

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

Provisional findings report


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## Glossary

# Summary

## Overview of our provisional findings

1. The Competition and Markets Authority (**CMA**) has provisionally found that the acquisition by Cérélia Group Holding SAS (**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 (**Jus-Rol Business**) (Cérélia and GMI – together, the **Parties**) (the **Merger**) has resulted or would result in a substantial lessening of competition (**SLC**) in the wholesale supply of dough-to-bake (**DTB**) products to grocery retailers in the UK, harming the interests of these retailers and, potentially, end-consumers of these products.
2. The report and its appendices, which will be published shortly after this summary, constitute the CMA's Provisional Findings. We invite any interested parties to make representations on these Provisional Findings by no later than **17:00 hours (UK time) on Friday 25 November 2022**. Interested parties should refer to the Notice of Provisional Findings for details of how to do this.
3. Cérélia completed the acquisition of the Jus-Rol Business on 31 January 2022 but has been required to hold the businesses separate since 3 February 2022, when the CMA imposed an Initial Enforcement Order. In our notice of possible remedies published alongside our Provisional Findings, we have set out our initial view that the only effective way to address the competition issues that we have identified is for Cérélia to sell the Jus-Rol business, in its entirety, to a suitable buyer. We also invite submissions from interested parties on these initial views by **17:00 hours (UK time) on Friday 18 November 2022**.

## What are DTB products?

4. DTB products include ingredient pastry dough (i.e., 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 swirl dough, gingerbread dough, cookie dough). DTB products are manufactured by combining flour with a liquid (e.g., water) and/or fat (butter, olive oil etc.) and sometimes with flavoured toppings. They are primarily sold in grocery retailers in the chilled shelves as part of the butter, spreads and margarine category of products. A smaller proportion are also available as frozen products, or at ambient temperatures.
5. Most of the largest retailers in the UK stock both private label (**PL**) and branded DTB products. Branded products are sold under the brand name of

the suppliers that sell them to retailers (although Jus-Rol is the only full-range branded supplier of DTB products with a national presence). We refer to this as the “branded channel”. PL products (also known as ‘own brand’ or ‘own label’ products) are products sold exclusively by a given retailer with their own packaging and branding. We refer to this as the “PL channel”.

## **Who are the businesses and what services do they provide?**

6. The Jus-Rol business is by far the largest supplier of DTB products to grocery retailers in the UK and the only full range brand with a national presence.
7. Prior to the Merger, the Jus-Rol Business was owned by GMI, a US-based global manufacturer and marketer of consumer and pet food. The Jus-Rol Business supplies branded DTB products to grocery retailers and foodservice customers primarily in the UK, and to a lesser extent in Ireland.
8. The Jus-Rol business’ UK product range is available either chilled or frozen in sheets, block and RTB forms. Specific products within the range include 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.
9. The Jus-Rol business is the largest supplier of DTB products (whether branded or PL) to grocery retailers in the UK by value by a considerable margin and, as noted above, the only full-range branded supplier of DTB products with a national presence.
10. Cérélia is by far the second largest supplier of DTB products in the UK and the largest supplier of private-label products to grocery retailers.
11. Cérélia is a joint stock company headquartered in Paris, France. Cérélia produces pies, pizzas, pastry dough, crepes, pancakes, waffles, cookie dough and ready to eat cookies for its own brands and for private-label brands of its customers from nine manufacturing sites in Europe.
12. In the UK, Cérélia operates under the name ‘BakeAway’, with a manufacturing plant in Corby, Northamptonshire. Cérélia’s predominant activity in the UK is the manufacturing and packaging of DTB products for grocery retailers who sell these products to end-consumers under their PL brands. Cérélia currently also manufactures a large proportion of the Jus-Rol branded products sold in the U.K. The Corby plant manufactures ingredient pastry dough, pizza dough, cookie dough, brownie dough and gingerbread dough.
13. Cérélia is the second largest supplier of DTB products to grocery retailers in the UK (after Jus-Rol) by value with a share of supply that is more than

double the size of the next largest supplier. Cérélia is also the largest supplier of DTB products to meet the PL product needs of grocery retailers by a considerable margin.

## **Our assessment**

### **Why are we examining this Merger?**

14. The CMA's primary duty is to seek to promote competition, both within and outside the UK, for the benefit of UK consumers. Following an initial 'phase 1' investigation, the Merger was referred for a more in-depth 'phase 2' investigation on 15 June 2022. At phase 2, the CMA considers whether:
  - (a) there is a 'relevant merger situation' for the purposes of the Enterprise Act 2002,
  - (b) that relevant merger situation has resulted, or may be expected to result, in an SLC within any market or markets in the UK for goods or services, and
  - (c) if so, whether remedial action should be taken, and if so, what action and by whom.
15. The central question for the CMA is whether the Merger has had or may have an impact on competition in the UK. The link to the UK is established by meeting one of two tests for jurisdiction: (i) the turnover test (based on the target's turnover in the UK), and (ii) the share of supply test (requiring that the Parties together supply at least 25% of a particular good or service supplied in the UK, and there is an increment to the share of supply).
16. As explained above, Cérélia and the Jus-Rol business are both active in the UK and provide products to UK customers. In this case, we provisionally conclude that the Merger has resulted in the creation of a relevant merger situation on the basis of the share of supply test. This is because, based on our estimates, the Parties have a combined share by value of [60-70]% with an increment of [30-40]% in the wholesale supply of DTB products to grocery retailers in the UK.

### **How have we examined this Merger?**

17. In assessing the competitive effects of the merger, the CMA must determine if either an SLC has resulted, or it has not; or if there is an expectation (i.e. a more than 50% chance) that an SLC may be expected to result, or it would not.



18. To determine whether this is the case, we have gathered information from a wide variety of sources, using our statutory powers to ensure that we have as complete a picture as possible under the constraints of the statutory timetable to understand the implications of the Merger on competition. The evidence we have gathered has been tested rigorously, and the context in which the evidence was produced has been considered when deciding how much weight to give it.
19. At phase 2, as with phase 1, we have focused our investigations on one possible way in which the Merger could give rise to an SLC. This ‘theory of harm’ was whether the Merger may be expected to result in an SLC as a result of horizontal unilateral effects in the wholesale supply of DTB products to grocery retailers in the UK. What we mean by this is the possibility that the Merger could remove from the market a business that was competing with Cérélia in the supply of these products. We describe this as ‘horizontal’ effects because, in this respect, Cérélia and Jus-Rol would both be active at the same level of the supply chain (i.e. offering DTB products to grocery retailers).
20. We provisionally conclude that the Merger has resulted or would result in an SLC on this basis. This is discussed in further detail below.

### **What evidence have we looked at?**

21. In assessing the Merger, we looked at a wide range of evidence that we considered in the round to reach our provisional decision.
22. We considered evidence from the Parties submitted during the phase 1 inquiry, responses to our informal and formal requests for information and internal documents during phase 2, site visits, the Main Party Hearings and other phase 2 submissions.
23. We spoke to and gathered evidence from other market participants in the industry (including both grocery retailer customers and competitors of the Parties) to understand better the competitive landscape for the supply of DTB products, and to get their views on the impact of the Merger.
24. We calculated market shares. In keeping with the established approach to market definition set out in the CMA’s guidance, we have considered the appropriate product market definition in this case from the starting point of whether the Parties are considered as alternatives by customers (grocery retailers). This takes into account the differences between the Parties’ activities, as well as the similarities in the light of grocery retailers’ requirements. We have also considered what other suppliers are considered as alternatives by customers and evidence of the ability to readily adapt

manufacturing processes to supply different types of products. On that basis, we have provisionally concluded that the relevant market is the wholesale supply of DTB products to grocery retailers in the UK.

25. As well as the size of the Parties' market shares, our assessment also took into account the stability of those shares and the strength of competitive constraints on the Parties.
26. We examined the Parties' own internal documents, which show how they run their businesses and provide some insight into how they view their rivals.
27. We have also had some regard to tendering evidence. However, given that we have only seen evidence of tendering within the private label channel (described further below), we would not expect to see the Parties competing against each other head-to-head in tenders.
28. We have also looked closely at how the sector operates at the retail and wholesale level and considered the interaction between consumer demand and wholesaler demand.

## **What did this evidence tell us...?**

### **...about what would have happened had the Merger not taken place?**

29. In order to provide a comparator and determine the impact that the Merger may have on competition, we have considered what would have happened had the Merger not taken place. This is known as the counterfactual.
30. Following an assessment of GMI's internal documents which discussed its options in some detail, our provisional view is that it was likely that, in the absence of the Merger, GMI would have continued to own and operate the Jus-Rol Business in the short to medium term whilst seeking an alternate buyer. Our assessment of the effects of the Merger are therefore considered in comparison to a scenario in which, had the Merger not gone ahead, the most likely scenario would have been GMI continuing to operate Jus-Rol in line with pre-merger conditions.

### **...about the nature of competition in the relevant market?**

31. Although PL and branded DTB products have very similar physical characteristics, and the Parties agree that they compete at the retail level, we found that the Parties' offerings to grocery retailers differ in a number of important respects because of the differences in the way that products from

each channel are supplied to grocery retailers. As the Parties have argued, the PL channel typically requires a more iterative negotiation process between the retail buyer and the supplier, while branded supply is offered to retailers on a 'take it or leave it' basis.

32. The procurement of a PL DTB product begins with the grocery retailer identifying what product(s) it wants to stock, or the changes the grocery retailer wishes to make to its existing offering. The grocery retailer will then typically create a product brief with the specifications of the product. Based on the product brief, grocery retailers run a tender process where the bids of different PL suppliers are compared. The outcome of this tender process results in the selection of the preferred PL supplier. Retailers therefore typically have a high degree of involvement in the specifications of PL products. A significant part of this involvement consists of collaborating with the PL supplier on recipe development.
33. The supply process for branded DTB products is generally less complex than that for private label DTB products. This is because, for branded DTB products, recipe and product development is entirely carried out by the supplier, with little to no involvement by the grocery retailer. In addition, we have not seen evidence of tender processes being used for branded supply, although that could be because Jus-Rol is the only branded supplier with a national presence across the full range of DTB products.
34. These differences mean that the constraint between the Parties does not typically manifest itself through "direct" competitive interactions (like head-to-head competition in tenders). This lack of "direct" competition largely reflects the existence of channel-specific competition, in which a grocery retailer selects its preferred supplier within each of the distinct channels.
35. This is, however, not the only way in which suppliers of DTB products compete. Grocery retailers engage in a series of purchasing decisions, which means there are several potential points of competition. Over 80% of DTB products supplied in the UK are sold by grocery retailers that provide both PL and branded DTB products. These retailers, having selected a PL supplier, then go on to consider both PL and branded channels together in making ongoing purchasing decisions, for example as regards the relative quantities of DTB products purchased from each channel. An assessment limited to "direct" competition would therefore not fully reflect the nature of competition in the market, and in particular the competitive tension that exists between the PL and branded channels in these ongoing purchasing decisions.

## ....about the extent of competitive interactions between the Parties?

36. Large grocery retailers, which account for the large majority of DTB products sold in the UK, told us that their ability to trade off the Parties in their (ongoing) negotiations is an important constraint which enables them to get a better deal for consumers. In the context of commercial negotiations and ongoing purchasing decisions, grocery retailers that have chosen to stock both PL and branded DTB products are currently able to flex volumes between the two channels as part of their commercial negotiations.
37. These grocery retailers told us that they may not typically explicitly pit their PL supplier against their branded supplier but that the availability of both is a source of competitive tension that would be lost by the Merger, thereby reducing their ability to protect against potential price rises (or other kind of worsening in the Parties' DTB offerings). We consider that the constraint between the Parties is important for both channels, noting that PL in particular (for which Cérélia is the leading supplier) operates as a pricing discipline on Jus-Rol. Post-merger, the strong market positions held by each of Cérélia and Jus-Rol will be consolidated within the Merged Entity, resulting in the loss of the constraint between the Parties which will, in turn, affect retailers' ability to resist a price rise (or other worsening in the Parties' offerings).
38. While, as noted above, there are important differences in the offerings of the Parties, the relative importance of the competitive constraint offered by Parties upon each other also depends on the available alternatives. As discussed further below, we found that there were few credible alternatives for grocery retailers purchasing DTB products, which makes the potential loss of the competition between the Parties particularly important.
39. The Parties told us that because Cérélia already manufactures most of the Jus-Rol products sold in the UK, there could be no existing competition between the Parties which would be lost by the merger. We note that this submission is not fully supported by the data that the Parties have provided. More broadly, we also note that Cérélia's role in manufacturing Jus-Rol products is based on a contractual relationship, which is materially different in nature to a merger. A contractual relationship does not result in a lasting change in market structure, has limited duration and may be renegotiated or terminated even before its initial term.
40. In this regard, the Merger would result in material changes in competitive dynamics and market structure:

- (a) Post-Merger, Cérélia would have control over all aspects of the wholesale offering to retailers across both channels, which it does not have at present. In particular, Cérélia would have control over pricing of both the PL products bought by retailers from Cérélia and Jus-Rol products and could determine pricing to maximise joint profits (which is not the case at present).
- (b) The Merger would also 'cement' Cérélia's role as the manufacturer of Jus-Rol products. As a result of the transaction, GMI would lose its ability to independently decide its commercial strategy, including whether to terminate the agreement with Cérélia and appoint an alternative supplier, take the production back in-house, or take any other course of action relating to its Jus-Rol products.

### **....about the alternatives available to the Parties' customers?**

- 41. We have found that the competitive constraint on the Parties from alternative suppliers is limited, both individually and in aggregate. The Merged Entity would be the largest supplier of DTB products to UK grocery retailers by a considerable margin, combining the first and second largest existing suppliers. The Merged Entity would face limited competition from other firms. Only two other suppliers (Bells and Henglein, which are both predominantly PL suppliers) have material shares of supply and their shares are substantially lower than either of the Parties.
- 42. We found there to be no credible alternative suppliers of branded products with an equivalent range at the national level. Retailers tend to stock primarily Jus-Rol and generally do not see other brands as strong alternatives. We are not aware of any examples of retailers switching branded products in the past five years.
- 43. Switching private label suppliers does occur more frequently. Across the six largest grocery retailers (accounting for 90% of the DTB market), there have been five instances of switching private label supplier in six years, although two of these five instances were in 2017.
- 44. The presence of other alternative PL suppliers means that retailers have more options in that channel and so the relative importance of the constraint of Jus-Rol on Cérélia is not as high as vice versa. However, the weakness of the constraint from those alternative PL suppliers, and the not immaterial costs involved in switching PL supplier (given the more complex PL procurement process), compared to simply flexing volume requirements from an existing PL to a branded supplier, means that the constraint provided by Jus-Rol on Cérélia is nonetheless important.

45. We have carefully considered whether the competitive threat from alternative PL suppliers would be sufficient to prevent the Merged Entity from degrading important aspects of its competitive offering following the Merger. Taking into account the attractiveness of these alternative options to retailers, the switching costs that retailers would face, and the existence of limited buyer power resulting from the lack of alternatives, we believe that retailers would be unlikely to switch for small, but significant, price rises.
46. We also considered what, if any, scope there was for some competitive constraint to be provided from outside our defined market, through the potential for substitution from products from outside the retail sector (e.g., from suppliers currently active in the food service and food manufacturing sectors). However, we found evidence of material differences in customer demand and supplier capabilities between the food service and food manufacturing sectors and the retail sector. These include different packaging requirements, a foodservice focus on frozen products, and higher technical specifications/requirements of retailers. These differences suggest it is not straightforward for suppliers of foodservice customers to also supply grocery retailers, which limits the scope for these to act as credible alternatives to grocery retailers.

#### **....about the extent of grocery retailers' buyer power against the Parties?**

47. A very high proportion of sales of DTB products at the wholesale level are to large grocery retailers.
48. While grocery retailers in the UK are sophisticated buyers who are trying to achieve the best deals and can benchmark commodity prices or limit promotional space, their ability to constrain DTB suppliers primarily depends on the existence of alternative options to respond to a deterioration in competitive conditions (e.g., by sponsoring entry or starting to self-supply). In some cases, special purchasing requirements (such as the desire not to use products containing ethanol), volume requirements (for example around Christmas, when demand for DTB products hugely increases) and strict purchaser approval processes may limit their realistic supply options further.
49. Grocery retailers' options to rebalance their PL/branded product mix will decrease due to the merger, as the largest PL supplier and the largest branded DTB supplier will combine. As noted, we also provisionally conclude that the Parties face limited competitive constraints from alternative suppliers which limits the retailers' ability to switch away from their suppliers.

50. While the Parties submitted that the potential threat of grocery retailers “delisting” their products suggested a degree of buyer power held by the supermarkets, we do not consider that this eventuality, which limits choice, to be in the interests of grocery retailers or end consumers.

### **....about any countervailing factors?**

51. Once we have decided that a Merger could give rise to an SLC, we also consider whether there are any factors that might prevent or mitigate against that SLC from arising. These are known as countervailing factors.
52. In this case, we focused on whether there could be any new entry or production expansion in the supply of DTB products that could prevent an SLC from arising. The CMA generally considers that entry and/or expansion preventing an SLC from arising will be rare and will seek to ensure that the evidence is robust when presented with claims of this nature.
53. We therefore considered this question by looking at any recent history of entry and expansion, seeking the views of third parties who may potentially sponsor or support entry and expansion, looking at the conditions and incentives to enter or expand in the supply of DTB products to the UK grocery retail market generally and seeking to identify any third parties with specific entry and expansion plans. Given the important differences in how products in the branded and PL channels are procured by grocery retailers, we considered the potential for entry and expansion in each channel separately.
54. Whilst past entry and expansion suggests that entry into the branded space is possible, we consider this most likely in a specific product category, rather than across the full range of DTB products offered by Jus-Rol. We found that there would potentially be significant investment required to launch a new DTB brand of a scale that could effectively constrain the merged entity. Jus-Rol holds a long-standing market position as the UK’s only national grocery retail DTB brand, which does not suggest that a branded competitor is likely to emerge as a strong alternative to Jus-Rol in a timely manner. The relatively small size of the overall market and degree of profitability we observed also suggest that entry from a branded supplier in an adjacent market is unlikely.
55. We have also not identified any branded suppliers currently looking to enter the market or any specific plans from those in the market (on a more limited scale) to significantly expand or invest in their branded DTB business. We have also not identified any third parties with specific plans or intentions to sponsor or support branded DTB supplier entry or expansion.

56. For PL products, we recognise that the relatively simple nature of the product and production process means that there could be, in theory, a number of potential new market entrants (e.g., from adjacent sectors, such as foodservice and food manufacturing) and that there was some willingness expressed by the grocery retailers to consider these potential suppliers if they could meet the qualifying criteria. In addition, we found that tender processes occur relatively regularly, providing an opportunity for potential new entry or expansion.
57. However, we also found evidence of barriers to entry and expansion. A wide range of different factors were identified, including the fact there were relatively few large contracts to be awarded, the fact retailers do not currently commit to long term contracts, with most contracts being of no fixed term, the cost of capacity expansion relative to likely returns, the existence of some economies of scale, the need to have a UK-based sales team and a proven track record with grocery retailers in order to win PL contracts (i.e., an incumbency advantage), transportation logistics for non-UK based suppliers (particularly for larger supply contracts), the current difficult economic environment and the strong market position of the Parties.
58. As with branded products, we have also not identified any potential PL suppliers currently looking to enter the market or any specific plans from those in the market to significantly expand or invest in their PL DTB business. We have also not identified any third parties with specific plans or intentions to sponsor or support PL DTB supplier entry or expansion.
59. Our assessment has therefore provisionally concluded that it is not likely that entry or expansion of sufficient scale would occur in a timely manner in order to prevent or reduce the impact of an SLC from arising as a result of this Merger.

## **Provisional conclusions**

60. As a result of our investigation and our assessment, we have provisionally concluded that the completed acquisition by C er lia of the Jus-Rol business has resulted or would result in the creation of a relevant merger situation.
61. We have also provisionally concluded that the Merger has resulted or may be expected to result in an SLC in the wholesale supply of DTB products to grocery retailers in the UK. Having regard to the evidence in the round, our provisional view is that the pre-merger constraint between the Parties is important and that the weakness of the limited alternative competitive constraints remaining post-merger will be insufficient to offset the effects of the Merger.





# Provisional findings

## 1. The reference

- 1.1 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 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**) (the **Merger**) 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**.
- 1.2 In exercise of its duty under section 35(1) of the Act, the CMA must decide:
- (a) Whether a relevant merger situation (**RMS**) 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 and services.
- 1.3 We are required to prepare and publish a final report by 24 January 2023.
- 1.4 Our terms of reference are set out in Appendix A.
- 1.5 This document, together with its appendices, constitutes the Inquiry Group’s provisional findings published and notified to Cérélia and GMI in line with the CMA’s procedure.<sup>1</sup> Further information can be found on our webpage.<sup>2</sup>

## 2. The Parties, the Merger and its rationale

### Introduction

- 2.1 This chapter sets out:
- (a) an overview of the Parties and their financial information.

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<sup>1</sup> Rules of procedure for merger, market and special reference groups (CMA17).

<sup>2</sup> Cérélia / Jus-Rol Merger inquiry.

- (b) the Merger background, details, valuation and other information;
- (c) Parties' rationale for the Merger.

## The Parties

### *Cérélia (The Buyer)*

2.2 Cérélia is a joint stock company headquartered in Paris, France. Cérélia produces pies, pizzas, pastry dough, crepes, pancakes, waffles, cookie dough and ready to eat cookies for its own brands as well as for private-label brands of its customers from nine manufacturing sites in Europe and three in North America. Cérélia's own consumer brands include English Bay Bakery, Abra-ca-Debora, Creapan, Jan, Pop! Bakery and Croustipate.<sup>3</sup> It also provides recipe formulation and other value-added services to its grocery retailer customers who own and operate respective private label brands. Cérélia's main business activities are shown in Figure 2.1 below.

**Figure 2.1: Cérélia's main business activities**



Source: Cérélia webpage: [we are cérélia – Anglais - Cérélia \(Cérélia.com\)](https://www.cerelia.com), accessed by the CMA on 17 October 2022.

- 2.3 The private equity firm Ardian France SA (**Ardian**) is the controlling shareholder of the Cérélia Group of companies<sup>4</sup>. Ardian also has a stake in a Spanish bakery products supplier called Monbake.
- 2.4 In the UK, Cérélia operates under the name 'BakeAway', with a manufacturing plant in Corby, Northamptonshire. Cérélia's predominant activity in the UK is the manufacturing and packaging of Dough-to-Bake (**DTB**) and pancake

<sup>3</sup> Merger Notice (MN), paragraph 82 (Abra-ca-Debora is a pancake brand with UK presence while the other brands are not operated in the UK).

<sup>4</sup> MN, paragraph 83.

products for third parties such as consumer-brand owners and grocery retailers who market these products to end-consumers under their own PL brands. The Corby plant manufactures ingredient pastry dough, pizza dough, cookie dough, brownie dough and gingerbread dough. Pre-Merger, Cérélia's UK business (**CUK**) did not own any consumer brand and manufactured nearly all of Jus-Rol's chilled DTB products (except filo pastry). CUK also imports DTB products for UK sales from its manufacturing plants in France.<sup>5</sup>

- 2.5 Cérélia's worldwide turnover for the financial year ending 30 June 2021 was approximately £[REDACTED] million and that of CUK for the same period was approximately £[REDACTED] million (pastry and pancake segments combined), predominantly generated in the UK.<sup>6</sup>
- 2.6 CUK's strategy goal as stated in its annual report ended 30 June 2021 is to become a market leader in the pastry and pancake segment.<sup>7</sup> During the 2020-21 financial year, the business experienced a sales growth of £8.1 million while gross profit increased by £0.4 million. A sizeable amount of capital expenditure was incurred in the most recent financial year resulting in an increase in book value of plant and machinery of approximately £7 million.
- 2.7 The following charts summarise financial trends in CUK's DTB pastry business.<sup>8</sup> CUK's pastry business has [REDACTED]. [REDACTED], as can be seen in Figure 2.2 below. The [REDACTED] is largely attributed to contracts being won/lost. Contracts being won/lost and changes in shares of supply over time are covered in further detail in Chapter 9.

**Figure 2.2: Trends in CUK revenue (pastry business only)**

[REDACTED]

Source: CMA internal analysis of financial information submitted by Cérélia.

- 2.8 Figure 2.3 below shows trends in CUK's gross and operating margins. [REDACTED].

**Figure 2.3: Trends in CUK's Margins (pastry business only)**

[REDACTED]

Source: CMA internal analysis of financial information submitted by Cérélia.

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<sup>5</sup> MN, paragraph 112.

<sup>6</sup> With the remaining revenues generated in the Republic of Ireland.

<sup>7</sup> Cérélia response to the CMA's section 109 Notice (**Phase 2 s.109**) (1), 14 July 2022, Annex S109.1.24.001.

<sup>8</sup> Cérélia response to the CMA's section 109 Notice (**Phase 2 s.109**) (1), 14 July 2022, Annex S109.24.006.

## **GMI (The Seller)**

- 2.9 Prior to the Merger, the Jus-Rol Business was owned by General Mills Inc. (**GMI**), a US-based global manufacturer and marketer of consumer and pet food, headquartered in Minneapolis, USA. GMI's product portfolio includes several prominent consumer brands such as Cheerios, Pillsbury, Betty Crocker, Nature Valley, Old El Paso, Blue Buffalo, and Häagen-Dazs amongst others, representing total worldwide retail sales of c.\$18.1 billion from all consumer brands.<sup>9</sup> In the UK, the Jus-Rol Business supplies branded DTB products to grocery retailers and foodservice customers.
- 2.10 In 2021, GMI adopted its "Accelerate" Growth Strategy, which aimed to reshape its product portfolio and re-focus on certain designated core product categories and brands (discussed in more detail below). In-line with this strategy, [REDACTED]<sup>10</sup> for the future of the brand (see 2.17- 2.26 below).

## **Jus-Rol Business (the Target)**

- 2.11 The Jus-Rol Business comprises certain assets of the UK and Ireland dough business of GMI. These assets include the goodwill, trademarks, inventory, business records, deposits and receivables, and contracts exclusively related to the Jus-Rol Business (the **Purchased Assets**), as defined in Schedule 2 of the Asset Purchase Agreement (**APA**) discussed in paragraph 2.19.
- 2.12 The Jus-Rol UK product range is available either chilled or frozen in sheets, block and Ready-to-Bake (**RTB**) forms. Specific products within the range include ingredient pastry dough, pizza dough, sharing bread dough and certain breakfast DTB products supplied in cans such as croissant dough, pain-au-chocolat dough and cinnamon swirl dough. All of these products are supplied under the Jus-Rol brand as shown in the summary snapshot shown in Figure 2.4 below.

### **Figure 2.4: Jus-Rol product portfolio**

[REDACTED]

Source: GMI virtual site visit presentation, 26 July 2022, slide 4.

- 2.13 Pre-Merger, Jus-Rol products were predominantly (c. [REDACTED]%)<sup>11</sup> manufactured by C  r  lia [REDACTED]. The remaining products were manufactured by [REDACTED]. [REDACTED].<sup>12</sup>

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<sup>9</sup> See [General Mills makes food the world loves - General Mills](#), accessed by the CMA on 28 October 2022.

<sup>10</sup> MN, Annex 22b.05, '[REDACTED]', 11 January 2021, [REDACTED].

<sup>11</sup> MN, paragraph 119(a).

<sup>12</sup> GMI's virtual site visit presentation, 26 July 2022, slide 12.

The chronological evolution in the share of manufacturing of Jus-Rol products by various suppliers since 2012 is covered in more detail in Chapter 9.

- 2.14 The turnover of the Jus-Rol Business in the financial year ending 31 May 2021 was approximately £[redacted] million with £[redacted] million generated in the UK<sup>13</sup> and the remaining coming from the Republic of Ireland. In the last three years, UK sales have [redacted]<sup>14</sup> as can be seen in the Figure 2.5 below. [redacted].

**Figure 2.5: Trends in Jus-Rol Revenues and Gross Margin**

[redacted]

Source: CMA internal analysis of Jus-Rol data (CMA analysis based on data in Annex 18.4 of GMI's part 1 response to s109 notice, dated 30 June 2022).

- 2.15 Figure 2.6 below shows a disaggregated view of trends in Jus-Rol's revenues split by grocery retailers.<sup>15</sup> [redacted] in the most recent financial year (2021-22) after [redacted] in the previous two years. In this period, the top five retailers accounted for c. [redacted]% of sales. The remaining [redacted]% amounted to c. £[redacted] million of revenues.

**Figure 2.6: Trends in Jus-Rol revenues split by grocery retailers**

[redacted]

Source: CMA internal analysis of Jus-Rol data.

- 2.16 Figure 2.7 below gives a disaggregated view of gross margins, [redacted] in the most recent year, which GMI submit is driven by [redacted].<sup>16</sup>

**Figure 2.7: Jus-Rol gross-margins split by grocery retailers**

[redacted]

Source: CMA internal analysis of Jus-Rol data.

## The Merger

### **Background**

- 2.17 In [redacted].<sup>17</sup> [redacted]. The formal process to acquire Jus-Rol was initiated [redacted].

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<sup>13</sup> MN, paragraph 139.

<sup>14</sup> GMI response to the CMA's section 109 Notice (**Phase 2 s.109**) (2), 30 June 2022, Annex 18.4.

<sup>15</sup> CMA analysis based on data in Annex 17.1 of GMI's part 1 response to s109 notice, dated 30 June 2022.

<sup>16</sup> GMI's response to the CMA's s109 notice, 30 June 2022, annex 18.4.

<sup>17</sup> C  r  lia response to the CMA's section 109 Notice (**Phase 2 s.109**) (2), 28 February 2022, paragraph 2.

2.18 [REDACTED].<sup>18</sup> [REDACTED].

### **Merger details**

2.19 On 24 November 2021,<sup>19</sup> GMI and Cérélia entered into a series of agreements for Cérélia to acquire certain assets relating to the (UK) Jus-Rol business for a consideration of USD [REDACTED] ([REDACTED])<sup>20</sup> including:

- (a) an 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];<sup>21</sup> and
- (b) a Patent and Know-How Licence under which Cérélia [REDACTED].<sup>22</sup> [REDACTED]. [REDACTED];<sup>23</sup>
- (c) a Transitional Services Agreement (**TSA**) under which General Mills [REDACTED] is providing transitional services to the Jus-Rol Business [REDACTED];<sup>24</sup> and
- (d) an Equipment Sale Agreement (the **ESA**) under which [REDACTED].<sup>25</sup>

2.20 The Merger was not conditional on any regulatory clearances and was completed on 31 January 2022.<sup>26</sup>

### **Related transaction**

2.21 On 24 November 2021, Cérélia SAS and GMI entered into a transaction under which Cérélia SAS agreed to purchase GMI's German dough business for a consideration of c.\$ [REDACTED],<sup>27</sup> which comprises mainly IP assets and retailer contracts relating to the 'Knack & Back' brand (the **German Transaction**). This transaction was approved by the German Bundeskartellamt in April 2022. [REDACTED].<sup>28</sup>

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<sup>18</sup> MN, paragraphs 130 and 131.

<sup>19</sup> MN, paragraph 88.

<sup>20</sup> MN, paragraph 92.

<sup>21</sup> MN, paragraphs 3, 90 and 92. Cérélia response to the CMA's section 109 Notice (**Phase 2 s.109**) (1), 4 February 2022, Annex 3-a.

<sup>22</sup> MN, paragraph 89(a). Cérélia response to the CMA's section 109 Notice (**Phase 2 s.109**) (1), 4 February 2022, Annex 3-c.

<sup>23</sup> Parties' response to the CMA's fourth s109 notice, 31 March 2022, question 2.

<sup>24</sup> Cérélia stated that [REDACTED].

<sup>25</sup> MN, paragraph 126 and annex 4.

<sup>26</sup> MN, paragraph 6.

<sup>27</sup> Cérélia Internal Document, Annex S109.2.11.001 to Phase 2 s.109 (2), 'Germany Asset Purchase Agreement', 24 November 2021.

<sup>28</sup> MN, paragraph 126.

## ***Jus-Rol valuation***

2.22 In the valuation model provided to the CMA,<sup>29</sup> Cérélia valued the combined Jus-Rol and the German dough businesses at c.EUR [REDACTED] (pre-transaction costs of EUR [REDACTED]). The model uses a [REDACTED] methodology [REDACTED]. The model [REDACTED]<sup>30</sup> [REDACTED]. Cérélia has submitted<sup>31</sup> [REDACTED].

[REDACTED]

2.23 [REDACTED]<sup>32</sup> [REDACTED].

2.24 [REDACTED]<sup>33</sup> [REDACTED]<sup>34</sup>

**Figure 2.8: [REDACTED]**

[REDACTED]

Source: [REDACTED]

2.25 [REDACTED].<sup>35</sup>

2.26 [REDACTED]<sup>36</sup> [REDACTED].<sup>37</sup>

## **The Parties' rationale for the Merger**

### ***Cérélia***

2.27 Cérélia submitted that the Merger is motivated by its desire to increase overall market penetration<sup>38</sup> and sales in the UK DTB category which at c.47% significantly lags behind many European countries like France (c.85%) and Italy (c.69%).<sup>39</sup> Cérélia submitted that it wants to capitalise on the opportunity created by the recent increase in home-baking by UK households (e.g. the popularity of the 'Great British Bake Off' TV show has increased interest in home-baking, in part driven by events related to the Covid-19 pandemic).<sup>40</sup>

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<sup>29</sup> Cérélia Internal Document, Annex S109.1.3.001 to Phase 2 s.109 (1), '[REDACTED]', 27 October 2021.

<sup>30</sup> CUK's part 1 response to s109 notice, 30 June 2022, paragraph 3.2(b).

<sup>31</sup> CUK's part 1 response to s109 notice, 30 June 2022, paragraph 3.2(a).

<sup>32</sup> Annex 22b.05 [REDACTED].

<sup>33</sup> MN, paragraph 159.

<sup>34</sup> Annex 22b.05 [REDACTED].

<sup>35</sup> MN, paragraph 159.

<sup>36</sup> Annex 1.1 – [REDACTED].

<sup>37</sup> MN, paragraph 160.

<sup>38</sup> Percentage of households buying a product once per year (page 58 of Cérélia main party hearing transcript)

<sup>39</sup> Kantar UK market penetration data quoted in MN at paragraph 530.

<sup>40</sup> MN, paragraph 97.



- 2.28 Table 2.1 below, reproduced from paragraph 530 of the MN shows monthly average penetration rates of UK households for the calendar years 2019-2021 for (a) DTB products and (b) ingredient pastry only.

**Table 2.1: UK penetration rates for DTB products and ingredient pastry products**

	2019	2020	2021
DTB	c39%	c48%	c46%
Ingredient pastry	c31%	c36%	c31%

Source: CMA analysis on MN.

- 2.29 Cérélia submitted that it intends to use the Jus-Rol brand as a vehicle for investing in marketing and new product development initiatives and grow the overall penetration and sales of the DTB category in the UK.<sup>41</sup> It said that driving further growth in the category would be beneficial not only to Cérélia as a manufacturer but also to grocery retailers and to consumers, who would benefit from a larger range of products.<sup>42</sup> Cérélia also submitted that its ownership of a consumer brand would facilitate increased product innovation, because that innovation could be implemented across a product offering to multiple retailers (rather than on a PL by PL basis), thus targeting a larger consumer base.<sup>43</sup> Cérélia also claimed that in comparable countries with higher market penetration than the UK, there exists a “strong” brand which it considers is driving (category wide) innovation.
- 2.30 In May 2022, Cérélia commissioned a report [REDACTED] authored by the consultancy [REDACTED].<sup>44</sup> The CMA notes that the report was commissioned relatively recently, and only after the CMA had begun its review of the transaction, but has nonetheless taken the conclusions of the report into account. The [REDACTED] report highlights a lack of effective brand leadership from an end-consumer perspective. Specifically, in respect of Jus-Rol, the report notes:
- ‘[REDACTED]’.
- 2.31 The [REDACTED] Report further identifies [REDACTED]. [REDACTED]. [REDACTED]. Cérélia has submitted that the above points of differentiation present an opportunity for Jus-Rol to add value to the sector under Cérélia’s ownership.<sup>45</sup> The CMA considers the extent to which branded products and PL products are differentiated to a material extent in Chapter 7.

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<sup>41</sup> MN, paragraph 99.

<sup>42</sup> Cérélia, main party hearing transcript, page 17.

<sup>43</sup> Cérélia, main party hearing transcript, page 16.

<sup>44</sup> Annex S109.1.5.001 – [REDACTED]

<sup>45</sup> Paragraph 5.3 of Part 1 of CUK’s response dated 07 July 2022 to s109 notice.

## *Conclusion on C r lia Deal Rationale*

2.32 The evidence the CMA has reviewed does not contradict the Parties submissions as to their stated deal rationale. The CMA notes however, that the Parties transaction rationale is not necessarily determinative of the question of what if any structural change on competition will result from the Merger and the impact the Merger will have on the merging firms' economic incentives.<sup>46</sup> This question is considered in the subsequent chapters. The question of potential Merger specific efficiencies is also considered in a later chapter.

## **GMI**

2.33 From the perspective of GMI, the sale of the Jus-Rol Business forms part of its overall 'Accelerate' strategy to reshape its product portfolio and re-focus on certain designated core product categories and brands.<sup>47</sup> GMI has said that it wants to focus on five key businesses globally: Cereal, Pet Food, Ice Cream, Snack Bars, and Mexican Food. According to GMI, these categories are expected to lead the company's sales growth and profitability in the future.<sup>48</sup>

2.34 GMI submitted that its 'Accelerate' strategy meant that the Jus-Rol brand was a de-prioritised part of the business, not receiving any further significant investment, which was instead directed at brands where General Mills felt the best growth opportunities existed. As a result, GMI was looking for an opportunity to better deploy its capital, both human and financial, which led to the Merger.<sup>49</sup>

## **3. Relevant merger situation**

3.1 A completed merger must meet the following two criteria, set out in sections 23 and 26 of the Act, to constitute a relevant merger situation (**RMS**):

(a) two or more enterprises have ceased to be distinct enterprises;

(b) one of the following two conditions is satisfied:

(i) the value of the turnover in the UK of the enterprise being taken over exceeds  70 million (the turnover test); and

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<sup>46</sup> [Merger Assessment Guidelines \(MAGs\)](#), paragraph 2.26.

<sup>47</sup> MN, paragraph 100.

<sup>48</sup> [General Mills, Inc. - General Mills Outlines "Accelerate" Growth Strategy at 2021 CAGNY Conference](#)

<sup>49</sup> GMI, main party hearing transcript, page 7.

- (ii) the result of those enterprises ceasing to be distinct creates or enhances a share of supply of 25% or more in respect of goods or services of any description which are supplied in the UK, or a substantial part of the UK (the share of supply test).

3.2 The second limb of the jurisdictional test establishes sufficient connection with the UK on a turnover or share of supply basis to give the CMA jurisdiction to investigate.

## **Enterprises ceasing to be distinct**

### ***Enterprises***

3.3 The first element of the jurisdictional test considers whether two or more enterprises will cease to be distinct as a result of the Merger.

3.4 The Act defines an 'enterprise' as 'the activities, or part of the activities, of a business'. A 'business' is defined as including 'a professional practice and includes any other undertaking which is carried on for gain or reward or which is an undertaking in the course of which goods or services are supplied otherwise than free of charge'.<sup>50</sup>

3.5 An 'enterprise' may comprise any number of components, most commonly including some combination of the assets and records needed to carry on certain activities of the business, employees working in the business, and existing contracts and/or goodwill. However, the Act does not require that a business (or part thereof) be of any minimum scale, or include any particular combination of components, in order to constitute an enterprise.<sup>51</sup>

3.6 The CMA's assessment of whether what is being acquired amounts to an enterprise will depend on the specific facts and circumstances of each case and the industry in question. No one single factor will necessarily be determinative. Rather, the CMA will make an assessment based on the totality of all relevant considerations.<sup>52</sup>

3.7 Where a transaction results in the acquisition of parts of a business, in determining whether the activities or components of the business being acquired constitute an enterprise, the CMA will have particular regard to whether the transaction includes (i) the transfer of tangible or intangible

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<sup>50</sup> Section 129(1) and (3) of the Act.

<sup>51</sup> [Mergers: Guidance on the CMA's jurisdiction and procedure \(CMA2\)](#), January 2021, paragraph 4.8.

<sup>52</sup> [CMA2](#), January 2021, paragraph 4.10.

assets; (ii) the transfer of business data (including customer databases, lists or other customer relationships; (iii) the transfer of employees; (iv) consideration for the goodwill obtained by the purchaser; and/or (v) the transfer of trademarks, trade names, or domain names.<sup>53</sup> The CMA will also consider, as an important factor, whether the combination of components results in a degree of economic continuity in the activities of the business being transferred.<sup>54</sup>

- 3.8 Cérélia is a company that operated as a going concern before the Merger with a range of assets and employees, and which contracts with customers to supply goods and services on commercial terms.
- 3.9 The Jus-Rol Business comprises goodwill, trademarks, inventory, business records, deposits and receivables, and contracts exclusively related to the Jus-Rol Business (as supported by the Merger arrangements referred to at paragraph 3.12 below). The Jus-Rol Business does not include any existing employees of GMI.
- 3.10 We consider that the components of the Jus-Rol Business, in particular the material customer contracts and intellectual property rights to the Jus-Rol brand, would allow a degree of economic continuity in the activities of the Jus-Rol Business such that it would allow Cérélia to carry on the business of supplying Jus-Rol branded products to retailers in the UK (notwithstanding the fact that the Jus-Rol Business does not include existing employees of GMI). Accordingly, consistent with CMA guidance, we consider that Cérélia and the Jus-Rol Business is each a 'business' and that, accordingly, each constitutes an 'enterprise' for the purposes of the Act.<sup>55</sup>

### ***Ceasing to be distinct***

- 3.11 The concept of 'ceasing to be distinct' is described in section 26 of the Act. This provides that any two enterprises cease to be distinct if they are brought under common ownership or common control.<sup>56</sup>

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<sup>53</sup> CMA2, January 2021, paragraph 4.11.

<sup>54</sup> CMA2, January 2021, paragraph 4.12.

<sup>55</sup> The Parties submitted that the Jus-Rol Business constitutes an 'enterprise' for the purposes of section 129 of the Enterprise Act 2002 on the basis that the acquisition of the Jus-Rol Business would allow CUK to carry on the business of supplying Jus-Rol branded products to retailers in the UK (MN, paragraph 134).

<sup>56</sup> 'Control' is not limited to the acquisition of outright voting control but may include situations falling short of outright voting control. Section 26 of the Act distinguishes three levels of interest (in ascending order): (i) material influence (ii) de facto control, and (iii) a controlling interest (also known as 'de jure', or 'legal' control). Since the circumstances of the present case fall within 'common ownership' we have not considered the issue of 'control' further.

3.12 On 24 November 2021, GMI (either directly or indirectly) and Cérélia (either directly or indirectly) entered into a series of agreements for Cérélia to acquire certain assets relating to the Jus-Rol Business.<sup>57</sup> Cérélia completed its acquisition of the Jus-Rol Business on 31 January 2022, bringing the two enterprises under common ownership.<sup>58</sup> As a consequence, we are satisfied that both enterprises have ‘ceased to be distinct’ prior to the date on which the reference was made.

3.13 We therefore consider that the first limb of the jurisdictional test is met.

### **The turnover or share of supply test – nexus with the UK**

3.14 The second element of the jurisdictional test seeks to establish sufficient connection with the UK on a turnover or share of supply basis to give the CMA jurisdiction to investigate.

#### ***Turnover***

3.15 The turnover test is satisfied where the value of the turnover in the UK of the enterprise being taken over exceeds £70 million. The Jus-Rol Business did not generate more than £70 million of turnover in the UK in its most recent financial year<sup>59</sup> and therefore the turnover threshold set out in section 23(1)(b) of the Act is not satisfied.

#### ***Share of supply***

3.16 Under section 23 of the Act, 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 or acquire at least 25% or more of those goods or services in the UK as a whole, or in a substantial part of it. There must be an increment in the share of supply as a result of the merger (although the size of the increment is irrelevant).<sup>60</sup>

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<sup>57</sup> The agreements include (i) 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; (ii) a Patent and Know-How Licence under which Cérélia [redacted]; and (iii) an Equipment Sale Agreement (the ESA) under which [redacted].

<sup>58</sup> MN, paragraph 133.

<sup>59</sup> MN, paragraph 139.

<sup>60</sup> CMA2, paragraph 4.65.

## *Supply or procurement of goods or services of any description in the UK*

- 3.17 The starting point in the application of the share of supply test is to establish that both merging parties supply or acquire the same category of goods or services (of any description) in the UK. In other words, there must be a degree of horizontal overlap between the merging parties in the supply or procurement of goods or services (of any description) in the UK.
- 3.18 The CMA has a broad discretion to identify a specific category of goods or services supplied or acquired by the merger parties for the purposes of applying the share of supply test.<sup>61</sup> The group of goods or services to which the jurisdictional test is applied does not have to correspond with the economic market definition adopted for the CMA's substantive assessment.<sup>62</sup> 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.<sup>63</sup>
- 3.19 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.<sup>64</sup> 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.
- 3.20 The test cannot capture mergers where the relationship between the merger parties is purely vertical in nature and where there is no overlap between the merger parties' activities based on any reasonable description of a set of goods or services.<sup>65</sup> The CMA has previously found that the share of supply test was satisfied where parties were active at the same level of the supply chain, in addition to being vertically related.<sup>66</sup>
- 3.21 In the phase 1 investigation, C er lia submitted that the share of supply test is not met as there is no material horizontal overlap between the Parties' activities in the UK and no increment in the Parties' respective shares of supply.<sup>67</sup> However, the phase 1 decision concluded that the share of supply test was satisfied on the basis of an horizontal overlap between the Parties in the supply of DTB products to grocery retailers in the UK (notwithstanding any vertical relationship that may exist between the Parties).

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<sup>61</sup> Sections 23(5) and 23(8) of the Act and CMA2, paragraph 4.59. See also [Sabre/Farelogix](#) [2021] CAT 11, paragraph 293.

<sup>62</sup> CMA2 (January 2021 (as amended on 4 January 2022)), paragraph 4.59(a).

<sup>63</sup> Section 23(5) of the Act and CMA2, paragraph 4.59.

<sup>64</sup> See [CMA2](#), January 2021, paragraph 4.59.

<sup>65</sup> CMA2, paragraph 4.59(e).

<sup>66</sup> CMA Decision: Completed acquisition by Google LLC of Looker Data Sciences, Inc. (13 February 2020).

<sup>67</sup> MN, paragraphs 136 and 137.

- 3.22 As explained in Chapter 2, CUK provides manufacturing and packaging services for PL DTB products to grocery retailers in the UK<sup>68</sup> and the Jus-Rol Business supplies branded DTB products to grocery retailers in the UK. Therefore, in line with the phase 1 approach, we consider that both Parties are active in the supply of DTB products to grocery retailers in the UK and there is a horizontal overlap between the Parties in the supply of DTB products to grocery retailers in the UK (in addition to the vertical relationship between the Parties arising from the manufacturing and packaging services provided by CUK to the Jus-Rol Business). We consider that the supply of DTB products to grocery retailers is a reasonable description of a set of goods as it relies on products supplied by the Parties to the same group of customers in the UK. The fact that the Parties' customers are located in the UK means that the Merger has a sufficient UK nexus.
- 3.23 In light of both Parties' activities in the supply of DTB products to grocery retailers to customers located in the UK, we consider that the first condition of the share of supply test is satisfied.

#### *The 25% threshold*

- 3.24 The next step of the share of supply test requires the CMA to establish that the merging parties' pre-merger combined share of supply/procurement of goods/services of any description in the UK, or in a substantial part of the UK, is of at least 25% and that the merger leads to an increment in share of supply. The size of the increment is irrelevant.<sup>69</sup>
- 3.25 The Act gives a wide discretion to the CMA to apply whatever measure (eg value, cost, price, quantity, capacity, or number of workers employed), or combination or measures, it considers appropriate to calculate the merging parties' share of supply or procurement and to determine whether the share of supply test is satisfied.<sup>70</sup>
- 3.26 Chapter 9 and appendix C provide details of how the CMA has reached its estimates of the shares of supply of the Parties.
- 3.27 On the basis of our estimates (see Chapter 9), the Parties' combined share in the wholesale supply of DTB products to grocery retailers (by value) in the UK

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<sup>68</sup> CUK also supplies a small amount of its own branded DTB products to UK grocery retailers, [redacted].

<sup>69</sup> This was illustrated in Tesco/Spar where the OFT considered that the share of supply test was met in circumstances where Tesco acquired a single store on the basis that this store would increase Tesco's share, even though the increase would be very substantially below 0.1%. See also para 4.54 of the Guidance which states that where an enterprise already supplies or acquires 25% of any particular goods or services, the test is satisfied so long as its share is increased as a result of the merger, regardless of the size of the increment.

<sup>70</sup> Section 23(5) of the Act.

is forecasted to be [60-70%] in 2023, with an increment of [30-40%] arising from the Jus-Rol Business' sales of branded products.

3.28 We therefore consider that the share of supply test in section 23(2)(b) of the Act is met.

### **Provisional conclusion on jurisdiction**

3.29 In light of the above assessment, we are currently satisfied that, as a consequence of the Merger:

- (a) the enterprises of C er elia and the Jus-Rol Business have ceased to be distinct; and
- (b) the share of supply test is met.

3.30 For these reasons we provisionally conclude that the Merger has resulted in the creation of an RMS.

## **4. Counterfactual**

### **Introduction**

4.1 This chapter sets out our assessment of the most likely competitive situation, ie the counterfactual, in the absence of the Merger.

4.2 The chapter covers the following:

- (a) The CMA's framework for assessing the counterfactual
- (b) Parties' views on the appropriate counterfactual
- (c) CMA's provisional assessment and views on the counterfactual

### **The CMA's framework for assessment of the counterfactual**

4.3 Applying 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 the merger gives rise to an SLC.<sup>71</sup>

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<sup>71</sup> MAGs, paragraph 3.1



- 4.4 The counterfactual may consist of the prevailing, or pre-merger, conditions of competition, or conditions of competition that involve stronger or weaker competition between the merger firms than under the prevailing conditions of competition. The appropriate counterfactual may increase or reduce the prospects of an SLC finding by the CMA.<sup>72</sup>
- 4.5 The CMA's conclusion on the counterfactual does not seek to ossify the market at a particular point in time. For example, an assessment based on the prevailing conditions of competition might reflect that, absent the merger under review, a merger firm would have continued making investments in improvements, innovations or new products.<sup>73</sup> Only events that would have happened in the absence of the merger under review—and are not a consequence of it—can be incorporated into the counterfactual.<sup>74</sup>
- 4.6 In determining the counterfactual, the depth of analysis in the CMA's assessment is usually not to the same level as in its competitive assessment. Indeed, in many cases the counterfactual assessment is likely to be brief, although this will vary across cases.<sup>75</sup> The counterfactual is not intended to be a detailed description of the conditions of competition that would prevail absent the merger. Those conditions are better considered in the competitive assessment.<sup>76</sup>
- 4.7 Establishing the appropriate counterfactual to assess the merger against is an inherently uncertain exercise and evidence relating to future developments absent the merger may be difficult to obtain. Uncertainty about the future will not in itself lead the CMA to assume the pre-merger situation to be the appropriate counterfactual. As part of its assessment, the CMA may consider the ability and incentive (including but not limited to evidence of intention) of the merger firms to pursue alternatives to the merger, which may include reviewing evidence of specific plans where available.<sup>77</sup>

## **Parties' views on the appropriate counterfactual**

- 4.8 [X]. The Merger was signed on 24 November 2021 and completed on 31 January 2022. Further details on the background and events leading up to the Merger have been covered in Chapter 2.

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<sup>72</sup> MAGs, paragraph 3.2

<sup>73</sup> MAGs, paragraph 3.3

<sup>74</sup> MAGs, paragraph 3.4

<sup>75</sup> MAGs, paragraph 3.6

<sup>76</sup> MAGs, paragraph 3.7

<sup>77</sup> MAGs, paragraph 3.14

- 4.9 CUK submitted that the pre-Merger competitive situation would be the most appropriate counterfactual.<sup>78</sup> The pre-Merger situation as summarised by Cérélia highlights [REDACTED] in the Jus-Rol brand by GMI which resulted in [REDACTED]. Cérélia submitted that this situation was expected to continue into the future.
- 4.10 Cérélia also submitted that if GMI had not agreed to the Merger with Cérélia, [REDACTED].<sup>79</sup> [REDACTED].<sup>80</sup>
- 4.11 GMI submitted that, absent the Merger, in the short to medium term GMI would have [REDACTED].<sup>81</sup> GMI also submitted that, [REDACTED].<sup>82</sup>

## **CMA's provisional assessment**

- 4.12 A GMI internal document summarises [REDACTED]<sup>83</sup> [REDACTED].
- 4.13 We consider that while the evidence we have seen suggests that GMI [REDACTED].
- 4.14 Cérélia's contract with GMI for the manufacturing of Jus-Rol products expires in [REDACTED].<sup>84</sup> GMI submitted that absent the Merger it had several options available which included [REDACTED]. However, this would have involved allocating resources to [REDACTED] and would have happened [REDACTED].<sup>85</sup> However, GMI added that based on its experience with Cérélia, absent the Merger it would most probably have [REDACTED].<sup>86</sup>
- 4.15 The evidence that we have seen suggests that, in the absence of the Merger, GMI would have [REDACTED]. Given the limited evidence suggesting [REDACTED], we consider that, the most likely scenario would have been GMI continuing to operate Jus-Rol in line with pre-Merger conditions. The implications of this are dealt with in Chapter 9.

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<sup>78</sup> MN, paragraph 156.

<sup>79</sup> MN, paragraph 158.

<sup>80</sup> Para 19(b) of Cérélia's response to Questions 10 – 36 (dated 16 Feb 22) of the CMA's s.109 Notice.

<sup>81</sup> GMI response to Working Papers, paragraph 3.2.

<sup>82</sup> GMI response to Working Papers, paragraph 3.2.

<sup>83</sup> As evidenced on slide 3 of Annex 22b.05 [REDACTED].

<sup>84</sup> Cérélia Internal Document, Annex 12-3 to the Phase 1 s.109 (3), 'Co-Pack Agreement', 17 May 2021, page 2.

<sup>85</sup> GMI, main party hearing transcript, page 66.

<sup>86</sup> GMI, main party hearing transcript, page 67.

