

CÉRÉLIA/JUS-ROL

Response to Notice of Possible Remedies

1. Overview

- 1.1 On 4 November 2022, the CMA published its provisional findings (**PFs**) in relation to Cérélia's acquisition of the Jus-Rol brand from General Mills (**GMI**).¹ In the PFs the CMA provisionally concludes that there is a greater than 50% chance that the transaction 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.
- 1.2 On the same day, the CMA published a 'Notice of Possible Remedies' (**Remedies Notice**) in which it stated that it had so far only identified one suitable remedy, namely a divestiture of the Jus-Rol UK Business assets acquired by Cérélia under the transaction. The CMA acknowledges that such a remedy would be similar to a prohibition of the transaction. Cérélia is gravely concerned about both of these developments.
- 1.3 The CMA's analysis of possible merger-specific competitive effects fails to grasp how competition in the grocery retail supply chain works. In particular, grocery contract manufacturers² do not have market power when competing for the supply of private label (**PL**) production services to grocery retailers in the UK (so-called 'co-pack' services).
- A divestment of the Jus-Rol UK Business is wholly disproportionate to the CMA's findings***
- 1.4 The CMA's provisional view that only the divestment of the Jus-Rol UK Business would effectively address the identified SLC is wholly disproportionate to the competitive constraint the CMA (wrongly) identifies, which is limited, indirect and secondary. The CMA also fails to properly consider the availability of alternatives that would be equally effective in addressing it. Consequently, the disproportionate remedy is irrational.
- 1.5 As a preliminary matter, it is noted that a full divestiture is the most intrusive measure in the CMA's remedies toolkit and must be applied with appropriate care. The CMA must have regard to all relevant circumstances, including any possible unintended effects on the market, in particular on consumers.
- 1.6 It is uncontested that the CMA must ensure that no remedy is disproportionate to the SLC and its adverse effects.³ In this regard, it must be recognised that a de facto prohibition order is the most intrusive and onerous remedy the CMA could conceivably impose. As a result, the CMA must have a high degree of confidence that there is no other effective remedy capable of offering a comprehensive and clear-cut solution to the identified competition concerns.⁴ In the present case, it is particularly important to have regard to the only limited scope of adverse effects arising from the SLC, even on the CMA's own case.

¹ The transaction concerns the acquisition of a consumer brand in decline (ie Jus-Rol) by a contract manufacturer for brand owners, such as GMI and grocery retailers (ie Cérélia) which has been producing that brand already for a number of years. It is therefore vertical in nature.

² A contract manufacturer (or co-packer) produces food products for brand owners in accordance with the brand owner's instructions. Brand owners include consumer brand owners, such as GMI/Jus-Rol, and retailers which own and manage their own private label brands.

³ CMA87, 13 December 2018; para. 3.6.

⁴ *Tobii AB v CMA* [2020] CAT 1, para. 55.

- 1.7 In exercising the CMA's statutory functions under the Enterprise Act, it is also relevant that the PFs themselves make it clear that it is far from certain that the identified SLC would have any adverse effects on consumers.
- 1.8 Consistent with the CMA's Merger Remedies Guidance, as well as UK case law, a remedy is only proportionate to the SLC identified and its adverse effects if it satisfies four cumulative conditions:⁵
- (a) It must be effective to achieve the legitimate aim in question;
 - (b) It must be no more onerous than is required to achieve that aim;
 - (c) If there is more than one effective remedy available, it must be the least onerous option; and
 - (d) In any event it must not produce adverse effects which are disproportionate to the aim pursued.
- 1.9 In the present case, the SLC provisionally identified is exceptionally narrow (see Section 2 for further details).
- 1.10 In contrast to the narrow, limited SLC, a Jus-Rol UK Business divestment would in fact be the most onerous effective remedy option, and more onerous than other equally effective alternatives – it therefore fails limbs (b) and (c) of the “proportionality” test above. It also produces disproportionate adverse effects, failing limb (d) as well.
- 1.11 As regards limbs (b) and (c), among other things, a divestment of the Jus-Rol UK business in its entirety would include a range of DTB products in other categories not affected by the SLC – such as DTB PL filo, pizza and cookie dough products, breakfast products, and the entirety of Jus-Rol's range in respect of frozen and foodservice products. These categories together account for [X] of Jus-Rol's total UK revenues – please see further detail in Section 2 below. It is therefore plainly a disproportionate remedy, and the CMA cannot require it.
- 1.12 Further, a Jus-Rol UK Business divestment undermines the rationale for the business and the benefits the transaction is aimed at delivering for category growth and consumers. The DTB category would continue to stagnate and underperform in comparison to other European markets.
- 1.13 Pre-merger, Cérélia had a significant co-packing contract with GMI, which lasted until [X]. [X]. [X].
- 1.14 The disproportionate nature of a Jus-Rol UK Business divestment is also brought clearly into focus when considering limb (d) of the test above.
- 1.15 The aim of any remedy imposed would be to address the SLC and its adverse effects. As regards the size of the alleged SLC itself, the CMA is not required to quantify this. But it should be uncontentious that the identified adverse effect must be “substantial”, as the statutory wording stipulates. The evidence in this case shows that the allegedly lost ‘implicit’ competitive tension was neither the primary nor the only other secondary source of constraint pre-merger. The CMA accepts this, and this point is key for the CMA's assessment of the effectiveness and proportionality of any remedy the CMA is minded to impose.
- 1.16 Even if one were to accept the CMA's case (which Cérélia strongly believes to be unsound), the alleged adverse effects from the provisional SLC – while not quantified by the CMA in the

⁵ See CMA87, Merger Remedies Guidance, para. 3.6; *Tesco plc v Competition Commission* [2009] CAT 6, para. 137; CMA Remedies paper on the completed acquisition by FNZ of GBST (remittal) (15 April 2021), para. 1.214.

