

Completed acquisition by Boparan Private Office, via Amber REI Holdings Limited, of Banham Poultry (2018) Limited

Decision on relevant merger situation and substantial lessening of competition

ME/6975/21

The CMA's decision on reference under section 22(1) of the Enterprise Act 2002 given on 25 March 2022. Full text of the decision published on 27 April 2022.

Please note that [✂] 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. On 18 October 2021, Boparan Private Office (**BPO**), via Amber REI Holdings Limited, acquired Banham Poultry (2018) Limited (**Banham**) (the **Merger**).
2. BPO is the management office for a group of companies operated by, and under the common ownership of, Ranjit Boparan and his family interests. BPO oversees one of the UK's largest food businesses and manages a group of companies with activities covering commercial and residential property, restaurants, farming, as well as a range of activities relating to food production and supply. A primary focus of the food businesses of BPO is the supply of poultry products, in particular chicken, and to a lesser extent turkey, in the UK.
3. 2 Sisters Food Group Limited (**2SFG**) is BPO's core food production business. 2SFG is one of the UK's largest suppliers of primary and processed chicken. Its customers range from supermarket retailers to food service companies to industrial food processors. Unless otherwise specified, all companies in the BPO group shall be collectively referred to as **Boparan**.
4. Banham is also a supplier of fresh and frozen chicken products. Banham was previously owned by Chesterfield Poultry Limited (**Chesterfield**), which bought the

company out of administration in 2018. Banham is active primarily in the UK, where it rears live birds for slaughter, before cutting and processing these for sale to retailers, industrial food processors, caterers, and wholesalers.

5. Boparan and Banham are together referred to as the **Parties**, and for statements referring to the future, as the **Merged Entity**.
6. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that each of Boparan and Banham is an enterprise; that these enterprises have ceased to be distinct as a result of the Merger; and that the turnover test is met. The four-month period for a decision as extended has not yet expired. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.
7. The CMA considered the impact of the Merger against the pre-Merger conditions of competition. The Parties submitted that the appropriate counterfactual was one in which Banham would have exited the market absent the Merger, but the CMA found that the Parties failed to provide sufficiently compelling evidence to support this. The CMA concluded that, despite losing [X] customers and receiving reduced order volumes [X], there was at least a realistic prospect that Banham would have remained active in the market, either by continuing to supply its existing customers prior to the Merger (including Boparan) or by finding alternative customers.
8. The Parties' activities overlap in the supply of chicken products in the UK. The CMA has previously found that the market for the supply of chicken can be segmented by different ways of processing chicken; different types of chicken products, including primary fresh chicken, primary frozen chicken, processed chicken, and chicken by-products; and by different customer types, such as retailers, food manufacturers and wholesalers.¹ The CMA used the frame of reference analysis in its past decisions in this sector as a guide for its assessment in this case. However, the CMA did not consider it necessary to draw a bright-line market definition in this case. The CMA therefore assessed the impact of the Merger in the market for the overall supply of chicken in the UK, as well as specific segments within this broader category.ⁱ
9. The CMA found that the supply of chicken in the UK is a concentrated industry characterised by limited spare capacity. Following a string of recent acquisitions, Boparan is today the largest player in the industry with a share of supply of [30-

¹ [Cargill Incorporated/Faccenda Investments Ltd](#) dated 7 December 2017; and [Boparan Private Office/Bernard Matthews](#) dated 12 January 2017.

40]%² and few remaining rivals. As set out in the CMA's Merger Assessment Guidelines, a large share of supply, high concentration levels, and limited spare capacity of rivals are all factors that make horizontal unilateral effects more likely in undifferentiated markets.³

10. The CMA found, however, that the market was competitive prior to the Merger with declining margins and prices. The investigation also showed that Banham was a relatively small player and was not a strong competitive constraint on Boparan prior to the Merger. It had suffered [X] reductions in order volumes and losses of [X] customer contracts prior to the Merger and had [X]. The CMA also found that Banham generally did not compete with Boparan for the same tenders and, when it did, it was rarely successful. The evidence from the Parties' internal documents also suggested that they did not view each other as close competitors. Most customers did not consider Banham as an alternative to their current chicken supplier, and the majority of third parties that engaged with the CMA's investigation (including most large customers) did not raise concerns regarding the Merger.
11. The CMA found that, notwithstanding the high levels of concentration in the market, Boparan will continue to face strong competition from at least three rivals (Avara, Moy Park, and Cranswick). Although the CMA did not carry out an in-depth analysis of profit margins or contractual terms in the industry, it found evidence that there has been pressure on chicken suppliers' profit margins over the past few years, and that at least some large retail customers can negotiate favourable contracts and switch suppliers when necessary.
12. The CMA noted that, given Boparan's high market share, the degree of concentration in the industry, and the lack of spare capacity, there will continue to be a risk of horizontal unilateral effects, including price increases, in the event of any further consolidation in the industry. The CMA will therefore continue to review carefully any potential future relevant merger situations.
13. The CMA, therefore, believes that the Merger does not give rise to a realistic prospect of a substantial lessening of competition (**SLC**) in the market for the supply of chicken in the UK.
14. The Merger will therefore **not be referred** under section 22(1) of the Enterprise Act 2002 (the **Act**).

² In terms of chickens slaughtered in the UK. See Table 1.

