

Anticipated acquisition by Glennon Bros UK Holdings Limited of Balcas Limited

Decision on relevant merger situation and substantial lessening of competition

ME/6939/21

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 9 September 2021. Full text of the decision published on 7 October 2021.

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. Glennon Bros UK Holdings Limited (**Glennon Brothers**) has agreed to acquire Balcas Limited (**Balcas**) (the **Merger**). Glennon Brothers and Balcas are together referred to as the **Parties**, and for statements referring to the market position if the Merger were to be completed, the **Merged Entity**.
2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that each of Glennon Brothers and Balcas is an enterprise; that these enterprises will cease to be distinct as a result of the Merger; and that the turnover test is met. Accordingly, arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
3. The CMA believes that the Merger does not give rise to a realistic prospect of a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects, and as a result of vertical effects.
4. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).

ASSESSMENT

Parties and transaction

5. Glennon Brothers is a manufacturer of timber products with processing activities in the United Kingdom (**UK**) and Ireland. Glennon Brothers supplies sawn timber products to the construction, pallet and packaging, and fencing and landscaping industries. Glennon Brothers also sells the by-products of its timber processing activities (eg woodchip and sawdust) including as feedstock to wood pellet producers.¹ In the financial year ending 31 December 2019, Glennon Brothers had a worldwide turnover of approximately £131 million, of which approximately £[~~3~~] was generated in the UK.²
6. Balcas also manufactures timber products, supplying customers in the UK and Ireland through its timber division. In addition, Balcas' energy division operates two energy plants in Enniskillen (Northern Ireland) and Invergordon (Scotland), producing high quality wood pellets, a heat fuel used in boilers and wood burning stoves in private homes and businesses.³ In the financial year ending 31 December 2019, Balcas had a worldwide turnover of approximately £108 million, of which approximately £[~~3~~] was generated in the UK.⁴
7. On 17 May 2021, Glennon Brothers and Balcas entered into a share purchase agreement under which Glennon Brothers will acquire 100% of Balcas' shares for a consideration of £[~~3~~].⁵
8. The Parties informed the CMA that the Merger is also the subject of review by the competition authority in the Republic of Ireland.

Jurisdiction

9. The CMA believes that the Merger (as described in paragraph 7) is an arrangement in progress or contemplation for the purposes of the Act.⁶
10. Each of Glennon Brothers and Balcas is an enterprise. As a result of the Merger, these enterprises will cease to be distinct.

¹ Merger Notice dated 19 July 2021 submitted on behalf of the Parties (**Merger Notice**), paragraphs 3.1-3.5 and 10.7 (executive summary).

² Merger Notice, paragraph 6.1.

³ Merger Notice, paragraphs 3.6-3.8 and 12.3-12.8.

⁴ Merger Notice, paragraph 6.2.

⁵ Merger Notice, paragraph 2.5.

⁶ Section 33(1)(a) of the Act.

11. The UK turnover of Balcas exceeds £70 million, so the turnover test in section 23(1)(b) of the Act is satisfied.
12. 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.
13. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 22 July 2021 and the statutory 40 working day deadline for a decision is therefore 16 September 2021.

Counterfactual

14. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual).⁷ In this case, there is no evidence supporting a different counterfactual, and the Parties and third parties have not put forward submissions in this respect. Therefore, the CMA believes the prevailing conditions of competition to be the relevant counterfactual.

Competitive assessment

Horizontal unilateral effects

15. 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.⁸ Horizontal unilateral effects are more likely when the merging parties are close competitors.
16. In assessing an anticipated merger, the CMA is required to consider whether it 'may be expected to result in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services'. The assessment of the relevant market is an analytical tool that forms part of the analysis of the competitive effects of the merger and should not be viewed as a separate exercise. In this case, the CMA has assessed competitive dynamics relevant to the Parties' activities in relation to the supply of sawn timber products in the UK. In line with the approach set out in the CMA's Merger Assessment Guidelines, the CMA considers that the analysis of the evidence gathered for the purposes of competitive assessment, which assesses the potentially significant constraints on the Parties' behaviour,

⁷ [Merger assessment guidelines \(CMA129\) – 2021 revised guidance](#), from paragraph 3.12.

