

REFERENCE RELATING TO THE COMPLETED ACQUISITION BY CÉRÉLIA GROUP HOLDING SAS (EITHER DIRECTLY OR INDIRECTLY) OF CERTAIN ASSETS RELATING TO THE UK AND IRELAND DOUGH BUSINESS (JUSROL) OF GENERAL MILLS, INC.

Notice of possible remedies under Rule 12 of the CMA's rules of procedure for merger, market and special reference groups¹

Introduction

1. On the 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 by Cérélia Group Holding SAS (either directly or indirectly) (**Cérélia**) of 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**) for further investigation and report by a group of CMA panel members (the **Inquiry Group**).
2. The Merger completed on 31 January 2022. The CMA imposed an Initial Enforcement Order (**IEO**) on 3 February 2022.² The IEO required the Jus-Rol Business and Cérélia to remain independent during the inquiry to ensure that no action is taken pending final determination of the Reference, which might prejudice the Reference or impede the taking of any action by the CMA under Part 3 of the Act which might be justified by the CMA's decisions on the Reference. In accordance with the IEO the CMA directed Cérélia to appoint a Monitoring Trustee (**MT**). A MT was appointed on 1 July 2022.³
3. In its provisional findings on the reference, notified to Cérélia on 4 November 2022, the CMA, among other things, provisionally concluded that the Merger has resulted in the creation of a relevant merger situation, and that the creation of that situation has resulted or may be expected to result in a substantial lessening of competition (**SLC**) in the supply of dough to bake products to grocery retailers in the UK.

¹ See [Rules of procedure for merger, market and special reference groups: CMA17](#).

² The original IEO was revoked and re-issued on 12 May 2022 to ensure that it captured all assets relating to the Merger.

³ Details of the IEO, MT mandate and derogations can be found on the [case page](#).

4. The CMA's analysis provisionally indicates that this SLC has resulted, or may be expected to result, in adverse effects, for example in the form of higher prices or lower quality and reduced innovation compared to what would otherwise have been the case absent the Merger.
5. This notice of possible remedies (**Remedies Notice**) sets out the actions which the CMA considers it might take for the purpose of remedying the SLC and/or any resulting adverse effects identified in the provisional findings report.⁴
6. The CMA invites comments on the Remedies Notice by **17:00 hours (UK time) on Friday 18 November 2022**.

Criteria

7. In deciding on a remedy, the CMA shall in particular have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to remedy the SLC and any adverse effects resulting from it.⁵
8. To this end, the CMA will seek remedies that are effective in addressing the SLC and its resulting adverse effects and will select the least costly and intrusive remedy that it considers to be effective.
9. The CMA will seek to ensure that no remedy is disproportionate in relation to the SLC and its adverse effects.⁶

Possible remedies on which views are sought

10. In determining an appropriate remedy, the CMA will consider the extent to which different remedy options would be effective in remedying, mitigating or preventing the SLC or any resulting adverse effects that have been provisionally identified.
11. As set out in published remedies guidance, the CMA prefers structural remedies, such as divestiture or prohibition, over behavioural remedies because:
 - (a) structural remedies are more likely to deal with an SLC and its resulting adverse effects directly and comprehensively at source by restoring rivalry;

⁴ See the Provisional Findings report published [here](#) .

⁵ Section 35(4) of the Act. [Merger remedies: CMA87](#) (December 2018), paragraph 3.3.

⁶ [Merger remedies: CMA87](#) (December 2018), paragraph 3.4.

- (b) behavioural remedies are less likely to have an effective impact on the SLC and its resulting adverse effects, and are more likely to create significant costly distortions in market outcomes; and
 - (c) structural remedies rarely require monitoring and enforcement once implemented.⁷
- 12. The CMA will also consider whether a combination of measures is required to achieve a comprehensive solution – for example whether any behavioural remedies would be required in a supporting role to safeguard the effectiveness of any structural remedies. The CMA will evaluate the impact of any such combination of measures on the SLC or any resulting adverse effects.