PFs – would be limited. To the extent that the CMA is concerned about potential cost price increases for retailers,⁶ two points need to be factored in.

- 1.17 First, the presence of other competitive constraints (which the CMA accepts are unaffected by the merger and some of which are stronger than the allegedly lost constraint) will remain, and will ensure such cost price increases would be limited. Second, the CMA further accepts that it is entirely unclear whether such cost price increases to retailers (if any) would be passed on to consumers in part or at all.
- 1.18 Indeed, **[Confidential]** admits that it is not aware of having faced unjustified cost price increases by its PL suppliers.⁷ So, no “playing off” was in fact required.
- 1.19 In contrast, the cost to consumers of a Jus-Rol UK Business divestment would be significant – it would mean Cérélia would be unable to proceed with the investments into the brand and product innovation it is planning to make. In contrast, it is uncertain whether any purchaser of the Jus-Rol UK Business would make any investments at all, essentially operating the Jus-Rol brand like GMI pre-merger (the CMA cannot require any such investments which would exceed the levels of investment in the counter-factual).
- 1.20 The absence of such investments would mean that the DTB category would continue to stagnate to the detriment of retailers, competition, and, more importantly, consumers.
- 1.21 As a result, the Jus-Rol UK Business divestment would be disproportionate to the harm identified. Below, Cérélia outlines two alternative remedy options to the Jus-Rol UK Business divestment identified in the Remedies Notice. While Cérélia considers that even these remedies would be disproportionate to the narrow SLC identified by the CMA, they would at least be *less* disproportionate.

The evidential basis for the CMA’s SLC is unsound

- 1.22 The essence of the CMA’s provisional SLC is driven by the CMA’s interpretation of comments made by two large grocery retailers **[Confidential]** (the **2 Retailers**).⁸
- 1.23 In the view of these 2 Retailers (as described in the PFs), there is an “implicit” – or unspoken – competitive tension between GMI/Jus-Rol and Cérélia (the **Parties**), as the 2 Retailers could exercise the option to shift – or “rebalance” – volumes from one to the other. These retailers and the CMA then assume that this implicit tension was both (i) understood by the Parties; and (ii) caused the Parties to offer them better terms (the **‘Implicit’ Competition Concern**). The 2 Retailers further noted, according to the PFs, that this ability to rebalance volumes between incumbent suppliers was more convenient and less costly than switching suppliers.
- 1.24 There are serious problems with the CMA’s heavy reliance on these assertions (assuming the CMA’s disclosure and interpretation of the totality of the submissions by the 2 Retailers, as set out in the PFs, is accurate and not misleading). Cérélia will set out its concerns in detail in its response to the PFs in due course. For the purposes of this submission, Cérélia limits its comments to the following headline points:

⁶ Beyond objectively justifiable cost price inflation recovery increases not related to the transaction itself, and which would only be possible in the event they were properly evidenced and then accepted by retailers.

⁷ See PFs, para. 9.83(c): “**[Confidential]** noted that this type of leverage has not tended to be necessary in practice, as it had not experienced unjustified cost inflation or (in respect of Jus-Rol) reduction in promotional funding.”

⁸ **[Confidential]** notes that it would prefer to continue dealing with two separate entities (for cost and quality comparison purposes). However, on the evidence disclosed to Cérélia, **[Confidential]** did not raise the “playing off” concerns based on implicit volume shifting threats which were raised by **[Confidential]**. As Cérélia already manufactured **[Confidential]** PL volume as well as Jus-Rol [⌘]. So this concern is not properly understood based on the PFs’ disclosures.

- (a) The CMA's market test in the present case confirms that [**Confidential**] other UK grocery retailers⁹ (including other large grocery retailers) did not raise the 'Implicit' Competition Concern;
- (b) The notion of an "implicit" competitive tension between consumer brand owners and retailer co-packers¹⁰ was expressly rejected by the CMA in its recent *PepsiCo/Pioneer* decision in March 2020 which also concerned a merger between a grocery co-packer and a consumer brand;¹¹
- (c) Between them, the 2 Retailers were unable to specify a single instance where such a threat was actually communicated¹², nor could they produce a single internal document which made implicit or explicit reference to this apparently significant tension; and
- (d) Each of GMI and Cérélia independently confirmed to the CMA that the alleged "implicit" threat was never communicated to them by retailers or otherwise perceived by them. The Parties' internal documents corroborate this. It is therefore not possible that this "implicit" threat could have caused either Party to offer retailers better terms.

