

Completed acquisition by Cérélia Group Holding SAS (either directly or indirectly) of certain assets relating to the UK and Ireland dough business (Jus-Rol) of General Mills, Inc.

Decision on relevant Merger situation and substantial lessening of competition

ME/6988-22

The CMA's decision on reference under section 22(1) of the Enterprise Act 2002 given on 30 May 2022. Full text of the decision published on 15 July 2022.

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. On 31 January 2022, Cérélia Group Holding SAS (either directly or indirectly) (**Cérélia**) acquired certain assets relating to the United Kingdom (**UK**) and Ireland dough business of General Mills, Inc. (**GMI**), operated under the 'Jus-Rol' brand (the **Jus-Rol Business**) (the **Merger**). Cérélia and the Jus-Rol Business are together referred to as the **Parties** and for statements referring to the future, the **Merged Entity**.
2. Cérélia and the Jus-Rol Business overlap at the wholesale level of the supply chain, providing dough-to-bake products (including ingredient pastry, pizza dough and other ready-to-bake dough products) to grocery retailers in the UK. Cérélia supplies these products for onward sale to end consumers under private label (eg supermarket own brand), while the Jus-Rol Business does so under the 'Jus-Rol' brand.
3. The Competition and Markets Authority (**CMA**) has jurisdiction to review a merger where either (a) the target company generates more than £70 million of turnover in the UK (the turnover test); or (b) the merger results in the

merger parties having a share of supply of goods or services of any description in the UK of 25% or more (the share of supply test). The revenues of the Jus-Rol Business do not meet the turnover test; however, the CMA has concluded that the Parties together have a share of supply of more than 25% in the supply of dough-to-bake products to grocery retailers in the UK. The CMA can decide to refer a transaction for a Phase 2 investigation within four months of the date of completion of that transaction;¹ the Merger completed at the end of January 2022 and the four-month period for a decision has not yet expired.

4. As the owner of the best-selling brand of dough-to-bake products and the leading wholesale supplier of private label dough-to-bake products to grocery retailers in the UK, the CMA believes that the Merged Entity could increase wholesale prices and/or degrade non-price aspects of its offering such as quality, range, innovation, in particular with the aim of diverting sales from private label to the Jus-Rol brand. This is because:
 - (a) Pre-Merger, Cérélia and the Jus-Rol Business each enjoyed a strong position in the wholesale supply of dough-to-bake products to grocery retailers in the UK, with estimated shares of supply of [30-40]% and [40-50]% respectively. Post-Merger,² Cérélia would be responsible for [70-80]% of the wholesale supply of dough-to-bake products to grocery retailers in the UK. This high combined share gives rise to *prima facie* competition concerns.
 - (b) The CMA found that from an end consumer perspective branded dough-to-bake products (eg Jus-Rol) and private label equivalents (the majority of which are supplied by Cérélia) are substitutable and compete closely.
 - (c) The CMA also found that pre-Merger, grocery retailers were able to leverage the substitutability between the products for consumers to negotiate better commercial terms for the wholesale supply of dough-to-bake products.

¹ Under section 24 of the Enterprise Act 2002, for the CMA to be able to refer a completed merger it must have taken place not more than four months before the reference is made, unless the merger took place without having been made public and without the CMA being informed of it (See [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2revised), January 2021, paragraph 4.48(b)).

² While Cérélia and the Jus-Rol Business have ceased to be distinct as the Merger is completed, the CMA made an Initial Enforcement Order pursuant to section 72(2) of the Enterprise Act 2002 on 12 May 2022 which prevents Cérélia from taking any action which might lead to the integration of the Jus-Rol Business with the Cérélia business (except with the prior written consent of the CMA).

- (d) The evidence seen by the CMA shows that, post-Merger, there will be insufficient competitive constraints remaining at the wholesale level to discipline the commercial behaviour of the Merged Entity. Other suppliers of branded dough-to-bake products are much smaller than Jus-Rol and have limited brand recognition. Other suppliers of private label dough-to-bake products are also much smaller than Cérélia and lack the capacity to meet grocery retailers' demand for a range of these products. Even in aggregate, grocery retailers would have limited alternatives to the Merged Entity, and these alternative suppliers would not pose a significant competitive constraint on the Merged Entity.
- (e) Finally, the CMA does not consider that entry by a new supplier or expansion by an existing supplier would be timely, likely and sufficient to constrain the Merged Entity.
5. Although there are differences in how grocery retailers purchase private label and branded dough-to-bake products, given the substitutability between the products supplied by the Parties for consumers, the leveraging of these products by grocery retailers in negotiations with the other Party, and the lack of available alternatives for either branded or private label supply, the CMA found that the Parties are close competitors and that the Merger would result in the loss of an important competitive constraint.
6. The CMA therefore believes that the Merger gives rise to a realistic prospect of a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects in the wholesale supply of dough-to-bake products to grocery retailers in the UK.
7. The CMA is therefore considering whether to accept undertakings under section 73 of the Enterprise Act 2002 (the **Act**). Cérélia has until 8 June 2022 to offer an undertaking to the CMA that might be accepted by the CMA. If no such undertaking is offered, then the CMA will refer the Merger pursuant to sections 22(1) and 34ZA(2) of the Act.

ASSESSMENT

Parties

8. Cérélia is a joint stock company headquartered in France. In the UK, Cérélia (primarily through its wholly-owned subsidiary Cérélia UK Limited and operating under the name 'BakeAway') provides manufacturing and

packaging³ of dough-to-bake products to consumer brand owners, and to grocery retailers⁴ who market these products to end consumers under private label brands. Cérélia also provides recipe formulation and other value-added services to grocery retailers.⁵ The main dough-to-bake products supplied by Cérélia in the UK are ingredient pastry dough, pizza dough, cookie dough, brownie dough and gingerbread dough.⁶ Cérélia operates one manufacturing plant in the UK, located in Corby, and also imports dough-to-bake products for sale in the UK from its manufacturing plants in France.⁷ The turnover of Cérélia in the financial year ending 30 June 2021 was approximately £[X] worldwide, of which approximately £[X] was generated in the UK.⁸

9. Pre-Merger, the Jus-Rol Business was owned by GMI, a US-based global manufacturer and marketer of consumer foods sold through retail stores, and pet food.⁹ In the UK, the Jus-Rol Business supplies branded dough-to-bake products to grocery retailers and foodservice customers.¹⁰ The Jus-Rol product range includes ingredient pastry dough, pizza dough, sharing bread dough and certain breakfast dough-to-bake products supplied in cans such as croissant dough, pain au chocolat dough and cinnamon swirl dough.¹¹ The turnover of the Jus-Rol Business in the financial year ending 31 May 2021 was approximately £[X] worldwide, of which approximately £[X] was generated in the UK.¹²
10. Pre-Merger, the Parties had a vertical relationship as Cérélia manufactured and packaged certain Jus-Rol products on behalf of GMI.¹³

³ A definition of 'manufacturing and packaging' is set out in paragraph 21 below.

⁴ In this decision, 'grocery retailers' refers to, but is not limited to, supermarkets (eg Tesco, Sainsbury's, Waitrose & Partners (**Waitrose**), Marks & Spencer (**M&S**)), discounters (eg Lidl, Aldi), as well as online-only supermarkets (eg Ocado) in the UK.

⁵ The distinction in the type of services provided to consumer brand owners and grocery retailers is reflected on Cérélia's own website, which distinguishes between Cérélia's offer to its 'retail partners' and to its 'co-manufacturing partners', see Cérélia's [website](#) (last accessed on 30 May 2022).

⁶ Merger Notice submitted by Cérélia to the CMA on 29 March 2022 (**Merger Notice**), paragraphs 9 and 81.

⁷ Merger Notice, paragraph 112.

⁸ Merger Notice, paragraph 138.

⁹ Merger Notice, paragraph 125. For further detail, see GMI's [website](#) (last accessed on 30 May 2022).

¹⁰ A definition of foodservice customers is set out in paragraph 19(b) below.

¹¹ Merger Notice, paragraphs 10 and 85.

¹² Merger Notice, paragraph 139.

¹³ For example, Cérélia's Submission on Potential Unilateral Horizontal Effects made to the CMA on 14 April 2022 (**April Submission**), paragraph 1.2.

11. GMI manufactures a limited volume of Jus-Rol products sold in the UK pursuant to terms of the Transitional Services Agreement (**TSA**) discussed in paragraph 12(c) below.¹⁴

Transaction

12. On 24 November 2021, GMI (either directly or through entities under its common ownership or common control or over which it exerts material influence within the meaning of section 26 of the Act) and Cérélia (either directly or through entities under its common ownership or common control or over which it exerts material influence within the meaning of section 26 of the Act) entered into a series of agreements for Cérélia to acquire certain assets relating to the Jus-Rol Business including:
- (a) an Asset Purchase Agreement (**APA**) which covers the acquisition of goodwill, trademarks, inventory, business records, deposits and receivables, and contracts exclusively related to the Jus-Rol Business, for a total consideration of USD[REDACTED];¹⁵ and
 - (b) a Patent and Know-How Licence under which Cérélia [REDACTED].¹⁶ [REDACTED]. [REDACTED];¹⁷
 - (c) a TSA under which General Mills [REDACTED] is providing transitional services to the Jus-Rol Business [REDACTED];¹⁸ and
 - (d) an Equipment Sale Agreement (the **ESA**) under which [REDACTED].¹⁹

Rationale for the Merger

13. Cérélia submitted that the Merger is motivated by its desire to increase the overall penetration and sales in the dough-to-bake category in the UK (which is smaller than in neighbouring European countries eg Germany and France).

¹⁴ These comprise Jus-Rol branded products sold in cans, including a pizza dough kit, sharing bread dough and breakfast dough products (Merger Notice, paragraph 120).

¹⁵ Merger Notice, paragraphs 3, 90 and 92; Schedule 2 of the APA submitted as Annex 3-a to Cérélia's response to the CMA's Enquiry Letter issued under section 109 of the Act and dated 2 February 2022 (the **Enquiry Letter Response**).

¹⁶ Merger Notice, paragraph 89.a. and Annex 3-c to the Enquiry Letter Response.

¹⁷ Parties' response to the CMA's fourth notice issued under section 109 of the Act dated 31 March 2022 (question 2).

¹⁸ [REDACTED]. [REDACTED].

¹⁹ Merger Notice, paragraph 126 and Annex 4 to the Merger Notice.

