

**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.**

Issues statement

15 July 2022

The CMA has excluded from the published version of the issues statement, information which the inquiry group considers should be excluded having regard to the three considerations set out in section 244 of the Act (specified information: considerations relevant to disclosure). The omissions are indicated by [X]. Some numbers have been replaced by a range. These are shown in square brackets.

The reference

1. On 15 June 2022, the Competition and Markets Authority (**CMA**), in exercise of its duty under [section 22\(1\)](#) of the Enterprise Act 2002 (the **Act**), referred the completed acquisition (the **Merger**) by Cérélia Group Holding SAS (**Cérélia**) (either directly or indirectly) of certain assets relating to the UK and Ireland dough business of General Mills, Inc. (**GMI**), operated under the ‘Jus-Rol’ brand (the **Jus-Rol Business**) for further investigation and report by a group of CMA panel members (the **Inquiry Group**). Cérélia and the Jus-Rol Business are together referred to as the **Parties** and, for statements referring to the future, the **Merged Entity**.
2. In exercise of its duty under [section 35\(1\)](#) of the Act, the CMA must decide:
 - (a) whether a relevant merger situation has been created; and
 - (b) if so, whether the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition (**SLC**) within any market or markets in the United Kingdom (**UK**) for goods or services.

Purpose of this issues statement

3. In this issues statement, we set out the main issues we are likely to consider in deciding whether the Merger gives rise to an SLC. The identification of these issues is based on the evidence we have received to date, including during the CMA’s phase 1 investigation.

4. We are publishing this issues statement to assist interested parties who may wish to submit evidence to our inquiry. The CMA's phase 1 decision (the **Phase 1 Decision**)¹ contains further background to this issues statement.
5. We intend to focus our investigation on the areas of most concern identified in the Phase 1 Decision. We are not restricted, however, from considering other issues that may be identified during our inquiry. We invite interested parties to tell us if there are other relevant issues that we should consider.
6. We intend to investigate whether the Merger will give rise to an SLC, in particular from horizontal unilateral effects in the wholesale supply of dough-to-bake products to grocery retailers in the UK. We explain what we mean by horizontal unilateral effects at paragraphs 31 to 36 below.
7. We will use evidence obtained during the phase 1 investigation, but we will also be considering further evidence on this and any other issue that may be identified during the phase 2 inquiry.

Background

The 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 packaging² of dough-to-bake products to consumer brands (eg Jus-Rol), and to grocery retailers³ who market these products to end consumers under private label brands (eg Sainsbury's ready rolled puff pastry). Cérélia also provides recipe formulation and other value-added services to grocery retailers.⁴ 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.⁵ 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.⁶ The turnover of Cérélia in the

¹ Phase 1 Decision, 30 May 2022. [Summary of Phase 1 decision](#), 30 May 2022. [Decision to refer](#) 15 June 2022.

² 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).

³ In this issues statement, '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.

⁴ 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 21 June 2022).

⁵ Merger Notice submitted by Cérélia to the CMA on 29 March 2022 (**Merger Notice**), paragraphs 9 and 81.

⁶ Merger Notice, paragraph 112.

financial year ending 30 June 2021 was approximately £[X] worldwide, of which approximately £[X] was generated in the UK.⁷

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.⁸ In the UK, the Jus-Rol Business supplies branded dough-to-bake products to grocery retailers and foodservice customers.⁹ 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.¹⁰ 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.¹¹
10. Pre-Merger, the Parties had a vertical relationship as Cérélia manufactured the majority of Jus-Rol products on behalf of GMI.¹²
11. GMI manufactures a limited volume of Jus-Rol products sold in the UK pursuant to the terms of the Transitional Services Agreement (**TSA**) discussed in paragraph 13(c) below.¹³

Business activities and relevant overlap

12. The phase 2 inquiry will be focused on the market in which the Parties both operate and in which the phase 1 investigation identified competition concerns arising from the Merger. The Phase 1 Decision found that the Parties overlap in the wholesale supply of dough-to-bake products to grocery retailers in the UK. Cérélia supplies private label dough-to-bake products and Jus-Rol supplies branded dough-to-bake products to grocery retailers in the UK.

The Merger

13. 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

⁷ Merger Notice, paragraph 138.

⁸ Merger Notice, paragraph 125. For further detail, see GMI's [website](#) (last accessed on 21 June 2022).