³ [Merger Assessment Guidelines \(CMA129\)](#), March 2021, paragraph 4.38

PARTIES, TRANSACTION AND INDUSTRY BACKGROUND

Boparan

15. Boparan manages a group of companies with activities covering commercial and residential property, restaurants, farming, as well as a range of activities relating to food production and supply. A primary focus of Boparan's food business is the supply of poultry products, in particular chicken, and to a lesser extent turkey, in the UK.
16. Boparan's main food business, 2SFG, is active in the supply of primary and processed chicken to retailers, food service companies, and other industrial food processors in the UK and Europe.⁴ The business is active across the entire chicken supply chain, from rearing live birds on farms to cutting and processing the birds in preparation for supply to customers. 2SFG currently processes [✂] birds in the UK each week.⁵
17. Boparan, through 2SFG, also has a 50% interest in the joint venture Hook 2 Sisters Limited (**Hook 2 Sisters**), which owns a number of broiler farms that are active in the supply of live chickens. Hook 2 Sisters' activities concern the rearing and growing of chickens for supply to 2SFG and other Boparan entities.⁶

Banham

18. Banham is a supplier of fresh and frozen chicken products based in Attleborough, Norfolk. Banham is also active across the chicken supply chain including rearing live birds for slaughter and cutting and processing birds for sale to customers. Banham currently slaughters [✂] birds per week before processing these for sale to retailers, industrial food processors, caterers, and wholesalers.⁷

⁴ Boparan, via 2SFG, operates a number of other food divisions, including, (i) a meal solutions division, which supplies a range of products including hot cross buns, ready meals, pizza, soups and sauces and is wholly focused on own label products; (ii) a biscuits division, which predominantly bakes own label products at its site in Uttoxeter; and (iii) a bakery division, which produces pies and puddings and includes the brands Holland's Pies and McDougall's Pies in its portfolio.

⁵ Parties' Response to the CMA's Enquiry Letter, paragraph 11.4.

⁶ Parties' Response to the CMA's Enquiry Letter, paragraph 11.4. Hook 2 Sisters also supplies chickens to Boparan entity, Shazan Foods Limited (**Shazan**). Shazan is a halal meat company that supplies a variety of meat products, including fresh meat and poultry, under the Shazan's brand. Shazan's entire product range (including its chicken products) is specifically produced to be compliant with halal standards.

⁷ Parties' Response to the CMA's Enquiry Letter, paragraph 11.18.

Transaction

19. The Merger was brought into effect pursuant to a Share Purchase Agreement and was completed on 18 October 2021. Boparan paid GBP [X].⁸
20. Before the Merger, Banham had entered into a supply agreement with [X], whereby [X] purchased a volume of processed chicken from Banham.⁹ In addition, [X] agreed to supply Banham with up to [X] live birds per week.¹⁰

Industry background

21. The Parties are both active across the chicken supply chain, from rearing live birds to cutting and processing them for customers. The chicken supply chain involves farms and manufacturing facilities at several different stages, including:¹¹
 - (a) Rearing farms: this is where breed laying chickens, which start laying as of 18 weeks old, are reared;
 - (b) Laying farms: this is where the chickens lay their eggs. The eggs are then delivered to hatcheries;
 - (c) Hatcheries: in the hatcheries, the eggs take approximately 21 days to hatch and the day-old chicks will then be delivered to growing farms (also referred to as broiler farms);
 - (d) Growing farms: where the day-old chicks are delivered and reared as broiler chickens for a period of usually between 35 to 53 days. A number of growing farms are operated directly by the established poultry producers and growing farms are also run by contract grower farmers who will be contracted to one of the poultry producers (most likely on a 12-month basis or a two crop notice period); and

⁸ Parties' Briefing Paper to the CMA, dated 18 October 2021.

⁹ Parties' consolidated response to RFI 2, dated 31 January 2022, paragraph 12.6.

¹⁰ Parties' Supplementary Submission to the CMA's Enquiry Letter, submitted on 7 February 2022, paragraph 4.3.

¹¹ The CMA notes that the Parties are both 'farm to fork' chicken suppliers, with both having farming activities covering the rearing of live chickens through to processing facilities where birds are cut and processed. The Parties' main rivals, Moy Park (<https://moypark.com/agriculture>); Avara (<https://www.avarafoods.co.uk/What-we-do>); and Cranswick (<https://cranswick.plc.uk/business-model-strategy>) also have integrated chicken supply chains.

(e) Processing sites: this is where the chickens are killed, cut, and processed for sale to retailers, industrial food processors, and caterers (including food service wholesale supply).¹²

22. The CMA considers the UK poultry sector, in particular chicken, to be an important industry for consumers: poultry is the most consumed meat in the UK by some margin,¹³ and the supply of chicken accounts for the vast majority of the volume of poultry meat produced annually.¹⁴ In addition, the market for chicken meat in the UK has been growing each year for several years.¹⁵ As set out in the CMA's Merger Assessment Guidelines, the importance of a market to UK customers is a factor that the CMA may take into account when considering whether the lessening of competition in a market is substantial.¹⁶
23. In recent years, there have been several mergers and acquisitions in the UK poultry industry.¹⁷ Boparan's recent acquisitions, in particular, have followed a similar pattern: Boparan has completed acquisitions of rival poultry suppliers, which have been followed by CMA investigations in which Boparan has argued that the targets would have exited the market absent the merger.¹⁸ Today, Boparan is one of a few large chicken suppliers, with a share of [30-40]% in terms of the volume of chickens slaughtered in the UK.¹⁹ It has a small number of large rivals, none of which have significant spare capacity.²⁰ As set out in the CMA's Merger Assessment Guidelines, the CMA considers that horizontal unilateral effects, including price increases, are more likely in markets with incumbents that have a high share of supply, which are concentrated among few rivals, and where there is limited spare capacity.²¹ It is against this background that the CMA assessed the current Merger.

¹² Parties' Response to the CMA's Enquiry Letter, paragraph 11.19

¹³ [Agricultural output - Meat consumption - OECD Data](#).

¹⁴ [Latest poultry and poultry meat statistics](#). Based on annual production for 2021.

¹⁵ [Latest poultry and poultry meat statistics](#).

¹⁶ See [Merger Assessment Guidelines \(CMA129\)](#), March 2021, paragraph 2.9.