Cérélia further submitted that it intends to use the Jus-Rol brand as a vehicle for growing and marketing the dough-to-bake category in the UK.²⁰

14. The CMA found that Cérélia's internal documents are broadly consistent with its stated rationale for the Merger.²¹

Procedure

15. The CMA's Mergers intelligence function identified this transaction as warranting an investigation.²²
16. The Merger was considered at a Case Review Meeting.²³

Background

17. Dough-to-bake products include all products that are manufactured by combining basic ingredients such as flour and liquid and/or fat (sometimes with flavouring toppings), and then sold to customers as a raw product to be baked for final consumption. Dough-to-bake products collectively refer to ingredient pastry dough (ie shortcrust, puff and filo pastry dough), pizza dough and other ready-to-bake dough products (including ready-to-bake croissant dough, pain au chocolat dough, cinnamon swirls dough, gingerbread dough, cookie dough).²⁴
18. Most, if not all, dough-to-bake products may be sold in chilled or frozen form. The manufacturing process for chilled and frozen dough-to-bake products is broadly similar except for the final step of the production ie the blast freezing of the dough along with temperature-controlled storage and delivery which is often outsourced to third party service providers.²⁵ Based on the data submitted by the Parties and third parties, the CMA estimates that chilled

²⁰ Merger Notice, paragraphs 97-99; Cérélia's response to the CMA's Issues Letter dated 5 May 2022 (the **Issues Letter Response**), paragraphs 3.1 and 3.5.

²¹ For example, Annexes 22a.02, 22a.03 and 22a.07 to the Enquiry Letter Response.

²² See [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2revised), January 2021, paragraphs 6.4-6.6.

²³ See [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2 revised), January 2021, from paragraph 9.29.

²⁴ Merger Notice, paragraph 177.

²⁵ Merger Notice, paragraph 198, 203-204 and 243-247.

dough-to-bake products accounted for at least 90% of the value of retail sales of all dough-to-bake products in the UK in 2021.²⁶

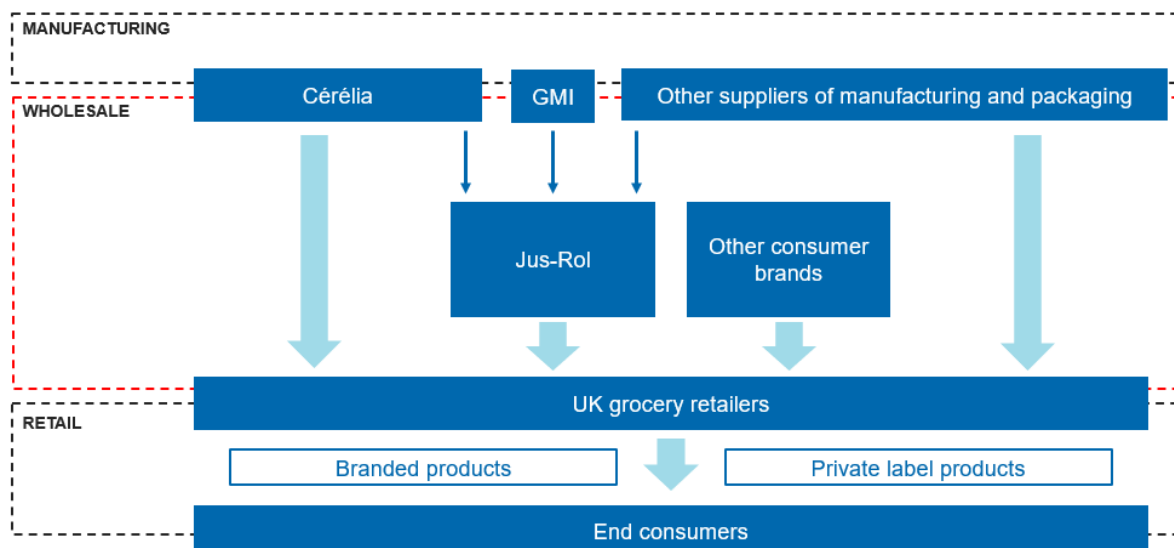
19. Dough-to-bake products are sold through three main wholesale channels in the UK:²⁷
- (a) Grocery and retail (the **retailer segment**): customers in this segment comprise large, national as well as smaller grocery retailers, including hybrid, online-only and brick-and-mortar only grocery retailers;
 - (b) Foodservice: customers in this segment comprise caterers who buy dough-to-bake products to sell to their end customers, as well as bakeries, restaurants and independent shops which purchase dough-to-bake products to produce and bake finished products in-store to serve their customers.
 - (c) Food manufacturing: customers in this segment purchase dough-to-bake products to manufacture a finished product for sale to consumers (eg round pastry dough as a pastry lid in a pie product or pizza dough for a pizza product. These customers typically buy bespoke products made to specifications which suit their manufacturing process but also purchase 'off the shelf' dough forms, standard sizes of blocks, rolls, sheets, etc.
20. The Parties overlap solely in the supply of dough-to-bake products to grocery retailers in the UK.²⁸ The diagram below provides an overview of the different levels of the dough-to-bake product supply chain in the UK retailer segment.

²⁶ This estimate is broadly consistent with that made by GMI in one of its internal documents from October 2020 (Annex 09.A.03 to the Enquiry Letter Response).

²⁷ Merger Notice, paragraphs 163-164.

²⁸ Merger Notice, paragraphs 170-171.

Figure 1: Overview of the dough-to-bake product supply chain in the UK retailer segment



Source: CMA analysis

21. The manufacturing level comprises product manufacture, package assembly and fulfilment services. Cérélia is active at the manufacturing level, providing manufacturing and packaging for both private label and branded dough-to-bake products. Pre-Merger, GMI outsourced the manufacture and packaging of most of the branded dough-to-bake products supplied by the Jus-Rol Business to third party manufacturers (principally Cérélia).²⁹ Cérélia estimated that it manufactured approximately [60-70]% (based on sales value) of all dough-to-bake products supplied to grocery retailers in the UK in 2020, followed by Henglein ([10-20]%), GMI ([10-20]%),³⁰ Hellenic Dough ([0-5]%), with other manufacturers and branded suppliers accounting for [10-20]% and [5-10]%, respectively.³¹ These figures show that Cérélia is, by far, the largest supplier of dough-to-bake products to grocery retailers.
22. At the retail level,³² dough-to-bake products are sold either as:
 - (a) branded products ie dough-to-bake products produced by consumer brand owners or contract manufacturers and sold to end consumers under a brand name (eg Jus-Rol). The CMA notes that for chilled puff pastry and shortcrust pastry dough which account for over 70% of dough-

²⁹ Merger Notice, paragraph 167. GMI manufactures a few SKUs for the Jus-Rol Business for sale to UK customers (see paragraph 11 above).

³⁰ For the self-supply of Jus-Rol products (see paragraph 11 above).

³¹ Merger Notice, Table 8 'Estimated shares of branded and own-label dough products (2020)'.

³² The CMA notes that this distinction also applies at the wholesale level as discussed in paragraph 23 below.

to-bake products sales in the UK at the retail level, there are no branded products available other than Jus-Rol (as set out in further detail from paragraph 88); or

- (b) private label products ie dough-to-bake products produced by manufacturers for grocery retailers and sold under the grocery retailers' brand (eg Sainsbury's ready rolled puff pastry).

23. Grocery retailers may procure either or both branded and private label dough-to-bake products, which they then sell to end consumers. At the wholesale level:

- (a) the Jus-Rol Business and other suppliers of branded dough-to-bake products independently develop the recipes, branding and marketing strategy for their products and then negotiate and agree wholesale prices for these products with grocery retailers. These suppliers also provide additional services to grocery retailers such as supply and demand forecasting services, marketing and customer services, along with category management, support and insight.³³
- (b) Cérélia, and other suppliers of private label dough-to-bake products, work with grocery retailers to develop recipes for these products; Cérélia submitted that it formulates the initial product recipe it submits to grocery retailers which the latter then approve,³⁴ which is in line with feedback received from rival suppliers of dough-to-bake products to grocery retailers in the UK.³⁵ In addition, Cérélia owns certain proprietary rights to the product formulae.³⁶ Private label suppliers produce and package the products using the retailer's private label brand. Cérélia negotiates and agrees wholesale prices with retailers, and provides services to grocery retailers such as category insights.³⁷

24. Both branded and private label wholesale suppliers of dough-to-bake products negotiate with grocery retailers to obtain listings or space on retail shelves:

³³ Merger Notice, paragraphs 420-424.

³⁴ Merger Notice, paragraph 365.

³⁵ [X], [X], [X], [X] and [X]' responses to the CMA's competitor questionnaire.

³⁶ Merger Notice, paragraph 366; notes of call with [X] dated 16 March 2022, [X] dated 8 March 2022 and [X] dated 15 March 2022; [X] response to the CMA's competitor questionnaire.

³⁷ Merger Notice, paragraph 383; for example, Annexes 24a.18-40 to the Enquiry Letter Response.

the inclusion of more of a supplier's products on retail shelves will typically result in higher sales of that supplier's products.³⁸

Jurisdiction

25. Cérélia submitted that neither the turnover test nor the share of supply test is met.³⁹ In respect of the share of supply test, Cérélia submitted that there is no material horizontal overlap between the Parties' activities, and no increment in the Parties' respective shares of (i) the upstream supply of third party 'co-packing' services for dough-to-bake products to brand owners in the UK (including retailer own-labels)⁴⁰ and (ii) the downstream supply of dough-to-bake products for distribution to consumers via retailers and foodservice operators.⁴¹ However, Cérélia recognised that despite operating at different levels of the supply chain, both Parties are active in the supply of dough-to-bake products in the UK.⁴²
26. Each of the Parties is an enterprise within the meaning of section 129 of the Act.⁴³ Cérélia completed its acquisition of the Jus-Rol Business on 31 January 2022,⁴⁴ such that the enterprises have ceased to be distinct within the meaning of section 26 of the Act. The turnover test is not met, as the Jus-Rol Business generated UK turnover of less than £70 million in the last financial year.⁴⁵ However, as is further explained below, the CMA believes that it is or may be the case that the share of supply test in section 23 of the Act is met.
27. Section 23(3) of the Act and the Mergers Guidance on the CMA's jurisdiction and procedure (the **J&P Guidance**) set out that the share of supply test is satisfied if the merged enterprises both either supply or acquire goods or services of a particular description in the UK, and will, after the merger, supply

³⁸ Merger Notice, paragraphs 223, 225(b), 374, 377, 407-408; note of calls with [X] dated 11 March 2022 and [X] dated 15 March 2022.

