

Anticipated acquisition by ForFarmers UK Limited of the business and certain assets of Bowerings Animal Feeds Limited

Decision on relevant merger situation and substantial lessening of competition

ME/6785/18

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 10 May 2019. Full text of the decision published on 12 June 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. ForFarmers UK Limited (**ForFarmers**) has agreed to acquire the business and certain assets of Bowerings Animal Feeds Limited (the **Bowerings Business**) (the **Merger**). ForFarmers and the Bowerings Business are together referred to as the **Parties**.
2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that each of ForFarmers and Bowerings 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 animal feed in the UK. The CMA has assessed the impact of the Merger against separate product frames of reference for conventional compound feed, conventional blended feed, and organic compound feed (with each segmented by type of animal: ruminants (such as cattle and sheep) and monogastric animals (such as pigs and poultry)). There is no overlap in organic blended feed for ruminants and monogastric animals. As to the geographic scope, the CMA has assessed the

Merger on both a UK-wide basis and local (within 100-mile radius from the Bowerings' mill) basis.

4. The CMA has, therefore, assessed whether the Merger gives rise to horizontal unilateral effects in each of these candidate frames of reference. In all frames of reference excluding organic compound feed, the CMA found that the Parties' estimated market shares are relatively low, the increments arising from the Merger are not material and that there will continue to be several other competitors.
5. The Parties have higher market shares of above 40% for organic compound feed for: (i) ruminants and pigs on a local basis; and (ii) pigs on a UK-wide basis. In these cases, the CMA is satisfied that the Parties will face sufficient competitive constraints from other suppliers of organic compound feed both within and outside of the local areas of overlap, as well as from suppliers of conventional compound feed expanding into the supply of organic compound feed.
6. The CMA believes that these constraints, taken together, are sufficient to ensure that the Merger does not give rise to a realistic prospect of a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects.
7. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).

ASSESSMENT

Parties

8. ForFarmers is a manufacturer and supplier of animal feed and other agricultural products in the UK. ForFarmers' 2017 UK turnover was £544,223,000.
9. Bowerings Animal Feeds Limited (**Bowerings**) is a supplier of animal feed in the UK. ForFarmers is acquiring the Bowerings Business which comprises goodwill, business contracts, vehicles, business information/records, animal feed, intellectual property rights¹ and employees.² The Bowering Business

¹ Clause 3.1 and Schedule 9 of the Business Purchase Agreement dated 5 December 2018, Annex 4 of the final merger notice submitted by the Parties on 20 March 2019 (**Final Merger Notice**).

² The scope of the transferring Bowerings Business includes transferring employees under TUPE (Clause 3.1 and Schedule 9 of the Business Purchase Agreement dated 5 December 2018, Annex 4 of the Final Merger Notice).

does not include the transfer of the Bowerings mill based in Bridgwater, Somerset which will instead be closed and decommissioned³ upon completion of the Merger.⁴ The turnover attributable to the Bowerings Business in 2017 was £9,800,000.

Transaction

10. On 5 December 2018, ForFarmers agreed to acquire the Bowerings Business for [X].⁵

Jurisdiction

11. Each of ForFarmers and the Bowerings Business is an enterprise.
12. The Parties overlap in the supply of conventional and organic compound animal feed at both a UK-wide and local level. At the UK-wide level, the Parties have a combined share of supply (by volume) in organic compound animal feed of:
 - a. for ruminants, [30-40]% (with the Merger bringing about an increment of [10-20]%);
 - b. for pigs, [60-70]% (with the Merger bringing about an increment of [0-5]%); and
 - c. poultry, [20-30]% (with the Merger bringing about an increment of [0-5]).⁶
13. The CMA therefore believes that the share of supply test in section 23 of the Act is met.
14. 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.

³ Clause 23.1 of the Business Purchase Agreement dated 5 December 2018, Annex 4 of the Final Merger Notice: *'The Seller shall as soon as practicable and in any event within 90 days of Completion, decommission the feed mill at the Seller Premises and shall confirm to the Buyer that such decommissioning has been carried out and in what manner'*.

⁴ Clause 22.2 of the Business Purchase Agreement dated 5 December 2018, Annex 4 of the Final Merger Notice contains a three year non-compete clause.

⁵ Business Purchase Agreement 5 December 2018 dated Annex 4 of the Final Merger Notice.

⁶ See Table 5 below.

15. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 21 March 2019 and the statutory 40 working day deadline for a decision is therefore 20 May 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.⁷
17. The Parties submitted that the appropriate counterfactual should be the prevailing conditions of competition. Under the prevailing conditions of competition, Bowerings purchases animal feed from ForFarmers and subsequently supplies the animal feed to its customers (ie, Bowerings operates as a merchant).⁸
18. The Parties submitted that Merger discussions started on 12 January 2018 when Bowerings (through its broker) approached ForFarmers regarding the possible sale of the Bowerings Business. The Parties also submitted information on the sequence of events that followed this date which led to the prevailing conditions of competition. In particular, the Parties submitted that following a fire at the Bowerings mill, the Parties entered a supply agreement whereby ForFarmers supplied Bowerings with animal feed to enable Bowerings to fulfil its customers' requirements.⁹ This agreement remained in place after Bowerings reopened its mill, with ForFarmers continuing to supply 40% of Bowerings' animal feed requirements. [REDACTED] Bowerings closed its mill in November 2018 and since then has been purchasing all its animal feed requirements from ForFarmers.
19. The CMA considers that the events and commercial decisions described above which led to the existing supply agreement between the Parties took

⁷ *Merger Assessment Guidelines* (OFT1254/CC2), September 2010, from paragraph 4.3.5. The *Merger Assessment Guidelines* have been adopted by the CMA (see *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2), January 2014, Annex D).

⁸ See Paragraph 4 of the Final Merger Notice, which states that since January 2018 Bowerings has purchased all its requirements of animal feed from ForFarmers.

⁹ Feed supply agreement dated 1 November 2018, Annex 7 of the Final Merger Notice.

place in contemplation of the Merger. The CMA also notes that the Parties included a non-compete restriction of three years and a mill-decommissioning clause in the Business Purchase Agreement which requires the permanent removal of the Bowerings mill's capacity from the market.¹⁰ The CMA considers that there is a realistic prospect that, in the absence of the Merger, Bowerings would have re-opened the mill and, therefore, would have continued to be active in both the manufacturing and supply of animal feed. The CMA considers that this counterfactual is more competitive than the prevailing conditions of competition as it envisages rivalry between Bowerings and ForFarmers in the manufacture and supply of animal feed.

20. Therefore, the CMA considers that the relevant counterfactual in this case is the situation that prevailed before the start of Merger discussions and the fire in January 2018, ie a situation in which Bowerings was active in the manufacturing and supply of animal feed in competition with ForFarmers.

Frame of reference

21. The CMA considers that 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.¹¹

Product scope

22. Animal feed is made up of two ingredients: agricultural raw materials (mainly grains) and pre-mix (ie feed additives), and is comprised of three categories:
 - a. single (or straight) feed which is made up of a single grain;
 - b. compound feed which is milled and supplied in pellet form; and
 - c. blended feed which is not milled but mixed and supplied as mixed feed.

¹⁰ Clauses 22.2 and 23.1 of the Business Purchase Agreement 5 December 2018, Annex 4 of the Final Merger Notice.

¹¹ [Merger Assessment Guidelines](#), paragraph 5.2.2.

23. Manufacturers of compound and blended animal feed process raw materials at a local mill and sell the feed to merchants, buyer groups, or directly to end-customers (farms).¹²
24. The Parties overlap in the supply of conventional (ie, non-organic) compound feed, conventional blended feed for ruminants and organic compound animal feed for ruminants and monogastric animals. The Parties submitted that all types of animal feed form part of a single market,¹³ as compound and blended feed are substantially interchangeable, both from the demand and supply side.¹⁴ However, in line with the CMA's decision in *ForFarmers/Countrywide Farmers*,¹⁵ the Parties acknowledged that the narrowest frame of reference is conventional compound feed for ruminants and monogastric animals, separately, and conventional blended feed for ruminants.¹⁶

Segmentation by category of feed

25. The Parties submitted that from a demand-side perspective, there is a significant price difference between compound and blended feed, as blended feed is between £10 to £15 cheaper per tonne than compound feed.¹⁷
26. In *ForFarmers/Countrywide*, the CMA distinguished between compound and blended feed on the basis that these types of feed are processed in different ways and compound feed can come in a pellet form.¹⁸ The CMA considers that there is no reason to depart from the approach taken in *ForFarmers/Countrywide* as third party evidence did not indicate that compound and blended feed were part of a single market. This finding is also consistent with the price difference between compound and blended feed noted by the Parties.

