

Anticipated acquisition by Lakeland Dairies (N.I.) Limited of LacPatrick Co-Operative Society Limited

Decision on relevant merger situation and substantial lessening of competition

ME6779/18

SUMMARY

1. Lakeland Dairies (N.I.) Dairies Limited and its parent entity Lakeland Dairies Co-Operative Society Limited (**Lakeland**) have agreed to acquire the business of LacPatrick Co-Operative Society Limited (**LacPatrick**), (**the Merger**). Both Lakeland and LacPatrick procure conventional bulk raw milk in Northern Ireland (**NI**) and the Republic of Ireland (**ROI**) and supply a variety of dairy products nationally and internationally. Lakeland and LacPatrick are together referred to as the **Parties**. [Please see End Note]
2. The Competition and Markets Authority (**CMA**) considers that the Parties will cease to be distinct as a result of the Merger; and that both the turnover and share of supply test are 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 are both farmer-owned co-operative societies and overlap in the procurement of conventional (ie non-organic) bulk raw milk in NI and **Ulster** (meaning both NI and the ROI counties of Donegal, Cavan, Monaghan) as well as in the supply of bulk butter, bulk milk powder, bulk cream to national and international markets.
4. In line with previous decisions of the CMA and evidence from third parties, the CMA has assessed the impact of the Merger in the following product and geographic frames of reference:

Upstream

- a. the procurement of conventional bulk raw milk in both (i) NI and (ii) Ulster.

Downstream

- b. the supply of bulk milk powder through the food ingredients channel in the EEA.
 - c. the supply of bulk butter through the food ingredients channel in (i) the island of Ireland and (ii) the EEA.
 - d. the supply of bulk cream supplied through the food ingredients channel in (i) the island of Ireland and (ii) the EEA.
5. The CMA assessed the impact of the Merger upstream on the procurement of conventional bulk raw milk at both a NI and Ulster level but did not consider it necessary to conclude on the exact geographic delineation of the market since the Merger does not raise competition concerns under either frame of reference.
 6. The CMA concluded that the geographic scope of downstream markets is wider than NI due to their international nature and assessed the impact of the Merger as follows: (i) the supply of bulk milk powder on an EEA basis and (ii) the supply of bulk butter on a narrower island of Ireland basis and EEA basis and (iii) bulk cream on a narrower island of Ireland basis and EEA basis. The CMA did not consider it necessary to conclude on the exact geographic delineation of the markets for the supply bulk butter or bulk cream, since the Merger does not raise competition concerns under any plausible geographic frame of reference.
 7. The CMA assessed whether the Merger might raise competition concerns as a result of horizontal unilateral effects in the frames of reference set out above, and also assessed whether the Merger could give rise to coordinated effects in the procurement of conventional bulk raw milk at both a NI and Ulster level. Finally, the CMA also considered the effect of the Merger on the vertical relationship between each of the Parties and other dairy processors that compete with the Parties downstream.
 8. **Unilateral horizontal effects downstream:** The Parties' combined share of supply of products in which they overlap is lower than [20-30]% in the frames of reference set out above (paragraph 4). As the Parties sell their products

downstream in various countries,¹ the CMA contacted third parties to assess the impact of the Merger. Furthermore, no third parties (including customers) raised competition concerns in relation to unilateral horizontal effects of the Merger downstream. In this regard, third party customers identified Glanbia, Aurivo (both based in the ROI), Dale Farm and Fonterra (based in New Zealand) as alternative suppliers of bulk milk powder. Other competitors for downstream products include: Muller, Arla, Lactalis, DMK and Friesland Campina.² The CMA therefore believes that the competitive constraints that the merged entity will face post-Merger are sufficient to ensure that the Merger does not give rise to a realistic prospect of a SLC as a result of horizontal unilateral effects.

9. **Unilateral horizontal effects, buyer power upstream:** The CMA believes that the merged entity would have limited ability to exercise its buyer power upstream to influence the price of conventional bulk raw milk downstream. In particular, the CMA found that the Parties are not each other's closest competitors, that there is limited switching between the Parties and that Glanbia Cheese and Dale Farm will remain significant competitive constraints on the merged entity upstream. Downstream market power (whether gained through the Merger or held unilaterally by either Party before the Merger) is a necessary condition for buyer power to lead to any harm to consumers.³ The CMA found that the merged entity will also not have enough market power in any downstream market to influence the price and/or volumes to gain anticompetitive advantages to the detriment of consumers.
10. **Coordinated effects:** The CMA examined the possibility of coordination in the procurement of conventional bulk raw milk amongst the five largest processing firms in NI and Ulster: Lakeland/LacPatrick, Dale Farm, Glanbia Cheese, Aurivo and Strathroy. Coordination may occur between firms in relation to prices or market sharing, for example, firms not attempting to attract milk suppliers away from a competitor. Based on the evidence, while there are some factors present in the market that may be conducive of coordination, the CMA believes that the Merger will not give rise to coordinated effects as the Merger will not increase the ability of market players to reach and monitor an understanding, and it will not increase either internal or external sustainability.

¹ For example, the products from Lakeland's Killeshandra site are sold to the UK market, the island of Ireland and over 80 other countries around the world. Products from Lakeland's Bailieborough site are sold to Africa, Europe, the Middle East and South East Asia; whilst products from Lakeland's Lough Egish site are sold to Africa. At LacPatrick's Artigarvan site, milk powders are sold mainly to West Africa and the Middle East.

² Table 25 of the Final Merger Notice which sets out competitors of the Parties for the supply of bulk butter.

³ [Merger Assessment Guidelines](#) (OFT1254/CC2), September 2010, paragraph 5.4.20

11. **Vertical unilateral effects:** The CMA examined whether the merged entity will have the ability to foreclose competing dairy processors by restricting the supply of conventional bulk raw milk or by increasing its price charged to competitors taking into account the factors below.
 - a. First, almost all competitors source 1% or less of their conventional bulk raw milk requirements from the Parties. This means that there are alternative suppliers for competitors to source conventional bulk raw milk from.
 - b. Second, a third party told the CMA that the price paid for milk by downstream competitors is based on a European milk index published weekly that compounds returns from skimmed and whole milk powder, butter and any exchange rate involved (EU Conventional Bulk Raw Milk Index). Furthermore, neither the Parties nor any single entity could affect the movements of the index in any significant way.⁴
12. The CMA therefore considers that the merged entity will not have the ability to foreclose competing dairy processors by restricting the supply of conventional bulk raw milk or by increasing its price charged to competitors.
13. The CMA, therefore found that Merger does not give rise to a realistic prospect of a SLC as a result of horizontal unilateral effects (downstream or upstream), vertical effects or coordinated effects. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).

ASSESSMENT

Parties

14. Lakeland is a farmer-owned co-operative society with over 3,800 members, headquartered in Killeshandra, Co. Cavan in the ROI. Lakeland operates three dairy processing sites in the ROI (Killeshandra, Bailieborough and Lough Egish) and two dairy processing sites in NI (Newtownards and Banbridge). Lakeland processes in excess of 1.4 billion litres of milk annually. The turnover of Lakeland in 2017 was approximately £584 million worldwide and approximately £135 million in the UK.
15. LacPatrick is a farmer-owned co-operative society with over 930 members headquartered in Co. Monaghan in the ROI. LacPatrick has one dairy processing site at Monaghan and two in NI (Ballyrashane and Artigarvan). LacPatrick processed approximately 570 million litres of milk in 2017. The

⁴ Note of call with third party competitor on 17 January 2019.

turnover of LacPatrick in 2017 was approximately £262.9 million worldwide and approximately [X] in the UK.

16. Figure 1 shows the location of the Parties' dairy processing sites.

Figure 1: Map representing the Parties' dairy processing sites



Source: Merger Notice. LacPatrick's sites are shown in green and Lakeland's sites are shown in red.

Transaction

17. On 3 July 2018 Lakeland agreed to acquire the LacPatrick business to form a new co-operative society.⁵ Completion of the proposed transaction is planned for March 2019.
18. LacPatrick's members will be allocated 27% of the ordinary shares whilst Lakeland's members will be allocated the balance (73%). The allocation of the shares is based on the relative values of each society.
19. In relation to the rationale of the Merger, the Parties submitted that the Merger will enable sustainable strategic growth, as the Parties' retail, foodservice and

⁵ Merger agreement between LacPatrick Co-operative Society limited and Lakeland Dairy Co-operative Society Limited, 2018, Annex 5 of the Merger Notice.

commodity ingredients businesses are complementary. In addition, the Parties submitted that the merged entity will have a stronger position on the European and global market due to enhanced scale, product breadth and range of processing capabilities. Finally, the Parties consider the Merger is attractive due to its '*co-op ethos*' as both Parties are farmer-owned co-operative societies.⁶

20. The Parties also notified the proposed transaction to the Irish competition authority, the Competition and Consumer Protection Commission (**CCPC**). Throughout the investigation, the CMA cooperated closely with the CCPC.