1.25 Irrespective of the above, Cérélia sets out its views on the remedies that could comprehensively and effectively address the CMA's SLC in a less disproportionate manner. The views set out in this submission are without prejudice to Cérélia view on the substantive SLC analysis.

The alleged loss of competition is, even on the CMA's own terms, limited in scope

1.26 When assessing possible remedies in this case, the CMA must have regard to the precise nature of the SLC identified in the PFs.

1.27 It is therefore important to acknowledge that even on the basis of the CMA's own case, the competitive tension which is allegedly lost as a result of the transaction is only indirect and limited in its scope. In particular:

- (a) The CMA accepts that GMI/Jus-Rol and Cérélia do not compete directly for volumes.¹³ Instead, the "primary" competition takes place within (i) the consumer brand channel in which GMI/Jus-Rol competes for listings¹⁴ and (ii) the PL co-pack channel in which Cérélia competes head-on with other DTB co-packers for retailer PL volumes.¹⁵ It is this primary, channel-specific competition¹⁶ – together with near total cost price transparency given the commoditised nature of DTB products¹⁷ – which currently delivers competitive terms for retailers. No retailers suggested otherwise.
- (b) A key factor of this primary competition, as far as Cérélia is concerned, is the ability of retailers to switch PL co-packers. The CMA accepts that "*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*".¹⁸

⁹ PFs, para. 9.296-7.

¹⁰ See footnote 1.

¹¹ ME/6872/19, *PepsiCo Inc./Pioneer Food Group*; eg see: "*the CMA understands from third parties that downstream retail brand owners [ie consumer brands and the PL brands of retailers] compete between each other in the retail market and do not compete with upstream contract manufacturers*" (para. 41).

¹² PFs, para. 9.83(c) [**Confidential**] and 9.76(b) [**Confidential**].

¹³ PFs, para. 9.53-54.

¹⁴ PFs, para. 9.55.

¹⁵ PFs, para. 9.55.

¹⁶ [**Confidential**] are claimed to have told the CMA that commodity cost price transparency "*is often one of the primary points of focus when discussing prices with suppliers*" (PFs, para. 9.273).

¹⁷ PFs, para. 9.273.

¹⁸ PFs, para. 10.105.

- (c) In any event, the scope for “rebalancing” volumes between Jus-Rol and PL is limited by what shoppers purchase at the retail level. The PFs acknowledge this, noting that “*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’)*”.¹⁹ As [Confidential] said, the “*ability to switch from PL to branded is limited because PL serves as the entry price point for the category*”.²⁰

1.28 Additional comments are provided in Section 2 below.

The alleged loss of competition only affects a sub-segment of the DTB category

1.29 The assessment of the effectiveness and proportionality of any remedy proposal must also have regard to the fact that the alleged SLC only affects a sub-segment of the DTB category.

1.30 The alleged “rebalancing” threat could only credibly affect product lines where retailers stock Jus-Rol SKUs and Cérélia-produced PL SKUs in the same sub-segments (together, **SLC SKUs**). These sub-segments are chilled ready-rolled and block puff and short crust pastry (see further Section 2 and Figure 1 below). No other sub-segments can credibly be the subject of the alleged ‘implicit’ threat, ie pizza²¹, filo, breakfast cans and cookie dough, and all frozen lines (see Section 2 for further details).

There are at least two alternative effective remedies which each would address the SLC in a clear-cut and comprehensive manner

1.31 There are at least two alternative effective remedies, one in relation to what the CMA refers to as the PL channel and one in relation to Jus-Rol in the (consumer) branded channel.

1.32 Cérélia could appoint an independent exclusive distributor to supply the Jus-Rol SLC SKUs in the UK. This would allow retailers to continue to negotiate the supply of Jus-Rol SLC SKUs with an independent third party.

1.33 Alternatively, Cérélia could divest a dough production line to a DTB co-pack rival. This would transfer to a rival the production capacity equivalent to at least [X] of the total annual PL DTB volumes of all UK retailers. This would materially enhance the outside options for retailers to switch volumes, making any alleged flexing threats across incumbent suppliers post-merger even less relevant. It would also directly address the concern raised in the PFs that, while several DTB co-pack rivals are interested in expanding their capacity, they have no immediate plans to do so, given the current economic climate.

1.34 If required by the CMA, on an appropriately reasoned basis, Cérélia may consider using its best endeavours to secure the support of a retailer to move a DTB PL contract to the purchaser of the production line. That said, given the short term nature of the DTB PL co-pack agreement and the absence of significant barriers to switching as such, this is not required in Cérélia’s view, given the prevailing market conditions. Any purchaser of a line is capable of offering competitive terms for retailer DTB PL contracts. This was confirmed in the PFs which confirm the CMA’s view that “[o]n a single production line the cost per unit can be brought down significantly by utilising the line at near capacity”.²²

Structure of the remainder of the response

1.35 In the remainder of this response, Cérélia discusses in more detail the following issues:

¹⁹ PFs, para. 7.89.

²⁰ PFs, para. 7.78.

²¹ [X].

²² PFs, para 10.81.