¹⁷ See, for example, ME/6703-17 – [Cargill Incorporated / Faccenda Investments Ltd](#), 7 December 2017; ME/6649/16 – [Boparan Private Office / Bernard Matthews](#), 12 January 2017; ME/6013/13 – [Boparan Holdings Limited / Vion Poultry Limited](#), 18 June 2013; and ME/4539/10 – [2 Sisters Property BV / Storteboom Group BV](#), 28 June 2010 .

¹⁸ ME/6649/16 – [Boparan Private Office / Bernard Matthews](#), 12 January 2017; ME/6013/13 – [Boparan Holdings Limited / Vion Poultry Limited](#), 18 June 2013.

¹⁹ See Table 1 of this Decision.

²⁰ Results of the CMA's market testing.

²¹ See [Merger Assessment Guidelines \(CMA129\)](#), March 2021, paragraph 4.38.

PROCEDURE

24. The CMA's mergers intelligence function identified this transaction as warranting an investigation.²²
25. The Merger was subsequently considered at a Case Review Meeting.²³

JURISDICTION

26. A relevant merger situation exists where two or more enterprises have ceased to be distinct and either the turnover or the share of supply test is met.²⁴ Two or more enterprises will cease to be distinct if they are brought under common ownership or control.²⁵
27. The Parties are both 'enterprises' within section 129 of the Act²⁶ and Boparan has acquired Banham such that two enterprises have ceased to be distinct as set out in section 26 of the Act.²⁷ Accordingly, the CMA considers that the first criteria for a relevant merger situation is met.
28. In its most recent financial year (2021), Banham's turnover in the UK was GBP [X].²⁸ Accordingly, the CMA considers that the turnover threshold set out at section 23(1)(b) of the Act is satisfied.
29. The Merger completed on 18 October 2021 and the CMA was first informed about it on the same date. The four-month deadline for a decision under section 24 of the Act is 30 April 2022, following extensions under section 25(2) of the Act.
30. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.

²² See [Mergers: Guidance on the CMA's jurisdiction and procedure \(CMA2revised\)](#), January 2021 (as amended on 4 January 2022), paragraph 6.4-6.6.

²³ See [Mergers: Guidance on the CMA's jurisdiction and procedure \(CMA2revised\)](#), January 2021 (as amended on 4 January 2022), from page 43.

²⁴ See [Mergers: Guidance on the CMA's jurisdiction and procedure \(CMA2revised\)](#), January 2021 (as amended on 4 January 2022), part 4.

²⁵ Section 26 of the Act.

²⁶ [Mergers: Guidance on the CMA's jurisdiction and procedure \(CMA2revised\)](#), January 2021 (as amended on 4 January 2022), paragraphs 4.5 to 4.11.

²⁷ [Mergers: Guidance on the CMA's jurisdiction and procedure \(CMA2revised\)](#), January 2021 (as amended on 4 January 2022), paragraphs 4.12 to 4.41.

²⁸ Parties' Response to the CMA's Enquiry Letter, paragraph 9.1.

31. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 31 January 2022 and the statutory 40 working day deadline for a decision is therefore 25 March 2022.

COUNTERFACTUAL

32. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For completed mergers, the CMA generally adopts the pre-merger 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.²⁹
33. The Parties submitted that, absent the Merger, Banham would have exited the market for the supply of chicken in the UK.³⁰ The CMA has therefore considered whether it should assess the competitive effects of the Merger against a counterfactual other than the pre-Merger competitive conditions. In particular, the CMA considered whether there is a realistic prospect that, absent the Merger, Banham would have exited the market for the supply of chicken in the UK.

The Parties' submissions

34. The Parties submitted that, absent the Merger, Banham would have exited the market for the supply of chicken in the UK.
35. According to the Parties, prior to the Merger Banham was a loss-making firm that has been in decline for several years.³¹ Banham's financial position had deteriorated further in recent years as a result of a number of adverse events, including a [X] reduction in [X] order volumes in 2020, and the loss of Banham's contracts with [X] in 2021.³² Banham's production rate declined significantly as a result of these losses, and the Parties submitted that Banham would have been unable to maintain operations at this reduced production rate absent the Merger. They also submitted

²⁹ [Merger Assessment Guidelines \(CMA129\)](#), March 2021, from paragraph 3.12.

³⁰ Parties' Supplementary Submission to the CMA's Enquiry Letter, submitted on 7 February 2022, paragraph 1.3. The Parties submitted that absent the Merger, Banham would have exited the market for the supply of chicken [X]. [X]. [X].

³¹ Parties' Supplementary Submission to the CMA's Enquiry Letter, submitted on 7 February 2022, paragraph 4.5.

³² Parties' Supplementary Submission to the CMA's Enquiry Letter, submitted on 7 February 2022, paragraph 3.6; Issues Meeting slides, slide 7 and 11.

that Banham would have been unable to mitigate any losses in sales volumes through supply agreements with other customers.³³

36. In 2021, Banham entered into a supply agreement with [X], as a result of which it was able to increase its production back to its target rates of around [X] birds per week. [X].³⁴
37. The Parties submitted that, absent the Merger, Banham would have exited the market for the supply of chicken [X]. According to the Parties, [X].³⁵
38. Finally, the Parties also submitted that there was no credible alternative purchaser to Boparan for Banham. The Parties noted that Chesterfield initiated preliminary discussions with [X] and [X], and [X], but that Boparan was the only serious potential acquirer to enter into negotiations for the purchase of Banham.³⁶

CMA analysis

39. The CMA considered the Parties' submissions on Banham's likely financial position and commercial direction absent the Merger. In particular, the CMA assessed whether the two conditions of the exiting firm test, as set out in the CMA's Merger Assessment Guidelines, would be met in this case:³⁷
 - (a) Limb 1: whether the firm is likely to have exited (through failure or otherwise); and, if so
 - (b) Limb 2: whether there would not have been an alternative, less anti-competitive purchaser for the firm or its assets to the acquirer in question.
40. In relation to the first condition, for the reasons set out below, the CMA does not consider that the Parties have provided 'compelling evidence' that Banham would have likely exited the market in the absence of the Merger (limb 1). On this basis, the CMA has not considered whether limb 2 is met.