Jurisdiction

21. Each of Lakeland and LacPatrick is an enterprise. As a result of the acquisition, these enterprises will cease to be distinct and LacPatrick will be brought under Lakeland's control.
22. The UK turnover of LacPatrick exceeds £70 million, so the turnover test in section 23(1)(b) of the Act is satisfied.
23. The Parties overlap in the purchase of conventional bulk raw milk, with a combined share of purchase in NI by volume of [40-50]%, with an increment of [10-20]%.⁷ The CMA therefore believes that the share of supply test in section 23 of the Act is also met.
24. 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.
25. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 16 January 2019 and the statutory 40 working day deadline for a decision is therefore 13 March 2019.

Counterfactual

26. 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,

⁶ Internal document submitted by LacPatrick on 7 January 2019, Annex 26, page 9.

⁷ See paragraph Table 3 for the Parties' shares of supply.

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.⁸

27. The Parties submitted evidence that [REDACTED].⁹
28. On this basis, the Parties argued that the impact of the Merger should be assessed against an alternative [REDACTED] counterfactual on the basis that absent the Merger [REDACTED].

Overview of relevant analytical framework

29. In forming a view on whether to adopt an alternative counterfactual in which one of the Merger Parties would have [REDACTED], the CMA will generally consider whether the prospect of prevailing conditions of competition continuing is not realistic. In particular, the CMA will consider:¹⁰
 - a. whether the firm would have [REDACTED] absent the Merger (Limb 1); and if so,
 - b. whether there would have been a substantially less anti-competitive alternative purchaser for the firm than the acquirer under consideration (Limb 2); and
 - c. what would have happened to the sales of the firm in the event of its [REDACTED] (Limb 3).
30. The CMA has considered whether the prospect of prevailing conditions of competition is not realistic and, if so, what counterfactual the Merger should be assessed against.
31. However, in this case, the CMA did not have to conclude on whether the conditions are met to consider the [REDACTED] of LacPatrick given that no competition concerns arise on the basis of the prevailing conditions of competition.
32. Accordingly, the CMA has assessed the Merger against the prevailing conditions of competition.

⁸ *Merger Assessment Guidelines* (OFT1254/CC2), September 2010, from para 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).

⁹ [REDACTED]

¹⁰ *Merger Assessment Guidelines*, paragraphs 4.3.8 - 4.3.18.

Industry background

Upstream – Procurement of conventional bulk raw milk

Size of the market, main dairy processors and location of dairy processing sites

33. According to the Department of Agriculture, Environment and Rural Affairs, NI produced 2.3 billion litres of conventional bulk raw milk in 2018.¹¹ On the upstream market for the procurement of conventional bulk raw milk, dairy processors procure milk from farmers and process it into different dairy products. There are at least eight dairy processors that procure conventional bulk raw milk from farmers in NI: Lakeland, LacPatrick, Glanbia Cheese, Dale Farm, Strathroy, Aurivo, Natural Dairies and Glanbia Ireland.
34. In terms of geographical spread. All eight dairy processors have processing sites in NI except Aurivo, Natural Dairies and Glanbia Ireland. The locations of the Parties' competitors are shown in the table below. Dairy processors procure conventional bulk raw milk beyond the county where their processing site is located.

¹¹ 'Milk price and production statistics 2000 onwards', published on 8 February 2019.

Table 1: Geographic distribution of Dairy Processors

Processing location	Processors
County Antrim (NI)	Dale Farm
County Armagh (NI)	Glanbia Cheese
County Tyrone (NI)	Dale Farm Strathroy Dairies
County Donegal (the ROI)	Natural Dairies Aurivo
County Roscommon (the ROI)	Aurivo
County Cavan (the ROI)	Glanbia Ireland
County Louth (the ROI)	Glanbia Ireland
Two sites in County Kildare (the ROI), one in Belview, the other in Ballyraggett	Glanbia Ireland
County Wexford (the ROI)	Glanbia Ireland

Source: information from the Parties and third parties

35. Dairy processors differ in terms of size, structure and range of dairy products they produce. For instance, Dale Farm produces mainly cheddar, wheat protein products, liquid milk, butter and spreads, while Glanbia Cheese produces predominantly mozzarella cheese.

The co-operative structure

36. A co-operative is a farm, business, or other organisation which is owned and run jointly by its members, who share the profits or benefits. Four of the big

dairy processors in NI are co-operatives: Lakeland, LacPatrick, Dale Farm and Aurivo. Glanbia Cheese and Natural Dairies are private companies,

37. Farmers can supply co-operatives without being a member. The price paid to farmers by a co-operative for conventional bulk raw milk is the same regardless of whether the farmer is a member of the co-operative or where the farmer is located within NI or the ROI.
38. Co-operatives, according to a third party farmer, face a trade-off between maximising their profit downstream by minimising their cost with the purchase of conventional bulk raw milk and setting an attractive price for milk suppliers (upstream) that does not risk milk suppliers switching to a competitor. In fact, the third party farmer clarified that a dairy processor cannot pay a price for conventional bulk raw milk that does not take into account competitors' pricing for the procurement of conventional bulk raw milk.¹²
39. Farmers can switch from supplying one co-operative to another without incurring any cost. As explained in the competitive assessment section at paragraph 123 below, most milk suppliers do not have contracts with co-operatives and have no, or a short, notice period.

Price of conventional bulk raw milk

40. Price is the main parameter of competition. One competitor told the CMA that other factors matter too, such as trading relationship and quality requirements, but price remains the main driver of competition. Third party farmers also confirmed that the price for conventional bulk raw milk is their main driver in the choice of a dairy processor.
41. Prices may vary according to volumes and quality, but the criteria are established in a formula that is the same for all farmers, with some differences between NI and the ROI (see below). Prices are set on a monthly basis for the conventional bulk raw milk procured the previous month.
42. In LacPatrick, the price is determined at a meeting of the Board of LacPatrick in the days leading up to the 25th of each month (when LacPatrick pays its suppliers).
43. In Lakeland, the milk price is set by the board of directors of Lakeland at a meeting which is generally held around the 10th–12th of any particular month. At that meeting the price is set for the preceding month. At that meeting management makes recommendations regarding the milk price and the board

¹² Note of a call with a third party milk supplier on 5 December 2018.

then decide what price they will pay for milk. As Lakeland suppliers are the first in the market both in the ROI and NI to be paid for their milk (money is paid into their accounts by the 15th of the month) Lakeland is invariably the first processor in the country in both NI and the ROI to set the milk price.¹³

44. Dairy processors have different pricing systems for the ROI and NI¹⁴ to determine the price of conventional bulk raw milk paid to farmers.
 - a. For milk suppliers based in the ROI, the price for conventional bulk raw milk is calculated according to a pricing system based on quality (protein and butterfat content) and quantity. Out of season bonus payments are payable to incentivise the supply of conventional bulk raw milk during the winter period.
 - b. For milk suppliers based in NI, the pricing system is very similar, but the focus is more on volume and less on the protein and butterfat contained in the milk.
45. Dairy processors take into account competitors' prices when setting their price for conventional bulk raw milk. This particularly important because the prices paid by all dairy processors in the island of Ireland are collected in a league table published by the Irish Farmers Journal on a monthly basis (one for the ROI and one for NI).¹⁵ This publication increases transparency in the market and facilitates competitors' monitoring of each other's prices.
46. The price paid by each dairy processor for conventional bulk raw milk is also highly influenced by its performance in the downstream markets. The key to the success of dairy processors is the optimisation of how their processing capacity is used in order to drive efficiencies and improve their performance in downstream markets.¹⁶ For example, a strong performance in the downstream market for milk powder would enable a dairy processor active in that market to pay a higher price for its conventional bulk raw milk upstream.
47. Formal and informal arrangements between dairy processors, such as milk swaps, are common in the industry. This kind of conventional bulk raw milk swaps enable dairy processors to maximise processing capacity and minimise milk waste.

¹³ Response from Lakeland to Request for Information (RFI) of 29 November 2018. See also call with third party milk supplier on 5 December 2018.

¹⁴ Third parties confirmed that other dairy processors apply different terms to milk suppliers depending on whether they are located in NI or in ROI.

¹⁵ See submissions from third parties and from the Parties in the Merger Notice. The prices are published monthly at <https://www.farmersjournal.ie>

¹⁶ Note of a call with third party competitor on 7 December 2018.