⁸ [Merger assessment guidelines \(CMA129\) – 2021 revised guidance](#), paragraph 4.1.

captures the competitive dynamics to the same extent as a separate formal analysis of market definition.⁹ The CMA considered that the evidence on shares of supply and alternative suppliers (see further below) indicates that on any precise definition of the relevant market the Merger would be unlikely to result in a realistic prospect of an SLC.¹⁰

17. The Parties submitted that they have a combined share of supply of sawn timber products in the UK of less than [0-10]% (by volume) with an increment of [0-10]% being brought about by the Merger.¹¹
18. The CMA considered whether the Parties' shares of supply would materially vary when excluding imports of softwood timber into the UK, which are estimated to account for approximately 65% of domestic demand.¹² The CMA found that, on such basis, the Parties' combined share of supply of sawn timber products in the UK would remain below 20%.¹³
19. The Parties also submitted that the Merged Entity will continue to face competition after the Merger from (i) several other UK-based suppliers, including [X], [X] and a tail of smaller sawmills (of a broadly similar size to Balcas), (ii) international suppliers with operations in the UK (eg [X], [X]) and (iii) imports from suppliers based in [X], and to a lesser extent [X] and [X].¹⁴
20. The Parties' internal documents broadly confirm that there is a range of alternative players supplying sawn timber products into the UK, including large UK-based players such as [X] and [X].¹⁵ Consistent with the Parties' submissions, most third parties that responded to the CMA's merger

⁹ [Merger assessment guidelines \(CMA129\) – 2021 revised guidance](#), paragraphs 9.1-9.5.

¹⁰ The CMA considered shares of supply on a number of alternative product and geographic bases.

¹¹ Estimates based on publicly available information on sawmilling capacity in the UK and through a variety of publicly available sources including: *Forestry Statistics 2020, A compendium of statistics about woodland, forestry and primary wood processing in the United Kingdom*, September 2020, page 61; [X]; and Annex 015 to the Merger Notice 'Timber Trade Flows to the UK, Previous years statistics 2019, Trends and data Analysis, Softwood forecasts, Nick Moore Timbertrends'. For completeness, the Parties also submitted that their combined share of supply of sawn timber products in the UK would, in any event, not exceed [10-20]% should a sub-segmentation be made according to the end-use, namely for: (i) the construction industry, (ii) the fencing and landscaping industry; and (iii) the pallets and packaging industry (Merger Notice, paragraphs 14.3 and 14.10-14.21).

¹² Merger Notice, paragraphs 14.2 and 15.33-15.34; Annex 015 to the Merger Notice 'Timber Trade Flows to the UK, Previous years statistics 2019, Trends and data Analysis, Softwood forecasts, Nick Moore Timbertrends'; 'UK softwood market prospects to improve if Brexit deal struck' (11 March 2019) available at: <http://www.tjonline.com/news/uk-softwood-market-prospects-to-improve-if-brexit-deal-struck-7033111>.

¹³ CMA own calculation based on Merger Notice, Table 1: UK sawn timber market – 2019; Annex 015 to the Merger Notice 'Timber Trade Flows to the UK, Previous years statistics 2019, Trends and data Analysis, Softwood forecasts, Nick Moore Timbertrends'; Annex 1 to the Parties' response to the CMA's Request for Information dated 11 June 2021.

¹⁴ Merger Notice, paragraph 14.3 and Table 1: UK sawn timber market – 2019.