³³ Parties' Response to the CMA's Issues Letter, paragraphs 8.5-8.8 and 8.11-8.12.

³⁴ Parties' Response to the CMA's Issues Letter, paragraph 8.3(d)

³⁵ Parties' Supplementary Submission to the CMA's Enquiry Letter, submitted on 7 February 2022, paragraph 4.8; Parties' Response to the CMA's Issues Letter, dated 8 March 2022; Issues Meeting slides, slide 8; [X].

³⁶ Parties' Supplementary Submission to the CMA's Enquiry Letter, submitted on 7 February 2022, paragraph 4.12-4.17; Issues Meeting slides, slide 9.

³⁷ [Merger Assessment Guidelines \(CMA129\)](#), March 2021, paragraphs 3.21-3.25.

Banham's continued viability

41. As noted above, the Parties submitted that Banham was a heavily loss-making firm that has been in decline for several years and had lost important order volumes from [REDACTED].
42. The CMA assessed the impact on Banham of losing certain supply contracts to retail customers and assessed Banham's production volumes over the relevant period. While Banham temporarily reduced its production from [REDACTED] to [REDACTED] birds per week following the loss of the [REDACTED] contract in 2021, it was quickly able to increase production back to [REDACTED] birds per week through a new supply agreement with [REDACTED] prior to the Merger. Any harm to Banham arising from the loss of these contracts, therefore, was only temporary.
43. The CMA found that the chicken industry is characterised by a lack of spare capacity, with most wholesale and retail suppliers currently operating at or near full capacity.³⁸ The CMA also found that the products supplied by the Parties are largely homogenous, which would have made it easier for Banham to find alternative retail or wholesale customers even in the absence of the [REDACTED] supply arrangement. The Parties have not provided sufficiently compelling evidence to show that Banham would have been unable to find other customers to make up for the shortfall in sales arising from the losses and reductions in sales to [REDACTED].
44. The Parties submitted that [REDACTED]. The CMA found that these submissions were at odds with the lack of spare capacity in the industry, as well as with Boparan's clear incentive to acquire Banham in order to [REDACTED]³⁹ As such, the CMA considers that there is at least a realistic prospect that [REDACTED], which would have maintained Banham as an actual and potential competitor in the retail supply of chicken.

Banham's proposed [REDACTED]

45. The CMA also considered the Parties' submissions that, absent the Merger, Banham's previous shareholders [REDACTED]. In response to the CMA's issues letter, a representative of Banham's former shareholders submitted that, prior to the Merger, the only viable option for the continuation of the Banham business [REDACTED].⁴⁰

³⁸ Results of the CMA's market testing.

³⁹ Parties' Response to the CMA's Enquiry Letter, paragraph 21.4.

⁴⁰ Parties' Response to the CMA's Issues Letter, dated 8 March 2022; [REDACTED].

46. The CMA also reviewed emails dated prior to the Merger between [REDACTED].⁴¹ The CMA found, however, that these emails discussed [REDACTED]. They do not show that Banham had made a final decision, [REDACTED].

Conclusion on counterfactual

47. The evidence threshold to accept an exiting firm argument at Phase 1 is high. As set out in the Merger Assessment Guidelines, the CMA will not accept an exiting firm counterfactual at Phase 1 unless there is ‘compelling evidence’ that it was inevitable that the firm would have exited the market, and that there would have been no alternative, less anticompetitive purchaser for the firm or its assets to the acquirer in question.⁴²
48. In this case, the CMA considers that there is no compelling evidence to show that Banham would have exited the market absent the Merger. As such, the CMA considers that the first limb of the exiting firm test is not met.
49. The CMA believes that the most appropriate counterfactual to assess the Merger is the pre-Merger conditions of competition. The CMA has, however, taken into account the Parties’ submission in relation to Banham’s financial position and overall competitiveness in the competitive assessment where appropriate.

COMPETITIVE ASSESSMENT

Theory of harm

50. 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.⁴³ Horizontal unilateral effects are more likely when there are material barriers to entry and expansion, the market is concentrated and the merging parties are close competitors.
51. 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 overall supply of chicken in the UK.

⁴¹ Parties’ Supplementary Submission to the CMA’s Enquiry Letter, submitted on 7 February 2022, Annex 1, Annex 2 and Annex 3.

⁴² [Merger Assessment Guidelines \(CMA129\)](#), March 2021, paragraph 3.23.

⁴³ [Merger Assessment Guidelines \(CMA129\)](#), March 2021, paragraph 4.1.

52. The concern under this theory of harm is that the removal of one party as a competitor could allow the merged entity to profitably raise prices or degrade non-price aspects of its competitive offering (such as quality, range, service, and innovation) on its own and without needing to coordinate with its rivals.⁴⁴
53. In order to assess the likelihood of the Merger resulting in unilateral effects in relation to the supply of chicken, the CMA considered the following factors:
- (a) Frame of reference;
 - (b) Shares of supply;
 - (c) Competition between the Parties;
 - (d) Competitive constraints; and
 - (e) Out of market constraints.

Frame of reference

54. 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.⁴⁵ Market definition involves identifying the most significant competitive alternatives available to customers of the merger firms.⁴⁶ In certain cases, there may be no need for the CMA's assessment of competitive effects to be based on a highly specific description of any particular market (including, for example, descriptions of the precise boundaries of the relevant markets and bright-line determinations of whether particular products or services fall within it). This is because the evidence gathered and analysed as part of the competitive assessment captures the competitive dynamics more fully than formal market definition.⁴⁷

Product frame of reference

55. The Parties' activities overlap in the supply of chicken products in the UK.⁴⁸ When looking at this sector in previous cases, the CMA has found that the market for the supply of chicken can be segmented by:

⁴⁴ [Merger Assessment Guidelines \(CMA129\)](#), March 2021, paragraph 4.1.