48. For sales of conventional bulk raw milk between dairy processors (ie competitors), the price is set out retrospectively directly from the EU Conventional Bulk Raw Milk Index.

Downstream

49. Dairy processors procure conventional bulk raw milk from farmers. The conventional bulk raw milk is then processed into a range of dairy products, such as skimmed milk powder, cream and butter. Liquid milk processing has three principal stages: separation, homogenisation and pasteurisation.¹⁷ Separation removes cream from the milk by the use of centrifuges. Homogenisation ensures that the remaining fat content is evenly distributed through the milk by applying high pressure. Pasteurisation involves rapidly heating and then cooling the milk.¹⁸ Different dairy products require different levels of processing and not all processors are present in the supply of each of the various dairy products downstream.
50. The Parties are present in several downstream markets, summarised in the table below.

Table 2: Overview of the products supplied by the Parties

	LacPatrick Retail	Lakeland Retail	LacPatrick Foodservice	Lakeland Foodservice	LacPatrick Ingredient	Lakeland Ingredient
Selling Product Category	Channel	Channel	Channel	Channel	Ingredient	Ingredient
Bulk Buttermilk					Yes	No
Bulk Cream					Yes	Yes
Bulk Skim Milk					Yes	Yes
Bulk Whole Milk					Yes	Yes
Bulk Butter					Yes	Yes
Bulk Milk Powders					Yes	Yes
Butter (Packet) (up to 2kg)	Yes	No	Yes	Yes		
Retail Fresh Buttermilk	Yes	No	No	No		
Retail Fresh Cream	Yes	No	No	No		
Retail Fresh Milk	Yes	No	No	No		
Retail Yogurt	Yes	No	No	No		
Bulk Yogurt	Yes	No	No	No		
Frozen Ice Cream	No	Yes	No	Yes		
Soft Serve Ice Cream	No	No	No	Yes		
Ice Cream Powder	No	No	No	Yes		
Long Life UHT Milk	No	Yes	No	Yes		
Long Life Flavoured Milk	No	Yes	No	Yes		
Long Life Cream	No	Yes	No	Yes		
Long Life Cream Blends	No	Yes	No	Yes		
Milk mini-pots & sticks	No	Yes	No	Yes		

Source: Table 14 of the Merger Notice: In the island of Ireland, dairy processors cross sell raw bulk milk to each other on an ad hoc basis, when necessary for milk supply reasons.

¹⁷ ME/6524/15 Anticipated acquisition by Muller UK & Ireland Group LLP of the dairies operations of Dairy Crest Group plc, 12 June 2015 ([Muller/Dairy Crest](#)), paragraphs 27-30.

¹⁸ Merger Notice, paragraph 12.3.

51. Ornuia is an Irish based dairy co-operative and Ireland's largest exporter of Irish dairy products worldwide. Lakeland¹⁹, as well as other NI dairy processors, have shareholdings in Ornuia. Ornuia, through its ingredients division, is responsible for the procurement of Irish and non-Irish dairy products and for the sale of dairy ingredients to food manufacturers and foodservice customers. [REDACTED]. Ornuia has business units in the ROI, UK, Europe, North America, Middle East, Africa and China.

Frame of reference

52. 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.²⁰
53. The Parties overlap: (i) upstream, in the procurement of conventional bulk raw milk; and downstream in (ii) the supply of bulk butter; (iii) the supply of bulk milk powder; and (iv) the supply of small quantities of bulk cream.
54. Both Parties also supply packet butter (up to 2kg) to the foodservice channel, however the CMA has not included packet butter in its horizontal effects assessment, because the Parties do not overlap, LacPatrick does not produce packet butter, it only resells a very small amount [REDACTED] to the foodservice channel in the ROI in the form of small butter portions which they buy from a producer, [REDACTED], for resale.²¹
55. In this section, the CMA considers what the appropriate frame of reference is to assess the effects of the Merger, starting with the procurement of conventional bulk raw milk and then the dairy products in which the Parties overlap downstream.

¹⁹ Lakeland Dairies currently holds 12.6% of the issued ordinary share capital in Ornuia. LacPatrick holds a limited amount of redeemable loan stock in Ornuia. Glanbia and Dairy Gold are also shareholders in Ornuia with 24% and 20% shareholdings respectively.

²⁰ [Merger Assessment Guidelines](#), paragraph 5.2.2.

²¹ Merger Notice, Table 14.

Upstream: procurement of conventional bulk raw milk

Product scope

Parties' submission

56. Both Parties only procure conventional bulk raw milk, as against organic bulk raw milk. The Parties submitted that:
- a. there are separate markets for the procurement of conventional bulk raw milk and organic bulk raw milk, with only the former being affected by the Merger;
 - b. organic milk to be a niche product in the island of Ireland²² and is retail focused;
 - c. they are limited in their ability to procure organic milk because: (i) it limits supply as it must be procured from specialist organic milk suppliers; (ii) it is inconvenient to segregate the organic milk supply from conventional milk supply from the point of collection throughout processing at a processing site; (iii) and additional site accreditation is required;²³ and
 - d. there is a single market for the procurement of conventional bulk raw milk, regardless of the different end uses to which the milk is put.
57. Given the Parties' submission, the CMA considers that there is limited demand side and supply side substitutability between conventional and organic milk: (i) conventional raw bulk milk is mostly use for processed dairy products to non-retail customers and (ii) the need for segregation between conventional and organic milk in the dairy processors' operations limits supply side substitution.

Previous decisions

58. In relation to the procurement of conventional and organic milk, the European Commission previously decided in *Friesland/Campina*²⁴ that there are separate markets for the procurement of organic raw milk and conventional raw milk. In relation to supply-side substitutability, the European Commission

²² Only Strathroy Dairies procures organic milk in NI.

²³ Merger Notice, paragraph 13.5.

²⁴ Commission decision of 17 December 2008 on the case [COMP/M.5046](#) – Friesland Foods/Campina (*Friesland/Campina*), paragraphs 47-52.

found that organic dairy farmers have no incentive to switch to conventional raw milk production, given the price premium they obtain and the investments they have made to produce organic raw milk.^{25/26}

59. In relation to the procurement of conventional bulk raw milk which is intended for different end uses, the European Commission and the Office of Fair Trading (**OFT**) have not previously distinguished between the intended end uses of different types of raw milk.²⁷ In *Muller/Dairy Crest*,²⁸ the CMA recognised that dairy processors may seek to incentivise farmers to produce milk for particular end uses, as farmers can affect fat and protein levels in milk. However, in the present case, the CMA did not need to conclude on this point, as the Merger did not raise competition concerns under any plausible frame of reference.

Conclusion on product scope

60. In line with previous decisions and the Parties' submissions, the CMA found that there is limited substitutability between organic and conventional bulk raw milk and has distinguished between the supply of conventional and organic bulk raw milk.
61. The CMA also found, based on information submitted by the Parties and third parties that the price paid by dairy processors for conventional bulk raw milk is the same regardless of the different uses to which it is put.
62. Therefore, for the purposes of this investigation, the CMA has assessed the impact of the Merger on the procurement of conventional bulk raw milk as a single product frame of reference without further segmentation on the intended end use of the conventional bulk raw milk.

Geographic scope

Parties' submissions

63. The Parties stated that the appropriate geographic scope to assess the effects of the Merger in the supply of conventional bulk raw milk is at least NI wide and may extend to include Ulster and Louth.

²⁵ *Friesland/Campina*, paragraph 50.

²⁶ For the reasons explained above, there is also limited ability for dairy processors to switch from conventional to organic bulk raw milk.

²⁷ ME/3352/07 Anticipated merger between First Milk Limited and Milk Link Limited, 12/12/2007, paragraph 7. COMP/M.6242 - LACTALIS/PARMALAT, 14/06/2011, paragraphs 8-13.

²⁸ ME/6524/15 Anticipated acquisition by Muller UK & Ireland Group LLP of the dairies operations of Dairy Crest Group plc, 12 June 2015 (*Muller/Dairy Crest*), paragraphs 97-100.

64. The Parties submitted that the 80% catchment area for Lakeland's processing sites (ie the area from which Lakeland's source 80% of the conventional bulk raw used in each of its processing sites) vary between [X] miles for the two smaller sites and [X] miles for the larger site in Bailieborough.
65. Moreover, the Parties submitted that there are no physical restrictions on the movement of conventional bulk raw milk between the ROI and NI.

Previous decisions

66. The European Commission and the CMA have in previous decisions considered that the geographic scope of the market for the procurement of conventional bulk raw milk is not wider than national and may be narrower than the UK.²⁹
67. In *Mueller/Dairy Crest*³⁰ the CMA noted that conventional bulk raw milk is supplied from a radius of around 255 km (up to 158 miles), including South, South West, Wales, West and the Midlands. Other procurement radii considered in the same decision were 150 km (93 miles) and 160 km (99 miles).