- (a) The narrow scope of the SLC and the resulting limited scope for adverse effects arising from it which set the frame of reference for the assessment of appropriate remedies in this case (**Section 2**);
- (b) The reasons why the appointment of an independent distributor for the supply of Jus-Rol SLC SKUs would be effective (**Section 3**); and
- (c) The reasons why a production line divestiture would be effective (**Section 4**); and
- (d) The relevant perimeters of any hypothetical Jus-Rol UK Business divestment (**Section 5**).

2. The alleged SLC could, even on the CMA's own case, have only a limited effect on competition

- 2.1 An assessment of appropriate remedies can only be undertaken by reference to the scope of the SLC itself, and of its expected adverse effects.
- 2.2 As a preliminary point, it is noted that a mere preference of retailers not to switch suppliers cannot in itself justify an SLC. It is the *actual* willingness of those retailers to exert competitive constraint by tendering and switching their supply that determines the parameters within which the merger should be assessed. Switching suppliers, while never instantaneous, frictionless and cost free, is a common feature and an important competitive constraint in the grocery sector.
- 2.3 The CMA's SLC therefore falls away, on the CMA's own case, if a remedy appreciably enhanced the ability of retailers to switch DTB PL volumes to an independent third party co-packer. The scale of the remedy to be effective must be assessed by reference to the small size of the DTB category and the limited number of SLC SKUs potentially affected by the SLC on the CMA's case.

There are material pre-merger competitive constraints which continue to constrain the Merged Entity post-merger

- 2.4 As noted in Section 1, the CMA accepts that the "primary" source of competition in the DTB category is channel specific. For Cerelia this means that the primary source of competition are other rival co-packers. The transaction does not affect this competitive constraint in any way.
- 2.5 Further:
 - (a) Supply volumes are materially determined by way shoppers purchase at the retail level (derived demand). So retailers are constrained in their ability to flex volumes between the Parties for that reason as well.
 - (b) Neither Party [§]. Both Parties are at risk from losing volumes at any point [§]. Retailers can test the market and engage primary channel-specific competition at any point. Indeed, the CMA acknowledges that "*retailers tend to review their DTB product supply arrangements regularly*"²³, often "*annually*"²⁴, comparing the offers of rival PL suppliers. Where required to obtain better terms, retailers switch, demonstrating the validity of the CMA's view that "*switching costs are not a major barrier to switching PL supplier*".²⁵ As the CMA is aware, C erelia recently lost a significant [§].

²³ PFs, para. 9.133.

²⁴ PFs, para. 7.67.

²⁵ PFs, para. 9.133.

- (c) Retailers have also told the CMA that commodity prices are transparent and that this enables retailers to challenge the prices offered to them by Jus-Rol and C  r  lia. Indeed, [Confidential] are referred to as having told the CMA that commodity cost price transparency “*is often one of the primary points of focus when discussing prices with suppliers*”.²⁶
- (d) The PFs also acknowledge that large retailers are sophisticated buyers. They can employ effective short-term strategies to discipline their suppliers without any lasting adverse effects on consumers. [Confidential] expressly acknowledges that “*it would have some ‘natural leverage’ from being a ‘significant part of the volume’ at the Merged Entity’s site*”.²⁷

2.6 In light of these important pre-merger and continuing competitive dynamics, even on the CMA’s own case, it is unclear how retailers could benefit from the alleged ‘implicit’ competitive threat to flex volumes to extract better terms. Neither of the 2 Retailers provided the CMA with any concrete business evidence of this. Indeed, [Confidential] told the CMA that “*it had not experienced unjustified cost inflation*” from its PL suppliers or indeed Jus-Rol in the first place.²⁸

There are sufficient alternative DTB co-pack suppliers to maintain effective competition in DTB PL channel

2.7 The PFs accept that there are no major switching costs but raise the concern that primary PL channel competition is constrained by the limited number of rival DTB co-packers which can credibly bid for additional large retailer PL contracts. This view is contradicted by the fact that all retailers which tendered DTB PL volumes were able to obtain competitive terms as a result of the operation of PL channel specific competition (no retailers raised any concerns in this regard).

2.8 The CMA’s focus on the absolute number of co-packers is misguided. The absolute number of current PL DTB co-packers to UK retailers is constrained by the small size of the DTB retail segment and the limited number of available contracts. The correct question is not “how many”, but whether there are sufficient third party DTB PL co-pack rivals to ensure that retailers obtain competitive terms. As noted above, retailers did secure competitive terms when they tendered DTB PL contracts and the transaction has zero effect on this PL channel-specific competition.

The CMA’s SLC only affects a sub-segment of the DTB category

2.9 Any competitive tension pre-merger can only exist in respect of those retailers who purchase SLC SKUs (ie SKUs which fall into equivalent product sub-categories) from each of C  r  lia and Jus-Rol.

2.10 SLC SKUs account for only a limited proportion of the Parties’ portfolio – namely, ready rolled and block puff pastry, and ready rolled and block shortcrust pastry (all within the chilled range only). Outside of these, the Parties do not supply products in the same sub-categories to the same retailers.²⁹

²⁶ PFs, para. 9.273.