Segmentation between conventional and organic

27. The Parties submitted that conventional and organic feed formed part of the same market on the basis that, from a supply-side perspective, it is simple and quick for conventional animal feed producers to start producing organic animal feed. While it is necessary for a supplier to have organic certification

¹² The CMA considers there is no need to identify separate frames of reference as between the manufacture of animal feed, and its supply (eg by merchants). It uses the term 'supply' to refer broadly to both supply channels throughout this decision. For the avoidance of doubt, both manufacturers and merchants are taken into account in the shares of supply, and throughout the competitive assessment.

¹³ Paragraph 45 of the Final Merger Notice.

¹⁴ Paragraph 49 of the Final Merger Notice.

¹⁵ *ForFarmers/Countrywide Farmers Decision* (ME/6507/14), CMA 13 April 2015.

¹⁶ The CMA notes that the Parties indicated that compound and blended feed are substantially interchangeable, both from the demand and supply side (Paragraph 49 of the Final Merger Notice).

¹⁷ Paragraph 49 of the Final Merger Notice.

¹⁸ Paragraph 19 of *ForFarmers/Countrywide Farmers* (ME/6507/14), CMA 13 April 2015.

as well as segregated bins for organic raw materials and feed, once this cost has been incurred, switching can be achieved at a negligible cost.

28. The Parties also submitted that, because demand for organic feed is very low at approximately 300,000 tonnes per annum, only 15 mills currently produce organic feed in the UK compared to a larger number of conventional feed producers. The Parties however noted that organic feed is also approximately £100-150 per tonne more expensive than conventional feed due to the higher costs of raw materials and certification requirements, and that the higher price allowed organic feed to be delivered further distances than conventional feed.
29. The CMA considers there to be a distinction between conventional animal feed and organic animal feed.
30. First, organic meat producers can only use organic animal feed. Thus, for these meat producers there is no demand substitutability between organic and conventional feed.
31. Second, third parties confirmed that organic feed is more expensive than conventional feed. The CMA considers that the higher price means that organic feed is generally not considered as a substitute for conventional feed by non-organic farmers.
32. The CMA considers supply side substitutability between conventional and organic feed in the competitive assessment.

Segmentation by animal

33. In *ForFarmers/Countrywide* the CMA concluded that compound feed manufacturers may not have the ability or incentive to switch production quickly between compound feed for ruminants and monogastric animals, or between pig and poultry feed.¹⁹ This was because of a range of reasons: different compound feed requires different equipment to manufacture feed for ruminants and monogastric animals; UK legislation requires feed for certain types of animal to be heavily medicated and producers would have to run a cleaning batch to prevent cross-contamination which may result in loss of productive efficiencies.
34. The CMA considers there is no reason to depart from the approach taken in *ForFarmers/Countrywide* as third party evidence did not indicate that feed for different types of animal were part of a single market.

¹⁹ *ForFarmers/Countrywide Farmers* (ME/6507/14), CMA 13 April 2015, paragraph 34.

Conclusion on product frame of reference

35. For the reasons set out above, the CMA has considered the impact of the Merger in the supply of:
- a. conventional compound feed for:
 - i. ruminants;
 - ii. pigs;
 - iii. poultry;
 - b. conventional blended feed for ruminants;
 - c. organic compound feed for:
 - i. ruminants;
 - ii. pigs; and
 - iii. poultry.

Geographic scope

36. The CMA notes that on the basis of UK precedents,²⁰ the appropriate geographical frame of reference for conventional compound and blended animal feed is a local area of 100 miles from the target mill. There are no precedents in terms of the geographic delineation for organic animal feed.
37. The Parties submitted that the market has moved on considerably since the decisional precedent referred to above. The Parties submitted that because of larger vehicles, the use of local transit depots for local distribution and the increase in feed prices, the radius of catchment areas have increased since the precedents of 2009 and 2015 and it is now more appropriate to use a catchment area of 150 miles.²¹ The Parties explained that this is particularly the case for organic feed as this is a higher value product allowing transport costs to be more easily absorbed.²²

²⁰ *AB Agri Limited/JE Porter Limited* (ME/40957/09), OFT 17 April 2009 [Decision](#). See also *ForFarmers/Countrywide Farmers* (ME/6507/14), CMA 13 April 2015 [Decision](#).

²¹ Paragraphs 55 to 57 of the Final Merger Notice. The Parties submitted the market for compound and blended feed may even potentially be national extending to England and Wales, parts of Scotland and possibly the whole of the UK.

²² Paragraph 55 of the Final Merger Notice.