⁹ 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

¹⁰ Merger Notice, paragraphs 10 and 85.

¹¹ Merger Notice, paragraph 139.

¹² Cérélia's Submission on Potential Unilateral Horizontal Effects made to the CMA on 14 April 2022 (**April Submission**), paragraph 1.2.

¹³ These comprise the five Jus-Rol branded products sold in cans, including a pizza dough kit, sharing bread dough and breakfast dough products (Merger Notice, paragraphs 120 and 347).

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];¹⁴
- (b) a Patent and Know-How Licence;¹⁵
- (c) a TSA under which General Mills [REDACTED] is providing transitional services to the Jus-Rol Business [REDACTED];¹⁶ and
- (d) an Equipment Sale Agreement (the **ESA**).¹⁷

Our inquiry

14. We set out below some areas of our intended assessment to help inform any interested parties who wish to make representations to us, although these will not be the only areas of investigation. In general terms, we will seek to assess how the industry operates, the appropriate counterfactual, the strength of competition between the Parties and between the Parties and other suppliers, the prospects for new market entry or expansion and any other relevant issues to deciding whether an SLC has or will result from the Merger.

Jurisdiction

15. To investigate a merger, we must believe that a relevant merger situation, as defined in the Act, has occurred.
16. In the context of a completed merger, a relevant merger situation exists where the following conditions are satisfied:¹⁸
- (a) Two or more enterprises have ceased to be distinct; and
 - (b) Either:
 - (i) the value of the target enterprise's UK turnover exceeded £70 million in its last fiscal year (the turnover test); or

¹⁴ 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**).

¹⁵ A Patent and Know-How Licence under which Cérélia [REDACTED]. [REDACTED]. [REDACTED].

¹⁶ [REDACTED]. [REDACTED].

¹⁷ An Equipment Sale Agreement (the **ESA**) under which [REDACTED].

¹⁸ Sections 23 and 24 of the Act.

- (ii) the enterprises ceasing to be distinct have a share of supply in the UK, or in a substantial part of the UK, of 25% or more in relation to goods or services of any description (the share of supply test);
 - (c) Subject to certain exceptions, the date of the merger must be no more than four months before the day the merger is referred for the phase 2 Inquiry (the four-month rule).
- 17. The Phase 1 Decision found that it is or may be the case that the CMA has jurisdiction to review the Merger on the basis that two enterprises (ie Cérélia and the Jus-Rol Business) have ceased to be distinct, and the share of supply test and four-month rule were both met.¹⁹
- 18. Cérélia submitted that neither the turnover nor the share of supply test are met. However, the Phase 1 Decision noted the Act confers on the CMA broad discretion to identify a specific category of goods or services supplied by merging parties for the purposes of assessing the share of supply test. Taking the Parties' horizontal overlap in the wholesale supply dough-to-bake products to grocery retailers in the UK, the CMA estimated that the Parties' combined share is [70-80]%, with an increment of [40-50]% arising from the Jus-Rol Business' sales of branded products.²⁰
- 19. We will consider the question of jurisdiction in our inquiry.

The counterfactual

- 20. The application of the SLC test involves a comparison of the prospects for competition with the merger against the competitive situation without the merger. The latter is called the 'counterfactual'. The counterfactual is not a statutory test but rather an analytical tool used in answering the question of whether a merger gives rise to an SLC.²¹
- 21. We will assess the possible effects of the Merger on competition compared with the competitive conditions in the counterfactual situation (ie the competitive situation that would have been most likely to have arisen absent the Merger).
- 22. The CMA's Phase 1 Decision found that the relevant counterfactual is the pre-existing conditions of competition.²²

¹⁹ Phase 1 Decision, 30 May 2022. [Summary of Phase 1 decision](#), 30 May 2022. [Decision to refer](#) 15 June 2022.

²⁰ Phase 1 Decision, 30 May 2022. [Summary of Phase 1 decision](#), 30 May 2022. [Decision to refer](#) 15 June 2022.

²¹ [MAGs](#), paragraph 3.1.

²² Phase 1 Decision, 30 May 2022. [Summary of Phase 1 decision](#), 30 May 2022. [Decision to refer](#) 15 June 2022.