²⁷ PFs, para. 9.274.

²⁸ PFs, para. 9.83(c).

²⁹ For example, despite both Parties supplying (for example) ready rolled shortcrust pastry, not all retailers purchase DTB products in this category from both the Parties. Waitrose, for example, does not have its own PL branded DTB products at all, meaning the conditions for the alleged SLC cannot arise with respect to this customer.

Figure 1: Chilled product portfolio - SLC SKU categories

[X]

Source: Cérélia analysis

Notes to Figure 1

- X indicates SKUs supplied by Jus-Rol or Cérélia to a retailer.
- Red cells indicate SLC SKUs, ie SKUs supplied by both Jus-Rol and Cérélia to the same retailer.
- Green cells indicate the supply of SKUs which are not affected by the 'Implicit' Competition Concern.

2.11 Cérélia's initial analysis of Kantar data is that the SLC SKUs above account for less than [X] of the total chilled DTB retail category (by value).

Cérélia estimates that SLC SKUs account for only around [X] of each of Cérélia's PL sales and Jus-Rol's sales (by value). This means that [X] of the Parties' sales to UK retailers cannot be affected by the 'Implicit' Competition Concern.

2.12 To the extent the lessening of competition in respect of this limited number of SLC SKUs could be considered to have *any effect at all* on end consumers (which even the CMA appears to be uncertain about³⁰), this cannot be considered to amount to a substantial effect. In any event, if the CMA concludes (wrongly) that this effect meets the SLC standard, any remedy must reflect the limited scope of the SLC.

2.13 By way of further context, the average UK household spends only approximately £7.80 per year on DTB products as a whole,³¹ of which SLC SKUs would account for only c.£[X].³²

2.14 The upshot is that any potential lessening of competition would have only limited, marginal adverse effects on retailers and as accepted by the CMA at paragraph 1 of its summary of the PFs, may have no effect on consumers at all.

3. The case for a Jus-Rol Distribution Remedy

3.1 Cérélia proposes that it could enter into an exclusive distribution agreement with an independent third party distributor (the **Distributor**) to cover the distribution of each of the Jus-Rol SLC SKUs in the UK (a **Jus-Rol Distribution Remedy**). The Distributor would become the sole supplier of such SKUs in the UK retail channel, meaning that retailers would continue to be able to deal with two different suppliers when seeking to purchase Jus-Rol SKUs and co-packing services for PL SKUs in the same DTB product sub-categories. This would directly address the SLC identified in the PFs.

3.2 The Distributor itself would be an existing distributor in the grocery space (of which a number exist already, [X]), or any other third party who could demonstrate to the CMA that they could effectively operate in the role.

³⁰ PFs, para. 1.

³¹ Based on Kantar data.

³² Pro-rated for SLC SKUs from the average category household spend.

- 3.3 The Distributor would engage in negotiations for the listing of its Jus-Rol SLC SKUs directly with retailers across the UK. In turn the Distributor would then negotiate the supply terms for these SKUs with the Merged Entity which would retain the relevant IP rights. These negotiations would also extend to possible changes in recipes and package sizes and resulting changes to the commercial terms for the supply of such new Jus-Rol products within the SLC SKU categories to the Distributor – in other words, the Distributor would be responsible for all “retailer-facing” aspects of the business with respect to those SKUs, just as GMI is today.
- 3.4 With the Distributor responsible for “retailer facing” negotiations for the Jus-Rol SLC SKUs, Cérélia would continue to own the Jus-Rol brand and manufacture the relevant SKUs. This is important, and stands in contrast to the divestment of the Jus-Rol UK Business as proposed by the CMA.
- 3.5 By retaining ownership of Jus-Rol, Cérélia would remain incentivised to invest in innovation and marketing which would benefit not only the Jus-Rol brand itself but also other DTB suppliers, retailers and, ultimately, end consumers. A Jus-Rol Distribution Remedy would therefore allow these significant consumer benefits to materialize – at a time when the UK economy and consumers are lacking the benefits which investments into innovation and growth in the DTB category could deliver. These benefits would be extinguished if Cérélia were forced to divest the brand.
- 3.6 Cérélia would be willing to offer an equivalent of an ‘upfront buyer’ obligation, whereby it would enter into a distribution agreement with the Distributor on terms the CMA deems to be acceptable prior to the CMA formally accepting the remedy.
- 3.7 A Jus-Rol Distribution Remedy would satisfy each dimension of the requirement for “effectiveness”, as described in the CMA’s Merger Remedy Guidelines, as outlined below:

Impact on SLC and resulting adverse effects

- 3.8 The Jus-Rol Distribution Remedy would capture the essential features of a structural remedy – specifically, a one-off event that addresses the structure of the market by introducing a new consumer branded player with respect to the Jus-Rol SLC SKUs. It would address the cause of the SLC at source, by ensuring that retailers would not negotiate the supply of Jus-Rol SLC SKUs with the Merged Entity, and allowing them the benefit of any ability they consider they may have pre-merger to “play off” two independent suppliers in respect of the SLC SKUs.