## 5. Industry background

### Introduction

5.1 This chapter provides an overview of the DTB products industry in the UK. It covers:

- (a) what DTB products are;
- (b) an overview of manufacturers, brand owners and grocery retailers;
- (c) other sectors of the DTB market outside the groceries channel; and
- (d) recent trends in the market.

### DTB products

5.2 DTB products include 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 swirl dough, gingerbread dough and cookie dough).<sup>87</sup> The value of sales of the DTB products sold by grocery retailers was £[130-150] million in the UK in 2020, while the volume was c.[40-50] thousand tonnes.<sup>88</sup>

5.3 DTB products are manufactured by combining ingredients such as flour with a liquid (eg water) and/or fat (butter, olive oil etc) and sometimes with flavouring toppings, and are then sold to customers as a raw product to be baked for final consumption.<sup>89</sup> They are often sold in supermarkets in the chilled shelves next to the butter, spreads and margarine category of products.<sup>90</sup> A smaller proportion are also available as frozen products, or at ambient temperatures. Figure 5.1 below illustrates the manufacturing process for chilled DTB products.<sup>91</sup>

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<sup>87</sup> MN, paragraph 177.

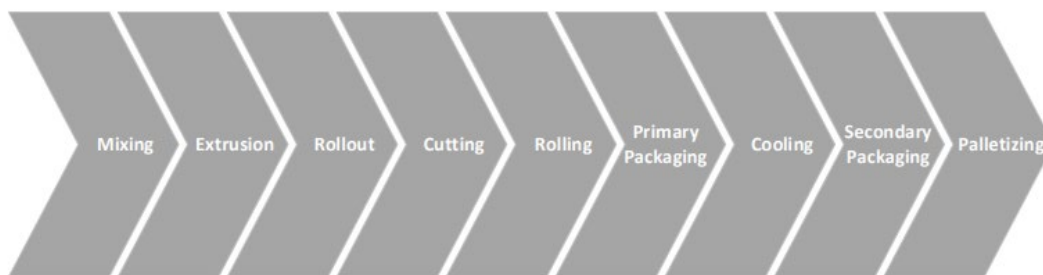
<sup>88</sup> MN, table 8. Cérélia said that the 2021 Kantar chilled data shows that sales fell [5-10]% by value and [5-10]% by volume. Cérélia response to the Annotated Issues Statement and Working Papers, 13 September 2022, annex AIS.04.b, slide 8.

<sup>89</sup> MN, paragraph 177.

<sup>90</sup> MN, paragraph 58.

<sup>91</sup> MN, paragraph 197.

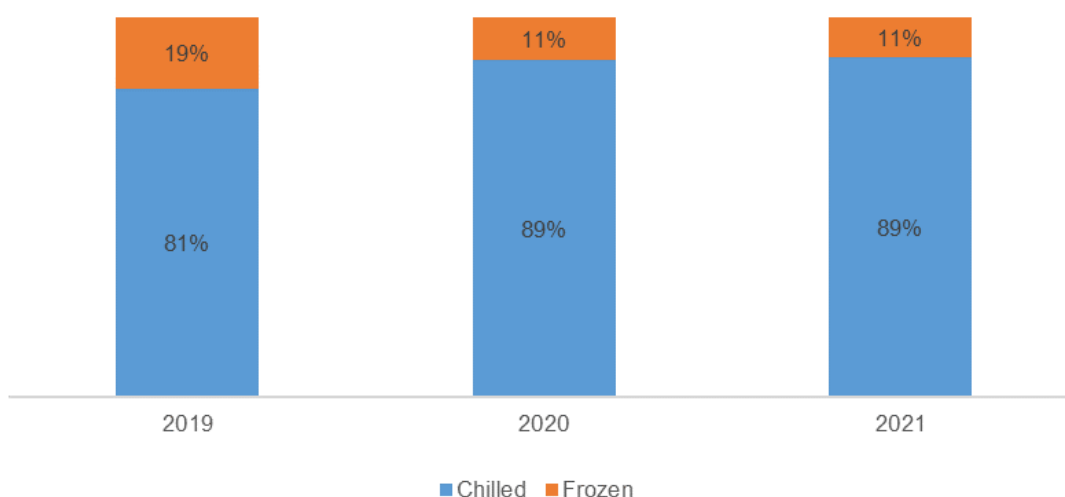
**Figure 5.1: Manufacturing process for DTB products**



Source: MN, paragraph 197.

5.4 As noted above, the vast majority of DTB products are sold in chilled or frozen form with a very small quantity sold at ambient temperatures.<sup>92</sup> Based on the data submitted by the Parties and third parties, the CMA has estimated that chilled DTB products accounted for slightly less than 90% of the value of retail sales of all DTB products in the UK in 2021, as shown in Figure 5.2 below.<sup>93</sup>

**Figure 5.2: Chilled vs Frozen trends in DTB products**



Source: CMA internal analysis of third party revenue data<sup>94</sup>

5.5 The manufacturing process for chilled and frozen DTB products is broadly similar, except that chilled products require the addition of preservatives (alcohol, potassium sorbate or a combination of others) and/or the optimisation of product packaging to maximize shelf life. Frozen products require a final step which involves blast freezing of the dough, along with

<sup>92</sup> Kantar data (Annex S109.1.41.002) of CUK's response dated 07 July 2022

<sup>93</sup> Annex 9 of CUK phase 1 response to Question 9 of second s109.

<sup>94</sup> Sales of DTB products sold at ambient temperature are excluded due to being extremely low.

temperature-controlled storage and delivery. These freezing steps are often outsourced to third party service providers.<sup>95</sup>

- 5.6 Pre-Merger, CUK and GMI were both involved in the manufacturing and packaging of both chilled and frozen DTB products.<sup>96</sup> However, with the exception of a limited number of products, such as filo pastry, vol au vents, pastry shapes (sold predominantly to UK foodservice customers) and canned DTB products, [REDACTED].<sup>97</sup> [REDACTED].<sup>98</sup>

## Manufacturers

- 5.7 Manufacturers of DTB products for the UK market exist both within the UK and in the rest of Europe. Details of the major PL DTB product providers are covered in the Alternative Competitive Constraints section of Chapter 9.
- 5.8 Within the grocery retail DTB market, manufacturers may supply grocery retailers as a key input to the retailer's own PL brand, (see paragraph 5.14) or to general consumer brands (see paragraph 5.13) that supply grocery retailers.
- 5.9 There are other DTB manufacturers supplying DTB products to the foodservice and food-manufacturing sectors (see paragraphs 5.20(a) and 5.20(b) respectively) which [REDACTED] capable of manufacturing for the grocery retail DTB market as the manufacturing processes are largely similar (barring packaging).<sup>99</sup> Manufacturers from these adjacent sectors are covered in more detail in the sections on Alternative Competitive Constraints (see paragraph 9.234) and Entry and Expansion (see paragraph 10.52).
- 5.10 Cérélia told us that whilst manufacturers do not own or control the rights to the end product, 'some contract manufacturers (including Cérélia) offer their ideas and category insights (for example, by sharing Kantar data), give feedback and collaboratively develop recipes with PL brand owners. Such collaboration between contract manufacturers and PL brand owners is a common feature across grocery categories'.<sup>100</sup> In contrast, manufacturers are limited to producing branded products strictly in-line with the specifications laid out by brand owners.

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<sup>95</sup> MN, paragraphs 198, 203–204 and 243–247.

<sup>96</sup> MN, paragraph 186.

<sup>97</sup> MN, paragraphs 167 and 179.

<sup>98</sup> See paragraph 38 of Appendix C.

<sup>99</sup> MN, paragraphs 249 and 250.

<sup>100</sup> Cérélia response to the Annotated Issues Statement and Working Papers, 12 September 2022, paragraph 2.12.

- 5.11 In these provisional findings we refer to suppliers of branded DTB products or manufacturers who supply DTB products for use in retailers' PL offering as "DTB suppliers" (**DTB suppliers**).

## **Brand owners**

- 5.12 There are two categories of DTB brands available to the end-consumer. These are general consumer brands and PL consumer DTB brands.
- 5.13 General consumer brands like Jus-Rol which are sold to the end-consumers from a variety of sales channels like grocery retail stores (Tesco, Sainsbury's, Morrison's etc), local convenience stores and online platforms like Ocado, Amazon etc. The manufacturing of these branded products is carried out either in-house by the brand owners or outsourced to contract manufacturers like C  r  lia. Brand owners independently develop recipes, marketing/sales strategies and negotiate wholesale prices with grocery retailers. They also provide additional services to grocery retailers such as supply and demand forecasting, promotional/marketing initiatives, and customer service, along with category management and insights.<sup>101</sup> [X]. Examples of consumer brands other than Jus-Rol include Bells, Picard, The Northern Dough Co., Dorset Pastry, Shire Foods, Theos, Munch!, Pizza Pilgrims, Genius Foods, Doughlicious etc.
- 5.14 PL consumer brands are owned and managed by various grocery retailers like Tesco, Sainsbury's, Morrison's etc. These brands are usually available exclusively within the stores of respective grocery retailers but some of them are also available at local convenience stores and on Amazon. They are manufactured by contract manufacturers like C  r  lia and others. Grocery retailers seek input from manufacturers to develop bespoke recipes for the retailers' respective PL brands.<sup>102</sup> The packaging design, retail pricing, brand management and marketing of PL brands are also exclusively carried out by their respective grocery retail owners.

## **Grocery retailers**

- 5.15 All major UK grocery retailers sell DTB products. The top four grocery retailers (Tesco, Sainsbury's, Asda, Morrisons) have a [70-80]% share of the UK DTB market at the retail level, with Aldi and Lidl accounting for a share around [10-20]%.

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<sup>101</sup> MN, paragraphs 420–424.

<sup>102</sup> MN, paragraph 365.

5.16 Table 5.1 shows the share of DTB sales of grocery retailers by value for 2021, based on chilled Kantar data submitted by Cérélia.

**Table 5.1: Share of DTB sales per grocery retailers by value in 2021**

<i>Retailer</i>	<i>Share of DTB sales</i>	<i>Share of PL within retailer</i>	<i>Share of branded sales</i>	<i>%</i>
Tesco	[30-40]	[40-50]	[50-60]	
Sainsbury's	[10-20]	[40-50]	[60-70]	
Asda	[10-20]	[60-70]	[30-40]	
Morrisons	[10-20]	[30-40]	[60-70]	
Aldi <sup>103</sup>	[5-10]	[90-100]	[0-5]	
Waitrose	[5-10]	[0-5]	[90-100]	
Lidl	[5-10]	[70-80]	[20-30]	
Co-op	[0-5]	[80-90]	[10-20]	
M&S & other	[0-5]	N/A	N/A	
Total	100			

Source: Kantar chilled data. Cérélia response to the CMA's section 109 Notice (Phase 2 s.109) (2), 22 August 2022, question 5.

5.17 As set out above, grocery retailers can procure branded and/or PL DTB products, which they then sell onto end-consumers. The branded and PL products typically sit side-by-side and are found in the dairy aisle of grocery retailers. PL products in the DTB Sector are generally a cheaper alternative to the branded products. This pricing dynamic is a typical feature of PL offerings across other product categories.

5.18 While grocery retailers are not involved in formulating recipes, branding, package design or pricing of branded DTB products, they have significant control on all aspects of PL, including their positioning on shelves. Wholesale pricing of PL and branded products is controlled by manufacturers and consumer-brand owners respectively, while retail pricing in both cases is controlled by grocery retailers.

5.19 During festive periods,<sup>104</sup> a variety of brands (including [✂]) from within the wider chilled category<sup>105</sup> compete for promotional space at the 'gondola end' of retailers' aisles.

<sup>103</sup> Aldi has subsequently moved into the fourth position of the largest grocery retailers in the UK. Cérélia's email of 29 September 2022 quoting Kantar data.

<sup>104</sup> No PL products other than meat are displayed at the gondola end.

<sup>105</sup> Butter, juices, yoghurt – page 23 of GMI MPH transcript.

## Other sectors of the DTB market

- 5.20 Besides the grocery retailers, as described above, there are two other sectors of the DTB market<sup>106</sup> through which DTB products are sold to end-consumers in the UK.<sup>107</sup>
- (a) Foodservice: customers in this Sector comprise caterers who buy DTB products to sell to their end customers, as well as bakeries, restaurants and independent shops which purchase DTB products to produce and bake finished products in-store to serve their customers.
  - (b) Food manufacturing: customers in this Sector purchase DTB 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.
- 5.21 Supply to the grocery retailers involves both chilled and frozen DTB products whereas the foodservice and food manufacturing sector primarily involves frozen DTB products in large pack sizes.<sup>108</sup> Neither Cérélia nor Jus-Rol are active in the supply chain for the supply of DTB products to food manufacturing customers.<sup>109</sup> Cérélia does not supply foodservice businesses directly. Its activities in the foodservice sector are limited to manufacturing products for Jus-Rol which is active in both the retail and foodservice sectors.
- 5.22 The various sectors of the DTB market are considered in more detail in Chapter 8.

## Industry trends/seasonality

- 5.23 Data for household penetration of DTB products in the UK is presented in Table 2.1. Penetration increased in 2020 possibly driven by covid-19 related lockdowns, decreasing slightly in 2021(still above 2019 levels). Table 5.2 below shows the overall DTB sales for the period 2018-2020<sup>110</sup>. The significant increase in 2020 sales, both in terms of value and volume confirm the effect of increase in household penetration in 2020.

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<sup>106</sup> MN, paragraphs 163 and 164.

<sup>107</sup> Cérélia has submitted that there is no meaningful distinction in supplying DTB products to grocery retailers, food service or food manufacturing sectors as the manufacturing process is very similar irrespective of the sector.

<sup>108</sup> MN, paragraph 250(a).

<sup>109</sup> MN, paragraph 171.

<sup>110</sup> Up to date Kantar data for 2021 not available.



**Table 5.2: DTB sales in value and volume**

	2018	2019	2020
Overall sales in value (£ thousand)	[REDACTED]	[REDACTED]	[REDACTED]
Overall sales in volume (tonnes)	[REDACTED]	[REDACTED]	[REDACTED]

Source: CMA analysis of Kantar data.

5.24 Figure 5.3 below presents a comparison between 2020 and 2021 of the breakdown of UK-wide DTB sales by product type. While all pastry categories (puff, ingredient and filo) have experienced a decline in the proportion of sales that they account for within the category in 2021, the presence of other fresh dough products within the category has grown, with pizza dough being the fastest growing Sector.

**Figure 5.3: Market trends in DTB products**

[REDACTED]

Source: CMA internal analysis of Nielsen market data

5.25 GMI's internal documents highlight certain other key trends influencing consumer choices and consequently the downstream sales of DTB products, including:<sup>111</sup>

(a) [REDACTED].

(b) [REDACTED].

(c) [REDACTED].

(d) [REDACTED].

5.26 According to GMI, Christmas sales account for over [REDACTED]%<sup>112</sup> of annual sales of Jus-Rol providing a [REDACTED] example of the seasonality in the sales of DTB products.

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<sup>111</sup> GMI response to the CMA's s109 notice of 2 February 2022, Annexe 04.A.01. 20200315, Slide 24.

<sup>112</sup> GMI response to the CMA's s109 notice of 2 February 2022, Annexe 04.A.01. 20200315, Slide 40.

## 6. Our approach to the competitive assessment

### Introduction

- 6.1 In this chapter we set out our approach to assessing the Merger and to the evidence we have gathered during our inquiry to date, to inform this assessment.
- 6.2 This chapter is structured as an overview of the following:
- (a) Features of the sector and our competitive assessment.
  - (b) Market definition.
  - (c) Theory of harm.
  - (d) Countervailing factors.
  - (e) Evidence gathering and use of evidence.

### Features of the sector and our competitive assessment

- 6.3 As set out in the CMA's guidance, the CMA will, in its merger assessments, develop a general understanding of the competitive process, including of the competitive parameters that are most important to the process of competition in the relevant industry.<sup>113</sup>
- 6.4 We have considered evidence on various individual aspects of competition in order to understand how competition in the supply of DTB products in the UK works as a whole, and the relative importance of each individual aspect.
- 6.5 As part of this, we have considered the interplay between branded and PL products throughout the supply chain. This includes considering the implications of how end-consumer behaviour may drive or influence retailer choices and negotiations with suppliers. We consider how these factors affect the competitive dynamic in relation to the DTB suppliers who supply to grocery retailers across the PL and branded channels.
- 6.6 Throughout our assessment, we have carefully considered the activities performed by different market players at the different stages of the overall supply chain and specifically as regards PL and branded DTB goods. Such

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<sup>113</sup> [MAGs](#), paragraph 2.3.

considerations are particularly relevant in this case because there is differentiation between the Parties and their activities across the value chain. In particular, we note that grocery retailers engage in a series of purchasing decisions which means there are several potential points of competition. In particular, for grocery retailers that opt to provide PL and branded DTB products, having selected a PL supplier, such retailers go on to consider both PL and branded channels in making ongoing purchasing decisions, for example as regards the relative quantities purchased in respect of each channel. In addition, there is a pre-existing vertical relationship between the Parties which is relevant to the assessment of the competitive dynamics.

## Market Definition

- 6.7 As set out in the CMA's Guidance, we must define the market within which the Merger may give rise to an SLC (the relevant market)<sup>114</sup> but the CMA has a margin of appreciation in defining markets.<sup>115</sup> As set out further in Chapter 8 below, while market definition is a useful analytical tool, it is not an end in itself, and identifying the relevant market involves an element of judgement.<sup>116</sup>
- 6.8 We use the market definition as a framework for our analysis of the competitive effects of the Merger.
- 6.9 Product market definition starts with the relevant products of the merger firms. In identifying what other significant competitive alternatives should be included in the relevant market, the CMA will pay particular regard to demand-side factors (the behaviour of customers) and may consider supply side substitution (the behaviour of suppliers).<sup>117</sup>
- 6.10 In this case, we have paid close attention to the roles played by the Parties in different stages and segments of the overall supply chain. We recognise that Cérélia provides an input to GMI's Jus-Rol product. We also have regard to the fact that, from the end-consumer's perspective at the retail level, GMI's Jus-Rol product often sits alongside the grocery retailers' PL product. Nevertheless, in our assessment of market definition in this case, we focus on the wholesale supply by both the Parties of DTB products to grocery retailers, with Cérélia supplying grocery retailers with DTB products to meet their PL requirements, and Jus-Rol supplying grocery retailers with branded DTB products. In doing so, as set out further in Chapter 8, we have considered

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<sup>114</sup> [MAGs](#), paragraph 9.1.

<sup>115</sup> *Meta v CMA*, [2022] CAT 26, paragraph 64(1).

<sup>116</sup> See also [MAGs](#), paragraph 9.4.

<sup>117</sup> [MAGs](#), paragraph 9.6.

demand side substitution by grocery retailers between Cérélia and Jus-Rol, including in the light of a hypothetical price increase.

- 6.11 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.<sup>118</sup> The Parties consider that the theory of harm as set out in the phase 1 Decision is in fact an essentially vertical foreclosure theory of harm.<sup>119</sup> We address these points in our assessment of Market Definition (see paragraphs 8.4 to 8.60), and in the Competitive Assessment Chapter (see paragraphs 9.117 to 9.122). While we have carefully considered the implications of the pre-existing vertical link between the Parties, we nevertheless consider that the horizontal framework is appropriate to assess any competition concerns potentially arising from the Merger.

## Theory of harm

- 6.12 We assessed whether the Merger may be expected to result in an SLC as a result of horizontal unilateral effects in the wholesale supply of DTB products to grocery retailers in the UK.
- 6.13 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.<sup>120</sup>
- 6.14 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 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

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<sup>118</sup> Cérélia initial submission, 1 July 2022, paragraphs 3.1 and 3.3.

<sup>119</sup> Cérélia initial submission, 1 July 2022, paragraph 3.6.

<sup>120</sup> MAGs, paragraph 4.1.

given lessening of competition will give rise to greater competition concerns.<sup>121</sup>

- 6.15 Through our competitive assessment we consider:
- (a) the nature of competition between suppliers at the wholesale level (in particular between suppliers selling PL products and branded products to retailers);
  - (b) the closeness of competition between the Parties;
  - (c) the strength of any alternative competitive constraints on the Parties; and
  - (d) the nature of any harm arising from the Merger.
- 6.16 In this case, as set out below, we have considered product differentiation and the contractual vertical link between the Parties as part of our Competitive Assessment.

### ***Differentiation and potential asymmetry of constraint***

- 6.17 As part of our assessment, we have considered closeness of competition and the extent to which the Parties' products are differentiated:
- 6.18 In differentiated markets, horizontal unilateral effects are more likely where the merger firms are close competitors or where their products are close substitutes. The more closely the merger firms compete the greater the likelihood of unilateral effects because the merged entity will recapture a more significant share of the sales lost in response to a price increase (or another worsening in the offering), making the price rise more profitable. The merger firms need not be each other's closest competitors for unilateral effects to arise. It is sufficient that the merger firms compete closely and that the remaining competitive constraints are not sufficient to offset the loss of competition between them resulting from the merger.<sup>122</sup>
- 6.19 In line with our guidance, we note that closeness of competition is a relative concept and that even where there is a degree of differentiation between the merger firms' products, they may nevertheless still be close competitors for example 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-

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<sup>121</sup> MAGs, paragraph 4.3.

<sup>122</sup> MAGs, paragraph 4.8.

merger. For example, where the CMA finds evidence that competition mainly takes place among few firms, any two would normally be sufficiently close competitors that the elimination of competition between them would raise competition concerns, subject to evidence to the contrary. The smaller the number of significant players, the stronger the prima facie expectation that any two firms are close competitors. In such a scenario, the CMA will require persuasive evidence that the merger firms are not close competitors in order to allay any competition concerns.<sup>123</sup>

- 6.20 Differentiation is relevant in this case because while the final DTB end-product is similar whether it is a Jus-Rol product or a DTB product which a retailer has purchased from C er lia to sell under its PL brand, there are meaningful differences in the services that the Parties offer to grocery retailers, flowing from their different business models. Accordingly, we consider the extent of differentiation between the offerings of the Parties when assessing closeness of competition.
- 6.21 The constraints exerted by the merger firms on each other may be asymmetric, such that one merger firm may be a close competitive constraint on the other, without the reverse being the case.<sup>124</sup> We have considered the relative strength of the existing constraint of both C er lia on Jus-Rol and Jus-Rol on C er lia and have taken into account potential asymmetries where relevant to our assessment. In particular, we have considered potential asymmetry of incentive to degrade price, quality, range and service (**PQRS**) post-merger. We have also assessed whether there may be a different incentive for the Merged Entity to divert sales towards the Jus-Rol channel, relative to the PL channel, and the incentives to degrade both channels.
- 6.22 The potential presence of such an asymmetry does not preclude the finding of an SLC – the SLC may arise from the loss of a one-side constraint.<sup>125</sup> This is because consumers can still be harmed by the loss of competitive pressure resulting from the merger, even if this loss impacts significantly more on one firm than the other, provided the loss of competition overall is considered to be substantial.<sup>126</sup>

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<sup>123</sup> [MAGs](#), paragraph 4.10.

<sup>124</sup> [MAGs](#), paragraph 4.11. For example, large supermarkets may be a good alternative for customers of convenience stores, while convenience stores may be a poor alternative for customers of large supermarkets.

<sup>125</sup> See, for example, *JD Sports Fashion plc / Footasylum plc merger inquiry*, CMA Decision of 5 November 2021; *J Sainsbury PLC / Asda Group Ltd merger inquiry* CMA Decision of 25 April 2019; Anticipated acquisition by Asda Stores Limited of Netto Foodstores Limited, OFT decision of 23 September 2010; and *Completed acquisition by Wm Morrison Supermarkets plc of 30 stores from Co-operative Group Limited*, Case ME/4132/09, OFT decision of 10 July 2009.

<sup>126</sup> *JD Sports Fashion plc / Footasylum plc merger inquiry*, CMA Decision of 5 November 2021 at para 11.7

### ***Consideration of vertical relationships within the supply chain***

- 6.23 We have also taken into account the vertical link between the Parties in our competitive assessment, in which we consider the nature of competition between suppliers (in particular between suppliers selling PL products and branded products to retailers), closeness of competition between the Parties and the strength of any alternative competitive constraints on the Parties.
- 6.24 The CMA has considered how the vertical links between the parties may have an impact on the extent to which the Parties' incentives change as a result of the Merger and taken into account the Parties' various submissions on this point. In doing so, we have also considered the material difference between a short-term supply agreement and a permanent structural change in the market arising from the Merger and in particular that the supply agreement between C  r  lia and GMI has a limited duration and may be renegotiated or terminated.

### **Countervailing factors**

- 6.25 We considered whether there are any countervailing factors which are likely to prevent any SLC that we may have found. Specifically, we looked at whether entry by new suppliers or capacity expansion by existing suppliers would be timely, likely and sufficient to offset any SLC. We took into account the features of the tendering process for the supply of DTB products to UK grocery retailers and its implications for entry and expansion in DTB supply.
- 6.26 We also considered whether any Merger-specific efficiencies or buyer power would prevent any SLC. In particular, throughout our competitive assessment we have closely considered the role of the grocery retailers, their bargaining position relative to the Parties under the counterfactual including their available alternatives and the likely effect of the Merger on this relationship. This is considered as part of the assessment of the nature of competition, closeness of competition, alternative competitive constraints, and countervailing buyer power.

### **Evidence gathered**

- 6.27 The CMA does not have a prescriptive list of evidence that it will take into account in its assessments. Instead, the CMA will in each case undertake reasonable evidence gathering, consider the relevant available evidence and

decide the weight to place on that evidence in its decision-making.<sup>127</sup> The CMA also has a wide margin of appreciation in its use of evidence. Given the case-specific nature of merger investigations, the CMA may apply different analytical methodologies and approaches in different cases. In assessing the evidence, the CMA is not required to make precise predictions about the future such as whether any particular innovations will take place or whether a specific price rise or particular degrading of service quality will take place after a merger.<sup>128</sup>

- 6.28 We have gathered and taken account of a large range of evidence as part of our assessment. We have based our provisional decision on a range of evidence including shares of supply, capacity, internal documents, and views and other information submitted by the Parties and third parties including customers (retailers) and competitors.
- 6.29 We have had regard to tendering evidence. Given the channel-specific nature of the competitive process for the supply of DTB products to grocery retailers, we would not expect to see the Parties competing against each other head-to-head in tenders. We note that absence of interaction in tender data does not necessarily mean that the Parties aren't material competitors to each other.
- 6.30 In considering the weight to be placed on each piece of evidence, we have taken into account factors such as the nature of competition in the market, robustness of the data/methodology adopted, the nature of the party providing the information or view (and what their incentives in relation to the outcome of our investigation might be), the age of the information or document, context, author and recipient of a document, and the purpose for which it was produced. We have not relied on any one piece of evidence to inform our decision; rather, we have assessed all of the evidence together and in the round, including giving due regard to the extent that our view on the interpretation of a piece of evidence is corroborated by other evidence available to us.
- 6.31 We set out below the different pieces of evidence we have reviewed in this case. A detailed assessment of the evidence is provided in the remaining chapters of our Provisional Findings.
- (a) *Submissions from the Parties:* We considered evidence from the Parties submitted during the phase 1 inquiry, responses to our informal and formal requests for information and documents during phase 2, site visits,

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<sup>127</sup> MAGs, paragraph 2.19.

<sup>128</sup> MAGs, 2.21.



the Main Party Hearings and other phase 2 submissions. As in any inquiry, in using views of the Parties, we have given due regard to a range of factors, including the extent to which the views were corroborated by other evidence available to us.

- (b) *Share of supply estimates:* We have considered estimated wholesale supply shares of DTB products to grocery retailers in the UK and how these have changed over time. In this case, shares of supply provide a useful indication of suppliers' position in the market. We have considered the relative stability of shares of supply over time. We consider the implications of our shares of supply estimates alongside other evidence to understand the Parties' individual and combined significance in the supply of DTB products to retailers.<sup>129</sup>
- (c) *Tender data:* We recognise that we do not, in this case, have evidence showing head-to-head competition between the Parties in tenders or bids for contracts. We have taken into account this feature of the market in our assessment. However, as set out below, we have found that tender data in this case does not capture the competitive interactions between the Parties because the tendering phase is channel-specific: PL suppliers compete directly with other PL suppliers in tenders while branded suppliers compete directly with other branded suppliers. In addition, tenders are not the only point at which competition arises. Rather, grocery retailers engage in a series of purchasing decisions. First they decide whether they wish to sell PL products, branded products or both. For those retailers that have decided to provide end-consumers with both PL and branded DTB products, they then seek suppliers separately within their chosen channel(s), including selecting a PL supplier. Those retailers then go on to consider both PL and branded channels in making ongoing purchasing decisions.
- (d) *Internal documents:*
  - (i) We gathered several thousand internal documents.<sup>130</sup> We assessed documents produced at senior leadership and sales manager levels. We gathered evidence relating to which suppliers the Parties: (i) price

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<sup>129</sup> See Chapter 9.

<sup>130</sup> At Phase 2, we received 7,794 documents from C erelia and 2,780 documents from GMI.

benchmark against; (ii) monitor; and (iii) appear to respond to.<sup>131</sup> We carried out targeted searches in internal documents.

- (ii) We have considered how the Parties monitor each other, and the expressions of competition between the Parties that arise in internal correspondence or in engagement with customers. Where we draw inferences from internal documents, we have sought the Parties' views and/or the views of the third party involved. We have considered whether the internal documents paint a picture that is consistent with the Parties' representations and whether they are consistent with what third parties have told us.
  - (iii) We consider that in this case internal documents provide a limited insight into competitive conditions, for two key reasons. First, the nature of the competitive process means the Parties may be expected to focus on how best to serve their retailer customers relative to any alternative suppliers within their respective channels (PL and branded). Second, third parties told us that ongoing negotiations between suppliers and retailers often take place orally (so there may, in practice, be limited contemporaneous written record of these negotiations). In addition, the amount of documentary evidence from GMI may be limited as a result of its de-prioritisation of the Jus-Rol brand and its short document retention period.<sup>132</sup> The CMA notes that an absence of internal documents pointing to, for example, competitive interactions between the merger firms may not be probative where merger firms do not normally generate documents in the ordinary course of business and have document retention policies whereby documents are regularly deleted.<sup>133</sup>
  - (iv) We have sought supporting documentary evidence from third parties. Where this is not available, we have taken this into account when evaluating the evidence, including the reasons given (such as the oral or unspoken nature of the dealings).
- (e) *Evidence from third parties:* Our guidance explains that we may take into account the views of competitors and informed third parties. We recognise that some third parties have an interest in the outcome of our inquiry. We have given due regard to a range of factors including: the incentives of the

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<sup>131</sup> We considered (i) any regularly produced monitoring and benchmarking documents; (ii) any other regularly reporting documents; (iii) any one-off competitor and benchmarking documents; and (iv) any one-off documents where competitors are discussed.

<sup>132</sup> GMI has a [redacted] retention policy.

<sup>133</sup> [MAGs](#), paragraph 2,29(d).

party giving that view; the extent to which the party had knowledge that was relevant to the subject areas being explored as part of our assessment and the extent to which the view was corroborated by other evidence available to us. For the reasons set out above and in particular the fact that internal documents provide a limited insight into the nature of the competitive process we have found that third-party evidence is a particularly important source of evidence in this investigation. We set out further our approach to third-party evidence gathering.

- (i) We have undertaken customer research with all key retailer customers of the Parties.
- (ii) Our evidence gathering focused on qualitative evidence, including holding calls and hearings where possible, supplemented by email questions including to follow up on issues of central importance to this inquiry. Over the course of phase 1 and phase 2, we received a significant number of written questionnaire responses including from key retailers and competitors. In phase 1 we received 20 responses while we received 25 responses in phase 2.<sup>134</sup> We followed up with key third parties and in particular we sent additional questions to the key large retailers collectively representing a very large proportion of demand in the overall DTB market seeking further evidence in relation to pre-Merger competition between the Parties and how the Merger will materially impact future negotiations, including to test certain submissions the Parties had made to us. In addition, we held further calls with two key retailers and received a further written response from another.
- (iii) We have used the results of this research to draw qualitative conclusions where appropriate, alongside other evidence. Similarly, we have taken into account the role a third party plays commercially when evaluating their evidence, including retailers' product range and the scale of their operations in the DTB market.
- (iv) We also gathered evidence and views on the nature of competition and the competitive conditions in the relevant markets from a range of suppliers.

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<sup>134</sup> The responses were split fairly evenly between retailers and competitors.

## 7. Features of the sector and our competitive framework

### Introduction

- 7.1 As set out in the CMA's guidance, the CMA will, in its merger assessments, develop a general understanding of the competitive process, including of the competitive parameters that are most important to the process of competition in the relevant industry.<sup>135</sup>
- 7.2 We have considered evidence on various aspects of competition in order to understand how competition in the supply of DTB products to grocery retailers works.
- 7.3 In this section, we consider the following:
- (a) The role of consumer brands and PL products in the DTB retail sector.
  - (b) How grocery retailers choose a DTB supplier.
  - (c) What grocery retailers look for in a DTB supplier.
  - (d) The extent to which retailers multi-source.
  - (e) How easy it is for grocery retailers to switch suppliers.
  - (f) How demand at the wholesale level is linked to demand at the retail level.

### Branded and PL DTB products

- 7.4 Grocery retailers may stock both branded and PL products across much of their product range.<sup>136</sup> Branded products are sold under the brand name of the suppliers that sell them to retailers and are usually sold by multiple different retailers. PL products<sup>137</sup> (also known as 'own brand' or 'own label' products) are products sold exclusively by a given retailer with their own packaging and branding. Throughout this report we use the terms 'PL channel' and 'branded channel' to refer to these different product groups.

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<sup>135</sup> MAGs, paragraph 2.3.

<sup>136</sup> The CC's Groceries market investigation (2008) noted that 'The sale of own-label products as a share of total grocery sales has increased substantially overall since their widespread introduction in the 1960s', para 9.75. Since the CC's report was published, the UK grocery market has evolved, with a number of new players emerging. Notably, Aldi and Lidl, who are primarily focused own PL products, have become important players.

<sup>137</sup> Retailers also sometimes sell white label products. For PL products, the retailer has some control over the product specifications, whereas with white label goods, the manufacturer has full control over the product specifications and the retailer merely applies their branding.

- 7.5 The general prominence of PL products sold by UK grocery retailers has increased over time. The PL share of all products sold by grocery retailers in the UK was estimated to be c. 51% in 2013, growing to c. 60% in 2021.<sup>138</sup> Some commentators have suggested that PL products, which are typically sold at a lower price point than their branded equivalents, are currently becoming more popular among consumers in the UK due to rising costs of living.<sup>139</sup> A number of grocery retailers that operate a primarily PL model, such as Aldi and Lidl, are growing their presence within the UK market. For DTB products, PL is expected to make up 54% of the products sold by UK retailers in 2023, with 46% branded. The PL share of DTB products has increased from 46% since 2018.<sup>140</sup>
- 7.6 Retailers told the CMA that their decisions whether to stock PL DTB products, branded DTB products, or both, and how much of these products to stock, are driven by a number of commercial factors, including being informed by what their customers (end-consumers) want to buy. For example, one retailer [redacted] commented that ‘our start place [for ranging decisions] is coming from a position of: how do we best serve the needs of our customers’<sup>141</sup> and another [redacted] that ‘our decisions on which products we sell in which stores are customer and category led’.<sup>142</sup> Retailers consider the commercial impact on their business when considering whether to stock PL or branded products (and in what volumes) but most retailers indicated they did not otherwise have a particular preference for one channel over the other.<sup>143</sup>
- 7.7 Most of the largest retailers in the UK stock both PL and branded DTB products. As a result, at least [80-90]% of DTB products bought in the UK grocery sector are sold by retailers that sell both types of products.<sup>144</sup> [redacted], which accounts for [5-10]% of the retail supply of DTB products, stocks only PL, and [redacted], which accounts for [5-10]% of the retail supply of DTB products, stocks only branded DTB products. [redacted], which accounts for [0-5%] of the retail supply of DTB products, has only recently (in April 2022) started selling branded products.<sup>145</sup>

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<sup>138</sup> See Statista, ‘PL share of total grocery retail sales volume in the United Kingdom (UK) from 2013 to 2021’, accessed by the CMA on 29 September 2022.

<sup>139</sup> See Reuters, ‘PL ousting big brands as cost of living crisis grows’, accessed by the CMA on 29 September 2022.

<sup>140</sup> CMA analysis based on the Parties’ data (C erelia response to the CMA’s section 109 Notice (phase 2 s.109) (5), 22 August 2022, question 3).

<sup>141</sup> Transcript of a call with [redacted], [redacted], page 4, lines 14-15.

<sup>142</sup> [redacted] response to the CMA phase 2 customer questionnaire, [redacted].

<sup>143</sup> 12 responses to CMA phase 2 customer questionnaire, question 26.

<sup>144</sup> CMA analysis based on the Parties’ data (C erelia response to the CMA’s section 109 Notice (phase 2 s.109) (2) 14 August 2022, question 5). 15 responses to the CMA phase 2 customer questionnaire, questions 2 and 4.

<sup>145</sup> 15 responses to CMA phase 2 customer questionnaire, questions 2 and 4. [redacted],[redacted].

- 7.8 The large supermarkets (ie Tesco, Sainsbury's, Asda and Morrisons) generally choose to stock both branded and PL DTB products to give end-consumers more choice. These retailers explained that PL DTB products typically offer a cheaper alternative and act as an entry point to the category, whereas branded DTB products typically offer a wider range of products at a higher price point.<sup>146</sup> In reference to its decision to stock PL and branded DTB products, one retailer [X] told us that they 'want to ensure that [their] range offers customers a choice of products at appropriate and reasonable price points'.<sup>147</sup> Retailers that stock both PL and branded DTB products will not necessarily do so across their full range of products. We consider the competitive interaction between the Parties' DTB products at the retail level in more detail as part of our analysis of closeness of competition in Chapter 9.
- 7.9 Some retailers, including Aldi, Lidl and M&S, have a preference for stocking PL products over branded ones. One of them [X] told us that this is to avoid cross-over between PL and branded products in order to drive efficiencies.<sup>148</sup>
- 7.10 In the UK DTB retail market, there are distinct sets of suppliers to retailers in the PL and branded channels, with the exception of [X], which has a branded offering and will also be supplying DTB products in the PL channel to a large retailer [X] from 2023.<sup>149</sup>
- 7.11 The Parties supply different channels, with retailers purchasing DTB products as an input to PL products from C er lia, and purchasing branded DTB products from Jus-Rol.<sup>150</sup> As explained in Chapter 2, however, C er lia is Jus-Rol's contract manufacturer and so it manufactures DTB products for both channels.

### **Supply process**

- 7.12 In this section we consider how grocery retailers select and interact with DTB product suppliers, including how this differs across the PL and branded product channels.

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<sup>146</sup> Response to the CMA phase 2 customer questionnaire from [X], [X]. Response to the CMA customer questionnaire from [X], [X]. Response to the CMA customer questionnaire from [X], [X]. Response to the CMA customer questionnaire from [X], [X].

<sup>147</sup> Written submission from [X], [X], paragraph 6c.

<sup>148</sup> Note of a call with [X], [X], paragraph 8.

<sup>149</sup> 15 responses to the CMA phase 2 customer questionnaire, questions 2 and 4. 11 responses to the CMA phase 2 competitor questionnaire, questions 2 and 5.

<sup>150</sup> As explained in paragraphs 9.42 to 9.43, C er lia has [X].

- 7.13 We set out in more detail how the activities of the Parties compare across the value chain in the Chapter 9. We focus here on the interaction between grocery retailers and their suppliers.
- 7.14 Grocery retailers have consistently told us that, when they run tenders, these are specific to a particular channel (ie PL or branded). In particular, they first decide whether they wish to sell PL products, branded products or both, and then seek suppliers separately within the chosen channel(s).
- 7.15 In the following sub-sections, we describe how grocery retailers generally procure DTB products for their PL channel, and how the process for branded DTB products compares. While each grocery retailer may follow a slightly different process, here we outline the general approach common to most retailers.

### ***PL supply process***

- 7.16 The procurement of a DTB product begins with the grocery retailer identifying what product(s) it wants to stock, or the changes the grocery retailer wishes to make to its existing offering. The grocery retailer will then typically create a product brief with the specifications of the product.<sup>151</sup>
- 7.17 On the basis of the product brief, grocery retailers run a tender process where the bids of different PL suppliers are compared.<sup>152</sup> The outcome of this tender process is the selection of the preferred PL supplier.<sup>153</sup>
- 7.18 Some retailers conduct tenders on a fixed basis (eg every year) in order to ensure they are getting the best deal from their supplier. For example, Cérélia submitted that some grocery retailers ([redacted]) run formal tenders for the supply of DTB products through their PL channel on an annual basis.<sup>154</sup> This was corroborated by third party evidence.<sup>155</sup> Most grocery retailers, however, conduct tenders on an *ad hoc* basis either when they wish to launch new products or replace their supplier for existing products.<sup>156</sup>
- 7.19 The tendering process typically involves the following steps:

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<sup>151</sup> Cérélia response to the CMA's section 109 Notice (**phase 2 s.109**) 1, 14 July 2022, question 46.

<sup>152</sup> 10 responses to the CMA's customer questionnaire, question 22.

<sup>153</sup> Cérélia response to the CMA's section 109 Notice (**phase 2 s.109**) 1, 14 July 2022, question 46.

<sup>154</sup> MN, paragraph 317.

<sup>155</sup> 9 responses to the CMA's customer questionnaire, question 9.

<sup>156</sup> MN, paragraph 317. Response to the CMA customer questionnaire from [redacted], [redacted]. Response to the CMA customer questionnaire from [redacted], [redacted]. Response to the CMA customer questionnaire from [redacted], [redacted].

- (a) The product brief setting out the scope of the tender and an invite to tender is sent to suppliers. This could include details like technical requirements, product specs, forecasts and target costs.
- (b) Generally, there are several rounds of submissions where the supplier submits a proposal (including samples as required), and the grocery retailer gives feedback on product quality to the suppliers and requests changes.
- (c) Before awarding the agreement, suppliers' sites may be audited, including an assessment of the suppliers' capacity.<sup>157</sup>

7.20 Retailers typically have a high degree of involvement in the specifications of PL products. A significant part of this involvement consists of collaborating with the PL supplier on recipe development.

7.21 After the tender, the grocery retailer and the successful PL supplier will enter into a supply agreement which governs the relationship between the supplier and the retailer. The supply agreement typically covers price, product specification (including the recipe), supply frequency, agreements on planned promotions, and review mechanisms, though not supply volumes.<sup>158</sup> Supply agreements typically have no fixed term and can be terminated by giving reasonable notice in accordance with the Groceries Supply Code of Practice (**GSCOP**) regime.<sup>159</sup> Each order placed by the retailer, once accepted by the supplier, constitutes a distinct contractual agreement whereby each party is bound by certain terms.<sup>160</sup> Orders are placed by retailers on a rolling basis based on short-term forecasts provided by retailers [redacted].<sup>161</sup>

7.22 About two thirds (six out of nine) of retailers submitted that they review the terms of their agreement on an annual basis.<sup>162</sup> If the review is unsatisfactory, or if the retailer or the supplier is unhappy with their agreement at any other point, they may choose to renegotiate the supply agreement. Renegotiations are generally spurred by:

- (a) A range review: a process by which grocery retailers assess the range and performance of products within a given grocery category and under-

<sup>157</sup> Response to the CMA customer questionnaire from [redacted], [redacted], question 14. Response to the CMA customer questionnaire from [redacted], [redacted], question 13.

<sup>158</sup> 9 responses to the CMA's customer questionnaire, question 9.

<sup>159</sup> This is often interpreted to be [redacted] however this is not fixed, and reasonable notice will depend on the individual circumstances of each case. MN, paragraph 54.

<sup>160</sup> 9 responses to the CMA's customer questionnaire, question 9.

<sup>161</sup> MN, paragraph 382c.

<sup>162</sup> 9 responses to the CMA's customer questionnaire, question 9.



performing products may be removed or reduced with additional space allocated to products that are performing well;

- (b) Changes in price proposed by the supplier, for example to reflect changes in input costs;
- (c) Changes or issues with the quality of the product; or
- (d) New product development initiated by either the grocery retailer or, more occasionally, the supplier.<sup>163</sup>

7.23 If either party is not happy with the outcome of the negotiation, then they can terminate the supply agreement and the retailer will launch a tender to find a new supplier.

### ***Branded supply process***

7.24 The supply process for branded DTB products is generally less complex than that for PL DTB products. This is due to the fact that for branded DTB products, recipe and product development is entirely carried out by the supplier (the brand owner) with little to no involvement by the grocery retailer.<sup>164</sup> In addition, we have not seen evidence of tender processes being used for branded supply.

7.25 Discussions between the grocery retailer and the branded DTB product supplier occur approximately on an annual basis, and the contracts retailers have with their branded DTB suppliers are often rolled over from year to year with little or no negotiation.<sup>165</sup> In addition to the factors retailers discuss with PL suppliers (ie range, price, product quality and product development), discussions with branded suppliers will cover [redacted].<sup>166</sup>

### **Parameters of competition**

7.26 In this section, we consider what factors are important to grocery retailers when deciding upon a DTB supplier. Our assessment of whether and to what extent suppliers of DTB goods compete along these parameters will be left for Chapter 9.

7.27 The Parties submitted that:

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<sup>163</sup> Cérélia response to the CMA's request for information (**Phase 1 RFI**) (1), 21 March 2022, question 46.

<sup>164</sup> Response to the CMA questionnaire from [redacted], [redacted], question 13.

<sup>165</sup> GMI response to the CMA's section 109 Notice (**phase 1 s.109**) (2), 28 February 2022, question 7.

<sup>166</sup> GMI response to the CMA's section 109 Notice (**phase 1 s.109**) (2), 28 February 2022, question 7.

- (a) Manufacturers, whether supplying into the PL or the branded channel, compete on the parameters of price, product quality and reliability of service.<sup>167</sup>
- (b) While price, quality and service level are important for retailers, they do not mean the same thing in the context of consumer brands (such as Jus-Rol) and contract manufacturing services. For example, when considering what consumer brands to stock in their stores, 'quality' and 'service level' discussions often focus heavily on brand equity and promotional/marketing activity. In the context of contract manufacturing services for PL provision, by contrast, the focus is much more on which supplier can manufacture products that meet the retailer's brief in terms of product quality, appearance and taste for the lowest possible price.<sup>168</sup>

7.28 We set out third-party evidence and evidence from tenders in relation to the key parameters of competition below.

### ***Third-party evidence***

7.29 In relation to price:

- (a) All customers (nine out of nine) indicated that, in their relationship with their PL suppliers, price is an important factor to them.<sup>169</sup>
- (b) The majority (ten out of 11) of customers indicated that, in their relationship with their branded suppliers, price is an important factor to them.<sup>170</sup>
- (c) One supplier into the PL channel [REDACTED] told us that the business of manufacturing DTB products is driven by price and quality but that the focus in the UK is generally on price.<sup>171</sup> It also told us that [REDACTED].<sup>172</sup>
- (d) One grocery retailer [REDACTED] told the CMA that price is 'extremely important' in its relationship with both branded and PL supplier due to the grocery market being highly competitive.<sup>173</sup>

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<sup>167</sup> MN, paragraph 358.

<sup>168</sup> C er lia response to the Annotated Issues Statement and Working Papers, 13 September 2022, annex AIS.05.b, page 21.

<sup>169</sup> 9 responses to the CMA's customer questionnaire, question 10.

<sup>170</sup> 11 responses to the CMA's customer questionnaire, question 10.

<sup>171</sup> Note of a call with [REDACTED], [REDACTED], paragraph 9.

<sup>172</sup> Note of a call with [REDACTED], [REDACTED], paragraph 11.

<sup>173</sup> Response to the CMA customer questionnaire from [REDACTED], [REDACTED], question 10.

7.30 In relation to quality:

- (a) The majority of customers indicated that, in their relationship with their PL (eight out of nine) and branded (seven out of 11) suppliers, quality is an important factor to them.<sup>174</sup>
- (b) One PL supplier [redacted] primarily because of the superior quality of its product offering.<sup>175</sup>
- (c) Three grocery retailers [redacted], [redacted], [redacted] ranked quality as the most important factor in their relationship with their PL supplier. Similarly, two retailers [redacted], [redacted] ranked quality as the most important factor in their relationship with their branded supplier.<sup>176</sup> One grocery retailer [redacted] told us that before switching [redacted] and concerns around quality.<sup>177</sup>

7.31 In relation to service level:

- (a) The majority of customers indicated that, in their relationship with their PL (six out of nine) and branded suppliers (eight out of 11), service is an important factor to them.<sup>178</sup>
- (b) One supplier of branded and PL DTB goods [redacted] told us that [redacted].<sup>179</sup>
- (c) For both PL and branded products, two grocery retailers [redacted] and [redacted] ranked service level and surety of supply respectively as the most important factor to them in their relationship with their suppliers and one said that a primary concern to them is to have the product available to sell in the first instance.<sup>180</sup> Another grocery retailer [redacted] commented that 'continuity of supply is key'.<sup>181</sup>

**Evidence from tenders**

7.32 [redacted], a large retailer [redacted] carried out a supplier review triggered by [redacted].<sup>182</sup> It explained that, at each stage of the review, PL suppliers were given feedback on product quality and any changes requested as well as on the commercial

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<sup>174</sup> 11 responses to the CMA's customer questionnaire, question 10.

<sup>175</sup> Note of a call with [redacted], [redacted], paragraph 15.

<sup>176</sup> 4 responses to the CMA's customer questionnaire, question 10

<sup>177</sup> Note of a call with [redacted], [redacted], paragraph 7.

<sup>178</sup> 11 responses to the CMA's customer questionnaire, question 10.

<sup>179</sup> Note of a call with [redacted], [redacted], paragraph 4.

<sup>180</sup> Response to the CMA customer questionnaire from [redacted], [redacted], question 10. Response to the CMA customer questionnaire from [redacted], [redacted], question 10.

<sup>181</sup> Response to the CMA customer questionnaire from [redacted], [redacted], question 10.

<sup>182</sup> C r lia Internal Document, Annex 2-1 to the Phase 1 s.109 (3), [redacted], 14 March 2022. Note of a call with [redacted], [redacted], paragraph 3.

viability of their proposals. The retailer also completed cost modelling analysis on key ingredients to ascertain the cost breakdowns, considered which suppliers were able to offer the best commercial proposition and assessed the available capacity of different players.<sup>183</sup>

- 7.33 Evidence from an email from the retailer to Cérélia in relation to the outcome of the tender indicated that [REDACTED].<sup>184</sup> This tender is discussed in more detail in paragraphs 9.143 and 9.144.
- 7.34 [REDACTED], a retailer [REDACTED] carried out a tender for its PL ready rolled puff and shortcrust pastry. Suppliers were asked for a product of a similar or improved quality to the retailer's current one, to quote their most competitive prices and to break down their costs. In a Cérélia internal document discussing the progress of Cérélia's bid for this tender, a CUK Sales Manager noted that [REDACTED].<sup>185</sup>

### ***Other parameters of competition***

- 7.35 The majority (six out of nine) of customers indicated that innovation is also an important factor to them in their relationship with their PL supplier and a minority (five out of 11) indicated this was important to them in their relationship with their branded supplier.<sup>186</sup>
- 7.36 When asked about a specific PL manufacturer [REDACTED], one grocery retailer [REDACTED] highlighted its limitations in range of products as a reason why it was not a suitable supplier.<sup>187</sup>
- 7.37 One retailer [REDACTED] mentioned its strict requirements in relation to the ingredients used in its PL products. [REDACTED].<sup>188</sup> However, we have not heard other retailers raising this concern and some [REDACTED]. So, whilst we consider that the use of specific ingredients can be a parameter of competition in certain circumstances, this is not always the case.
- 7.38 Sustainability, in terms of packaging requirements and ingredients, was also considered an important factor. A majority of retailers (five out of nine)

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<sup>183</sup> Response to the CMA customer questionnaire from [REDACTED], [REDACTED], question 14.

<sup>184</sup> Cérélia Internal Document, Annex ME\_6988\_22\_004647 to the Phase 2 s.109 (1), [REDACTED], 10 June 2022.

<sup>185</sup> Cérélia response to the CMA's s.109 of 30 June 2022, question 48a, 'RE: Tender - Ready Rolled Puff and Shortcrust Pastry', ME\_6988\_22\_007613 and 'RE: Confidential - [REDACTED] tender update and next steps', ME\_6988\_22\_003632.

<sup>186</sup> 11 responses to the CMA's customer questionnaire, question 10.

<sup>187</sup> Response to the CMA customer questionnaire from [REDACTED], [REDACTED], question 18.

<sup>188</sup> Response to the CMA customer questionnaire from [REDACTED], [REDACTED], question 18.

referenced it for their relationships with PL suppliers and just under half (four out of ten) referenced it for branded suppliers.<sup>189</sup>

- 7.39 While responses from third parties, on the whole, highlighted similar factors that were important to them for both their PL and branded supplier, there were some differences.
- 7.40 Two retailers [X] and [X] mentioned that marketing was important to them in their relationship with their branded supplier but not with their PL supplier. The explanation given by one of them [X] was that this was important to drive sales of the branded product.<sup>190</sup>
- 7.41 One retailer [X] mentioned that customer-centric planning, ‘incrementality’ (ie growing overall sales rather than reallocating sales between products) and customer and market insight were important factors to it when considering the risks and benefits between supplying PL and branded products. The explanations it gave for why these factors are important were focused on ‘ensuring that its range offers customers a choice of products (creating an optimal balance across PL and branded), at appropriate and reasonable price points’.<sup>191</sup>

### ***Provisional conclusions on factors on which suppliers compete***

- 7.42 Evidence from third-party questionnaire responses and tenders is consistent with Cérélia’s submission that price, quality, and service level are the most important factors on which suppliers of DTB products compete.
- 7.43 We consider that the most important parameters of competition for branded and PL products are similar. However, there are some less important parameters, such as marketing and ability to grow the category, which are relevant for branded suppliers but not PL suppliers.

### **Multi-sourcing**

- 7.44 Multi-sourcing refers to the ability and tendency of customers to source a product from more than one supplier at the same time.

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<sup>189</sup> 10 responses to the CMA’s customer questionnaire, question 10.

<sup>190</sup> Response to the CMA customer questionnaire from [X], [X], question 10. Response to the CMA customer questionnaire from [X], [X], question 10.