¹⁵ Annex 015 to the Merger Notice 'Timber Trade Flows to the UK, Previous years statistics 2019, Trends and data Analysis, Softwood forecasts, Nick Moore Timbertrends'; Annex 011 to the Merger Notice 'Project Evergreen – November 2020' and Annex 013 to the Merger Notice 'IBISWorld, Sawmilling & Wood Planning in the UK, November 2020'.

investigation confirmed that there is strong competition from both UK suppliers and timber imports from Scandinavia and other European countries.¹⁶

Conclusion on horizontal unilateral effects

21. For the reasons set out above, 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 supply of sawn timber products in the UK.

Vertical effects

22. 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 downstream customer or a downstream competitor of the supplier's customers.
23. 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.¹⁷
24. 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. This is discussed below.
25. In the present case, the CMA considered whether the Merged Entity could partially foreclose rival wood pellet producers in the UK by increasing the price, worsening the quality of or limiting access to Glennon Brothers' feedstock supplied to them.¹⁸

¹⁶ [X]'s response to the CMA's merger investigation dated 15 June 2021, [X]'s response to the CMA's merger investigation dated 8 June 2021, [X]' response to the CMA's merger investigation dated 2 June 2021, [X]' response to the CMA's merger investigation dated 2 June 2021, [X]' response to the CMA's merger investigation dated 3 June 2021, and [X]' response to the CMA's merger investigation dated 10 June 2021.

¹⁷ In relation to this theory of harm 'foreclosure' means either foreclosure of a rival or to substantially competitively weaken a rival.

¹⁸ The CMA investigated this theory of harm further to receiving two complaints through the invitation to comment that took place between 2 and 15 June 2021 ([X]'s response to the CMA's merger investigation dated 10 June 2021 and [X]'s response to the CMA's merger investigation dated 10 June 2021).

Ability

26. The Parties submitted that there are [X] wood pellet producers that purchase feedstock from Glennon Brothers and that [X] competitors have alternative sources of supply available: [X];¹⁹ [X].^{20, 21}
27. [X] sources a large proportion of its feedstock requirements directly from forests in and around Argyll and South West Scotland, whereas [X].²² Therefore, while Glennon Brothers may be [X] supplier of wood pellets feedstock [X], the CMA believes that in the event the Merged Entity were to engage in input foreclosure vis-à-vis [X], the latter would have the ability to source its feedstock requirements from neighbouring forest owners as it already does at present.
28. The Parties also submitted that Balcas uses all its feedstock for its own wood pellet production and [X] nor has it ever in the past supplied feedstock directly to a wood pellet producer for the production of wood pellets.²³ The CMA found that this is broadly consistent with the Parties' internal documents obtained during the merger investigation.²⁴
29. Based on the evidence set out above, the CMA does not believe that the Parties would have the ability to engage in a foreclosure strategy.

Incentive

30. The Parties submitted that wood pellet feedstock is a by-product from the process of manufacturing timber, which must be disposed of either through sale for another use (eg feedstock) or paid for disposal.²⁵ The wood fibre used as wood pellet feedstock is relatively low value and margin, and as such, its supply is restricted to regional markets in order to mitigate haulage and lower the cost. As a result, Glennon Brothers only supplies feedstock to wood pellet

¹⁹ Merger Notice, paragraphs 19.14.

²⁰ Merger Notice, paragraphs 19.42-19.43.

²¹ This information is provided for completeness although the Republic of Ireland is outside of the scope of the CMA's merger investigation.

²² Merger Notice, paragraph 19.46 and [X]'s response to the CMA's merger investigation dated 23 July 2021.

²³ Merger Notice, paragraphs 19.1, 19.4, 19.9 and 19.11.

²⁴ Annex 001 to the Merger Notice 'Project Evergreen, Confidential Information Memorandum, 9 december 2019' (page 21) and Annex 006 to the Merger Notice 'Evergreen Sawmill, Operations Overview, 9 October 2020' (page 2).