Appropriate duration and timing

- 3.9 The impact of the Jus-Rol Distribution Remedy would be immediate. Once Cérélia had entered into the exclusive distribution agreement with the Distributor, retailers would immediately have a readily available alternative supplier (subject only to their own internal onboarding procedures, which would be expected to be swift given the product itself would not have changed).
- 3.10 Cérélia proposes that the Distribution Agreement would need to last for no more than [X] years; however, it would be willing to discuss the term with the CMA if a different duration was preferable.

Practicality

- 3.11 The Jus-Rol Distribution Remedy would be straightforward to implement. Once the distribution agreement itself had been entered into, Cérélia would be able to deliver the necessary stock on short notice, as and how directed by the Distributor.

Acceptable risk profile

- 3.12 The Jus-Rol Distribution Remedy would present minimal risk. As explained, the provisional SLC arises in the context of an implicit threat to switch volumes between certain limited DTB sub-

segments (ie the SLC SKUs). The remedy offers a simple, clear-cut, comprehensive and readily implementable solution to the identified concern.

No need for subsequent monitoring

- 3.13 The CMA could readily verify that the distribution agreement had been executed. From that point there would be no need for any further monitoring by the CMA – to the extent Cérélia were ever to fail to comply with its obligations, the Distributor would be highly incentivised to bring the matter promptly to the CMA’s attention.

4. The case for a production line divestiture

- 4.1 As a preliminary comment, it is noted that the provisional SLC relates to the loss of an alleged ability to “play off” suppliers in the PL channel against those in the branded channel (and *vice versa*) – as a matter of logic, it should therefore be possible to remedy the SLC by a divestment in either of these two channels.
- 4.2 Despite this, the Remedies Notice states that at this stage the CMA has “*identified only one suitable remedy, an asset divestiture remedy: the full divestiture of the Jus-Rol UK Business assets by Cérélia*”.³³ No reasoning is provided why, as a matter of principle, an asset divestiture in the PL channel would not be as effective as a divestiture in the branded channel. That said, Cérélia welcomes the CMA’s confirmation that it remains open to consider “*other practicable structural remedies*”³⁴ that may be put to it.
- 4.3 Cérélia submits that a remedy which materially enhances the available ‘outside options’ for retailers to switch some/all their PL DTB co-pack requirements to another co-packer would be equally effective to a Jus-Rol based remedy.

Overview of a product line divestiture

- 4.4 Cérélia submits that a divestment of a production line (***Line Divestment***), along the lines set out below, would not only effectively and comprehensively address the provisional SLC, but also retain significant customer benefits arising from the transaction, as encapsulated in Cérélia’s deal rationale which the CMA accepts is credible – namely, Cérélia’s commitment to make material investments into the Jus-Rol UK Business to drive inspiration and innovation via the Jus-Rol brand to reinvigorate and grow the DTB category for the benefits of all stakeholders, including retailers and importantly consumers. Indeed, Cérélia has already undertaken significant preparatory steps in this regard which are discussed below.
- 4.5 These benefits, which a Line Divestment would preserve, are particularly significant given the CMA’s provisional findings regarding a lack of resolve to invest in the DTB category by some suppliers given the current market environment.

Details of the proposed Line Divestment remedy

- 4.6 A Line Divestment would consist of the divestment of one of Cérélia’s DTB production lines to a suitable, independent third party.
- 4.7 The divestment would be to a purchaser with requisite dough products category expertise in the retail segment.

³³ Remedies Notice, para.13.

³⁴ *Ibid.*, para. 18.

- 4.8 The divestment would be made to an upfront buyer, ie approval of a signed SPA with a CMA-approved purchaser would be a condition for proceeding with the transaction.

A Line Divestment would effectively and comprehensively remedy the SLC

- 4.9 A Line Divestment would therefore satisfy each dimension of the requirement for “effectiveness” described in the CMA’s Merger Remedy Guidance, as outlined below:

(a) Impact on SLC and resulting adverse effects:

- (i) A Line Divestment would constitute a structural remedy – that is to say, a one-off measure which re-establishes the structure of the market expected in the absence of the transaction. In particular, it would re-establish the competitive dynamics whereby a grocery retailer who wished to stock PL would have available to it significant additional capacity and the option of an additional credible DTB PL services supplier.
- (ii) The CMA recognises that a smaller supplier operating a single line could compete on price to win a contract from a major grocery retailer.³⁵ In fact a production line operated at sufficient capacity represents very significant capability – the ability to satisfy at least [X]% of the market with immediate effect.

Consequently, a Line Divestment would enhance materially the competitive constraint on the Merged Entity, reduce any market power that the Merged Entity could exercise, and provide grocery retailers with material additional leverage to resist a price rise.

- (b) Appropriate duration and timing – A Line Divestment would be permanent, and not limited in duration. If required by the CMA, Cérélia could additionally commit not to re-acquire the divested production line from the Line Divestment purchaser for up to 10 years, ensuring the enduring nature of the remedy.
- (c) Practicality – A Line Divestment would be straightforward to implement. No specific, specialized or novel know-how or IP would be required on the purchaser side (indeed, the requirement to divest to an industry player means they would most likely be running identical or very similar production assets already), and the measure would not require any monitoring or enforcement. It would be a one-off asset divestment, which could be readily verified by the CMA and market participants themselves.