23. In our phase 2 investigation, in order to reach a judgement as to whether or not an SLC is likely to occur as a result of the Merger, we will select the most likely conditions of competition as the counterfactual against which to assess the Merger.²³
24. Significant changes affecting competition from third parties which would occur with or without the Merger (and therefore form a part of the counterfactual) are unlikely to be assessed in any depth as part of our counterfactual assessment.²⁴ The counterfactual is not intended to be a detailed description of the conditions of competition that would prevail absent the Merger,²⁵ which we intend to consider in the competitive assessment.
25. We will consider the evidence gathered at phase 1 and any new evidence we receive which is relevant to the consideration of the counterfactual in our assessment of the Merger. We are likely to focus only on significant changes where there are reasons to believe that those changes would make a material difference to our competitive assessment.²⁶

Assessment of the competitive effects of the Merger

Theory of harm

26. A 'theory of harm' describes a possible way in which an SLC could arise as a result of a merger. The theory of harm provides the framework for our analysis of the competitive effects of a merger.²⁷ Identifying a theory of harm in this issues statement does not preclude an SLC from being identified on another basis following receipt of additional evidence or further analysis. We welcome views on the theory of harm described below.
27. Subject to the evidence we obtain during our investigation, we intend to assess whether the Merger may be expected to result in an SLC as a result of horizontal unilateral effects in the wholesale supply of dough-to-bake products to grocery retailers in the UK.
28. The Parties have submitted that the Merger is purely vertical in nature and the CMA erred in its Phase 1 Decision by analysing the Merger through a horizontal lens.²⁸ The Parties consider that the theory of harm as set out in

²³ MAGs, paragraph 3.13.

²⁴ MAGs, paragraph 3.10.

²⁵ MAGs, paragraph 3.7.

²⁶ MAGs, paragraph 3.9.

²⁷ MAGs, paragraph 2.11.

²⁸ Parties' initial submission at Phase 2, submitted on 1 July 2022 (the **P2 Initial Submission**), paragraphs 3.1 and 3.3.

the Phase 1 Decision is in fact an essentially vertical foreclosure theory of harm.²⁹

29. At this early stage of the phase 2 investigation, our starting point is to focus on a theory of harm based on horizontal unilateral effects. The CMA notes in this respect that:
- (a) Both Parties are supplying grocery retailers in the UK with dough-to-bake products – and it is in this part of the supply chain where harm may occur as a result of the Merger.
 - (b) The key issues that will determine whether or not the Merger has resulted, or may be expected to result, in an SLC – including whether, as a result of the Merger, the merged entity has market power and will have the ability and incentive to exploit this market power – are the same, regardless of whether the Merger is assessed through a horizontal or vertical lens.
 - (c) The potential harms that may arise under the theory of harm set out below are not limited to input foreclosure of grocery retailers. For example, increasing the price of both the branded and private label products would not necessarily have a foreclosure effect but may nevertheless result in higher prices for end consumers.
30. The CMA will nevertheless continue to consider the appropriate framework for analysis in light of the Parties’ submissions and evidence collected during the investigation.

Horizontal unilateral effects

31. Horizontal unilateral effects can arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged entity profitably to raise prices or degrade non-price aspects of its competitive offering (such as quality, range, service and innovation) on its own and without needing to coordinate with its rivals. Unilateral effects giving rise to an SLC can occur in relation to customers at any level of a supply chain, for example at a wholesale level or retail level (or both) and is not limited to end consumers.³⁰
32. The concern under horizontal unilateral effects essentially relates to the elimination of a competitive constraint by removing an alternative to which customers could switch. The CMA’s main consideration is whether there are sufficient remaining good alternatives to constrain the merged entity post-merger. Where there are few existing suppliers, the merger firms enjoy a

²⁹ Parties’ initial submission at Phase 2, submitted on 1 July 2022 (the **P2 Initial Submission**), paragraph 3.6.