³⁹ Merger Notice, paragraphs 135-137.

⁴⁰ 'Co-packing', also referred to as contract packaging and/or contract manufacturing, comprises the service of assembling a product into its final finished packaging on behalf of a customer (Merger Notice, paragraph 8). The CMA agrees that 'co-packing' forms part of Cérélia's activities in the UK (at the manufacturing level – see Figure 1 above). However, the CMA believes that in its submissions Cérélia conflated its role as a wholesale supplier with its manufacturing and packaging activities as a 'co-packer'.

⁴¹ Merger Notice, paragraph 137.

⁴² Merger Notice, paragraph 7.

⁴³ The CMA considers that the Jus-Rol Business constitutes an enterprise on the basis that it comprises the transfer of goodwill, trademarks, inventory, business records, deposits and receivables, and contracts (in accordance with [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2revised), January 2021, paragraph 4.8).

⁴⁴ Merger Notice, paragraph 133.

⁴⁵ Merger Notice, paragraph 139.

or acquire 25% or more of those goods or services, in the UK as a whole or in a substantial part of it.⁴⁶

28. The Act confers on the CMA a broad discretion to identify a specific category of goods or services supplied or procured by the merger parties for the purposes of the share of supply test.⁴⁷
29. The J&P Guidance further makes clear that the share of supply test is not an economic assessment of the type used in the CMA's substantive assessment and need not amount to a relevant economic market, but rather provides that the CMA will have regard to any reasonable description of a set of goods or services to determine whether the share of supply test is met.⁴⁸
30. The CMA will consider the commercial reality of the merger parties' activities when assessing how goods or services are supplied, focussing on the substance rather than the legal form of arrangements.⁴⁹ Firms can engage in a variety of different business models and the forms of supply which firms may offer in competition with one another can vary significantly.
31. For the reasons set out in paragraphs 23 and 24 above, the CMA believes that Cérélia and the Jus-Rol Business both supply dough-to-bake products to grocery retailers in the UK. This horizontal overlap between the Parties manifests itself, for example, through the fact that both Cérélia and the Jus-Rol Business negotiate and agree wholesale prices for dough-to-bake products with grocery retailers in the UK,⁵⁰ as confirmed by third parties.⁵¹
32. As set out in paragraph 57 below, the CMA estimates that the Parties' combined share of the wholesale supply of dough-to-bake products to grocery retailers in the UK is [70-80]%, with an increment of [40-50]% arising from the Jus-Rol Business' sales of branded products.⁵²

⁴⁶ See [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2revised), January 2021, paragraph 4.58.

⁴⁷ Section 23(8) of the Act.

⁴⁸ See [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2revised), January 2021, paragraph 4.59.

⁴⁹ See [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2revised), January 2021, paragraph 4.59.

⁵⁰ Merger Notice, paragraphs 223, 225(b), 374, 377, 407-408.

⁵¹ Notes of call with [REDACTED] dated 11 March 2022 and [REDACTED] dated 15 March 2022.

⁵² Calculations of shares of supply include all of Cérélia's private label dough-to-bake products and the Jus-Rol Business' branded products supplied to grocery retailers in the UK in 2020, the last year for which Cérélia possesses data (RFI3 Response).

Conclusion

33. For the reasons set out above, the CMA believes that it is or may be the case that the share of supply test in section 23 of the Act is met in the supply of dough-to-bake products to grocery retailers in the UK.
34. The Merger completed on 31 January 2022 and the CMA was first informed of it on 26 November 2021.⁵³ The four month deadline for a decision under section 24 of the Act is 31 May 2022.
35. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.
36. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 1 April 2022 and the statutory 40 working day deadline for a decision is therefore 31 May 2022.

Counterfactual

37. 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 or less competitive than these conditions.⁵⁴
38. In this case, the CMA has not seen any evidence supporting a different counterfactual than the pre-Merger conditions of competition, and Cérélia and third parties have not put forward arguments in this respect. Therefore, the CMA believes the pre-Merger conditions of competition to be the relevant counterfactual.

⁵³ E-mail from Willkie Farr & Gallagher (UK) LLP to the CMA of 26 November 2021 08:59.

⁵⁴ [Merger Assessment Guidelines \(CMA129\)](#), March 2021, from paragraph 3.1.

Frame of reference

39. 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.⁵⁵

Product scope

40. The Parties overlap in the wholesale supply of dough-to-bake products to grocery retailers in the UK. This is therefore the starting point for the relevant product frame of reference.⁵⁶ Cérélia supplies private label dough-to-bake products and Jus-Rol supplies branded dough-to-bake products to grocery retailers in the UK.
41. Cérélia submitted that no segmentation by either product type (eg ingredient pastry, pizza dough, and other ready-to-bake dough products) or between chilled and frozen dough-to-bake products is necessary, because:
- (a) in relation to type of dough-to-bake products,
 - (i) from a demand-side perspective, grocery retailers typically adopt a holistic approach to negotiating the supply of ‘co-packing’ services for different types of dough-to-bake products;⁵⁷ and
 - (ii) from a supply-side perspective, the manufacturing process is very similar across dough-to-bake products;⁵⁸ and
 - (b) in relation to the distinction between chilled and frozen dough-to-bake products, the basic manufacturing process is identical, except that chilled dough-to-bake products require the addition of preservatives to maximise shelf life and frozen dough-to-bake products require an additional step:

⁵⁵ [Merger Assessment Guidelines \(CMA129\)](#), March 2021, paragraph 9.4.

⁵⁶ [Merger Assessment Guidelines \(CMA129\)](#), March 2021, paragraph 9.6.

⁵⁷ Merger Notice, paragraph 237.

⁵⁸ Merger Notice, paragraph 233.

freezing and storage in a temperature-controlled environment before delivery to the customer.⁵⁹

42. Cérélia submitted that there is an upstream market for the supply of 'co-packing' services and a downstream market for the supply of dough-to-bake products to consumers via the retail and food service segments. On this basis, Cérélia submitted that the Parties operate in different markets.⁶⁰
43. The CMA agrees with Cérélia that the product frame of reference should not be segmented by product type for the purpose of market definition based on both the demand and supply side factors presented above.⁶¹ However, to the extent that certain suppliers have strengths in different products, the CMA has taken into account such differences in the competitive assessment below.
44. The CMA has further considered whether branded and private label dough-to-bake suppliers compete to supply grocery retailers with their products. In making this assessment, the CMA has considered the extent to which branded and private label dough-to-bake products compete at the retail level, that is in sales to end consumers, as competition within the retail stores informs competition in the supply to grocery retailers.
45. In this case, the CMA believes that the available evidence, which is discussed further in the closeness of competition section below shows that branded and private label dough-to-bake products supplied by the Parties closely compete for end consumers. This assessment is based on:
 - (a) similarity in the products;
 - (b) evidence of consumer behaviour;
 - (c) views of third parties; and
 - (d) Parties' internal documents.
46. In addition, the available evidence also shows that wholesale suppliers of branded and private label dough-to-bake products compete to supply grocery retailers with their products. As discussed further below, the CMA received

⁵⁹ Merger Notice, paragraph 243.

⁶⁰ For example, Merger Notice, paragraphs 161 and 172; Issues Meeting Presentation to the CMA dated 9 May 2022 (slide 18); Issues Letter Response, paragraphs 2.2-2.7.

⁶¹ The CMA notes that in *General Mills UK Ltd / Saxby Bros Ltd* (2006), the CMA considered the customer segments separately on a cautious basis.

evidence that grocery retailers shift shelf space between the two and, in that context, are able to leverage the substitutability between the products for consumers to negotiate better commercial terms for the wholesale supply of dough-to-bake products with the other type of supplier.⁶²

47. For the reasons set out above, the CMA believes that the product frame of reference includes both branded and private label dough-to-bake products. The CMA however recognises that there are differences between these two types of products, and has taken account of those differences in its competitive assessment below.

Geographic scope

48. Cérélia did not make any specific submissions on the scope of the geographic frame of reference for the wholesale supply of dough-to-bake products to grocery retailers. Cérélia submitted that, in relation to the 'co-packing' of dough-to-bake products, the geographic frame of reference is at least EEA- and UK-wide. This is because both Parties manufacture, and have historically manufactured, dough-to-bake products outside the UK for sale in the UK. Cérélia submitted that the same is true for its 'co-packing' competitors which supply UK customers from sites located outside the UK, such as Henglein (Germany), Hellenic Dough (Greece) and Wewalka (Austria).⁶³
49. The evidence available to the CMA indicates that the relevant geographic frame of reference for the wholesale supply of dough-to-bake products to grocery retailers is UK-wide. This is because the Parties negotiate commercial terms with grocery retailers for the wholesale supply of dough-to-bake products through national procurement processes.
50. However, the CMA is aware that some competitors active in the wholesale supply of dough-to-bake products to grocery retailers have a regional presence in the UK and has taken this into account in the competitive assessment. Also, the CMA has considered the constraint posed by competitors outside this geographic frame of reference, as appropriate, as part of its competitive assessment.

⁶² See paragraph 78(a) below.

⁶³ Merger Notice, paragraphs 25-26, 262-266.

Conclusion on frame of reference

51. For the reasons set out above, the CMA has assessed the impact of the Merger in the following frame of reference: the wholesale supply of dough-to-bake products to grocery retailers in the UK.

Competitive assessment

Horizontal unilateral effects

52. 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 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.⁶⁴ Unilateral effects giving rise to an SLC can occur in relation to customers at any level of a supply chain, for example at the wholesale level or retail level (or both), and is not limited to end consumers.⁶⁵ Where there are few existing suppliers, the merger firms enjoy a strong position or exert a strong constraint on each other, or the remaining constraints on the merger firms are weak, competition concerns are likely.⁶⁶ Further, in differentiated markets, horizontal unilateral effects are more likely when the merging parties compete closely and where the remaining competitive constraints are not sufficient to offset the loss of competition between them resulting from the Merger.⁶⁷
53. The CMA considers that horizontal unilateral effects may arise in a variety of ways, including (for example) increasing wholesale prices and/or degrading non-price aspects of the products (such as quality, range, service and innovation).⁶⁸ Post-Merger, Cérélia would control the wholesale supply of both private label and Jus-Rol branded products, including price and non-price aspects. Given that Cérélia would earn an additional margin on the sale of

⁶⁴ [Merger Assessment Guidelines \(CMA129\)](#), March 2021, paragraph 4.1.