Third party submissions

68. Third parties milk suppliers which responded to the CMA's market investigation confirmed that dairy processors collect milk across all NI. In this regard, two milk suppliers noted that distance is irrelevant, as dairy processors cover transport costs.³¹ Dairy processors confirmed that they cover transport costs and indicated that milk suppliers are paid the same price regardless of the distance between the collection point and the dairy processing site.³²

CMA assessment

69. The CMA assessed whether the competitive conditions varied significantly within NI. Based on shares of supply at NI county level, the Parties have a significant presence in all counties with shares of supply ranging from [30-40]% to [50-60]% combined. The only exception is Fermanagh where the Parties have combined shares of supply of [10-20]% only.

²⁹ *Friesland/Campina*, paragraphs 53-56 and *Arla Foods/ Milk Link*, paragraphs 54-57.

³⁰ *Mueller/Dairy Crest*, paragraph 180; [ME/3352/07](#) Anticipated merger between First Milk Limited and Milk Link Limited, 12/12/2007, paragraphs 8-12.

³¹ Response to Farmers Questionnaire submitted on 1 February 2019; response to Farmers Questionnaire submitted on 29 January 2019.

³² Notes of calls with two third party competitors on 7 December 2018 and 17 January 2019.

70. All three main competitors of the Parties, namely Glanbia Cheese, Dale Farm and Aurivo procure conventional bulk raw milk in every and each county of NI. Strathroy has a more limited presence (ie it is not present in the Antrim and Fermanagh counties). This is consistent with comments from third parties that most dairy processors are present in all counties.
71. The CMA notes that:
- a. The full length of NI is approximately 102 miles (north west – south east: Londonderry-Newcastle) or 112 miles (north east – south west: Ballycastle-Belcoo). These distances are consistent with the catchment areas considered by the CMA in the competitive assessment for *Muller/Dairy Crest*.
 - b. There are some differences in the pricing structure for conventional bulk raw milk between NI and the ROI (see paragraph 44 above). The CMA understand these differences in farming practices in each of these jurisdictions.³³ pricing system in the Republic of Ireland reflects the less intensive nature of farming.

Conclusion on geographic scope

72. The gathered evidence suggested that NI constitutes one single geographic frame of reference for the procurement of conventional bulk raw milk. The CMA found that there may be some competitive constraints from competitors in the ROI near the border and took into account these constraints in the competitive assessment.
73. For these reasons, the CMA assessed the Merger at both a NI and Ulster level. The CMA but did not consider it necessary to conclude on the exact geographic delineation of the frame of reference because, as explained below, the Merger does not raise competition concerns under any of these geographic frames of reference.

³³ In the ROI milk is produced on a seasonal basis, with the majority of milk being produced during the grass growing season from March through to the end of October. In NI, the milk production system is more of a year-round business, with a sizeable volume of the milk being produced in the winter months indoors. In order to get the best returns out of this system dairy cows in NI tend to be higher yielding and often have less constituents in their milk. Therefore, while the volume-based purchasing and pricing system in NI reflects the intensive nature of dairy farming in NI whereby farmers aim to produce large quantities of milk with larger herds, the purchasing and pricing system in the ROI reflects the less intensive nature of farming in the ROI where the focus has been traditionally on achieving a higher butterfat and protein constituent value. See the Parties' response to RFI3 of 14 December 2018. Most dairy processors submitted that they use different price structures in NI and ROI.

Downstream products

74. The CMA assessed the frame of reference for downstream markets where the Parties overlap.

Bulk butter

Product Scope

75. The Parties submitted that there are separate markets for:
- a. the supply of packaged butter through retail and foodservice channels (ie for use by customers such as bakeries and catering companies); and
 - b. the supply of bulk butter through the food ingredients channel (ie food manufacturers).
76. The Parties submitted that a distinction can be drawn in the products processed from milk supplied through retail and foodservice channels and those supplied in bulk intended to be used as ingredients in food production. The Parties noted that bulk dairy products tend to be supplied in larger containers than products intended for use in retail and foodservice outlets. Buyers of bulk dairy products are typically food manufacturers and traders on commodity spot markets, whereas customers for dairy products supplied to retail and foodservice channels are typically retailers or foodservice outlets, for example hospitals and schools.
77. In *Friesland/Campina* and *Arla/Hansa* the Commission distinguished between the market for packet butter and bulk butter.³⁴
78. The CMA assessed the effects of the Merger under the product frame of reference for the supply of bulk butter through the food ingredients channel.

Geographic Scope

79. The Parties submitted that the relevant geographic frame of reference is at least EEA wide. This is supported by the fact that:
- a. [REDACTED] of Lakeland's bulk butter production is supplied to [REDACTED],³⁵ and

³⁴ *Friesland/Campina*, paras 817-837 and paras 849-874; Commission decision of 1 April 2011 on the case [COMP/M.6119 – Arla Foods/Hansa \(Arla/Hansa\)](#), para 30.

³⁵ Annex 17 of the Merger Notice, Table 30.

b. LacPatrick supplies [X] total sales of bulk butter to [X].

80. In *Friesland/Campina*, the Commission concluded that the relevant geographic market for bulk butter is EEA-wide, noting brands and origin are not important factors.³⁶
81. Third party submissions confirmed that the geographic scope for the supply of bulk butter is EEA-wide.³⁷
82. The Parties estimated that their combined shares in the supply of bulk butter is lower than [0-5]% at EEA level and approximately [20-30]% in the island of Ireland, with an increment of less than [5-10]%. No third parties expressed competition concerns about the effects of the Merger in the supply of bulk butter.
83. For these reasons, the CMA has not found it necessary to conclude on the scope of the geographic frame of reference for bulk butter given that no competition concerns arise by reference to either a narrower island of Ireland frame of reference or a wider EEA frame of reference.
84. The CMA does not believe the Merger gives rise to a realistic prospect of an SLC in the supply of bulk butter as a result of horizontal unilateral effects, even assuming the most cautious plausible frame of reference. Therefore, the effects of the Merger in the supply of bulk butter is not considered further in this decision.

Bulk milk powder

Product Scope

85. Milk powders are produced when moisture is evaporated and dried from liquid whole milk or liquid skimmed milk, giving it a longer shelf life than liquid milk without the need for refrigeration. Skimmed milk powder is manufactured by evaporating and drying most of the moisture from skimmed milk. Whole milk powder is manufactured in a similar way, using the same site, but using whole instead of skimmed milk.³⁸
86. The Parties submitted that bulk milk powder, whether whole or skimmed, is part of a wider ingredients market because it competes with a range of starch-based products for use in various dairy and bakery applications and therefore

³⁶ *Friesland/Campina*, paragraphs 834-837.

³⁷ Note of a call with a third party customer on 12 December 2018.

³⁸ Merger Notice, paragraph 12.3.3.

a delineation covering only the supply of bulk milk powder is too narrow, as there is a range of alternative products which could be used.³⁹

87. The European Commission has previously left open whether milk powders could form part of a wider ingredients market.⁴⁰
88. The CMA assessed the effects of the Merger in relation to the supply of bulk milk powder and in relation to the supply of whole milk powder and skimmed milk powder through the food ingredients channel. The CMA did not have necessary to conclude on the exact definition of the product frame of reference, because no competition concerns arise in any of the product frames of reference mentioned above, ie the Parties' combined shares of supply for (i) milk powder, (ii) whole milk powder and (iii) skimmed milk powder separately are lower than [5-10]% at EEA level (see paragraph 92 below).

Geographic scope

89. The Parties submitted that the relevant geographic market is worldwide and certainly at least EEA-wide.⁴¹
90. The European Commission has previously concluded that the relevant geographic scope of milk powder is at least EEA-wide, if not global.⁴²
91. Third party submissions confirmed that the geographic scope for the supply of bulk milk powder is at least EEA-wide.⁴³ Third party customers and competitors confirmed that bulk milk powder is traded internationally and competitors from as far as New Zealand influence the price of bulk milk powder. For these reasons and on a cautious basis, the CMA concluded that the scope of the geographic frame of reference for bulk milk powder is at least EEA-wide.
92. The Parties estimated that their combined shares in the supply of bulk milk powder is [0-5]% at EEA level,⁴⁴ with Lakeland having a [0-5]% share and

³⁹ Final Merger Notice, paragraphs 13.25 and 13.26.

⁴⁰ Commission decision of 7 November 2011 on the case [COMP/M.6348](#) – Arla Foods/Allgualand (*Arla Foods/Allgualand*), paragraphs 69-70.

⁴¹ Merger Notice, paragraph 13.30.