³⁰ **MAGs**, paragraph 4.1.

strong position or exert a strong constraint on each other, or the remaining constraints on the merger firms are weak, competition concerns are likely. Furthermore, in markets with a limited likelihood of entry or expansion, any given lessening of competition will give rise to greater competition concerns.³¹

33. In the Phase 1 Decision, the CMA found that there was a realistic prospect of an SLC as a result of horizontal unilateral effects as:
- (a) Post-Merger, Cérélia would be responsible for [70-80]% of the wholesale supply of dough-to-bake products to grocery retailers in the UK; this is a high combined share, which gives rise to *prima facie* competition concerns.
 - (b) Branded dough-to-bake products (eg Jus-Rol) and private label equivalents (the majority of which are supplied by Cérélia) are substitutable and closely complete.
 - (c) Furthermore, post-Merger there will be insufficient competitive constraint remaining at the wholesale level – other suppliers of branded dough-to-bake products are much smaller than Jus-Rol, and other suppliers of private label dough-to-bake products are much smaller than Cérélia.
 - (d) The CMA found that entry or expansion of an existing player would not be timely, likely and sufficient to constrain the Merged Entity.
34. As part of our inquiry, we will use the data and information collected in the phase 1 investigation and seek to expand this evidence base as appropriate.
35. We expect to examine, among other matters:
- (a) the market structure and the market position of the Parties and their competitors;
 - (b) the process by which grocery retailers select suppliers of dough-to-bake products and what factors are important when selecting suppliers;
 - (c) the closeness of competition between the Parties and their dough-to-bake products;
 - (d) the ways in which the Merger could result in a loss of competition, including any changes in the incentives of the Merged Entity to increase prices or otherwise deteriorate their offering following the Merger; and

³¹ MAGs, paragraph 4.3.

- (e) the current and future remaining competitive constraints post-Merger on the Merged Entity from alternative suppliers of dough-to-bake products.
36. Subject to new evidence being submitted, we do not currently intend to investigate any other theories of harm in relation to this Merger.

Market definition

37. Where the CMA makes an SLC finding, this must be ‘within any market or markets in the UK for goods or services’.³² The CMA is therefore required to identify the market or markets within which an SLC exists. An SLC can affect the whole or part of a market or markets. Within that context, the assessment of the relevant market is an analytical tool that forms part of the analysis of the competitive effects of a merger and should not be viewed as a separate exercise.³³
38. In the Phase 1 Decision, the CMA considered the impact of the Merger within the wholesale supply of dough-to-bake products to grocery retailers in the UK.³⁴
39. We will use this as a starting point for our analysis in the phase 2 inquiry and our view of market definition will be largely drawn from the findings of our competitive assessment. Where relevant, we will consider out-of-market constraints and/or any differences in the degree of competitive constraints on the Merged Entity from different suppliers.

Countervailing factors

40. In some instances, there may be countervailing factors that prevent or mitigate any SLC arising from a merger.³⁵ There are two main ways in which this could happen: through merger efficiencies or through the entry and/or expansion of third parties in reaction to the effects of a merger.
41. We will consider evidence put to us on any relevant countervailing factors. Some of the evidence that is relevant to the assessment of countervailing factors may also be relevant to our competitive assessment.
42. We will consider evidence on entry and/or expansion by third parties and whether entry and/or expansion would be timely, likely, and sufficient to prevent any SLC from arising as a result of the Merger.³⁶

³² The Act, [section 35\(1\)\(b\)](#).

³³ [MAGs](#), paragraph 9.1.

³⁴ Phase 1 Decision, 30 May 2022. [Summary of Phase 1 decision](#), 30 May 2022. [Decision to refer](#) 15 June 2022.

³⁵ [MAGs](#), paragraph 8.1.

³⁶ [MAGs](#), paragraphs 8.30 & 8.31.

43. We will also consider any relevant evidence submitted to us by the Parties that the Merger is likely to give rise to efficiencies that will enhance rivalry, such that the Merger may not be expected to result in an SLC.

Possible remedies and relevant customer benefits

44. Should we conclude that the Merger has resulted or may be expected to result in an SLC within any market or markets in the UK, we will consider whether, and if so what, remedies might be appropriate.
45. In any consideration of possible remedies, we may in particular have regard to their effect on any relevant customer benefits (**RCBs**) that might be expected to arise as a result of the Merger and, if so, what these benefits are likely to be and which customers would benefit.³⁷

Responses to this issues statement

46. Any party wishing to respond to this issues statement should do so in writing, by **no later than 5pm on 29 July 2022** by emailing Cerelia.Jus-Rol@cma.gov.uk or writing to:

Principal Case Officer
C erelia/Jus-Rol phase 2 merger inquiry
Competition and Markets Authority
The Cabot
25 Cabot Square
London
E14 4QZ

³⁷ [Merger Remedies](#) (CMA87), paragraphs 3.4 and 3.15–3.24.