms, can mitigate the initial effect of a merger on competition, and in some cases may mean that there is no SLC. In

assessing whether entry or expansion might prevent an SLC, the CMA considers whether such entry or expansion would be timely, likely and sufficient.³²

91. However, 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.

Decision

92. 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 United Kingdom.
93. The Merger will therefore **not be referred** under section 33(1) of the Act.

Eleni Gouliou
Director of Mergers
Competition and Markets Authority
30 January 2019

³² [Merger Assessment Guidelines](#), from paragraph 5.8.1.