⁴² *Arla Foods/Allgualand*, paragraphs 76-77; *Muller/Dairy Crest*, paragraphs 168-171.

⁴³ Note of a call with a third party customer on 13 December 2018.

⁴⁴ Table 22 of the Merger Notice.

LacPatrick having [0-5]% share.⁴⁵ No third parties expressed competition concerns about the effects of the Merger in the supply of bulk milk powder.⁴⁶

93. The CMA does not believe that the Merger gives rise to a realistic prospect of an SLC in the supply of bulk milk powder as a result of horizontal unilateral effects on an EEA-wide geographic frame of reference. Therefore, the effects of the Merger in the supply of bulk milk powder is not considered further in this decision.

Bulk cream

Product Scope

94. The Parties submitted that there is no traded market (ie sales between dairy processors) for bulk cream in NI. Most dairy processors process and add value to their cream or sell it directly to an end user in packed format. There are some small volumes of cream traded in bulk, but this tends to be supplied to a specific customer and is not an open market. Lakeland only supplies bulk fresh cream when it has surplus to packing capacity. In 2018 most of these sales were to LacPatrick.⁴⁷ LacPatrick has informal arrangements to supply bulk fresh cream to [REDACTED].⁴⁸
95. In *Muller/Dairy Crest*, the CMA found there is a separate market for the supply of bulk fresh cream to industrial customers, which broadly corresponds to the Food Ingredients channel in which the Parties overlap identified above in Table 2.⁴⁹
96. The CMA assessed the effects of the Merger under the product frame of reference for the supply of bulk cream supplied through the food ingredients channel.

Geographic Scope

97. The Parties submitted that the relevant geographic frame of reference is at least national.

⁴⁵ In the island of Ireland, the Parties combined share in the supply of bulk milk powder is [30-40]%, with an increment of less than [10-20]%.

⁴⁶ Note of a call with a third party customer on 13 December 2018.

⁴⁷ Merger Notice, paragraph 13.37.

⁴⁸ [REDACTED] of LacPatrick's cream goes to [REDACTED] customers, Merger Notice, paragraph 13.37.

⁴⁹ *Mueller/Dairy Crest*, paragraph 140.

98. In *Friesland/Campina*, the Commission found the market for bulk cream was at least wider than national.⁵⁰ In *Dairy Crest/Arla*, the OFT found the market to be at least national.⁵¹
99. The CMA has not found it necessary to reach a conclusion on the scope of the geographic frame of reference given that no competition concerns arise on a narrower (island of Ireland) frame of reference.
100. The Parties estimated that their combined shares in the supply of bulk cream is lower than [0-5]% at EEA level and lower than [5-10]% in the island of Ireland. No-third parties expressed competition concerns about the effects of the Merger in the supply of bulk cream.
101. For these reasons, the CMA has not found it necessary to conclude on the scope of the geographic frame of reference for the supply of bulk cream given that no competition concerns arise on a narrower (island of Ireland) geographic frame of reference.
102. The CMA does not believe the Merger gives rise to a realistic prospect of an SLC in the supply of bulk cream as a result of horizontal unilateral effects, even assuming the most cautious plausible frame of reference. Therefore, the effects of the Merger in the supply of bulk cream is not considered further in this decision.

Conclusion on frame of reference

103. For the reasons set out above, the CMA has assessed the impact of the Merger in the procurement of conventional bulk raw milk in both (i) NI and (ii) Ulster.
104. The CMA did not assess the impact of the Merger in detail for the downstream products given the Parties' small shares of supply for: (i): bulk butter in the island of Ireland and EEA; (ii) bulk milk powder in the EEA; and (iii) bulk cream in the island of Ireland and the EEA.

⁵⁰ *Friesland/Campina*, paragraphs 1391 - 1393.

⁵¹ [ME/2622/06](#) Completed acquisition by Dairy Crest Group plc of the doorstep and depot based middle ground milk businesses of Arla Foods UK plc (*Dairy Crest/Arla*), 26/10/2006, paragraph 15.

Competitive assessment

Horizontal unilateral effects: increased buyer power

105. As explained above, the Parties are active in the procurement of conventional bulk raw milk.
106. 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 procurement of conventional bulk raw milk.
107. Where the merging parties purchase the same products, the merged entity may have greater buyer power (or monopsony power) than the merging parties could previously exert individually. In many cases, an increase in buyer power is not likely to give rise to unilateral effects, and some of the benefits to the firm from its greater buyer power may be passed on to the merged entity's customers.⁵²
108. If the merged entity exerts buyer power upstream and pays lower prices, this will generally reduce the volume it is able to purchase. In turn, this will reduce its sales downstream. Therefore, a reduction of the prices paid to suppliers upstream will only be profitable if the merged entity has a large share of supply downstream so that an increase in price outweighs its loss of sales downstream, ie if it has sufficient market power downstream to benefit from a unilateral reduction in output.
109. Therefore, the CMA examined whether the Merger could give rise to increased buyer power vis-à-vis suppliers of conventional bulk raw milk that could result in harm in the downstream supply of dairy products.

Parties' submissions

110. The Parties submitted that dairy processors have no ability or incentive to decrease procurement prices to unsustainable levels for farmers because:
 - a. the merged entity will face significant competitive constraints, in particular from Dale Farm and Glanbia;
 - b. farmers have a number of alternatives in terms of buyers for their conventional bulk raw milk and can easily switch should the combined entity attempt to worsen supply terms;

⁵² [Merger Assessment Guidelines](#), paragraphs 5.4.19–5.4.21.

- c. the merged entity is a co-operative which is ultimately owned by farmers; and
- d. in order to reduce the price paid to farmers for conventional bulk raw milk, the combined entity would have to reduce its purchases of milk, and this would result in reduced sales downstream. As the downstream markets are international in nature, the sales lost by the merged entity would go to other suppliers; accordingly, any cost savings from lower prices for conventional bulk raw milk would be offset by revenue lost as a result of lower sales downstream.

Assessment

111. In order to assess horizontal unilateral effects in the procurement of conventional bulk raw milk and downstream markets, the CMA focused on:
- a. whether the Merger would increase the merged entity's buyer power; and
 - b. whether the merged entity would have enough market power in any downstream market to raise prices over the competitive level or harm competition in any other way.

Buyer Power upstream

112. First, the CMA assessed whether the Merger would increase the Parties' buyer power vis-à-vis suppliers to the extent that they will be able to pay a lower price for the conventional bulk raw milk supplied. The CMA focused on:
- a. shares of procurement and share of processing capacity;
 - b. closeness of competition between the Parties;
 - c. alternative dairy processors available to farmers;
 - d. switching costs;
 - e. third party views.

Shares of procurement and share of processing capacity

113. The Parties submitted that they had a combined share of [40-50]% for the procurement of conventional bulk raw milk in NI for 2017. Regardless of the frame of reference and source of estimates, following the Merger, the merged

entity would control roughly half of the conventional bulk raw milk pool available in NI or in Ulster with shares of procurement between [40 to 50%].

Table 3: Estimated shares of procurement in NI

NI	2016	2017	2018 (first six months)
Lakeland	[20-30]%	[20-30]%	[20-30]%
LacPatrick	[20-30]%	[20%-30]%	[10-20]%
Aurivo	[0-5]%	[0-5]%	[0-5]%
Dale Farm	[30-40]%	[30-40]%	[30-40]%
Glanbia Cheese	[10-20]%	[10-20]%	[10-20]%
Natural Dairies	[0-2]%	[0-5]%	[0-5]%
Strathroy	[5-10]%	[0-5]%	[5-10]%
Total	100%	100%	100%
Combined	[40-50]%	[40-50]%	[40-50]%

Source: CMA analysis of Parties and third parties' data

Table 4: Estimated shares of procurement in Ulster

Ulster	2016	2017	2018 (first six months)
Lakeland	[20-30]%	[30-40]%	[20-30]%
LacPatrick	[20-30]%	[10-20]%	[10-20]%
Aurivo	[5-10]%	[5-10]%	[5-10]%
Dale Farm	[20-30]%	[20-30]%	[20-30]%
Glanbia Cheese	[10-20]%	[10-20]%	[10-20]%
Natural Dairies	[0-5]%	[0-5]%	[0-5]%
Strathroy	[5-10]%	[5-10]%	[10-20]%
Total	100%	100%	100%
Combined	[40-50]%	[40-50]%	[40-50]%

Source: CMA analysis of Parties and third parties' data

114. In the case of homogeneous products such as conventional bulk raw milk, shares of capacity might be more indicative than shares of procurement to assess a firm's market power.⁵³ Shares of procurement are based on the location of the farmer suppliers; therefore, it is possible to limit the geographic scope to NI or Ulster. Shares of capacity instead are based on the total processing capacity of dairy processors. Since a site in the ROI can (and does) process milk from NI, it is not possible to accurately apply the same geographic scope to these estimates.