⁴⁵ [Merger Assessment Guidelines \(CMA129\)](#), March 2021, paragraph 9.1.

⁴⁶ [Merger Assessment Guidelines \(CMA129\)](#), March 2021, paragraph 9.2.

⁴⁷ [Merger Assessment Guidelines \(CMA129\)](#), March 2021, paragraphs 9.2 and 9.5.

⁴⁸ Parties' Response to the CMA's Enquiry Letter, paragraph 11.20.

- (a) Different ways of processing chicken, ie halal and non-halal chicken;
- (b) Different types of chicken product, including primary fresh chicken, primary frozen chicken, processed chicken, and chicken by-products; and
- (c) Different customer types, including retailers (mostly supermarkets), food manufacturers and wholesalers.⁴⁹

56. In line with previous cases and the Parties' submissions,⁵⁰ the CMA considers it appropriate to treat halal and non-halal chicken as separate product frames of reference for the purpose of its competitive assessment.

57. With regard to different types of chicken and customer types, the CMA does not consider it necessary to draw a bright-line market definition in this case.⁵¹ In order to assess the competitive effects of the Merger, the CMA has considered the market for the overall supply of chicken, as well as specific segments within this broader category.

Geographic frame of reference

58. The Parties are both active in the supply of chicken in the UK. In previous cases, the CMA has looked at the market for chicken on a national basis.⁵² Overall, the evidence seen by the CMA suggests that there is no reason to depart from this precedent.

59. The CMA therefore assessed the impact of the Merger in the market for the overall supply of chicken in the UK.⁵³

60. The Parties have submitted that the CMA should also consider the competitive pressure that imports exert on the UK market.⁵⁴ The CMA has considered this in its competitive assessment.

⁴⁹ [Cargill Incorporated/Faccenda Investments Ltd dated 7 December 2017](#); and [Boparan Private Office/Bernard Matthews dated 12 January 2017](#). The CMA notes that in past cases in this sector, food caterers have been identified as a possible customer segment. In this case the Parties do not overlap in the supply to food catering customers, the CMA has therefore not considered this segment further in the competitive assessment below.

⁵⁰ Parties' Response to the CMA's Enquiry Letter, paragraph 11.16.

⁵¹ [Merger Assessment Guidelines \(CMA129\)](#), March 2021, paragraphs 9.1 to 9.5.

⁵² See, for example, [Cargill Incorporated / Faccenda Investments Ltd](#), paragraph 85; [Boparan Private Office / Bernard Matthews](#), paragraph 53; and [Boparan Holdings Limited / Vion Poultry Limited](#), paragraph 43.

⁵³ The Parties submitted that the CMA should also consider the competitive pressure that imports exert on the UK market. The CMA considers this below at paragraphs 88 to 92.

⁵⁴ Parties' Response to the CMA's Enquiry Letter, paragraph 30.5.

Shares of supply

61. The Parties submitted a range of shares of supply estimates covering a number of different product types and customer groups. In relation to the supply of chicken overall, the Parties estimated that the Merger resulted in a combined share of supply of [30-40]% and an increment of [0-5]% (including halal chicken).⁵⁵
62. The Parties submitted that the Merger does not give rise to competition concerns, regardless of how the CMA defines the market, as a result of the small increment provided by Banham.⁵⁶
63. The CMA was unable to verify the Parties' share of supply estimates, as their methodology relied at least partly on factors that could not be objectively verified (such as the Parties' 'industry experience' and 'third-party publications' that the Parties did not submit to the CMA).⁵⁷ The CMA was nevertheless able to produce its own share of supply estimates by gathering data from the Parties and third-party suppliers on the volume of chickens slaughtered in the UK in 2020.
64. The CMA estimated that the Parties have a combined share of supply of chicken in the UK of [30-40]% with an increment of [0-5]% (excluding halal chicken). The CMA found that Moy Park and Avara both had significant shares of supply at [20-30]% and [20-30]% respectively. Cranswick, a more recent entrant into the supply of chicken, had a lower share of supply than Boparan, Moy Park and Avara, although higher than Banham at [5-10]%.

Table 1: Share of supply of the number of chickens slaughtered in the UK in 2020 (excluding halal chicken)

Supplier	Share of supply (%)
Boparan	[30-40]%
Banham	[0-5]%
Combined Share	[30-40]%
Moy Park	[20-30]%
Avara	[20-30]%
Cranswick	[5-10]%
Frank Bird	[0-5]%
Traditional Norfolk Poultry	[0-5]%

Source: CMA analysis.

⁵⁵ Parties' Response to the CMA's Enquiry Letter, paragraph table 3.

⁵⁶ Parties' Response to the CMA's Enquiry Letter, paragraph 30.2.

⁵⁷ Parties' Response to the CMA's Issues Letter, dated 8 March 2022. Annex 2.

65. These estimates show that the Merged Entity will be the largest supplier of chicken in the UK. The market overall also appears to be concentrated, with three suppliers holding more than 80% of the share of supply.
66. The CMA notes that the Banham's increment is small and that each of Avara, Moy Park, and Cranswick had a larger share of supply than Banham prior to the Merger. This suggests these three firms may have imposed a greater constraint on Boparan than Banham prior to the Merger, which is consistent with the CMA's competitive assessment.