²⁵ The CMA notes there may be different product segmentations within wood pellets, including based on the size and quality of the individual pellets. The CMA did not consider the extent of any segmentation relevant to its assessment of the vertical relationship between the Parties in this case.

producers in close geographic proximity to its sites in Troon, Scotland ([REDACTED]) and Fermoy, Republic of Ireland ([REDACTED]).²⁶

31. To assess whether the Merged Entity would have the incentive post-merger to engage in a partial foreclosure strategy aimed at rival wood pellet producers in the UK, the CMA examined Balcas' share of supply in the downstream market for the supply of wood pellets in the UK.
32. Broadly consistent with the CMA's merger investigation, Balcas estimates its share of supply of wood pellets in the UK at approximately [20-30]% in relation to wood pellets for commercial use and [10-20]% for wood pellets for residential use (by volume), in a market where customers can also choose from alternative wood pellet producers including AMP Clean Energy, Land Energy and a tail of smaller players.^{27, 28} Given Balcas' limited position in the downstream market, the CMA believes that an input foreclosure strategy by the Merged Entity would be unlikely to result in a material gain in downstream sales. In addition, the CMA notes that the Parties have limited alternative options to generate revenues from Glennon Brothers' wood pellet feedstock.²⁹
33. On that basis, the CMA believes that the Parties would not have an incentive to engage in a foreclosure strategy.

Effect

34. Given the CMA's conclusion that the Parties would have neither the ability nor the incentive to engage in a foreclosure strategy, the CMA has not carried out a detailed assessment of the effects of such a strategy.

²⁶ Merger Notice, paragraphs 19.2-19.16. For completeness, the Parties submitted that they believe that the catchment area for the supply of wood pellet feedstock is contained within a [REDACTED] radius of source, for it to be commercially viable for both customers and suppliers (Merger Notice, paragraphs 19.9 and 19.15).

²⁷ Merger Notice, paragraphs 19.20; Annex 002 to the Merger Notice '20200924 Evergreen KPMG CDD' (pages 17-20); [REDACTED]'s response to the CMA's merger investigation dated 27 July 2021; [REDACTED]'s response to the CMA's merger investigation dated 23 July 2021 and [REDACTED]' response to the CMA's merger investigation dated 27 July 2021.

²⁸ The CMA notes that Balcas' estimated share of supply of wood pellets in the UK may vary materially at sub-national level. For example, in line with estimates provided by third parties in response to the CMA's merger investigation, Balcas estimates its share of supply of wood pellets in Northern Ireland to reach [40-50]% (by volume) (Merger Notice, paragraphs 19.18(d) and table under paragraph 19.25; [REDACTED]'s response to the CMA's merger investigation dated 27 July 2021 and [REDACTED]' response to the CMA's merger investigation dated 27 July 2021). The CMA further notes, for completeness, that it did not receive any complaints from interested third parties about the Merger relating specifically to Northern Ireland.

²⁹ In this regard, the CMA notes that there are only three wood pellet producers in Scotland: [REDACTED], [REDACTED] and [REDACTED]. The Parties submitted that Glennon Brothers does not have plans to supply [REDACTED] and/or [REDACTED] in the future due to geographical constraints and the long distance between Glennon Brothers' Troon site and [REDACTED]' and [REDACTED]' respective wood pellets plants ([REDACTED]) (Merger Notice, paragraphs 19.44 and 19.50).

Conclusion on vertical effects

35. For the reasons set out above, 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 wood pellets feedstock in the UK.

Barriers to entry and expansion

36. 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.³⁰
37. 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.

Third party views

38. The CMA has received input during its investigation from competitors and customers across the UK. Third party comments have been taken into account in the competitive assessment above.

Decision

39. Consequently, the CMA does not believe that it is or may be the case that the Merger may be expected to result in an SLC within a market or markets in the UK.
40. The Merger will therefore **not be referred** under section 33(1) of the Act.

Sorcha O’Carroll
Director
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³⁰ [Merger Assessment Guidelines](#), from paragraph 8.40.