⁵³ *Merger Assessment Guidelines*, paragraphs 5.3.2 and 5.3.6.

115. The CMA found that there is significant spare capacity in the industry, for both the Parties and their competitors. [X] LacPatrick has a spare capacity of [X] thanks to its new dryer and Lakeland’s spare capacity is of [X].

Table 5: Shares of total annual processing capacity of dairy processors at least partly active in NI, 2017

	Utilised capacity	Total capacity
Lakeland	[40-50]%	[30-40]%
LacPatrick	[10-20]%	[10-20]%
Aurivo	[10-20]%	[10-20]%
Dale Farm	[10-20]%	[10-20]%
Glanbia Cheese	[10-20]%	[5-10]%
Natural Dairies	[0-5]%	[0-5]%
Strathroy ⁵⁴	[5-10]%	[5-10]%
Total	100%	100%
Combined	[50-60]%	[50-60]%

Source: CMA analysis of Parties and third-parties’ data

116. The CMA also looked at shares of capacity for processing sites based in NI only, regardless of the origin of the conventional bulk raw milk processed. Therefore, the CMA excluded all sites from Aurivo, Glanbia Ireland and Natural Dairies, and some processing capacity from Lakeland and LacPatrick.

Table 6: Shares of utilised capacity and total annual processing capacity for sites in NI, 2017

	Utilised capacity	Total capacity
Lakeland	[10-20]%	[5-10]%
LacPatrick	[30-40]%	[30-40]%
Dale Farm	[30-40]%	[30-40]%
Glanbia Cheese	[10-20]%	[10-20]%
Strathroy ⁵⁵	[5-10]%	[0-5]%
Total	100%	100%

Source: CMA analysis of Parties and third parties’ data, based on 2017 data and current capacity estimates

Closeness of competition

117. The CMA assessed the Parties’ offering, in particular price and distance between the Parties’ dairy processing sites to determine whether the Parties are close competitors.

⁵⁴ Due to lack of information in this regard, the CMA assumed that Strathroy has no spare capacity.

⁵⁵ Due to lack of information in this regard, the CMA assumed that Strathroy has no spare capacity.

118. The CMA examined pricing data obtained through the review of LacPatrick's internal documents. This included raw price published monthly by all dairy processors between July 2016 and August 2018.⁵⁶ The analysis of the price offered to milk suppliers showed there is no consistent pattern or ranking in dairy processors' pricing behaviour. Some dairy processors seem to be more price competitive than others, but this varies over time. In the period analysed, Dale Farm was often in the top 3 highest paying dairy processors, whilst LacPatrick, Glanbia Cheese and Strathroy tended to price less competitively. In the majority of the price in month during this two-year period, the price offered by each of the Parties was closer to the price offered by other dairy processors than to the price offered by the other Party.
119. Internal documents reviewed by the CMA and third party submissions do not indicate that the Parties are particularly close competitors in relation to any aspects of their offer. Some elements of the Parties' offer (payment conditions, type of bonus) are similar across several dairy processors in NI.⁵⁷ One third-party farmer supplier suggested that the Parties are close competitors, highlighting that Lakeland was its first option when considering switching from LacPatrick and that the Parties offer similar prices.⁵⁸
120. The CMA asked dairy processors operating in NI to rank their competitors according to how closely they compete against them. The CMA found that Lakeland is consistently viewed as a strong competitor whereas LacPatrick is considered weaker and it was usually ranked as the third strongest competitor.
121. In terms of geographic presence, as explained in the industry background section, the distance from a dairy processing site has limited influence on a farmer's choice of dairy processor. In this regard, conventional bulk raw milk collection occurs across relatively large distances and farmers of a certain size can attract collectors from anywhere in the north of the island of Ireland. Moreover, in terms of geographic proximity, the Parties are not each other's closest competitors and several alternatives are available in the area. The distance data submitted by the Parties show that the other Party is not the closest competitor to any of their sites as shown in Table 7.

⁵⁶ The CMA also received pricing data from the NI Department of Agriculture, Environment and Rural Affairs (DAERA). The data provided by DAERA is consistent with the data in the Parties' internal documents.

⁵⁷ Annex 11, internal document submitted by LacPatrick on 14 January 2019, pages 48-53 and Annexes 1-24, internal documents submitted by LacPatrick on 14 January 2019

⁵⁸ Note of a call with a third party farmer on 16 January 2019.

Table 7: Distance from the Parties' sites in NI

LacPatrick Artigarvan	LacPatrick Ballyrashane	LD Newtownards
<i>Natural Dairies Convoy 12.9</i>	Dale Farm Cullybackey 20.6	Glanbia Magheralin 28.1
<i>Aurivo Killygordon 13.3</i>	Dale Farm Ballymena 27.7	Dale Farm Ballymena 37.9
Strathroy Omagh 23.4	Dale Farm Cookstown 37.8	Dale Farm Cullybackey 46.0
Dale Farm Cookstown 38.1	Natural Dairies Convoy 51.4	Dale Farm Cookstown 52.4
Glanbia Fivemiletown 40.3	Aurivo Killygordon 55.6	LacPatrick Ballyrashane 64.0
Dale Farm Cullybackey 49.0	Strathroy Omagh 57.1	LacPatrick Monaghan 68.0
Dale Farm Ballymena 56.7	Farmview Belfast 58.2	<i>Glanbia Lough Egish 75.5</i>
Lakeland Kileshandra 71.1	Glanbia Magheralin 59.5	Glanbia Fivemiletown 77.4
<i>Glanbia Lough Egish 73.6</i>	Lakeland Newtownards 64.0	Strathroy Omagh 81.5
Glanbia Magheralin 77.6		LacPatrick Artigarvan 84.0
Farmview 78.2		
Lakeland Bailieborough 81.0		
Lakeland Newtownards 84.0		

Source: Merger notice, Table 8

Note: Parties' sites in bold and sites in ROI highlighted in *italic*

Alternative processors available to farmers

122. Overall, three out of fourteen farmers that responded to the CMA's market investigation noted that they have limited options available in terms of dairy processors, as the main alternatives to the Parties are Aurivo, Dale Farm and Glanbia Cheese. Nevertheless, most of the respondents were of the view that the Merger would either have no impact on the price of conventional bulk raw milk or preserve the processing capacity in the market.

Switching and switching costs

123. The standard supplying agreements that Lakeland and LacPatrick currently offer to farmers do not appear to prevent farmers from switching to other purchasers to take advantage of better terms. Only a small proportion of the

Parties' suppliers had contracts and these were either of relatively short duration or related to a small proportion of their milk.⁵⁹

124. Respondents to the CMA's market investigation indicated that switching costs are insignificant. In this regard, milk suppliers who recently switched from LacPatrick stated that, having had no contract with LacPatrick, they simply served a one-day notice and faced no other switching cost. All milk suppliers explained they would switch to another dairy processor if their dairy processor's price for conventional bulk raw milk were to decrease by 5-10% relative to other buyers.
125. Despite the lack of a contractual commitment, in practice the volumes switched from and to the Parties in the past three years show that switching is rare. The figures show that:
- a. in 2017, less than [REDACTED] of Lakeland's volumes switched to and from Lakeland, most of which to Dale Farm and Natural Dairies and from Strathroy;
 - b. in 2017, [REDACTED] of LacPatrick's volumes switched away to other buyers, mainly to Aurivo and Natural Dairies. Lakeland did not gain any of LacPatrick's volume;
 - c. switching data for 2016 and the first six months of 2018 show similar patterns.
126. These figures show that the Parties' milk suppliers tend not to switch between dairy processors and there is limited competition between the Parties for the procurement of conventional bulk raw milk. The CMA notes however that the pace of switching may vary rapidly. Recently switching increased [REDACTED]. For example, between 1 December 2018 and 31 January 2019, approximately [REDACTED] of bulk raw milk switched away from LacPatrick to Glanbia Cheese, Aurivo and Dale Farm. This is compared to the [REDACTED] that switched away from LacPatrick in the entire 2017.⁶⁰ None of the farmers that switched away from LacPatrick between 1 December 2018 and 31 January 2019 switched to Lakeland.

⁵⁹ Generally, Lakeland has no milk supply agreements in NI and no notice periods are required. However, [REDACTED] out of 720 suppliers are under contract fixing the price of up to [REDACTED] of their supply in exchange for exclusivity for the full duration of the contract (for 3 years up to the end of 2020). Similarly, [REDACTED] the farmers supply to LacPatrick on a no-contract basis. If a milk supply agreement is concluded, milk suppliers have to comply with one of the following four possible notice periods for termination of supply to LacPatrick: (i) three months; (ii) six months; (iii) 12 months; or (iv) 24 months. Only [REDACTED] of LacPatrick's milk suppliers have to serve a notice of 12-24 months. Merger Notice, paragraphs 15.17-15.21.