Average and maximum distances for supplying conventional and organic feed

38. In relation to conventional feed, *ForFarmers/Countrywide* established the geographic frame of reference to be regional (100 miles radius from each of the mills owned by ForFarmers), on the basis that:
- a. third parties submitted that the average distance that feed was delivered from the mill was 60-100 miles;²³ and
 - b. there was no reason to depart from the approach taken in *AB Agri Limited/JE Porter Limited*,²⁴ where the Office of Fair Trading concluded that the relevant geographic frame of reference for compound and blended animal feed was 100 miles from the mill in question.²⁵
39. The CMA considers there is no reason to depart from the approach taken in both *ForFarmers/Countrywide* and *AB Agri Limited/JE Porter Limited*,²⁶ as third party evidence received in its merger investigation was consistent with this approach.
40. In relation to organic animal feed, on the demand-side, third party customers submitted their furthest supplier of organic animal feed is located 50 to 60 miles away.²⁷ On the supply side, the CMA received mixed evidence²⁸ from third party competitors who broadly indicated that suppliers may deliver organic feed over greater distances although there are some limitations to doing so.²⁹
- a. For example, one competitor indicated that while on average it delivers organic feed 70 miles away, it can deliver to a maximum distance of 180 miles. This competitor informed the CMA that the maximum distance would only be feasible with a full load and with volume of feed below that it would not go beyond 80 to 100 miles.³⁰

²³ Paragraph 61 of the *ForFarmers/Countrywide Farmers* (ME/6507/14), CMA 13 April 2015.

²⁴ *AB Agri Limited/JE Porter Limited* (ME/40957/09), OFT 17 April 2009.

²⁵ Paragraph 62 of the *ForFarmers/Countrywide Farmers* (ME/6507/14), CMA 13 April 2015.

²⁶ *AB Agri Limited/JE Porter Limited* (ME/40957/09), OFT 17 April 2009.

²⁷ Third party customer response of [REDACTED] to the CMA's questionnaire; and third party customer response of [REDACTED] to the CMA's questionnaire.

²⁸ A third party competitor told the CMA it would travel an average distance of 160 to 350 miles and a maximum distance of 430 miles with a full load; third party competitor response of [REDACTED] to the CMA's questionnaire. Another third party indicated it would travel an average distance of 180 to 200 miles and a maximum of 500 miles; third party competitor response of [REDACTED] to the CMA's questionnaire.

²⁹ Third parties told the CMA that the distance they can travel is determined by the volume they have to deliver in a specific area and by other factors such as, for example, if they have to collect ingredients for their animal feed in an area located further away. In this case, suppliers can deliver to customers located in that area while collecting their input ingredients.

³⁰ Third party competitor response of [REDACTED] to the CMA's questionnaire.

- b. Another competitor submitted that the large majority of its sales travel 170 miles, with 430 miles being the maximum distance it could travel with a full load.³¹
- c. Another competitor indicated that while it is more competitive the nearer a customer is to its mill, it currently covers the whole of the UK (although the average distance it would travel to deliver organic feed would be 80 miles).³²

Conclusion on geographic scope

41. In light of this mixed evidence, and on a cautious basis, the CMA considers that the appropriate geographic frame of reference for organic feed is a local area of 100 miles around the mill. However, in light of the evidence of some suppliers delivering organic feed over greater distances and of some with national coverage, the CMA has taken into account the competitive constraints from suppliers located outside of this catchment area in its competitive assessment where relevant.

Conclusion on frame of reference

42. For the reasons set out above, the CMA has considered the impact of the Merger in the following frames of reference:
- a. The supply of conventional compound feed for:
 - i. ruminants in the UK and on a local level;
 - ii. pigs in the UK and on a local level;
 - iii. poultry in the UK and on a local level;
 - b. The supply of conventional blended feed for ruminants in the UK and on a local level;
 - c. The supply of organic compound feed for:
 - i. ruminants in the UK and on a local level;
 - ii. pigs in the UK and on a local level; and

³¹ Third party competitor response of [X] to the CMA's questionnaire.

³² Third party competitor response of [X] to the CMA's questionnaire.

- iii. poultry in the UK and on a local level.

Competitive assessment

Horizontal unilateral effects

43. 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.³³ Horizontal unilateral effects are more likely when the merging parties are close competitors. 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:
- a. The supply of conventional compound feed for:
 - i. ruminants in the UK and on a local level;
 - ii. pigs in the UK and on a local level;
 - iii. poultry in the UK and on a local level;
 - b. The supply of conventional blended feed for ruminants in the UK and on a local level;
 - c. The supply of organic compound feed for:
 - i. ruminants in the UK and on a local level;
 - ii. pigs in the UK and on a local level; and
 - iii. poultry in the UK and on a local level.