<sup>191</sup> Response to the CMA customer questionnaire from [X], [X], question 10.

- 7.45 The degree of multi-sourcing in the market impacts not only the range of products that retailers stock but also effects the competitiveness of different suppliers and how easy it is for retailers to switch supplier.
- 7.46 In the context of this Merger inquiry, we consider the following forms of multi-sourcing:
- (a) Whether retailers use more than one branded DTB supplier.
  - (b) Whether retailers use more than one PL DTB supplier.
- 7.47 The question of whether to stock PL and branded products has been discussed in paragraphs 7.6 to 7.8. As part of our assessment, we distinguish between multi-sourcing where retailers use different suppliers for different DTB products across their range (eg using one supplier for ingredient pastry and another for pizza dough) and multi-sourcing where retailers use different suppliers for the same individual products/SKUs (eg using two different suppliers to supply ready rolled puff pastry).

#### *Multi-sourcing branded products*

- 7.48 Most (eight out of 14) of the customers who stock branded products and that responded to our inquiry indicated that they only stock Jus-Rol. For all customers who sold more than one branded product (six out of 14), these brands were stocked in addition to, not instead of, Jus-Rol.<sup>192</sup> Other brands sold alongside Jus-Rol include Bells, Theos, Dorset Pastry, The Northern Dough Co., Shire and Feuilles de Filo. These brands are usually present within one or two DTB product categories (eg filo pastry or pizza dough) for a particular retailer. In some cases, these other brands are present in the same DTB product type. For example, one retailer [X] sold three different branded puff pastry alternatives.<sup>193</sup>
- 7.49 One retailer [X], accounting for less than [0-5%] of the market, stated that multiple brands were listed as a result of recent innovations in dough products such as sourdough and brioche frozen dough.<sup>194</sup>

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<sup>192</sup> 14 responses to the CMA's customer questionnaire, question 4.

<sup>193</sup> In Cérélia's response to the Alternative Competitive Constraints Working Paper, Cérélia submitted that retailers were supplied by several brands not listed by the CMA. One major retailer [X] identified as only stocking Jus-Rol is also supplied by a small supplier for one DTB product, which was also submitted by the supplier. Other brands referenced by Cérélia could not be corroborated by third-party submissions, whether from retailers or suppliers.

<sup>194</sup> Response to the CMA customer questionnaire from [X], [X], question 8.

## Multi-sourcing PL products

7.50 Cérélia submitted that:

(a) Many retailers multi-source supply for their PL products,<sup>195</sup> [REDACTED].<sup>196</sup>

(b) [REDACTED].<sup>197</sup>

(c) [REDACTED]. [REDACTED].<sup>198</sup>

(d) [REDACTED],<sup>199</sup> [REDACTED].<sup>200</sup>

7.51 We found that there are instances of retailers sourcing DTB inputs for different PL products from different DTB suppliers (eg PL ingredient pastry from one supplier and PL pizza dough from another). A majority (six out of nine) of the customers that sell PL products who responded to our phase 2 questionnaire indicated they use more than one PL DTB supplier.<sup>201</sup>

7.52 We note that ready-to-bake products include PL frozen breakfast goods, which most retailers stock and for which they generally use a different supplier than the supplier used for their other DTB products (chilled DTB and frozen ingredient pastry products). As set out in paragraphs 9.174 to 9.176, none of the suppliers producing these products were mentioned in the Parties' or third parties' submissions and we are not aware of any of them having competed in tenders against Cérélia. Therefore, we consider the use of alternative suppliers for these products to be of limited significance for the competitive dynamics of this market.

7.53 We found no instances of grocery retailers currently sourcing the same DTB product type (eg puff pastry) from more than one PL supplier. Cérélia submitted that [REDACTED].<sup>202</sup>

7.54 We found that there are a variety of reasons why grocery retailers do not multi-source more frequently for their PL DTB products, including:

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<sup>195</sup> MN, paragraph 500.

<sup>196</sup> Cérélia's response to the Phase 1 Issues Letter, 11 May 2022, paragraph 6.15.

<sup>197</sup> MN, paragraphs 501 to 509.

<sup>198</sup> [Cérélia's response to the Issues Statement](#), 2 August 2022, paragraphs 4.13 and 4.14.

<sup>199</sup> MN, paragraph 503.

<sup>200</sup> MN, paragraph 503.

<sup>201</sup> 9 responses to the CMA's customer questionnaire, question 2.

<sup>202</sup> Cérélia response to the Annotated Issues Statement and Working Papers, 13 September 2022, annex AIS.05.b, page 31.

- (a) Some retailers [REDACTED], [REDACTED], [REDACTED] indicated that their choice was driven by the options available to them. This was either because they were satisfied with their supplier, or because of a lack of good alternative manufacturers.
- (b) One retailer [REDACTED] said that single-sourcing drives cost synergies.
- (c) Another retailer [REDACTED] said it does not multi-source because it valued surety of supply.<sup>203</sup>

7.55 Moreover, one DTB supplier [REDACTED] mentioned that suppliers might be driving the lack of multi-sourcing since they would not want to supply small quantities of products to a customer. We note that this is consistent with some evidence from Cérélia's internal documents. For example, emails between Cérélia and retailers suggest that [REDACTED].<sup>204</sup>

7.56 In the Main Party Hearings, Cérélia also submitted that, [REDACTED].<sup>205</sup>

### ***Provisional conclusions on multi-sourcing***

7.57 Most retailers stock both branded and PL products. While multi-sourcing of DTB inputs to PL products is not uncommon, retailers tend to purchase the bulk of DTB inputs from a single supplier, and where they do use more than one PL supplier this typically relates to different types of DTB products. There is evidence that different branded suppliers are used more frequently, and these do sometimes relate to the same product types. However, the branded products are typically Jus-Rol products, and where retailers use alternative branded suppliers in addition to Jus-Rol, those suppliers often account for relatively small quantities or more niche products.<sup>206</sup>

7.58 This multi-sourcing behaviour means that end-consumers typically have a choice between the retailer's PL DTB product and a small number of branded products – although, for many types of DTB products, this is often confined to only Jus-Rol branded products.

7.59 The tendency for retailers not to use more than one supplier for a given DTB product type means that switching suppliers tends to involve moving large volumes to a new supplier, making switching more challenging than would be the case if retailers were switching volumes between existing suppliers.

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<sup>203</sup> 10 responses to the CMA's customer questionnaire, question 3.

<sup>204</sup> Cérélia Internal Document, Annex ME\_6988\_22\_006183 to the Phase 2 s.109 (1), [REDACTED], 20 November 2018. Cérélia Internal Document, Annex ME\_6988\_22\_005885 to the Phase 2 s.109 (1), [REDACTED], 14 September 2021.

<sup>205</sup> Cérélia, main party hearing transcript, page 58, line 25.

<sup>206</sup> As covered in Appendix C, other branded suppliers have a share of supply of only 7%.



7.60 A recent example of a large retailer [X] choosing to multi-source for different DTB products demonstrates that multi-sourcing is possible and may be a tool for retailers that want to test a supplier or switch incrementally. However, we note that there is still a general preference to source the majority of PL products from one supplier and this indicates that suppliers who are better able to meet the volume and range requirements of larger retailers may have a competitive advantage relative to smaller suppliers with a narrower product set.

## Switching costs

7.61 Switching occurs when a customer changes its supplier. This supplier change could relate to the totality of a customer's purchases or to marginal units ordered.

7.62 The costs involved in switching can take different forms and can be either monetary or non-monetary. For example, when running a tender, customers will spend time producing documents, searching the market, and carrying out the tendering process. Other switching costs may occur post-tender, including finalising the recipe formulation, onboarding/completion of the retailers' checks on the new supplier, cementing logistics arrangements, etc.

7.63 The presence of significant switching costs may limit the ability of alternative suppliers to impose a competitive constraint on the Merged Entity because they reduce their ability to attract customers. In the presence of high switching costs, retailers will find it difficult to source DTB products from alternative suppliers and potential new suppliers will find it difficult to enter the market (with smaller suppliers also finding it more difficult to expand).

7.64 In this market, switching may involve (i) changing suppliers altogether (retailers can switch between a PL and a branded supplier, between PL suppliers or between branded suppliers) or (ii) switching volumes from one to another of its existing suppliers (eg from its PL supplier to its branded supplier or vice versa). In this section we consider the prevalence of switching and the costs associated with each of these types of switching events.

7.65 C r lia submitted that:

(a) While there may be some costs to switching suppliers, these are simply part of the ordinary course of switching in any retail sector in the UK and

that, if these factors were to comprise material barriers to switching, no PL sector product in the UK could be regarded as contestable.<sup>207</sup>

(b) [redacted] is not a long time for a retailer to switch to an alternative PL supplier and is consistent with the time usually taken to switch suppliers in other grocery sectors.<sup>208</sup>

(c) [redacted].<sup>209</sup>

### *Switching to a new supplier*

7.66 Switching within the branded channel is extremely rare. We are not aware of any examples of retailers switching branded products in the past five years. GMI told us that [redacted] instances since 1 January 2019 in which grocery retailers switched, or threatened to switch, from supplying Jus-Rol branded DTB products to those of an alternative supplier.<sup>210</sup> This is consistent with the limited alternative supply options available in the branded channel as set out in Chapter 9. In this subsection we therefore focus primarily on switching between suppliers within the PL channel.

7.67 Switching of PL suppliers does occur; however, it does not happen frequently. Across the six largest grocery retailers (accounting for 90% of the DTB market), there have been five instances of switching PL supplier in six years. They were carried out by three retailers: [redacted], [redacted] and [redacted]. We consider this to be infrequent because only one of the large grocery retailers has switched since 2017 and because, as explained in paragraph 7.22, grocery retailers often review the terms of their agreements with suppliers annually, meaning there will have been a significant number of occasions on which retailers have decided not to switch.

7.68 When switching does occur, it may only relate to certain products or SKUs, eg [redacted].<sup>211</sup>

7.69 Any switching must take place within the requirements imposed on retailers by GSCOP. Before terminating a contract or delisting a supplier's products, a retailer must provide reasonable notice to the supplier. This notice period will depend on, but is not limited to, the duration of the supply agreement or the frequency with which orders are placed by the retailer.<sup>212</sup> When delisting

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<sup>207</sup> Cérélia's response to the Phase 1 Issues Letter, 11 May 2022, paragraph 6.54.

<sup>208</sup> Cérélia's response to the Phase 1 Issues Letter, 11 May 2022, paragraph 6.57.

<sup>209</sup> Cérélia, main party hearing transcript, page 70, lines 6 to 9.

<sup>210</sup> GMI response to the CMA's section 109 Notice (Phase 1 s.109) (2), 28 February 2022, question 39.

<sup>211</sup> Response to the CMA customer questionnaire from [redacted], [redacted], question 2.

<sup>212</sup> GSCOP, paragraph 1.

products, this period also includes allowing the supplier sufficient time to have the decision reviewed and providing written reasons for the retailer's decision.<sup>213</sup>

7.70 A majority of retailers (seven out of nine) submitted that contracts with PL suppliers were typically 12 months long with prices reviewed annually. Only a minority (three out of nine) of retailers said prices were, or could also be, reviewed more frequently according to inflation and commodity fluctuations.<sup>214</sup>

7.71 A small number of third parties characterised switching costs as low. When asked how easy or difficult it is to switch suppliers of PL DTB products, one retailer [REDACTED] (out of nine) said that it was easy. Another retailer [REDACTED] submitted that, assuming that the correct GSCOP time frames and processes have been adhered to, in theory it is possible to switch with relative ease.<sup>215</sup> A competitor [REDACTED] told us that some products could be transferred at short notice provided the recipe is already developed and that product standards are not perceived as a barrier.<sup>216</sup>

7.72 Whilst some of their responses were consistent with Cérélia's submissions on what is involved in switching, a number of third parties nevertheless characterised switching as difficult. When asked how easy or difficult it is to switch suppliers in the PL channel, more than half of the customers (five out of nine) submitted that it was either difficult or very difficult.<sup>217</sup> In relation to switching, third parties commented that:

(a) [REDACTED] It would take approximately six to nine months to switch supplier, as it takes time to reformulate the recipe, identify the best quality products and agree the terms of supply.<sup>218</sup>

(b) [REDACTED] A brand new supplier would require a long transition period of a minimum of 12 months.<sup>219</sup>

(c) [REDACTED] Switching PL DTB supplier usually takes at least one year.<sup>220</sup>

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<sup>213</sup> GSCOP, paragraph 16(2).

<sup>214</sup> 9 responses to the CMA's customer questionnaire, question 9.

<sup>215</sup> 9 responses to the CMA's customer questionnaire, question 22.

<sup>216</sup> Note of a call with [REDACTED], [REDACTED], paragraph 14.

<sup>217</sup> 9 responses to the CMA's customer questionnaire, question 22. We note that some respondents appeared from their answer to this question to conflate the availability of alternatives with the ease or difficulty of switching to an alternative. We have taken this into account when attaching weight to this evidence.

<sup>218</sup> Response to the CMA customer questionnaire from [REDACTED], [REDACTED], question 22.

<sup>219</sup> Note of a call with [REDACTED], [REDACTED], paragraph 31.

<sup>220</sup> Note of a call with [REDACTED], [REDACTED], paragraph 19.

(d) [redacted] It would have to give reasonable notice of any switch, so the timescales are a barrier.<sup>221</sup>

- 7.73 When asked in the phase 1 questionnaire, a majority of customers (five out of eight) referenced the time needed for teams to agree on the product itself, whether or not this is done in a tender process, and to audit the supplier. Customers (three out of eight) also mentioned the need for suppliers to adjust their manufacturing processes in order to meet capacity and product specification requirements, if they did not already meet them when chosen (the time taken to do this is factored into the estimates given by retailers in paragraph 7.72).<sup>222</sup>
- 7.74 As well as switching within channels, retailers can also switch from a supplier in one channel to a new supplier in a different channel. We note that the switching costs involved in this may depend upon the direction in which the switch takes place. In particular, we consider that the cost of switching from an existing PL to a new branded supplier is likely to be lower than switching in the other direction given that, for branded products, retailers do not have to work with the supplier to develop the product as is the case in the PL channel.

#### *Switching between existing suppliers*

- 7.75 Rather than switching to a new supplier, retailers may choose to switch volumes between existing suppliers. Since supply agreements typically do not specify the volumes to be purchased, this can be varied at short notice (assuming suppliers do not have capacity constraints) and switching volumes between existing suppliers is likely to be relatively easy and costless.
- 7.76 Such switching could take place within the PL or branded channels if retailers use more than one supplier in each. However, as set out in the multi-sourcing section above, it is unusual for retailers to have more than one supplier for a given DTB product type in each channel. Switching volumes between existing DTB suppliers therefore would typically occur across the PL and branded channels. Where the Parties are the sole suppliers to a retailer, this entails the retailer switching its purchases of Jus-Rol's branded product to their PL product supplied by Cérélia in the PL channel, or vice versa. We refer to this mechanism as 'rebalancing' between PL and branded products.
- 7.77 One retailer [redacted] told us that it has a determined space for this area (DTB products) so if there is a more competitive price on PL, it might expand its

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<sup>221</sup> Response to the CMA customer questionnaire from [redacted], [redacted], question 22.

<sup>222</sup> 8 responses to the CMA's customer questionnaire, question 13.

range and take out the brands or vice versa. It also told us that if it saw a cost-price increase on a product that made it uncompetitive it would look to remove it and increase another product.<sup>223</sup>

- 7.78 The ability to switch volumes may depend on the direction in which retailers are switching. For example, one retailer [REDACTED] submitted that its ability to switch from PL to branded is limited because PL serves as the entry price point for the category but that it had in the past switched from branded products to PL in response to a price rise.<sup>224</sup>

### ***Provisional conclusions on switching costs***

- 7.79 Switching can occur in several different ways in this market. Retailers can switch between branded product suppliers or between PL suppliers. They can also switch by adjusting the volumes they purchase between their existing branded and PL suppliers. These different types of switching have different levels of associated switching costs.

- 7.80 Since retailers collaborate with their PL suppliers on developing the final product, switching to a new PL supplier likely has a higher cost than switching branded supplier. Although retailers do not switch PL supplier frequently, the fact that they tend to review their supply contracts regularly suggests they are prepared to switch if they judge it necessary.

- 7.81 Switching volumes between existing suppliers – typically between branded and PL suppliers – is likely to incur the lowest level of switching costs as this is simply a case of ordering more volume from one supplier and less from the other.

### **The relationship between demand at the wholesale level and demand at the retail level**

- 7.82 Taking into account the features of the DTB sector in the UK, as summarised above, we have considered how demand at the wholesale level is linked to demand at the retail level.

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<sup>223</sup> Transcript of a call with [REDACTED], [REDACTED], page 7, lines 16 to 21.

<sup>224</sup> Transcript of a call with [REDACTED], [REDACTED], page 10, lines 5 to 9.

### ***Competition between PL and branded DTB products and our focus on competition at the wholesale level***

7.83 In keeping with the description of the sector set out above, we have observed that there seems to be some competitive interaction between PL and branded DTB products at three (inter-connected) stages:

- (a) Retailers decide whether to stock PL DTB products, branded DTB products or both.
- (b) Where a retailer decides to stock both product types, retailers consider how to allocate shelf space (volumes) between PL and branded DTB products – ie retailers decide how much PL and branded DTB product to buy and from which suppliers (wholesale competition).
- (c) Where both PL and branded products are sold by a retailer, PL and branded DTB products compete with each other to be bought by end-consumers off the shelf (retail competition).<sup>225</sup>

7.84 Our investigation is focused on the wholesale level as this is the level at which retailers purchase DTB products from the Parties. As set out above, retailers purchase DTB products from C erelia in the PL channel and from Jus-Rol in the branded channel.

7.85 While retailers can be expected to consider the value of the offering of the products available in the two channels when deciding whether to stock PL DTB products, branded DTB products or both, we consider that this decision is unlikely to be materially affected by the Merger. A retailers' business model is typically driven by its position in the market and the needs of its targeted end-consumers. The choice whether to stock just PL, just branded or both is therefore unlikely to be affected by more marginal changes in pricing or quality that might occur as a result of the Merger. This is consistent with the fact that retailers' choices are typically not informed by running tender processes that include both PL and branded suppliers as outlined above.<sup>226</sup> In addition, concerns raised by third parties in relation to the Merger have primarily related to a loss of wholesale competition between incumbent

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<sup>225</sup> We note that while it is feasible that end-consumers might switch to a different retailer based on their DTB product offering (inter-retailer competition), the evidence we have received indicates that this is unlikely to occur because (i) DTB products are typically a small proportion of an end-consumer's shopping basket, (ii) the level of differentiation across DTB products is limited (see below) and (iii) DTB products are often an 'impulse purchase'.

<sup>226</sup> While it is acknowledged that retailers' choice over whether to stock both PL and branded DTB products may change over time, there was little evidence to indicate such changes were expected to occur except for a limited number of SKUs.

suppliers and the ability of retailers to ‘trade off’ the Parties in their respective supply into the PL and branded channels.

7.86 While our focus is on competition between suppliers of PL and branded DTB products to grocery retailers (ie at the wholesale level), we nevertheless note that competition at each stage is interrelated and driven to a significant extent by the needs of end-consumers:

- (a) Retailers decide whether to stock PL and/or branded DTB products, informed by the needs of their end-consumers.
- (b) Where both PL and branded products are stocked, end-consumers decide at the retail level which products to buy and retailers respond to these retail demand preferences by purchasing more or less of the PL or branded DTB products at the wholesale level. A retailer may even stop stocking the PL or branded DTB product entirely if few end-consumers are buying it – the CMA has found evidence of such ‘de-listing’ events for certain underperforming SKUs.

*The connection between PL and branded DTB product competition at the retail level and competition at the wholesale level*

7.87 The connection between competition at the retail level and competition at the wholesale level is illustrated, for example, by considering the choices of a retailer that currently purchases their DTB products solely from C  r  lia in the PL channel and Jus-Rol in the branded channel. This situation arises for a significant portion of the market because, as set out in this chapter, most retailers stock both branded and PL DTB products, multi-sourcing for a given DTB product type within the branded and PL channels is rare and the C  r  lia and Jus-Rol are the leading suppliers into the PL and branded channels respectively.

7.88 As set out in this chapter, where both PL and branded products are stocked, end-consumers decide at the retail level which products to buy and retailers respond to these retail demand preferences by purchasing more or less of the PL or branded DTB products at the wholesale level. This is corroborated by third party evidence. For example, a buyer from [REDACTED] commented that ‘[if] there is more volume [ie demand from consumers] on one line, you would buy more of it as a result of that’.<sup>227</sup> If there is no change in suppliers and the retailer continues to buy its DTB products through the Parties, an increase in demand for the branded products at the retail level will necessarily result in more DTB

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<sup>227</sup> Transcript of a call with [REDACTED], [REDACTED], page 7, line 5.

products being purchased from Jus-Rol and vice versa – an increase in demand for PL products at the retail level (for example due to an improvement in PQRS) will necessarily result in more DTB products being purchased from Cérélia.

- 7.89 As a result, the CMA is provisionally of the view that competition at the wholesale level is linked, to some extent, to the competitive dynamics between PL and branded products at the retail level. That is, the demand for DTB products across the channels at the retail level significantly influences the amount that the Parties are asked to supply to retailers at the wholesale level (ie it is a ‘derived demand’).<sup>228</sup>
- 7.90 The competitive dynamics at the retail and wholesale levels will not be identical because retailers may have considerations other than satisfying consumer needs when deciding which DTB products to buy from suppliers. Wherever possible, we have therefore sought to distinguish between the retail and wholesale levels as part of our evidence gathering and have considered the evidence for competition between the Parties specifically at the wholesale level in Chapters 8 and 9. However, we note that the interconnected nature of the competition at the retail and wholesale levels means that the two levels cannot always be clearly separated and evidence of competition at the retail level is a relevant factor that should be taken into account as part of the competitive assessment.<sup>229</sup>

## 8. Market definition

### *Introduction / Framework of assessment*

- 8.1 The assessment of the relevant market (or markets) is an analytical tool that forms part of the analysis of competitive effects of the merger,<sup>230</sup> and is intended to assist the CMA in reaching a properly based outcome.<sup>231</sup> Market definition involves identifying the most significant competitive alternatives available to the Parties and includes the sources of competition to the Parties that are the immediate determinants of the effects of the merger.<sup>232</sup> However, the CMA’s assessment of the competitive effects of the merger does not need

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<sup>228</sup> We note that this is the case irrespective of the fact that the Parties are engaged in different activities with Cérélia primarily just providing the manufacturing in the PL channel and Jus-Rol supplying a more complete product.

<sup>229</sup> For example, see response of [§] to question 25 of the CMA customer questionnaire from [§] where this dynamic appears to have caused some third-party customers/retailers to use the terms PL for Cérélia and branded for Jus-Rol interchangeably.

<sup>230</sup> MAGs, paragraph 9.1.

<sup>231</sup> Meta Platforms, Inc. v Competition and Markets Authority, CAT 26 [2022], paragraph 41.

<sup>232</sup> MAGs, paragraph 9.2.



to be based on a highly specific description of any particular market.<sup>233</sup> In this context, we have identified the appropriate product and geographic market on which we will assess the competitive effects of the Merger. As set out in Chapter 6, our investigation assesses the following theory of harm: horizontal unilateral effects in the wholesale supply of DTB products to grocery retailers in the UK. In this chapter we set out how we have identified the relevant market.

### ***The Parties' submissions on market definition***

- 8.2 The Parties consider that the production of DTB products involves two distinct vertically related economic activities – (i) the upstream manufacturing of the products and (ii) downstream brand ownership/operation.<sup>234</sup> They submit that:
- (a) Cérélia does not operate in the downstream market. Instead, it is the retailers, with their PL brands that are active at this level of the supply chain, operating as brand owners and competing with Jus-Rol.<sup>235</sup>
  - (b) There is similarly no increment in upstream manufacturing since GMI is not a provider of contract manufacturing services to third parties.<sup>236</sup>
- 8.3 Consequently, the Parties submit that the CMA is committing an error (the **Conflation Error**) by conflating these two levels of the supply chain – manufacturing and brand operation – into a single, homogenous activity (ie wholesale supply of DTB products).<sup>237</sup>
- 8.4 We recognise that the Parties have a vertical relationship, with Cérélia manufacturing the majority of the Jus-Rol DTB products that are sold in the UK (and have, as described in detail elsewhere in the report, taken that into account in our assessment of the Merger). We note, however, that the existence of a vertical relationship of this nature does not preclude that the Parties compete horizontally.
- 8.5 In keeping with the approach set out in the CMA's guidance, product market definition starts with the relevant products of the merging parties.<sup>238</sup> In

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<sup>233</sup> MAGs, paragraph 9.5.

<sup>234</sup> Cérélia's response to the Annotated Issues Statement and Working Papers, 13 September 2022, paragraph 2.15.

<sup>235</sup> Cérélia's response to the Annotated Issues Statement and Working Papers, 13 September 2022, annex AIS.03.a, paragraph 10.ii.

<sup>236</sup> Cérélia's response to the Annotated Issues Statement and Working Papers, 13 September 2022, annex AIS.03.a, paragraph 10.iii.

<sup>237</sup> Cérélia's response to the Annotated Issues Statement and Working Papers, 13 September 2022, paragraph 2.16.

<sup>238</sup> MAGs, paragraph 9.6.

assessing what competitive alternatives should be included in the relevant market, the CMA will pay particular regard to demand-side factors (the behaviour of customers). The CMA may also consider supply-side factors.<sup>239</sup>

8.6 The Parties submit that there is (i) upstream, a market for the supply of the dough; and (ii) downstream, a market where the branded DTB products and PL DTB products stocked by the grocery retailer in question compete. We consider, however, that this characterisation is not fully consistent with the evidence that we have received so far during our investigation. Accordingly, in keeping with the established approach to market definition set out in the CMA's guidance, we have considered the appropriate product market definition in this case from the starting point of whether the Parties are considered as alternatives by customers (grocery retailers). This takes into account the differences between the Parties' activities, as well as the similarities in the light of grocery retailers' requirements. We have also considered which other suppliers are considered as alternatives by customers.

8.7 We have considered in our assessment:

(a) The product market within which the Parties compete:

- (i) Whether the Parties' activities (the supply of DTB products through the PL and branded channels) are such that they fall within the same product market (taking into account whether the Parties are considered as alternatives by customers).
- (ii) Whether all DTB product types (and wider BSM products) fall within the same product market.
- (iii) Whether frozen and chilled DTB products fall within the same product market.
- (iv) Whether the product market definition should include the supply of DTB products to the foodservice and food manufacturing sectors in addition to the retail sector.

(b) The geographic market within which the Parties compete.

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<sup>239</sup> MAGs, paragraph 9.6.

## **Product market**

8.8 In this section, we discuss whether the Parties' activities are such that they fall within the same product market, taking into account whether the Parties are considered as alternatives by customers (grocery retailers).

### *The Parties' activities*

8.9 Cérélia has told the CMA that the Jus-Rol business is providing a retailer with a product which is substantively different from the co-manufacturing services that retailers (and GMI itself) obtain from Cérélia and other co-manufacturers.<sup>240</sup>

8.10 Specifically, Cérélia has submitted that it only supplies a manufacturing input to brand owners and does not supply retailers with a finished branded DTB product.<sup>241</sup> It said that it is not possible to put Cérélia's manufacturing services on a retailer's shelf on a stand-alone basis.<sup>242</sup> It stated that while 'retailer-branded PL products' and 'consumer-brand products' compete on retailers' shelves, Cérélia does not itself compete with either 'consumer-brand products' or 'retailer-branded PL products'.<sup>243</sup>

8.11 Our investigation has found that that both Parties supply DTB products at the wholesale level, although Jus-Rol only supplies branded DTB products, while Cérélia supplies DTB products mostly to PL buyers in the UK, with the exception of [✂].<sup>244</sup> Therefore, the Parties only partially overlap in the supply of branded DTB products; generally, they sell their products to retailers through the two different channels (PL and branded DTB products) identified in paragraph 7.40.

8.12 In light of this differentiation, and in accordance with our guidance, we have carefully considered the demand-side and supply-side substitution between the supply of DTB products as inputs to PL products, and supply of branded DTB products.

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<sup>240</sup> Cérélia's response to Annotated Issues Statement and Working Papers, 13 September 2022, paragraphs 2 to 2.19.

<sup>241</sup> Cérélia's response to Annotated Issues Statement and Working Papers, 13 September 2022, paragraph 2.4.

<sup>242</sup> Cérélia's response to Annotated Issues Statement and Working Papers, 13 September 2022, paragraph 2.13.

<sup>243</sup> Cérélia's response to Annotated Issues Statement and Working Papers, 13 September 2022, paragraph 2.14.

<sup>244</sup> MN, paragraph 115. Cérélia supplies pancake products in the UK, both as a copacker and under its own 'Abra-ca-Debora' brand. Cérélia submits that its pancake suppliers are not relevant to the competitive assessment of the merger as Jus-Rol does not supply any pancake products. MN, footnote 1.

*Demand-side substitution between PL and branded products at the wholesale level*

- 8.13 To understand the degree to which the Parties' activities place them within the same product market, we have sought to understand whether their customers view the products they supply as substitutes.
- 8.14 At the wholesale level, retailers adjust the balance of their purchasing volumes of DTB products in the PL channel and branded channel. As described in Chapter 7, retailers take into account several factors when switching between PL and branded products.
- 8.15 When asked about what factors were important to them in their relationship with PL and branded suppliers respectively, retailers generally mentioned the same factors for each. The most commonly mentioned of these factors were price, quality and service level (see Chapter 7 for more details).
- 8.16 The majority of the retailers that responded to our inquiry stated that they considered C r lia and Jus-Rol to be competitors in the wholesale supply of DTB products, although there was a more mixed response from competitors (see paragraphs 9.57 and 9.58 for more details).
- 8.17 All retailers who responded to our phase 2 questionnaire that stock both branded and PL DTB products said that, in response to an increase in the wholesale price of DTB products for PL beyond the level it thought reasonable, they would consider buying more of the equivalent branded products instead.<sup>245</sup> Similarly, all retailers who responded to our phase 2 questionnaire that stock both branded and PL DTB products said that, in response to an increase in the wholesale price of branded products beyond the level they thought reasonable, they would consider buying more of the equivalent PL products instead.<sup>246</sup>
- 8.18 Internal documents from Jus-Rol show that it monitors the performance and quality of PL products. For example, a GMI promotional pricing analysis [REDACTED].<sup>247</sup> As set out in Chapter 9, internal documents also show grocery retailers substituting PL and branded DTB products as part of their ongoing purchasing decisions, including by reference to end-consumer substitution between branded and PL DTB products. A number of retailers also provided examples of stocking decisions that included changing Jus-Rol products for PL products. One retailer [REDACTED] said that it has delisted a number of specialist

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<sup>245</sup> 8 responses to the CMA's customer questionnaire, question 31.

<sup>246</sup> 9 responses to the CMA's customer questionnaire, question 32.

<sup>247</sup> GMI Internal Document, Annex 11.A.01 to the MN, [REDACTED], 28 August 2020.

Jus-Rol products due to poor performance. In most instances it replaced these with branded like-for-like or PL products.<sup>248</sup> Another retailer [X] also said that it has replaced Jus-Rol products with PL products.<sup>249</sup>

*Supply-side substitution between PL and branded products at the wholesale level*

- 8.19 We have also sought to understand whether DTB suppliers themselves view products supplied to grocery retailers for sale as PL products, and branded DTB products, as substitutes.
- 8.20 C r lia submitted that manufacturing costs (for equivalent recipes and equivalent production runs) are [X].<sup>250</sup>
- 8.21 When asked about adapting their manufacturing process to produce PL products, competitors that currently supply branded products but not PL products [X], [X], [X] said that they could adapt to produce the PL equivalents of their branded products. One competitor [X] said it would be relatively easy, although may require BRC accreditation for food safety.<sup>251</sup>
- 8.22 In light of the demand-side and supply-side factors set out above, we provisionally consider that the market definition should include both DTB products supplied to grocery retailers in the PL channel, and branded DTB products supplied at the wholesale level.

***Product types and customer sectors***

- 8.23 We have considered whether the product market should include:
- (a) all DTB product types and, in addition, wider BSM products;
  - (b) both chilled and frozen DTB products; and
  - (c) all customer sectors (ie retail, foodservice and food manufacturing).

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<sup>248</sup> Response to the CMA customer questionnaire from [X], [X], question 15.

<sup>249</sup> Response to the CMA customer questionnaire from [X], [X], question 15.

<sup>250</sup> C r lia's response to the Phase 1 Issues Letter, 11 May 2022, paragraph 8.12.

<sup>251</sup> Response to the CMA competitor questionnaire from [X], [X], question 3. BRC (British Retail Consortium) Global provides independent food safety accreditation. Their accreditations are recognised by supermarkets and large organisations as proof that high food safety standards are in place.

## *Product types*

- 8.24 We have considered the overlapping product types/product ranges supplied by the Parties.
- 8.25 Cérélia supplies grocery retailer customers with DTB products, including ingredient pastry dough, pizza dough, cookie dough and gingerbread dough, under the trading name BakeAway.<sup>252</sup> In the UK, Cérélia has no brand of its own with respect to DTB products, but sells pancakes under its brand Abra-ca-Debra. Cérélia Group, Cérélia's holding company, supplies dough and pancake products. Outside of the UK, Cérélia supplies cookie dough, pancake, crepes, pizza dough, pastry dough and pastry products under its own brands English Bay Bakery, Creapan, Jan, Pop! Bakery and Croustipate.<sup>253</sup>
- 8.26 Jus-Rol supplies grocery retailer and foodservice customers with DTB products, including ingredient pastry dough, pizza dough balls, pizza dough kits and sharing bread dough (supplied in cans) and certain breakfast dough products supplied in cans.<sup>254</sup>
- 8.27 The Parties submitted that the product scope should include all DTB product types including ingredient pastry, pizza dough and other types of dough including cookie and brownie dough and breakfast dough products.<sup>255</sup> The Parties submitted that from a demand-side perspective, grocery retailers typically take a holistic approach to negotiating supply,<sup>256</sup> and from a supply-side perspective, the manufacturing process is very similar across DTB products.<sup>257</sup> GMI submitted that, for its chilled products, it was competing against branded butters, branded juices and branded yoghurts and retailers consider the stocking of DTB products in the context of the wider butter, spreads and margarine category.<sup>258</sup>
- 8.28 The Parties overlap in the supply of DTB products. Although there are some differences in product offering, for example Cérélia does not supply canned dough products whereas Jus-Rol does, both parties supply the main types of

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<sup>252</sup> MN, paragraph 81.

<sup>253</sup> MN, paragraph 82.

<sup>254</sup> MN, paragraph 10.

<sup>255</sup> MN, paragraph 230.

<sup>256</sup> MN, paragraph 237.

<sup>257</sup> MN, paragraph 233.

<sup>258</sup> GMI, main party hearing transcript, pages 11 and 24.

DTB products. In particular, both Cérélia and Jus-Rol sell puff pastry, shortcrust pastry, filo pastry,<sup>259</sup> pizza dough and ready-to-bake products.<sup>260</sup>

- 8.29 Regarding the question of whether the product market should include products from the wider butter, spreads and margarine (**BSM**) category, all (11 out of 11) retailers who responded to our phase 2 questionnaire said that they did not consider that DTB products compete with butter, spreads and margarine or other dairy products.<sup>261</sup> One retailer [REDACTED] told us that it could shift volumes from DTB products to products in the wider BSM category but this would be detrimental to its customers because it would involve removing choice and making themselves less competitive.<sup>262</sup> For these reasons, we do not consider that the market definition should include products in the wider BSM category.
- 8.30 Regarding the question of whether the product market should include all DTB products:
- (a) Retailers tend to run tenders for specific DTB products rather than for any type of DTB product indicating that demand-side substitutability is low.<sup>263</sup>
  - (b) However, there is evidence of strong supply-side substitutability between different types of DTB products because most (seven out of nine) of the other DTB suppliers who responded to our questionnaire indicated they would be able to adapt their manufacturing process to produce those DTB products they do not currently produce with relative ease. The remaining DTB suppliers cited lack of space and/or equipment as the reason why they were not able to easily produce other DTB products.<sup>264</sup>
- 8.31 As discussed Chapter 7, retailers typically source the majority, or even all, of their PL products from a single supplier. This is also true for the branded channel.
- 8.32 Evidence from the Parties' internal documents suggests that DTB products are often referred to as a whole. However, we also found occasional

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<sup>259</sup> Cérélia supplies Filo pastry to retailers, [REDACTED]. MN, paragraph 184.

<sup>260</sup> MN, paragraphs 9 and 10.

<sup>261</sup> 11 responses to the CMA's customer questionnaire, question 28.

<sup>262</sup> Transcript of call with [REDACTED], [REDACTED], page 17, lines 20–25.

<sup>263</sup> Cérélia Internal Document, Annex 2-1 to the Phase 1 s.109 (3), 'Pastry, Pizza Dough & RTB Cookie Dough Supply Base Review', 14 March 2022. Note of a call with [REDACTED], [REDACTED], paragraph 3.

<sup>264</sup> Nine responses to the CMA's competitor questionnaire, question 3.

references to specific DTB products (eg pizza dough) or subgroups of products (eg ingredient pastry, ready-rolled, or blocks).<sup>265</sup>

- 8.33 The above evidence shows that DTB products are typically considered and sourced by retailers as a distinct category. While there is limited demand-side substitutability as between DTB products, the supply-side substitutability as between DTB products is strong.
- 8.34 For these reasons, we provisionally consider that the product market definition should include all types of DTB products, but not wider BSM products.

### *Chilled and frozen products*

- 8.35 The Parties submitted that there is a single product market for supplying chilled and frozen PL DTB products because the basic production process used to manufacture each is identical apart from minor differences such as adding preservatives to chilled products and freezing for frozen products.<sup>266</sup>
- 8.36 Both Parties supply a number of both frozen and chilled DTB products to retailers.<sup>267</sup>
- 8.37 From a demand-side perspective, responses from retailers to our phase 2 questionnaire suggest that retailers consider frozen and chilled DTB products to be interchangeable, depending on shelf space. For example, some responses indicated an increase in shelf space offered to frozen products due to innovation in that area.<sup>268</sup>
- 8.38 Evidence from the Parties and from third parties indicates that there is supply-side substitutability between chilled and frozen products. Both C er lia and Jus-Rol supply retailers with both chilled and frozen products. Furthermore, while only one [redacted] of the suppliers who responded to our phase 1 questionnaire currently supplies both chilled and frozen PL DTB products, two [redacted] and [redacted] suppliers said they would be able to produce both frozen and chilled PL products by simply adapting their current manufacturing process.<sup>269</sup> In particular, one of them [redacted] told us that, although it predominately supplies chilled pastry, it would be able to manufacture frozen pastry if necessary.<sup>270</sup>

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<sup>265</sup> For example, [redacted] often provide an overview of the DTB market as a whole including all product types before breaking this down and looking at specific products or subgroups of products.

<sup>266</sup> MN, paragraphs 242 and 243.

<sup>267</sup> C er lia's response to the CMA's section 109 Notice (**Phase 2 s.109**) (2), 25 August 2022, questions 3 and 14.

<sup>268</sup> Response to the CMA customer questionnaire from [redacted], [redacted], questions 7 and 8. Response to the CMA customer questionnaire from [redacted], [redacted], questions 7 and 8.

<sup>269</sup> 3 responses to the CMA's competitor questionnaire, question 3.

<sup>270</sup> Response to the CMA's competitor question from [redacted], [redacted], question 3.



The other [X] told us that the blast freezing facilities it has on site would allow the production of frozen products.<sup>271</sup>

- 8.39 As discussed in paragraph 7.57, retailers tend to source all their PL products, whether chilled or frozen, from one single supplier. Similarly, they tend to source all their branded products, whether chilled or frozen, from one single supplier.
- 8.40 Evidence from internal documents suggests that typically no distinction is made between chilled and frozen products during the normal course of business.
- 8.41 For these reasons, we provisionally consider the product market definition should include both chilled and frozen DTB products.

#### *Customer sectors*

- 8.42 As discussed in the Chapter 5, besides the grocery retail sector, there are two other groups of customers that purchase DTB products in the UK, namely the foodservice and food manufacturing sectors.
- 8.43 The Parties submitted that:
- (a) The foodservice channel comprises caterers who buy DTB products to sell to their end-consumers, as well as bakeries, restaurants and independent shops that purchase DTB products to produce and bake finished products in-store to serve to their end-consumers.<sup>272</sup>
  - (b) The food manufacturing sector comprises customers that purchase DTB products to manufacture a finished product for sale to end-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.<sup>273</sup>
  - (c) There should be no distinction between the retail, foodservice and food manufacturing customer groups and they should all be included within a

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<sup>271</sup> Response to the CMA's competitor question from [X], [X], question 3.

<sup>272</sup> MN, paragraph 163.b.

<sup>273</sup> MN, paragraph 164.

single market.<sup>274</sup> This is because the manufacturing processes are very similar for each sector.<sup>275</sup>

- (d) Suppliers of DTB products in the foodservice sector are already manufacturing the same DTB products as those in the retail sector, and they already meet all necessary food safety regulations. Different packaging being required for the retail and foodservice sectors does not represent a barrier to supply-side substitution.<sup>276</sup>
- (e) [X] means that at least [X], representing more than [X]% of the total annual DTB contract manufacturing demand of retailers.<sup>277</sup>
- (f) They do not believe that the foodservice sector is small relative to the retail sector and, although the Parties are not able to provide a precise estimate for the size of the foodservice sector overall, they understand that the supply of frozen croissants alone is more than twice the size of the entire DTB grocery sector, at an estimated US\$360 million in 2021.<sup>278</sup>
- (g) Current manufacturers of baked goods for retailers are also readily available to manufacture DTB products for retailers. [X]. The recent entry into the DTB sector by [X] is a compelling recent real-life example of the competitive threat coming from baked goods manufacturers.<sup>279</sup>
- (h) Cérélia and [X] supply products sold by Jus-Rol for both the retail and foodservice sectors.<sup>280</sup> However, Cérélia also submitted that, as it does not directly supply foodservice or food manufacturing customers, it therefore 'does not have good visibility over these sectors'.<sup>281</sup>

8.44 The Parties only overlap in the supply of DTB products to retail customers. Jus-Rol also supplies DTB products to foodservice customers, but Cérélia does not. Neither party supplies DTB products to food manufacturing customers.<sup>282</sup> Below we consider whether the market definition should include

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<sup>274</sup> MN, paragraph 255.

<sup>275</sup> MN, paragraph 250.

<sup>276</sup> Cérélia response to the Annotated Issues Statement and Working Papers, 13 September 2022, annex AIS.03.a, paragraph 12.

<sup>277</sup> Cérélia response to the Annotated Issues Statement and Working Papers, 13 September 2022, annex AIS.03.a, paragraph 12.

<sup>278</sup> Cérélia response to the Annotated Issues Statement and Working Papers, 13 September 2022, annex AIS.03.a, paragraph 13.

<sup>279</sup> Cérélia response to the Annotated Issues Statement and Working Papers, 13 September 2022, annex AIS.03.a, paragraphs 16 and 17.

<sup>280</sup> MN, paragraph 251.

<sup>281</sup> MN, paragraph 249.

<sup>282</sup> Cérélia's response to the CMA's section 109 Notice (**Phase 2 s.109**) (2), 22 August 2022, question 14.

supply to the foodservice and food manufacturing sectors in addition to supply to grocery retailers.

- 8.45 Most of the evidence we have received relates to the foodservice sector, rather than the food manufacturing sector. This is because it was not an area of focus in the Parties' submissions until later on in the evidence-gathering process and also because neither of the Parties are active in this sector (so the Parties' insight into the position of food manufacturers is limited). We consider, however, that both foodservice and food manufacturing products are likely to be required to be repurposed in similar ways to be able to be sold to retail customers and, therefore, that the evidence we present is likely to be relevant for both sectors.
- 8.46 From a demand-side perspective, most (nine out of 11) retailers said they would consider switching to a PL product supplier that is currently only active in the foodservice sector, provided that the supplier had the capabilities to be present in the retail sector.<sup>283</sup> However, concerns were raised that this was not often possible or likely. For example:
- (a) One large retailer [redacted] said its volume needs and the need to adapt manufacturing lines for packing made it an 'unlikely solution' in the short to medium term.<sup>284</sup>
  - (b) A retailer [redacted] said that it had not been 'historically considered, due to expected issues over technical specifications'.<sup>285</sup>
  - (c) All retailers who would consider it mentioned the need to meet technical and supply capabilities.
- 8.47 The fact that none of the retailers considered they would be flexible on certain product characteristics and that products would need to be adapted to meet the same requirements as those produced by retail suppliers indicates that demand-side substitution between the foodservice and retail sectors is low.
- 8.48 Half (five out of ten) of the suppliers who responded to our phase 2 questionnaire indicated that they supply customers in the foodservice sector. Two suppliers indicated they only supply the foodservice sectors [redacted] and [redacted]. Three suppliers [redacted], [redacted], [redacted] indicated they provide products to both

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<sup>283</sup> 11 responses to the CMA's customer questionnaire, question 24.

<sup>284</sup> Response to the CMA customer questionnaire from [redacted], [redacted], question 24.

<sup>285</sup> Response to the CMA customer questionnaire from [redacted], [redacted], question 24.

the retail and foodservice sectors. Five suppliers [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] only provide to the retail sector.<sup>286</sup>

- 8.49 One competitor [REDACTED] who is planning to start supplying to the retail PL sector told us that a significant part of its business consists in supplying food manufacturers with DTB products.<sup>287</sup> Another competitor [REDACTED] manufactures dough products which it uses as inputs to produce other products, such as sausage rolls. It recently repurposed a production line for dough for sausage rolls to produce DTB products for a retailer.<sup>288</sup>
- 8.50 From a supply-side perspective, when asked whether suppliers currently only active in the foodservice sector would be able to meet the needs of grocery retailers, answers were mixed. A minority of suppliers (three out of seven) [REDACTED], [REDACTED], [REDACTED] indicated substitution between foodservice and retail sectors and said that products for foodservice and grocery retailers are similar.<sup>289</sup> However, more suppliers (four out of seven) said that the two sectors are different, including because:
- (a) products for foodservice are primarily frozen while those for retail are mainly chilled;<sup>290</sup>
  - (b) some products for the retail sector are relatively expensive and would not be suitable for the foodservice sector which often requires a cheaper product;<sup>291</sup>
  - (c) they would require new machinery to produce for the retail sector;<sup>292</sup>
  - (d) foodservice volumes are significantly higher than those for grocery retailers and the packaging requirements and capabilities are very different;<sup>293</sup> and
  - (e) the technical requirements are higher in retail, different machinery is required and the quality assurance standards in retail are higher.<sup>294</sup>
- 8.51 We found only a limited number of the Parties' internal documents discussing the foodservice or food manufacturing sectors.

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<sup>286</sup> 10 responses to CMA phase 2 competitor questionnaire, question 2 and question 19.

<sup>287</sup> Note of a call with [REDACTED], [REDACTED], paragraphs 1 and 2.

<sup>288</sup> Note of a call with [REDACTED], [REDACTED], paragraph 9.

<sup>289</sup> Seven responses to CMA phase 2 competitor questionnaire.

<sup>290</sup> [REDACTED] response to CMA phase 2 competitor questionnaire, [REDACTED], question 20.

<sup>291</sup> [REDACTED] response to CMA phase 2 competitor questionnaire, [REDACTED], question 20.

<sup>292</sup> [REDACTED] response to the CMA phase 2 competitor questionnaire, [REDACTED], question 20.

<sup>293</sup> [REDACTED] response to the CMA phase 2 competitor questionnaire, [REDACTED], question 20.

<sup>294</sup> [REDACTED] response to the CMA phase 2 competitor questionnaire, [REDACTED], question 20.

- 8.52 One document relevant to the foodservice sector is a 2017 email from BakeAway to [REDACTED] which discusses the feasibility of [REDACTED]. The email states that [REDACTED].<sup>295</sup> This aligns with some suppliers' views that manufacturing processes for the retail and foodservice sectors differ.
- 8.53 We consider that it would be possible for suppliers active in the foodservice sector to start supplying customers in the retail sector. However, they could not do so seamlessly and without making changes to their manufacturing arrangements, indicating low supply-side substitution between the retail and foodservice sectors.
- 8.54 Because of the low level of demand-side substitutability and limited level of supply-side substitutability, we provisionally consider that the product market definition should not include the foodservice and food manufacturing sectors. However, given the existence of some supply-side substitutability, we will consider the out-of-market constraint on the Parties from suppliers active in these sectors in the competitive assessment.

*Provisional conclusions on the wholesale product market*

- 8.55 In summary, we provisionally consider that:
- (a) DTB products supplied to grocery retailers for sale through the PL channel, and branded DTB products, are part of the same product market. This is because:
- (i) Evidence shows that there is strong demand-side substitutability for supply of PL and branded DTB products at the wholesale level. For example, retailers said that in response to an increase in the wholesale price of DTB products supplied via the PL channel, beyond the level they thought reasonable, they would consider buying more of the equivalent branded products instead, and vice versa.
- (ii) Evidence also shows that there is strong supply-side substitutability for supply of DTB products supplied via the PL channel and branded DTB products at the wholesale level. For example, both products have near-identical manufacturing costs and third-party suppliers indicate that they would be able to switch from supplying one to the other with relative ease.

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<sup>295</sup> C er lia Internal Document, Annex ME\_6988\_22\_002103 to the Phase 2 s.109 (1), '[REDACTED]', 17 August 2017.

- (b) The relevant product market should include all DTB products but not BSM products. This is because evidence shows that:
  - (i) Suppliers indicated they could switch to supply DTB products they do not currently produce. This implies there is strong supply-side substitutability between DTB product types.
  - (ii) Retailers indicated DTB products do not compete with products in the wider BSM category implying demand-side substitutability between the DTB and BSM products is low.
- (c) We consider that chilled and frozen DTB products should be included in the same market. This is because:
  - (i) Retailers considered frozen and chilled DTB products to be interchangeable, depending on shelf space, suggesting strong demand-side substitutability between chilled and frozen DTB products.
  - (ii) Some suppliers considered that they would be able to produce both frozen and chilled PL products by simply adapting their current manufacturing process, suggesting there is supply-side substitutability between these products.
- (d) Supply of DTB products to foodservice customers and to food manufacturing customers should not form part of the same product market as supply to retail customers. This is because:
  - (i) Given the inflexibility of retailers' product requirements, there is little scope for demand-side substitutability between retail and foodservice products. Whilst there is evidence that it is possible for suppliers to switch between these sectors, they indicated that there are differences in the products and production processes, implying supply-side substitutability to be limited.
  - (ii) Limited evidence was provided on the food manufacturing sector. However, we consider that the limited level of demand and supply-side substitutability between this sector and the retail sector is likely to be similar to that between the foodservice and retail sectors.

8.56 In accordance with our guidance, we will consider those suppliers that serve only the foodservice and food manufacturing sectors as out-of-market constraints in the Chapter 9.

8.57 We therefore provisionally conclude that the impact of the Merger should be assessed in relation to the wholesale supply of all DTB products, both chilled and frozen, both branded and PL, to grocery retailers.

### **Geographic market**

8.58 The Parties submitted that the geographic market for the supply of DTB products is at least as wide as the EEA and UK.<sup>296</sup> The Parties said there is significant cross-border supply of products into the UK from EEA-based manufacturers (eg [X]) and that the Parties manufacture products for the UK in other European countries.<sup>297</sup> They also said that EEA suppliers are competitive from a price and quality perspective and there are low transport costs and no regulatory or production differences which could act as barriers.<sup>298</sup>

8.59 Both Parties supply DTB products in the UK. Cérélia sells DTB products across Europe. As of 2020, all its PL production sold in the UK came from UK facilities, while a majority of DTB products supplied to Jus-Rol were produced in continental Europe. Jus-Rol only sells products in the UK. Some DTB suppliers selling in the UK, like Henglein, have production facilities only outside the UK.<sup>299</sup>

8.60 Retailers (except [X]) negotiate commercial terms with suppliers of DTB products through national procurement processes and only for the UK market.<sup>300</sup>

8.61 The largest grocery retailers who responded to our phase 2 questionnaire source PL products from suppliers based in the UK. Most (six out of eight) of the respondents to our phase 2 questionnaires, irrespective of their size, said they would be willing to switch to a PL supplier where the product is manufactured outside the UK.<sup>301</sup>

8.62 However, some retailers said that there were certain factors that would have to be taken into consideration if sourcing from suppliers outside of the UK. For instance, one large retailer [X] said it would have to look at cost, because it might cost more to ship over. In addition, this retailer told the CMA that '[it]

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<sup>296</sup> MN, paragraph 266.

<sup>297</sup> MN, paragraphs 264 and 267–276.

<sup>298</sup> MN, paragraphs 265 and 277–282.

<sup>299</sup> Cérélia response to the Phase 1 Issues Letter, 11 May 2022, Annex 'DTB production in UK vs EU'.

<sup>300</sup> 10 Responses to the CMA's customer questionnaire, question 9. [X] noted 'although negotiations occur centrally, there may be country-specific variations in relation to the recipe, weight, type of packaging, etc'. Note of a call with [X], [X], paragraph 3.

<sup>301</sup> 8 responses to CMA phase 2 customer questionnaire, question 23.

might lose date life' and, if this were the case, it would have less time to sell the product, so this also needs to be factored into the choice of supplier.<sup>302</sup>

Another retailer [REDACTED] set out that new post-Brexit regulations have posed challenges when sourcing outside of the UK, but also said that these have not arisen in relation to DTB products, or if they have, these have been resolved swiftly.<sup>303</sup>

8.63 There is also some evidence of regional variation in competitive constraints across the UK. For example, the Bells brand is relatively stronger in Scotland (eg Tesco currently only stocks Bells branded DTB products in its Scottish stores).<sup>304</sup>

8.64 In Chapter 9, we will consider further the strength of suppliers based in continental Europe.

#### *Provisional conclusions on geographic market*

8.65 The evidence considered above shows that grocery retailers tend to have national procurement strategies for DTB products for the UK market only. As such, the competitive parameters (eg price and quality) are negotiated on a UK-specific basis (including where the procurement processes are wider than the UK). For these reasons, we provisionally conclude that the relevant geographic market for the wholesale supply of DTB products to grocery retailers is UK only.

8.66 However, there is evidence that suppliers based outside the UK may place a constraint to UK-based suppliers and that UK-based retailers are willing to switch to an EEA-based supplier if needed. Therefore, we will account for competitive constraints coming from suppliers based in the EEA and not currently supplying UK customers in our competitive assessment. Similarly, we account for any regional strength of certain suppliers in our competitive assessment.