For illustration, Cérélia would expect the delivery and installation of a production line to take no longer than 4-8 weeks for a simple installation, or up to 12 weeks if the purchaser chose to add special customisations to the line. A purchaser could then expect to be able to commence production within a further 4-6 weeks of the completed installation. In particular, a Line Divestment would be expected to be a considerably faster remedy to implement than a Jus-Rol UK Business divestment.

To the extent needed, Cérélia could offer transitional services to the purchaser to assist the transfer.

- (d) Acceptable risk profile – There would be a high degree of certainty that a capacity remedy effectively addresses the provisional SLC.

The provisional SLC does not arise from the loss of any competitive capability or expertise unique to either of the Parties. Rather, it arises from the perceived loss of an independent DTB PL supplier. Increasing the capacity of an existing PL supplier directly

³⁵ PFs, para. 10.81.

addresses that concern by strengthening the alternative options available to a retailer wishing to switch, in turn enhancing the ability of retailers to switch significant DTB PL volumes to a rival co-packer.

- (e) No need for subsequent monitoring – given the clear-cut nature of the Line Divestment proposal, there would be no need for any ongoing compliance monitoring.

Add-on of a retailer PL contract to supplement the Line Divestment?

- 4.10 For the reasons outlined above, a Line Divestment would be effective on its own.
- 4.11 However, if the CMA can provide reasons why this would not be the case, Cérélia could consider enhancing the remedy by using its best endeavours to obtain the support and consent from a retailer customer to transfer at least one major retailer contract to the purchaser.

A Line Divestment would be less costly than a Jus-Rol UK Business divestment and preserve customer benefits associated with the transaction

- 4.12 The CMA is required by law to select the least costly remedy when facing more than one possible remedy which would effectively address the identified SLC. The costs of a remedy may be incurred by a variety of parties, including the merger parties, third parties, the CMA and other monitoring agencies.³⁶ They may also take a variety of forms, such as distortions in market outcomes, ongoing compliance costs, and the loss of relevant customer benefits.³⁷
- 4.13 Compared with a Jus-Rol UK Business divestment as proposed in the Remedies Notice, a Line Divestment would be materially less costly, in that it would not result in a significant loss of customer benefits associated with the transaction. In particular, UK consumers would still benefit from Cérélia's plans to reinvigorate the Jus-Rol brand and use it to drive category growth.
- 4.14 As explained above in the context of the Jus-Rol Distribution Remedy, a key benefit to this remedy would be that Cérélia would retain ownership of the brand, and would therefore be able to use it to drive category growth, at a time when the UK economy and consumers are lacking the benefits which investments into innovation and growth deliver. In contrast, a Jus-Rol UK Business divestment would extinguish these benefits, amounting to a significant cost of the remedy.

Conclusion on a Line Divestment

- 4.15 For the reasons explained above, a Line Divestment would constitute a comprehensive and effective structural remedy to the SLC identified. It could be readily implemented and would be a less intrusive and costly option compared to a Jus-Rol UK Business divestment. It would also preserve the consumer benefits outlined above.

5. Responses to the aspects of the Jus-Rol UK Business divestment upon which the Remedies Notice expressly invites views

- 5.1 The Remedies Notice expressly invites views on certain aspects of a Jus-Rol UK Business divestment. Without prejudice to its view that a Jus-Rol UK Business divestment would be disproportionate and unjustified, Cérélia addresses each of these aspects in turn.

³⁶ CMA87, 13 December 2018; para. 3.8.

³⁷ CMA87, 13 December 2018; para. 3.10. "Relevant customer benefits" are limited by the Enterprise Act 2002 to benefits to relevant customers in the form of (i) lower prices, higher quality or greater choice of goods or services in any market in the United Kingdom, and/or (ii) greater innovation in relation to such goods or services.

The package of assets to be divested

- 5.2 The Jus-Rol UK Business to be divested would consist of the goodwill, intellectual property, stock, business records, deposits and receivables, and contracts exclusively related to the Jus-Rol UK Business, subject to the comments in paragraph 6.3.
- 5.3 These assets constitute the majority – but not all – of the assets specified in Schedule 2 of the Asset Purchase Agreement.³⁸ The PFs contain no basis for any requirement to divest the following assets and rights which cannot be tied back to the SLC identified in the PFs, eg because they relate to assets exclusively related to non-UK business activities or to product segments which are unrelated to the SLC, namely:
- (a) the trademarks relating to Ireland as set out in Schedule 6 of the Asset Purchase Agreement;
 - (b) the exclusive right to exploit Jus-Rol IP to make, keep, transport and sell products in Ireland;
 - (c) the non-exclusive right to exploit Jus-Rol IP and the leavening patent (to make, keep, transport and sell products) in the Netherlands and Greece;
 - (d) the exclusive right to exploit certain Jus-Rol IP and the leavening patent (other than to make keep and transport products) in the EU, excluding Greece, Germany, the Netherlands and Republic of Ireland; and
 - (e) the exclusive right to exploit Jus-Rol IP in the UK in relation to the foodservice or food manufacturing sector; and
 - (f) the exclusive right to exploit Jus-Rol IP in the UK in relation to the non-SLC SKUs.
- (together, the **Excluded Assets**).
- 5.4 For the purposes of the comments below, which respond to questions set out in the Remedies Notice, the package of assets that should be divested (as described above) is referred to as the Jus-Rol UK Divestment Package.