⁶⁰ Merger Notice, paragraph 15.16.

Third party views

127. Finally, most of the third parties who engaged with the CMA's market investigation were not concerned about the Merger. In fact, the majority of conventional bulk raw milk suppliers that responded to the market investigation were in favour of the Merger and in general highlighted that it would bring certainty to farmers, in light of LacPatrick's financial instability. In addition, a number of respondents to the CMA's market investigation argued that the Merger would generate efficiencies, as it would reduce processing costs in the long term.

Conclusion on buyer power upstream

128. For the reasons set out above, the CMA believes that the merged entity would have limited ability to exercise its buyer power upstream to force down the price of conventional bulk raw milk.⁶¹

Market power downstream

129. As explained above, the Parties process conventional bulk raw milk and sell dairy products on downstream markets. The CMA has assessed whether the merged entity could make use of any potential increase in buyer power vis-à-vis milk suppliers to the detriment of consumers of the products it supplies downstream. This assessment is applied both in the dairy products in which the Parties overlap and in the dairy products supplied by only one Party (identified in Table 8 below).
130. As explained above in paragraphs 74-104, the CMA found that the Parties do not currently have and will not have as a result of the Merger a significant market position in the supply of the dairy products in which they overlap downstream.
131. In relation to the supply of the dairy products in which the Parties do not overlap downstream, the Parties emphasised the international nature of the downstream markets and noted they have a small presence in the supply of any of these products.
132. Table 8 shows the shares of the Parties in the supply of non-overlap dairy products based on estimates provided by the Parties.⁶²

⁶¹ For the purposes of the CMA's assessment, there was no need to conclude on whether the farmer-owned nature of the co-operatives would affect their incentive to reduce conventional bulk raw milk prices.

⁶² Lakeland estimated its shares of supply based on own data and third party (eg Teno) estimates for the total market size. LacPatrick provided internal estimates.

Table 8: Overview of downstream markets where one Party is present

Product	Parties present	Estimated share of supply	Geographic scope
Bulk yoghurt to retail	LacPatrick	< [5-10]%	UK and ROI
Frozen Ice Cream to retail	Lakeland	[0-5]% ROI, [0-5]% UK	UK and ROI
Soft Serve Ice Cream to foodservice channel	Lakeland	[40-50]% ROI [40-50]% UK	UK and ROI
Milk Mini-pots and Sticks to retail channel	Lakeland	[0-5]% ROI [5-10]% UK	UK and ROI
Fresh buttermilk to retail channel	LacPatrick	<[5-10]%	UK and ROI
Fresh milk to national multiples	LacPatrick	< [5-10]%	UK and ROI
Fresh milk to middle ground customers	LacPatrick	< [5-10]%	UK and ROI
Long life flavoured milk to foodservice	Lakeland	[0-5]% ROI [0-5]% UK	UK and ROI
Long life cream	Lakeland	[10-20]% ROI [10-20]% UK	UK and ROI
Long life cream blends	Lakeland	[5-10]% ROI [10-20]% UK	UK and ROI

Source: Parties' submission

133. The Parties have a share of less than [10-20]% in the supply of these dairy products – except for the supply of Soft Serve Ice Cream to foodservice channel – either by reference to ROI and the UK. Based on precedents⁶³ and on a cautious basis, the CMA assessed the supply of these products on each of a UK and ROI basis. Given the small shares of supply of the Parties, the CMA did not consider that the Parties would have any ability to raise prices in these downstream dairy products if they reduced supply.

134. The CMA examined the effects of the Merger on the supply of soft serve ice cream to the foodservice channel, given that Lakeland has a share of supply of [40-50]% in the UK and [40-50]% in ROI. The CMA found that the revenue

⁶³ For example, see *Friesland/Campina*.

Lakeland generates from the supply of these products represents a mere [0-5]% of Lakeland's total revenue and [5-10]% of its revenues within the UK. Consequently, the CMA believes that any possible market power in the soft serve ice cream market would not provide enough additional incentive to the Parties to reduce conventional bulk raw milk price upstream, irrespective of the impact of the Merger on the Parties' buyer power. This is because the Parties cannot discriminate between the price they pay for conventional raw milk upstream depending on its intended use. Therefore, a reduction in the price paid for conventional bulk raw milk across all suppliers upstream would result in loss of output for all products the merged entity supplies downstream. This loss of output would not be outweighed by the potential benefit of a price increase in the small volume of soft serve ice cream that the merged entity sells to the foodservice channel.

135. The CMA considered that LacPatrick did not submit reliable data sources for its estimates of shares of supply regarding the following markets: (a) the supply of fresh buttermilk to the retail channel; (b) the supply of fresh milk to national multiples (ie supermarkets such as Sainsbury's, Tesco, Waitrose), and (c) the supply of fresh milk to middle ground customers (ie all customers between that of national multiples and doorstep customers).⁶⁴ The CMA examined the share of milk utilised by LacPatrick to produce liquid milk and buttermilk. These showed that LacPatrick uses [5-10]% of its milk to produce liquid milk, which includes buttermilk (see below). Therefore, for the reasons explained in paragraphs 129 to 134 above, the merged entity's market power would not give enough additional incentive to exercise any potential market power downstream.

Figure 2: LacPatrick's conventional bulk raw milk utilisation

[✂]

Source: LacPatrick annex 77 and annex 78 of the Merger Notice.

136. Based on the evidence described above, the CMA found that the Parties would not have enough market power to influence volumes, price and, ultimately, harm consumers in any product downstream.

⁶⁴ *Muller/Dairy Crest*, paragraph 108.

Conclusion on horizontal unilateral effects: increased buyer power

137. For the reasons set out in paragraphs 105 to 136 above, the CMA believes that the merged entity would have limited ability to exercise its buyer power upstream to force the price of conventional bulk raw milk down. In particular, the Parties are not each other's closest competitors and enough alternatives will remain to farmers upstream. Moreover, even if price of conventional bulk raw milk would decrease upstream, the CMA could not identify any product downstream where the Parties would have enough market power and incentive to influence volumes, price and, ultimately, harm consumers.
138. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the procurement of conventional bulk raw milk and downstream markets.

Coordinated effects

139. Coordinated effects may arise when firms operating in the same market recognise that they are mutually interdependent and that they can reach a more profitable outcome if they coordinate to limit their rivalry.⁶⁵ A merger may raise competition concerns as a result of coordinated effects if it affects the market structure such that the conditions for sustaining coordinated effects are created or enhanced.
140. When assessing whether or not coordinated effects may arise as a consequence of a merger, the CMA has regard to whether (a) the features of the relevant market(s) are conducive to coordination (ie whether firms are able to reach and monitor the terms of coordination), (b) coordination would be internally sustainable, and (c) coordination would be externally sustainable.⁶⁶ The CMA notes that as the coordination considered here would occur in the procurement market, an additional condition is required: (d) coordinating firms are able to harm consumers downstream. The CMA examines these factors below.
141. The CMA examined whether the loss of one of the five largest milk processors in NI would decrease complexity and/or increase the sustainability of coordination between all or some of the five largest processing firms in NI and Ulster: Lakeland/LacPatrick, Dale Farm, Glanbia Cheese, Aurivo, Strathroy. Coordination may occur between firms in relation to prices or market sharing,

⁶⁵ [Merger Assessment Guidelines](#), paragraph 5.5.1.

⁶⁶ [Merger Assessment Guidelines](#), paragraphs 5.5.4 and 5.5.9.

for example, firms not attempting to attract farmer suppliers away from a competitor.

Are market features conducive to coordination?

142. There are several features of the market that make the ability to reach and monitor coordination plausible.
143. As explained above, the procurement of conventional bulk raw milk in NI and Ulster is relatively concentrated (see paragraph 113).
144. Evidence from third parties and the Parties' internal documents indicate that the market is characterised by price and supplier transparency. For instance, the Parties' internal documents highlighted that:
 - a. The price for conventional bulk raw milk paid by dairy processors to farmers is transparent. Both Parties monitor the price paid by their competitors and adjust their prices accordingly.⁶⁷
 - b. If farmers are approached by a competitor to induce them to switch, the Parties⁶⁸ are aware of it and react. In particular, the CMA found evidence of instances when [redacted] approached several of LacPatrick's farmers: on that occasion, [redacted].⁶⁹
145. Furthermore, as explained in the Industry Background section (paragraphs 35, 45 and 47) there are frequent interactions between the main dairy processors, for example, many dairy processors trade unprocessed or processed milk with each other; and the presence of structural links, for example a number of dairy processors have shares in Ornu.⁷⁰
146. However, other features may potentially be less conducive to coordination. These are for example, the diversity in the presence of dairy processors in different downstream markets and the cyclical nature of supply and demand for conventional bulk raw milk.