Conventional compound feed

44. The CMA assessed the Parties' combined shares by volume sales for 2017 for conventional compound and blended feed at both the UK-wide and local level for the different animals.

³³ [Merger Assessment Guidelines](#), from paragraph 5.4.1.

Shares of supply

Table 1: Conventional compound animal feed volume shares at the UK-wide level (2017)

	Ruminants	Pigs	Poultry
Bowerings	[0-5]%	[0-5]%	[0-5]%
ForFarmers	[20-30]%	[10-20]%	[5-10]%
Combined	[20-30]%	[10-20]%	[5-10]%
AB Agri Ltd	[0-5]%	[10-20]%	[10-20]%
Pig & Poultry Integrators	[0-5]%	[70-80]%	[70-80]%
Harbro	[0-5]%	[0-5]%	[0-5]%
Dugdale Nutrition Ltd	[0-5]%	[0-5]%	[0-5]%
Crediton Milling	[0-5]%	[0-5]%	[0-5]%
Heygates Ltd	[0-5]%	[0-5]%	[0-5]%
HJ Lea Oakes	[0-5]%	[0-5]%	[0-5]%
Duffields	[0-5]%	[0-5]%	[0-5]%
Lloyds Animal Feeds	[5-10]%	[0-5]%	[5-10]%
Wynnstay plc	[5-10]%	[0-5]%	[0-5]%
Massey Feeds	[5-10]%	[0-5]%	[0-5]%
Mole Valley Farmers	[10-20]%	[0-5]%	[0-5]%
Carrs Billington Agriculture Ltd	[10-20]%	[0-5]%	[0-5]%
MWF Ltd	[10-20]%	[0-5]%	[0-5]%

Source: Parties' data

Note: For the purposes of this table [⌘] shares reflect a rounding down of low volumes of feed, rather than [⌘] volumes.

Table 2: Conventional compound animal feed volume shares within 100 miles of the Bowerings site (2017)

	Ruminants	Pigs	Poultry
Bowerings	[0-5]%	[0-5]%	[0-5]%
ForFarmers	[30-40]%	[20-30]%	[5-10]%
Combined	[30-40]%	[20-30]%	[5-10]%
<i>Total AB Agri</i>	[0-5]%	[60-70]%	[50-60]%
NWF (EX37 9HZ)	[0-5]%	[0-5]%	[0-5]%
Lloyds Animal Feeds (TA10 9RB)	[0-5]%	[0-5]%	[20-30]%
<i>Total Duffields</i>	[5-10]%	[0-5]%	[0-5]%
Crediton Milling	[5-10]%	[0-5]%	[0-5]%
Wynnstay (SA31 3SG)	[10-20]%	[0-5]%	[0-5]%
Massey Feeds (EX22 6ER)	[10-20]%	[0-5]%	[0-5]%
<i>Total Mole Valley</i>	[20-30]%	[5-10]%	[5-10]%

Source: Parties' data.

Note: For the purposes of this table [⌘] shares reflect a rounding down of low volumes of feed, rather than [⌘] volumes.

45. The CMA notes that the Parties' combined market shares at both the UK-wide level and local level are below 40% with respect to ruminants, pigs and poultry feed with very low increments arising as a result of the Merger (<[0-5]%).³⁴ No concerns were raised by third parties in respect of these frames of reference and therefore they are not considered further.

Conventional blended feed for ruminants

46. The CMA assessed the Parties' combined shares by volume sales for 2017 for conventional blended feed for ruminants at both the UK-wide and local level.

Shares of supply

Table 3: Conventional blended animal feed volume shares at the UK-wide level (2017)

	Ruminants
Bowerings	
ForFarmers	[10-20]%
Combined	[10-20]%
Pig & Poultry Integrators	[0-5]%
Harbro	[0-5]%
Heygates Ltd	[0-5]%
Carrs Billington Agriculture Ltd	[0-5]%
Crediton Milling	[0-5]%
Lloyds Animal Feeds	[0-5]%
HJ Lea Oakes	[0-5]%
Duffields	[0-5]%
Massey Feeds	[0-5]%
Dugdale Nutrition Ltd	[5-10]%
Wynnstay plc	[5-10]%
Mole Valley Farmers	[5-10]%
MWF Ltd	[10-20]%
AB Agri Ltd	[20-30]%

Source: Parties' data

Note: For the purposes of this table [⌘] shares reflect a rounding down of low volumes of feed, rather than [⌘] volumes. There is no overlap in organic blended feed for ruminants and monogastric animals.