#### ***Provisional conclusion and our current views on market definition***

8.67 For the reasons set out above with regards to the appropriate product and geographic market, we are assessing the impact of the Merger in the wholesale supply of DTB products (both chilled and frozen, and both via the PL channel and branded channels) to grocery retailers in the UK.

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<sup>302</sup> Transcript of a call with [REDACTED], [REDACTED], page 21.

<sup>303</sup> Note of a call with [REDACTED], [REDACTED], paragraph 5.

<sup>304</sup> Note of a call with [REDACTED], [REDACTED], paragraph 1.



## 9. Competitive assessment

- 9.1 This chapter sets out our assessment of whether the Merger has given or may be expected to give rise to an SLC in the supply of DTB products to grocery retailers because of our horizontal unilateral effects theory of harm.
- 9.2 Our assessment is structured as follows:
- (a) We set out our estimates of the shares of supply of the Parties and their competitors in the relevant market;
  - (b) We assess whether the Parties are close competitors, ie to what extent they acted as a competitive constraint on one another before the Merger;
  - (c) We assess the remaining alternative competitive constraints that the Merged Entity faces following the Merger; and
  - (d) Having considered the constraint between the Parties and the constraint from alternative competitive constraints, we conclude on the closeness of competition between the Parties.

### Shares of supply

- 9.3 In this section we present our analysis of shares of wholesale supply of DTB products to grocery retailers in the UK. Further details of our analysis are in Appendix C.
- 9.4 The concern under horizontal unilateral effects essentially relates to the elimination of a competitive constraint by removing an alternative that customers could switch to. One way in which the CMA may assess whether there are sufficient remaining alternatives is through a consideration of measures of market concentration, such as shares of supply.<sup>305</sup> While the focus of the CMA's assessment is on the change in the competitive constraints on the merger firms arising from the merger, where one merger firm has a strong position in the market, even small increments in market power may give rise to competition concerns.<sup>306</sup>
- 9.5 In differentiated markets, horizontal unilateral effects are more likely where the merger firms are close competitors or where their products are close substitutes.<sup>307</sup> Shares of supply can also be useful evidence when assessing

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<sup>305</sup> MAGs, paragraphs 4.3 – 4.4.

<sup>306</sup> MAGs, paragraph 4.12(a).

<sup>307</sup> MAGs, paragraph 4.8.

closeness of competition. This will particularly be so when there is persuasive evidence on demand- and supply-side substitution as to which potential substitutes should be included or excluded, and when, although differentiated, the degree of differentiation between firms is more limited. In such circumstances, a firm with a higher share of supply is more likely to be a close competitor to its rivals, and therefore a merger that removes the competitive constraint such a firm exerts on its rivals would be more likely to raise competition concerns.<sup>308</sup>

- 9.6 In other cases, such as where the boundaries of the market are not as clear-cut, where reliable estimates of shares of supply are not readily available, or where there is a high degree of differentiation, the CMA may rely to a greater extent on other sources of evidence on closeness of competition.<sup>309</sup>
- 9.7 In this case, in our view, shares of supply provide an important indication of suppliers' position in the market and the degree of market concentration. Across all measures adopted here and across all time periods, the Parties are the first and second largest wholesale suppliers of DTB products to grocery retailers in the UK, each with a considerably larger share than the next largest competitor. However, the small number of retailer customers, and the nature of the tender processes to supply them in the PL channel, mean that shares of supply can be subject to fluctuations, and we have found evidence of differentiation between the products supplied by the Parties. We therefore consider the implications of our shares of supply estimates alongside other evidence to understand the Parties' individual and combined significance in the supply of DTB products to retailers.
- 9.8 We have used Kantar data provided by Cérélia for our analysis as we think that provides the most complete picture available.<sup>310</sup> Given that there have been recent changes in supply arrangements, which have a significant impact on shares of supply, we consider it is appropriate to present shares for the period 2021-2023, which include the forecasted impact of these changes for when they come into effect in 2023.<sup>311</sup> We note that these forecast estimates are subject to limitations as shares across brands and retailers may have changed (see paragraph 18 of Appendix C).<sup>312</sup>

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<sup>308</sup> MAGs, paragraph 4.14.

<sup>309</sup> MAGs, paragraph 4.15.

<sup>310</sup> See paragraph 12 of Appendix C.

<sup>311</sup> See Alternative Competitive Constraints section. Shares for 2021 are also forecast estimates as Cérélia was only able to provide Kantar data for 2018-2020.

<sup>312</sup> Cérélia was able to provide Kantar data until 2020 only.

**Table 9.1: Shares of wholesale supply estimates for DTB products by value to grocery retailers in the UK in 2021-2023**

Supplier	%		
	2021	2022	2023
Jus-Rol	[40-50]	[40-50]	[40-50]
Cérélia	[30-40]	[30-40]	[20-30]
[REDACTED]	[5-10]	[10-20]	[10-20]
[REDACTED]*	[0-5]	[0-5]	[5-10]
Other PL	[10-20]	[10-20]	[10-20]
Other branded†	7	7	7
<b>Total</b>	100	100	100
Parties combined	[70-80]	[70-80]	[60-70]

\* [REDACTED] supplied small amount of PL DTB products to [REDACTED] and [REDACTED] until September 2022. Note of a call with [REDACTED], [REDACTED], paragraph 2.

† Other branded includes brands like Bells, Dorset Pastry, Northern Dough Co, Picard, Pret A Manger, Shire Foods, and Theos. Given that these estimates are based on 2020 data, it does not include PizzaExpress sales.

Note: Percentages may not total due to rounding.

Source: CMA analysis based on the Parties' data (Cérélia's response to the CMA's section 109 Notice (phase 2 s.109) (1), 14 July 2022, questions 44 and 50. Cérélia's response to the CMA's section 109 Notice (phase 2 s.109) (2), 22 August 2022, question 6.).

9.9 Based on the above methodology, the Parties currently have a very high combined share in the wholesale supply of DTB products to grocery retailers in the UK.<sup>313</sup> Further, that high share has been sustained over time and sustained at least up to forecast for 2023, and the only other suppliers with notable (although significantly lower) shares are [REDACTED] and [REDACTED].

9.10 Based on Cérélia's shares of supply estimates and our understanding of recent changes in supply agreements, we estimate that for 2023, by value, Jus-Rol has a forecast share of supply of [40-50]%, Cérélia of [20-30]%, [REDACTED] of [10-20]% and [REDACTED] of [5-10]%.<sup>314</sup>

9.11 Details on how shares of supply have changed over time are provided in Appendix C. Cérélia's share of supply has increased [REDACTED] between 2012 and 2020, while [REDACTED] share has [REDACTED] during that period. [REDACTED] in recent years Cérélia has [REDACTED].<sup>315</sup>

9.12 Between 2018 and 2020, Jus-Rol's share of supply decreased, losing share to PL suppliers rather than to other branded suppliers.<sup>316</sup>

<sup>313</sup> The fact that Cérélia currently manufactures [REDACTED] of Jus-Rol products by value currently means that the 'increment' we have calculated is not equivalent to the additional manufacturing volume Cérélia will produce as a result of the merger.

<sup>314</sup> These shares of supply reflect recent changes in supply arrangements (eg [REDACTED] share of supply reflects the recent award of the [REDACTED]).

<sup>315</sup> This does not take into account any retendering of contracts where the current supplier was successful. See paragraph 16 in Appendix C for further detail. [REDACTED].

<sup>316</sup> See Table 4 in Appendix C. Cérélia was able to provide Kantar data until 2020 only. A limitation of the forecast estimates presented in Table 9.1 for 2021-2023 is that, if the shares across brands and retailers have changed substantially since 2020, this makes these estimates less accurate as these changes will not be captured. For example, any change in Jus-Rol's shares since 2020 is not captured.

- 9.13 [X] and [X] ([X]) are the only other alternative suppliers with material shares, although their value of sales will each remain considerably smaller than that of the Merged Entity.
- 9.14 Overall, the shares of supply indicate that the Parties have a strong position in the wholesale supply of DTB products to retailers in the UK. They each account for a significantly larger proportion of sales than any other competitor, their high shares have been sustained over time, and the only other competitors with material shares of supply in the market are [X] and [X].

## Closeness of competition

### *Introduction*

- 9.15 This section considers how closely the Parties compete. This is important because horizontal unilateral effects are more likely where the merger firms are close competitors or where their products are close substitutes. This is because the merged entity will be able to recapture a larger share of the sales lost following a price increase (or another worsening in the offering), making the price rise more profitable.<sup>317</sup>
- 9.16 As set out in Chapter 6 and in our MAGs, we also note, in relation to our consideration of the closeness of competition, that:
- (a) Where the CMA finds evidence that competition mainly takes place among few firms, any two would normally be sufficiently close competitors such that the elimination of competition between them would raise competition concerns, subject to evidence to the contrary. The smaller the number of significant players, the stronger the *prima facie* expectation that any of the two firms are close competitors. In such a scenario, the CMA will require persuasive evidence that the merger firms are not close competitors in order to allay any competition concerns.<sup>318</sup>
  - (b) Closeness of competition is a relative concept. The issue is not whether the Parties are the closest or even ‘particularly’ close competitors but whether they are sufficiently close competitors for the Merger to raise competition concerns. The Parties’ products may be differentiated from

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<sup>317</sup> MAGs, paragraph 4.8.

<sup>318</sup> MAGs, paragraph 4.10.

each other but can still be close competitors if rivals' products are more differentiated or if there are few rivals.<sup>319</sup>

- (c) 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.<sup>320</sup>

9.17 In relation to closeness of competition, the Parties submitted that while Jus-Rol and PL products do compete for consumers at the retail level, the Parties do not compete to supply retailers at the wholesale level.<sup>321</sup>

9.18 In this section we consider:

- (a) the evidence on competition between the Parties in their supply to retailers at the wholesale level;
- (b) the evidence on competition between PL and branded products at the retail level; and
- (c) the vertical relationship between the Parties.

9.19 As discussed in paragraph 7.89, we consider that competition between the Parties at the wholesale level is linked to the competitive dynamics between PL and branded products at the retail level and it is important to consider the evidence for both.

9.20 We therefore set out our assessment of competition at both the wholesale and retail levels in turn.

### ***Competition between the Parties in their supply to retailers at the wholesale level***

9.21 In this section we consider:

- (a) The nature of the Parties' offerings (and, in particular, how similar are the Parties' offerings to retailers, having regard to the activities performed by the Parties and the products supplied); and
- (b) the evidence on competition between the Parties.

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<sup>319</sup> MAGs, paragraph 4.10.

<sup>320</sup> MAGs, paragraph 4.10.

<sup>321</sup> Cérélia's response to the phase 1 Issues Letter, 11 May 2022, paragraph 5.2.

## *The nature of the Parties' offerings to retailers*

9.22 In this subsection we consider the nature of the Parties' overlapping DTB products. In doing so, we assess the activities performed by the Parties; this is followed by a consideration of the physical product provided by the Parties. We recognise that the Parties are performing different activities as regards their respective supply channels but also note that both are ultimately supplying DTB products to retailers, and so we consider below how the two products (DTB products sold for the purposes of onward sale as PL products, and DTB products sold for onward sale as branded products) are produced and supplied to understand how similar they are (and, therefore, to what extent they should be regarded as competitive alternatives).

### *Activities performed by the Parties*

- *The Parties' submissions*

9.23 The Parties submitted that the activities of Cérélia and Jus-Rol in the development of the products purchased by retailers differ.

9.24 For example, the Parties stated that:

- (a) The Parties are not supplying the same 'products'.<sup>322</sup> This is because while Cérélia is a manufacturer, GMI is a brand owner.<sup>323</sup> Cérélia is principally active in the co-packing of DTB products for third-party brand owners which involves both the manufacturing and packaging of DTB products to meet the needs of customers.<sup>324</sup> Jus-Rol, on the other hand, is only active in the supply of DTB products to end-consumers via the retail and foodservice sectors.<sup>325</sup> GMI is a consumer brand owner which owns, manages and operates the consumer brand Jus-Rol.<sup>326</sup>
- (b) When sourcing PL products, retailers will determine the recipe, ingredients used, packaging, retail prices and marketing.<sup>327</sup> Cérélia may '[X]'.<sup>328</sup> [X].<sup>329</sup> In contrast, Jus-Rol makes all decisions in relation to the

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<sup>322</sup> Cérélia's response to the phase 1 Issues Letter, 11 May 2022, paragraph 1.7.

<sup>323</sup> MN, paragraph 161.

<sup>324</sup> MN, paragraph 174.

<sup>325</sup> MN, paragraph 161.

<sup>326</sup> MN, paragraph 212a.

<sup>327</sup> MN, paragraph 215; response to phase 1 decision, paragraphs 2.8 and 3.4c.

<sup>328</sup> [Cérélia's initial phase 2 Submission](#), 1 July 2022, paragraph 3.4c; Cérélia's response to the phase 1 Issues Letter, 11 May 2022, paragraph 2.5; Cérélia's response to the CMA's request for information (phase 1 RFI) (1) Cérélia, 11 March 2022, Q2; Cérélia's response to Closeness of Competition Working Paper, slide 22; Cérélia's response to the CMA's request for information (phase 2 s.109) (1), 7 July 2022, paragraphs 19.1 and 22.3.

<sup>329</sup> Cérélia's response to the CMA's section 109 Notice (phase 2 s.109) (1), 14 July 2022, paragraph 40.4.

recipe, packaging, branding and marketing. As such, there is no collaborative development process with retailers.<sup>330</sup> It behaves in a similar manner to retailers, in determining the design and marketing of DTB brands.<sup>331</sup> Jus-Rol recommends retail prices and makes significant promotional proposals and contributions.<sup>332</sup> Furthermore, it supplies marketing displays tailored for specific retailers and provides product forecasting services. It also provides customer services such as running a direct consumer careline.<sup>333</sup>

- (c) It does not make sense to classify PL products that Cérélia manufactures as ‘Cérélia products’ without also classifying Jus-Rol products that Cérélia manufactures as ‘Cérélia products’. If the CMA takes the view that Cérélia currently ‘controls’ the PL products which it manufactures, it follows that it also currently ‘controls’ the Jus-Rol products it manufactures.<sup>334</sup>

- *Evidence*

9.25 The evidence shows that while Cérélia and Jus-Rol provide added services to retailers, the type of services they provide is different.

9.26 Whereas Cérélia formulates recipes based on retailers’ briefs and occasionally makes product development recommendations, Jus-Rol [REDACTED], [REDACTED].<sup>335</sup> Internal documents show that Cérélia [REDACTED].<sup>336</sup> In response to the AIS, Cérélia submitted that developing recipes to meet retailer briefs is part of a contract manufacturer’s role in every grocery sector but the retailer retains the ultimate decision-making power.<sup>337</sup>

9.27 Jus-Rol has full control of package size and design while Cérélia only occasionally makes packaging size recommendations to retailers and is not involved in the design of retailers’ PL packaging.<sup>338</sup>

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<sup>330</sup> Cérélia’s response to the phase 1 Issues Letter, 11 May 2022, paragraph 5.5.

<sup>331</sup> MN, paragraph 219.

<sup>332</sup> [Cérélia’s initial phase 2 Submission](#), 1 July 2022, paragraph 3.4d; GMI’s response to the CMA’s section 109 Notice (phase 2 s.109) (1), 14 July 2022, paragraph 27.1.

<sup>333</sup> Cérélia’s response to the CMA’s request for information (phase 1 RFI) (1), 11 March 2022, Q2.

<sup>334</sup> Cérélia response to the Annotated Issues Statement and Working Papers, 13 September 2022, annex AIS.06.a, paragraph 6.ii.

<sup>335</sup> [REDACTED]. Cérélia’s response to CMA’s section 109 Notice (phase 1 s.109) (3), Cérélia, 14 March 2022, page 5.

<sup>336</sup> Email from Cérélia account manager to [REDACTED], dated 19 November 2018. Cérélia presentations ‘[REDACTED]’, January and February 2021.

<sup>337</sup> Cérélia’s response to AIS (Cérélia’s response to internal documents), 13 September 2022, page 9. Cérélia also submitted said that the CMA accepted that the development of recipes may be a collaborative process between co-manufacturers and retailers in Pepsico/Pioneer.

<sup>338</sup> [Cérélia’s initial phase 2 Submission](#), 1 July 2022, paragraph 3.4d; Cérélia’s response to the phase 1 Issues Letter, 11 May 2022, paragraph 5.5.

9.28 Both Jus-Rol and Cérélia provide [redacted] to retailers.<sup>339</sup>

9.29 Jus-Rol [redacted]. Cérélia [redacted].<sup>340</sup>

9.30 A major retailer [redacted] stated that both PL and branded suppliers will provide additional services to retailers. It said that PL suppliers will work with the retailer to develop recipes, while branded suppliers typically will not share recipes. Both types of suppliers will offer market analysis and recommendations on range and distribution, although branded suppliers will also offer promotional strategy. The submissions of other retailers and competitors were broadly consistent with this.<sup>341</sup>

- *Our assessment*

9.31 In considering how closely the Parties compete, we have taken into account the differences in the services that the Parties offer to grocery retailers, flowing from their different business models. We also recognise this differentiation in paragraph 7.24, for example when a grocery retailer is considering whether or not to develop its PL range and whom to procure that PL range from.

9.32 However, for grocery retailers that purchase both PL and branded DTB products for onward sale, we note that there are considerable similarities in the nature of these products. In both instances, the retailer is seeking to purchase DTB products for onward sale to its retail level end-consumers. Although there may be some product differentiation between PL and branded products, the Parties are effectively offering the same underlying product to the same customers for sale to the same end-consumers (see paragraphs 9.38 to 9.39). In addition, as discussed in paragraphs 7.42 to 7.43, the key competitive parameters are the same in both channels with retailers focused primarily on price, quality, and service. Third parties indicated that the elements of the Parties' offerings that differed (eg branding and promotion activities undertaken by Jus-Rol but not Cérélia) were of secondary importance. This is suggestive of a degree of closeness in competition between the Parties for the custom of grocery retailers.

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<sup>339</sup> Cérélia's initial phase 2 Submission, 1 July 2022, paragraph 3.4c; Cérélia's response to the phase 1 Issues, 11 May 2022, paragraph 2.5. GMI site visit, 26 July 2022, slide 29.

<sup>340</sup> Cérélia's initial phase 2 Submission, 1 July 2022, paragraph 3.4d; GMI's response to the CMA's section 109 Notice (phase 2 s.109) (1), 14 July 2022, paragraph 27.1; Cérélia's response to the CMA's section 109 Notice. (phase 2 s.109) (1) ME6988 - Notice under section 109 - 30 June 2022 - CUK confidential response and document submissions dated 14 July 2022 (002).pdf, 14 July 2022, paragraph 40.4.

<sup>341</sup> Response to the CMA phase 2 customer questionnaire, July 2022, question 13. Response to the CMA phase 2 competitor questionnaire, July 2022, question 8.



9.33 Finally, in our view, C er lia’s involvement in selling the [X] branded [X] products is extensive. While the ownership of the brand may ultimately sit with [X], C er lia’s role mirrors that of the supplier of a branded product competing closely and directly with Jus-Rol (see paragraphs 9.43 to 9.44).

#### *The Parties’ products*

- *Characteristics of the overlapping products*

- *Evidence*

9.34 At the Main Party Hearing, C er lia said that the product characteristics of PL and branded products are [X].<sup>342</sup>

9.35 Third-parties views are largely consistent with the position that there are no major differences in the Parties’ overlapping products:

(a) A retailer [X] said that PL products offer a cheaper alternative to branded products and act as an entry point to the category, whereas branded products provide more quality assurance and a wider range.<sup>343</sup> That same retailer [X] considered that ‘[the Parties] manufacture the same product’.<sup>344</sup>

(b) A retailer [X] told us that PL products were used as an entry price point, with branded products providing an opportunity for customers to upgrade.<sup>345</sup>

(c) In reference to its decision to stock PL and branded products, one retailer [X] told us that they ‘want to ensure that [its] range offers customers a choice of products [...] at appropriate and reasonable price points’.<sup>346</sup> That retailer is of the view that the merging parties are competitors in that they ‘do the same job’.<sup>347</sup>

(d) Other customers [X] stated that the Parties make similar products.<sup>348</sup>

(e) Third parties also considered there to be substantial similarity across the DTB product range, including the Parties’ products. For example, a major

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<sup>342</sup> C er lia, main party hearing transcript, page 73, line 19.

<sup>343</sup> [X] response to CMA phase 2 customer questionnaire, [X], question 27.

<sup>344</sup> Note of a call with [X], [X], page 7 line 9.

<sup>345</sup> Note of a call with [X], [X], page 4, lines 21-24.

<sup>346</sup> Written submission from [X], [X], paragraph 6c.

<sup>347</sup> [X] response to CMA phase 2 customer questionnaire, 25 July 2022, question 25.

<sup>348</sup> Responses to the CMA phase 2 customer questionnaire, [X], question 25.

retailer [redacted] stated that puff and shortcrust pastry are ‘interchangeable products from brand to PL with little differentiation from a recipe perspective’.<sup>349</sup>

- 9.36 Wholesale prices of Jus-Rol are generally at a higher price point [redacted]. Typically, there is a brand premium with the wholesale prices of Jus-Rol products [redacted].<sup>350</sup>
- 9.37 Retailers also offer a more ‘premium’ PL range, for example, Asda’s Extra Special, M&S PL range, Sainsbury’s Taste the Difference, Tesco’s Finest or Waitrose’ PL range.<sup>351</sup> These premium PL products are more similar to the Jus-Rol products as their recipes are often all-butter or butter-enriched and sold at a higher price point (at the wholesale as well as at the retail level). However, these more ‘premium’ PL products represent only [redacted].<sup>352</sup>
- *Our assessment*
- 9.38 The evidence indicates that differences in quality between DTB products manufactured on a contract basis by Cérélia for grocery retailers, and branded DTB products sold to retailers by Jus-Rol, are limited, in particular in relation to the ‘premium’ PL range of retailers.
- 9.39 Differences in wholesale prices suggest some differentiation between the overlapping products supplied by the Parties to retailers even when adjusted for quality (by comparing products with and without butter used). This variation in prices is therefore likely driven by differences in the brand value attached to these products.
- *Product range*
    - *Evidence*
- 9.40 Cérélia supplies PL ingredient pastry, pizza dough and ready-to-bake (such as cookie dough, brownie dough and gingerbread dough) products to grocery retailers. GMI supplies Jus-Rol ingredient pastry, pizza dough and ready-to-

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<sup>349</sup> By contrast, this large retailer [redacted] in response to the question whether the Parties compete with each other said that they ‘do not provide like-for-like products’. Response to the CMA customer questionnaire from [redacted], [redacted], questions 25 and 27.

<sup>350</sup> CMA’s analysis based on Parties’ wholesale prices data. [redacted]. Cérélia response to the CMA’s request for information (phase 2 RFI) (1), 7 July 2022, question 16.

<sup>351</sup> Cérélia response to the CMA’s section 109 Notice (phase 2 s.109) (1), 7 July 2022, question 20.

<sup>352</sup> Cérélia had £[redacted] million revenue in 2020 from manufacturing [redacted] PL products. This represented [redacted]% of its revenue from manufacturing [redacted] PL products in 2020. Cérélia response to the CMA’s request for information (phase 2 RFI) (1), 7 July 2022, questions 15 and 43.

bake (supplied in cans, such as croissant dough, pain au chocolat dough and cinnamon swirl dough) products to grocery retailers.<sup>353</sup>

- 9.41 Cérélia stated that the Parties' product ranges are not identical. This is because Cérélia does not produce [REDACTED], in contrast to GMI/Hellenic-manufactured products.<sup>354</sup> It also submitted that it is unable to produce Jus-Rol's entire product range.<sup>355</sup> [REDACTED]. Cérélia submitted that therefore there is no competition between the DTB products manufactured for the PL channel by Cérélia and the products manufactured by GMI/[REDACTED].<sup>356</sup>
- 9.42 Cérélia also submitted that it [REDACTED] with [REDACTED] to use the brand in connection with the supply of pizza DTB products in [REDACTED]. The agreement with [REDACTED].
- 9.43 Cérélia explained that [REDACTED] owns and controls the overall brand strategy and has worked with Cérélia to implement that strategy with retailers in the DTB category (specifically, [REDACTED] dough).<sup>357</sup> In addition, [REDACTED].<sup>358</sup> Cérélia therefore has control over most of the parameters of competition as set out in Chapter 7, ie it has control over price, product quality and product development. [REDACTED].<sup>359</sup>
- 9.44 A Cérélia internal document ([REDACTED]), [REDACTED].<sup>360</sup> Cérélia submitted that as part of a recent agreement with [REDACTED], Cérélia would be able to list [REDACTED] products if [REDACTED].
- 9.45 GMI supplies Jus-Rol pizza dough products, in particular pizza dough balls and pizza dough kits (supplied in cans) to retailers in the UK.<sup>361</sup> These pizza dough sales are at approximately [REDACTED]% of Jus-Rol DTB sales to retailers by value in the first half of 2022. These pizza dough products are sold at Lidl, Ocado, Sainsbury's, Tesco and Waitrose.<sup>362</sup>
- *Our assessment*
- 9.46 We found that the Parties significantly overlap in the product ranges that they offer. Both Jus-Rol's products and the DTB products manufactured by Cérélia for the PL channel cover the same types of ingredient pastry, including puff

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<sup>353</sup> MN, paragraphs 9-10.

<sup>354</sup> Cérélia's response to the CMA's section 109 Notice (phase 2 s.109) (2), 22 August 2022, paragraph 14.3.

<sup>355</sup> Cérélia's response to the CMA's section 109 Notice (phase 2 s.109) (2), 22 August 2022, paragraph 14.

<sup>356</sup> Cérélia's response to the CMA's section 109 Notice (phase 2 s.109) (2), 22 August 2022, paragraph 15.

<sup>357</sup> Enquiry Letter, 2 February 2022, question 29.1.

<sup>358</sup> Cérélia's response to the CMA's Working Paper on Market Definition, paragraph 8.

<sup>359</sup> MN, paragraphs 393 and 395.

<sup>360</sup> Cérélia's response to s109 (phase 1) (2), 2022, question 8, Annex 8 '[REDACTED]', February 2021.

<sup>361</sup> MN, paragraph 10.

<sup>362</sup> GMI's response to the CMA's section 109 Notice (phase 2 s.109) (1), 14 July 2022, question 31.

pastry and short pastry. This is key as ingredient pastry represents the largest proportion of the DTB market.<sup>363</sup>

- 9.47 In addition, the Parties overlap in pizza dough products and in ready-to-bake products to a lesser extent. Cérélia manufactures PL pizza dough and some PL ready-to-bake products for retailers (cookie and brownie dough, and seasonal products such as gingerbread dough kits), albeit not in a canned package.<sup>364</sup> However, we have not seen evidence that would indicate that the canned packaging format is particularly important to retailers and to end-customers.
- 9.48 We note that sales of [REDACTED] products supplied by Cérélia are not insignificant, at approximately [REDACTED]% of Cérélia's DTB sales to retailers by value in the first half of 2022 and [REDACTED] (see paragraph 22 in Appendix C).<sup>365</sup> [REDACTED] has a material presence within the pizza dough products sector.<sup>366</sup> Even though [REDACTED] was only launched in [REDACTED], our understanding is that it is one of the largest (if not the largest) brand other than Jus-Rol in the UK retail DTB market.<sup>367</sup> We understand that these [REDACTED] products are sold at Tesco, Sainsbury's, Asda and Morrisons.<sup>368</sup>
- 9.49 We consider that Cérélia's role in selling branded [REDACTED] pizza dough products to retailers means that Cérélia and Jus-Rol are competing closely in this pizza dough product space.

#### *Evidence of competition between the Parties*

- 9.50 The Parties submit that they do not compete with each other to supply grocery retailers at the wholesale level.<sup>369</sup>
- 9.51 In this subsection, we consider the Parties' submissions and discuss the following evidence of competition between the Parties:
- (a) the available tendering evidence;
  - (b) third party views on competition between the Parties;
  - (c) evidence from the Parties' internal documents; and

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<sup>363</sup> See Chapter 5.

<sup>364</sup> Cérélia's response to the CMA's section 109 Notice (phase 2 s.109) (2), 22 August 2022, question 17.

<sup>365</sup> Cérélia's response to Shares of Supply WP (marked-up), slide 14.

<sup>366</sup> MN, paragraph 115.

<sup>367</sup> [REDACTED]. Cérélia's response to the CMA's section 109 Notice (phase 2 s.109) (3), 14 September 2022, question 1.

<sup>368</sup> Annex 25a, [REDACTED].

<sup>369</sup> Cérélia's response to the phase 1 Issues Letter, 11 May 2022, paragraph 5.2.

(d) evidence of competition between the Parties in commercial negotiations.

### *Tendering evidence*

- *Evidence*

9.52 In support of their position that they are not competitors, the Parties submit that they have never tendered or bid against each other for a retailer contract.<sup>370</sup>

9.53 This is confirmed by the evidence available to us, which does not show head-to-head competition between the Parties in any tenders or bids for contracts to supply retailers. We note, however, that, the reason for this position is that, as set out in paragraph 7.24, PL suppliers compete directly with other PL suppliers in tenders, and tenders do not take place for the supply of branded products.

- *Our assessment*

9.54 The lack of head-to-head competition in tenders indicates that the Parties do not compete directly at the channel-specific tendering stage. As described in Chapter 7, this is because PL and branded DTB suppliers are selected through separate, and quite different, processes. This reflects the differences in the wider supply relationship, as described in the previous section (ie *The nature of the Parties' offerings to retailers*).

9.55 As set out in Chapter 7, we have found that tender evidence in this case does not fully capture the competitive interactions between the Parties because this is not the only point at which there is competition to supply DTB products. Grocery retailers have consistently told us that they do not run tender processes or negotiations with suppliers that include both PL and branded suppliers but instead engage in a series of purchasing decisions. First, they decide whether they wish to sell PL products, branded products or both. For those retailers that decide to provide their end-consumers with both PL and branded DTB products, they then seek suppliers separately within each channel. Those retailers then go on to consider how much product to stock in the PL and branded channels through ongoing purchasing decisions. Below we discuss this constraint in the context of commercial negotiations.

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<sup>370</sup> Cérélia's initial phase 2 Submission, 1 July 2022, paragraph 3.8a.

### *Third party views on competition between the Parties*

- *Evidence*

- 9.56 Third parties were asked whether the Parties compete, and which suppliers were alternatives to each of the Parties.<sup>371</sup>
- 9.57 The large majority (seven out of ten) of the retailers that responded to our inquiry stated that they considered C  r  lia and Jus-Rol to be competitors in the wholesale supply of DTB products.<sup>372</sup> This was primarily due to the similarity of their products, with one large retailer [X] saying that they ‘do the same job’.<sup>373</sup> On the other hand, another large retailer [X] submitted that the Parties did not compete because they ‘do not provide like-for-like products’.<sup>374</sup>
- 9.58 Competitors that responded to our Inquiry presented a mixed view on whether or not C  r  lia and Jus-Rol compete, with half [X] considering that they do compete and half [X] considering that they do not.<sup>375</sup>
- 9.59 One competitor [X] stated of the wholesale supply of DTB products, ‘in this sector PL always competes with the market leading brand in terms of price and promotional activity’. By contrast, [X] highlighted the difference in PL and branded channels as the basis for their position that the Parties do not compete at the wholesale level.
- 9.60 When asked to list and to rank in terms of closeness alternative suppliers to the Parties, only one competitor [X] mentioned Jus-Rol and C  r  lia as alternatives to each other, marking them as competing very closely.<sup>376</sup>

- *Our assessment*

- 9.61 We found that the majority of customers perceive the Parties to be competitors. We note the mixed response from suppliers, but consider that this is, to some extent, likely to reflect the channel-specific nature of the tendering process and each supplier’s position and focus on its own rivals within that channel.

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<sup>371</sup> CMA phase 2 customer questionnaire, question 18, question 19 and question 25.

<sup>372</sup> Responses to CMA phase 2 customer questionnaire, question 25.

<sup>373</sup> [X] response to CMA phase 2 customer questionnaire, question 25.

<sup>374</sup> [X] response to CMA phase 2 customer questionnaire, question 25.

<sup>375</sup> Responses to CMA phase 2 competitor questionnaire, question 22.

<sup>376</sup> [X] response to CMA phase 2 competitor questionnaire, question 13 and question 14.

*Do the Parties perceive each other as competitors in their internal documents?*

- *The Parties' submissions*

9.62 In relation to internal documents, the Parties submitted that:

- (a) The Parties do not perceive each other as directly competing and do not monitor each other's performance.<sup>377</sup> References to PL in the Parties' documents are not and cannot be construed as references to Cérélia, but only to finished PL products (regardless of their manufacturer, which it usually not known and which varies over time).<sup>378</sup>
- (b) There are limited mentions of Jus-Rol in Cérélia's internal documents and vice versa (with the exception of references in the context of the existing contract manufacturing arrangement between Cérélia and GMI).<sup>379</sup>
- (c) Cérélia submitted that [REDACTED].<sup>380</sup>
- (d) GMI submitted that its internal [REDACTED] the respective PL manufacturer for any given PL DTB product at the relevant point in time (nor does GMI usually even know who the manufacturer is and even if it knew it would not consider such information relevant for its negotiations with retailers). From GMI's perspective, '[REDACTED]'.<sup>381</sup>

- *The Parties' internal documents*

- *Cérélia documents*

9.63 As covered in Chapter 6, we have relied upon documentary evidence submitted by the Parties in our assessment. We note that whilst Cérélia produces formal documents for external parties, many of their internal documents discussing important matters are emails and relatively informal. [REDACTED]. We also note that the relatively agile nature of BakeAway's business means that [REDACTED].

9.64 Of the documents we did find in which Cérélia considers competitors, there were several emails that show Cérélia [REDACTED].

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<sup>377</sup> Cérélia's initial phase 2 Submission, 1 July 2022, paragraph 3.8b.

<sup>378</sup> Cérélia's response to the phase 1 Issues Letter, 11 May 2022, paragraph 2.8d.

<sup>379</sup> Cérélia's response to the phase 1 Issues Letter, 11 May 2022, paragraph 5.22 and 5.26.

<sup>380</sup> Cérélia's response to the phase 1 Issues Letter, 16 May 2022.

<sup>381</sup> GMI response to the CMA's section 109 Notice (phase 2 s109), 7 July 2022, paragraph 10.4.

- 9.65 For example, an internal document from C  r  lia shows [REDACTED].<sup>382</sup> In this email, when evaluating DTB products supplied by C  r  lia in the PL channel, [REDACTED].
- 9.66 In the Main Party Hearings, C  r  lia stated that [REDACTED]. C  r  lia said that [REDACTED]. However, further internal documents show that [REDACTED]. For example, internal emails discussing [REDACTED].<sup>383</sup>
- 9.67 In relation to these [REDACTED].<sup>384</sup> C  r  lia further submitted that there ‘[REDACTED]’.<sup>385</sup>
- 9.68 We also identified documents referencing [REDACTED] sales and prices:
- (a) In a presentation [REDACTED].<sup>386</sup> In response to the AIS, C  r  lia submitted that that [REDACTED].<sup>387</sup> Whilst we accept that providing category data to retailers is often standard, we consider that this document has not been prepared for an external audience and so should be considered as evidence of C  r  lia monitoring [REDACTED] performance for its own commercial purposes.
  - (b) C  r  lia internal document shows [REDACTED].<sup>388</sup>
    - o *GMI documents*
- 9.69 Due to GMI’s document retention policy (which results in the destruction of documents after [REDACTED]), we mainly had access to internal documents created after Merger discussions with C  r  lia had started, limiting the overall volume of available evidence. We also note that the CMA is generally likely to attach more evidentiary weight to documents generated before merging parties were contemplating or aware of a merger.<sup>389</sup> We identified documents that showed GMI referencing C  r  lia’s PL activities.
- (a) In an internal presentation dated March 2020, GMI discussed [REDACTED].<sup>390</sup>
  - (b) A [REDACTED].<sup>391</sup>
- 9.70 Although GMI referred to [REDACTED].

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<sup>382</sup> [REDACTED].

<sup>383</sup> [REDACTED], 2 August 2019. C  r  lia internal emails [REDACTED], 18 September 2019. [REDACTED], 24 February 2021.

<sup>384</sup> Response to AIS (C  r  lia’s response to internal documents), 13 September 2022, page 10.

<sup>385</sup> Response to AIS (C  r  lia’s response to internal documents), 13 September 2022, page 10.

<sup>386</sup> [REDACTED], September 2021.

<sup>387</sup> Response to AIS (C  r  lia’s response to internal documents), 13 September 2022, page 12.

<sup>388</sup> [REDACTED] May 2021.xlsx’.

<sup>389</sup> MAGs, paragraph 2.29.

<sup>390</sup> [REDACTED], March 2020.

<sup>391</sup> [REDACTED], 28 August 2020.



- *Our assessment*

- 9.71 In general, the Parties appear to produce relatively few documents analysing competitive conditions within the DTB sector.
- 9.72 We note that the Parties do not appear to consider each other extensively in their internal documents and, consistent with our understanding of the market, the Parties' internal documents contain no evidence of direct competition (e.g. rivalry in customer tenders) between them. In this regard, the CMA notes that Cérélia monitors PL DTB suppliers more frequently than it tracks Jus-Rol/GMI (see Alternative Competitive Constraints section below).
- 9.73 There is, however, some evidence that Cérélia monitors the sales and prices of Jus-Rol products [REDACTED].
- 9.74 In addition, GMI's internal documents show that it monitors and benchmarks Jus-Rol against PL products. References to PL that we have seen are generic and do not name wholesale suppliers or retailers (but as Cérélia is, by far, the largest PL supplier, we infer that some of these documents refer, at least in part, to Cérélia). We have not identified documents indicating that GMI monitors retailers' PL strategy or benchmarks against other branded products.

*Evidence of the Parties exerting a constraint in commercial negotiations*

- 9.75 The Parties submitted that:
- (a) Where a retailer refers to volume and cost tension, it is simply referring to the fact that it has visibility over Jus-Rol's manufacturing costs and this then allows it to focus its discussion with Jus-Rol around the margin it should be paid for its brand equity. This would be the case regardless of the PL supplier.<sup>392</sup>
  - (b) Retailers never [REDACTED] when negotiating DTB PL terms with Cérélia and always refer to [REDACTED].<sup>393</sup> When negotiating with Jus-Rol, retailers [REDACTED].<sup>394</sup>
  - (c) [REDACTED].<sup>395</sup>

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<sup>392</sup> Cérélia's response to the phase 1 Issues Letter, 11 May 2022, paragraph 8.11.

<sup>393</sup> [Cérélia's initial phase 2 Submission](#), 1 July 2022, paragraph 3.8c.

<sup>394</sup> Cérélia's response to the phase 1 Issues Letter, 11 May 2022, paragraph 2.8c.

<sup>395</sup> Cérélia's response to the CMA's section 109 Notice (Phase 2 s.109) (1), 14 July 2022, question 39.

- (d) Retailer negotiation is about Jus-Rol's own metrics, [REDACTED].<sup>396</sup> PL contract manufacturing terms are never a feature of GMI's negotiations with retailers.
  - (e) When considering allocating shelf space to Jus-Rol, retailers will consider de-listing Jus-Rol products and replacing them with the equivalent PL products.<sup>397</sup> However, the fact that retailers decide on the proportion of PL and Jus-Rol products (which their PL products may copy) to stock on shelf is not evidence of retailers leveraging PL terms in negotiations with Jus-Rol.<sup>398</sup>
  - (f) Any threat by retailers to discipline Cérélia (and get the best offer from it) by threatening to switch volumes to Jus-Rol [REDACTED].<sup>399</sup>
- *Grocery retailer evidence on constraint in commercial negotiations*

9.76 Over half of the grocery retailers (6 out of 9) who responded to our questionnaire [REDACTED] (which together account for the majority of supply of DTB products in the UK), including all of the largest retailers, told us that there is a degree of competitive tension between the Parties that they can use as a lever in negotiations.<sup>400</sup>

- (a) A large retailer [REDACTED] stated that changing volumes of PL and Jus-Rol products in response to their offers was a lever the retailer is able to pull if the Parties increase price or decrease quality. Due to the limited presence of alternative suppliers in the UK, rebalancing own label and brand proportions is seen as a more important and viable option than switching suppliers entirely. This retailer stated that the ability to flex volume is enhanced by the fact that branded and own label DTB products are very similar.<sup>401</sup> The same retailer [REDACTED] stated that [REDACTED].<sup>402</sup>
- (b) Another large retailer [REDACTED] told us that the price differential, with branded products typically expected to be more premium, was key in separate negotiations with the Parties, helping the retailer assess meaningfully value for money and competitiveness. It told us that having at least two distinct suppliers provides the retailer with an objective, independent benchmark for use in negotiations with suppliers. It explained that,

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<sup>396</sup> Cérélia's response to the phase 1 Issues Letter, 11 May 2022, paragraph 2.21.

<sup>397</sup> Cérélia's response to the phase 1 Issues Letter, 11 May 2022, paragraph 2.20b.

<sup>398</sup> Cérélia's response to the phase 1 Issues Letter, 11 May 2022, paragraph 2.9b.

<sup>399</sup> Cérélia's response to the phase 1 Issues Letter, 11 May 2022, paragraph 1.26.

<sup>400</sup> Responses to CMA phase 2 customer questionnaire, question 17; Written submission from [REDACTED], [REDACTED], page 2.

<sup>401</sup> Transcript of a call with [REDACTED], [REDACTED], page 9.

<sup>402</sup> Transcript of a call with [REDACTED], [REDACTED], pages 7-8.

although a branded product might carry a price premium, it would use separate supplier negotiations to assess the cost price position of each, and the differential between them, to help assess value for money and competitiveness.<sup>403</sup>

- (c) Another large retailer [REDACTED] submitted that the Parties compete for the space allocated to DTB products by retailers, [REDACTED]. This is because the nature of the category forces the retailer to manage a mix of own label and branded products, rather than simply expanding the range they stock (expanding their range does not necessarily lead to significantly more volume being sold).<sup>404</sup> [REDACTED] It said that it has [REDACTED]. It [REDACTED] indicated that this leverage is slightly mitigated by the fact that C r lia produces the majority of the Jus-Rol products supplied to the retailer.<sup>405</sup> It maintains, however, that there is competition between the Parties in terms of pricing to drive sales.<sup>406</sup> It [REDACTED] submitted that use of this leverage has taken place in every negotiation over the last few years and comes in the form of retail pricing, promotional strategy and adjusting ranges.<sup>407</sup>

- *Grocery retailer evidence on direction of constraint between the Parties*

9.77 Large retailers also provided evidence in relation to the direction of constraint of C r lia on Jus-Rol, and vice versa:

- (a) [REDACTED] submitted that the constraint of trading the Parties off against each other works in both directions (ie trading PL off against Jus-Rol as well as trading Jus-Rol off against PL products).<sup>408</sup> For instance, the retailer could decide to lower prices to drive more volume, if the brand is investing more in efficiencies and this would provide the best commercial proposal.<sup>409</sup>
- (b) [REDACTED] also stated that the constraint works in both directions as the benchmark which manifests as a result of the differential can be used in negotiations with either supplier.<sup>410</sup>
- (c) In contrast, [REDACTED] submitted that, from a pricing perspective, the products [REDACTED] in the PL channel provide a greater constraint on the price of Jus-Rol

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<sup>403</sup> Written submission from [REDACTED], [REDACTED], page 1.

<sup>404</sup> Transcript of a call with [REDACTED], [REDACTED], page 4.

<sup>405</sup> Transcript of a call with [REDACTED], [REDACTED], page 7.

<sup>406</sup> Transcript of a call with [REDACTED], [REDACTED], page 9.

<sup>407</sup> Email from [REDACTED]. [REDACTED]. See further 'Evidence on the nature of the constraint'.

<sup>408</sup> Transcript of a call with [REDACTED], [REDACTED], page 10.

<sup>409</sup> Transcript of a call with [REDACTED], [REDACTED], page 8.

<sup>410</sup> Written submission from [REDACTED], [REDACTED], question 2.

than the other way round due to the nature of the lower price point for the PL product.<sup>411</sup>

- *Grocery retailer evidence of the constraint on wholesale prices deriving from competition between the Parties*

9.78 In relation to constraint of wholesale prices deriving from competition between the Parties, the Parties submit that they both compete on price and quality within their respective channels. Cérélia aims to provide retailers with competitive prices and quality, whereas GMI competes on price, the margin for the effective wholesale price, service, rate of sale and category insight.<sup>412</sup> However, they do not accept that this competition takes place across the two supply channels.

9.79 When asked whether wholesale prices of PL products helped determine the wholesale prices of branded products (and vice versa), a little over half (four out of seven) of the customers that [REDACTED], including [REDACTED] of the largest grocery retailers by market share, said they did – on the basis that PL wholesale pricing helps generate pricing discipline for the branded channel (since they would expect PL products to cost less than branded products).<sup>413</sup> One large retailer [REDACTED] further stated that the Merger would mean that it would be ‘unable to offset the brand vs. PL for range changes and commercial competitiveness to ensure we have great prices’.<sup>414</sup>

9.80 In addition, one other large retailer [REDACTED], when talking about [REDACTED] relations with suppliers, explained that it looks at the price differential between the PL product ([REDACTED]) and [REDACTED] and that it ‘[trades] competitors off against each other’.<sup>415</sup> It explained that ‘the presence of [at least] two separate and viable suppliers each offering high quality products creates competitive tension in any negotiation, and is something that we leverage (implicitly) to generate jeopardy and negotiate a good commercial outcome for us and our customers.’<sup>416</sup>

9.81 By contrast, one smaller retailer [REDACTED] said that the wholesale price negotiated with PL suppliers has no bearing on the wholesale price negotiated with branded suppliers and that commercial viability was instead prioritised.<sup>417</sup>

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<sup>411</sup> Transcript of a call with [REDACTED], [REDACTED], page 10.

<sup>412</sup> Cérélia's initial phase 2 Submission, 1 July 2022, paragraph 3.4c. GMI site visit, slide 29.

<sup>413</sup> Responses to CMA phase 1 customer questionnaire, question 16c.

<sup>414</sup> [REDACTED] response to CMA phase 1 customer questionnaire, question 17.

<sup>415</sup> [REDACTED] response to CMA phase 1 customer questionnaire, question 13.

<sup>416</sup> Written submission from [REDACTED], [REDACTED], page 1.

<sup>417</sup> [REDACTED] response to CMA phase 1 customer questionnaire, question 16a and 16b.

9.82 We found some evidence in GMI's internal documents of a customer making direct pricing comparisons between Jus-Rol and PL products. An email chain between [REDACTED] and GMI from 31 May 2022 shows [REDACTED].<sup>418</sup> In its response to our Working Papers, GMI submitted that [REDACTED].<sup>419</sup> GMI further submitted that [REDACTED], which we address immediately below.

- *Evidence on the nature of the constraint*

9.83 Large retailers described the constraint between the Parties as being implicit in nature.

- (a) One large retailer [REDACTED], when describing the potential lever of switching volumes between PL and branded supply, described a commercial process that focused on the supplier's competitiveness and the profitability for the retailer, rather than comparing explicitly across channels. While it [REDACTED] indicated that, in discussions with either of the Parties, it would not necessarily directly reference an offer from the other Party and that it had not particularly needed to do so in negotiations, it also told us that the option to switch between PL and Jus-Rol was more important than the option to change supplier.<sup>420</sup>
- (b) Another large retailer [REDACTED] submitted that a competitive tension between the Parties is implicitly present in any negotiation. It stated that the presence of the Parties as alternatives provides 'an objective, independent 'benchmark' to assess factors such as value for money, competitiveness of the deal offered, quality etc'.<sup>421</sup> It explained that it would typically not refer directly to the constraint from the other Party, focusing instead on the best possible offer each supplier could produce, but that it is nevertheless a competitive pressure which would be lost as a result of the Merger.<sup>422</sup> It further explained that discussions were centred around the best possible offer each supplier could produce.<sup>423</sup> [REDACTED].<sup>424</sup>
- (c) [REDACTED], [REDACTED] similarly submitted that, as far as it was aware, specific references to other parties were not usually made during negotiations.<sup>425</sup> While noting that there may be some conversations that take place outside of email exchanges, it also noted that this type of leverage has not

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<sup>418</sup> Email from [REDACTED] to GMI, 31 May 2022.

<sup>419</sup> GMI response to the Annotated Issues Statement and Working Papers, 12 September 2022, paragraph 5.1.2.

<sup>420</sup> Transcript of a call with [REDACTED], [REDACTED], page 9.

<sup>421</sup> Written submission from [REDACTED], [REDACTED], page 1.

<sup>422</sup> Written submission from [REDACTED], [REDACTED], page 4.

<sup>423</sup> Written submission from [REDACTED], [REDACTED], page 1.

<sup>424</sup> Written submission from [REDACTED], [REDACTED], page 2.

<sup>425</sup> Transcript of call with [REDACTED], [REDACTED], pages 14-15.

tended to be necessary in practice, as it had not experienced unjustified cost inflation or (in respect to Jus-Rol) reduction in promotional funding.

9.84 When asked for contemporaneous internal documents referencing the competitive tension described, the retailers that had described the constraint between the Parties told us that such documents were generally not available – pointing to the implicit nature of the commercial tension or leverage.

9.85 Internal documents also indicate that retailers often consider replacing Jus-Rol products with equivalent PL products when assessing their product range. For example:

- (a) An email from one retailer [REDACTED] to a General Mills account manager in 2020 shows the retailer [REDACTED] [REDACTED].<sup>426</sup>
- (b) An internal email between GMI staff in 2019 describes one retailer [REDACTED].<sup>427</sup> GMI submitted that the decision to [REDACTED] was part of that retailer [REDACTED] and that this should not be read as these products being taken out and replaced with PL products.<sup>428</sup> When we asked the retailer [REDACTED], it said that [REDACTED].<sup>429</sup> [REDACTED].<sup>430</sup>
- (c) In a 2021 category review, Cérélia, as a retailer's [REDACTED] [REDACTED], recommended that that retailer [REDACTED].<sup>431</sup> Cérélia submitted that the provision of category insights is standard practice and required by retailers from their contract manufacturers and this does not confer any control over a retailer's PL range.<sup>432</sup> In addition, all recommendations are objectively justified, [REDACTED] and ultimately that retailer [REDACTED] rejected Cérélia's recommendations.<sup>433</sup> [REDACTED].<sup>434</sup> In other circumstances, Cérélia has recommended [REDACTED] where this would benefit the entire category, (see paragraph (d) below).<sup>435</sup> We do not dispute any of these submissions but also do not consider them to be particularly relevant in this context, given that they are not inconsistent with the position that retailers consider replacing Jus-Rol products with equivalent PL products.

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<sup>426</sup> [REDACTED].

<sup>427</sup> [REDACTED], 12 June 2019.

<sup>428</sup> Cérélia, main party hearing transcript, page 30.

<sup>429</sup> [REDACTED].

<sup>430</sup> [REDACTED].

<sup>431</sup> [REDACTED], February 2021. [REDACTED].

<sup>432</sup> Response to AIS (Cérélia's response to internal documents, 13 September 2022, pages 4 and 10.

<sup>433</sup> [REDACTED].

<sup>434</sup> [REDACTED].

<sup>435</sup> Response to AIS (Cérélia's response to internal documents, 13 September 2022, pages 4 and 10.

(d) C r lia said that it has recommended [REDACTED]. In March 2021, it recommended [REDACTED].<sup>436</sup> C r lia notes that this is consistent with its position as set out above at paragraph (c), that category management recommendations are made on an objective basis.<sup>437</sup> Notwithstanding this position (which we do not dispute), we note that [REDACTED].

9.86 A number of retailers provided examples of stocking decisions that included changing Jus-Rol products for PL. One retailer [REDACTED] said that it has delisted a number of specialist Jus-Rol products due to poor performance. In most instances it replaced these with branded like-for-like or PL products.<sup>438</sup> Another retailer [REDACTED] also said that it has replaced Jus-Rol products with PL products.<sup>439</sup>

- *Our assessment*

9.87 In assessing how closely the Parties compete, we have carefully considered the body of evidence available including written evidence and evidence from oral hearings. While we note the Parties' submission that a limited number of references to the other Merging Party across the other evidence sources might indicate that the Parties are not close competitors, we have placed particular weight on the third-party evidence obtained during the course of our inquiry, particularly in the light of the majority of the large retailers describing an implicit but important constraint which operates in commercial negotiations (after the choice to offer PL and branded DTB products have been made, and after the channel specific tender process has taken place).

9.88 Taking the evidence in the round, we consider that the Parties exert a material constraint on each other in the context of commercial negotiations. The majority of grocery retailers that responded to our inquiry viewed the Parties as competitors. The evidence supports the view that retailers flex their purchases across both channels to reflect price and quality needs, and in this context in particular, the Parties are material competitors. A significant share of the grocery market told us that the Parties compete for volumes purchased by them, which they use (alongside other factors) to drive down prices. We also found the Parties monitor each other to some extent. We note, however, the retailers' evidence that the competitive dynamic is not typically explicit. This is consistent with the picture apparent in the Parties' internal documents

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<sup>436</sup> Response to AIS (C r lia's response to internal documents), 13 September 2022, pages 4-5. Annex 24a.28 – [REDACTED], slides 3 and 23

<sup>437</sup> Response to AIS (C r lia's response to internal documents), 13 September 2022, pages 4-5. Annex 24a.28 – [REDACTED], slides 3 and 23

<sup>438</sup> [REDACTED] response to CMA phase 1 customer questionnaire, [REDACTED], question 15.

<sup>439</sup> [REDACTED] response to CMA phase 1 customer questionnaire, [REDACTED], question 15.

more generally and other DTB suppliers' descriptions of the channel-specific commercial negotiations with retailers. However, we provisionally conclude that the evidence supports the view that the Parties exert a material competitive constraint on each other, while noting Cérélia's PL pricing is more commonly cited as a constraint on Jus-Rol, a number of retailers considered the price differential was important for pricing in both channels.