Divestiture remedy

- 13. At this stage, we have identified only one suitable remedy, an asset divestiture remedy: the full divestiture of the Jus-Rol UK Business assets acquired by Cérélia in the Merger.
- 14. Cérélia did not acquire a stand alone business, instead acquiring certain assets, IP and customers pertaining to the Jus-Rol UK Business, from GMI. As set out in the CMA's Merger Remedies guidance, the licensing or assignment of IP, including patents, licences, brands and data, may be viewed generally as a specialised form of asset divestiture.⁸
- 15. We consider that a full divestiture of the Jus-Rol UK Business assets would be similar to a prohibition of the Merger and it would re-create a similar market structure to that which existed at the time of the Merger. We therefore take the preliminary view that, subject to implementation considerations, a full divestiture of Jus-Rol UK would represent a comprehensive and effective remedy to all aspects of the SLC it has provisionally found, and consequently any resulting adverse effects.
- 16. Our initial view is that there are no other structural or smaller asset divestitures that would address the provisional SLC because the Merger primarily consists of only the Jus-Rol UK brand and UK customers. We do not consider smaller permutations of the divestiture package would be a comprehensive remedy that would effectively remedy, mitigate or prevent the identified SLC from arising.

⁷ [Merger remedies: CMA87](#) (December 2018), paragraph 3.46.

⁸ [Merger remedies: CMA87](#) (December 2018), paragraph 6.1.

17. Further, our initial view is that a licencing remedy would not be an effective remedy for the following reasons:
- (a) Firstly, offering a third party time limited access to the Jus-Rol brand and IP given the time, challenges and uncertainty in brand transitioning would not effectively remedy the SLC, which is not time-limited.
 - (b) Secondly, if a licencing remedy was exclusive, irrevocable and non-terminable with no performance-related royalties, this is not materially different from a full divestiture.
18. We have not identified any other divestiture package that, at this stage, would be effective. We will however, consider any other practicable structural remedies that the main parties, or any interested third parties, may propose that could be effective in addressing the SLC and/or any resulting adverse effects.

Issues to be considered in relation to a divestiture remedy

19. In evaluating possible divestitures as a remedy to the provisional SLC it has provisionally found, the CMA will consider the likelihood of achieving a successful divestiture and the associated risks. In reaching its view, the CMA will have regard to the following critical elements of the design of divestiture remedies:
- (a) the scope of the divestiture package;
 - (b) identification of a suitable purchaser; and
 - (c) the effectiveness of the divestiture process.

The scope of the divestiture package

20. To be effective in remedying the provisional SLC, any divestiture package would need to be appropriately configured to be attractive to potential purchasers and to enable the purchaser to operate effectively as an independent competitor.
21. We invite views on:
- (a) the package of assets to be divested;
 - (b) whether there are risks that the scope of the divestiture package may be too constrained or not appropriately configured to attract a suitable purchaser or may not allow a purchaser to operate as an effective competitor in the market;

- (c) whether there are risks that the competitive capability of a divestiture package will deteriorate before completion of the divestiture;
- (d) whether the Jus Rol brand outside of the UK should also be included in the divestiture;
- (e) whether there should be a supply contract between a purchaser and Cérélia; and
- (f) any other elements that may be required.

Identification of a suitable purchaser

- 22. The CMA will wish to be satisfied that a prospective purchaser:
 - (a) is independent of the main parties;
 - (b) has the necessary capability to compete;
 - (c) is committed to competing in the supply of dough to bake products to grocery retailers in the UK; and
 - (d) will not create further competition concerns.⁹
- 23. We invite views on whether there are:
 - (a) risks that a suitable purchaser is not available or that the merger parties will divest to a weak or otherwise inappropriate purchaser.
- 24. We invite views on whether there are any specific factors to which we should pay particular regard in assessing purchaser suitability.