³⁴ Previous decisions in mergers in markets where products are undifferentiated suggest that combined market shares of less than 40 per cent will not often give the CMA cause for concern over unilateral effects. See paragraph 5.3.5 of the [Merger Assessment Guidelines](#).

Table 4: Conventional blended animal feed volume shares within 100 miles of the Bowerings site (2017)

	Ruminants
Bowerings	[0-5]%
<i>Total ForFarmers</i>	<i>[10-20]%</i>
Combined	<i>[10-20]%</i>
NWF (EX37 9HZ)	[0-5]%
<i>Total AB Agri</i>	<i>[0-5]%</i>
Lloyds Animal Feeds (TA10 9RB)	[0-5]%
Massey Feeds (EX22 6ER)	[5-10]%
Crediton Milling	[10-20]%
<i>Total Duffields</i>	<i>[10-20]%</i>
Wynnstay (SA31 3SG)	[10-20]%
<i>Total Mole Valley</i>	<i>[30-40]%</i>

Source: Parties' data

Note: For the purposes of this table [⌊] shares reflect a rounding down of low volumes of feed, rather than [⌋] volumes. There is no overlap in organic blended feed for ruminants and monogastric animals.

47. The CMA notes that the Parties' combined market shares at both the UK-wide and local level are below 40% with respect to ruminants (all animals), with a negligible increment arising as a result of the Merger. No concerns were raised by third parties in respect of this frame of reference, and therefore they are not considered further.

Organic compound feed

48. The CMA assessed the Parties' combined shares by volume sales for 2017 for organic compound feed at both the UK-wide and local level for ruminants, pigs and poultry respectively. The Parties submitted estimated shares that the CMA was able to test and supplement with some third-party data.

Shares of supply

Table 5: Organic compound animal feed volume shares at the UK-wide level (2017)

	Ruminants	Pigs	Poultry
Bowerings	[10-20]%	[0-5]%	[0-5]%
ForFarmers	[20-30]%	[60-70]%	[20-30]%
Combined	[30-40]%	[60-70]%	[20-30]%
Anode Feeds	-	[0-5]%	[0-5]%
Moy Park	-	[0-5]%	[0-5]%
Faccenda Foods	-	[0-5]%	[0-5]%
Marriages	-	[0-5]%	[0-5]%
AB Agri - Enstone	[0-5]%	[0-5]%	[5-10]%
AB Agri - Uffculme	[0-5]%	[0-5]%	[5-10]%
B & W Feeds	[0-5]%	[0-5]%	[0-5]%
Humphrey Feeds	[0-5]%	[0-5]%	[30-40]%
Noble Foods	[0-5]%	[0-5]%	[10-20]%
Allen & Page/Organic Feed Co	[0-5]%	[20-30]%	[5-10]%
H J Lea Oakes	[10-20]%	[5-10]%	[0-5]%
Mole Valley Farmers	[20-30]%	[0-5]%	[0-5]%
Hi Peak	[20-30]%	[0-5]%	[10-20]%

Source: Parties' and third parties' data

Note: For the purposes of this table [X] shares reflect a rounding down of low volumes of feed, rather than [X] volumes.

Table 6: Organic compound animal feed volume shares within 100 miles of the Bowerings site (2017)

	Ruminants	Pigs	Poultry
Bowerings	[20-30]%	[10-20]%	[0-5]%
ForFarmers (Blandford)	[30-40]%	[70-80]%	[0-5]%
Combined	[50-60]%	[80-90]%	[0-5]%
AB Agri - Enstone	[0-5]%	[0-5]%	[10-20]%
AB Agri - Uffculme	[0-5]%	[0-5]%	[10-20]%
B & W Feeds	[0-5]%	[0-5]%	[0-5]%
Humphrey Feeds	[0-5]%	[0-5]%	[70-80]%
Noble Foods	[0-5]%	[0-5]%	[0-5]%
Mole Valley Farmers	[40-50]%	[10-20]%	[0-5]%

Source: Parties' and third parties' data

Note: For the purposes of this table [X] shares reflect a rounding down of low volumes of feed, rather than [X] volumes.

49. The CMA notes that, at the UK-wide level, the Parties' combined market shares are below 40% in relation to ruminants and poultry, but greater than 40% in relation to pigs. Although the Parties' combined share for pigs is significant, the increment is minimal, at less than [0-5]%, with the shares of

supply indicating the existence of a number of alternative suppliers with a greater scale than Bowerings post-Merger, for example, Allen & Page and HJ Lea Oakes. No third parties raised concerns in respect of these possible UK-wide candidate frames of reference.