Competition between the Parties

Parties' submissions

67. The Parties submitted that, prior to the Merger, they were not close competitors. In particular, the Parties noted that Boparan had not lost business to Banham in the past ten years and did not take Banham's behaviour into account in determining its competitive strategy.⁵⁸
68. The Parties submitted that Banham was a marginal supplier, not an effective competitor. According to the Parties, (i) Banham was not succeeding in any of the retail tenders in which it participated, (ii) it failed to qualify to participate in tenders for [X], [X], or [X], and (iii) it was [X]. The Parties noted that, whilst Banham may have participated in some of the same tenders as Boparan, it lost every retail supply tender in which it participated in the year prior to its sale to Boparan,⁵⁹ and there is no evidence that its participation had any effect on the competitive outcome.⁶⁰
69. The Parties consider that other main chicken suppliers in the market, such as [X], [X], [X], [X], and [X] placed a far greater competitive constraint on Boparan than Banham.⁶¹

CMA analysis

70. The CMA reviewed internal documents provided by the Parties. The CMA considers that the Parties' internal documents broadly support their position that, prior to the Merger, Banham did not exercise a significant constraint on Boparan. Overall, there are few examples of either Party monitoring competitors in their internal documents.

⁵⁸ Parties' Response to the CMA's Issues Letter, dated 8 March 2022, paragraph 1.3(b).

⁵⁹ Parties' Response to the CMA's Issues Letter, dated 8 March 2022, paragraph 4.3.

⁶⁰ Parties' Response to the CMA's Issues Letter, dated 8 March 2022, paragraph 4.3.

⁶¹ The Parties noted that all of these alternative suppliers have independently won major retail contracts.

The CMA reviewed the small number of internal documents submitted by Boparan which do discuss its competitors; in these documents, Banham is [REDACTED].⁶² In one document created prior to completion of the Merger, Boparan anticipates [REDACTED].⁶³

71. As discussed in the counterfactual, the Parties submitted evidence that Banham had lost a number of [REDACTED] customers in the past few years; this evidence was confirmed by third parties, who told the CMA that Banham had been struggling in recent years. One third party that purchases chicken products from Boparan told the CMA that it did not view Banham as a credible alternative to Boparan for its supply requirements.⁶⁴ The same third party also noted to the CMA that it considered Banham to be in poor financial and operational health in 2018 (when it was acquired by Chesterfield) and that it considered that Banham had deteriorated further from this point by the time it was acquired by Boparan.⁶⁵
72. The CMA also requested tender data from the Parties and third parties to test whether the Parties were regularly competing in the same tenders. This tender data indicated that the Parties competed in [REDACTED] of the same tenders in the past two years. In [REDACTED] tenders, Banham scored lower than Boparan, with customers commenting that Banham had not matched other providers [REDACTED]. The tender data therefore broadly supports the Parties' submissions that Banham was consistently not among the leading suppliers that were successfully competing for retail customer tenders. While the CMA considers the tender data shows a degree of competition between the Parties, the CMA also considers that they show that Banham was not providing a strong constraint prior to the Merger.
73. Third parties who spoke to the CMA also suggested that Banham may not have imposed a strong competitive constraint pre-Merger, mentioning its lack of scale and range, and its lack of retailer contracts. The majority of customers who responded to the CMA's market testing did not raise concerns about the Merger and did not consider Banham to be an alternative to their current chicken supplier.
74. Overall, based on the evidence above, the CMA believes that Banham did not impose a strong competitive constraint on Boparan prior to the Merger.

⁶² Annex Q33 to the Parties' Response to the CMA's Enquiry Letter, contains a [REDACTED].

⁶³ Eg, [REDACTED], Annex Q23.43 to the Parties' Response to the CMA's Enquiry, [REDACTED].

⁶⁴ Results of the CMA's market testing.

⁶⁵ See email response from [REDACTED], dated 16 February 2022.

Competitive constraints

75. As part of its assessment of the Merger, the CMA considered the remaining competitive constraints faced by chicken suppliers in the UK following the Merger.

Parties' submissions

76. The Parties submitted that chicken suppliers compete vigorously for business, and that the Merged Entity will continue to face strong competition from several strong suppliers post-Merger. In particular, the Parties noted that they will face strong competition from Moy Park, Avara, Cranswick, and Salisbury Poultry following the Merger.⁶⁶
77. The Parties submitted that the tendering process for retail customers facilitates switching. For example, retail tenders typically have lead times of up to 18 months before supply commences, which allows tender participants to make investments (or at least commit to do so) in order to win a tender.⁶⁷ The Parties submitted that retail customers can switch between suppliers, and that the Parties have themselves won and lost retail customers to other leading suppliers.⁶⁸ For example, in 2021, Banham lost its contract to supply [REDACTED], and Boparan had recently lost tenders for [REDACTED].⁶⁹ The Parties submitted that the potential for customers to switch highlights the strong constraint placed on the Parties by their competitors.
78. The Parties submitted that Boparan's [REDACTED] are further evidence that it lacks market power and faces strong competitive constraints. According to the Parties, for example, [REDACTED].⁷⁰
79. The Parties also submitted that in addition to strong competitors, they are also constrained by the negotiating strength of retail customers.⁷¹ The Parties noted that retail customers adopt a number of techniques to ensure that they are able to source chicken at low prices. In particular, the Parties noted that retail customers typically use multi-sourcing, joint business plans, and open book accounting as means to increase price transparency and keep costs low.⁷² The Parties also pointed to ratchet clauses in retail supply contracts, which they noted typically allow

⁶⁶ Parties' Response to the CMA's Issues Letter, dated 8 March 2022, paragraph 5.2.

⁶⁷ Parties' Response to the CMA's Issues Letter, dated 8 March 2022, paragraph 5.2.

⁶⁸ Parties' Response to the CMA's Issues Letter, dated 8 March 2022, slide 36.

⁶⁹ Parties' Response to the CMA's Issues Letter, dated 8 March 2022, paragraph 6.2.

⁷⁰ Parties' Response to the CMA's Issues Letter, dated 8 March 2022, Figure 2.

⁷¹ Parties' Supplementary Submission to the CMA's Enquiry Letter, submitted on 7 February 2022, paragraph 2.4 and Parties' Response to the CMA's Issues Letter, dated 8 March 2022, paragraph 5.2.