⁶⁵ [Merger Assessment Guidelines \(CMA129\)](#), March 2021, paragraph 4.2.

⁶⁶ [Merger Assessment Guidelines \(CMA129\)](#), March 2021, paragraph 4.3.

⁶⁷ [Merger Assessment Guidelines \(CMA129\)](#), March 2021, paragraph 4.8.

⁶⁸ The CMA has assessed the impact of the Merger in the wholesale supply of dough-to-bake products to grocery retailers in the UK, ie through a 'horizontal lens'. In the course of its merger investigation, the CMA has also considered whether it would be appropriate to assess the impact of the Merger through a 'vertical lens' (ie a theory of harm based on input foreclosure in relation to the supply of manufacturing and packaging to grocery retailers in the UK). However, given the findings set out below on horizontal unilateral effects, the CMA has not found it necessary in this decision to reach a separate conclusion on a vertical theory of harm.

Jus-Rol branded products as compared to private label products, any such changes may be aimed at diverting sales to the Jus-Rol brand.⁶⁹

54. In assessing this theory of harm, the CMA has considered:

- (a) shares of supply;
- (b) the closeness of competition between the Parties; and
- (c) the competitive constraints from alternative suppliers and barriers to switching.

Shares of supply

Cérélia's submissions

55. Cérélia provided data based on Kantar reports for the year 2020.⁷⁰ Kantar records the value of sales at the retail level (ie sales to end consumers) of branded and private label dough-to-bake products, and identifies the source of these products (ie the supplier of manufacturing and packaging, or the consumer brand). This data has been supplemented by the Parties' internal sales data.⁷¹

⁶⁹ Cérélia submitted that the Merger rationale is to invest into the growth of the dough-to-bake category (Issues Letter Response, paragraph 2.27). The CMA notes, however, that pursuing expansion of the dough-to-bake category in line with the Merger rationale would not preclude Cérélia from also seeking to divert sales from private label to Jus-Rol products.

⁷⁰ Merger Notice, Table 8 'Estimated shares of branded and own-label dough products (2020)'.

⁷¹ Cérélia submitted that due to Kantar's sample size and methodology, the data does not capture sales by online retailers (eg Ocado and Amazon, that stock brands such as Picard), and under-indexes sales by independent retailers which are more likely to stock independent UK brands (eg Northern Dough Co., Theos and Dorset Pastry) (Merger Notice, paragraph 307). Cérélia also submitted that retail sales data is the best available proxy for estimating shares of supply of dough-to-bake products at the wholesale level (ie sales to grocery retailers), given it does not have access to internal sales data of competing 'co-packers' (e-mail from Willkie Farr & Gallagher (UK) LLP to the CMA of 21 April 2022 17:24).

CMA's assessment

56. The CMA has relied upon retail level data as a proxy for the Parties' shares of supply at the wholesale level,⁷² and has used the data provided by Cérélia for its analysis.⁷³ The CMA's estimates are presented in Table 1 below.

Table 1: Share of supply estimates for branded and private label dough-to-bake products in the UK (2020)

Branded			Private label			
Jus-Rol	Others*	Total	Cérélia	Henglein	Others	Total
[40-50]%	[5-10]%	[40-50]%	[30-40]%	[10-20]%	[10-20]%	[50-60]%

Notes: (*) 'Others' here include Picard, Dorset Pastry, Theos, Bells, Northern Dough Co. and Shire Foods.⁷⁴

Source: CMA analysis based on the Parties' data (Merger Notice, Table 8).

57. The CMA estimates that the Parties' combined share in the wholesale supply of dough-to-bake products to grocery retailers in the UK is [70-80]% with an increment of [40-50]% arising from the Jus-Rol Business' sales of branded products.⁷⁵
58. The Parties are followed by Henglein/Golden Acre ([10-20]% share), other smaller wholesale suppliers of private label dough-to-bake products (together accounting for [10-20]%) and a long tail of very small consumer brands (together accounting for [5-10]%).
59. The CMA has also analysed third party revenue data from suppliers of dough-to-bake products for each calendar year in the period 2019-2021 (including ingredient pastry, pizza dough and other ready-to-bake dough products (both chilled and frozen)). The CMA notes that the results of this analysis are broadly consistent with the estimates presented above.

⁷² Given that the data identifies the wholesale supplier of the products and matches this information to the value of sales, the CMA considers that it is possible to use the retail sales data to estimate approximate shares of supply at the wholesale level. To do this, Cérélia provided details of which grocery retailers it supplied with 'co-packing' services for private label products in 2020. Where it supplied a grocery retailer with dough-to-bake products and was not aware of another supplier to that grocery retailer, it conservatively assumed that Cérélia manufactured 100% of that grocery retailer's sales. The remaining grocery retailer's sales were allocated to other suppliers of 'co-packing' of dough-to-bake products, based on information available to Cérélia as part of a market intelligence exercise (Merger Notice, paragraph 309).

⁷³ For example, Merger Notice, Table 8 'Estimated shares of branded and own-label dough products (2020)'.

⁷⁴ Merger Notice, Table 8 'Estimated shares of branded and own-label dough products (2020)'.

⁷⁵ Calculations of shares of supply include all of Cérélia's sales of private-label dough-to-bake products and the Jus-Rol Business' branded products supplied to grocery retailers in the UK in 2020.

60. The CMA considers that the Parties have a very high combined share in the wholesale supply of dough-to-bake products to grocery retailers in the UK; the only other suppliers with material shares in this segment have a limited presence. Similarly, if branded and private label products are considered separately, Cérélia has a very high share of private label products, and post-Merger would also have a very high share of branded products.

Closeness of competition

61. Closeness of competition is a relative concept. Where there is a degree of differentiation between the merger firms' products, they may nevertheless still be close competitors if rivals' products are more differentiated, or if there are few rivals. The CMA will consider the overall closeness of competition between the merger firms in the context of the other constraints that would remain post-merger.⁷⁶
62. The CMA has examined the extent to which the Parties competed pre-Merger, and has considered within its assessment:
- (a) Cérélia's submissions;
 - (b) evidence from internal documents; and
 - (c) evidence from third parties.

Cérélia's submissions

63. Cérélia submitted that it is common ground that Jus-Rol and the private label brands of grocery retailers compete for end consumers at the retail level.⁷⁷ This is because, in Cérélia's view, there are significant similarities across branded and private label dough-to-bake products from a product format, recipe and packaging perspective (ie in terms of product characteristics and use) despite some differentiation in terms of price, quality assurance and product innovation.⁷⁸

⁷⁶ [Merger Assessment Guidelines \(CMA129\)](#), March 2021, paragraph 4.10.

⁷⁷ Issues Letter Response, paragraph 5.2.

⁷⁸ April Submission, paragraphs 4.13-4.15.

64. Cérélia submitted that it does not, however, follow that the Parties compete with each other at the wholesale level on the basis that:⁷⁹
- (a) the Parties do not regard each other as competitors as they offer very different ‘products’ to UK grocery retailers. The Jus-Rol Business develops and produces branded dough-to-bake products for which it then seeks listings by grocery retailers in the UK. The Jus-Rol Business controls every aspect of the product development, production and marketing of its products. In contrast, Cérélia offers dough-to-bake ‘co-packing’ services to retailers which have a dough-to-bake private label offering owned and managed in every respect by grocery retailers; and
 - (b) the Parties do not constrain one another. For example, Cérélia submitted that they [REDACTED]. In addition, in [REDACTED].

CMA’s assessment

65. When competing for grocery retailers, both branded and private label wholesale suppliers of dough-to-bake products compete (albeit through separate procurement processes) on price and quality, as well as innovation and the level of service.⁸⁰ In that context, grocery retailers rely on competition between selected wholesalers for shelf-space and listing of dough-to-bake products in negotiating wholesale prices and other terms.
66. Both Cérélia and the Jus-Rol Business negotiate and agree wholesale prices and other non-price aspects with grocery retailers for the supply of dough-to-bake products, as confirmed by both Cérélia and third parties.⁸¹
67. The third party feedback indicates that, pre-Merger, grocery retailers were able to negotiate better commercial terms by alternatively using the terms offered by Cérélia or the Jus-Rol Business as a lever, given the significant extent of substitutability between the Jus-Rol products and grocery retailers’ private label dough-to-bake products (including those supplied by Cérélia) from an end consumer perspective (as set out in further detail from paragraph 76). This is because grocery retailers currently have the option of switching

⁷⁹ Issues Letter Response, paragraphs 2.2-2.10 and 5.2-5.28.

⁸⁰ CMA analysis of [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], responses to the CMA’s grocery retailer questionnaire; Issues Letter Response, paragraph 2.5.

⁸¹ Merger Notice, paragraphs 223, 225(b), 374, 377, 407-408; notes of calls with [REDACTED] dated 11 March 2022 and with [REDACTED] dated 15 March 2022.

between private label and branded products in response to a price increase or deterioration in quality.

68. This is also in a context where end consumers are presented with very limited other options aside from Jus-Rol branded dough-to-bake products and a grocery retailer's private label equivalent. Similarly, grocery retailers have very limited choice of branded dough-to-bake products, other than Jus-Rol. Specifically, for chilled puff pastry and shortcrust pastry dough which account for over 70% of dough-to-bake products sales in the UK at the retail level, there are no consumer brands available other than Jus-Rol (as set out in further detail at paragraph 88 below). Therefore, the most likely alternatives for consumers buying Jus-Rol chilled puff and shortcrust pastry dough products will be the equivalent grocery retailer private label products (predominantly supplied by C  r  lia) and, likewise, the most likely alternative for consumers of private label chilled puff and shortcrust pastry dough products will be Jus-Rol products. This product substitutability from an end consumer perspective (ie at the retail level) also provides an indirect constraint at the wholesale level.
69. The CMA sets out below the evidence from the Parties' internal documents and the third party responses to its merger investigation pertaining to the closeness of competition between the Parties.