50. The CMA notes that, within the local 100-mile catchment area of the Bowerings' site, the Parties' combined market shares are greater than 40% in relation to ruminants and pigs with a significant increment of more than [20-30]% and [10-20]%, respectively. This overlap is attributable to ForFarmers' sole organic feed-producing mill, which is located in Blandford 48 miles east of the Bowerings' site (the **ForFarmers Blandford Mill**).
51. The CMA has therefore gone on to consider a range of evidence to assess the competitive constraints imposed by the Parties' competitors both within the local area and outside of it in relation to organic compound animal feed for ruminants and pigs.

Competitive constraints within and from outside the local area

52. The Parties submitted that, post-Merger, the Parties will face competitive constraints from existing competitors supplying organic compound feed and in addition, suppliers of conventional compound feed on the basis that the latter could readily switch to supplying organic feed should that demand emerge.³⁵ The Parties informed the CMA that they did not have documents discussing competition in the animal feed market, the size of the market and their position within it, so were unable to submit evidence in the form of internal documents about competitive constraints to the CMA.

Mole Valley

53. Within the 100-mile catchment area of the Bowerings site there is, in addition to the ForFarmers Blandford Mill, one other competitor for organic feed, Mole Valley, that is located more closely (2 miles) to the Bowerings site.³⁶ Mole Valley produces organic compound feed for ruminants, pigs and poultry from its Bridgwater mill.
54. Mole Valley told the CMA that [REDACTED].³⁷ This is consistent with the views of a Bowerings' customer that currently purchases organic compound feed for ruminants who indicated that after Bowerings, the other most important suppliers are ForFarmers and Mole Valley.³⁸ On the basis of its geographic

³⁵ Paragraph 49 of the Final Merger Notice.

³⁶ Distances have been calculated on the basis of drive time.

³⁷ Mole Valley's response of [REDACTED] to the CMA's questionnaire.

³⁸ Third party customer response of [REDACTED] to the CMA's questionnaire.

closeness to the Bowerings' site, the CMA also believes that Mole Valley is likely to exercise a more significant constraint on Bowerings than ForFarmers.

Constraints outside of the 100-mile catchment area

55. Third party evidence indicated there to be a number of competitors for organic feed located outside the 100-mile catchment area:
- a. Hi Peak produces organic compound and blended feed for ruminants and monogastric animals (both pigs and poultry) from a dedicated organic mill located in Killamarsh, near Sheffield, 170 miles from Bowerings' mill. Hi Peak told the CMA that [REDACTED]. This is further supported by the fact that, following the fire at the Bowerings mill, Hi Peak was [REDACTED].³⁹ Hi Peak also [REDACTED]. [REDACTED]. As Table 5 shows, data provided by Hi Peak shows that it is a significant supplier of organic feed for ruminants in the UK with a larger UK share of supply of [20-30]% relative to Bowerings' share of supply of [10-20]% in 2017. Whilst Hi Peak's production of organic feed for pigs is less significant, Table 5 shows that its 2017 production was comparable to Bowerings.
 - b. HJ Lea Oakes produces organic compound feed for ruminant and monogastric animals (both pigs and poultry) from a mill near Newcastle, 154 miles from Bowerings' mill. HJ Lea Oakes told the CMA that it primarily serves North West England and Wales, but it also serves Scotland and South West England and that it [REDACTED].⁴⁰ It also indicated [REDACTED]. As Table 5 shows, data provided by HJ Lea Oakes shows that it is a significant supplier of organic feed for ruminants with a UK share of supply [REDACTED]. Whilst HJ Lea Oakes production of organic feed for pigs is, at [5-10%], less significant than its share for ruminants [10-20%], Table 5 shows that its 2017 production [REDACTED].
 - c. Allen and Page produces organic feed for ruminants and monogastric animals from a mill located in Norfolk 226 miles away from Bowerings' mill.

³⁹ Hi Peak's response of [REDACTED] to the CMA's questionnaire

⁴⁰ HJ Lea Oakes' response of [REDACTED] to the CMA's questionnaire.