⁷² Parties' Supplementary Submission to the CMA's Enquiry Letter, submitted on 7 February 2022, paragraph 2.6 and Parties' Response to the CMA's Issues Letter, dated 8 March 2022, paragraph 6.5

suppliers to recover a limited proportion of costs where commodity prices fluctuate in respect of feed ingredients and other key inputs such as poultry feed vitamins.⁷³ The Parties submitted that these ratchet clauses often only cover a limited range of variable input costs, meaning that suppliers are able to recover only a proportion of their increased costs during the lifecycle of the supply agreement.⁷⁴

CMA analysis

80. The CMA found that the remaining chicken suppliers are perceived as strong competitive constraints in the market. The third parties who responded to the CMA's market testing generally supported the Parties' view that each of Moy Park, Avara, Cranswick, and (to a lesser extent) Salisbury Poultry are alternative suppliers for their chicken requirements. A number of retail customers currently supplied by at least one of the Parties indicated that they consider one or several of the Parties' rivals to be suitable alternatives to the Parties. The evidence submitted by third-party retail customers also suggested that switching occurs regularly, with nine out of eleven retail customers who responded to the CMA's market testing noting that they had switched chicken suppliers in the past five years.
81. The CMA also received evidence of specific instances of retail customer switching, including the recent examples highlighted by the Parties. These retail customers who switched supply away from the Parties told the CMA that the alternative suppliers they had switched to had strong offers, and that reasons for switching included [REDACTED].
82. The CMA found that Cranswick is viewed as a growing competitive constraint. An internal document prepared by [REDACTED] notes that [REDACTED].⁷⁵ The Parties' competitors also told the CMA that they viewed Cranswick as a strong competitor, despite its relatively small market share.
83. The CMA asked the Parties' competitors to provide an indication of how their profit margins have developed over the past few years. The responses that the CMA received were consistent with the Parties' submissions that margins have been in decline in recent years, and that [REDACTED].⁷⁶ The CMA notes that it did not carry out an in-depth analysis of operating margins in the chicken industry, and that low margins are not necessarily sufficient evidence of intense competition. Nonetheless, the

⁷³ Parties' Response to the CMA's Issues Letter, dated 8 March 2022, paragraph 6.6.

⁷⁴ Parties' Response to the CMA's Issues Letter, dated 8 March 2022, paragraph 6.6.

⁷⁵ Parties' Response to the CMA's Enquiry Letter, Annex Q33.

⁷⁶ Parties' Response to the CMA's Issues Letter, dated 8 March 2022, Figure 2.

evidence gathered by the CMA is consistent with strong competition and an increase in pressure on margins in recent years.

84. The CMA also found that retail customers are, in many cases, able to enter into contracts with chicken suppliers that provide for open accounting practices and ratchet clauses, whereby chicken suppliers are able to negotiate price increases only in proportion to cost increases of certain key inputs, such as poultry feed. Third parties told the CMA that they are not always able to pass through their cost increases (or the full amount of a given cost increase) to retail customers, and that the amount of pass-through depends on the terms of each negotiated retail supply contract. Although the CMA did not carry out an in-depth assessment of contractual provisions across the chicken industry, the evidence was consistent with the Parties' submissions that, at least in some cases, chicken suppliers are not able to increase prices to large retail customers without a cost increase justification, and that they are not always able to pass on the full amount of cost increases.
85. On balance, the CMA found that the features of the chicken industry are consistent with the Parties facing strong competitive constraints and some degree of buyer power from their retail customers.

Out of market constraints

Halal chicken

86. The Parties' submitted that, from a demand-side substitutability perspective, halal chicken products are distinct from non-halal products, for two reasons: (a) halal meat is not compliant with the welfare standards of retailers (and most halal meat is sold to wholesalers and meat markets rather than retailers), and (b) end purchasers of halal chicken will not purchase non-halal chicken for religious and cultural factors. From a supply-side substitutability perspective, the Parties submitted that halal meat requires an entirely different slaughtering process.⁷⁷
87. The CMA has confirmed this with several third-party retail customers and competitors during its market investigation.⁷⁸ Accordingly, the CMA believes that the supply of halal chicken places a limited competitive constraint on the Parties' activities in the supply of chicken products in the UK.

⁷⁷ Parties' Response to the CMA's Enquiry Letter, paragraph 11.16.

⁷⁸ Results of the CMA's market testing.

Imported chicken

88. The Parties submitted that, in addition to the UK-based players discussed above, there are numerous chicken producers based in the EEA and elsewhere that will continue to impose a strong competitive constraint on the Merged Entity, particularly in relation to non-retail customers.⁷⁹
89. However, with the exception of one retailer, all retail customers told the CMA that imported fresh chicken was not an alternative to UK origin fresh chicken, for the following reasons:
- (a) One retailer explained that the reduced shelf life makes imported chicken unattractive; and
 - (b) Several other retail customers have made public commitments to supply 100% UK provenance chicken.
90. Although imported chicken is not an alternative to UK fresh chicken, imported chicken was seen as an alternative for non-fresh chicken (eg frozen and cooked products) by some customers.
91. As for wholesalers, some noted that some of their customers would be interested in purchasing imported chicken on the basis that it is usually cheaper. However, some wholesalers also noted that, for some of their customers, it was important that chicken was sourced from the UK.
92. Overall, the CMA believes that imported chicken places a limited competitive constraint on the Parties' activities in the supply of chicken products in the UK, in particular in relation to the supply of retail customers.