- *Evidence from internal documents*

70. The Parties' internal documents show how closely grocery retailers' private label dough-to-bake products (including those supplied by C  r  lia) and the Jus-Rol Business' products compete for consumers at the retail level. Specifically:
- (a) one GMI internal document setting out [REDACTED].⁸² In the Issues Letter Response, C  r  lia recognised that each of the statements contained in this internal document indicates that grocery retailers' private label products and Jus-Rol branded products may be substitutable from an end consumer perspective;⁸³

⁸² Annex 20c to the Enquiry Letter Response.

⁸³ Issues Letter Response, paragraph 5.15(a).

- (b) one presentation produced by Cérélia for [REDACTED];⁸⁴
 - (c) the consumer research commissioned by Cérélia and [REDACTED];⁸⁵
 - (d) one GMI internal document from 2020 discusses the competitive landscape in the UK and [REDACTED];⁸⁶
 - (e) one due diligence report conducted in late 2020 and commissioned by Cérélia only [REDACTED];⁸⁷ and
 - (f) in relation to a GMI internal document of August 2020 analysing the impact of Jus-Rol promotional pricing on its rate of sale in 2019, Cérélia confirmed that [REDACTED].⁸⁸
71. The evidence from the internal documents submitted by the Parties supports the finding that private label and branded dough-to-bake products (including those supplied by Cérélia and the Jus-Rol Business) are substitutable to a significant extent from an end consumer perspective, in line with the feedback received from third parties discussed from paragraph 76 below.
72. For the reasons set out in paragraphs 67 and 68 above, the CMA believes that the product substitutability from an end consumer perspective (ie at the retail level) also provides an indirect constraint at the wholesale level. The CMA therefore considers that the evidence from the Parties' internal documents on substitutability, from an end consumer perspective, between grocery retailers' private label dough-to-bake products (including those supplied by Cérélia) and the Jus-Rol Business' products is relevant to the assessment of closeness of competition between the Parties in the wholesale supply of dough-to-bake products.
73. The Parties' internal documents also provide some evidence of interaction between branded and private label dough-to-bake products at the wholesale level. For example, a pastry and dough category review presentation of February 2021 discusses Cérélia's proposals [REDACTED].⁸⁹

⁸⁴ Annex 24a.32 to the Enquiry Letter Response.

⁸⁵ Annex 22a.03 to the Enquiry Letter Response.

⁸⁶ Annex 04.A.01 to the Enquiry Letter Response.

⁸⁷ Annex 22a.07 to the Enquiry Letter Response.

⁸⁸ Annex 11.A.01 to the Enquiry Letter Response and Parties' response to the CMA's questions of 16 May 2022, paragraph 1.2(b).

⁸⁹ Annex 24a.32 to the Enquiry Letter Response (slide 37).

74. In addition, the CMA observes that internal documents submitted by GMI to the CMA hardly ever discuss competition from or benchmarking against other consumer brands of dough-to-bake products.⁹⁰

75. Finally, the CMA notes that even if the Parties do not perceive each other as directly competing or regularly monitor each others' performance in their internal documents, this does not preclude, in and of itself, a finding of close competition between them at the wholesale level.

- *Evidence from third parties*

76. In line with the Parties' internal documents, the evidence received from third parties confirms that there is a significant degree of substitutability from an end consumer perspective between grocery retailers' private label dough-to-bake products (including those supplied by Cérélia) and the Jus-Rol Business' branded dough-to-bake products in the UK, which drives close competition between the Parties at the wholesale level.

77. Two large grocery retailers explained that they consider Cérélia and the Jus-Rol Business to be competitors on the basis that the products they supply 'are the same', with packaging being the only difference.⁹¹ Moreover, one of them told the CMA that the grocery retailer's private label dough-to-bake products supplied by Cérélia and the Jus-Rol Business' products compete closely in-store as when private label products are on promotion, some sales are diverted from Jus-Rol products (and vice-versa).⁹²

78. Evidence from third parties also indicates that there is substitutability between the products supplied by the Parties' at the wholesale level. Specifically:

- (a) closeness of competition at the wholesale level is evidenced by the way grocery retailers negotiate terms of procurement with each of Cérélia and, per-Merger, GMI.⁹³ For example, grocery retailers submitted that they are able to negotiate lower wholesale prices by using the terms offered by GMI as a lever in their negotiations with Cérélia (and vice-versa), and that

⁹⁰ However, some of these consumer brands are named in some of GMI's customer-facing internal documents including [REDACTED] (for example, Annex 11.B.04 to the Enquiry Letter Response).

⁹¹ Notes of call with [REDACTED] dated 15 March 2022 and [REDACTED] dated 10 March 2022.

⁹² Note of call with [REDACTED] dated 15 March 2022.

⁹³ Notes of call with [REDACTED] dated 15 March 2022 and [REDACTED] dated 11 March 2022.

post-Merger this leverage would be lost.⁹⁴ One grocery retailer said this leverage also helped it get better terms with the Parties relating to innovation, market insight, marketing, or anything that can drive customer awareness, footfall and volume for competitive advantage;⁹⁵

- (b) several of Cérélia's [X] customers expressed concerns that, as a result of the Merger, they will no longer be in a position to use the competitive interactions (which Cérélia contests the existence of in its submissions⁹⁶) at the retail level between their private label products and the Jus-Rol products in their future negotiations with the Merged Entity on price and non-price dimensions.⁹⁷ One grocery retailer said that the Merged Entity may stop supplying private label products altogether or may increase prices or deteriorate quality of the private label range.⁹⁸ Another grocery retailer said that there is a concern that the Merger would exacerbate the 'extremely limited competition' in the supply of dough-to-bake products, and it would lead to an 'almost monopoly position' for both branded and private label products;⁹⁹ and
- (c) one supplier of private label dough-to-bake products said that the Merger could lead 'to a reduction in competition between branded and private label products'.¹⁰⁰

79. The feedback from the grocery retailers that responded to the CMA's merger investigation is clear that they consider that competition would be lost in the wholesale supply of dough-to-bake products to grocery retailers as a result of the Merger. Therefore, it must ensue that pre-Merger Cérélia and the Jus-Rol

⁹⁴ E-mails from [X] to the CMA dated 3 May 2022 and [X] to the CMA dated 4 May 2022. One grocery retailer illustrated the exercise of this leverage with an example. It said that if GMI (the owner of the Jus-Rol Business pre-Merger) raised wholesale prices beyond what is deemed reasonable, the grocery retailer could adjust the range and/or number of distribution points/stores in which Jus-Rol products are present. The impact of this change would result in more sales for private label products, and less for Jus-Rol products, creating competitive tension and a structural incentive to ensure costs are fair. Furthermore, having two suppliers in a category also enables effective cost benchmarking which is in part used in the assessment of reasonable inflation. Not having two suppliers would remove both the volume and cost tension (E-mail from [X] to the CMA dated 4 May 2022).

⁹⁵ E-mail from [X] to the CMA dated 3 May 2022.

⁹⁶ See paragraph 64(b) above.

⁹⁷ Notes of call with [X] dated 15 March 2022 and [X] dated 11 March 2022; e-mail from [X] to the CMA dated 19 January 2022 and [X]' response to the CMA's grocery retailer questionnaire. [X], [X] and [X] together account for approximately [X]% of Cérélia's forecasted gross sales in 2022 (Cérélia's response to the CMA's request for information dated 21 March 2022).

⁹⁸ E-mail from [X] to the CMA dated 27 January 2022.

⁹⁹ E-mail from [X] to the CMA dated 19 January 2022.

¹⁰⁰ [X]'s response to the CMA's competitor questionnaire.

Business competed closely in the wholesale supply of dough-to-bake products to grocery retailers in the UK.

Conclusion on the closeness of competition between the Parties

80. As noted above, closeness of competition is a relative concept, and where merger firms' products are differentiated they may still be close competitors if rivals' products are more differentiated or there are few rivals.
81. The evidence available to the CMA on the direct interaction between the products supplied by the Parties suggests that, while these products are differentiated (with Cérélia supplying private label products and the Jus-Rol Business supplying branded products), they are nonetheless close competitors in the wholesale supply of dough-to-bake products to grocery retailers in the UK.
82. First, the available evidence indicates that grocery retailers' private label dough-to-bake products (including those supplied by Cérélia) and Jus-Rol Business' branded dough-to-bake products are close substitutes at a retail level, and that this closeness of competition at the retail level is an important consideration for grocery retailers in negotiating terms for the wholesale supply of dough-to-bake products with the Parties. Second, the available evidence (discussed in the next section on competitive constraints) also indicates the presence of few rivals in this segment. Considering in the round the degree of substitutability between branded and private label dough-to-bake products, and the lack of alternatives available to grocery retailers, the CMA believes that the Parties compete closely in the wholesale supply of dough-to-bake products to grocery retailers in the UK.

Competitive constraints

83. Horizontal unilateral effects are more likely where customers have little choice of alternative supplier. The CMA has examined whether there are alternative suppliers which would provide a competitive constraint on the Merged Entity and has considered within its assessment:
 - (a) Cérélia's submissions;
 - (b) competitive constraints posed by consumer brands; and

- (c) competitive constraints posed by wholesale suppliers of private label products.

Cérélia's submissions

84. Cérélia submitted that dough-to-bake 'co-packing' services are currently provided to UK grocery retailers on competitive terms (ie pre-Merger), and there will remain sufficient competition following the Merger. Specifically, Cérélia submitted that:
- (a) there are credible and effective alternative dough-to-bake 'co-packers' located in the UK and Continental Europe that can supply UK grocery retailers;¹⁰¹
 - (b) UK grocery retailers have the ability to switch dough-to-bake 'co-packers' in short order;¹⁰² and
 - (c) UK grocery retailers are able to multi-source.¹⁰³
85. Cérélia also submitted that it would make no commercial or economic sense for the Merged Entity to divert sales from Jus-Rol to private label, because:¹⁰⁴
- (a) the dough-to-bake category is contestable;
 - (b) [REDACTED];¹⁰⁵ and
 - (c) any price increase would not result in complete diversion between private label products supplied by Cérélia and Jus-Rol products, as some diversion would go to:
 - (i) private label products supplied to grocery retailers by other 'co-packers';
 - (ii) other third party consumer brands;
 - (iii) self-supply by consumers who can make dough themselves; and

¹⁰¹ Issues Letter Response, paragraph 2.13.

¹⁰² Cérélia submitted examples of grocery retailers switching 'co-packers' between 2010 and 2022 (Issues Letter Response, paragraph 6.6).