56. Both Hi Peak and HJ Lea Oakes told the CMA [REDACTED].⁴¹⁴² [REDACTED] informed the CMA that [REDACTED] in the next year and [REDACTED] in the longer term. [REDACTED].⁴³ [REDACTED].⁴⁴ HJ Lea Oakes said that [REDACTED].
57. [REDACTED], some customers confirmed to the CMA that organic animal feed producers located at further distances from the South West of England can use merchants to serve and acquire customers in South West England. For example, a large merchant customer of Bowerings informed the CMA that it purchases feed from HJ Lea Oakes and Hi Peak and delivers on their behalf.⁴⁵
58. For these reasons, the CMA considers that Hi Peak and HJ Lea Oakes, although located at a greater distance >100 miles from the Bowerings' mill, would exercise a significant competitive constraint on the Parties post-Merger.

Constraints from suppliers of conventional feed

59. Third party evidence indicates that producers of conventional compound animal feed can quickly switch to producing organic compound feed without incurring significant sunk costs because:⁴⁶
- a. The equipment used for producing organic and conventional animal feed is the same;
 - b. The equipment needs to be flushed with conventional raw material before using it for the production of organic feed. Flushing is a fast process that takes approximately 3 or 4 minutes and costs £25 a flush. A third party competitor told the CMA that it would take one week to start producing organic feed at its sites that did not already do so;⁴⁷ and
 - c. While an organic certification is required, it is relatively cheap to acquire with costs that range between £870 and £6,000 annually according to the value of sales of organic animal feed.⁴⁸

⁴¹ In addition, the CMA notes that another third party competitor told the CMA that it [REDACTED]. See third party response of [REDACTED] to the CMA's questionnaire.

⁴² Third party competitor response of [REDACTED] to the CMA's questionnaire.

⁴³ Third party competitor response of [REDACTED] to the CMA's questionnaire.

⁴⁴ Third party competitor response of [REDACTED] to the CMA's questionnaire.

⁴⁵ Third party customer response of [REDACTED] to the CMA's questionnaire.

⁴⁶ A third party competitor told the CMA: 'Any feed mill could quite easily manufacture organic feeds, as the process is exactly the same; it would just require procurement of organic raw materials'. Third party response of [REDACTED] to the CMA's questionnaire.

⁴⁷ Third party response of [REDACTED] to the CMA's questionnaire.

⁴⁸ Paragraph 53 of the Final Merger Notice: 'Certification requirements are simply that the plant has in place systems which avoid the risk of cross contamination, e.g. that organic materials are kept separate from

60. For these reasons, the CMA considers that producers of conventional animal feed could quickly switch to the supply of organic feed, without incurring significant costs.

Views of third parties

61. The CMA contacted customers and competitors of the Parties, as well as the broker that arranged the sale of the Bowerings business and certain assets.⁴⁹ The CMA notes that third party customers did not express concerns about the Merger and informed the CMA that there are other alternative suppliers available.⁵⁰ One competitor told the CMA that the Merger would take out an alternative organic supplier and potentially increase prices for organic feed.⁵¹ However, a proportion of competitors said that pre-Merger Bowerings was too small to make a big impact in organic feed and, for this reason, they did not expect the Merger to make any significant difference in the market.

Conclusion on horizontal unilateral effects

62. For the reasons set out above, the CMA considers that Bowerings is a relatively small supplier of organic feed at the national level and that the Parties post-Merger would face sufficient constraints from competitors located both within and outside the local area. As explained at paragraph 57, suppliers also use merchants to serve and acquire customers in locations that are geographically distant from their mills. Moreover, some competitors [REDACTED]. In addition to the existing competitive constraints in the market, the barriers to expand into organic animal feed for producers of conventional feed are low. Further, third parties have not raised any concerns.
63. 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 conventional compound feed for ruminants, pigs or poultry; conventional blended feed for ruminants; or organic compound feed for ruminants, pigs or poultry.

conventional raw materials and to ensure that there is an appropriate methodology to protect against cross contamination’.

⁴⁹ Third party comments have been taken into account where appropriate in the competitive assessment.

⁵⁰ Third party customer response of [REDACTED] to the CMA’s questionnaire and third party customer response of [REDACTED] to the CMA’s questionnaire.

⁵¹ Third party competitor response of [REDACTED] to the CMA’s questionnaire.

Barriers to entry and expansion

64. 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.⁵²
65. As set out in paragraph 59 above, the CMA notes that producers of conventional compound feed can quickly switch to producing organic compound feed without incurring significant costs. The CMA concludes therefore that there are low barriers to entry or expansion for existing conventional compound feed producers to start or increase supplying organic compound feed.

Decision

66. 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.
67. The Merger will therefore **not be referred** under section 33(1) of the Act

Eleni Gouliou
Director, Mergers
Competition and Markets Authority
13 May 2019

⁵² [Merger Assessment Guidelines](#), from paragraph 5.8.1.