Conclusion on horizontal unilateral effects

93. The CMA found that the supply of chicken in the UK is a concentrated market, with a history of recent acquisitions, in which the Merged Entity is the largest player. In assessing whether any potential lessening of competition was substantial in this market, the CMA had regard to the importance of this industry to UK consumers.
94. In this case, for the reasons set out above, the CMA found that Banham was not providing a strong constraint on Boparan prior to the Merger. Banham has lost several [§] customers over the last few years. The CMA found that Banham is

⁷⁹ Parties' Response to the CMA's Enquiry Letter, paragraph 30.5.

widely viewed by market participants as a weak rival that seldom competes for the same customers as Boparan (and, when it does, is rarely successful). Third parties confirmed that Banham and Boparan do not compete strongly, and many considered that Banham is not a suitable alternative to Boparan due to its lack of scale. The majority of third parties who responded to the CMA's market testing did not raise concerns about the Merger and did not consider Banham to be an alternative to their current chicken supplier.

95. The CMA also found that, despite high levels of concentration, there seems to be sufficient competition in the market from the Parties' rivals. The Parties' internal documents, as well as evidence from retail customers, confirmed that rival chicken suppliers such as Moy Park, Avara, Cranswick, and (to a lesser extent) Salisbury Poultry will continue to exert a sufficient competitive constraint on Boparan post-Merger. The CMA found that at least some large retail customers are able to carry out competitive tenders and enter into contractual agreements that make it difficult for suppliers to increase prices other than as a result of corresponding increases in input costs. This means that operating margins have been decreasing in the industry in recent years.
96. The CMA notes that the outcome of one merger investigation is not an indication of the outcome of potential future merger investigations in the same sector.⁸⁰ In any market where concentration levels are high, there is a lack of spare capacity, and the merged entity has a large share of supply, horizontal unilateral effects are more likely.⁸¹ The CMA will continue to review carefully any potential future relevant merger situations in this sector and, depending on the evidence available at the time, will not hesitate to intervene if necessary to prevent an SLC.
97. In this case, on the basis of the available evidence, the CMA has 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 chicken in the UK.

COUNTERVAILING FACTORS

Barriers to entry and expansion

98. 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

⁸⁰ See *Ecolab Inc. v Competition and Markets Authority* [2020] CAT 2, paragraph 93.

⁸¹ *Merger Assessment Guidelines (CMA129)*, March 2021, paragraph 4.38

whether entry or expansion might prevent an SLC, the CMA considers whether such entry or expansion would be timely, likely, and sufficient.⁸²

99. The Parties submitted that barriers to entry and expansion in respect of the overlapping products are low.⁸³ In particular, the Parties submitted that:
- (a) Existing chicken producers can increase output in a number of ways, including increasing the number of shifts that employees work, increasing capacity at existing sites, developing new sites (though this could take in the region of 18 to 36 months and require planning permission), acquiring a mothballed processing site, or increasing total output by sourcing chicken from non-UK farms;⁸⁴
 - (b) There is recent evidence of entry and expansion in the market in the form of Cranswick, who have extended their bird processing capacity to 1.4 million birds per week and will shortly be opening a second chicken processing factory;⁸⁵
 - (c) There are international chicken producers who are well-placed to establish a UK presence, and existing suppliers of other poultry products such as turkey or duck, who could enter into the supply of chicken relatively easily;⁸⁶ and
 - (d) The capital expenditure required to enter the market can be considerably reduced by leasing a site and relying on financing arrangements to construct a site.⁸⁷
100. Third parties told the CMA that there are three main barriers to expansion in relation to the supply of chicken:⁸⁸
- (a) Access to farming space, which can be costly to obtain, and requires planning permission;
 - (b) Processing capacity and investment in plant equipment (most third parties told the CMA that they do not carry spare capacity at their processing facilities); and

⁸² [Merger Assessment Guidelines \(CMA129\)](#), March 2021, from paragraph 8.40.

⁸³ Parties' Response to the CMA's Enquiry Letter, paragraph 32.1.

⁸⁴ Parties' Response to the CMA's Enquiry Letter, paragraph 32.2.

⁸⁵ Parties' Response to the CMA's Enquiry Letter, paragraph 32.3.

⁸⁶ Parties' Response to the CMA's Enquiry Letter, paragraph 32.4 and 32.6.

⁸⁷ Parties' Response to the CMA's Enquiry Letter, paragraph 32.5.

⁸⁸ Results of the CMA's market testing.

(c) Labour, which is in short supply in the industry following the UK's exit from the EU.

101. On this basis, the CMA believes that while there are a number of barriers to entry, including production capacity, examples of entry such as Cranswick show that it is possible to enter and grow market share. 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.

Countervailing buyer power

102. The Parties submitted that their customers have considerable countervailing buyer power.⁸⁹ In particular, the Parties noted that:

- (a) The Parties sell primarily to UK retailers, food service wholesalers, and food processors / manufacturers, who are sophisticated customers able to switch, or threaten to switch, between suppliers;⁹⁰
- (b) The impact of buyer power is seen in the fact that the 'real' price of chicken has been on a downward trajectory for consumers over several decades;⁹¹ and
- (c) Customers negotiate prices aggressively and there is a high degree of transparency regarding input costs.⁹²

103. As noted above, the CMA has found that at least some large retailers often adopt strategies such as multi-sourcing, open-book accounting, and contract tendering to increase price transparency and prevent unjustified price increases.

104. However, the CMA has not had to conclude on the extent of any countervailing buyer power as the Merger does not give rise to competition concerns on any basis.

DECISION

105. Consequently, the CMA does not believe that it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC within a market or markets in the United Kingdom.

⁸⁹ Parties' Response to the CMA's Enquiry Letter, paragraph 30.6.

⁹⁰ Parties' Response to the CMA's Enquiry Letter, paragraph 30.6.

⁹¹ Parties' Response to the CMA's Enquiry Letter, paragraph 30.7.

⁹² Parties' Response to the CMA's Enquiry Letter, paragraph 30.7.

106. The Merger will therefore **not be referred** under section 22(1) of the Act.

Andrea Coscelli
Chief Executive Officer
Competition and Markets Authority
25 March 2022

ⁱ Unless otherwise specified, references to the supply of chicken are intended to refer to non-halal chicken.