### ***Competition between PL and branded products at the retail level***

- 9.89 In Chapter 7 we set out how, in our provisional view, competition at the wholesale level is interrelated and driven to a significant extent by the competitive dynamics between PL and branded products at the retail level (see paragraph 7.89). That is, the demand for DTB products across the channels at the retail level significantly influences the amount that the Parties are asked to supply to retailers at the wholesale level (ie it is a 'derived demand').
- 9.90 In light of this connection between the retail and wholesale levels, we consider that it is important to understand the strength of competition between PL and branded products at the retail level. We next set out the evidence for competition between PL DTB products and Jus-Rol's products at the retail level.
- 9.91 Cérélia initially submitted that branded and PL DTB products are differentiated products, which do not compete closely at the retail level.<sup>440</sup> In a later submission, Cérélia submitted that it is common ground that Jus-Rol branded products and PL products do compete for consumers at the retail level,<sup>441</sup> and that Jus-Rol is lacking differentiation compared to PL products.<sup>442</sup>
- 9.92 GMI submitted that many retailers, such as Sainsbury's, have changed their PL product packaging to resemble consumer brands, such as Jus-Rol, more closely, and that this makes the distinction between PL and Jus-Rol harder to see for consumers.<sup>443</sup>

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<sup>440</sup> MN, paragraph 294.

<sup>441</sup> Cérélia's response to the phase 1 Issues Letter, 11 May 2022, paragraph 5.2.

<sup>442</sup> Cérélia's response to the phase 1 Issues Letter, 11 May 2022, paragraph 5.15ci. Cérélia, main party hearing transcript, page 19-21.

<sup>443</sup> GMI Site visit, 26 July 2022, slide 28.



*Evidence on competition between PL and branded DTB products at the retail level*

*Evidence on differentiation between PL and branded DTB products at the retail level*

- 9.93 There are elements of differentiation between PL and branded DTB products sold to end-consumers, in particular in relation to pricing strategies, the target end-consumers (for example, the demographic profile of the consumer) and packaging.
- 9.94 While PL products are sold at lower price points, branded products, such as Jus-Rol, are typically sold for a higher price.<sup>444</sup> The willingness to pay this 'brand premium' indicates that some end-consumers consider branded products to be of a higher quality than the equivalent PL products. Other reasons for the willingness to pay the 'brand premium' may be that consumers value the quality assurance provided by brands, the more exciting packaging of branded products, new recipes and use suggestions.<sup>445</sup>
- 9.95 GMI submitted that [redacted].<sup>446</sup> Data provided by GMI show that [redacted].<sup>447</sup> One retailer [redacted] also said that within its chilled category the branded products have a small loyal base whereas PL products serve the masses more.<sup>448</sup>
- 9.96 There are also differences in packaging with branded products tending to be more effective in attracting shopper attention, eg with a more attractive and category-specific packaging design compared to own-label, which adheres to own-label brand guidelines across product categories.<sup>449</sup>

*Evidence on substitutability between PL and DTB products at the retail level*

- 9.97 However, we find that there is strong evidence that PL and branded DTB products are physically very similar, and end-consumers do often see the two products as direct substitutes for each other.
- 9.98 Packaging aside, the physical characteristics of branded and PL products like ingredients and shapes are very similar. For example, a major retailer [redacted] stated that puff and shortcrust pastry are 'interchangeable products from brand to PL with little differentiation from a recipe perspective'.<sup>450</sup> Moreover,

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<sup>444</sup> C er lia's response to the phase 1 Issues Letter, 11 May 2022, paragraph 8.11.

<sup>445</sup> MN, paragraph 294.a.

<sup>446</sup> GMI site visit, 26 July 2022, slide 8.

<sup>447</sup> GMI site visit, 26 July 2022, slide 8.

<sup>448</sup> [redacted] response to CMA phase 2 customer questionnaire, [redacted], question 27.

<sup>449</sup> MN, paragraph 418.

<sup>450</sup> [redacted] response to CMA phase 2 customer questionnaire, [redacted], question 27.

at the Main Party Hearings, C  r  lia said that the product characteristics of PL and branded products are [REDACTED].<sup>451</sup> We heard similar comments from third parties. This similarity in product means that consumers view them as functionally equivalent. One internal presentation [REDACTED].<sup>452</sup>

9.99 The decreasing differentiation between PL and branded products referred to by the Parties is supported by evidence from the Parties' internal documents. For example:

(a) A regional review slide-deck from GMI refers to [REDACTED].<sup>453</sup>

(b) A 2020 GMI presentation comments that '[REDACTED]'.<sup>454</sup>

9.100 Internal documents from Jus-Rol also indicate that consumers treat branded and PL products as substitutes. For example, in a Jus-Rol email explaining a decision to delist certain Jus-Rol products, the [REDACTED].<sup>455</sup> Moreover, a GMI presentation indicates that [REDACTED].<sup>456</sup>

9.101 Evidence from third parties also indicates that PL and branded products are considered as alternatives by customers at the retail level:

(a) A retailer [REDACTED] said that 'there is some brand loyalty, but customers do switch between branded and [PL], in particular when Jus-Rol is on promotion'.<sup>457</sup> In addition, it submitted that there is 'a high degree of cross-shop' across PL and branded chilled pastry.<sup>458</sup> This retailer also stated that customers that shop both PL and branded within chilled pastry (27%) represent half of the category's total value of sales.<sup>459</sup>

(b) In an email to Jus-Rol, [REDACTED].<sup>460</sup>

(c) The large majority (six out of seven) of the retailers who responded to our customer questionnaire and stock both PL and branded products said the two products compete with each other.<sup>461</sup>

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<sup>451</sup> C  r  lia, main party hearing transcript, page 73.

<sup>452</sup> GMI Annex 20c, 30 November 2021, slide 21.

<sup>453</sup> '[REDACTED]', 1 November 2021.

<sup>454</sup> '[REDACTED]', 29 April 2020; '[REDACTED]', 1 March 2020.

<sup>455</sup> '[REDACTED]', 21 February 2022.

<sup>456</sup> '[REDACTED]', 1 March 2020.

<sup>457</sup> [REDACTED] response to CMA customer questionnaire, [REDACTED], question 25.

<sup>458</sup> Note of a call with [REDACTED], [REDACTED], paragraph 9.

<sup>459</sup> Note of a call with [REDACTED], [REDACTED], paragraph 9; Response to the CMA customer questionnaire from [REDACTED], [REDACTED], question 27.

<sup>460</sup> '[REDACTED]', 21 February 2022

<sup>461</sup> Responses to CMA phase 2 customer questionnaire, question 27.

(d) The majority (six out of eight) of competitors that responded to the question of whether branded DTB products and PL products compete with one another at the retail level, considered that they do compete.<sup>462</sup>

(e) One retailer [X] submitted that consumers would trade between branded and PL products dependent on need and availability.<sup>463</sup>

9.102 We have considered the extent to which end-consumers are faced with the choice between PL and branded DTB products when shopping. In Table 9.2, we show the share of DTB products stocked in physical stores by retailers according to whether they are PL or Jus-Rol (branded) products. Smaller stores typically only stock either PL or branded products, not both. However, this is not true in large stores. All of the retailers listed in Table 9.2 stock both PL and Jus-Rol products in their online channel.<sup>464</sup>

**Table 9.2: percentage of retailers' stores stocking PL and/or Jus-Rol products**

Retailer	PL (%)	Stores (#)	Convenience stores		PL (%)	Stores (#)	Other physical stores	
			Jus-Rol (%)	Stores (#)			Jus-Rol (%)	Stores (#)
Retailer 1	[0-5%]	[X]	[90-100%]	[X]	[90-100%]	[X]	[90-100%]	[X]
Retailer 2	[0-5%]	[X]	[60-70%]	[X]	[90-100%]	[X]	[30-40%]	[X]
Retailer 3	[20-30%]	[X]	[10-20%]	[X]	[70-80%]	[X]	[80-90%]	[X]
Retailer 4	N/A	[X]	N/A	[X]	[90-100%]	[X]	[90-100%]	[X]
Retailer 5	N/A	[X]	[80-90%]	[X]	N/A	[X]	[90-100%]	[X]
Retailer 6	[70-80%]	[X]	[30-40%]	[X]	N/A	[X]	N/A	[X]
Retailer 7	N/A	[X]	N/A	[X]	[40-50%]	[X]	[X]	[X]
Retailer 8	N/A	[X]	N/A	[X]	[50-60%]	[X]	[10-20%]	[X]

Source: Responses to CMA customer questionnaire, question 29.  
 Note: table includes those retailers who responded to question 29.

### Our assessment

9.103 We have found that there are elements of differentiation between PL and branded DTB products sold to end-consumers in particular in relation to pricing strategies, the target end-consumers and packaging.

9.104 However, we have found that, overall, there is strong evidence that PL and branded products are similar products which compete closely for end-consumers at the retail level where both product types are stocked.

<sup>462</sup> Responses to CMA phase 2 competitor questionnaire, question 23.

<sup>463</sup> [X] response to CMA phase 2 customer questionnaire, [X], question 27.

<sup>464</sup> Response to CMA phase 2 customer questionnaire, question 29. [X] and [X] said that the availability of products online depends on the store type. In particular, [X] said that online orders will be picked from local convenience stores, some of which would not have the products available.

9.105 This is particularly the case because end-consumers are often choosing between only one branded product and the equivalent PL product (and, in the vast majority of cases, between a PL product for which Cérélia is the contracted supplier and Jus-Rol). We set out Chapter 7 that the CMA is not aware of any instances of retailers sourcing the same DTB product from multiple suppliers within the PL and branded channels. Where the only products available to an end-consumer for a given SKU are a single branded option and the PL equivalent and those products are substitutable, we consider that those products are competing very closely at the retail level.

9.106 The evidence above suggests that the PL products for which Cérélia is the contracted supplier and Jus-Rol products compete closely for end-consumers. As discussed in paragraph 7.89, competition at the retail level is linked to competition at the wholesale level, and this should be taken into account in our assessment of closeness of competition. This close competition at the retail level is an indication of closeness of competition between that Parties at the wholesale level.

### ***The vertical relationship between the Parties***

9.107 In this section we discuss the impact of the vertical relationship between the Parties on the nature of their competitive relationship.

#### ***Parties' representations***

9.108 Cérélia notes that it has been manufacturing products for Jus-Rol since 2015 and is contracted to continue to do so [redacted]. Cérélia supplies approximately [redacted] of Jus-Rol's products sold in the UK. Cérélia submits that the other third comprises canned products and filo pastry, none of which compete with the DTB products purchased from Cérélia by PL buyers.<sup>465</sup>

9.109 The Parties submit that this supply relationship means that Cérélia does not compete with Jus-Rol to supply grocery retailers. Cérélia submits [redacted]. As such, it submits that any attempts by grocery retailers to play off Cérélia and Jus-Rol products [redacted]. It stated that this means there can be no Merger-specific loss of competition.<sup>466</sup>

9.110 In the Main Party Hearings, Cérélia stated that, [redacted].<sup>467</sup>

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<sup>465</sup> Cérélia's response to the CMA's section 109 Notice (phase 2 s.109) (2), 22 August 2022, paragraphs 14 and 15.

<sup>466</sup> [Cérélia's response to the Issues Statement](#), 2 August 2022, paragraph 5.14.

<sup>467</sup> Cérélia, main party hearing transcript, page 20.

### *Views of third parties*

9.111 Only one third party suggested that the existence of the Parties' contractual relationship could mean the Parties may be less closely competing than they otherwise would be. One key competitor [X] stated that as Cérélia manufactured both branded and PL products, there was 'no competition within Cérélia'.<sup>468</sup>

9.112 However, when large retailers (including retailers currently supplied by Cérélia) were specifically asked about this issue, they indicated that they did not consider it to undermine their view that Cérélia was constrained by Jus-Rol. For example:

- (a) A retailer [X] said that although its leverage is slightly reduced by the fact that Cérélia produces the majority of Jus-Rol products, there remained a competitive tension between the Parties in terms of pricing to drive sales.<sup>469</sup>
- (b) Another retailer [X] said that although Cérélia may manufacture PL and Jus-Rol, 'our agreement is with two different trading teams' and that they 'have two very different, separate negotiations and separate prices'.<sup>470</sup>
- (c) A retailer [X] said in relation to Cérélia and Jus-Rol, that 'the presence of at least two viable suppliers offering high quality products creates competitive tension in negotiations'. They also noted that [X] did not change their view on this.<sup>471</sup>

### *Evidence on Cérélia's view of the channels*

9.113 As noted above, Cérélia submitted [X]. We consider that this position is fully supported by the underlying evidence available to us. In particular:  
not

- (a) Based on the information supplied by Cérélia, [X], this is not the case over time and [X]. For example, in the first half of 2022, [X].<sup>472</sup>
- (b) The [X] provided is, in any case, in the CMA's view ambiguous and is heavily dependent upon [X]. We note, in this regard, that Cérélia emphasised the limitations of its [X] in its RFI response.<sup>473</sup> On this basis,

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<sup>468</sup> [X] response to CMA phase 2 competitor questionnaire, question 22.

<sup>469</sup> Transcript of a call with [X], [X] 2022, page 7, line 9.

<sup>470</sup> Transcript of a call with [X], [X], page 10.

<sup>471</sup> Written submission from [X], [X], question 2(b)(ii).

<sup>472</sup> Cérélia's response to s109 (phase 2) (3), 14 September 2022.

<sup>473</sup> Cérélia's response to s109 (phase 2) (2), 22 August 2022, question 1.

we consider that it is appropriate to put relatively limited weight on the [REDACTED] in general.

- (c) Cérélia's role in the manufacture of Jus-Rol products is subject to a contractual arrangement which expires in [REDACTED]. As with any contract, there is a risk that the contract may not be renewed (or could be terminated) and that Cérélia would cease to have any role in the supply of Jus-Rol products. Cérélia therefore faces two forms of contractual risk in relation to the supply of Jus-Rol: the risk that Jus-Rol loses contracts to supply grocery retailers, and the risk that Cérélia loses its own contract to supply Jus-Rol. In comparison, Cérélia faces only one form of contractual risk in relation to its PL supply activities: the risk that it loses contracts to supply retailers.
- (d) We identified one internal document that indicates that [REDACTED]. In an email titled [REDACTED], discussing [REDACTED] during the pandemic, Cérélia's UK Managing Director said '[REDACTED]'.<sup>474</sup>

### *Our assessment*

9.114 We note that Cérélia's role in manufacturing Jus-Rol products is based on a contractual relationship, and that a contractual relationship is materially different in nature to a merger.<sup>475</sup> A contractual relationship does not result in a lasting change in market structure, has limited duration and may be renegotiated or terminated even before its initial term. The implications for competition of a non-structural, term-limited contractual relationship, such as the Partnership, are different from the ownership of a target business. The Merger would, in contrast to the previous outsourcing arrangement (which is a type of arrangement that typically fall outside the scope of merger control),<sup>476</sup> bring about a permanent change in the market structure.

9.115 Notwithstanding the existing vertical link between the Parties, the Merger would result in material changes in competitive dynamics and market structure:

- (a) Post-Merger, Cérélia would have control over the entire commercial strategy relating to Jus-Rol products, including all aspects of the wholesale PQRS offering to retailers across both channels, which it does

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<sup>474</sup> [REDACTED], 23 April 2020

<sup>475</sup> See, to that effect, [MAGs](#) paragraph 7.15 and Anticipated acquisition by Cellnex UK Limited of the passive infrastructure assets of CK Hutchison Networks Europe Investment S.A.R.L., 3 March 2022, Final Report paragraph 8.76.

<sup>476</sup> [MAGs](#), paragraph 4.13

not have at present. In particular, Cérélia would have control over pricing of both the PL products supplied by Cérélia in the PL channel and Jus-Rol products (including its brand-equity margin) and could determine price points (and therefore relative pricing) to maximise joint profits.

- (b) The Merger would also ‘cement’ Cérélia’s role as the manufacturer of Jus-Rol products. As post-transaction Cérélia would control all aspects of the commercial strategy, it would no longer be exposed to the risk that GMI could find an alternative manufacturer for Jus-Rol products, including GMI taking production back in-house (in other words, the Merger turns the link between Cérélia and Jus-Rol from a contractual link into a structural link).
- (c) Lastly, even if Cérélia were [✂], this was not true for GMI, which was unambiguously worse off if retailers switched sales from Jus-Rol to the PL channel (and therefore incentivised to compete to avoid this happening).

9.116 Nevertheless, we consider that the existing vertical link is relevant to our assessment. In particular, Jus-Rol’s use of Cérélia for manufacturing means that Jus-Rol is a somewhat weaker competitor than if Cérélia did not manufacture Jus-Rol products. This is because Cérélia will currently recapture a material share of any sales diverted from its PL products to the Jus-Rol branded channel. However, we do not believe that this means that there can be no material loss of competition brought about by the Merger.

### ***Provisional conclusion on closeness of competition***

9.117 We have provisionally found that the Parties compete in the wholesale supply of DTB products to retailers. This is because we have found that the Parties supply products to retailers that are physically similar, and that retailers and end-consumers to a large extent regard these as substitutes.

9.118 As the Parties have argued, the DTB product supply process differs between the PL and branded channel, with the PL channel typically requiring a more iterative negotiation process between the retail buyer and the contract manufacturer, while branded supply is offered to retailers on a ‘take it or leave it’ basis. The fact that Cérélia engages with retailers via the PL channel, while Jus-Rol engages as a branded supplier, means the Parties do not compete head-to-head in the same tender processes.

9.119 Despite this lack of head-to-head competition in tenders, we have found that Cérélia and Jus-Rol do exert some constraint on each other and that retailers value the ability to weigh up the Parties’ offerings against each other in order to get a better deal in negotiations, particularly in terms of price and quality. Grocery retailers told us that they have not typically resorted to explicitly

putting their PL supplier against their branded supplier, but that the presence of independent suppliers in each of these channels has been regarded as a source of competitive tension. This competition would be removed by the Merger, thereby reducing the ability of retailers to protect themselves against potential price rises by a particularly large supplier with full control over PQRS in both supply channels.

- 9.120 There is material differentiation between the Parties' offerings in terms of the channel they sell through (PL v branded), the typical wholesale price paid by retailers and the activities undertaken by each of the Parties within the value chain. In keeping with this position, while the Parties do monitor each other to some extent in their internal documents, they do not seem to consider each other as direct competitors for specific tenders.
- 9.121 We also considered the vertical link between the Parties. While we recognise that C  r  lia's role as a contract manufacturer for Jus-Rol pre-Merger is likely to have had some effect on the extent of competition between the Parties pre-Merger, we note this does not mean that there can be no material loss of competition brought about by the Merger, and consider that the Merger would result in material changes in competitive dynamics and market structure.
- 9.122 In the round, we provisionally consider that the evidence supports the view that there is material competitive interaction between the Parties. In keeping with the position set out in the CMA's guidance that closeness of competition is a relative concept, the significance of the competitive constraint that the Parties exert on each other also depends upon the strength of the constraint from other competitors. The loss of competition between the Parties must therefore be assessed in the context of the alternative competitive constraints that they face. We consider these in the next section.

## **Alternative competitive constraints**

### ***Introduction***

- 9.123 In this section, we consider the alternative competitive constraints on the Merged Entity. We discuss expansion of alternative competitive constraints in Chapter 10.
- 9.124 Our MAGs state that the concern under a horizontal unilateral effects theory of harm relates to the elimination of a competitive constraint by removing an alternative that customers could switch to. The CMA's main consideration is



whether there are sufficient remaining good alternatives to constrain the Merged Entity post-merger.<sup>477</sup>

- 9.125 The ability for customers to switch is key to the competitive process. If the costs (financial or otherwise) of switching from one supplier to another are high, the Merged Entity may be able to raise prices or degrade the quality of products without losing many customers.<sup>478</sup> High switching costs may weaken the bargaining position of customers and make them less sensitive to changes in the price, quality or service levels.
- 9.126 The relative ease of switching between different channels (for example, branded and PL) is important when considering how retailers may act when faced with a price rise or a degradation of non-price aspects of a supplier's offering. If switching to a branded supplier is easier than switching to a PL supplier then this would strengthen the constraint posed by branded suppliers, including Jus-Rol, relative to that posed by alternative PL suppliers.
- 9.127 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.<sup>479</sup>
- 9.128 The Parties submitted that effective competitive constraints will remain post-Merger and, in particular, that:
- (a) There will be at least six different DTB contract manufacturers, including manufacturers based in the UK and in Continental Europe.<sup>480</sup>
  - (b) [REDACTED] retailer PL products sold in the UK are manufactured by manufacturers other than Cérélia.<sup>481</sup>
  - (c) Cérélia's competitors have [REDACTED] DTB manufacturing contracts that have been put out to tender by UK retailers in recent years.<sup>482</sup>
  - (d) While rival consumer brands' offers may be less comprehensive than Jus-Rol's, there is a range of specialised brands that can compete with Jus-Rol.<sup>483</sup>

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<sup>477</sup> MAGs, paragraph 4.3.

<sup>478</sup> MAGs, paragraph 5.4.9 (c).

<sup>479</sup> MAGs, paragraph 4.3.

<sup>480</sup> Cérélia's response to the Issues Statement, 2 August 2022, paragraph 1.13.

<sup>481</sup> See Appendix C for further discussion on shares of supply for PL DTB products. Cérélia's response to the Issues Statement, 2 August 2022, paragraph 1.14.

<sup>482</sup> Cérélia's response to the Issues Statement, 2 August 2022, paragraph 1.14.

<sup>483</sup> Cérélia's response to the phase 1 Issues Letter, 11 May 2022, paragraph 7.1.

- (e) There is a wide range of suppliers active in the foodservice and food manufacturing sectors who could [X] supply grocery retailers.<sup>484</sup>
- (f) The DTB sub-category [X] for retailers, and they can, and have in the past, reduced the shelf space devoted to DTB products. This is effectively another source of constraint.<sup>485</sup>

9.129 In this section, we first discuss switching. Then, we consider the constraints posed on the Merged Entity from within our defined market by:

- (a) PL suppliers; and
- (b) alternative consumer brands.

9.130 We then consider the out-of-market constraints from:

- (a) non-retail suppliers; and
- (b) retailers' option to buy fewer DTB products and sell other products instead.

9.131 Finally, we provide our provisional conclusion on the alternative competitive constraints.

### **Switching**

9.132 We have assessed switching from paragraph 7.79. There, we considered the nature and cost of the switching process for retail buyers looking to change either PL or branded supplier.

9.133 For PL, we found that it takes resources and effort on the part of retail buyers to identify and onboard a new supplier, and we do not observe frequent switching in this market. However, given that the switching process is familiar to grocery retailers and the fact that retailers tend to review their DTB product supply arrangements regularly, we provisionally conclude that switching costs are not a major barrier to switching PL supplier.

9.134 For branded, we found that switching costs for retail buyers are lower than is the case for PL switching, however switching rarely occurs in the branded

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<sup>484</sup> [Cérélia's response to the Issues Statement](#), 2 August 2022, paragraph 4.9; [Cérélia's initial phase 2 Submission](#), 1 July 2022, paragraph 4.20; Cérélia response to the CMA's request for information (phase 2 RFI) (1), 7 July 2022, paragraphs 28.16-20

<sup>485</sup> [Cérélia's initial phase 2 Submission](#), 1 July 2022, paragraph 4.16.

channel, likely due to a lack of viable alternative suppliers (see paragraph 9.233).

### ***Constraint from PL suppliers***

9.135 In this section we assess evidence in relation to the constraint from:

- (a) UK-based PL suppliers; and
- (b) EEA-based PL suppliers.

9.136 As discussed in paragraphs 7.12 to 7.23, alternative PL suppliers provide the primary constraint on Cérélia in one sense. This is because, once a grocery retailer has decided to supply a PL DTB product, alternative PL suppliers participate in the same tender processes as Cérélia, and they are in direct competition for the grocery retailer to select them as their PL supplier. However, this is not the only point at which competition arises. Rather, grocery retailers engage in a series of purchasing decisions. Having selected a PL supplier, retailers go on to consider both PL and branded channels in making purchasing decisions, which means that branded products provide an ongoing constraint on PL suppliers.

### ***UK-based PL suppliers***

9.137 In this sub-section, we first assess evidence related to the two key UK-based suppliers of PL products after Cérélia, namely Bells and Cranswick.<sup>486</sup> Then, we assess other UK-based PL suppliers from paragraph 9.167.

#### ***Bells***

- ***Evidence***

9.138 Bells is a Scottish manufacturer of DTB products, which supplies both branded and PL products.<sup>487</sup> Most of Bells' revenue does not relate to the DTB market but comes from the manufacturing of pies. DTB products predominantly for retail sale generate approximately £[REDACTED] for Bells in revenue, which is approximately [REDACTED]% of its total revenues. Bells told us that the DTB business is important to it, despite [REDACTED], because it is one of [REDACTED].<sup>488</sup>

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<sup>486</sup> We consider these suppliers to be key for a number of reasons including their shares of supply, references to them in internal documents, the parties' views on them and third parties' views on them.

<sup>487</sup> MN, paragraph 206(e).

<sup>488</sup> Note of a call with [REDACTED], [REDACTED], paragraph 1.

Bells' main DTB products are branded ready-rolled puff pastry and puff pastry blocks that are predominantly sold in a chilled state to retailers.<sup>489</sup>

9.139 Bells also supplies DTB products to food manufacturers and a small amount of PL DTB products to [REDACTED] and [REDACTED]. However, it stopped supplying PL products to these retailers in September 2022 [REDACTED]. Bells' share of supply of all DTB supply to UK grocery retailers was [0-5]% in 2021.<sup>490</sup>

9.140 Bells' maximum DTB production capacity is [REDACTED] per year.<sup>491</sup> In contrast, Cérélia's DTB UK production capacity is around [REDACTED].<sup>492</sup>

9.141 The Parties submitted that:

(a) Bells supplies both branded and PL DTB products [REDACTED].<sup>493</sup>

(b) [REDACTED].<sup>494</sup>

(c) [REDACTED].<sup>495</sup>

9.142 Bells told us that it has a strong brand presence in Scotland for pies and pastry, has been manufacturing pastry since the early 1970s and has a reputation for producing good quality pastry.<sup>496</sup>

9.143 In [REDACTED].<sup>497</sup> On this basis, we forecast that Bells' share of supply of all DTB products to UK retailers [REDACTED] [5-10]% in 2023.<sup>498</sup> In relation to this, [REDACTED] told us that:

(a) it did not believe [REDACTED];<sup>499</sup>

(b) [REDACTED];<sup>500</sup> and

(c) [REDACTED].<sup>501</sup>

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<sup>489</sup> Note of a call with [REDACTED], [REDACTED], paragraph 2.

<sup>490</sup> See paragraph 22 in Appendix C.

<sup>491</sup> Response to the CMA questionnaire from [REDACTED], [REDACTED], question 15.

<sup>492</sup> Cérélia Group's production capacity is around [REDACTED] in Europe (excluding the UK). Email from Cérélia to the, 29 September 2022. Cérélia's site visit presentation (morning session), 28 July 2022, slide 20.

<sup>493</sup> MN, paragraph 206.

<sup>494</sup> MN, paragraph 482.

<sup>495</sup> MN, paragraph 253.

<sup>496</sup> Note of a call with [REDACTED], [REDACTED], paragraph 4.

<sup>497</sup> Response to the CMA customer questionnaire from [REDACTED], [REDACTED], question 2.

<sup>498</sup> Note that the [REDACTED]% share of [REDACTED] do not include its branded DTB sales as we did not have that granular data within the Kantar dataset (see paragraph 21 in Appendix C).

<sup>499</sup> Response to the CMA questionnaire from [REDACTED], [REDACTED], question 17.

<sup>500</sup> Note of a call with [REDACTED], [REDACTED], paragraph 17.

<sup>501</sup> Response to the CMA questionnaire from [REDACTED], [REDACTED], question 18.

- 9.144 Bells said that [REDACTED]. Bells also said that [REDACTED].<sup>502</sup>
- 9.145 Bells told us that it is [REDACTED].<sup>503</sup>
- 9.146 One [REDACTED] (out of nine) customer that responded to our phase 1 questionnaire mentioned Bells as being one of the main suppliers of PL products.<sup>504</sup>
- 9.147 One [REDACTED] (out of seven) customer that responded to our phase 2 questionnaire submitted that if it was to switch PL supplier, it would switch to Bells. This retailer [REDACTED] commented that Bells is a puff pastry specialist and is able to produce in line with its guidelines but that factory capacity and ability to expand is a concern.<sup>505</sup>
- 9.148 None of the (seven) competitors who responded to our phase 2 questionnaire listed Bells as a DTB supplier they saw as a competitor to themselves.<sup>506</sup> Similarly, none of the (eight) competitors saw Bells as an alternative or competitor to Cérélia.<sup>507</sup> Only one (out of eight) competitor [REDACTED] considered Bells to be an alternative or competitor supplier to Jus-Rol in the UK, citing the similarity of products.<sup>508</sup>
- 9.149 Internal documents indicate that [REDACTED]. For example:
- (a) In an internal email in May 2018 [REDACTED] included a link to [REDACTED] website and wrote '[REDACTED]' and '[REDACTED]'.<sup>509</sup>
  - (b) In April 2018, Cérélia [REDACTED] described [REDACTED] as '[REDACTED]', [REDACTED].<sup>510</sup>
  - (c) When [REDACTED].<sup>511</sup>
  - (d) An internal document from May 2021 also shows [REDACTED].<sup>512</sup>

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<sup>502</sup> Note of a call with [REDACTED], [REDACTED], paragraph 5.

<sup>503</sup> Note of a call with [REDACTED], [REDACTED], paragraph 6.

<sup>504</sup> Response to the CMA phase 1 customer questionnaire, question 11.

<sup>505</sup> Response to the CMA phase 2 customer questionnaire from [REDACTED], [REDACTED], question 18. Cérélia argued that the construction of this question was vague and did not make clear to retailers they may list more than one supplier, and this is an opaque market so recall of potential suppliers may be poor. Respondents were given five boxes in which to list alternative suppliers so we consider that it was clear they could list multiple suppliers. Furthermore, whilst the full range of options may not be known to retailers, this is a market in which the customers are relatively sophisticated and are likely to maintain a paper trail, so we do not consider recall a problem. Notwithstanding this, the response from customers to this question only forms one piece of evidence of our alternative competitive constraints assessment (Cérélia's response to Alternative Competitive Constraints Working Paper, paragraph 6(ii)).

<sup>506</sup> Response to the CMA phase 2 competitor questionnaire, [REDACTED], question 12.

<sup>507</sup> Response to the CMA phase 2 competitor questionnaire, [REDACTED], question 13.

<sup>508</sup> Response to the CMA phase 2 competitor questionnaire from [REDACTED], question 14.

<sup>509</sup> Cérélia Internal Document, Document ME\_6988\_22\_006083 to RFI, [REDACTED], [REDACTED], 17 May 2018.

<sup>510</sup> Cérélia Internal Document, Document ME\_6988\_22\_006075 for RFI, [REDACTED], [REDACTED], 9 April 2018.

<sup>511</sup> Cérélia Internal Document, Document ME\_6988\_22\_004655, [REDACTED], [REDACTED], 17 June 2022. [REDACTED].

<sup>512</sup> Cérélia Internal Document, Document ME\_6988\_22\_004264 to RFI, [REDACTED], [REDACTED], 13 October 2021.

(e) When [REDACTED].<sup>513</sup>

9.150 On the other hand, internal documents concerning negotiations with [REDACTED] indicate that, [REDACTED]. In an internal email from 2021, in reference to a discussion with the [REDACTED] buyer about [REDACTED], a Cérélia employee said that [REDACTED].<sup>514</sup> The Cérélia employee had said to [REDACTED].<sup>515</sup> In the end, [REDACTED].<sup>516</sup>

9.151 [REDACTED].<sup>517</sup>

- *Our assessment*

9.152 Internal documents suggest Cérélia perceives Bells as a constraint. Evidence from retailers, except [REDACTED], suggests that Bells is not currently perceived as a strong alternative supplier. [REDACTED], it will exercise limited competitive pressure on the merging parties over the next one to two years [REDACTED]. By switching production from foodservice to retail and by restructuring shift patterns Bells may be able to meet the PL needs of a large retailer in the short term, however, this would require ceasing some of its current profitable foodservice sector supply arrangements. Its ability to expand in the longer term [REDACTED]<sup>518</sup> (see paragraph 9.145); we consider this in more detail in paragraph 10.69.

### *Cranswick*

- *Evidence*

9.153 The core of Cranswick's business is outside the DTB market. Cranswick is primarily a manufacturer of baked pastry goods like sausage rolls and pies.

9.154 Cranswick entered the DTB market in 2021 after winning the contract for PL all-butter puff pastry for [REDACTED]. We estimate that this contract provides Cranswick with [0-5]% share of all DTB supply to UK retailers.<sup>519</sup>

9.155 Cranswick obtained the contract for [REDACTED] PL puff pastry on the back of its existing relationship with [REDACTED]. To manufacture DTB products for [REDACTED] it uses

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<sup>513</sup> Cérélia Internal Document, Document ME\_6988\_22\_002458 to RFI, [REDACTED], 18 May 2020.

<sup>514</sup> Cérélia Internal Document, Document ME\_6988\_22\_004167 to RFI, [REDACTED], 18 May 2021.

<sup>515</sup> Cérélia Internal Document, Document ME\_6988\_22\_004218, [REDACTED], 19 May 2021.

<sup>516</sup> [REDACTED] Cérélia's response to the CMA's request for information (phase 1 s109) (2), 21 February 2022, Annex 8.

<sup>517</sup> [REDACTED]. As with other areas, we did not review such documents exhaustively.

<sup>518</sup> Note of call with [REDACTED], [REDACTED], paragraph 5.

<sup>519</sup> MN, paragraph 206c; [REDACTED] response to the CMA phase 2 competitor questionnaire, [REDACTED], question 3.

machinery that was already being used to manufacture sausage roll products for [REDACTED].<sup>520</sup>

9.156 Cranswick's maximum DTB production capacity is [REDACTED] per year.<sup>521</sup> In contrast, Cérélia's DTB UK production capacity is around [REDACTED].<sup>522</sup>

9.157 The Parties submitted that:

(a) Cranswick recently started supplying [REDACTED] with all-butter puff pastry, [REDACTED].<sup>523</sup> [REDACTED].<sup>524</sup>

(b) Cranswick has [REDACTED].<sup>525</sup>

(c) [REDACTED].<sup>526</sup>

9.158 Cranswick told the CMA that it believes [REDACTED] primarily because of the superior quality and consistency of Cranswick's product and that price was not the key factor.<sup>527</sup> However, it noted that:

(a) in order to be more competitive more generally in the DTB market, Cranswick would need to [REDACTED];<sup>528</sup>

(b) customer preferences in the DTB market favour [REDACTED] products, like those made by the Parties;<sup>529</sup>

(c) it does not have [REDACTED];<sup>530</sup> and

(d) it does not [REDACTED].<sup>531</sup>

9.159 Furthermore, in its response to our phase 2 questionnaire, Cranswick submitted that it competes only weakly with each of the Parties due to the fact that it supplies more premium artisan products than the Parties.<sup>532</sup>

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<sup>520</sup> Note of a call with [REDACTED], [REDACTED], paragraph 9.

<sup>521</sup> Response to the CMA phase 2 competitor questionnaire from [REDACTED], [REDACTED], 2022, question 15.

<sup>522</sup> Cérélia Group's production capacity is around [REDACTED] in Europe (excluding the UK). Email from Cérélia to the CMA, 29 September 2022. Cérélia's site visit presentation (morning session), 28 July 2022, slide 20.

<sup>523</sup> MN, paragraph 45c.

<sup>524</sup> MN, paragraph 475. [REDACTED]. MN, paragraph 206c.

<sup>525</sup> Cérélia response to the CMA's request for information (phase 2 RFI) (1), 7 July 2022, paragraph 35.7.

<sup>526</sup> Cérélia's response to the phase 1 Issues Letter, 11 May 2022, paragraph 2.34.

<sup>527</sup> Note of a call with Cranswick, [REDACTED] 2022, paragraph 15; response to the CMA questionnaire from Cranswick, [REDACTED] 2022, question 10.

<sup>528</sup> Note of a call with Cranswick, [REDACTED] 2022, paragraph 10 and 27.

<sup>529</sup> Response to the CMA competitor questionnaire from Cranswick, [REDACTED] 2022, question 10.

<sup>530</sup> Response to the CMA competitor questionnaire from Cranswick, [REDACTED] 2022, question 10.

<sup>531</sup> Response to the CMA competitor questionnaire from Cranswick, [REDACTED] 2022, question 10a, 17, and 18.

<sup>532</sup> Response to the CMA competitor questionnaire from Cranswick, [REDACTED] 2022, question 12.

- 9.160 About a third of (three out of nine) the customers that responded to our phase 1 questionnaire mentioned Cranswick as being one of the main suppliers of PL DTB goods.<sup>533</sup> However, only one [REDACTED] of the (seven) customers that responded to our phase 2 questionnaire (including those (three) retailers that had listed Cranswick as a main supplier of PL products) submitted that if they were to switch to an alternative supplier of PL products, they would switch to Cranswick.<sup>534</sup>
- 9.161 None of the (six, excluding Cranswick) competitors who responded listed Cranswick as a DTB supplier they saw as a competitor to themselves.<sup>535</sup> Similarly, none of the (eight) respondent competitors identified Cranswick as an alternative or competitor to Cérélia in the UK.<sup>536</sup> None of the (eight) competitors named Cranswick as an alternative or competitor to Jus-Rol in the UK.<sup>537</sup>
- 9.162 Prior to the Cranswick contract, Cérélia supplied [REDACTED] with DTB products in the PL channel. [REDACTED] told us that [REDACTED].<sup>538</sup> However, it also stated that, looking forward, [REDACTED].<sup>539</sup> [REDACTED] stated that it is [REDACTED].<sup>540</sup>
- 9.163 Some internal documents suggest Cérélia may be concerned about Cranswick as a competitor at the premium end of the PL sector. For example:
- (a) In an internal email, in reference to the [REDACTED] product submitted by Cérélia in the [REDACTED], [REDACTED].<sup>541</sup>
  - (b) Cranswick is also mentioned in [REDACTED].<sup>542</sup> However, [REDACTED].<sup>543</sup>
  - (c) In internal emails [REDACTED], Cérélia mentioned the possibility of [REDACTED] using Cranswick (the PL supplier for [REDACTED]) as a reference for their [REDACTED].<sup>544</sup>
  - (d) In internal emails, Cérélia [REDACTED].<sup>545</sup>

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<sup>533</sup> Response to the CMA Customer questionnaire, [REDACTED], question 11.

<sup>534</sup> Response to the CMA Customer questionnaire, [REDACTED], question 18.

<sup>535</sup> Response to the CMA Competitor questionnaire, [REDACTED], question 12.

<sup>536</sup> Response to the CMA Competitor questionnaire, [REDACTED], question 13.

<sup>537</sup> Response to the CMA Competitor questionnaire, [REDACTED], question 14.

<sup>538</sup> Response to the CMA Customer questionnaire, [REDACTED], question 13.

<sup>539</sup> Response to the CMA Customer questionnaire, [REDACTED], question 13; response to the CMA competitor questionnaire from [REDACTED], [REDACTED], question 18.

<sup>540</sup> [REDACTED] response to CMA phase 2 customer questionnaire, [REDACTED], question 18; [REDACTED] 2022.

<sup>541</sup> Cérélia Internal Document, Document ME\_6988\_22\_003177 to RFI, 'FW: 3<sup>rd</sup> Submission Feedback Pastry & Cookie Dough', 19 April 2022.

<sup>542</sup> Cérélia Internal Document, Document ME\_6988\_22\_004655, [REDACTED], 17 June 2022. Cérélia said that [REDACTED].[REDACTED]. [REDACTED]. (Cérélia's response to internal documents, pages 5-6).

<sup>543</sup> Cérélia response to the AIS and Working papers, 13 September 2022, annex AIS.09.a, pages 5-6.

<sup>544</sup> Cérélia Internal Document, Document ME\_6988\_22\_003201 to RFI, [REDACTED], 7 May 2022.

<sup>545</sup> Cérélia Internal Document, Document ME\_6988\_22\_002855 to RFI, [REDACTED], 21 July 2021.



(e) A 'Chilled Food Association' newsletter from [REDACTED] is announced as a new member company of the group with a brief description of it, amongst other news items, was included in Cérélia's internal documents.<sup>546</sup>

9.164 Other than the above, we have not seen relevant references to Cranswick in Cérélia's internal documents, in terms of it being a competitive constraint. We searched for mentions of Cranswick in Cérélia's internal documents and, beyond the documents already identified, other instances where Cranswick was mentioned was usually in an inconsequential way.

9.165 We have not found any internal documents from Jus-Rol referencing Cranswick.

- *Our assessment*

9.166 Overall, we recognise that in 2021 Cranswick started to supply [REDACTED], [REDACTED], and that it has been listed as a main alternative by some third parties. However, the core of its business is outside the DTB market, currently it has [REDACTED], it has achieved a very small degree of market penetration and [REDACTED]. Evidence from retailers, including [REDACTED], suggests that Cranswick is not a strong alternative supplier to Cérélia or Jus-Rol. Overall, we provisionally conclude that Cranswick provides a very weak competitive constraint on the Parties.

#### *Other UK-based PL suppliers*

9.167 In this section, we assess evidence related to other PL suppliers based in the UK.

- *Evidence*

9.168 The Parties submitted that there are at least three other UK-based PL suppliers that serve retailers in the UK:

(a) Dorset Pastry – a supplier of [REDACTED] to the retail and foodservice channels. Cérélia also believes that it supplies [REDACTED] with [REDACTED].<sup>547</sup>

(b) Shire Foods – which supplies [REDACTED] to [REDACTED].<sup>548</sup>

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<sup>546</sup> Cérélia Internal Document, Document ME\_6988\_22\_004812 to RFI, 'CFA News No.56.pdf', dated 19 October 2021.

<sup>547</sup> MN, paragraph 206f.

<sup>548</sup> Cérélia, main party hearing transcript, page 55 and [REDACTED] response to the CMA phase 2 competitor questionnaire, [REDACTED], question 2. [REDACTED] is a grocery and general merchandise retailer. [REDACTED], accessed by the CMA on 11 October 2022.

(c) St James Pastry – which supplies [REDACTED] to [REDACTED].<sup>549</sup>

9.169 [REDACTED] submitted that Dorset Pastry does not currently supply it with PL DTB products, and we have not seen any instances of it supplying other retailers with PL products.<sup>550</sup> We will consider them further in the branded suppliers section below (see from paragraph 9.221).

9.170 [REDACTED] currently produces an average of [REDACTED] of pastry per week [REDACTED] and told us that, while in theory it could make [REDACTED] every 24 hours [REDACTED], this would impact the rest of the business.<sup>551</sup> In contrast, Cérélia's DTB production capacity in the UK alone is around [REDACTED].<sup>552</sup> It also told us that to compete on the same terms as Cérélia or Jus-Rol it would need a dedicated pastry processing site and that selling pastry for it is a 'secondary focus'.<sup>553</sup> We estimate that Shire Foods has [0-5]% share of all DTB supply to UK retailers.<sup>554</sup>

9.171 We understand that St James Pastry is a filo specialist and currently does not produce other DTB products.<sup>555</sup>

- *Our assessment*

9.172 Our assessment of third-party evidence indicates that none of these producers, through their PL supply, are likely to pose a material constraint on either Cérélia or Jus-Rol. In particular:

(a) None of the (nine) customers who responded to the phase 1 questionnaire listed any of these suppliers as being among the main PL suppliers in the UK.<sup>556</sup>

(b) When asked who they would switch to if they were to switch PL supplier, none of the (seven) customers who responded to the phase 2 questionnaire listed any of these suppliers as an alternative PL supplier. The only additional UK-based PL supplier that was mentioned by one of

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<sup>549</sup> MN, paragraph 206d.

<sup>550</sup> [REDACTED] stocks frozen PL puff pastry sheets and shortcrust pastry sheets. Its supplier for these lines is [REDACTED] which acts on behalf of a European manufacturer, although [REDACTED] does not know who this is. [REDACTED] told us that [REDACTED] served notice on it so they will switch to [REDACTED] to replace these lines [REDACTED].

<sup>551</sup> [REDACTED] response to the CMA competitor questionnaire, [REDACTED], question 15.

<sup>552</sup> Cérélia Group's production capacity is around [REDACTED] in Europe (excluding the UK). Email from Cérélia to the CMA, 29 September 2022. Cérélia's site visit presentation (morning session), 28 July 2022, slide 20.

<sup>553</sup> [REDACTED] response to the CMA phase 2 competitor questionnaire, [REDACTED], question 15.

<sup>554</sup> [REDACTED] response to the CMA competitor questionnaire, [REDACTED], question 6.

<sup>555</sup> [REDACTED] response to the CMA phase 2 competitor questionnaire, [REDACTED], questions 4, 6, 7.

<sup>556</sup> Response to the CMA customer questionnaire, [REDACTED], question 11.

these customers was Bakkavor [REDACTED] but it was not seen as meeting requirements.<sup>557</sup>

- (c) Competitors' responses are generally aligned with retailers' views. When asked to identify PL suppliers that are alternatives or competitors to Cérélia, only one competitor [REDACTED] (out of eight) considered St James Pastry as an alternative to Cérélia.<sup>558</sup> The same competitor was also the only one (out of eight) to consider St James Pastry as an alternative to Jus-Rol.<sup>559</sup> However, this was mainly restricted to filo pastry in both cases.
- (d) None (zero out of seven) of the competitors identified Dorset Pastry, Shire Foods, or St James Pastry as a DTB supplier they competed with.<sup>560</sup>
- (e) A minority (two out of eight) [REDACTED] of competitors stated that there were no DTB suppliers that were alternatives or competitors to Jus-Rol in the UK, with a third [REDACTED] saying the question was not applicable.<sup>561</sup>

9.173 Our review of the Parties' internal documents indicates that these other UK-based PL suppliers are monitored to a minimal extent.

#### *Other UK-based PL frozen ready-to-bake suppliers*

- *Evidence*

9.174 As discussed in paragraph 23 in Appendix C, by value approximately [10-20]% of the wholesale DTB market relates to frozen sales, in particular to PL frozen ready-to-bake sales.

9.175 Based on the third-party information available to the CMA, the manufacturers of these PL frozen ready-to-bake products are (Bridor and Lantmannen Unibake at [REDACTED]; Delifrance UK at [REDACTED]; Delifrance UK at [REDACTED]; CP Foods, Lantmannen Unibake and Turners at [REDACTED]; Gourmand Pastries at [REDACTED]). None of these suppliers were mentioned in the Parties' submissions or in third-party responses as a competitive constraint. [REDACTED] was mentioned in Cérélia's [REDACTED] slide-deck, although with no detail on its differences to Cérélia.<sup>562</sup> Beyond

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<sup>557</sup> Response to the CMA phase 2 customer questionnaire, [REDACTED], question 18.

<sup>558</sup> Response to the CMA phase 2 competitor questionnaire, [REDACTED], question 13.

<sup>559</sup> Response to the CMA phase 2 competitor questionnaire, [REDACTED], question 14.

<sup>560</sup> Response to the CMA phase 2 competitor questionnaire, [REDACTED], question 12.

<sup>561</sup> Response to the CMA phase 2 competitor questionnaire, [REDACTED], question 14.

<sup>562</sup> In addition, the credibility of this internal document is heavily disputed by the Parties, as discussed in paragraph 9.163b.

this, no references were found in internal documents to these suppliers as competitive threats.

9.176 In addition, we are not aware that these suppliers have ever tendered against C er elia in supplying PL DTB products to grocery retailers in the UK.

- *Our assessment*

9.177 Third-party evidence and internal documents indicate that Dorset Pastry, Shire Foods and St James Pastry do not provide a material competitive constraint on the Parties.

9.178 Based on the evidence discussed in paragraphs 9.174 to 9.176, we consider that the PL frozen ready-to-bake suppliers do not provide a material competitive constraint on the Parties.

9.179 Therefore, we provisionally conclude that none of these other suppliers, individually and in aggregate, provide a material competitive constraint on the Parties.

#### *Non-UK based PL suppliers*

9.180 In this section, we first assess evidence related to the two key non-UK based suppliers of PL DTB products in the UK, namely Henglein and Wewalka.<sup>563</sup> Then, we assess other non-UK based PL suppliers from paragraph 9.211.

#### *Henglein*

- *Evidence*

9.181 Henglein is a large supplier of DTB products based in Germany. It currently manufactures in Germany PL shortcrust, puff pastry, and filo pastry products for three UK retailers: [REDACTED], [REDACTED], and [REDACTED].<sup>564</sup> Henglein has a [REDACTED] with Golden Acre foods in the UK whereby the latter is responsible for distributing products to UK customers and managing relationships with retailers.<sup>565</sup>

9.182 Henglein's share of supply for UK PL [REDACTED] (see paragraph 34 in Appendix C). This [REDACTED], including two with [REDACTED] in 2013 and 2017, and one with [REDACTED] in 2017.

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<sup>563</sup> We consider these suppliers to be key for a number of reasons including their shares of supply, references to them in internal documents, the parties' views on them and third parties' views on them.

<sup>564</sup> [REDACTED] response to the CMA phase 2 competitor questionnaire, [REDACTED], question 2, paragraph 206a.

<sup>565</sup> Note of a call with [REDACTED], [REDACTED], paragraph 2.

9.183 However, more recently, Henglein [redacted]: [redacted] in 2019<sup>566</sup> and [redacted] in 2021.<sup>567</sup> Henglein's 2023 forecast share of supply is [10-20]% of all DTB supply to UK retailers.

9.184 [redacted] recently decided to expand its range to include a PL pizza dough product, and the contract for supply of this product was won by [redacted]. Although [redacted] did not provide information on other bidders for the contract, [redacted] submitted it believed it had won against [redacted].<sup>568</sup>

9.185 Henglein's current DTB production volume (for serving the UK and mainland Europe) is [redacted] per year and its maximum capacity is [redacted] per year.<sup>569</sup> It said that it [redacted].<sup>570</sup> By comparison, Cérélia's DTB production capacity in the UK is around [redacted].<sup>571</sup>

9.186 Cérélia submitted that:

(a) Continental European suppliers face no material disadvantages and [redacted] DTB products are manufactured outside of the UK.<sup>572</sup>

(b) [redacted]:

(i) A tender for [redacted] in 2019. [redacted].<sup>573</sup>

(ii) A tender for [redacted] in 2021. [redacted].<sup>574</sup>

(c) A number of suppliers, including Henglein, are highly likely to have sufficient capacity to supply a large UK retailer.<sup>575</sup>

9.187 Henglein told us that it produces a very similar product to that produced by Cérélia and Jus-Rol with slight differences in shape, size and packaging format.<sup>576</sup> It does not, however, produce frozen, canned or block products.<sup>577</sup> It said its philosophy is to use natural ingredients (eg alcohol) only and to

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<sup>566</sup> Note of a call with [redacted], [redacted], paragraph 5.

<sup>567</sup> Response to the CMA phase 2 customer questionnaire, [redacted], question 21.

<sup>568</sup> [redacted].

<sup>569</sup> [redacted] response to the CMA phase 2 competitor questionnaire, [redacted], question 15.

<sup>570</sup> Written submission from [redacted], [redacted].

<sup>571</sup> Cérélia Group's production capacity is around [redacted] in Europe (excluding the UK). Email from Cérélia to the CMA, 29 September 2022. Cérélia's site visit presentation (morning session), 28 July 2022, slide 20.

<sup>572</sup> [Cérélia's response to the Issues Statement](#), 2 August 2022, paragraph 4.26.

<sup>573</sup> MN, paragraph 53.

<sup>574</sup> MN, paragraph 495.

<sup>575</sup> Cérélia's response to the phase 1 Issues Letter, 11 May 2022, paragraph 6.58.

<sup>576</sup> Note of a call with [redacted], [redacted], paragraph 3.

<sup>577</sup> Note of a call with [redacted], [redacted], paragraph 3. Response to the CMA competitor questionnaire, [redacted], question 14.

keep the production process most effective and not to produce a lot of different formulations for one product.<sup>578</sup>

9.188 [X] told us that its decision to switch from Henglein in 2013 and 2017 to Cérélia was driven by the product quality, the ingredients used by the suppliers, and [X]'s desire to reduce supply-chain complexity and its carbon footprint by moving to UK-based production.<sup>579</sup>

9.189 [X] told us that Golden Acre (Henglein) ultimately won the business in [X] due to its commercial strength and that, despite cost increases, it scored highly in terms of quality and price. It also told us that suppliers were asked to commit to invest if volumes grew and Golden Acre (Henglein) agreed to do so.<sup>580</sup>

9.190 In our phase 1 questionnaire, three customers [X] (out of nine) mentioned Henglein as being amongst the main suppliers of PL products.<sup>581</sup>

9.191 In our phase 2 questionnaire, customer views were mixed (three out of seven) about Henglein being an alternative PL supplier that they would switch to if they were switching.<sup>582</sup> One of these [X] said that Henglein has 'good service levels and quality', was commercially competitive and, therefore, considered that it fully meets its requirements.<sup>583</sup> Another retailer [X], said it has no concerns regarding its current supplier being based outside of the UK.<sup>584</sup>

9.192 On the other hand, some large retailers expressed concerns over the ability of Henglein to meet their product specifications. For example, [X] submitted that it would not use Henglein as a supplier because it uses alcohol in its recipe and is unwilling to change this,<sup>585</sup> and [X] stated that while Golden Acre (Henglein) could potentially serve its full product range, it is unclear if it 'could meet its technical requirements.'<sup>586</sup> In addition, [X] stated that Henglein offers almost the entire range of products, but 'there are key products missing'.<sup>587</sup>

9.193 None (out of six, excluding Henglein) of the competitors who responded considered Henglein to be a DTB supplier they competed with.<sup>588</sup> Only

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<sup>578</sup> [X] response to the CMA phase 2 competitor questionnaire, [X], question 3a. Note of a call with [X], [X], paragraph 8.

<sup>579</sup> Written submission from [X], [X].

<sup>580</sup> Note of a call with [X], [X], paragraph 6.

<sup>581</sup> Response to the CMA customer questionnaire, [X], question 11.

<sup>582</sup> Responses to the CMA phase 2 customer questionnaire, [X], question 18.

<sup>583</sup> [X] response to the CMA phase 2 customer questionnaire, [X], question 18.

<sup>584</sup> Note of a call with [X], [X], paragraph 5.

<sup>585</sup> Response to the CMA phase 2 customer questionnaire, [X], question 18

<sup>586</sup> Response to the CMA phase 2 customer questionnaire, [X], question 15.

<sup>587</sup> Response to the CMA phase 2 customer questionnaire, [X], question 18.

<sup>588</sup> Response to the CMA phase 2 competitor questionnaire, [X], questions 12.