The effectiveness of the divestiture process

- 25. We invite views on the appropriate timescale for achieving a divestiture.
- 26. We will consider what, if any, procedural safeguards may be required to minimise the risks associated with this divestiture.
- 27. A MT is already in place, and we would expect this to continue throughout any divestiture process. We invite views on whether any additional risks may arise during the divestiture period and whether the functions of the MT should be amended to oversee the divestiture.

⁹ [Merger remedies: CMA87](#) (December 2018), paragraph 5.21.

28. The CMA will have the power to mandate an independent divestiture trustee to dispose of the divestiture package if:
- (a) Cérélia fails to procure divestiture to a suitable purchaser within the initial divestiture period; or
 - (b) the CMA has reason to expect that Cérélia will not procure divestiture to a suitable purchaser within the initial divestiture period.
29. In unusual cases, the CMA may require that a divestiture trustee is appointed at the outset of the divestiture process. We invite views on whether the circumstances of this Merger necessitate such an approach.

Behavioural remedy

30. Our current view is that a behavioural remedy is very unlikely to be an effective remedy to the SLC or any resulting adverse effects that it has provisionally identified. However, we will consider any behavioural remedies put forward as part of this consultation.

Cost of remedies and proportionality

31. In order to be reasonable and proportionate, the CMA will seek to select the least costly remedy, or package of remedies, that it considers will be effective. The CMA will also seek to ensure that no remedy is disproportionate in relation to the SLC and its adverse effects. Between two remedies that the CMA considers equally effective, it will choose that which imposes the least cost or restriction. In relation to completed mergers, the CMA will not normally take account of costs or losses that will be incurred by the merger parties as a result of a divestiture remedy.¹⁰
32. We invite views on what costs are likely to arise in implementing each remedy option.

Relevant customer benefits

33. In deciding the question of remedies, the CMA may have regard to the effects of any remedial action on any relevant customer benefits in relation to the creation of the relevant merger situation.¹¹

¹⁰ [Merger remedies: CMA87](#) (December 2018), paragraphs 3.6 and 3.9.

¹¹ [Section 35\(5\)](#) of the Act, see also [Merger remedies: CMA87](#) (December 2018), paragraph 3.15.

34. Relevant customer benefits are limited by the Act to benefits to customers in the form of:
- (a) 'lower prices, higher quality or greater choice of goods or services in any market in the United Kingdom ... or
 - (b) greater innovation in relation to such goods or services'.¹²
35. The Act provides that a benefit is only a relevant customer benefit if:
- (a) it has accrued to relevant customers within the UK within a reasonable period as a result of the creation of that situation; and
 - (b) it was, or is, unlikely to accrue without the creation of that situation or a similar lessening of competition.¹³
36. We welcome views on the nature of any relevant customer benefits and on the scale and likelihood of such benefits and the extent (if any) to which these are affected by the different remedy options we are considering.

Next steps

37. Interested parties are requested to provide any views in writing, including any practical alternative remedies they wish the Inquiry Group to consider, by **17:00 hours (UK time) on 18 November 2022** (see Note (i)).
38. A copy of this notice will be posted on the CMA case page.

[signed]
Margot Daly
Inquiry Group Chair
4 November 2022

Note

- (i) This notice of possible actions to remedy, mitigate or prevent the SLC or any resulting adverse effects is made having regard to the provisional findings announced on 4 November 2022. Interested parties have until **17:00 hours (UK time) on Friday 25 November 2022** to respond to the provisional findings. The CMA's findings may alter in response to comments it receives on its provisional

¹² [Section 30\(1\)\(a\)](#) of the Act, see also [Merger remedies: CMA87](#) (December 2018), paragraph 3.17.

¹³ [Section 30\(2\)](#) of the Act. See also [Merger remedies: CMA87](#) (December 2018), paragraph 3.19.

findings, in which case the CMA may consider other possible remedies, if appropriate.

Comments should be made by email to cerelia.jus-rol@cma.gov.uk and nadia.muhammad@cma.gov.uk or in writing to:

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