¹⁰³ Cérélia submitted that between 2013 and 2019, [REDACTED] used both Cérélia and Henglein for its chilled private label range, and that [REDACTED] (Issues Letter Response, paragraphs 6.6 and 6.8).

¹⁰⁴ Issues Letter Response, paragraph 2.27(b)-(c).

¹⁰⁵ See paragraph 53 above.

- (iv) other non dough-to-bake products in the wider butter, spreads, margarine and dairy category.

CMA's assessment

86. Cérélia's submissions have focused on analysing the lack of incentives post-Merger to degrade the Jus-Rol offering to divert sales to private label products.¹⁰⁶ However, these submissions on incentives do not address the CMA's concern that the Merged Entity could worsen the private label offering to divert sales to Jus-Rol products (and potentially degrade innovation and/or quality aspects across both products).¹⁰⁷
87. The CMA does not agree with Cérélia on one key aspect of its analysis, namely that there are sufficient alternative suppliers that could discipline the Merged Entity, and has analysed the constraint that other wholesalers of branded and private label dough-to-bake products pose on the Parties, each of which are considered in turn.
- *Consumer brands*
88. Based on the available evidence, the CMA believes that other consumer brands do not pose a significant constraint on the Parties, for the following reasons:
- (a) as discussed in paragraph 58 above, consumer brands (other than Jus-Rol) account for only approximately [5-10]% of dough-to-bake retail sales in the UK, and this is made up of a long tail of suppliers largely offering niche products (including premium products and gluten-free products);
 - (b) wholesale suppliers of private label dough-to-bake products, as well as grocery retailers, told the CMA that other consumer brands have very limited recognition;¹⁰⁸ and

¹⁰⁶ See paragraph 85 above.

¹⁰⁷ [X] the CMA notes that post-Merger it would also receive (and control) the additional margin that GMI made, pre-Merger, on sales of Jus-Rol products to grocery retailers. Moreover, Cérélia would control all aspects of the Jus-Rol offering (price, quality, etc.) such that it would have scope to flex the various attributes of both private label and branded products in order to maximise its profits (see paragraph 53 above).

¹⁰⁸ [X] response to the CMA's competitor questionnaire; notes of call with [X] dated 11 March 2022 and [X] dated 10 March 2022.

(c) evidence from the Parties' internal documents rarely mention rival retail brands, indicating that consumer brands do not pose a significant constraint on the Parties.¹⁰⁹

89. For the reasons set out above, the CMA believes that other consumer brands do not exert a significant competitive constraint on the Parties.

- *Wholesale suppliers of private label dough-to-bake products*

90. The CMA has considered the strength of the competitive constraints posed by alternative wholesale suppliers of private label dough-to-bake products to grocery retailers in the UK and has taken into account:

(a) the similarity of their service proposition;

(b) evidence from third parties; and

(c) evidence from internal documents.

- *Similarity of service proposition of current wholesale suppliers of private label dough-to-bake products*

91. The CMA has received information from grocery retailers on the suppliers that they currently use for each dough-to-bake private label product discussed in the product frame of reference. The evidence has been summarised in Table 2 below.

92. The CMA notes that Cérélia offers the most extensive product range (being active in seven product categories), followed by Henglein/Golden Acre and Bells (active in just three). Other smaller suppliers provide grocery retailers with two or fewer types of dough-to-bake products. There also appear to be several product areas where none of the rivals identified by the Parties are active (for example frozen ingredient pastry).¹¹⁰

Table 2: Private label dough-to-bake products by wholesale suppliers

	Wholesale supplier
--	--------------------

¹⁰⁹ Internal documents submitted by the Parties rarely mention rival consumer brands (see paragraph 74 above).

¹¹⁰ The CMA notes that Cérélia submitted that there are no material barriers to expansion, such that competing suppliers could easily expand their range if there was an opportunity to do so. However, this contradicts views of wholesale suppliers, who have listed a number of barriers to expansion (see from paragraph 114 below).

		Cérélia*	[X]**	[X]	[X]	[X]	[X]	[X]
Chilled	Shortcrust pastry dough	X	X					
	Puff pastry dough	X	X	X	X		X	
	Filo pastry dough	X	X			X		
	Pizza dough	X						X
	Ready-to-bake dough products	X						
Frozen	Shortcrust pastry dough	X					X	
	Puff pastry dough	X				X		
	Filo pastry dough							
	Pizza dough							
	Ready-to-bake dough products			X				

Notes: (*) [X]; (**) [X].

Source: grocery retailers' responses to the CMA questionnaire

93. [X] of the [X] grocery retailers in the UK (ie [X]) – which together accounted for approximately [60-70]% of the value of retail sales of private label dough-to-bake products in the UK in 2021 – are customers of Cérélia and [X] source for their chilled private label dough-to-bake product needs.¹¹¹

- *Evidence from third parties*

o *Grocery retailers' views on alternative wholesale suppliers*

94. The CMA asked grocery retailers in the UK to list the main suppliers of private label dough-to-bake products that they would consider using. The CMA notes that only three suppliers other than Cérélia were named by at least two grocery retailers. Each of those suppliers is discussed in turn below.

95. At the outset, the CMA observes that grocery retailers that responded to the CMA's merger investigation, particularly the larger ones, have expressed doubts about the credibility of these suppliers. While a range of reasons have been put forward as to why these suppliers would not be credible alternatives,

¹¹¹ Annex to the Issues Letter Response (tab 'Switching and multi-sourcing'); [X], [X], [X] and [X] responses to the CMA's grocery retailer questionnaire.

the feedback essentially indicates that none of the suppliers listed below would provide a like-for-like alternative to Cérélia.

96. **Henglein**, based in Germany, supplies private label ingredient pastry products to [REDACTED], [REDACTED] and [REDACTED] in the UK ([REDACTED]).¹¹² It was identified by several grocery retailers as a possible alternative to Cérélia.¹¹³ However, some grocery retailers said it is unlikely to be a credible alternative because:
- (a) there are a number of concerns with its offering. For example:
 - (i) Brexit-related concerns (eg friction at borders). [REDACTED];¹¹⁴
 - (ii) concerns around the use of certain [REDACTED] (eg [REDACTED]);¹¹⁵
 - (iii) cost concerns (eg [REDACTED]). [REDACTED];¹¹⁶
 - (b) it does not offer a broad range of products that would satisfy all customer needs. For example, [REDACTED] ([REDACTED]);¹¹⁷
 - (c) it is unclear whether Henglein could meet certain [REDACTED] requirements (eg [REDACTED]);¹¹⁸ and
 - (d) there is a preference in the UK to source British products.¹¹⁹
97. **Bells** is a Scotland-based wholesale supplier of private label ingredient pastry.¹²⁰ It currently supplies certain ingredient pastry products for [REDACTED] (only [REDACTED]) and [REDACTED],¹²¹ and was mentioned by another grocery retailer as a possible alternative to Cérélia.¹²² One customer said that Bells provides good quality products at competitive prices.¹²³ However, grocery retailers expressed some concerns regarding the credibility of Bells as a viable supplier on the basis that:

¹¹² Merger Notice, paragraph 45(a); [REDACTED] response to the CMA's questionnaire; [REDACTED], [REDACTED] and [REDACTED] responses to the CMA's grocery retailer questionnaire.

¹¹³ Notes of call with [REDACTED] dated 10 March 2022, [REDACTED] dated 11 March 2022 and [REDACTED] dated 15 March 2022.

¹¹⁴ Note of call with [REDACTED] dated 11 March 2022.

¹¹⁵ Note of call with [REDACTED] dated 11 March 2022.

¹¹⁶ Note of call with [REDACTED] dated 11 March 2022.

¹¹⁷ Note of call with [REDACTED] dated 10 March 2022.

¹¹⁸ Note of call with [REDACTED] dated 15 March 2022.

¹¹⁹ Note of call with [REDACTED] dated 15 March 2022.

¹²⁰ Cérélia submitted that Bells also supplies branded ingredient pastry products under the Bells and Fraser brands (Merger Notice, paragraph 482).

¹²¹ Note of call with [REDACTED] dated 15 March 2022; [REDACTED] response to the CMA's grocery retailer questionnaire.

¹²² Note of call with [REDACTED] dated 11 March 2022

¹²³ [REDACTED] response to the CMA's grocery retailer questionnaire.

(a) its capacity is [REDACTED];¹²⁴ and

(b) it produces only [REDACTED].¹²⁵

98. **Cranswick** is another UK-based wholesale supplier of private label dough-to-bake products.¹²⁶ It currently supplies [REDACTED].¹²⁷ The CMA received feedback from grocery retailers that Cranswick could be considered an alternative to Cérélia to start supplying private label products. However, the same grocery retailers expressed concerns as it only [REDACTED], instead of a wide range of dough-to-bake products, it does not have [REDACTED] (which increases [REDACTED] and limits its ability to [REDACTED]), it is expensive relative to other suppliers and has capacity [REDACTED].¹²⁸ Moreover, Cranswick told the CMA that it was not considering supplying other grocery retailers (apart from M&S) at this point.¹²⁹

99. **Others.** Based on the available evidence, the CMA believes that other wholesale suppliers of private label dough-to-bake products do not pose a significant constraint on the Parties. This is because:

(a) Hellenic Dough and St James Pastry, who were [REDACTED] as credible alternatives for grocery retailers, were not mentioned by any grocery retailers when asked which suppliers they would consider using for their private label range; and

(b) Other smaller suppliers (Wewalka, Countrystyle, Doughlicious and Odysea) identified by some grocery retailers¹³⁰ (albeit by only one respondent each) were not considered credible alternatives for several reasons.¹³¹

¹²⁴ Note of call with [REDACTED] dated 11 March 2022; e-mail from [REDACTED] to the CMA dated 12 May 2022 13:56.

¹²⁵ Note of call with [REDACTED] dated 15 March 2022; [REDACTED] response to the CMA's grocery retailer questionnaire.

¹²⁶ Cranswick also supplies other private label pastry products such as open tarts, quiches, sausage rolls and deep filled pies (Merger Notice, paragraph 474). The wholesale supply of private label dough-to-bake products to M&S only accounts for a very small percentage of Cranswick's pastry business, and it is also active in the foodservice segment (Note of call with Cranswick dated 16 March 2022).

¹²⁷ [REDACTED] response to the CMA's grocery retailer questionnaire.

¹²⁸ [REDACTED] and [REDACTED] responses to the CMA's grocery retailer questionnaire.