Henglein and its UK agent Golden Acre (two out of eight) saw themselves as a DTB supplier which could be an alternative to C  r  lia in the UK.<sup>589</sup> Only Henglein (out of eight) saw itself as an alternative to Jus-Rol in the UK, although its UK agent Golden Acre stated that there were no significant branded alternatives (within this sector) in the UK.<sup>590</sup>

9.194 A number of third parties viewed the fact of being based in Europe as a material competitive disadvantage (see paragraph 8.62):

- (a) A retailer [REDACTED] said that transportation costs and border frictions when sourcing from Europe are an obstacle to switching supplier.<sup>591</sup>
- (b) Another retailer [REDACTED] stated a preference to source from UK-based manufacturers due to sustainability concerns and transport costs.<sup>592</sup>
- (c) A competitor [REDACTED] told us that the trend for ‘made in Britain’ products can prevent retailers switching away from C  r  lia, which is ‘the only UK manufacturer’.<sup>593</sup>

9.195 C  r  lia’s internal documents indicate that it sees Henglein as a competitor and in certain documents C  r  lia indicates [REDACTED]. [REDACTED] documents mentioning Henglein were identified by the CMA as relevant for the question of whether it is a competitive threat.<sup>594</sup> For example:

- (a) Henglein [REDACTED].<sup>595</sup> [REDACTED], (as explained in paragraph 9.163(b) above).<sup>596</sup>
- (b) One internal email from 2020 from [REDACTED] noted the potential risks Brexit represented for suppliers based in Europe. In particular, the email stated that [REDACTED].<sup>597</sup> However, more recent internal emails indicate that [REDACTED]. In internal emails from 2021, it is stated that:
  - (i) [REDACTED],<sup>598</sup> and

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<sup>589</sup> Response to the CMA phase 2 competitor questionnaire, [REDACTED], questions 13.

<sup>590</sup> Response to the CMA phase 2 competitor questionnaire, [REDACTED], question 14.

<sup>591</sup> Response to the CMA phase 1 customer questionnaire, [REDACTED], question 12.

<sup>592</sup> Response to the CMA phase 2 Customer questionnaire, [REDACTED], question 23.

<sup>593</sup> Response to the CMA competitor questionnaire, [REDACTED], question 13.

<sup>594</sup> As with other document searches, this review was not exhaustive.

<sup>595</sup> C  r  lia Internal Document, Document ME\_6988\_22\_004655, ‘[REDACTED]’, 17 June 2022. C  r  lia said [REDACTED]. (C  r  lia response to the AIS and Working papers, 13 September 2022, annex AIS.09.a, pages 5-6)

<sup>596</sup> C  r  lia response to the AIS and Working papers, 13 September 2022, annex AIS.09.a, 13 September 2022, pages 5-6

<sup>597</sup> C  r  lia Internal Document, Document ME\_6988\_22\_007507 to RFI, ‘Re: [REDACTED] FW: Pastry’, 24 September 2020.

<sup>598</sup> C  r  lia internal document, Document ME\_6988\_22\_005245, [REDACTED], 11 April 2021.

(ii) [REDACTED].<sup>599</sup>

(c) The evidence from internal documents on how competitive Henglein is on price is mixed.

(i) In one internal email from 2021, Cérélia UK's Managing Director noted that [REDACTED] but also that [REDACTED].

(ii) In an internal email in relation to the [REDACTED] tender in 2021 discussing [REDACTED]. In this email it was also noted that [REDACTED]. [REDACTED] ultimately awarded the contract to [REDACTED].<sup>600</sup>

9.196 Henglein.<sup>601</sup>

- *Our assessment*

9.197 Henglein's [REDACTED] indicates that its competitiveness in the UK may have [REDACTED] since 2012 (see paragraph 34 in Appendix C). However, its market share remains material [REDACTED] (see paragraph 9.183).

9.198 Third-party evidence indicates there are some gaps in Henglein's range, but it offers the main DTB products. Retailers' views were mixed with a minority considering Henglein as a strong alternative supplier. Some large retailers did not consider Henglein an attractive alternative due to its use of alcohol, gaps in its range and retailers' preference for UK-based supply. However, some retailers, including its current customers, considered it a strong alternative. Henglein's positioning as a non-UK based supplier is seen by retailers to pose some barriers although only to a degree. While Henglein appears to operate close to its capacity, it confirmed that [REDACTED].

9.199 Overall, we consider Henglein to represent a material constraint on the Parties, particularly in relation to competition for smaller supply contracts (of the sort it has now). However, we believe the constraint exerted by Henglein is likely to be weaker when it comes to competition to supply large retailers, for the reasons described immediately above. We provisionally conclude that the constraint is likely to be confined to PL supply, with minimal impact on Jus-Rol.

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<sup>599</sup> Cérélia internal document, Document ME\_6988\_22\_007581, [REDACTED], 14 January 2021.

<sup>600</sup> Cérélia Internal Document, Document ME\_6988\_22\_005931 for RFI, [REDACTED], 14/09/2021; In Cérélia's response to the WPs, Cérélia submitted that [REDACTED].

<sup>601</sup> [REDACTED]. As with other areas, we did not review such documents exhaustively.



## Wewalka

- Evidence

9.200 Wewalka is a family-owned Austrian supplier of fresh dough to customers across Europe and the UK. It has factories in both Austria and Hungary, although its production capacity is unknown. It supplies PL pizza dough in the UK but has a wider product range in Europe.<sup>602</sup>

9.201 We understand that Wewalka has a small share of UK retailer supply [0-5]%.<sup>603</sup> This is largely made of volumes of [REDACTED].<sup>604</sup> It occasionally supplies [REDACTED] with special items.<sup>605</sup> Wewalka told us that [REDACTED].<sup>606</sup>

9.202 Wewalka was mentioned less frequently than Henglein in the submissions of competitors and retailers, consistent with its relatively minor presence in the UK.

9.203 In our phase 1 questionnaire, three customers [REDACTED] (out of nine) mentioned Wewalka as being amongst the main suppliers of PL products in the UK.<sup>607</sup>

9.204 In our phase 2 questionnaire, one customer (out of eight) [REDACTED] mentioned Wewalka as being an alternative PL supplier they would switch to.<sup>608</sup> The customer said that Wewalka has [REDACTED].<sup>609</sup> Another retailer [REDACTED] said it has no concerns regarding its current supplier being based outside of the UK.<sup>610</sup>

9.205 In response to the phase 2 questionnaire, two competitors (out of seven) mentioned Wewalka when asked to identify the DTB product suppliers they competed with. However, these two competitors viewed Wewalka as competing most closely with other European suppliers of PL DTB products. For example, [REDACTED] viewed Wewalka as a very close competitor to itself, [REDACTED].<sup>611</sup> [REDACTED] also noted that Wewalka produces in Austria and Hungary so would have to transport products 800 miles further than it to supply to the UK.<sup>612</sup>

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<sup>602</sup> C r lia response to Alternative Competitive Constraints WP (marked-up), 13 September 2022, slide 39.

<sup>603</sup> [REDACTED] response to the CMA phase 1 customer questionnaire [REDACTED], question 5.

<sup>604</sup> From [REDACTED], C r lia [REDACTED]. (C r lia response to the CMA's section 109 Notice (phase 2 s.109) (2), 25 August 2022, paragraph 6.4e).

<sup>605</sup> Note of a call with [REDACTED], [REDACTED], paragraph 6.

<sup>606</sup> Written response from [REDACTED], [REDACTED].

<sup>607</sup> Responses to the CMA phase 1 customer questionnaire, [REDACTED], question 11.

<sup>608</sup> Response to the CMA phase 2 customer questionnaire, [REDACTED], question 18.

<sup>609</sup> Response to the CMA phase 2 customer questionnaire, [REDACTED], question 18.

<sup>610</sup> Note of a call with [REDACTED], [REDACTED], paragraph 5.

<sup>611</sup> Response to the CMA phase 2 competitor questionnaire, [REDACTED], question 12.

<sup>612</sup> Note of a call with [REDACTED], [REDACTED], paragraph 22.

9.206 Two (out of eight) competitors identified Wewalka as an alternative to Cérélia in the UK.<sup>613</sup> Only one (out of eight) [REDACTED] identified Wewalka as an alternative to Jus-Rol in the UK, although highlighted its lack of frozen products as a weakness.<sup>614</sup>

9.207 A number of third parties viewed the fact of being based in Europe as a material competitive disadvantage (see paragraph 9.194).

9.208 Cérélia's internal documents indicate that it sees Wewalka as competitor and in certain documents [REDACTED]. This includes:

(a) [REDACTED].<sup>615</sup> [REDACTED], as set out at paragraph 9.163(b) above.<sup>616</sup>

(b) In an internal email, Wewalka [REDACTED].<sup>617</sup>

9.209 Wewalka [REDACTED].<sup>618</sup>

- *Our assessment*

9.210 Wewalka currently only supplies very limited volumes of DTB products to the UK and [REDACTED].<sup>619</sup> Accordingly, we consider it to be a very weak constraint on the Parties, and we think that constraint is confined to PL supply given its PL offering, with little, if any, constraint on Jus-Rol branded product.

*Other non-UK based PL suppliers*

- *Evidence*

9.211 In this section, we assess evidence related to other PL suppliers based and manufacturing outside the UK.

9.212 [REDACTED]: Hellenic Dough – a Greece-based manufacturer which supplies Jus-Rol [REDACTED] for sale to UK retailers and foodservice suppliers. It also supplies branded products under the [REDACTED] brand.<sup>620</sup>

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<sup>613</sup> Response to the CMA phase 2 competitor questionnaire, [REDACTED], question 13.

<sup>614</sup> Response to the CMA phase 2 competitor questionnaire, [REDACTED], question 14.

<sup>615</sup> Cérélia Internal Document, Document ME\_6988\_22\_004655, [REDACTED], 17 June 2022. Cérélia said [REDACTED]. [REDACTED]. [REDACTED]. (Cérélia response to the AIS and Working papers, 13 September 2022, annex AIS.09.a, pages 5-6)

<sup>616</sup> Cérélia response to the AIS and Working papers, 13 September 2022, annex AIS.09.a, 13 September 2022, pages 5-6.

<sup>617</sup> Cérélia internal document, Document ME\_6988\_22\_003165 for RFI, [REDACTED], 2 April 2022.

<sup>618</sup> [REDACTED]. As with other areas, we did not review such documents exhaustively.

<sup>619</sup> See paragraph 9.201.

<sup>620</sup> [REDACTED].

- 9.213 Hellenic Dough said that it supplies [REDACTED] with frozen ready-to-bake products and [REDACTED] with chilled filo pastry.<sup>621</sup> It told us that its yearly revenue in the UK is approximately £[REDACTED] which would give it a market share of [0-5]% of all DTB supply to UK retailers.<sup>622</sup> Its current DTB production volume (worldwide) is [REDACTED] and its capacity is [REDACTED].<sup>623</sup> In contrast, Cérélia's DTB production capacity in the UK alone is around [REDACTED].<sup>624</sup>
- 9.214 None (out of nine) of the customers who responded to our phase 1 questionnaire indicated that Hellenic Dough was a main PL supplier.<sup>625</sup>
- 9.215 When asked who they would switch to if they were to switch to an alternative supplier of PL products, none of the (eight) customers who responded to our phase 2 questionnaire mentioned Hellenic Dough. The only other non-UK based PL supplier that was mentioned was Odysea by one retailer [REDACTED] who submitted that Odysea did not meet its requirements and was very resource constrained at the moment.<sup>626</sup>
- 9.216 None (out of six, excluding Hellenic Dough) of the competitors who responded to our phase 2 questionnaire identified Hellenic Dough as a DTB supplier they competed with.<sup>627</sup>
- 9.217 When asked which DTB suppliers are alternatives or competitors to Cérélia in the UK, none (out of eight) of the competitors who responded to our phase 2 questionnaire mentioned Hellenic Dough. Other suppliers that were identified as alternatives to Cérélia in the UK were Casa Tarradellas, A1 Foods, and Vandemoortele.<sup>628</sup> One competitor (out of eight) [REDACTED] named Vandemoortele as a strong alternative to Jus-Rol in the UK.<sup>629</sup>
- 9.218 Our review of the Parties' internal documents indicates that Hellenic Dough is monitored to a minimal extent.<sup>630</sup> Only one document mentioning Hellenic Dough was identified as relevant to the question of whether it is a competitive constraint. This was a [REDACTED].<sup>631</sup>

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<sup>621</sup> [REDACTED].

<sup>622</sup> [REDACTED] response to the CMA phase 1 competitor questionnaire, [REDACTED], question 5.

<sup>623</sup> [REDACTED] response to the CMA phase 2 competitor questionnaire, [REDACTED], questions 2, 4 and 15.

<sup>624</sup> Cérélia [REDACTED]. Email from Cérélia to the CMA, 29 September 2022. Cérélia's site visit presentation (morning session), 28 July 2022, slide 20.

<sup>625</sup> Response to the CMA phase 1 customer questionnaire, [REDACTED], question 11.

<sup>626</sup> Response to the CMA phase 2 customer questionnaire, [REDACTED], question 18.

<sup>627</sup> Response to the CMA phase 2 competitor questionnaire, [REDACTED], questions 12.

<sup>628</sup> Response to the CMA phase 2 competitor questionnaire, [REDACTED], question 13.

<sup>629</sup> Response to the CMA phase 2 competitor questionnaire, [REDACTED], question 14.

<sup>630</sup> [REDACTED]. As with other areas, we did not review such documents exhaustively.

<sup>631</sup> Cérélia Internal Document, Document CJR-000001287, 'S109.1.36.001 – [REDACTED]', 13 July 2022.

- *Our assessment*

9.219 While Hellenic Dough has relatively large spare capacity, internal documents and evidence from retailers and suppliers suggest that Hellenic Dough is currently not perceived as a strong alternative supplier. This is also the case for the other non-UK based PL suppliers mentioned by third parties (apart from Henglein and Wewalka). In addition, these firms currently supply limited volumes of DTB products to the UK. Therefore, we provisionally conclude that these other non-UK based PL suppliers, individually or in aggregate, are likely to pose an extremely weak constraint on either C  r  lia or Jus-Rol.

*CMA's provisional conclusion on the degree of constraint from PL suppliers*

9.220 For the reasons set out above, we provisionally conclude that PL suppliers, individually and in aggregate, exert only a limited competitive constraint on C  r  lia, and even less of a constraint on Jus-Rol given the branded nature of its product. We have provisionally found that:

- (a) PL suppliers based in the UK provide only a limited competitive constraint on the Parties. In particular, [X]. In addition, [X] is not willing to invest to expand in the DTB market and its presence in the retail sector may cease soon. Other UK-based PL suppliers, such as [X], represent only a small portion of sales in the market and are not considered strong alternative suppliers by retailers.
- (b) PL suppliers based in the EEA offer some competitive constraint. In particular, while the competition that Henglein is likely to offer in relation to its current retail customers is material, it would be less likely to constrain the Parties when it comes to contracts to supply large retailers. This is because Henglein presents a less compelling offer to them due to its use of alcohol, gaps in its range and retailers' preference for UK-based supply. Wewalka currently only supplies very limited volumes of DTB products to the UK [X], so we consider it to be a very weak constraint on the Parties. While [X] has large spare capacity, it and other non-UK based PL suppliers represent only a small portion of sales in the market and are not considered strong alternative suppliers by retailers.

***Constraint from alternative consumer brands***

*Evidence*

9.221 In this section, the alternative consumer brands considered will include those currently supplying retailers and those mentioned by the Parties in their submissions. The brands are therefore Bells, Theos, Dorset Pastry, Picard,

The Northern Dough Co., Feuilles de Filo, Alesis Bakery, Schulstad, St James Pastry and Shire.<sup>632</sup>

9.222 Cérélia submitted that:

- (a) Retailers would be able to switch to alternative branded products.<sup>633</sup>  
These alternatives include a wide variety of products and brands.<sup>634</sup>  
There are numerous suppliers which self-supply branded products.<sup>635</sup>
- (b) Growth of e-commerce and increasing availability of low-cost delivery means branded products have even easier access to an effective route to market.<sup>636</sup>
- (c) Breadth of product range does not determine the strength of a brand and some competing brands may have brand recognition for a few specific products that are more effective than the Jus-Rol brand.<sup>637</sup>
- (d) In its Working Paper responses, Cérélia submitted that the CMA did not place enough weight on existing or potential suppliers, either already in the market or in relevant markets.<sup>638</sup>

9.223 As mentioned in the Shares of supply section paragraph 9.9, branded suppliers other than Jus-Rol – in aggregate - represent only [5-10%] of the market as of 2021 and no firm has more than [0-5%] market share of all DTB supply to UK retailers.

9.224 GMI submitted [REDACTED]. In regard to this, GMI noted that, [REDACTED].<sup>639</sup>

9.225 Most (eight out of 14) of the retailers who responded to the phase 2 questionnaire and who stock branded products, including three of the four major retailers, indicated that they only stocked one brand of DTB product, namely Jus-Rol. For the remaining retailers (six out of 14), all of whom sold more than one branded product, Jus-Rol's was one of these. Despite stocking more than one brand, the majority of these (five of the six) retailers use Jus-

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<sup>632</sup> Responses to CMA phase 2 customer questionnaire, [REDACTED], question 4; MN, paragraph 207.

<sup>633</sup> MN, paragraph 562b.

<sup>634</sup> MN, paragraphs 427-446. Ingredient pastry products: Dorset Pastry, Frasers, Genius, JR Feuilles, Picard, Sue's Gluten-free Kitchen, Shire, Theo's. Pizza dough products: Costa & Mollica, Don Marcos, Munch!, Napolina, PizzaExpress, Pizza Pilgrims, Schar, The Northern Dough Co. Cookie and breakfast dough products: Doughlicious, Picard, Pret-a-Manger, The Northern Dough Co.

<sup>635</sup> MN, paragraph 208.

<sup>636</sup> MN, paragraph 447.

<sup>637</sup> MN, paragraph 448.

<sup>638</sup> Cérélia response to Alternative Competitive Constraints Working Paper, 13 September 2022, paragraph 6v.

<sup>639</sup> GMI response to the CMA's section 109 Notice (phase 2 s.109) (1), 30 June 2022, Q39.

Rol for the majority of their DTB products with other brands limited to just one or two DTB products each.<sup>640</sup>

- 9.226 All (out of eight) of the customers who responded to our phase 1 questionnaire named Jus-Rol as the main consumer brand active in the supply of branded products in the UK.<sup>641</sup> It was often identified as the UK's brand leader with good quality products and promotional support.
- 9.227 When asked who they would switch to if they were to switch to an alternative supplier of branded products, a majority (four out of six) of customers who only stock Jus-Rol did not name any branded alternatives in their response to the phase 2 questionnaire. One major retailer [X] referenced Bells but noted that this was only in Scotland and said there were otherwise limited alternatives.<sup>642</sup>
- 9.228 Almost all (five out of six) of the customers who stocked more than one brand (including Jus-Rol) responded to the question who they would switch to if they were to switch to an alternative supplier of branded products. Two retailers [X] interpreted the question as asking who could replace specifically Jus-Rol's offering as Jus-Rol provides the majority of their DTB products. Of these, no brand was named which could meet the needs of the retailers in terms of volume, affordability and breadth of range at the same level that Jus-Rol could. A third retailer [X] could not name any alternatives and a fourth [X] said it had never explored moving as it was happy with its current supplier. The final [X] stated that it did not have enough knowledge of the market to comment.<sup>643</sup>
- 9.229 Only one competitor (out of eight) [X] saw Bells (the branded aspect) as an alternative or competitor to Jus-Rol in its response to the phase 2 questionnaire, stating that Bells and Jus-Rol had similar products and quality.<sup>644</sup>

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<sup>640</sup> Responses to CMA phase 2 customer questionnaire, question 4; In Cérélia's response to the Alternative Competitive Constraints Working Paper, Cérélia submitted that retailers were supplied by several brands not listed by the CMA. One major retailer [X] identified as only stocking Jus-Rol is also supplied by a small supplier for one DTB product, which was also submitted by the supplier. Other brands referenced by Cérélia could not be corroborated by third-party submissions, whether from retailers or suppliers.

<sup>641</sup> Responses to CMA phase 1 customer questionnaire, [X], question 11b.

<sup>642</sup> Response to the CMA customer questionnaire, [X], question 19.

<sup>643</sup> Response to the CMA customer questionnaire, [X], question 19.

<sup>644</sup> Response to the CMA competitor questionnaire, [X], question 14.

9.230 None (out of seven) competitors who responded referenced any of the alternative consumer brands identified in paragraph 9.221 as a DTB supplier they competed with.<sup>645</sup>

9.231 Our review of the Parties' internal documents indicates that no other brand is closely monitored by the Parties. In particular, Jus-Rol's internal documents indicate that PL is seen as the key threat at the retail level, rather than alternative consumer brands. This is further discussed in the Closeness of Competition section above. For example:

- (a) A GMI internal presentation assessing the competition faced by Jus-Rol [REDACTED].<sup>646</sup>
- (b) Another GMI internal presentation looking at competition faced by Jus-Rol states that [REDACTED] 'and notes that '[in the UK] [REDACTED]'.<sup>647</sup>
- (c) A GMI internal presentation notes that [REDACTED]. A graphic showing the magnitude of switching only includes [REDACTED].<sup>648</sup>
- (d) A GMI presentation summarising the performance of the DTB category at Asda compares [REDACTED].<sup>649</sup>
- (e) A Jus-Rol Christmas review in 2021 states that [REDACTED]. [REDACTED], although [REDACTED] was highlighted or prioritised over these.<sup>650</sup>
- (f) A C  r  lia board meeting assesses the transaction rationale and states that [REDACTED].<sup>651</sup>

9.232 Internal documents from Jus-Rol show it monitoring [REDACTED] performance to some degree [in the branded sector] but they do not suggest that they are seen as a particular threat. For example:

- (a) Several documents show Jus-Rol comparing [REDACTED] to [REDACTED] (as well as to [REDACTED]).<sup>652</sup>

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<sup>645</sup> Response to the CMA competitor questionnaire, [REDACTED], question 12.

<sup>646</sup> GMI Internal Document, Document HSF00003713 for RFI, 11 February 2019.

<sup>647</sup> GMI Internal Document, Annex 12.B.07 to RFI, '[REDACTED]', 1 February 2020.

<sup>648</sup> GMI Internal Document, Annex 04.A.01 to RFI, '[REDACTED]', 1 November 2021.

<sup>649</sup> GMI Internal Document, Annex HSF00002933 to RFI, '[REDACTED]', 30 July 2019.

<sup>650</sup> GMI Internal Document, Annex HSF00001986 to RFI, '[REDACTED]', 26 January 2022.

<sup>651</sup> C  r  lia Internal Document, Document CJR-000000298, 'Annex 22a.08 – C  r  lia Group Holding – Supervisory Board Meeting.PDF', 2 February 2022; in marked-up WP, C  r  lia submit that [REDACTED]; C  r  lia also submitted that 'branded' was used as shorthand for 'consumer brand' and that Jus-Rol faces competition from PL brands as well as consumer brands. (Response to internal documents.

<sup>652</sup> GMI Internal Document, Annex HSF00002933 to RFI, '[REDACTED].pdf', 30 July 2019 and GMI Internal Document, Annex HSF00003057 to RFI, '[REDACTED]', 20 February 2020.

- (b) A presentation for Jus-Rol compared [REDACTED] of various brands, including [REDACTED], and stated that [REDACTED].<sup>653</sup>
- (c) [REDACTED] was seen as a brand ‘loser’ rather than ‘winner’ when comparing [REDACTED] over Christmas in 2021, in contrast to [REDACTED] being a ‘winner’.<sup>654</sup>

### *Our assessment*

9.233 While there are several alternative brands, the evidence we have reviewed, including market shares, internal docs and third-party evidence, suggests that alternative branded products impose little to no material constraint on either of the Parties, in particular in ingredient pastry products. While Jus-Rol faces more competition in case of niche DTB products, retailers tend to stock primarily Jus-Rol and generally do not see other brands as strong alternatives. Therefore, our provisional conclusion is that alternative branded suppliers provide a weak competitive constraint on the Parties.

### ***Constraint from non-retail suppliers (out of market constraint)***

#### *Evidence*

9.234 The suppliers considered in this section are those who supply DTB products to customers in the foodservice and food manufacturing sectors.<sup>655</sup> From Cérélia’s submission, [REDACTED].<sup>656</sup> [REDACTED] also supply foodservice customers, alongside providing PL or branded products. This is discussed further from paragraph 8.42. While Cérélia has submitted that Shire supplies foodservice customers, Shire stated that it is not active in the sector.<sup>657</sup> Although all these firms were sent questionnaires, [REDACTED] did not respond.

9.235 Cérélia submitted that:

- (a) A number of suppliers already manufacture either DTB products for the foodservice sector or dough-based products (eg pies) for the retail and/or foodservice sector. These suppliers would require [REDACTED] investment to supply DTB products to UK retailers.<sup>658</sup> These include [REDACTED].<sup>659</sup>

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<sup>653</sup> GMI Internal Document, Annex HSF00001986 to RFI, ‘[REDACTED]’, 26 January 2022.

<sup>654</sup> GMI Internal Document, Annex HSF00001997 to RFI, ‘[REDACTED]’, 23 March 2022.

<sup>655</sup> The Parties’ earlier submissions (and therefore our evidence gathering) focused more on foodservice than food manufacturing. We therefore have more information on the former than the latter.

<sup>656</sup> MN, paragraph 209.

<sup>657</sup> Response to the CMA Competitor questionnaire, [REDACTED], question 19.

<sup>658</sup> MN, paragraph 539.

<sup>659</sup> MN, paragraph 209.



- (b) The production processes for supplying PL DTB products and supplying DTB products to foodservice and food manufacturing customers are essentially the same.<sup>660</sup> The only distinctions are that (i) retailers require both chilled and frozen DTB products whereas foodservice and food manufacturing customers require large quantities of frozen DTB products<sup>661</sup> and (ii) additional packaging equipment is required to supply the retail channel. Suppliers to the foodservice and food manufacturing channel that already supply the retail channel are likely to have this equipment.<sup>662</sup>
- (c) Suppliers of DTB products can and do supply DTB products for more than one distribution channel. Cérélia and [redacted] manufacture products for Jus-Rol which are sold through both channels.<sup>663</sup>
- (d) A number of suppliers, including Bells, Cranswick, Shire, and William Sword, which primarily supply the foodservice and food manufacturing sectors also supply branded or PL DTB products to retailers.<sup>664</sup>

9.236 As described in paragraph 8.48, half (five out of ten) of the suppliers of DTB products who responded to our phase 2 questionnaire indicated that they supply customers in the foodservice sector. Of these, two [redacted] exclusively supply foodservice customers, and the other three [redacted] also supply grocery retailers with either PL or branded products.<sup>665</sup>

9.237 When asked whether suppliers currently only active in the foodservice sector would be able to meet the needs of grocery retailers, views were mixed. A little below half (three out of seven) of respondents said that foodservice suppliers would be able to do so due to the similarity of products, although 'major investment' would be needed. A little over half (the remaining four out of seven) considered this would not be possible, highlighting the need for new machinery in order to meet different packaging requirements.<sup>666</sup>

9.238 A third (three out of nine) [redacted] of customers who responded to our phase 1 questionnaire said that they would not consider switching their PL supplier to

<sup>660</sup> MN, paragraphs 209 and 249.

<sup>661</sup> MN, paragraph 250.

<sup>662</sup> MN, paragraph 250.

<sup>663</sup> MN, paragraph 251.

<sup>664</sup> MN], paragraph 252.

<sup>665</sup> Response to the CMA competitor questionnaire, [redacted], question 19

<sup>666</sup> Response to CMA phase 2 competitor questionnaire, [redacted], question 20; in their ACC WP response, Cérélia stated that three positive responses indicate the existence of at least three potential entrants from the foodservice sector. This should be considered in combination with the fact that at least five retailers said they would be willing to consider a foodservice supplier for their PL products.

one currently active in the foodservice sector but not the retail sector.<sup>667</sup> Reasons included capacity, quality and cost issues. Only one customer [X] could name an example of a current foodservice supplier that would be able to start supplying the retail sector, although these were [X] who already do so. A majority (four out of six) of respondents who said they would consider it stated that this was dependent on the supplier's ability to meet their volume requirements and specifications. One retailer [X] said that foodservice suppliers may be able to offer competitive products and prices.

9.239 Similarly, a large majority (nine out of 11) of customers who responded to our phase 2 questionnaire said they would consider switching to a supplier currently only in the foodservice sector for their PL products. No examples could be named and four highlighted that they considered it an unlikely possibility for example due to volume needs or technical specifications.<sup>668</sup>

9.240 When asked whether they would consider switching capacity from foodservice customers to grocery retailers given the opportunity to do so, a majority (two out of three) of the competitors who replied to our phase 1 questionnaire said they would ([X], the only two other foodservice suppliers [X] did not respond and this may have been because they already supply outside of the foodservice sector).<sup>669</sup> One supplier [X] said they could switch capacity easily and quickly and had been approached by smaller grocery retailers. However, it mentioned that there was little opportunity to do so due to the strong brand presence of [X] in the market.

9.241 Only two competitors responded when asked to rank the main foodservice suppliers in the UK.<sup>670</sup> Cérélia was named by one supplier [X] as the only main foodservice supplier for UK customers, referencing its wide product range and ability to manufacture different packaging types alongside a UK-based production site. The second competitor [X] listed Jus-Rol, Pukka Pastry and Pin-It Pastry as its ranking of suppliers but said they were only known by their brand names to smaller wholesalers.

9.242 Of the suppliers of DTB products that responded to our phase 2 questionnaire, none who are only active in the foodservice sector or who earn a majority of their revenues from this sector indicated they were planning to

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<sup>667</sup> Response to CMA phase 2 customer questionnaire, [X], question 14.

<sup>668</sup> Response to CMA phase 2 competitor questionnaire, [X], question 24.

<sup>669</sup> Response to CMA phase 2 competitor questionnaire, [X], question 12.

<sup>670</sup> Response to the CMA competitor questionnaire, [X], question 11.

significantly expand their manufacturing capacity in the next 18 to 24 months.<sup>671</sup>

9.243 Only one (out of eight) [REDACTED] competitor identified Pin-It Pastry as an alternative to Jus-Rol in the UK.<sup>672</sup> Two (out of eight) [REDACTED] competitors identified Pin-It Pastry as an alternative to Cérélia in the UK.<sup>673</sup>

9.244 One (out of eight) competitor [REDACTED] identified Vandemoortele and another [REDACTED] named A1 Foods as an alternative to Cérélia in the UK.<sup>674</sup>

9.245 The CMA found limited internal documents from the Parties discussing the foodservice sector. For example:

(a) One spreadsheet was found showing Cérélia [REDACTED], although it does not specify the individual suppliers.<sup>675</sup>

(b) A 2017 email from BakeAway to [REDACTED] discusses [REDACTED]. [REDACTED].<sup>676</sup>

(c) A Cérélia email from 2018 mentions [REDACTED].<sup>677</sup>

9.246 We do not have information on the exact size of the foodservice sector. Cérélia submitted that it believes the supply of frozen croissants to restaurants, cafes, retailers and other businesses in the UK to singlehandedly be larger than the entire DTB grocery sector, at an estimated US\$360 million in 2021.<sup>678</sup>

9.247 The revenues earned from the foodservice sector by respondents to our phase 2 questionnaire are small, even in 2019 (before the pandemic negatively impacted their revenues). It appears that the total volumes of any of these manufacturers in the foodservice sector are less than the wholesale revenues earned by supplying DTB products to a major retailer.<sup>679</sup> While noting the limitations to the analysis that is possible in the light of the available evidence, this suggests that these foodservice suppliers may operate on a smaller scale than that required for supplying a major retailer.

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<sup>671</sup> Response to the CMA competitor questionnaire, [REDACTED], question 17.

<sup>672</sup> Response to the CMA competitor questionnaire, [REDACTED], question 14.

<sup>673</sup> Response to the CMA competitor questionnaire, [REDACTED], question 13.

<sup>674</sup> Response to the CMA competitor questionnaire, [REDACTED], question 13.

<sup>675</sup> Cérélia Internal Document, Document ME\_6988\_22\_003336, [REDACTED], 3 June 2021.

<sup>676</sup> Cérélia Internal Document, Document ME\_6988\_22\_002103, 'FW: Summary visit Corby and Sliedrecht', 17 July 2017

<sup>677</sup> Cérélia Internal Document, Document ME\_6988\_22\_006075 for RFI, [REDACTED], 9 April 2018.

<sup>678</sup> Annex AIS.04.b – WP (SS) mark-up.DOCX, slide 28.

<sup>679</sup> Response to the CMA Competitor questionnaire, [REDACTED], question 4 and question 7.

## *Our assessment*

- 9.248 As set out in Chapter 8, we consider that there is scope, in theory, for some demand and supply-side substitutability between products supplied for the retail and foodservice sectors given the similarities between these products. However, there is also evidence of differences between the two sectors. These include different packaging requirements (although as noted above, foodservice suppliers are likely to have the required packaging equipment), a foodservice focus on frozen products, and higher technical specifications/requirements of retailers. These differences suggest it is not straightforward for suppliers of foodservice customers to also supply grocery retailers.<sup>680</sup>
- 9.249 We have not seen evidence of foodservice operators supplying large volumes to retailers or looking to significantly expand such that they would be able to supply large grocery retailers if they could switch volumes from foodservice to retail.
- 9.250 We are not aware of any material and successful contract win from foodservice providers recently.<sup>681</sup> Given that foodservice revenues appear to have fallen as a result of the pandemic while DTB sales at grocery retailers have increased, this suggests that foodservice suppliers have not constrained the Parties. Otherwise, the foodservice suppliers would have started supplying retail customers recently if it were a profitable option for them.
- 9.251 Internal documents of the Parties do not suggest this group of suppliers imposes a meaningful constraint on them.
- 9.252 For these reasons, we consider the current constraint on the Parties from suppliers focused on the foodservice sector to be weak.

### ***Constraints on the Merged Entity from retailers' option to buy less DTB product (out of market constraint)***

- 9.253 This section focuses on retailers' ability to constrain the Parties by buying less DTB products in total, and devote more shelf space to other products (eg BSM category).

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<sup>680</sup> Cérélia's response to Alternative Competitive Constraints Working Paper, 13 September 2022. Cérélia submitted that these are not material barriers as foodservice suppliers already have most of the equipment required and their factories meet food manufacturing requirements.

<sup>681</sup> [REDACTED]. Prior to this contract win, [REDACTED] supplied DTB products to food manufacturers and PL and branded DTB products to retailers.

## Evidence

9.254 Cérélia submitted that:

- (a) Buyer power of UK retailers is bolstered by the fact that ingredient pastry is not a 'must have' product line for retailers and is easily replaced with other products in the BSM category.<sup>682</sup>
- (b) Retailers can, and have in the past, reduced the shelf space devoted to DTB products.<sup>683</sup> This is made easier by the fact that only a small proportion of their overall sales are made up of DTB goods.<sup>684</sup>

9.255 One retailer [REDACTED] told us that it offers a pastry product in every single one of its physical stores which demonstrates the importance of the product category to customers.<sup>685</sup> Another retailer [REDACTED] said that reducing the range is an option to resist a price increase from DTB suppliers.<sup>686</sup> One competitor [REDACTED] told us that there are some DTB products retailers simply need to stock (such as puff pastry) but some smaller lines aren't important to them and they could threaten to delist these.<sup>687</sup>

9.256 We asked retailers about the options available to them if they were not happy with their PL or branded suppliers' offering. A small minority of the customers (one out of ten for PL and two out of 12 for branded) stated delisting as an option available them, for either PL or branded DTB products.<sup>688</sup> We also asked retailers whether they had decreased the range of PL or branded DTB products in the last 5 years. Similarly, a small minority of the customers (two out of ten for PL and three out of 12 for branded) had decreased the range of PL or branded DTB products.<sup>689</sup>

9.257 Evidence from Cérélia's internal documents shows, in CMA's view, how the presence of alternative suppliers is key to the balance of the bargaining position between retailers and suppliers. For example, in an internal email, [REDACTED].<sup>690</sup> In Cérélia's response to the ACC WP, it submitted that this evidence should also be read in the context of Cérélia competing against [REDACTED] as the

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<sup>682</sup> MN, paragraph 58.

<sup>683</sup> [Cérélia initial submission](#), 1 July 2022, paragraph 4.16.

<sup>684</sup> [Cérélia's response to the Issues Statement](#), 2 August 2022, paragraph 4.43.

<sup>685</sup> Note of a call with [REDACTED], [REDACTED], paragraph 13.

<sup>686</sup> Note of a call with [REDACTED], [REDACTED], page 24 line 21.

<sup>687</sup> Note of a call with [REDACTED], [REDACTED], paragraph 17.

<sup>688</sup> Response to the CMA customer questionnaire, [REDACTED], questions 15-16.

<sup>689</sup> Responses to the CMA phase 2 customer questionnaire, [REDACTED], questions 11-12.

<sup>690</sup> Cérélia Internal Document, Document ME\_6988\_22\_007507 to RFI, [REDACTED], 24 September 2020.

incumbent co-packer for [redacted] pastry dough. At the date of the email, [redacted] had a [redacted] arrangement in which it used Cérélia [redacted].<sup>691</sup>

### *Our assessment*

9.258 In principle, the CMA does not consider that a customers' option to 'buy less' is a constraint that should be given material weight in the assessment of a merger, given that this is an outcome that would, ultimately, be worse for consumers.

9.259 In any case, the extent to which retailers can constrain the Parties by simply 'buying less' DTB product altogether, and devoting more shelf space to other products (eg butter, spreads and margarine category), appears to be limited. Most retailers indicated that their customers expect the core DTB products to be available to them.

9.260 Buyer power is discussed in further detail below (see from paragraph 9.265).

### ***Our current view on alternative competitive constraints***

9.261 In the sections above, we have reviewed the Parties' submissions on the competitive constraints exerted by alternative suppliers. We have also reviewed evidence from third parties and internal documents. Overall, we have provisionally found that:

- (a) PL suppliers based in the UK (specifically Bells and Cranswick) provide only a limited competitive constraint on the Parties. In particular, [redacted].
- (b) PL suppliers based in the EEA (specifically Henglein and Wewalka) offer some competitive constraint. In particular, we consider Henglein to represent a material constraint mainly in case of its current retail customers, but weaker competitive constraint in case of the large retailers. This is because Henglein, although it has some spare capacity, presents a less compelling offer to them. On the other hand, Wewalka currently only supplies very limited volumes of DTB products to the UK [redacted], so we consider it to be a very weak constraint on the Parties.
- (c) Other PL suppliers represent only a minimal portion of sales in the market and are not considered strong alternative suppliers by retailers.

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<sup>691</sup> Cérélia response to Alternative Competitive Constraints Working Paper (marked-up), 13 September 2022, slide 35.

(d) Alternative branded products have a small presence in the market and are rarely considered substitutes to either of the Parties' products. Therefore, we consider them to pose a weak competitive constraint on the Parties.

9.262 We have also considered out-of-market constraints. While there is evidence that suppliers serving only or mainly the foodservice sector provide some level of constraint, our assessment indicates that this constraint is weak. The extent to which the retailers can constrain the Parties by simply 'buying less' DTB product appears limited.

9.263 Moreover, we consider that the aggregate competitive constraint on the Parties from alternative suppliers is limited. The Merged Entity will be the largest supplier of DTB products to UK retailers, with a [60-70]% share of supply, and will face limited competition from firms generally, with the stronger of the firms (Bells and Henglein) having a substantially lower share of the market, [redacted], or presenting a less compelling offer to the largest retailers in case of Henglein.

9.264 For these reasons, we provisionally conclude that the Parties face limited competitive constraints from alternative suppliers, both individually and in aggregate.

## Buyer power

9.265 As recognised in Chapter 5 (see Table 5.1) the DTB retail product market is characterised by four large grocery retailers holding approximately [70-80%] share of supply by value, and a number of much smaller retailers.

9.266 Cérélia submitted that:

- (a) Retailers have strong buyer power as recognised in GMI / Saxby (2006);<sup>692</sup>
- (b) Sales are concentrated among a small number of powerful retailers;<sup>693</sup>
- (c) Commodity benchmarking for cost pricing [redacted];<sup>694</sup>
- (d) The Merger would strengthen retailers' bargaining position in relation to Jus-Rol products because, [redacted];<sup>695</sup> and

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<sup>692</sup> MN, paragraph 57.

<sup>693</sup> MN, paragraph 59.

<sup>694</sup> Cérélia's response to the Annotated Issues Statement, 13 September 2022, paragraphs 4.7-4.9.

<sup>695</sup> MN, paragraph 61.

- (e) Cérélia's retailer customers (large and small) are all sophisticated buyers able to exercise significant buyer power by relying on each of the features of the DTB contract manufacturing sector to extract competitive terms from their contract manufacturers.<sup>696</sup>

9.267 Cérélia's submissions are based on the size and sophistication of grocery retailers leading to buyer power. Size and sophistication, in themselves, do not necessarily result in buyer power: as set out in our MAGs, where a retailer has the ability and incentive to trigger new entry, it may be able to restore competitive conditions to the levels that would have prevailed absent the merger.<sup>697</sup> Most other forms of buyer power that do not result in new entry – for example, buyer power based on a customer's size, sophistication, or ability to switch easily – are unlikely to prevent an SLC that would otherwise arise from the elimination of competition between the Parties. This is because retailers' buyer power depends on the availability of good alternative suppliers they can switch to, which in the context of an SLC will have been reduced.<sup>698</sup>

9.268 In this section, we assess Cérélia's submissions on buyer power by summarising grocery retailers' options to respond to a deterioration in PQRS, and considering the negotiating strength of the largest retailers, as well as the impact of the Merger on their negotiating strength.

### **Evidence**

9.269 Retailers' ability to constrain DTB suppliers primarily depends on their options to respond to a deterioration in PQRS. While retailers are sophisticated buyers who are trying to achieve the best deals and can benchmark commodity prices or limit promotional space, their ability pre-Merger depends on the availability of the following options:

- (a) PL/branded product rebalancing where the retailer buys more of the product through the other channel from its current supplier;
- (b) switching to a new supplier (PL or branded);
- (c) buying fewer DTB products; and/or
- (d) sponsoring entry and/or expansion.

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<sup>696</sup> Cérélia stated the following features of the market: [redacted]. Cérélia's response to the Annotated Issues Statement, 13 September 2022, paragraphs 3.8 and 3.43.

<sup>697</sup> MAGs, paragraph 4.19.

<sup>698</sup> MAGs, paragraph 4.20.



- 9.270 In responding to our inquiry, grocery retailers have described a number of commercial tools by which they seek to ensure prices are competitive. This includes tendering within each channel, negotiating on price by reference to commodity pricing, range reviews, and rebalancing the quantity of their purchases across the PL and branded channels (as well as across the wider dairy category) or by reference to promotional activity/product placement devoted to branded products.
- 9.271 In response to the question of options available to customers if they are not happy with their PL product supplier's offering, customers had mixed views. A little below half (four out of ten) [REDACTED] stated that they would consider switching supplier. Half (five out of ten) [REDACTED] of customers that responded to our inquiry stated that there are no or limited alternative suppliers of DTB products for PL. A minority (three out of ten) [REDACTED] said that they would discuss the manufacturing process, recipes or package size with their supplier to find value.<sup>699</sup>
- 9.272 In response to the question of options available to customers if they are not happy with their branded product supplier's offering, the majority (seven out of twelve) [REDACTED] of the customers that responded to our inquiry stated that there are no or limited alternative suppliers of branded DTB products. Two (out of twelve) [REDACTED] said that they could limit promotions.<sup>700</sup>
- 9.273 A number of third parties confirmed that commodity prices are transparent and that this enables certain retailers to appraise any price rise by a retailer by reference to the commodity price. Two large retailers [REDACTED] indicated that this is often one of the primary points of focus when discussing prices with suppliers.<sup>701</sup> This transparency on supplier costs was also referenced by [REDACTED].<sup>702</sup>
- 9.274 However, a large retailer [REDACTED] submitted that while they would still be able to use commodity prices for benchmarking following the Merger, their ability to mitigate their exposure to unjustified inflation by rebalancing volumes between brand and PL would be reduced.<sup>703</sup> That large retailer acknowledges that it would have some 'natural leverage' from being a 'significant part of the volume' at the Merged Entity's site, and they could 'impact on the volumes of that site'. However, they warned that this would probably be to the detriment

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<sup>699</sup> Responses to the CMA's customer questionnaire, question 15.

<sup>700</sup> Responses to the CMA's customer questionnaire, question 16.

<sup>701</sup> Note of a call with [REDACTED], [REDACTED], page 11-13. Note of a call with [REDACTED], [REDACTED], page 27.

<sup>702</sup> Written submission from [REDACTED], [REDACTED], question 3.

<sup>703</sup> Note of a call with [REDACTED], [REDACTED], pages 11-13.

of customers and that this is a growing category, and that they would not want to dampen that growth.

- 9.275 Another large retailer [REDACTED] stated that changing volumes of PL and Jus-Rol products is a lever it can pull if the Parties increase price or decrease quality. However, due to the limited presence of alternative suppliers in the UK, rebalancing quantities between PL and branded products is recognised to be a more important option than switching suppliers entirely.<sup>704</sup> [REDACTED] stated that the Merger will mean that it will no longer have the ability to flex volumes between PL and Jus-Rol, leaving ‘no room for negotiation’ due to a limited choice of credible alternative suppliers (to switch) to in response to a price increase.<sup>705</sup> While this retailer confirmed that it would be willing to run a competitive tender and to look at Europe for its supply, it also highlighted a number of risks with any such approach, including the risk of surety of supply, whether the suppliers would be able to meet or prioritise their needs, and delay in the process.
- 9.276 This large retailer [REDACTED] told us that suppliers owning other non-DTB brands can potentially improve the retailers’ negotiating position across the board.<sup>706</sup>
- 9.277 Another large retailer [REDACTED] said that it seeks to negotiate a deal on the best commercial terms possible. It submitted that if such negotiations were unsuccessful, it may decide to delist one product, in favour of the product available in the other channel (ie switching PL for branded and vice versa) or, if the price was across both channels, it may rationalise or delist both. However, it submitted that the Merger would lead to a loss in its ability to compare and challenge Cérélia’s costs. This ability is a competitive tension used as a benchmark in negotiations, the ability to meaningfully compare and challenge quality and other factors between the various products, as well as potentially the access to new product development and innovations in the category.<sup>707</sup>
- 9.278 Evidence from Cérélia’s internal documents shows, in the CMA’s view, how the presence of alternative suppliers is key to the balance of the bargaining position between retailers and suppliers (see paragraph 9.257).

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<sup>704</sup> Note of a call with [REDACTED], [REDACTED], page 8 line 2 to page 9 line 17.

<sup>705</sup> Note of a call with [REDACTED], [REDACTED], page 16 line 2-14.

<sup>706</sup> Note of a call with [REDACTED], [REDACTED], page 18 lines 17 to page 19 line 3.

<sup>707</sup> Written submission from [REDACTED], [REDACTED], question 3.

## ***Our assessment***

9.279 At the start of this section, we listed the four options available to grocery retailers pre-Merger in order to constrain DTB suppliers (see paragraph 9.269). Taking those options in turn:

- (a) We consider that the retailers' option to rebalance PL/branded product will decrease due to the Merger, as the largest PL and branded DTB suppliers combine (see paragraph 9.122).
- (b) As discussed in paragraph 9.264 in the Alternative competitive constraints section, we provisionally conclude that the Parties face limited competitive constraints from alternative suppliers which limits the grocery retailers' ability to switch away from their suppliers. In relation to multi-sourcing of PL products we found that customers tend to switch their entire volumes of DTB product types (eg pizza dough or shortcrust pastry), rather than smaller volumes, making switching more difficult (see paragraph 7.57).
- (c) For the reasons set out above, the CMA does not consider that customers' ability to 'buy less' is a constraint that should be given material weight, given that this would result in a worsening of the options available to consumers. In any case, retailers' ability to constrain the Merged Entity by buying fewer DTB products, and devoting more shelf space to other products, appears limited (see paragraph 9.258). Most retailers indicated that their customers expect the core DTB products to be available to them.
- (d) Another lever the retailers could possibly use in response to the Merger is to sponsor entry or expansion of alternative DTB suppliers, possibly countervailing the effects of the Merger. However, as discussed below in Chapter 10, while the CMA has found some appetite to sponsor entry or expansion, the majority of retailers including the largest ones are generally not willing to consider explicit sponsorship. [X] told us that, given the current supply dynamics in the DTB products, awarding new business to an existing or new supplier on the back of a tender (as in the case of [X]) was its preferred mode of sponsoring to create new capacity in the own label category.<sup>708</sup> Other grocery retailers have not identified specific candidates for imminent sponsorship as discussed in paragraphs 10.93 to 10.100. While there is no evidence of imminent sponsorship, the

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<sup>708</sup> Note of a call with [X], [X], paragraph 18.

Merger does not stop grocery retailers from awarding new business to existing or new suppliers other than the Parties.

9.280 We consider that the larger retailers have some negotiating strength as they are sophisticated businesses used to dealing with suppliers and each retailer is an important route for suppliers in this concentrated market. In addition, suppliers want to keep capacity filled and their fear of losing large PL contracts may increase retailers' leverage when threatening to switch PL suppliers. However, we note that buyer power is largely a function of retailer's options and as noted above we have provisionally found that their alternative options are limited, and reduced by the Merger.

9.281 We also note that the small grocery retailers are unlikely to have the same degree of negotiating strength, in the sense of being able to sponsor entry or expansion, or push back on an attempt to increase prices.<sup>709</sup> However, acting in the other direction, their lower volume requirements mean it would likely be easier for them to find alternative suppliers.

### ***Provisional conclusion on buyer power***

9.282 Customers in this case include some very large, sophisticated grocery retailers, which command a degree of negotiating power and have at their disposal a range of means by which they seek to negotiate with suppliers of DTB products.

9.283 However, a customer's buyer power depends on the availability of good alternatives they can switch to. In the light of our assessment of the alternative suppliers active in the market, the limited switching by grocery retailers and the limited scope for market entry, we provisionally conclude that buyer power constrains the merging firms to a limited extent and that ability to exercise any buyer power will be reduced by the Merger.

### **Conclusion on closeness of competition between the Parties**

9.284 Having considered both the competitive constraint between the Parties, and the other constraints on the Parties, we now assess their relative importance.

9.285 We found that the Parties' offerings to retailers are differentiated and the constraint between them does not typically manifest itself through direct competitive interactions (in particular through head-to-head competition in

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<sup>709</sup> One of the small grocery retailers [redacted] specifically highlighted its lack of buyer power. Responses to the CMA's customer questionnaire from [redacted], [redacted], question 33.

tenders).<sup>710</sup> However, this lack of direct competition largely reflects the nature of channel-specific competition, in which a grocery retailer selects its preferred supplier within each of the distinct channels. For the reasons set out in earlier sections of our provisional findings, an assessment limited to direct competition would not fully reflect the nature of competition in the market, and in particular the competitive tension that exists between the PL and branded channels.

- 9.286 Large grocery retailers have told us that their ability to trade off the Parties in their negotiations is an important constraint which enables them to get a better deal for consumers. Grocery retailers told us that they may not typically have recourse to pitting their PL supplier against their branded supplier but that it is a source of competitive tension that would be lost by the Merger, thereby reducing their ability to protect against potential price rises by a particularly large supplier covering both supply channels.
- 9.287 We have found that the competitive constraint on the Parties from alternative suppliers is limited, both individually and in aggregate. The Merged Entity will be the largest supplier of DTB products to UK retailers, with a [60-70]% share of supply, and will face limited competition from other firms. Only two other suppliers (Bells and Henglein, which are predominantly PL suppliers) have material shares of supply and their shares are substantially lower than either of the Parties. Bells is [X] while Henglein is presenting a less compelling offer to large retailers due to its use of alcohol, gaps in its range and retailers' preference for UK-based supply. We have found there to be no credible branded alternatives at the national level.
- 9.288 The presence of other alternative PL suppliers means that retailers have more options in that channel and so the relative importance of the constraint of Jus-Rol on Cérélia is not as high as vice versa. However, the weakness of the constraint from those alternative PL suppliers and the presence of not immaterial switching costs indicate that the constraint provided by Jus-Rol on Cérélia is still important and material.
- 9.289 As noted above, 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.<sup>711</sup> On this basis, we consider that the

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<sup>710</sup> With the exception of the pizza dough product type where Cérélia also supplies branded ([X]) pizza dough which competes with Jus-Rol's equivalent branded products.

<sup>711</sup> MAGs, paragraph 4.10.

Parties are close competitors, notwithstanding the differentiation in their offerings.

- 9.290 We have carefully considered whether the competitive threat from Henglein and Bells would be sufficient to prevent the Merged Entity from degrading PQRS as a result of the Merger. For example, although Henglein may not be an attractive option for certain key retailers, we have considered whether they might revise this position in the event of a price rise.<sup>712</sup> In addition, we have considered retailers' ability to constrain suppliers by closely monitoring commodity prices, undertaking range reviews and using their ability to adjust purchase volumes.
- 9.291 We consider that it is unlikely that retailers would switch to a new supplier in response to a small but significant price rise given (i) the evidence on the relative unattractiveness and capacity constraints of the alternative options, (ii) the existence of limited buyer power resulting from the lack of alternatives; and (iii) the existence of some switching costs.
- 9.292 The size of the Parties key grocery retailer customers means that if any one of them did decide to switch and buy all of its PL product from an alternative supplier, [REDACTED]; we estimate that such a contract loss would result in the Merged Entity losing between [REDACTED]% and [REDACTED]% of its FY2021 revenues.<sup>713</sup> While such a loss of revenue would be unattractive for the Merged Entity, there is no such evidence to suggest that the business would be unable to absorb such a loss in revenue, in the event it did occur in response to a price rise.
- 9.293 Accordingly, having regard to the evidence in the round, our provisional view is therefore that the pre-Merger constraint between the Parties is important and that the weakness of the limited alternative competitive constraints remaining post-Merger will be insufficient to offset the effects of the Merger.
- 9.294 Below we consider the potential harm resulting from this Merger as a consequence of the loss described above, including an assessment of third-party views, principles for assessing harm from the loss of rivalry between competitors and the Parties' submissions in this area.

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<sup>712</sup> We also consider whether a change to the current alternative competitive constraints might occur as a countervailing factor in Chapter 10. For example, whether retailers might further support the expansion of [REDACTED] capacity or/and consider sponsoring the entry of a new supplier.