⁶⁷ Annex 52, internal document submitted by LacPatrick on 14 January 2019.

⁶⁸ See evidence from LacPatrick internal documents, Annex 28, 38 and 94 of LacPatrick's response to s.109 notice.

⁶⁹ See evidence from LacPatrick internal documents, Annex 94 of LacPatrick's response to s.109 notice.

⁷⁰ See footnote 19 above.

Internal sustainability

147. The CMA has assessed whether the Merger would increase the internal sustainability of a tacit agreement due to the reduction in the number of dairy processors active in the market. The reduction in the number of firms active in the market is 6 to 5, or 5 to 4 excluding Strathroy (since it had only a 4% share of conventional bulk raw milk procurement in NI).
148. The CMA found that Merger will not increase, because it will not create more symmetric. In particular, the merged entity would become the largest buyer of conventional bulk raw milk in NI with a [40-50]% share based on 2017 data, followed by Dale Farm at 32% and Glanbia Cheese at 14%.
149. Moreover, the CMA found that each of the firms considered are active in (or focus on) different downstream markets and this will not change significantly after the Merger. This element of further asymmetry reduces the likelihood of internal sustainability of a possible coordination because performance in downstream markets influences the price paid for conventional bulk raw milk. In particular:
- a. Dale Farm produces mainly cheddar, wheat protein products, liquid milk, butter and spread;
 - b. Lakeland produces mainly milk powder, milk proteins, dairy fats, butter, long life liquid milk and ice-cream;
 - c. LacPatrick's business is focused on milk powder and, secondarily, on liquid milk;
 - d. Glanbia Cheese produces predominantly mozzarella cheese.
150. For the reasons set out above, the CMA does not consider that the Merger would increase symmetry in the procurement of conventional bulk raw milk in NI and Ulster.
151. Accordingly, for all the reasons set out above, the CMA concludes that the Merger is unlikely to increase the internal sustainability of a tacit collusion.

External sustainability

152. The Merger is unlikely to have any effect on barriers to entry.

153. The CMA took into account that after the Merger potential competition from competitors based in the nearby ROI counties would still threaten the sustainability of the coordination among firms in NI.⁷¹
154. Accordingly, the CMA considers that the Merger is unlikely to increase external sustainability of a tacit collusion.

Ability to harm consumers

155. The CMA considered whether coordination could harm competition in any downstream market. In particular, the CMA assessed whether the results of coordination upstream might result in detriment to consumers downstream by examining each participant's market power downstream.
156. In paragraphs 129 to 136, the CMA assessed the Parties' market power in each of the downstream markets where they are present and concluded either that they would not have the ability to harm competition downstream or, in a small number of cases, that the downstream market is sufficiently small relative to procurement markets that upstream incentives are unlikely to be sufficiently affected.
157. The CMA has not assessed the downstream market power of other milk processors in NI and Ulster, as there is no need to conclude where none of the previous conditions are met and the market power of other milk processors will not change as a result of the Merger.

Conclusion on coordinated effects

158. For the reasons set out above, the CMA believes that the Merger will not give rise to coordinated effects as the Merger will not increase the ability of milk processors in NI to reach and monitor an understanding, and it will not increase either internal or external sustainability. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of coordinated effects in relation to in the market for procurement of conventional bulk raw milk in NI and Ulster.

Vertical effects

159. Vertical effects may arise when a merger involves firms at different levels of the supply chain, for example a merger between an upstream supplier and a

⁷¹ Broadening the agreement to firms based in the ROI would reduce the internal sustainability of coordination due to the increase in the number of participants.

downstream customer or a downstream competitor of the supplier's customers.

160. Vertical mergers may be competitively benign or even efficiency-enhancing, but in certain circumstances can weaken rivalry, for example when they result in foreclosure of the merged firm's competitors. The CMA only regards such foreclosure to be anticompetitive where it results in an SLC in the foreclosed market(s), not merely where it disadvantages one or more competitors.⁷²
161. In the present case, both Parties supply the excess of conventional bulk raw milk to other dairy processors (downstream competitors). During peak production periods, conventional bulk raw milk supplies may exceed processing capacity. A dairy processor may also have excess supply in the event of unplanned processing disruption, such as unforeseen malfunction of a milk dryer or other processing equipment. The CMA assessed whether after the Merger the Parties may restrict supplies of conventional bulk raw milk to competing dairy processors or may increase the price of milk charged to competing dairy processors (ie input foreclosure of competitors downstream).
162. The CMA's approach to assessing vertical theories of harm is to analyse (a) the ability of the merged entity to foreclose competitors, (b) the incentive of it to do so, and (c) the overall effect of the strategy on competition.⁷³ This is discussed below. In practice, the analysis of these questions may overlap, and many factors may affect more than one question.

Ability

163. The CMA found that the Parties have limited volumes of surplus milk and estimated that most competitors source 1% or less of their needs from the Parties. Only one competitor sources a significant amount of conventional bulk raw milk from the Parties and it did not express any concerns regarding the impact of the Merger on its supply arrangements. [REDACTED] In addition, the third party said that the price paid for that milk from competitors is based on the EU Conventional Bulk Raw Milk Index. Furthermore, neither the Parties nor any single entity could affect the movements of the index in any significant way.
164. Only one milk processor that currently purchases a small quantity of conventional bulk raw milk [REDACTED] expressed the concern that the merged entity would no longer have the incentive to supply it because [REDACTED].⁷⁴

⁷² In relation to this theory of harm 'foreclosure' means either foreclosure of a rival or to substantially competitively weaken a rival.

⁷³ [Merger Assessment Guidelines](#), paragraph 5.6.6.

⁷⁴ [REDACTED]

165. The CMA found that, while conventional bulk raw milk is a crucial input for the production of dairy products, this dairy processor currently procures a small amount of conventional bulk raw milk [X]. Other alternative sources seem to be available to this dairy processor to replace the small amount of raw bulk conventional milk [X], namely to purchase directly from farmers.
166. [X] Therefore, it is unlikely that the merged entity would benefit significantly downstream from foreclosing this dairy processor. Only a large increase in shares of supply of the merged entity in the supply of dairy products in which it overlaps with this dairy processor would give the merged entity the ability to profitably raise prices and margins downstream as a result of the foreclosure of this dairy processor. Therefore, the merged entity would not have the ability to foreclose its rival.
167. On basis of the evidence considered above, the CMA has concluded that the Merger will not provide the merged entity with sufficient ability to foreclose. The CMA has, therefore, not assessed the impact of the Merger on its incentive to foreclose or the effect of a foreclosure strategy on competition.

Conclusion on vertical effects

168. For the reasons set out above, the CMA believes that the merged entity will not have the ability to foreclose competing processors by restricting the supply of conventional bulk raw milk or by increasing the price of conventional bulk raw milk charged to competitors. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of vertical effects in relation to the supply of conventional bulk raw milk.

Barriers to entry and expansion

169. 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.⁷⁵
170. 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.

⁷⁵ [Merger Assessment Guidelines](#), from paragraph 5.8.1.

Third party views

171. The CMA contacted customers, competitors and milk suppliers of the Parties. Two of six competitors and one of the fourteen milk suppliers that responded to the CMA market's investigation raised concerns regarding the Merger, noting there will be less buyers on the market.
172. Most of the milk suppliers were in favour of the Merger and in general highlighted that it would bring certainty to farmers, given LacPatrick's current financial instability. Some suppliers argued that the Merger would generate efficiencies, as it would reduce processing costs in the long term.
173. One milk processor expressed concerns about the Merger and the effect of the Merger in its relationship with the Parties. However, most of its concerns were not Merger specific.
174. Third party comments have been taken into account where appropriate in the competitive assessment above.

Decision

175. 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.
176. The Merger will therefore **not be referred** under section 33(1) of the Act.

Eleni Gouliou Director, Mergers

**Competition and Markets Authority
5 March 2019**

End Note - following the announcement of the decision, the merger parties informed the CMA that the transaction involves a merger between Lakeland Dairies Co-Operative Society Limited and LacPatrick Co-Operative Society Limited under the Irish Industrial and Provident Societies Act 1983 (as amended), the governing statute for co-operative societies. Throughout the decision all references to an acquisition should be read as the merger between Lakeland Dairies Co-Operative Society Limited and LacPatrick Co-Operative Society Limited. This factual adjustment does not materially change the substance of this decision.