¹²⁹ Note of call with Cranswick dated 16 March 2022.

¹³⁰ [REDACTED], [REDACTED] and [REDACTED] responses to the CMA's grocery retailer questionnaire.

¹³¹ Wewalka supplies [REDACTED] grocery retailers with pizza dough only in the UK and [REDACTED] ([REDACTED] and [REDACTED] responses to the CMA's grocery retailer questionnaire; e-mail from [REDACTED] to the CMA dated 29 April 2022); Countrystyle was approached by one of the largest grocery retailers but the offering was not judged competitive ([REDACTED] response to the CMA's grocery retailer questionnaire); and Doughlicious and Odysea are being considered by [REDACTED] for being innovative, however, the former '[REDACTED]' and Odysea is based in Greece and represents a very long supply chain ([REDACTED] response to the CMA's grocery retailer questionnaire).

100. Furthermore, the feedback from grocery retailers that responded to the CMA's merger investigation indicates that grocery retailers take into account capacity constraints when choosing their suppliers.¹³²
101. The CMA has also gathered evidence from grocery retailers on multi-sourcing from suppliers of private label chilled dough-to-bake products. The available evidence indicates that large grocery retailers do not currently multi-source for private label chilled dough-to-bake products,¹³³ despite the fact that these products accounted for at least 90% of the value of retail sales of all dough-to-bake products in the UK in 2021.^{134,135} To the extent retailers were to multi-source, for the reasons set out above regarding the limited scope to switch to alternative suppliers, multi-sourcing would remain a limited constraint on the Merged Entity.
102. Cérélia submitted some evidence of a grocery retailer threatening to switch certain private label products to an alternative supplier.¹³⁶ The CMA notes that this [REDACTED]. [REDACTED].
- *Wholesale suppliers' views on alternative suppliers*
103. The CMA also asked competing suppliers to list the main suppliers of private label dough-to-bake products in the retailer segment. The CMA notes that the majority of respondents said that Cérélia was the main player.¹³⁷
104. Six suppliers replied that Cérélia is the main supplier of private label dough-to-bake products in the UK.¹³⁸ Specifically:
- (a) it is able to supply a full range of products in different categories (making it an attractive option to grocery retailers, as they tend to gravitate to

¹³² See paragraphs 97(a) and 98.

¹³³ [REDACTED], [REDACTED], [REDACTED] and [REDACTED] responses to the CMA's grocery retailer questionnaire.

¹³⁴ See paragraph 18 above.

¹³⁵ While Cérélia suggested that smaller suppliers could increase capacity, potentially by starting to supply a limited number of products to a grocery retailer and then expanding over time (see paragraph 113 below), third party feedback does not suggest that significant capacity increases would be straightforward or likely. As mentioned above, large grocery retailers do not multi-source for a large proportion of their dough-to-bake product needs, indicating that a strategy of starting small and growing might not be a viable option. For further details, see below 'barriers to entry and expansion' section.

¹³⁶ Issues Letter Response, paragraphs 6.8-6.9; Issues Meeting Exhibit – [REDACTED].

¹³⁷ Only one of these suppliers identified an alternative to Cérélia (Wewalka) as it is able to supply a range of dough-to-bake products ([REDACTED] response to the CMA's competitor questionnaire). However, as discussed in footnote 131 above, Wewalka only supplies pizza dough to [REDACTED] in the UK and [REDACTED].

¹³⁸ [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED] responses to the CMA's competitor questionnaire.

suppliers who can fill a range rather than supply a single product) and offers a variety of packaging types;¹³⁹

- (b) it has a UK manufacturing plant with a proximity to market and is highly automated;¹⁴⁰ and
- (c) it has an established reputation, and Cérélia is the only supplier considered by grocery retailers for the supply of private label dough-to-bake products.¹⁴¹

- *Third party views on barriers to switching*

- 105. The CMA has considered barriers to switching suppliers as part of its competitive assessment and gathered evidence from grocery retailers and competing suppliers. Based on the available evidence, the CMA believes that the time and costs involved in switching suppliers may limit the ease of switching for the reasons set out in paragraphs 116 and 117 below.¹⁴²
- 106. The CMA has also gathered evidence from grocery retailers on past switching behaviour. The available evidence indicates that none of the [X] grocery retailers have switched away from Cérélia between 2010 and 2021.¹⁴³

- *Evidence from internal documents*

- 107. The CMA has reviewed internal documents provided by the Parties and has seen no mention of alternative suppliers posing a constraint. In particular, Cérélia's internal documents rarely mention any rival suppliers of private label dough-to-bake products.¹⁴⁴ Most internal documents the CMA has seen highlight the closeness of competition between the Jus-Rol and private label products, as explained from paragraph 70 above.
- 108. The CMA has also seen internal documents submitted by Cérélia which are in line with the evidence provided by third parties on the stringent evaluation that

¹³⁹ [X], [X] and [X] responses to the CMA's competitor questionnaire.

¹⁴⁰ [X] response to the CMA's competitor questionnaire.

¹⁴¹ [X] and [X] responses to the CMA's competitor questionnaire.

¹⁴² [X] and [X] response to the CMA's grocery retailer questionnaire; [X], [X] and [X] response to the CMA's competitor questionnaire; note of call with [X] dated 16 March 2022;

¹⁴³ The feedback received by third parties ([X], [X], [X] and [X] responses to the CMA's grocery retailer questionnaire) is consistent with the evidence submitted by Cérélia in relation to switching since 2010 (Annex to the Issues Letter Response, tab 'Switching and multi-sourcing').

¹⁴⁴ The CMA searched for the names of the main competitors listed by the Parties in the UK (eg [X], [X], [X]) in internal documents and found no mention of them in relation to the UK dough-to-bake segment.

grocery retailers need to go through when contracting new suppliers for private label dough-to-bake products. For example, Cérélia provided a number of documents relating to [✂] detailed technical guidelines and product specifications.¹⁴⁵

Conclusion on competitive constraints

109. For the reasons set out above, the CMA believes that there are no suppliers active in the wholesale supply of dough-to-bake products to grocery retailers in the UK that can sufficiently constrain the Merged Entity, either individually or taken together. This is because:
- (a) there are no consumer brands as widely recognised as Jus-Rol, and the long tail of consumer brands in the UK together only account for approximately [5-10]% of the wholesale supply of dough-to-bake products to grocery retailers in the UK;
 - (b) grocery retailers have limited credible alternatives to Cérélia for the wholesale supply of private label dough-to-bake products, and this is particularly true for large grocery retailers, given they take into account capacity constraints when choosing suppliers and the fact that they do not multi-source, particularly for their chilled dough-to-bake product needs;
 - (c) other suppliers active in selling to grocery retailers in the UK do not believe that they are able to compete with Cérélia in the wholesale supply of private label dough-to-bake products because of Cérélia's established reputation with grocery retailers, the scope of its product offering, scale and technology (ie lower costs and automated facilities), and being UK-based;
 - (d) the Parties' internal documents rarely mention constraints posed by third parties in the UK; and
 - (e) the time and costs involved in switching suppliers may limit the ease of switching suppliers for grocery retailers, especially large ones.

¹⁴⁵ For example, Annexes 12-2 and 2-1 to the Enquiry Letter Response.

Conclusion on competitive assessment

110. For the reasons set out above, the CMA believes that the Merger raises competition concerns as a result of horizontal unilateral effects in the wholesale supply of dough-to-bake products to grocery retailers in the UK:
- (a) the Parties' combined share of supply post-Merger is very high, and other suppliers have a considerably smaller share;
 - (b) the evidence available to the CMA indicates that the products supplied by the Parties compete closely for consumers, and that these products also provide important alternatives for grocery retailers;
 - (c) there would be insufficient competitive constraints in the wholesale supply of dough-to-bake products to grocery retailers in the UK, post-Merger:
 - (i) rival consumer brands only account for [5-10]% of the wholesale supply of dough-to-bake products to grocery retailers in the UK and third party evidence and the Parties' internal documents indicate that they do not pose a significant constraint on the Parties.
 - (ii) grocery retailers have expressed concerns about the credibility of alternative suppliers for their private label range on the basis of product characteristics, capacity constraints, border frictions and significant barriers to switching;
 - (d) given the substitution between the products supplied by the Parties by both consumers and grocery retailers, and the lack of alternative competitive constraints, the Parties compete closely; and
 - (e) several of Cérélia's [X] customers have expressed concerns in relation to the Merger.

Barriers to entry and expansion

111. Effective entry and/or expansion of existing firms can mitigate the effect of a Merger on competition, and in some cases may mean that there is no SLC.¹⁴⁶ In assessing whether entry and/or expansion would prevent an SLC, the CMA considers whether such entry or expansion would be (i) timely, (ii) likely and (iii) sufficient to prevent an SLC. These conditions are cumulative and must be

¹⁴⁶ [Merger Assessment Guidelines \(CMA129\)](#), March 2021, paragraphs 8.28-8.29.

satisfied simultaneously.¹⁴⁷ In carrying out its assessment, the CMA will seek to ensure that the evidence is robust when confronted with claims of entry or expansion being timely, likely and sufficient to prevent an SLC from arising. In that respect, the CMA is likely to place greater weight on detailed consideration of entry or expansion and previous experience of entry and expansion (including how frequent and recent it has been).¹⁴⁸

112. The CMA has therefore examined the extent to which entry and/or expansion would be timely, likely and sufficient to prevent an SLC, and has considered within its assessment:

- (a) Cérélia's submissions; and
- (b) evidence from third parties.

Cérélia's submissions

113. Cérélia submitted that it considers there are no material barriers to entry or expansion in the dough-to-bake business segment in the UK, consistent with the OFT's findings in *General Mills UK Ltd/Saxby Bros Ltd*.¹⁴⁹ In particular:

- (a) each of the inputs required to start supplying dough-to-bake products (equipment, premises and staff) can be readily obtained at a relatively low cost;¹⁵⁰
- (b) while a new entrant will have to meet certain process/compliance requirements of grocery retailers in order to start supplying them with products, retailers are willing and able to sponsor entry and expansion by offering 'co-packers' longer term contracts or using them on a trial basis and/or supporting new consumer brands from a technical and marketing perspective.¹⁵¹ Cérélia submitted that this was how [redacted];¹⁵²
- (c) in relation to expansion by existing suppliers, manufacturers that currently supply dough-to-bake products can add capacity with relative ease to service a larger retailer customer in any, or a combination of ways,

¹⁴⁷ [Merger Assessment Guidelines \(CMA129\)](#), March 2021, paragraph 8.31-8.32.