<sup>713</sup> CMA estimates based on CUK and Jus-Rol's FY2021 revenue data [REDACTED]. [REDACTED].

### ***Third party views on the impact of the Merger on competition***

9.295 We asked third parties to provide any views on the impact on competition of the Merger.

#### *Grocery retailers' views*

##### *Evidence*

9.296 We found that, amongst the grocery retailers who replied to our inquiry, the majority of them (based on the value of sales of DTB products made by retailers) considered that the Merger could reduce competition:

- (a) A retailer [REDACTED], [REDACTED] noted that post-Merger a large proportion of the supply would be owned by one company which may lead to challenges around product quality and price. It may also affect security of supply.<sup>714</sup>
- (b) Another retailer [REDACTED] stated that the Merger would mean that it will no longer have the ability to flex volumes between PL and Jus-Rol, leaving 'no room for negotiation' with limited choice of credible alternative suppliers it could go to following a price increase for example. The retailer also stated that (outside of the DTB sector), it had in the past experienced suppliers of both PL and branded products threatening to cease production of their PL products if a change in the branded product was not accepted by retailers.<sup>715</sup> In order to mitigate this risk that retailer explained that it prefers to keep discussions between PL and branded 'very separate'.<sup>716</sup>
- (c) Another retailer [REDACTED] submitted that while it may have good transparency on costs at present, which enables it to apply pressure in commercial negotiations, the Merger would lead to a loss in the ability to compare and challenge cost of two viable rivals, the competitive tension used as a benchmark in negotiations, the ability to meaningfully compare and challenge quality between the various products, as well as potentially the access to new product development and innovations in the category.<sup>717</sup> That same retailer listed a number of concerns resulting from the Merger and in particular that the Merged entity (i) may increase the price of the PL products, and that it would be able to do so because of the lack of real alternatives in the UK; (ii) may stop supplying that retailer its PL product

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<sup>714</sup> [REDACTED] response to the CMA phase 2 customer questionnaire, question 33.

<sup>715</sup> Transcript of a call with [REDACTED], [REDACTED], page 16

<sup>716</sup> Transcript of a call with [REDACTED], [REDACTED], pages 16 and 17.

<sup>717</sup> Written submission from [REDACTED], [REDACTED]

altogether; (iii) may deteriorate the quality of the PL product; and (iv) may impact price and range of other related sectors like branded pizza DTB products.<sup>718</sup>

- (d) A customer [redacted] noted that it would limit competition in a market already presenting limited alternatives for pastry products such as puff pastry and filo pastry.<sup>719</sup>
- (e) [redacted] submitted that it considered the Merger would reduce the level of competition within the market by combining two potential sources of supply in an already very limited pool of potential suppliers. [redacted] obtain leverage in negotiations with these suppliers and it was concerned that the Merger would [redacted].<sup>720</sup>

9.297 The other grocery retailers which replied to our inquiry either did not have a view on the impact of the Merger on competition or considered it would have little or no impact:

- (a) One of the large grocery retailers [redacted] stated that it did not have a view on whether the Merger would impact competition;<sup>721</sup>
- (b) A retailer [redacted] said it did not have a strong view on the impact of this Merger. It stated Jus-Rol is a relatively small brand in General Mills portfolio, and it understood that Cérélia had already been manufacturing Jus-Rol for a number of years. It said that it did not plan to place any further business with Cérélia.<sup>722</sup>
- (c) One retailer [redacted] did not comment on the impact on competition but thought the Merger would have a minimal impact on it as a purchaser of branded products only.<sup>723</sup>
- (d) One retailer [redacted] considered that on balance the Merger would not impact the market significantly.<sup>724</sup> However it also noted that it did not have 'significant views' on the impact of the Merger.
- (e) [redacted] did not have concerns;<sup>725</sup>

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<sup>718</sup> [redacted] response to CMA phase 2 customer questionnaire, question 33.

<sup>719</sup> [redacted] response to CMA phase 2 customer questionnaire, question 33.

<sup>720</sup> [redacted] response to CMA phase 2 questionnaire, question 33.

<sup>721</sup> [redacted] response to CMA phase 2 customer questionnaire, question 33.

<sup>722</sup> [redacted] response to CMA phase 2 customer questionnaire, question 33.

<sup>723</sup> [redacted] response to CMA phase 2 customer questionnaire, question 33.

<sup>724</sup> [redacted] response to CMA phase 2 customer questionnaire, question 33.

<sup>725</sup> [redacted] response to CMA phase 2 customer questionnaire, question 33.



- (f) There were some retailers [redacted] that responded to our questionnaire but did not provide a view on the impact of the Merger on competition.<sup>726</sup>
- (g) [redacted] said that '[t]he acquisition makes little difference to us at this stage. We [redacted] do a [redacted] amount of business in [redacted] with Cérélia and Jus-Rol. [redacted].'<sup>727</sup>

### *Assessment*

- 9.298 Most of the large grocery retailers clearly expressed concerns about the impact of the Merger on their negotiations. In particular their submissions point to an expected loss of competition as an important check on pricing that would be lost as a result of the Merger.
- 9.299 We note that most of the grocery retailers who didn't have strong views on the impact of the Merger on competition represented a smaller part of the market by value. For some of these retailers, this is influenced by their business model, for example, a choice not to stock both PL and branded DTB products, for others this points to their view of the relative differentiation as between the PL and branded supply channels or their view of alternative PL suppliers.

### *Competitors' views*

#### *Evidence*

- 9.300 Half of competitors that responded to our inquiry considered that the Merger would have a detrimental impact on the market:
- (a) One competitor [redacted] explained that 'the transaction will strengthen Cérélia's position towards retailers because they will own the Jus-Rol brand, which is the only brand in UK and they do the PL business'.<sup>728</sup> However, this competitor in response to the question whether Cérélia and Jus-Rol compete with each other stated that '[b]rand and PL are produced by Cérélia, therefore no competition within Cérélia'.<sup>729</sup>
- (b) [redacted] considered that the Merger would have an impact on competition but also that it should not have a significant impact on its own business.<sup>730</sup>

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<sup>726</sup> Responses to CMA phase 2 customer questionnaire, question 33.

<sup>727</sup> [redacted] response to CMA phase 1 questionnaire, question 18.

<sup>728</sup> [redacted] response to CMA phase 2 competitor questionnaire, question 24.

<sup>729</sup> [redacted] response to CMA phase 2 competitor questionnaire, question 22.

<sup>730</sup> [redacted] response to CMA phase 2 competitor questionnaire, question 24.

(c) [X] submitted that the Merged Entity will command 100% of pastry products to what it characterised as the ‘big five’ supermarkets, with a detrimental effect on consumers and SMEs producing DTB products for the foodservice and other sectors.<sup>731</sup>

(d) [X] submitted that the Merger will adversely impact competition because Jus-Rol is the leading brand and will also be supplying the big four supermarkets with their PL pastry requirements and because of limited alternative suppliers in the UK.<sup>732</sup>

9.301 One supplier [X] submitted that the Merger would have a ‘mildly negative impact on competition’ due to reduction of competition between branded and PL products.<sup>733</sup> Other competitors [X] did not have any views on the impact of the Merger on competition.<sup>734</sup> Two [X] however stated that the Merger could have a negative impact on their business.<sup>735</sup>

### *Assessment*

9.302 Half (five out of ten) of the competitors who replied to our inquiry thought that the Merger would have a negative impact on competition. The main concern raised was that the Merged Entity would be supplying all or nearly all DTB requirements of the large grocery retailers. There were some competitors [X] that responded to our questionnaire but did not provide a view on the impact of the Merger on competition.<sup>736</sup>

## **The effects of the loss of competition between the Parties**

### ***Analysis of incentives in horizontal unilateral effects***

9.303 As established in our Guidance, the CMA views competition as a process of rivalry between firms seeking to win customers’ business over time by offering them a better deal. Rivalry creates incentives for firms to cut price, increase output, improve quality, enhance efficiency, or introduce new and better products. This is because rivalry provides the opportunity for successful firms to take business away from competitors, and poses the threat that firms will lose business to others if they do not compete successfully.<sup>737</sup> When levels of

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<sup>731</sup> [X] response to CMA phase 2 competitor questionnaire, question 24.

<sup>732</sup> [X] response to CMA phase 2 competitor questionnaire, question 24.

<sup>733</sup> [X] response to CMA phase 2 competitor questionnaire, question 24.

<sup>734</sup> Responses to CMA phase 2 competitor questionnaire, question 24.

<sup>735</sup> Responses to CMA phase 2 competitor questionnaire, question 24.

<sup>736</sup> Responses to CMA phase 2 competitor questionnaire, question 33.

<sup>737</sup> [MAGs](#), paragraph 2.2

rivalry are reduced, firms' competitive incentives may be dulled, to the detriment of customers. Some mergers will lessen competition but not substantially so, because sufficient post-merger competitive constraints will remain to ensure that rivalry continues to discipline the commercial behaviour of the merger firms. However, some mergers lead to a lessening of competition that is substantial. Since merger assessments are prospective, an element of judgement is necessary in deciding whether any loss of competition is substantial rather than any exact quantitative measurement.<sup>738</sup>

9.304 In this regard, the Competition Appeal Tribunal has previously held that where the CMA finds evidence that (a) the merging parties are close competitors, who compete on a variety of aspects of PQRS; and (b) sufficiently demonstrates that the merger will result in an SLC, there is no need to undertake a 'granular exercise' in respect of each of the parameters of competition.<sup>739</sup> Accordingly, the CMA is not required to conduct a granular analysis of the likely impact of the Merger on (eg) pricing.

9.305 In order to assess whether such a chain of causation is established by the evidence in this case, we have approached our assessment of the Merger as follows:

- (i) We have considered how suppliers compete in the relevant market and provisionally found that the pre-Merger constraint between the Parties is important and that there are limited alternative suppliers which could constrain any deterioration in the Merged Entity's offering;
- (ii) We have found that there are various aspects of PQRS that the Parties compete on, which are important to customers and which the Merged Entity would be able to deteriorate to the detriment of customers; and
- (iii) In our view, this – subject to countervailing factors – represents a substantial loss of competition, and that, accordingly, the Merged Entity's competitive incentives are likely to be meaningfully dulled, creating an incentive for the Merged Entity to deteriorate any of these aspects of PQRS.

9.306 While, as noted above, the CMA is not required to quantify the likely effects of the Merger on individual competitive parameters, the Parties have submitted

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<sup>738</sup> MAGs, paragraph 2.7

<sup>739</sup> Competition Appeal Tribunal Judgment – [JD Sports Fashion plc v Competition and Markets Authority](#), 2020, paragraph 99.

that certain factors arise in this case which mean that they would not have an incentive to deteriorate any aspect of PQRS post-Merger. Some of the Parties' submissions are based on the position that Cérélia and Jus-Rol should not be considered horizontal competitors and therefore analyse the Parties' incentives within the framework of a vertical effects analysis. For the reasons set out in detail above, we consider that it is more appropriate to assess the Merger on the basis that the Parties are horizontal competitors and we therefore do not believe that it is necessary to address, in full, the Parties' submissions which are based on a vertical effects framework.<sup>740</sup> We have, however, addressed the submissions of the Parties in relation to their incentives that we consider to be relevant to our horizontal unilateral effects theory of harm.<sup>741</sup>

### ***The nature of harm and the Parties' incentives***

9.307 Cérélia's submissions distinguish between (i) degrading products supplied to retailers by Jus-Rol, (ii) degrading the terms of supply of Cérélia's contract manufacturing services, or (iii) a worsening of terms across both channels. Cérélia submitted that the Merged Entity has no incentive or ability to raise prices or otherwise deteriorate its offer in any of these scenarios post-Merger.<sup>742</sup>

9.308 Unilateral effects may arise in differentiated product markets because a price increase becomes less costly when the products or services of two merging firms are brought under common ownership or control. Absent the merger, firms face a trade-off when considering whether to raise prices or reduce quality, range or service. On the one hand, the firm will incur a cost because some customers will switch away, and the firm will lose the profits they would have earned on those customers. On the other hand, the firm also gains, because it makes a bigger profit on the customers that remain (because of the higher price, or the lower cost associated with reduced quality, range or service). After the merger, it would no longer be as costly for the merged entity to raise prices or reduce quality: it would recoup the profit on recaptured sales from those customers who would switch to the products of the other merger firm.<sup>743</sup>

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<sup>740</sup> For example, Cérélia's response to the Annotated Issues Statement and Working Papers, 13 September 2022, annex AIS.11.a – Foreclosure incentives analysis; this quantitative analysis relates to a vertical input foreclosure theory of harm.

<sup>741</sup> [Cérélia's response to the Issues Statement](#), 2 August 2022, paragraph 5.2.

<sup>742</sup> [Cérélia's response to the Issues Statement](#), 2 August 2022, paragraph 5.2.

<sup>743</sup> [MAGs](#), paragraphs 4.6 & 4.7

9.309 In this regard, we note (by way of context to the analysis that follows in the next section) that, post-Merger, Cérélia would have full control over the PQRS offering of both the DTB products supplied by Cérélia in the PL channel and branded products supplied by Jus-Rol. It would therefore be able to determine price points (and therefore relative pricing) to maximise joint profits across the two channels, including through degrading both channels simultaneously. We note that a variety of strategies would be open to Cérélia – eg it could adjust its commercial strategies over time, change the offerings incrementally and/or to a variety of degrees. Nevertheless, we have considered the Parties’ submissions on the possibility of worsening terms in each of the Jus-Rol channel, the PL channel and both as these may provide further insight into the Parties incentives and the nature of harm that could result from the Merger under our horizontal unilateral effects theory of harm.

### *Incentives to degrade the Jus-Rol channel*

#### *Parties’ submissions*

9.310 With respect to the incentive to raise prices or degrade the quality of Jus-Rol’s products, the Parties submit that:

- (a) It would earn additional margins on any sales of Jus-Rol that divert to retailer own brand products as a result of price rises, or the degradation of, Jus-Rol products; however
- (b) the recapture of these sales would not be profit enhancing for the Merged Entity because Cérélia already manufactures both PL and Jus-Rol products [redacted]<sup>744</sup> and
- (c) Pre-Merger GMI was already [redacted] and so any change would result in a decrease in profits.<sup>745</sup>

#### *Our assessment*

9.311 We agree that the Merged Entity would earn additional margins on any sales of Jus-Rol that divert to PL products when Cérélia is the supplier of DTB products in that channel. However, for the reasons set out in paragraphs 9.114 to 9.116, we consider the existing contract manufacturing relationship between Cérélia and Jus-Rol to be of limited relevance.

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<sup>744</sup> Cérélia’s response to the Issues Statement, 2 August 2022, paragraphs 5.4 and 5.5.

<sup>745</sup> Cérélia’s response to the Issues Statement, 2 August 2022, paragraph 5.6.

9.312 The fact that Cérélia currently manufactures both PL and Jus-Rol products for some grocery retailers means that sales diverted to the PL channel are likely to be less profitable (as the PL channel does not benefit from the Jus-Rol brand equity value which is earned on top of the manufacturing margin). However, the recapture of the profits in the PL channel is, nevertheless, a factor that the Merged Entity may consider as part of its price setting process, whereas pre-Merger Jus-Rol attributed no value to any lost sales when setting its profit-maximising prices. Contrary to the Parties' submissions, this means there is likely to be a change in the incentive for the Merged Entity to raise prices or deteriorate the quality of Jus-Rol's products as a result of the Merger.

#### *Incentives to degrade the PL channel*

##### *Parties' submissions*

9.313 The Parties submit that it would not be profitable to raise prices or degrade the quality of the DTB products Cérélia supplies to retailers in the PL channel because:

- (a) Jus-Rol does not exert a competitive constraint on Cérélia pre-Merger;<sup>746</sup> and
- (b) Cérélia does not have the ability to worsen its terms of supply to retailers as it would result in retailers switching to alternative PL product suppliers.<sup>747</sup>

##### *Our assessment*

9.314 As set out above, we consider the Parties do compete and the Merger will remove a constraint on Cérélia's supply of DTB products into the PL channel which existed pre-Merger. In addition, given the limitations of the alternative suppliers available in the market, their limited attractiveness to key retailers and the presence of not immaterial switching costs, we consider it unlikely retailers would switch PL suppliers to the extent assumed by the Parties,

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<sup>746</sup> Cérélia's response to the Issues Statement, 2 August 2022, paragraphs 5.12 to 5.13.

<sup>747</sup> Cérélia response to the Annotated Issues Statement and Working Papers, 13 September 2022, paragraph 6.3.

leaving the Merged Entity able to profitably increase its prices or degrade the quality of its offering to grocery retailers in the PL channel.<sup>748</sup>

9.315 We note that the incentive to degrade the PL channel to divert sales towards the branded channel may be strong as the Jus-Rol equity brand premium means that the branded channel is likely to be more profitable for the Merged Entity.<sup>749</sup>

### *Incentives to degrade across both channels*

#### *Parties' submissions*

9.316 The Parties submit that it would not be profitable to raise prices or degrade the quality of both Jus-Rol products and Cérélia's manufacturing services to retailers for the PL channel because:

- (a) Any deterioration of Cérélia's offer to retailers can be expected to lead to a loss of its contract manufacturing supply contracts within the PL channel;<sup>750</sup> and
- (b) It would not be profitable for the Merged Entity to attempt to worsen the terms on which it supplies Jus-Rol to retailers since this would inevitably lead to end-consumers switching to the retailers' own brand products which would now be supplied by rival contract manufacturers.<sup>751</sup>

#### *Our assessment*

9.317 The Parties' submissions regarding a price rise by the Merged Entity across both channels being unprofitable are again based on the position that it faces significant competition from alternative PL suppliers. This position is not supported by our provisional findings as we have found that the competitive constraint on the Parties from alternative suppliers is limited.

9.318 We therefore consider that the Parties' submissions that it would not be profitable to raise prices or degrade the quality of both Jus-Rol products and

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<sup>748</sup> We note that the Parties' 'foreclosure incentives analysis' (Cérélia's response to the Annotated Issues Statement and Working Papers, 13 September 2022, annex AIS.11.a) considers a similar dynamic with an assessment of diversion from the PL channel to the Jus-Rol channel under a vertical framework. The Parties find no incentive to degrade the PL channel based on the assumptions that a significant proportion of sales will be lost to alternative PL suppliers and not be recaptured by Jus-Rol – again, these assumptions are not consistent with our findings.

<sup>749</sup> [REDACTED], Cérélia response to the Annotated Issues Statement and Working Papers, 13 September 2022, annex AIS.11.a – Foreclosure incentives analysis, Table 1.

<sup>750</sup> [Cérélia's response to the Issues Statement](#), 2 August 2022, paragraph 5.19.

<sup>751</sup> Cérélia's response to the Issues Statement, 2 August 2022, paragraph 5.20.

Cérélia's manufacturing services to retailers for the PL channel are not supported by the available evidence.

### *Price matching*

- 9.319 We have also considered the possibility that price-matching behaviour between grocery retailers might impact the incentives of the Merged Entity or affect the harm that could arise as a result of the Merger.
- 9.320 The Parties submitted that retailers would need to pass on any cost increases to end-consumers in the form of higher retail prices to cause volumes to be shifted between the Jus-Rol and PL channels. They submitted that it is unclear that this would happen as the grocery retailers face competitive pressure from rival retailers. For example, grocery retailers supplied with DTB products by Cérélia in the PL channel might seek to price match with other retailers – such as Aldi and Lidl – whose products were not manufactured by Cérélia, and who would therefore not be under any pressure to increase their own retail prices.<sup>752</sup> The Parties appear to argue that the lack of pass-through of any price increase would prevent downstream switching and/or harm that would otherwise flow from an SLC at the wholesale level.
- 9.321 We note that our MAGs specify that 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.<sup>753</sup> Our theory of harm is focused on the supply of DTB products to grocery retailers and so harm has occurred to customers if the wholesale prices for the Parties' retailer customers increase as a result of the Merger, regardless of whether they are willing or able to pass on those higher prices to end-consumers at the retail level.
- 9.322 In addition, our provisional view is that, even if retailers were to engage in such price matching behaviour, this would not prevent the harm that could arise from the Merger affecting end-consumers, in particular for the following reasons:

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<sup>752</sup> Cérélia response to the Annotated Issues Statement and Working Papers, 13 September 2022, paragraph 6.4.d.i.

<sup>753</sup> MAGs, paragraph 4.1.



- (a) Price matching typically only relates to a subset of products rather than the full range;<sup>754</sup>
- (b) Aldi and Lidl typically only stock PL products<sup>755</sup> and so price matching to those retailers would not affect the Jus-Rol products supplied by the Merged Entity – in the event of a price rise in the Jus-Rol channel; and
- (c) End-consumers would be exposed to potential harm from a deterioration in other aspects of Cérélia’s offering (e.g. quality or innovation), even if retailers were price matching, with such harm being passed on to end-consumers (in the form of lower quality products).

9.323 We therefore do not consider that any price matching activities used by the Parties customers would prevent harm occurring as a result of the Merger.

### **Our provisional conclusion on our competitive assessment**

9.324 We have provisionally found that the Merger will bring together the two largest suppliers in the wholesale supply of DTB products in the UK. The Merger leads to a combined share of [60-70%] and an increment of [30-40%]. The evidence shows that pre-Merger both Jus-Rol and Cérélia have strong positions in their respective channels (branded and PL)<sup>756</sup> and that they compete to supply retailers.

9.325 In particular, we have provisionally found that in the context of commercial negotiations and ongoing purchasing decisions, grocery retailers which have chosen to stock PL and branded DTB products use the competitive tension between the Parties, and their ability to flex volumes as between the two purchasing channels, as part of their commercial negotiations.

9.326 We have provisionally found there to be weak alternative constraints on the Parties, there being only a few credible PL suppliers, with no PL supplier holding more than a [10-20]% share of supply, and no nationally established branded alternatives. Therefore, we consider that the constraint between the Parties is important for both channels, noting that PL in particular (for which Cérélia is the leading supplier) operates as a pricing discipline on Jus-Rol. Post-Merger, these strong market positions will be consolidated within the

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<sup>754</sup> For example, Sainsbury’s claims on its website to have price matched Aldi on ‘150 fresh Sainsbury’s own-label and branded products plus other grocery and frozen products’ ([‘Sainsbury’s, Aldi Price Match’](#), accessed by the CMA on 21 October 2022). Moreover, Tesco claims on its website to have price matched Aldi ‘on hundreds of comparable products’ ([‘Tesco, Aldi Price Match’](#), accessed by the CMA on 21 October 2022).

<sup>755</sup> Albeit Lidl sometimes stocks branded DTB products as ‘specials’.

<sup>756</sup> With Cérélia also having a significant presence in the branded pizza dough product space through its supply of [§] branded products.

Merged Entity, creating a structural change in the market and there will be a loss in the constraint between the Parties which will affect retailers' ability to resist a price-rise. We consider that the Parties will have both the ability and incentive to raise prices or degrade other aspects of PQRS as a result of the Merger potentially across both channels and to varying degrees.

9.327 On the basis of the evidence set out above, taken in the round, we provisionally conclude that, subject to our findings on countervailing factors, the Merger may be expected to result in an SLC, arising from overlaps between the Parties, in the wholesale supply of DTB products to grocery retailers in the UK. We next consider whether there are any countervailing factors (specifically entry and/or expansion) that could prevent an SLC arising from the Merger.

## 10. Countervailing factors

### Introduction

10.1 We considered whether there are any countervailing factors that may prevent the SLC we found from arising, as set out in this Chapter. Specifically, we considered the effect of entry and expansion and any efficiencies arising from the Merger. In considering entry and expansion, we looked at whether competition in the supply of PL and branded DTB products to UK grocery retailers may be affected as new firms enter and expand to compete against the Merged Entity and whether such activity may countervail the SLC we found. We also considered whether any efficiencies arising specifically from the Merger may also enhance rivalry such that the Merger does not give rise to an SLC.

### Entry and Expansion

10.2 In merger inquiries, the CMA considers entry and expansion as one of several potential countervailing factors that might prevent an SLC from arising. In this Chapter, we assess whether entry and/or expansion could be a countervailing factor to an SLC finding<sup>757</sup>. In particular, this Chapter focuses on whether entry or expansion may be timely, likely and sufficient in the supply of DTB products to grocery retailers in the UK ('the relevant market') so as to offset the harm identified.

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<sup>757</sup> [MAGs](#), paragraph 8.28.

10.3 The Guidance explains the factors relating to timeliness, likelihood and sufficiency of entry or expansion as follows:

- (a) *Timeliness*: to prevent an SLC, entry and/or expansion must be sufficiently timely and sustained to constrain the merged entity. The timeliness of entry or expansion is assessed on a case-by-case basis, depending on the characteristics and dynamics of the market, but the CMA would normally consider entry or expansion that has a significant impact on competition within two years to be timely.<sup>758</sup>
- (b) *Likelihood*: in considering the likelihood of entry or expansion, the CMA will consider both the scale of any barriers to entry and/or expansion that may impact on the likelihood of entry or expansion and also whether firms have the ability and incentive to enter the market.<sup>759</sup>
- (c) *Sufficiency*: to prevent an SLC, entry or expansion should be of sufficient scope to deter or defeat any attempt by the merged firm to exploit any lessening of competition resulting from the merger.<sup>760</sup>

10.4 The Guidance also states that the CMA will consider how the merger may affect the likelihood of new entry or expansion, for example the merger may increase barriers to entry and/or expansion by strengthening the merged entity's incumbency advantage, or a larger merged entity might also be perceived to increase the risk involved in entry or expansion since the larger the firm, the more it might be expected to defend its position in the market.<sup>761</sup> Entry is also less likely where barriers are substantial relative to available profits.<sup>762</sup> The Guidance identifies common barriers but also notes that barriers to entry or expansion are liable to vary depending on the nature of the market.<sup>763</sup>

10.5 The CMA considers that entry and/or expansion preventing an SLC from arising would be rare.<sup>764</sup> The CMA's evaluation of a selection of some of its past cases has shown that in some instances, when it has relied on entry or expansion to clear mergers, that entry or expansion did not in fact materialise.<sup>765</sup> The CMA will therefore seek to ensure that the evidence is

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<sup>758</sup> [MAGs](#), paragraph 8.33.

<sup>759</sup> [MAGs](#), paragraph 8.35-8.36.

<sup>760</sup> [MAGs](#), paragraph 8.37-8.39.

<sup>761</sup> [MAGs](#), paragraph 8.43.

<sup>762</sup> [MAGs](#), paragraph 8.40.

<sup>763</sup> [MAGs](#), paragraph 8.41.

<sup>764</sup> [MAGs](#), paragraphs 8.29.

<sup>765</sup> [MAGs](#), paragraphs 8.29.

robust when presented with claims of entry or expansion being timely, likely and sufficient to prevent an SLC from arising.

10.6 This Chapter is structured as follows:

- (a) Nature of the market;
- (b) Summary of the Parties' submissions;
- (c) Third-party evidence in relation to:
  - (i) competitor expansion plans;
  - (ii) entry from adjacent sectors;
  - (iii) competitor views on barriers to entry and expansion;
  - (iv) Retailers' sponsorship of new entry or expansion;
  - (v) Retailers' views on barriers to switching supplier;
- (d) Market conditions and incentives to invest;
- (e) Recent history of entry and expansion;
- (f) Evaluation of the economic modelling submitted by the Parties;
- (g) Impact of future tendering exercises; and
- (h) Our provisional conclusions on entry and expansion.

## **Nature of the Market**

10.7 In this section we summarise some features of the tendering process for the supply of DTB products to UK grocery retailers, and its implications for our entry and expansion assessment.

### ***The tendering process***

10.8 This section summarises our findings of the tendering process, taken from Chapter 7 which explains how the supply process works. We found that UK grocery retailers conduct supplier reviews for their PL supply reasonably frequently. Most grocery retailers conduct tenders on an ad hoc basis, with a limited number conducting annual reviews.

10.9 In a PL tendering process, grocery retailers generally issue a product brief setting out the scope of the tender and send an invitation to tender to

suppliers. There are then several rounds of submissions where the supplier submits a proposal (including samples as required), and the grocery retailer gives feedback on product quality to the suppliers and requests changes. Before awarding the agreement, suppliers' sites may be audited, including any assessment of the suppliers' capacity.

- 10.10 We have not seen any evidence of the tender process being used for branded supply but the evidence available indicates that retailers typically have annual discussions with their branded DTB product supplier.
- 10.11 Supply agreements, both for PL and branded products, typically have no fixed term and can be terminated by giving reasonable notice in accordance with the GSCOP regime<sup>766</sup>. Orders are placed by retailers on a rolling basis based on short-term forecasts provided by retailers typically two weeks in advance.
- 10.12 A supply agreement review can be spurred by a grocery retailer product range review, supplier-initiated price change proposals, quality issues or requirements or product development. These negotiations can result in a new supply agreement, lead to a tendering exercise or lead to no change.
- 10.13 We found that grocery retailers consider price, quality, and service level to be the most important factors on which suppliers of DTB products compete.

### ***Implications for our assessment***

- 10.14 As a countervailing factor, entry or expansion must sufficiently replace any rivalry lost as a result of the Merger. In the context of this case, entry therefore refers to the entry of a new supplier of DTB products to grocery retailers, whether a manufacturer (like C er elia) or a brand owner (like Jus-Rol).
- 10.15 There are several ways in which entry or expansion can be achieved. In assessing expansion, we have sought to establish whether a current market participant is likely to materially enhance its competitive capabilities and whether that counterbalances the harm to competition as set out in our competitive assessment.<sup>767</sup> The clearest example in this industry would be a smaller provider investing in expanding its production capacity. As with entry, expansion could be achieved by a grocery retail DTB supplier, or by a brand owner.

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<sup>766</sup> Reasonable Notice means a period of notice, the reasonableness of which will depend on the circumstances of the individual case. [Groceries Supply Code of Practice - GOV.UK \(www.gov.uk\)](http://www.gov.uk).

<sup>767</sup> The competitive assessment examines the current competitive constraint imposed by existing market participants based on their current capabilities.

- 10.16 Cérélia supplies DTB products in the PL channel, whereas Jus-Rol is a branded DTB supplier. This means that there are different sources from which entry or expansion could occur.
- 10.17 As set out in the tender process section above, see paragraphs 10.8 to 10.13, the market is characterised by grocery retailers regularly reviewing their PL supply and holding at least annual discussions with their branded suppliers. These regular reviews, which can result in a retailer going out to tender if unsatisfied with current suppliers, coupled with the fact that supply agreements are typically not subject to long fixed-length terms, create opportunities for entry or expansion in both PL and branded DTB supply through the (potentially relatively frequent) future tendering exercises or informal equivalents.
- 10.18 The CMA generally places more weight on detailed consideration of entry or expansion by new or existing suppliers and previous experience of entry and expansion (including how frequent and recent it has been).<sup>768</sup> However, given the market features present in this case, we will also consider the structure of the market (including the relatively frequent opportunities to compete for customers' supply requirements) as part of our assessment of whether entry or expansion will be timely, likely, and sufficient to offset an SLC (see paragraphs 10.2 to 10.5).

## **Summary of Cérélia's views on entry and expansion**

- 10.19 In this section, we summarise the views of Cérélia about entry and expansion conditions in the relevant market.

### ***Cérélia submission on the GMI/Saxby case***

- 10.20 In its response to the Issues Statement, Cérélia noted the GMI/Saxby OFT case<sup>769</sup> in 2006 where the OFT found barriers to entry and expansion to be low.<sup>770</sup> GMI/Saxby overlapped primarily in the supply of frozen and chilled ingredient pastry to the retail, foodservice and bakery/manufacturing sectors. Cérélia noted that, in that case, the OFT concluded that 'low barriers to entry and expansion, combined with the presence of strong buyer power are

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<sup>768</sup> [MAGs](#), paragraphs 8.30.

<sup>769</sup> [General Mills UK Ltd / Saxby Bros Ltd - GOV.UK \(www.gov.uk\)](#)

<sup>770</sup> Saxbys concentrated on the manufacture and marketing of chilled ingredient pastry and un-baked goods to the retail sector and was acquired by GMI in 2006.

considered to exert a significant constraint on the parties post-Merger sufficient to offset any loss of competition arising from the Merger.<sup>771</sup>

10.21 Cérélia submitted that the ‘fundamental production process for DTB products has not changed since GMI/Saxby and, as a result, barriers to entry and expansion remain low.’<sup>772</sup>

10.22 We have considered the relevance of this decision but note that the CMA has an obligation to assess each case on its own facts at the time the case comes before the CMA with regard to the evidence presented in that case.<sup>773</sup> The GMI/Saxby decision was issued over 15 years ago and the evidence we have seen suggests that the market dynamics were different from today. As a result, in reaching a view on the barriers to entry and expansion, we examine the evidence available to us and the market as it is today.

### ***Cérélia’s submissions on entry/expansion from adjacent Sectors***

10.23 Cérélia submitted that there are numerous suppliers in adjacent Sectors which could easily expand into co-packing DTB products for retailers because they currently produce dough-based products on their existing production lines. In particular, Cérélia referred to foodservice DTB suppliers and suppliers of baked or ready-to-eat pastry, pie and pizza dough-based products (eg [REDACTED]).<sup>774</sup>

10.24 With regard to foodservice DTB suppliers, Cérélia noted that the Phase 1 Decision indicated that certain foodservice DTB suppliers could ‘immediately’ start supplying DTB SKUs to retailers.<sup>775</sup>

10.25 With regard to suppliers of baked or ready-to-eat products, Cérélia submitted that these suppliers are already supplying UK retailers with other PL products.<sup>776</sup> Cérélia submitted that [REDACTED].<sup>777</sup>

10.26 [REDACTED].<sup>778</sup> In Cérélia’s view, this demonstrates the ease with which a supplier in an adjacent Sector can redeploy existing dough manufacturing equipment to offer DTB co-pack services to retailers.<sup>779</sup> During the Main Party Hearing

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<sup>771</sup> [Anticipated acquisition by General Mills UK Limited of Saxby Bros Limited \(publishing.service.gov.uk\)](#), paragraph 62, page 16.

<sup>772</sup> [Cérélia response to the Issues Statement](#), paragraph 6.1, page 41.

<sup>773</sup> *Ecolab Inc. v Competition and Markets Authority*, [2020] CAT 12 at para 93.

<sup>774</sup> [Cérélia initial submission](#), paragraph 4.20, page 17. [Cérélia response to the Issues Statement](#), paragraph 6.6, page 43.

<sup>775</sup> Phase 1 Decision, paragraph 119(b)

<sup>776</sup> [Cérélia initial submission](#), paragraph 4.20, page 17.

<sup>777</sup> [Cérélia response to the Issues Statement](#), paragraph 6.9, page 43.

<sup>778</sup> [Cérélia response to the Issues Statement](#), paragraph 6.9, page 43.

<sup>779</sup> [Cérélia initial submission](#), paragraph 4.20, page 17.

Cérélia reiterated that barriers to entry and expansion are low and competition could come from anywhere [REDACTED] as an example of entry from an adjacent Sector due to low barriers.<sup>780</sup>

10.27 Similarly, Cérélia submitted that [REDACTED].<sup>781</sup>

10.28 Cérélia noted that The Northern Dough Co. ‘expanded beyond branded pizza dough and launched four new sweet and savoury products, including sourdough bread dough, brioche bread dough and cookie dough’.<sup>782</sup>

10.29 Cérélia also noted that there are a number of strong existing brands in adjacent sectors which are well placed to expand in the DTB sector (eg [REDACTED] and [REDACTED]). Cérélia submitted that this could be done [REDACTED].<sup>783</sup> Cérélia also submitted that the UK grocery sector is famous for supporting the launch of new innovative and disruptive brands (citing Innocent, Dorset Cereals and Tyrrells crisps as examples).<sup>784</sup>

10.30 Cérélia stated that it believes that there are at least [REDACTED] production lines in the UK that it considers could be used to manufacture DTB products. Cérélia noted that there would be many more production lines across the EU.<sup>785</sup>

## **Cérélia’s submissions on barriers to entry/expansion**

### ***Scalability***

10.31 Cérélia submitted that there are a number of smaller DTB suppliers already active in the grocery retail market who could expand their activities to meet additional demand.<sup>786</sup>

10.32 Cérélia submitted that DTB production is scalable as most costs are variable or semi-variable. It considers the basic ‘unit’ of production in DTB manufacturing to be the production line, which typically has an operational annual capacity of [REDACTED], [REDACTED]. Cérélia considers that this allows a provider to serve a large national retailer [REDACTED].<sup>787</sup>

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<sup>780</sup> Cérélia, main party hearing transcript, page 52, lines13-16.

<sup>781</sup> MN, paragraph 482, page 122.

<sup>782</sup> MN, paragraph 290, page 77.

<sup>783</sup> Cérélia response to Annotated Issues Statement, paragraph 4.6. Cérélia’s response to the Alternative Constraints Working Paper.

<sup>784</sup> Cérélia response to Annotated Issues Statement, paragraph 4.6.

<sup>785</sup> [Cérélia response to the Issues Statement](#), paragraph 6.7, page 43.

<sup>786</sup> [Cérélia response to the Issues Statement](#), paragraph 6.3, page 41.

<sup>787</sup> [Cérélia response to the Issues Statement](#), paragraph 6.5 (a), page 42.



10.33 Cérélia submitted that the same equipment is versatile and can be used to produce a wide range of DTB products. [REDACTED]. [REDACTED]. [REDACTED].<sup>788</sup>

### **Time and cost**

10.34 Cérélia submitted that the equipment used in manufacturing DTB products is standardised and widely available.<sup>789</sup> Cérélia considered that the equipment that makes up a DTB production line can be ordered and installed on site in [REDACTED] whether by someone expanding in the market or a new competitor entering.<sup>790</sup>

10.35 Cérélia told us that it estimates that the total cost of an entirely new production line (bought first-hand) would amount to £[REDACTED] and [REDACTED]. Cérélia also submitted the cost would be considerably lower if the production line were acquired second hand, which Cérélia noted was [REDACTED].<sup>791</sup>

### **Economic capacity expansion modelling exercise**

10.36 Cérélia submitted that the barriers to entry and expansion are low and, because they are low, entry/expansion would be likely, timely and sufficient to prevent an SLC in the hypothetical event that retailers could not turn to existing competitors.<sup>792</sup> Cérélia provided us with a 'bottom-up capacity expansion' modelling exercise carried out by Cérélia's economic advisers.

10.37 Two scenarios were modelled, [REDACTED] and the second [REDACTED].

10.38 The model looked at the [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].<sup>793,794</sup>

10.39 Cérélia submitted that the modelled timeframes are likely an overestimate because conservatively it assumes [REDACTED].<sup>795</sup> The analysis also assumes [REDACTED].

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<sup>788</sup> [Cérélia response to the Issues Statement](#), paragraph 6.5 (d), page 42.

<sup>789</sup> [Cérélia response to the Issues Statement](#), paragraph 6.5 (b), page 42.

<sup>790</sup> [Cérélia response to the Issues Statement](#), paragraph 6.5 (c), page 42.

<sup>791</sup> [Cérélia response to the Issues Statement](#), paragraph 6.5 (e), page 42.

<sup>792</sup> [Cérélia response to the CMA's Working Paper on Entry and Expansion](#), paragraph 7, page 2.

<sup>793</sup> Annex AIS.12.a - Entry and expansion business case

<sup>794</sup> Annex AIS.12.b - Entry and expansion model

<sup>795</sup> Annex AIS.12.a - Entry and expansion business case

## CMA assessment

### *Third-party evidence*

10.40 In this section, we summarise the third-party evidence received to date on entry and expansion in relation to the supply of PL DTB products to UK retailers.

10.41 This section sets out the following evidence:

- (a) views of third parties on expansion plans and investment intentions (this includes suppliers of DTB products to UK grocery retailers,<sup>796</sup> suppliers to the food-service industry and a large UK-based pastry company who does not supply DTB to UK grocery retailers but is active in foodservice and the manufacture and supply of baked goods to grocery retailers);<sup>797</sup>
- (b) entry from adjacent sectors;
- (c) views of above third parties on barriers to expansion;
- (d) views of retailers on sponsorship of new entry or expansion;
- (e) views of retailers on barriers to switching DTB supplier.

### ***Expansion plans of DTB manufacturers (for the PL channel) and branded DTB product suppliers***

10.42 In this section, we set out the views from existing suppliers of DTB products (including PL and branded DTB products) to UK grocery retailers on their capacity expansion plans and investment intentions.

10.43 We asked third parties if they had the ability to expand to meet the entire DTB supply needs of a leading UK grocery retailer, whether they have any plans to expand capacity in the next two years or invest in product development.

10.44 A competitor [REDACTED], said it has no imminent plans (within the next 18 to 24 months) to expand manufacturing capacity into the UK as it does not currently anticipate an increase in demand which would necessitate such an expansion. [REDACTED]. In response to our questionnaire, this competitor said that it had the ability to meet the entire supply needs of any leading grocery retailer

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<sup>796</sup> Some of the competitors are also active in food-service or the manufacture of baked goods and we have indicated this below, where known.

<sup>797</sup> [REDACTED] are active in [REDACTED].

in the UK by increasing production within its current manufacturing spare capacity [REDACTED].<sup>798</sup>

- 10.45 A manufacturer of DTB products based in continental Europe, [REDACTED], who manufactured [REDACTED], told us that it has recently added capacity with a [REDACTED] manufacturing plant, outside of the UK, and is also investing in new [REDACTED] categories and [REDACTED] assortment.<sup>799</sup>
- 10.46 Three competitors, who [REDACTED], [REDACTED], [REDACTED] and [REDACTED], all said that they have no plans to significantly expand manufacturing capacity in the next 18 to 24 months.<sup>800</sup>
- 10.47 A competitor [REDACTED] that [REDACTED], whose UK DTB grocery retail revenues account for [REDACTED] of total revenues, said that it is willing to consider expansion but had no imminent plans to increase manufacturing capacity.<sup>801</sup> This competitor said that subject to [REDACTED] it may consider investing in additional capacity in the future after a year or so.<sup>802</sup>
- 10.48 A producer of [REDACTED] dough, that focusses on supplying outside the UK, [REDACTED], told us that it does not have big business in UK and ‘our plans are not to increase the business in UK’.<sup>803</sup>
- 10.49 A major [REDACTED] that produces a range of baked pastry products, [REDACTED], told us it had no plans to invest in new manufacturing capacity or product development as it wants to remain dedicated to supplying [REDACTED].<sup>804</sup>
- 10.50 A supplier of [REDACTED] pastry to the [REDACTED] channels, [REDACTED], told us that it has looked into expansion but in the current economic environment, rising inflation, Brexit and in the suppliers’ view ‘market dominance by Cérélia and Jus-Rol’ in the UK, the risk was deemed to be too great.<sup>805</sup>
- 10.51 Overall, in relation to pre-existing plans, the evidence from third parties indicates that UK and continental European firms active in the supply of DTB products to UK retailers have no plans to expand beyond the current levels of manufacturing capacity in the foreseeable future. We assess the possibility of entry or expansion from a DTB manufacturer or brand owner prompted by a

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<sup>798</sup> [REDACTED] response to CMA’s phase 2 questionnaire

<sup>799</sup> [REDACTED] response to CMA questionnaire, [REDACTED], question 17.

<sup>800</sup> [REDACTED], [REDACTED] and [REDACTED] response to the CMA questionnaire, [REDACTED], question 17.

<sup>801</sup> Note of a call with [REDACTED], [REDACTED].

<sup>802</sup> [REDACTED] response to CMA questionnaire, [REDACTED], question 17.

<sup>803</sup> [REDACTED] submission of [REDACTED].

<sup>804</sup> Note of a call with [REDACTED], [REDACTED].

<sup>805</sup> [REDACTED] response to CMA questionnaire.

supplier through a future tendering process in the section entitled, Impact of future tendering exercises (see paragraphs 10.137 to 10.177).

### **Entry from adjacent sectors**

- 10.52 Cérélia submitted that there is a significant threat from suppliers in adjacent markets such as foodservice DTB suppliers and suppliers of baked/ready to eat pastry goods (see paragraphs 10.23 to 10.30). In this section, we set out the views from suppliers in adjacent markets on their entry/expansion plans in the UK grocery retail DTB market.
- 10.53 A large supplier that serves the foodservice Sector and supplies baked goods to retailers, [REDACTED], told us that it is not looking at expanding into serving grocery retailers.<sup>806</sup>
- 10.54 [REDACTED], told us that it is unable to expand production while consolidating its current position and has no plans to add new manufacturing capacity due to the current political and economic situation.<sup>807</sup>
- 10.55 A supplier that primarily caters to the foodservice and food manufacturing channels, [REDACTED] told us that it was unable to increase current production as that would require new equipment which could take 6-8 months to arrive and that 'it's impossible to penetrate the market'.<sup>808</sup>
- 10.56 Cérélia submitted that the barriers to entry and expansion for branded products are low, citing the likes of PizzaExpress as a successful market entrant into DTB pizza dough, and suppliers of branded products in adjacent Sectors (eg dairy) as potential entrants (see paragraph 10.29).
- 10.57 Cérélia is [REDACTED] contract manufacturer. [REDACTED] told us it has '[REDACTED]'.<sup>809</sup> The recent entry of [REDACTED] is already taken into consideration in our competitive assessment. [REDACTED] told us that it is focused on the [REDACTED] sector of the DTB market.
- 10.58 With regard to entry from the wider dairy sector, At the Main Party Hearing, GMI cited Anchor, a company with a well-known brand within dairy, particularly butters, that entered the pastry market, with a number of products

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<sup>806</sup>

[REDACTED] response to CMA questionnaire.

<sup>807</sup> [REDACTED] response to CMA questionnaire.

<sup>808</sup> [REDACTED] response to CMA questionnaire.

<sup>809</sup> [REDACTED] response to RFI, dated [REDACTED].

such as sheets and blocks.<sup>810</sup> However, GMI also noted that Anchor has since exited the DTB market.<sup>811</sup>

- 10.59 We received responses from smaller branded DTB manufacturers like [X], [X] and [X], who told us that they did not have immediate plans to invest in or increase their capabilities (see paragraphs 10.47 to 10.50).
- 10.60 With regard to the threat from adjacent Sectors, the CMA considers that a DTB foodservice supplier or a supplier of baked pastry goods may already have much of the expertise and equipment needed to supply DTB goods to UK grocery retailers. This is supported by the fact that a number of companies that supply DTB products to UK grocery retailers also supply either DTB products to the foodservice sector or baked goods.<sup>812</sup>
- 10.61 The evidence indicates that entry from the adjacent Sectors is possible. However, we have found no evidence of specific entry plans by any supplier. The only recent<sup>813</sup> example, which is cited by C  r  lia is that of [X], a supplier of [X] products who are now supplying DTB products to [X]. This entry impacts [X]% of the market by supply (see Table 5.1 in Chapter 5), and as noted above, [X].<sup>814</sup> [X], who supply DTB in the food service sector are not looking at expanding into serving grocery retailers. We assess the possibility of entry or expansion from a DTB manufacturer or brand owner prompted by a supplier through a future tendering process in the section entitled, Impact of future tendering exercises (see paragraphs 10.137 to 10.177).

### ***Competitor views on barriers to entry and expansion***

- 10.62 Third parties, including all of those above, were asked to explain reasons for their expansion and investment plans and their ability to compete for contracts.
- 10.63 We set out below the key themes emerging from third party evidence:
- (a) Barriers to competing for new contracts;
  - (b) Financial barriers to increasing production capacity;

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<sup>810</sup> See, [Anchor unveils new ready-made pastry product \(talkingretail.com\)](#), accessed by the CMA on 17 October 2022.

<sup>811</sup> GMI, main party hearing transcript, page 49, lines 10-25.

<sup>812</sup> [X], [X], [X], [X] and [X]

<sup>813</sup> Early 2022, MN, paragraph 492.

<sup>814</sup> [X] response to CMA phase 2 customer questionnaire.

- (c) Economies of scale in DTB manufacturing, which may prevent small scale entry and expansion acting as an effective competitive constraint; and
- (d) Barriers to establishing a branded product.

*Barriers to competing for new contracts*

10.64 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 DTB products to grocery retailers for their PL requirements in the UK. The feedback received indicates that there is a range of potential barriers for wholesale suppliers to compete for new retail contracts in the UK, including:

- (a) [X] and [X] told the CMA of the importance of scale, volume and scope in terms of product variety to meet grocery retailers' needs and ability to price competitively;<sup>815</sup>
- (b) [X] told us that requirements in terms of CAPEX expenditure to operate at scale are a barrier in the industry;<sup>816</sup>
- (c) [X] told us manufacturing standards (customer production standards) are stringent (e.g [X] has high requirements), and are not easy to accommodate within existing processes and production flows as they may differ from European standards;<sup>817</sup>
- (d) [X] told us that 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) is a barrier to entry or expansion and that in order to supply UK retailers with PL DTB products, a supplier would need a UK-based sales team, a proven track record of serving large retailers and adequate transportation logistics in place.<sup>818, 819;</sup>
- (e) [X] and [X] both told us that the breadth of DTB products offered is a potential barrier insofar as grocery retailers tend to gravitate to suppliers

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<sup>815</sup> [X] and [X] responses to the CMA's phase 1 competitor questionnaire. The importance of scale was also identified by one of Cérélia's customers as a significant challenge in changing supplier [X] response to CMA's grocery retailer phase 1 questionnaire).

<sup>816</sup> [X] response to the CMA's phase 1 competitor questionnaire.

<sup>817</sup> [X] response to the CMA's phase 1 competitor questionnaire and note of a call with [X], [X].

<sup>818</sup> Note of a call with [X], [X].

<sup>819</sup> [X] response to the CMA's phase 1 competitor questionnaire.

who can fill a range rather than supply a single product making it much more difficult for small companies like them to compete’;<sup>820</sup>

- (f) [redacted] cited 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);<sup>821</sup> and [redacted] cited grocery retailers’ preference to source from British suppliers where possible.<sup>822</sup>

10.65 Overall, the evidence from third parties indicates that firms active in the supply of manufacturing and packaging of DTB products to retailers in respect of their PL brands face some challenges in the context of investing in capacity-based expansion or expanding through competing for new contracts.

#### *Financial barriers to increasing production capacity*

10.66 Cérélia submitted (see paragraphs 10.36 to 10.39 above) that [redacted] and a range of DTB products, and that a new line costs just under £[redacted] million and would take [redacted] to be operational. Cérélia also submitted that DTB products are relatively simple to formulate, and ingredients can be easily purchased.

10.67 In order to be more competitive in the DTB space, [redacted], a major food manufacturer who produces a range of [redacted] pastry products, told us that it would need to make significant investments which is not perceived as attractive considering this is a low margin Sector.<sup>823</sup>

10.68 As set out above (see paragraphs 10.46, 10.47 and 10.50), when describing their reasons for not expanding capacity, three suppliers raised difficulties in the market conditions (including the political and economic conditions, inflation, Brexit and delays in capacity building, as well as difficulties in achieving market penetration to justify the investment), such that any expansion would not be an economically viable option.

10.69 We sought further evidence on the time and cost it would take to expand manufacturing capacity which is summarised below. The submissions by [redacted] and [redacted] appear broadly in line with those made by Cérélia. [redacted] submission is significantly higher due to it including site acquisition and factory construction.

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<sup>820</sup> [redacted] and [redacted] responses to the CMA’s phase 1 competitor questionnaire.

<sup>821</sup> [redacted] response to the CMA’s phase 1 competitor questionnaire; Note of a call with [redacted], [redacted].

<sup>822</sup> [redacted] response to the CMA’s phase 1 competitor questionnaire; Note of a call with [redacted], [redacted].

<sup>823</sup> Note of a call with [redacted], [redacted].

- (a) [redacted] submitted the cost would be £[redacted] (including the cost of site acquisition and construction). It estimates it would take [redacted] months for ordering equipment and obtaining approvals and [redacted] years to be fully commissioned. Its estimate was based on establishing a facility similar to its existing pastry set-up with a manufacturing capacity of c50kT per year. It noted costs would potentially be significantly lower if an existing food manufacturing facility were to be repurposed.<sup>824</sup>
- (b) [redacted] submitted the cost would be £[redacted] and require [redacted]. This was based on a very rough estimate, taking account of flour processing, pastry mixing, production line and packing line to service a large retailer [redacted].<sup>825</sup>
- (c) [redacted] submitted the cost would be £[redacted] (including a mixer, laminator, freezing equipment and wrapping but not building costs). It estimated [redacted] would be required to get equipment, train staff, organise raw materials contracts, packaging among other things. It also noted a limiting factor on time would be the supply of pastry laminators and that second-hand equipment is rarely available in Europe.<sup>826</sup>

10.70 The responses from [redacted] and [redacted] above broadly support the modelling provided by Cérélia [redacted] (see paragraph 10.36 to 10.39) [redacted]. That assessment found that [redacted].<sup>827</sup>

10.71 The available evidence suggests that production capacity could be [redacted]. This investment needs to be weighed against the chances of obtaining sufficient volumes from customers (see paragraphs 10.36 to 10.91 and 10.144 to 10.149). The attractiveness of the market would also impact the likelihood of such investment being forthcoming (see paragraphs 10.107 to 10.118).

### *Economies of scale*

10.72 Economies of scale occur when the cost per unit of volume produced (eg pound per kilogram) declines as volume increases. The Guidance notes that, in the presence of economies of scale, large-scale entry or expansion will generally be successful only if it expands the total market significantly, or substantially replaces one or more existing firm; and if the entrant can afford the risk that such investment will involve, especially in terms of sunk costs.<sup>828</sup>

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<sup>824</sup> [redacted] response to RFI dated [redacted].

<sup>825</sup> [redacted] response to RFI dated [redacted].

<sup>826</sup> [redacted] response to RFI dated [redacted].

<sup>827</sup> Frontier Economics consider [redacted] to be conservative and the time and cost is likely to be less.

<sup>828</sup> [MAGs](#), paragraph 8.41 (d).



10.73 While we have not seen evidence indicating differences in the significance of economies of scale between the PL and branded channels, we note that retailers place greater emphasis on brand owners' ability to grow the category rather than offering a low price.

10.74 Cérélia disputes the importance of economies of scale in the production of DTB products saying:

- (a) There are relatively limited economies of scale in DTB production and a manufacturer with a single DTB production line can operate with high levels of efficiency.<sup>829</sup>
- (b) A manufacturer with a single production line can operate with high levels of efficiency, especially if producing [X]. This is because most costs can be characterised as semi-variable so can be stepped up in increments as production requirements increase.<sup>830</sup>
- (c) The price competitiveness of smaller producers has been illustrated by [X] decision to switch to using [X] to manufacture all its PL [X] requirements (in preference to both Cérélia and other large European manufacturers). If [X] had been unable to price on competitive terms [X], it would not have won the [X] business.<sup>831</sup>
- (d) The fact that BakeAway was able to supply [X] demand in the UK from two lines shows that it is not necessary to have more production lines than this to produce efficiently.<sup>832</sup>
- (e) The ingredients for DTB products are highly commoditised (flour, oil, etc) and are sold on global markets. Furthermore, DTB products account for only a tiny fraction of demand for these ingredients, meaning that even the largest DTB manufacturers are small customers from the perspective of these suppliers.<sup>833</sup>
- (f) While it is possible to be competitive at different operational scales, what does matter is [X].<sup>834</sup>

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<sup>829</sup> Paragraph 35(1-9) of CUK response to s109 notice of 30 June 2022

<sup>830</sup> Cérélia response to the CMA's section 109 Notice (Phase 2 s.109) (1), 14 July 2022, question 35.

<sup>831</sup> Cérélia response to the Annotated Issues Statement and Working Papers, 13 September 2022, annex AIS.05.a, paragraph 5.

<sup>832</sup> Cérélia response to the Annotated Issues Statement and Working Papers, 13 September 2022, annex AIS.05.a, paragraph 5.

<sup>833</sup> Cérélia response to the Annotated Issues Statement and Working Papers, 13 September 2022, annex AIS.05.a, paragraph 5.

<sup>834</sup> Cérélia response to the Annotated Issues Statement and Working Papers, 13 September 2022, annex AIS.05.a, paragraph 5.

10.75 We note, however, that this position is not supported by the evidence we have gathered during our investigation. In particular:

- (a) GMI told us that [REDACTED].<sup>835</sup>
- (b) Five out of six of the DTB suppliers (both in the PL and branded channels) that responded to our phase 2 questionnaire indicated that economies of scale are very important in the supply of DTB products. Four out of six of respondents said that there are cost advantages of producing at larger volumes. Four out of six mentioned the ability to secure lower prices on raw ingredients as an important element of economies of scale.<sup>836</sup>
- (c) One PL supplier [REDACTED] told us that [REDACTED].<sup>837</sup>
- (d) One supplier [REDACTED] who submitted that economies of scale are somewhat important commented that there are cost advantages but only up to a certain volume and, after this volume is reached, the cost remains the same.<sup>838</sup>

10.76 Figure 10.1 below shows Cérélia's breakdown of per unit production costs.<sup>839</sup>

**Figure 10.1: Breakdown of Cérélia's per unit costs**

[REDACTED]

10.77 As Figure 10.1 above shows, [REDACTED], which lends some weight to Cérélia's argument that economies of scale may not be material in this industry.

10.78 At the Main Party Hearing, GMI told us that one of the reasons it closed its production facility in the UK was that it was [REDACTED]. The factory was operating '[REDACTED]' and '[REDACTED]'.<sup>840</sup>

10.79 As explained in paragraphs 9.21 to 9.88, the primary factors based on which DTB suppliers compete for grocery retailers' business are ability to supply, price and quality. The importance of price to grocery retailer customers, and the need to have sufficient volumes to be able to operate with a competitive cost basis, indicates that economies of scale could act as a barrier to entry or expansion. As set out in the Tendering Process section (see paragraphs 10.137 to 10.177), the UK's grocery retailers regularly review the

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<sup>835</sup> GMI, main party hearing transcript, page 60.

<sup>836</sup> Responses the CMA phase 2 competitor questionnaire, question 11.

<sup>837</sup> Note of a call with [REDACTED], [REDACTED], paragraph 24.

<sup>838</sup> [REDACTED] response to the CMA phase 2 competitor questionnaire, question 11.

<sup>839</sup> Slide 13 of Cérélia's site visit afternoon presentation.

<sup>840</sup> GMI, main party hearing transcript, page 62, lines 2-5.

market and consider their commercial options (which can result in tender process being initiated relatively frequently).

10.80 The UK's large national grocery retailers spend in excess of £120 million on DTB products annually as covered in Chapter 5. Most of these products are currently purchased from Cérélia (for grocery retailers' own PL products) or from Jus-Rol. The contracts that a supplier could obtain from the large grocery retailers could be significant in scale, as evidenced by [redacted] switch to [redacted] which is expected to be approximately £[redacted] million per annum. We consider that economies of scale are a feature of the market, however, we also consider that a contract of the scale of the [redacted] could allow a supplier to achieve sufficient economies of scale to be able it to compete effectively against Cérélia on price.

10.81 Overall, the evidence indicates that whilst economies of scale are a feature of the market we consider that economies of scale can be achieved to some degree by operating a single production line at sufficient capacity which would enable smaller suppliers to compete on price to win a contract from a major grocery retailer. On a single production line the cost per unit can be brought down significantly by utilising the line at near capacity as is evidenced by the [redacted] deal.

### ***Branded channel***

10.82 If entry or expansion was to occur through branded DTB products, this would either come from the expansion of an existing small brand or the entry of a new brand, for example from an adjacent Sector. Both forms would require time and investment in marketing.

10.83 As noted in Chapter 7, the CMA has not seen evidence of grocery retailers tendering for a branded supplier.

10.84 [redacted], a [redacted], told us that it would be expensive for a new brand to enter the UK, as it would have to compete with Jus-Rol. This supplier commented that in the Dutch, Belgian, Scandinavian smaller markets there are only established brands as the Sector is too small to have PL. [redacted] said that in the UK, there is Jus-Rol and PLs, so entering the UK to compete with both of these would be expensive. [redacted] told us that it would have to build its brand up.<sup>841</sup>

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<sup>841</sup> Note of a call with [redacted], [redacted]

- 10.85 [X] told us that in the DTB market, it is hard to establish a brand. [X] is not aware of any branded DTB supplier successfully entering an established market.<sup>842</sup>
- 10.86 Jus-Rol has been the leading DTB brand in the UK for a long period of time. As noted in paragraphs 10.56 and 10.57, [X] is now in the DTB market, supplying DTB [X] to UK grocery retailers. This is evidence that branded entry is possible in practice, albeit that [X] is focused (and told us that [X]) on its area of speciality, [X], and also benefits from a strong established brand within that area of focus. Whilst this is evidence of entry from a closely related adjacent market, we note that [X] is unlikely to challenge Jus-Rol's position as the UK's largest branded supplier providing a range of DTB products.
- 10.87 The CMA understands that The Northern Dough Co. entered the market in relation to frozen DTB products (in frozen pizza dough; brioche; sourdough; cookie dough). We note, again, that The Northern Dough Co.'s range is limited in breadth (being limited to a small number of products in the frozen Sector) and scale.
- 10.88 As noted in paragraph 10.50, [X] has no current plans to expand capacity due to economic uncertainty.
- 10.89 Further, as noted in paragraph 10.58, [X], a branded grocery retail supplier in the wider dairy Sector, entered the DTB pastry market but subsequently exited [X].<sup>843</sup>
- 10.90 Whilst entry in particular product lines appears possible, establishing a supplier with a similar presence to Jus-Rol (ie a new brand with a significant presence across multiple popular product categories) is unlikely to occur or be successful at a sufficient scale to offset an SLC. The examples of branded entry we have found is only within small individual product lines and the evidence from [X] suggests the level of investment in promoting either a smaller DTB brand or a new brand entering the UK DTB market may be significant and the likelihood of successfully competing with Jus-Rol uncertain.

### ***Grocery retailers' sponsorship of new entry or expansion***

- 10.91 We asked grocery retailers whether or not they would be willing to consider sponsoring the expansion of smaller UK DTB suppliers, in either the PL or the

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<sup>842</sup> Note of a call with [X], [X]

<sup>843</sup> GMI, main party hearing transcript, page 49, lines 10-25.

branded supply channels. Within this context, sponsored entry refers to a third party who is encouraged and financially supported by one or more customers to enter or expand. We note that it could also be possible for entry or expansion from a DTB manufacturer or brand owner to arise through a future tendering process (see paragraphs 10.137 to 10.177). Switching of suppliers is considered in more detail in Chapter 7 paragraphs 7.61 to 7.81.

- 10.92 A grocery retailer [X], told us it is unlikely to sponsor any suppliers in this category through financial support or extended contracts.<sup>844</sup>
- 10.93 A grocery retailer [X] told us it will not consider sponsorship and has not changed suppliers in the last ten years.<sup>845</sup>
- 10.94 A grocery retailer [X] told us it is [X]<sup>846</sup>. This retailer [X] initially 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 commitments. [X] also said that there would need to be a [X].<sup>847</sup> This retailer subsequently told the CMA that it could not state with certainty whether sponsorship is something it might consider, and if so, what that would entail.<sup>848</sup>
- 10.95 A grocery retailer [X], told us that sponsorship ‘entails competitive costs and media support’. This retailer told the CMA it is open to considering switching to manufacturers from [X] subject to ‘qualifying criteria.’<sup>849</sup> This retailer told the CMA that it would take about 6 months to get a new supplier onboard. However, it had not specifically identified any new PL or branded suppliers to sponsor or switch to immediately and was not aware in specific terms of who the potential suppliers that might fill this role would be.
- 10.96 One grocery retailer, [X], responded to the CMA that it is willing to engage in conversations with suppliers about investment and capacity growth. However, this retailer told us that ‘At the moment there are no PL or branded suppliers that are willing to engage in conversations about investment except (Cérélia). In general, we would like to engage with more suppliers on conversations about investment and capacity growth, but at the moment the market is not supporting this happening. We would absolutely consider funding, longer

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<sup>844</sup> [X] response to working paper putback request of [X]

<sup>845</sup> [X] response to CMA customer questionnaire.

<sup>846</sup> [X] response to CMA customer questionnaire.

<sup>847</sup> Note of a call with [X], [X].

<sup>848</sup> Written submission from [X], [X].

<sup>849</sup> [X] response to CMA phase 2 customer questionnaire.

terms agreements etc. if the supplier was able to demonstrate a credible proposal'.<sup>850</sup>

- 10.97 That grocery retailer [X] has recently<sup>851</sup> switched [X].<sup>852</sup> However, the retailer was previously supplied by Cérélia and told the CMA that [X].<sup>853</sup>
- 10.98 A grocery retailer [X], is not looking to sponsor any suppliers and has not changed suppliers of chilled pastry in the past [X] years.<sup>854</sup>
- 10.99 A grocery retailer [X] told us it would not sponsor as it does not consider itself as the retailer of choice for pastry products.<sup>855</sup>
- 10.100 A grocery retailer [X] told us it is willing to sponsor suppliers with know-how and long-term contracts in the next 18-24 months.<sup>856</sup>
- 10.101 A grocery retailer [X] told us that sponsoring PL or branded DTB suppliers is not a priority for its business, further adding that 'it's just not lucrative enough of a segment for us to be interested in exploring such funding'.<sup>857</sup>
- 10.102 In its response to the AIS, Cérélia said that the UK grocery sector is famous for supporting the launch of new innovative and disruptive brands like Innocent, Dorset Cereals and Tyrrells crisps.<sup>858</sup> However we note that these brands operate in much larger markets (£600 million for smoothies<sup>859</sup>, £2.76 billion for breakfast cereals<sup>860</sup> and £1.2 billion for crisps<sup>861</sup> in 2021) compared to DTB and therefore any sponsorship in support of a marginal innovative brand is more likely to be forthcoming in these bigger markets. Conversely, Cérélia submitted that the 'fundamental production process for DTB products has not changed since GMI/Saxby' (see 10.20) which implies that the DTB market is not driven by innovation and is therefore less likely to attract meaningful sponsorship. Therefore, we have placed little weight on these examples as evidence of sponsorship for entry in the DTB market which would be timely, likely and sufficient to countervail the effects of the Merger.

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<sup>850</sup> [X] response to CMA customer questionnaire.

<sup>851</sup> [X]

<sup>852</sup> [X] is unable to supply shortcrust pastry.

<sup>853</sup> [X] response to CMA customer questionnaire.

<sup>854</sup> [X] response to CMA customer questionnaire.

<sup>855</sup> [X] response to CMA customer questionnaire.

<sup>856</sup> [X] response to CMA customer questionnaire.

<sup>857</sup> [X] response to CMA customer questionnaire.

<sup>858</sup> Cérélia's response to Annotated Issues Statement, 13 September, paragraph 4.6a.

<sup>859</sup> See [UK: juice mixtures & smoothies revenue 2013-2026 | Statista](#), accessed by the CMA on 17 October 2022.

<sup>860</sup> See [Breakfast cereals in the UK - statistics and facts | Statista](#) accessed by the CMA on 17 October 2022.

<sup>861</sup> See [Crisps sales value Great Britain 2006-2021 | Statista](#) accessed by the CMA on 17 October 2022.

10.103 Overall, the evidence indicates that there is some appetite to sponsor entry or expansion by retailers but that this is limited, and the majority of retailers, including those that comprise the largest proportion of the DTB market are generally not willing to sponsor entry or expansion. In line with this conclusion, the CMA has seen no evidence to suggest that grocery retailers have any imminent plans or are currently working towards supporting the launch of new brands that are innovative or disruptive by launching brand incubator programmes.

### ***Retailers' views on barriers to switching***

10.104 Grocery retailers provided the CMA with their views on the relative ease or challenges associated with switching DTB manufacturer.<sup>862</sup> Switching dynamics and summary of evidence received from various grocery retailers are covered in paragraphs 7.61 to 7.81.

10.105 Overall, as set out in Chapter 7, the evidence from customers on barriers to switching is mixed. While the evidence indicates that switching PL suppliers is sometimes a lengthy and multi-step process, the evidence also indicates that switching costs (both monetary and non-monetary) are not particularly high and that the switching process is familiar to grocery retailers. The majority of customers (eight out of nine) submitted that switching is either possible, difficult or very difficult. However, a small number of third-parties characterised switching as easy. Delay, disruption/transition-requirements and a lack of alternative supply options are seen as barriers to switching. Moreover, the evidence set out in Chapter 7 indicates that switching in the PL channel is not frequent and nearly non-existent in the branded channel.

### **Market conditions and incentives to invest**

10.106 In this section we consider if there are other market conditions which may influence the likelihood of entry or expansion, in particular:

- (a) Impact of market size and growth on likelihood of entry or expansion; and
- (b) Impact of profitability on incentives.

### ***Impact of market size and growth on likelihood of entry or expansion***

10.107 The growth trajectory and/or growth prospects of an industry or market are important factors in predicting likelihood of entry or expansion. A high rate of

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<sup>862</sup> Responses did not distinguish between PL or branded manufacturers.

growth in recent periods or a high prospect for growth in the immediate future will increase the likelihood of entry/expansion by new or incumbent players.

10.108 CMA analysis of Kantar data<sup>863</sup> of chilled DTB products<sup>864</sup> reveals a 3-year cumulative growth of [20-30]% by sales in the period ranging 2018-2021 as shown in Figure 10.2. 3-year cumulative growth in volumes for the same period is [20-30]% as shown in Figure 10.3.

**Figure 10.2: Evolution of chilled DTB market by sales (Kantar data)**

[✂]

**Figure 10.3: Evolution of chilled DTB market by volumes (Kantar data)**

[✂]

10.109 Both figures above show an upwards spike in sales and volumes in 2020 (and possibly 2021) which we understand to be driven by Covid-19 related lockdowns resulting in increased home baking. Annualised growth rate in sales is [5-10]%pa and volumes is [5-10]%pa.

10.110 Cérélia has submitted that its vision and rationale is for further growth opportunities arising from the Merger providing it with the ability to catch-up with other European countries (France, Italy, Germany) on household penetration rates. Cérélia submits that the relatively limited past investment in the UK by brand owners and retailers and the recent increase in home-baking due to the popularity of the ‘Great British Bake Off’ TV show and Covid-19 related lockdowns provide further growth impetus.<sup>865</sup>

10.111 The chilled DTB market in the UK has experienced reasonable growth of c9% in the four-year period 2018-2021. Smaller manufacturers have told the CMA that they see the continuation of this growth. One manufacturer, [✂], said that due to the cost-of-living issues, people will start to bake more at home to save money.<sup>866</sup>

10.112 However, whilst there has been clear growth of the overall market in relative terms over the past few years, the UK grocery retailer DTB market is small in absolute terms. Cérélia, which is the largest manufacturer by a significant margin in this Sector, had revenues of £[✂] million for the financial year

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<sup>863</sup> Annex S109.1.41.002 of Cérélia response (part 2) to s109 notice of 30 June 2022.

<sup>864</sup> Neilson data (2020, 2021) of combined chilled and frozen sales (Annex S109.1.41.001) is broadly same.

<sup>865</sup> MN, paragraph 97.

<sup>866</sup> [✂] response to RFI dated [✂]



ending 30 June 2021.<sup>867</sup> Moreover, whilst there may be a general trend upwards over time, there has been a fall since the market peaked during the COVID-19 pandemic, which suggests this growth may not be sustained in the future.

10.113 The above evidence shows that the UK DTB market is small, is experiencing some growth but that sales have fallen since the end of the COVID-19 measures.

### ***Profitability of incumbents***

10.114 High profitability of incumbent players in a market/industry may be an important predictor of the likelihood of entry/expansion. Consistently high levels of profit in an industry/market are more likely to attract entry/expansion compared to markets that are not very profitable or are loss making.

10.115 Figure 10.4 below shows trends in profitability for Cérélia's pastry business.<sup>868</sup> Gross margins (gross profit as a percentage of sales) [✂] while operating margins (operating profit as a percentage of sales) have been [✂].

#### **Figure 10.4: CÉRÉLIA pastry business. Trends in Gross and Operating Margins**

[✂]

[✂]

10.116 Figure 10.5 below shows trends in sales growth and profitability of Jus-Rol in the period 2019-2021.<sup>869</sup> While sales have experienced a [✂], gross margins [✂].

#### **Figure 10.5: Trends in Jus-Rol sales and gross margin**

[✂]

10.117 In the MN, Cérélia provided the CMA with GMI's short-term financial forecasts for the operation of the Jus-Rol Business. These show that GMI [✂].<sup>870</sup> The CMA notes this only covered a year but did show [✂] for the financial year ending 2021 versus underlying expectations.

10.118 The evidence suggests that this is an industry with low and fluctuating margins for both DTB PL suppliers and DTB brand owners.

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<sup>867</sup> MN, paragraph 111.

<sup>868</sup> Annex 109.1.24.001 of Cérélia part 1 response to s109 notice dated 30 June 2022.

<sup>869</sup> Annex 18.4 - [✂].

<sup>870</sup> MN, Annex 20.b – Dough S08 MBR Pre-Read.

## Recent history of entry and expansion

- 10.119 In this section we look at the recent history of entry and expansion in the relevant market. This evidence may be informative of whether entry or expansion may be timely and/or likely post-Merger.
- 10.120 We considered the evidence for new entry and expansion in the market during the past five years. To be a sufficient countervailing factor, entry or expansion would need to increase the competitive constraint that rivals exert on the Merged Entity, for example by introducing additional capacity, or new or better competitive offerings. The history and experience of past entry or expansion can be informative in this regard. It should be noted that the impact of recent entry and expansion on competition is taken into consideration in Chapter 9.

### ***Evidence on recent entry or expansion into PL and branded channels***

- 10.121 Below we have set out evidence provided by C er lia of actual entry/expansion in the last five years plus further examples we have been able to identify.

#### *New entry into DTB supply for PL*

- 10.122 C er lia submitted that it believes that in late 2020 to early 2021, a major food manufacturer [X] started supplying [X]. C er lia believes this manufacturer [X] was ‘able to start this supply relationship by leveraging its existing relationship with [X] in the [X] category. [X].<sup>871</sup> [X].<sup>872</sup> [X].<sup>873</sup>

#### *Expansion by existing DTB suppliers for PL*

- 10.123 We are not aware of any recent major investments in manufacturing capacity or capabilities by any UK based DTB suppliers other than C er lia’s.
- 10.124 We are aware of a manufacturer of DTB products based in continental Europe, [X], who manufactured [X], who told us that it has recently added capacity with a [X] manufacturing plant, [X].
- 10.125 We understand that [X] was supplying some Jus-Rol products into the UK pre-Merger. [X].<sup>874</sup>

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<sup>871</sup> [X] response to CMA competitor questionnaire.

<sup>872</sup> MN, paragraph 572, page 142.

<sup>873</sup> [X] response to CMA customer questionnaire.

<sup>874</sup> MN, paragraph 573, page 142.

10.126 We are also aware of Bells, a Scottish manufacturer which supplies both own brand and PL DTB products. As set out in 9.3 to 9.14, C r lia [REDACTED].<sup>875</sup> [REDACTED]<sup>876</sup>. [REDACTED], the CMA understands that [REDACTED] or capabilities. Therefore, [REDACTED] (see paragraphs 9.138 to 9.152).

#### *New entry into branded*

10.127 C r lia submitted that The Northern Dough Co. started in 2011 as a small business that sold a single pizza dough product in farmers' markets, won national listings in Sainsbury's and Waitrose and, in 2020-2021, expanded its range of new sweet and savoury products, including sourdough bread dough, brioche bread dough and cookie dough. C r lia submitted that The Northern Dough Co.'s products are now distributed by the largest UK retailers including Sainsbury's, Waitrose, Tesco, Morrisons, Ocado, Booths and Wholefoods, as well as hyperlocal delivery services.<sup>877</sup>

10.128 At the Main Party Hearing, GMI cited The Northern Dough Co. and Pret A Manger (**Pret**) as examples of recent consumer brand entries into the DTB market. GMI said that it 'expect that there is a potential for new consumer brands to come in, potentially in some smaller areas'.<sup>878</sup> While this an example of entry into the market, The Northern Dough Co. has a very small footprint and specialises in frozen DTB, not the larger chilled DTB Sector. The Parties did not provide any further submissions on Pret but the CMA understands that Pret, like The Northern Dough Co., is focused on the frozen DTB Sector.

10.129 C r lia submitted that Doughlicious, which is a cookie dough brand, 'launched two new product lines in late 2021, including a collection of ready-to-bake savoury biscuits and a collection of ready-to-eat frozen desserts wrapped in edible cookie dough'.<sup>879</sup>

10.130 We are aware that in May 2021, C r lia [REDACTED] with [REDACTED] to use the '[REDACTED]' brand in connection with the supply of [REDACTED] DTB products. [REDACTED]. We understand that the [REDACTED] products [REDACTED] and sold at Tesco, Sainsburys, Asda, and Morrisons. [REDACTED] has said that it has [REDACTED].<sup>880</sup>

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<sup>875</sup> C r lia's P2 response to s109 notice, Question 50 Table 4. [REDACTED].

<sup>876</sup> [REDACTED].

<sup>877</sup> MN, paragraph 579, page 142.

<sup>878</sup> GMI, main party hearing transcript, page 14, lines 12-25.

<sup>879</sup> MN, paragraph 580, page 142.

<sup>880</sup> [REDACTED] response to RFI dated [REDACTED].

### *Exit by branded DTB suppliers*

10.131 At the Main Party Hearing, GMI also cited Anchor, a company with a well-known brand within dairy, particularly butters, that entered the pastry market, with a number of products such as sheets and blocks. GMI also noted that Anchor has since exited the DTB market.<sup>881</sup>

### *Our assessment of recent entry and expansion*

10.132 We consider that entry and expansion outside of supply to the top six retailers (accounting for 90% of DTB sales) is unlikely to meet the 'sufficiency' part of the test for entry and expansion to be a countervailing factor.

10.133 For example, [X] is a clear example of a new DTB supplier entering the market. However, [X] is only serving a very small part of the market (see paragraph 5.16). The evidence that [X] will become a stronger constraint is weak, particularly because we understand that [X] (see paragraph 10.97), and therefore it is not clear whether [X] will be able to maintain its existing market position.

10.134 With regards to expansion by existing DTB suppliers, with [X] winning a contract with [X] shows that sizeable contracts can be won by smaller players in the market. [X].<sup>882</sup> Moreover, the contract has not led to [X]. [X], an existing DTB supplier have added new capacity in continental Europe, but they are not focused on the UK market [X].

10.135 There has been some recent entry into the branded space, the most significant of which is [X] but only in relation to [X]. Northern Dough is a new entrant into the market that manufactures its own products but it is a small company (see paragraphs 9.3 to 9.14) and not widely used by the grocery retailers (see paragraphs 9.123 to 9.264) and specialises in frozen dough so does not compete in the much larger chilled section of the market.

10.136 Whilst not a recent event, the CMA notes that Anchor entered the grocery retail DTB market just over ten years ago but has since exited. The CMA is not aware of any other companies exiting the market.

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<sup>881</sup> GMI, main party hearing transcript, page 49, lines 10-25.

<sup>882</sup> Note of a call with [X], [X].

### ***Impact of future tendering***

- 10.137 As set out in paragraphs 10.42 to 10.61, we have not identified any current or potential rivals (including PL suppliers, branded suppliers, or manufacturers in adjacent markets) with plans to enter or expand in this market. In addition, none of the largest retailers are currently considering sponsorship in this market, see paragraphs 10.91 to 10.103.
- 10.138 In response to the CMA's entry and expansion working paper, Cérélia told us that DTB manufacturers are incentivised to continue to provide competitive services and there is surplus capacity in the market. As such, Cérélia submitted that the CMA should be assessing what would happen in the hypothetical scenario in which retailers were not happy with their DTB suppliers.<sup>883</sup>
- 10.139 In that scenario, the likelihood of entry or expansion into DTB supply is subject to three main factors: a grocery retailers' willingness to consider alternative suppliers; the likelihood of alternative suppliers being able to meet the requirements of a grocery retailer; and the incentives for actual or potential suppliers to consider bidding.
- 10.140 The MAGs note that a firm may only find it profitable to enter or expand if prices remain above pre-merger levels, and that such cases of entry or expansion are unlikely to restore pre-merger prices and are unlikely to prevent an SLC from arising.<sup>884</sup>
- 10.141 Within this context, in the following sections we look at:
- (a) the potential willingness of the grocery retailers to consider alternative suppliers going forward;
  - (b) the ability of suppliers both in and outside the market to meet grocery retailers' needs;
  - (c) the incentives for suppliers to enter or expand in response to a tendering exercise; and
  - (d) the history of such entry or expansion.
- 10.142 There are DTB brands already operating in specific DTB categories in the UK and, although we do consider any individually here, there are potentially

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<sup>883</sup> Cérélia mark-up of CMA Entry and Expansion Working Paper, Annex AIS.08.b, paragraph 39.

<sup>884</sup> MAGs paragraph 8.36(b).

appropriate brands in adjacent markets, such as the wider dairy Sector. However, the CMA considers that entry or expansion from a branded supplier is most likely to come from closely related adjacent markets into a specific category, as we have seen in [redacted] or in frozen [redacted].<sup>885</sup> Such entry is unlikely to have a sufficient impact on the negative impacts of the Merger. A branded supplier operating in a single product category of the DTB market is unlikely to provide a material competitive constraint on Jus-Rol's position as the UK's leading DTB brand, a position it has enjoyed for a significant period of time. We have already found that there are likely to be significant costs involved in trying to gain brand recognition in the UK (see paragraphs 10.82 to 10.90). As already noted, the CMA has not seen any evidence of tendering for branded supply.

10.143 We therefore consider it more likely that future grocery retailer tendering events are more likely to encourage entry or expansion in the supply of DTB for PL purposes. As such, this section is primarily focused on the potential for a future tendering exercise as a route to encouraging entry or expansion in the manufacture of DTB products.

#### ***Grocery retailers' willingness to consider alternative DTB suppliers***

10.144 In paragraphs 10.7 to 10.18, we summarised the features of the relevant market and its implications for the assessment of entry and expansion. In particular, we noted that grocery retailers review, on an ad-hoc but regular basis, their PL supply. If grocery retailers are not content with their current supplier, those reviews can result in tendering exercises which allow retailers to consider alternative DTB suppliers and can create an opportunity for expansion or entry in this market. The potential for expansion or entry to occur is strengthened by the reasonably simple nature of both the product and production method. As further explained below, tendering exercises could be used to encourage suppliers in adjacent Sectors (like baked goods or foodservice) to enter the market or a smaller DTB manufacturer to expand.

10.145 Tendering exercises could encourage suppliers in adjacent Sectors to enter the DTB market. One such sector is the food service sector that already produces DTB goods for a wide range of customers, just not grocery retailers. We asked grocery retailers if they would consider foodservice suppliers. Most (nine out of 11) of the retailers that we asked appeared willing to consider

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<sup>885</sup> [redacted] response to RFI dated [redacted].

switching to, or at least open to actively considering foodservice suppliers, subject to qualifying criteria (see paragraphs 10.104 to 10.105).

- 10.146 The grocery retailers that can tender the largest and, therefore, most lucrative contracts are [redacted]. All bar [redacted] said they would consider foodservice suppliers.<sup>886</sup>
- 10.147 [redacted] told us that they would consider foodservice suppliers ‘as long as technical capability, surety of supply and ability to hit commercials’.<sup>887</sup> Whilst [redacted] told us they would not consider sponsorship, it did tell us that in the event it was unhappy it would look at who else was in the market and whether they have capacity.<sup>888</sup>
- 10.148 Tendering exercises could also encourage suppliers which are already supplying DTB products to retailers, but which are at present small in comparison to C er lia. We have evidence of this in the [redacted] deal with [redacted], albeit that this exercise has not led to [redacted], investing in new capacity.<sup>889</sup>
- 10.149 The evidence suggests that in the context of a tendering exercise there is some willingness from the grocery retailers to consider a range of potential suppliers, including both smaller DTB suppliers, foodservice and potentially other adjacent Sectors.

### ***Ability of current or potential DTB suppliers to meet the needs of grocery retailers***

- 10.150 As explained above, the UK’s largest grocery retailers are likely to assess the DTB market regularly and appear reasonably open to consider not only current DTB suppliers, but also those in adjacent Sectors. However, this is subject to those suppliers meeting the grocery retailers’ specific criteria. The grocery retailers told us they were not aware of anyone in the food service market who currently would meet these criteria.<sup>890</sup>
- 10.151 For an existing PL supplier to expand they would need to invest in new capacity. Companies already active in the manufacturing of DTB products already have the necessary capabilities and know-how to operate in this market. In terms of upskilling and expanding the ancillary services that grocery retailers desire, the evidence indicates that whilst there are some

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<sup>886</sup> Responses to CMA phase 2 customer questionnaire, question 24.

<sup>887</sup> [redacted] response to CMA phase 2 customer questionnaire, question 24.

<sup>888</sup> Transcript of a call with [redacted], [redacted], page 28.

<sup>889</sup> [redacted] told the CMA that it had invested in some new equipment related to reconfiguring its existing capacity.

<sup>890</sup> [redacted], [redacted], [redacted], [redacted], [redacted], [redacted] and [redacted] responses to CMA phase 2 customer questionnaire, question 24.

barriers to be overcome, they are not large (see paragraphs 10.62 to 10.71). We therefore consider that the key hurdles for companies to successfully expand production capacity are resource and incentive. We come onto the potential incentives to expand production capacity in the following section (see paragraphs 10.156 to 10.167 below).

- 10.152 With regard to the ability of those in adjacent sectors to enter the PL space, we agree with C er lia that those currently operating in the food service Sector and those supplying baked pastry goods are the most credible sources. Suppliers in the food service industry already supply DTB products and those in the baked goods could produce DTB products from their existing lines.
- 10.153 Whilst operating in related pastry manufacturing markets, these suppliers would still likely need to make some investments if they wished to enter the grocery retail DTB market even if they had available capacity. The investments would be business specific and depend on the area of the market they operated in. For example, food service suppliers would likely need to invest in packaging equipment and related expertise as this is not something most currently offer as they do not supply consumer products. Those suppliers that manufacture baked goods may have packaging expertise but are potentially going to have to invest in some DTB capabilities, which may involve acquiring personnel, but also infrastructure like refrigeration. These are not insurmountable barriers if retailers would consider such suppliers and the incentives to pursue such contracts existed.
- 10.154 In contrast to this, [redacted] told us that due to the volume needs a food service supplier would be an unlikely solution, giving the example of pack size complications given the different needs of the sectors, meaning that food service suppliers' existing lines may require adaptation, assuming there is capacity for additional volume.<sup>891</sup> Similarly both [redacted] and [redacted] told us that it is not aware of a food service supplier that could meet its needs.<sup>892</sup> [redacted] told us that it does not know of any potential suppliers, other than [redacted], that it could partner with.<sup>893</sup>
- 10.155 Overall we consider that smaller players already in the UK grocery retail market could serve a large UK retailer with targeted and specific investments that would be unique to the situation of the supplier. In addition, those in adjacent markets such as food service could, in principle service, the grocery retail DTB market. However, the evidence suggests that grocery retailers are

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<sup>891</sup> [redacted], response to CMA phase 2 customer questionnaire, question 24.

<sup>892</sup> [redacted] and [redacted], responses to CMA phase 2 customer questionnaire, question 24.

<sup>893</sup> Transcript of a call with [redacted], [redacted], page 20.



not aware of any third party in the food service sector that could meet their needs.

### ***Incentives to enter and expand in response to a tender***

10.156 In this section we consider the market conditions and the implications of this on the likelihood of smaller suppliers expanding or new entrants coming into the market before looking at the economics of establishing a new production line.

#### *Market conditions*

10.157 As set out in paragraphs 10.114 to 10.118, we found that Cérélia and the Jus-Rol business make [REDACTED], and in the case of Cérélia, [REDACTED]. In addition, as set out in paragraphs 10.107 to 10.113, the market in absolute terms is not large, and its growth is slow, and has fallen from a peak experienced during the UK's COVID-19 lockdown in 2020.

10.158 This could suggest that the incentives for current or potential suppliers of PL services to expand or enter the market are low, as the market conditions are not attractive. However, in contrast to the general market conditions, if the largest retailers were to tender contracts, the value of these would be in the millions of pounds. As an example, [REDACTED] are expecting to supply [REDACTED] for [REDACTED] from [REDACTED]. [REDACTED] expect this to be worth approximately £[REDACTED] million per annum with [REDACTED] telling us that [REDACTED] has provided volume expectations for [REDACTED].<sup>894</sup>

#### *Incentives to expand production capacity*

10.159 Cérélia produced an assessment of the time, costs and pay-back period for the installation of a new production line (see paragraph 10.36 to 10.39).

10.160 In our view, the analysis shows that within [REDACTED], a smaller supplier or a new market entrant could [REDACTED]. The analysis also showed that a supplier that secured a contract with a large UK retailer could expect to recoup its initial investment in approximately three years.

10.161 We received some evidence that supported the installation time and cost Cérélia used in its modelling (see paragraph 10.69). Cérélia's estimate, that it considers conservative, is that a new production line could be installed and capacity brought online [REDACTED] at a cost of somewhere between £[REDACTED] million. Cérélia estimate the payback period being [REDACTED], depending on whether the

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<sup>894</sup> Note of a call with [REDACTED], [REDACTED].

supplier was a smaller DTB supplier or came from an adjacent market like food service.

- 10.162 With regard to the time period, the CMA is not aware of any such capacity commissioning at present. Whilst the installation of a new manufacturing line may occur in response to a future grocery retail tendering exercise, this pushes the entry/expansion event further into the future. [X] told us it would take six months to launch a product at a new supplier.<sup>895</sup> In addition, once a production line is installed, there will likely be a period of testing and audit exercises undertaken by the grocery retailer. The time for a tendering event to occur, the tendering exercise itself plus testing and auditing post the installation period potentially push such an expansion event further out than C  r  lia suggests.
- 10.163 The  [X] million cost of installation, whilst not high in absolute terms must be assessed against the likelihood of achieving a profit and the requisite volumes required, to at the very least break-even. (By way of comparison we note, as set out above, that [X].)
- 10.164 Whilst [X] is not an example of expansion as [X] was already in the market [X], it does provide a useful example of retailers' willingness to consider small suppliers and of the value and volumes that can arise from retailer tendering exercises. We understand this [X] contract to [X], [X] [X]. However, notwithstanding [X] there are likely to be issues around timeliness and risks to suppliers from relying on single customer contracts.
- 10.165 Leaving aside the revenue concerns, the C  r  lia model assumes a large grocery retailer would shift a significant volume to a new supplier. The retailers' openness to considering alternatives and the [X] example provide evidence that retailers may be willing to consider this strategy. From the DTB manufacturer's point of view, there are risks attached to committing to expansion within the context of a tender award. In practice, the retailers do not currently commit to long term contracts, with most contracts being of no fixed term. Investing millions of pounds into such a market and being reliant on a single contract, that can be exited at fairly short notice,<sup>896</sup> would be a risk.
- 10.166 If the cost of expansion was reflected in the contract price to some extent and contracts are typically not fixed term, therefore potentially short-term then it

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<sup>895</sup> Note of a call with [X], [X].

<sup>896</sup> The GSCOP requires a period of notice, the reasonableness of which will depend on the circumstances of the individual case. See [Groceries Supply Code of Practice - GOV.UK \(www.gov.uk\)](http://www.gov.uk).

seems possible that contract prices could be materially higher. If prices were above pre-merger levels as a result, we would not regard this as entry that would countervail the adverse effects of the merger. Whilst grocery retailers could offer longer term contracts to encourage new entry/expansion if they were unhappy with their current supply options, it would nevertheless be a materially different contractual model and a change in behaviour to what we have seen in the recent past and not consistent with the evidence discussed above (see paragraphs 10.91 to 10.103 and 10.149).

10.167 Our assessment on alternative competitive constraints (see paragraphs 9.123 to 9.264), which includes grocery retailers' assessment of their alternative options should quality be degraded, concluded that the grocery retailers' options are limited.

#### *Past examples of tendering*

10.168 We have considered whether past examples of the large retailers tendering contracts that led to either expansion by a small grocery retail DTB supplier or a new PL supplier entering the market either with spare capacity or new capacity, may support C erelia's view that a future tendering exercise could trigger entry into the market.

10.169 As set out in paragraphs 10.121 to 10.136, there have been no significant examples of this happening. [X] are the best example of a new market entrant. However, this is a very small contract with [X].

#### *CMA assessment of entry and expansion from a future tender*

10.170 The evidence shows that grocery retailers are willing to consider alternative suppliers. Given the features of the market, they are likely to assess the DTB market, including what suppliers and potential suppliers exist, within a reasonable timeframe, in the context of a tendering process. Such an event could trigger entry or expansion in DTB grocery retail supply from suppliers in adjacent markets or smaller DTB suppliers.

10.171 However, grocery retailers impose requirements on suppliers that any new entrant would need to meet. These retailers told us that they are not aware of food service suppliers who could meet their requirements. In addition, the market has low margins and a slow historical trend of growth, adding to the risk that entry or expansion will not be successful. CMA guidance notes that if a firm only finds it profitable to enter or expand if prices remain above pre-

merger levels, such cases of entry or expansion are unlikely to restore pre-merger prices and are unlikely to prevent an SLC from arising.<sup>897</sup>

- 10.172 Cérélia produced a model that shows the upfront cost of installing a new production line could be recouped in approximately [REDACTED] if a large UK DTB supply contract was available. The CMA has some concerns over the revenues in the Cérélia model but putting that aside, at face value the model does provide evidence that in principle entry can be successful.
- 10.173 The model however relies on the winning and retaining of a large DTB contract. There is a risk of losing such a contract prior to recouping the investment due to the non-fixed term nature of contracts in this market. Whilst grocery retailers could offer a greater or longer guarantee, this would require a change in their behaviour.
- 10.174 The model provides little evidence that a supplier is likely going to expand capacity in a timely manner as whilst it may only take a year to install a line, no suppliers have started this process, retailers are not looking to tender at present and post installation there will be a period of time set aside for quality control before the grocery retailers start accepting stock in their stores. The CMA has not found any third party currently investing in capacity and no retailers are currently or imminently pursuing this approach with any supplier.
- 10.175 Assuming a grocery retailer was to assess the market within the next year, there would then be a tendering exercise only after which would a supplier consider investing in new capacity to serve DTB products to a large UK retailer. This raises questions around timeliness of such an event.
- 10.176 There is limited historical evidence to support future tendering exercises encouraging entry and expansion. The largest change in the market, [REDACTED], has [REDACTED] in any plans at [REDACTED]. The [REDACTED] is a genuine example of a new market entrant bringing new manufacturing capacity to the grocery retail DTB market.
- 10.177 Three DTB suppliers, [REDACTED] are very unlikely to invest in capacity. [REDACTED] told us that it is not currently planning on expanding capacity but is focused on reconfiguring its capacity for [REDACTED].<sup>898</sup> [REDACTED] told us it could already serve a large UK retailer<sup>899</sup> and [REDACTED] have recently already finished expanding their manufacturing capacity.<sup>900</sup>

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<sup>897</sup> MAGs, paragraph 8.36(b).

<sup>898</sup> [REDACTED] response to CMA phase 2 competitor questionnaire, questions 16 and 17.

<sup>899</sup> [REDACTED] response to CMA phase 2 competitor questionnaire, question 16.

<sup>900</sup> [REDACTED] response to CMA phase 2 competitor questionnaire, question 17.

## **CMA summary assessment and provisional conclusion on entry and expansion**

- 10.178 In this final section, we draw together the evidence above to form a provisional conclusion on whether or not entry or expansion would be timely, likely and sufficient to prevent an SLC from arising as a result of the Merger from either a brand owner or manufacturer of DTB products.
- 10.179 The CMA's approach to barriers to entry has been to test Cérélia's assertions that barriers to entry and expansion are low, by seeking and considering the views of third parties, looking at the history of entry and expansion, and looking at the conditions and incentives to enter or expand in the supply of DTB products to the UK grocery retail market. In particular, the CMA has also sought to identify third parties with specific plans that could impact its conclusion on the effects of the Merger.

### ***Entry and expansion from branded suppliers of DTB products***

- 10.180 The CMA has not identified any branded suppliers looking to enter the market or any specific plans from those in the market to significantly expand or invest in their DTB business (see paragraphs 10.42 to 10.51).
- 10.181 The CMA has identified some recent entry from branded suppliers (see paragraphs 10.121 to 10.136), for example in the DTB pizza dough and frozen Sectors. The CMA is also aware of a branded DTB supplier, Anchor, who entered but exited the market in 2016.<sup>901</sup>
- 10.182 Whilst past entry and expansion suggests that entry into the branded space is possible, the past history suggests this most likely to be in a specific product category, rather than across a range of DTB products. Our evidence shows (see paragraphs 10.82 to 10.90), that there would potentially be significant investment required to launch a new brand. Jus-Rol has been the UK's largest DTB brand for a significant period of time.
- 10.183 Based on the above, the CMA considers that the size of the market and low margins suggest that entry from a branded supplier in an adjacent market is unlikely. The long-standing strong market position held by Jus-Rol, as the UK's only national grocery retail DTB brand, does not suggest that a brand competitor is likely to appear as a strong alternative to Jus-Rol in a timely manner.

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<sup>901</sup> GMI, main party hearing transcript, page 47.

### ***Entry and expansion from suppliers of DTB products for PL purposes***

- 10.184 The CMA has not identified any DTB manufacturers who supply DTB products that are looking to enter the market or any specific plans from those in the market to significantly expand their DTB business (see paragraphs 10.42 to 10.51).
- 10.185 We found some evidence of barriers to entry and expansion in relation to competing for new PL contracts and the cost of capacity expansion but did not find economies of scale to be a significant barrier (see paragraph 10.64 and 10.72 to 10.81). We also consider that the simple nature of the product and production process, both of which are the same or similar to products in the foodservice and baked pastry goods markets means that there are potentially a number of potential market entrants (see paragraph 10.170).
- 10.186 We consider Cérélia's submissions on the time it would take to add a new manufacturing line to be reasonable and we broadly agree with its assessment of the potential cost of entry. However, the CMA found no evidence of either PL or branded DTB suppliers having any plans to expand their manufacturing capacity in the next 18-24 months. Coupled with this, the grocery retailers are not currently conducting any tendering exercises. Both of these facts push the time it would take for new manufacturing capacity to enter the UK market further into the future.
- 10.187 [REDACTED], a [REDACTED] from 2021<sup>902</sup> said that it had no further plans to expand in the Sector (see paragraph 10.49). This is consistent with Cérélia's own experience, as it also confirmed it was not aware of any third parties entering or expanding.<sup>903</sup> [REDACTED] are uniquely well placed to expand capacity having [REDACTED] but told us they have no immediate plans to expand capacity but might consider it in a year or so (see paragraph 10.47). [REDACTED] told us it had no plans to expand, did not anticipate an increase in demand and could accommodate a UK retailer if needed (see paragraph 10.44).
- 10.188 There is limited evidence that sponsorship is likely to occur in the future with the major UK grocery retailers not considering sponsoring the entry or expansion of DTB suppliers of PL products in the near term nor looking to support innovative or disruptive brands. Four grocery retailers [REDACTED], [REDACTED], [REDACTED] and [REDACTED] also consider switching to be difficult. One of these grocery retailers [REDACTED] also noted that the commitments it would need to offer a new supplier

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<sup>902</sup> MN paragraph 492.

<sup>903</sup> Cérélia, main party hearing transcript, page 68, lines 8 to 25.

would be 'significant' in order to justify the capital expenditure (see paragraphs 10.144 to 10.149).

- 10.189 Other manufacturers of DTB products identified a number of barriers to entry and expansion and reasons for their lack of plans, such as the need to have a UK-based sales team, a proven track record, transportation logistics, the level of investment required, the fact that it is a low margin Sector, the current economic environment, rising inflation, Brexit and the strong market position of C er lia and Jus-Rol (see paragraphs 10.42 to 10.60 and 10.64). The Parties margins support this being a volatile and low margin market (see paragraphs 10.114 to 10.118).
- 10.190 Whilst we have not received evidence of imminent entry or expansion, we did consider the likelihood of future entry or expansion occurring in response to a grocery retail tender as C er lia suggested this would be the route by which entry or expansion would occur. We found that the grocery retailers review their suppliers regularly, which, in the event they were unhappy could lead to a tendering exercise (see paragraphs 10.144 to 10.149).
- 10.191 We found a general willingness from the grocery retailers to consider, in the context of a tendering process, not only those already in the market, but those in adjacent Sectors, like food service, subject to them being able to meet the grocery retailers' requirements. However, none of the grocery retailers were able to identify such a supplier (see paragraphs 10.137 to 10.149). We consider that there are potential competitors in adjacent markets or smaller competitors already in the market who could enter or expand to serve a UK retailer if they chose to (see paragraphs 10.150 to 10.155).
- 10.192 We are not aware of any discussions that Grocery retailers are having with competitors that we believe could encourage entry or expansion in this market. Therefore, the openness of grocery retailers to consider alternative suppliers and the ability alternatives suppliers to meet grocery retailers needs must be weighed against the incentives for this to occur in the future. On incentives, we consider that the small size of the market and low margins suggest that entry, even from adjacent markets, is unlikely (see paragraphs 10.156 to 10.167).
- 10.193 Given no such discussions with grocery retailers are currently in progress we also query whether entry or expansion via a future tender would be timely (see paragraph 10.162).
- 10.194 Recent history does not provide any support for the theory that potential future tendering exercises are likely to lead to entry or expansion in the supply of DTB products to grocery retailers. Recent history suggests it is unlikely. To

invest in new capacity, a supplier would likely need to acquire a sizeable order from a grocery retailer. [REDACTED]. To invest in a production line when such contracts have no fixed term further increases risk, thereby reducing the likelihood of successful entry at a scale sufficient to countervail the SLC.

10.195 The only example is [REDACTED], which constitutes between [0-5%] of the UK DTB market (see Chapter 9) and [REDACTED] (see paragraph 10.97) [REDACTED]. In addition, we found that economies of scale is a feature of the market and whilst not a significant barrier, economies of scale increase the risk of investment in a brand new production line due to the size of the volumes that need to be captured. Coupled with this, the grocery retailers do not typically offer long term contracts increasing the risk of investment absent a change in grocery retailer behaviour (see paragraphs 10.170 to 10.171).

### **Provisional conclusion on entry and expansion**

10.196 There is no evidence of imminent entry or expansion in the wholesale supply of DTB products to UK grocery retailers. This, combined with the extremely limited evidence of recent entry or expansion in the market suggests that future entry or expansion in a timely or sufficient manner is unlikely.

10.197 We considered potential entry or expansion as a response to a future tendering exercise by a grocery retailer which Cérélia considered the most likely scenario that would encourage future entry or expansion. Whilst we agree that, in principle, grocery retailers could help competitors expand or enter the UK DTB market, on balance we consider that the evidence from grocery retailers and competitors does not support it being timely, likely or sufficient to mitigate or prevent the provisional SLC in the wholesale supply of DTB products.

10.198 We therefore provisionally conclude that entry and expansion would not be timely, likely or sufficient to mitigate or prevent the provisional SLC we have found.

### **Merger efficiencies**

10.199 We considered whether any efficiencies arising from the Merger could constitute a countervailing factor.



- 10.200 In some instances, mergers can give rise to efficiencies.<sup>904</sup> Rivalry-enhancing efficiencies change the incentives of the merger firms and induce them to act as stronger competitors to their rivals—for example, by reducing their marginal costs giving them the incentive to provide lower prices or a better quality, range or service.<sup>905</sup> They may prevent an SLC by offsetting any anticompetitive effects.<sup>906</sup>
- 10.201 The CMA will use the following criteria when it assesses whether merger efficiencies mean that the merger does not result in an SLC. The merger efficiencies must:
- (a) enhance rivalry in the supply of those products where an SLC may otherwise arise;
  - (b) be timely, likely and sufficient to prevent an SLC from arising;
  - (c) be merger-specific; and
  - (d) benefit customers in the UK.<sup>907</sup>
- 10.202 Cost and revenue synergies often form part of the rationale for mergers, and it is not uncommon for firms to make efficiency claims in merger proceedings. Many efficiency claims by merger firms are not accepted by the CMA because the evidence supporting those claims is difficult to verify and substantiate.<sup>908</sup>
- 10.203 Most of the information relating to the synergies and cost reductions resulting from a merger is held by the merger firms.<sup>909</sup> Therefore, it is for the Parties to demonstrate that the Merger will result in efficiencies.<sup>910</sup>
- 10.204 Cérélia has made no rivalry-enhancing efficiency claims as part of this Inquiry.
- 10.205 Whilst not making any specific rivalry enhancing efficiency claims, Cérélia has made reference to consumer benefits in its Merger rationale (see paragraph 2.29). Cérélia submit that ‘under GMI’s ownership, the Jus-Rol Business has been [X], with [X]. Cérélia said that it intends to make significant investments in Jus-Rol in short order with an aim to improve overall household penetration and category growth by reinvigorating the brand and its

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<sup>904</sup> MAGs, paragraph 8.2.

<sup>905</sup> MAGs, paragraph 8.3 (a).

<sup>906</sup> MAGs, paragraph 8.4.

<sup>907</sup> MAGs, paragraph 8.8

<sup>908</sup> MAGs, paragraph 8.6.

<sup>909</sup> MAGs, paragraph 8.7.

<sup>910</sup> MAGs, paragraph 8.15.

products, thereby delivering greater innovation and choice which would benefit retailers and ultimately UK consumers.<sup>911</sup>

10.206 The evidence submitted by Cérélia in support of the Merger rationale and consumer benefits includes:

- (a) a report commissioned in May 2022 (after the CMA had begun its review of the transaction), titled “[REDACTED]” authored by the consultancy [REDACTED].<sup>912</sup> The report highlights [REDACTED] from an end consumer perspective and specifically in respect of Jus-Rol. It identifies [REDACTED] which Cérélia has submitted are an opportunity for Jus-Rol to add value to the sector.<sup>913</sup>
- (b) a valuation model<sup>914</sup> that shows a [REDACTED]<sup>915</sup> as an [REDACTED] in the three-year period from 2023 to 2025 and a Capex of EUR [REDACTED] million in 2023 followed by [REDACTED] million each in 2024 and 2025. Cérélia said<sup>916</sup> that these investments would go towards developing new nutritional recipes, recyclable packaging and marketing/advertising to establish Jus-Rol’s renewed brand proposition.

### **Our assessment**

10.207 As noted above at paragraph 10.205, the Parties have made no rivalry-enhancing efficiency claims as part of this inquiry.

10.208 We considered whether the consumer benefits submitted by Cérélia could meet the cumulative criteria set out in paragraph 10.201. However, we do not consider the consumer benefits submitted are efficiencies that are likely to prevent an SLC for the following reasons:

- (a) We do not consider that the Merger, which removes the constraint of a significant rival to Cérélia, is likely to strengthen the ability and incentive of Cérélia to act pro-competitively for the benefit of consumers. The cost of any increased innovation that would arise from Cérélia’s plans [REDACTED].
- (b) With regards to Merger specificity, the CMA must assess whether the merger efficiencies are reliant on the merger in question or whether they would be brought about by other means.<sup>917</sup> In this case we consider that

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<sup>911</sup> MN, paragraph 584.

<sup>912</sup> Annex S109.1.5.001 – [REDACTED]

<sup>913</sup> Paragraph 5.3 of Part 1 of CUK’s response dated 07 July 2022 to s109 notice.

<sup>914</sup> Annex S109.1.3.001 – Project Delta\_Business Plan v38 – standalone – [REDACTED].

<sup>915</sup> CUK’s part 1 response to s109 notice dated 30 June 2022, paragraph 3.2(b).

<sup>916</sup> CUK’s part 1 response to s109 notice dated 30 June 2022, paragraph 3.2(a).

<sup>917</sup> [MAGs](#), paragraph 8.16.

there are less anti-competitive ways to increase investment and promotion into the UK DTB sector. For example, Cérélia could invest in product development for the products it supplies to supermarkets, or develop a brand of its own.

10.209 The Parties have not sufficiently demonstrated that the Merger would result in improving overall innovation and choice to the ultimate benefit of UK consumers and therefore offset the adverse effects of the Merger on competition.

10.210 The CMA's assessment is that the Merger efficiencies submitted by Cérélia would not be timely, likely, and sufficient to mitigate or prevent an SLC from arising in the UK market for wholesale supply of DTB products.

### **Provisional conclusion on countervailing factors**

10.211 Based on our assessment set out in this chapter, we have provisionally concluded that there are no countervailing effects arising from entry and expansion or Merger efficiencies that could offset the effect of the SLC we found in the supply of PL and branded DTB products to UK grocery retailers.

## **11. Provisional conclusion on SLC**

11.1 As a result of our assessment, we provisionally conclude that the Merger has resulted in the creation of an RMS.

11.2 We also provisionally conclude that the creation of that situation has resulted, or may be expected to result in an SLC in the wholesale supply of DTB products to grocery retailers in the UK.