¹⁴⁸ [Merger Assessment Guidelines \(CMA129\)](#), March 2021, paragraph 8.29.

¹⁴⁹ April Submission, paragraph 4.46.

¹⁵⁰ April Submission, paragraphs 4.47-4.52.

¹⁵¹ April Submission, paragraphs 4.53-4.56.

¹⁵² Issues Letter Response, paragraphs 10.3-10.4.

including freezing inventory, increasing the run time of production equipment and investing in a new production line;¹⁵³ and

- (d) barriers to entry and expansion in the UK dough-to-bake ‘co-packing’ segment are low, particularly for dough-to-bake suppliers already active in the foodservice segment.¹⁵⁴

CMA’s assessment

114. As set out in detail below, the evidence received by the CMA as part of its merger investigation does not support a conclusion that entry and/or expansion would be timely, likely or sufficient to mitigate any SLC arising as a result of the Merger. The CMA has specifically considered barriers to entry and/or expansion in the wholesale supply of dough-to-bake products to grocery retailers.

Expansion by alternative private label wholesale suppliers in sales to retailers

115. The CMA sought feedback from third parties identified as competitors by Cérélia as to whether there are any barriers to them competing for new contracts for the supply of manufacturing and packaging of dough-to-bake products to grocery retailers in the UK and, if so, to identify the three main barriers (ranking by reference to the following options: (i) high, (ii) medium and (iii) low). The CMA considers this feedback to be relevant to assess the likelihood of both entry and expansion in the wholesale supply of dough-to-bake products to grocery retailers in the UK.
116. The feedback received indicates that there is a range of barriers (ranked from medium to high when a ranking was provided by the respondent) for wholesale suppliers to compete for new retail contracts in the UK, including:
- (a) the importance of scale to meet grocery retailers’ needs and ability to price competitively;¹⁵⁵
 - (b) requirements in terms of CAPEX expenditure to operate at scale;¹⁵⁶

¹⁵³ April Submission, paragraphs 4.57-4.64.

¹⁵⁴ Issues Letter Response, paragraphs 10.1-10.2.

¹⁵⁵ [§] and [§] responses to the CMA’s competitor questionnaire. The importance of scale was also identified by one of Cérélia’s customers as a significant challenge in changing supplier ([§] response to CMA’s grocery retailer questionnaire).

¹⁵⁶ [§] response to the CMA’s competitor questionnaire.

- (c) manufacturing standards (customer production standards are stringent, and are not easy to accommodate in existing processes and production flows as they may differ from European standards);¹⁵⁷
 - (d) recipe formulation (it takes approximately nine months to set up a new product including product development of the recipes along with all necessary tests and analysis);¹⁵⁸
 - (e) use of certain [redacted] (eg [redacted]) which some UK grocery retailers are not favourable to;¹⁵⁹
 - (f) breadth of dough-to-bake products offer insofar as grocery 'retailers tend to gravitate to suppliers who can fill a range rather than supply a single product making it much more difficult for small companies like [...] to compete';¹⁶⁰
 - (g) transportation, including as a result of Brexit-related border frictions (leading to higher transport costs and higher storage and wastage costs, and higher buffer stocks are needed to compensate for risk of delays);¹⁶¹ and
 - (h) preference to source British where possible.¹⁶²
117. As part of its merger investigation the CMA also sought feedback from grocery retailers as to whether they have considered sponsoring entry and, if so, how this would work in practice. The feedback received is as follows:
- (a) one of the smaller grocery retailers that responded to the CMA's questionnaire noted that sponsoring entry may be an avenue they would consider pursuing;¹⁶³
 - (b) one of Cérélia's large retail customers noted that sponsoring an existing supplier would in principle be possible although this would have to be accompanied by significant commitments to justify the CAPEX and there would be challenges associated with agreeing such long-term

¹⁵⁷ [redacted] response to the CMA's competitor questionnaire.

¹⁵⁸ [redacted] response to the CMA's competitor questionnaire.

¹⁵⁹ [redacted] response to the CMA's competitor questionnaire; note of call with [redacted] dated 11 March 2022; e-mail from [redacted] to the CMA dated 12 May 2022).

¹⁶⁰ [redacted] and [redacted] responses to the CMA's competitor questionnaire.

¹⁶¹ [redacted] response to the CMA's competitor questionnaire; note of call with [redacted] dated 11 March 2022.

¹⁶² [redacted] response to the CMA's competitor questionnaire; note of call with [redacted] dated 15 March 2022.

¹⁶³ [redacted] response to the CMA's grocery retailer questionnaire.

commitments. This customer also said that there would need to be a lengthy transition period;¹⁶⁴ and

- (c) another of Cérélia's customers told the CMA that grocery retailers would not be interested in offering the long-term commitments required to sponsor a small supplier's expansion. This is primarily because the pastry category has not been a profitable segment and without a strong brand attached to the product it would be difficult for the grocery retailer to justify such investment in a product category.¹⁶⁵

118. Regarding capacity expansion, the third party feedback does not suggest it would be timely, likely or sufficient. This is based on several responses from suppliers.¹⁶⁶ Specifically, several of these respondents indicated that the typically short length of contracts with grocery retailers does not provide the adequate assurances to suppliers that investing in expanding capacity or in lines of production will be worthwhile in the long run.¹⁶⁷

Expansion by wholesale suppliers in the foodservice segment

119. The CMA believes that expansion into sales to retailers by wholesale suppliers that are primarily active in the foodservice segment would not be timely, likely or sufficient to prevent an SLC. This is based on responses to the CMA's competitor questionnaire. Specifically:

- (a) one competitor noted that despite having spare capacity which it could use to produce a small number of ingredient pastry SKUs, it has been unable to penetrate the retailer segment;¹⁶⁸ and
- (b) third party respondents that primarily serve the foodservice segment said that they were either not looking at expanding into serving grocery retailers,¹⁶⁹ or had been approached by smaller grocery retailers but could, in principle, only start supplying a very limited number of ingredient

¹⁶⁴ Note of call with [REDACTED] dated 15 March 2022.

¹⁶⁵ Note of call with [REDACTED] dated 11 March 2022.

¹⁶⁶ [REDACTED], [REDACTED], [REDACTED] and [REDACTED] responses to the CMA's competitor questionnaire and e-mail from [REDACTED] to the CMA dated 29 April 2022.

¹⁶⁷ [REDACTED], [REDACTED] and [REDACTED] responses to the CMA's competitor questionnaire.

¹⁶⁸ [REDACTED] response to the CMA's competitor questionnaire.

¹⁶⁹ [REDACTED] response to the CMA's competitor questionnaire.

pastry SKUs immediately depending on the format of the product and subject to packaging supply.¹⁷⁰

120. In the absence of evidence of wholesale suppliers in the foodservice segment previously expanding into the retailer segment (of which Cérélia itself did not provide any concrete examples) together with the available evidence on the existence of barriers to expansion discussed above, the CMA does not believe that such expansion would be likely to occur as a result of the Merger.

Entry of wholesale suppliers

121. Based on the challenges raised above regarding expansion by wholesale suppliers in the retailer and foodservice segments, the CMA believes that entry or expansion by wholesale suppliers would not be timely, likely or sufficient to prevent an SLC. This is because:
- (a) the barriers to expansion faced by wholesale suppliers already active in the retailer and foodservice segments would be even higher for a wholesale supplier with no prior experience of dealing with grocery retailers, even more so the large ones, as they may struggle to demonstrate their ability to fulfil the onboarding requirements; and
 - (b) the CMA has not seen any evidence of such entry.

Conclusions on barriers to entry and expansion

122. For the reasons set out above, the CMA believes that entry or expansion would not be timely, likely or sufficient to prevent a realistic prospect of an SLC from arising as a result of the Merger.

Third party views

123. The CMA contacted customers of the Parties along with wholesale suppliers of dough-to-bake products in the retail and foodservice segments. While a majority of respondents have not raised concerns regarding the Merger, several of Cérélia's [REDACTED] customers raised concerns regarding possible price increases owing to the very small number of alternative wholesale suppliers to the Merged Entity.

¹⁷⁰ [REDACTED] response to the CMA's competitor questionnaire.

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

Conclusion on substantial lessening of competition

125. Based on the evidence set out above, the CMA believes that it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC as a result of horizontal unilateral effects in relation to the wholesale supply of dough-to-bake products to grocery retailers in the UK.

Decision

126. Consequently, the CMA believes that it is or may be the case that (i) a relevant Merger situation has been created; and (iii) the creation of that situation has resulted, or may be expected to result, in an SLC within a market or markets in the UK.
127. The CMA therefore believes that it is under a duty to refer under section 22(1) of the Act. However, the duty to refer is not exercised whilst the CMA is considering whether to accept undertakings under section 73 of the Act instead of making such a reference.¹⁷¹ Cérélia has until 8 June 2022¹⁷² to offer an undertaking to the CMA.¹⁷³ The CMA will refer the Merger for a phase 2 investigation¹⁷⁴ if Cérélia does not offer an undertaking by this date; if Cérélia indicates before this date that it does not wish to offer an undertaking; or if the CMA decides¹⁷⁵ by 15 June 2022 that there are no reasonable grounds for believing that it might accept the undertaking offered by Cérélia, or a modified version of it.
128. The statutory four-month period mentioned in section 24 of the Act in which the CMA must reach a decision on reference in this case expires on 31 May 2022. For the avoidance of doubt, the CMA hereby gives Cérélia notice pursuant to section 25(4) of the Act that it is extending the four-month period mentioned in section 24 of the Act. This extension comes into force on the date of receipt of this notice by Cérélia and will end with the earliest of the following events: the giving of the undertakings concerned; the expiry of the

¹⁷¹ Section 22(3)(b) of the Act.

¹⁷² Section 73A(1) of the Act.

¹⁷³ Section 73(2) of the Act.

¹⁷⁴ Sections 22(1) and 34ZA(2) of the Act.

¹⁷⁵ Section 73A(2) of the Act.

period of 10 working days beginning with the first day after the receipt by the CMA of a notice from Cérélia stating that it does not intend to give the undertakings; or the cancellation by the CMA of the extension.

Sorcha O'Carroll
Senior Director, Mergers
Competition and Markets Authority
30 May 2022