Whether there are risks that the scope of the divestiture package may be too constrained or not appropriately configured to attract a suitable purchaser or may not allow a purchaser to operate as an effective competitor in the market

- 5.5 There is no risk of this. The Jus-Rol UK Divestment Package includes a substantial proportion of the Jus-Rol UK pre-merger business volumes which are sufficient to support a viable business. In practice, a suitable purchaser is likely to have other grocery assets, and this will give rise to additional synergies which while not necessary for the viability of the divestment assets would be attractive.
- 5.6 The Excluded Assets constitute assets which are not necessary to operate the Jus-Rol brand in the UK (ie ex-UK rights) or which go beyond the scope of the SLC (ie the non-SLC SKUs).
- 5.7 The relevant Jus-Rol products would continue to be produced by third party contract manufacturing arrangements (currently Cérélia) on the sale of the Jus-Rol UK Divestment Package. Cérélia will enter into any sub-licenses necessary for a purchaser to have Jus-Rol manufactured outside of the UK, if so desired by the purchaser.

³⁸ Asset Purchase Agreement dated 24 November 2021 between (i) General Mills, Inc., (ii) Cérélia UK Ltd., and (iii) Cérélia Group Holding SAS.

Whether there are risks that the competitive capability of a divestiture package will deteriorate before completion of the divestiture

- 5.8 There is no reason why the Jus-Rol UK Divestment Package should lose its competitive capability prior to the completion of the divestiture. GMI has been operating Jus-Rol under the terms of the TSA and the CMA's IEO since February 2022. It constitutes a standalone business which can be and is managed without material integration into the operator's own business.
- 5.9 Pursuant to the terms of the TSA, GMI will continue to provide [X] until [X] after the CMA's final report and [X] until [X]. Both terms may be extended [X] if required and agreed between C  r  lia and GMI. The Parties are of course free to extend these terms further, as required and agreed.

Whether the Jus Rol brand outside of the UK should also be included in the divestiture

- 5.10 There is no basis for including the Jus-Rol brand outside the UK in the Jus-Rol UK Divestment Package. It does not require the business outside of the UK in order to operate at its present levels. It is viable as defined. Moreover, the use of the Jus-Rol brand outside of the UK has no bearing on the competitive effectiveness of the brand in the UK, as the brand competes in a national market from a consumer perspective – as shown by the evidence the PFs cite in the CMA's market definition analysis, such as the fact that retailers (i.e. C  r  lia's customers) [X].³⁹
- 5.11 The Irish Jus-Rol brand is not necessary for the Jus-Rol UK Divestment Package to operate at sufficient scale to be competitive (with the Irish sales accounting for less than [X]% of Jus-Rol's revenues in the last year).

Whether there should be a supply contract between a purchaser and C  r  lia

- 5.12 The current contract manufacturing agreement is the most logical and optimal way for the Jus-Rol UK Divestment Package to perform at pre-divestiture levels and returns to the pre-merger situation. As the Jus-Rol UK Divestment Package does not include any physical production assets and employees, a purchaser of the Jus-Rol UK Divestment Package would require contract manufacturing services of at least the same standard for the entirety of its volume requirements, with minimal risk and, importantly, minimal disruption. A divestment of the Jus-Rol UK Divestment Package without security of contract manufacturing services could not be effective in remedying the SLC. The terms of the contract manufacturing arrangements for the purposes of the divestment are a commercial matter for C  r  lia and a purchaser, subject only to the CMA's general approval rights in relation to the divestment.

Whether there are risks that a suitable purchaser is not available or that the merger parties will divest to a weak or otherwise inappropriate purchaser

- 5.13 C  r  lia considers that there is no meaningful chance that it would be able to find a buyer as motivated and committed to the success of the Jus-Rol brand as it would be itself. As the CMA is aware from evidence regarding GMI's sale process, [X]. However, from a purely functional standpoint, there are no material barriers to the effective operation of the Jus-Rol UK Divestment Package.
- 5.14 The manufacturing input can be outsourced to contract manufacturers, as GMI itself has done [X]. The main activities in addition to this are (i) brand development (which could likewise be outsourced to a large extent to consultants, if needed) and (ii) sales. Indeed, [X] is a compelling example of how an 'asset light' sales approach in the UK can be competitively very effective.

³⁹ PFs, para. 8.60.

- 5.15 The operation of the brand itself does not require particular technical skills or experience; and even to the extent it did, it would be possible to achieve with effective recruitment and/or the use of third party consultants.
- 5.16 Brands can therefore be managed perfectly effectively by private equity owners as well as strategic players. It is therefore not clear how a potential purchaser could be inappropriate (subject to the requirements of independence and assuming at least a degree of relevant expertise).

Whether there are any specific factors to which we should pay particular regard in assessing purchaser suitability

- 5.17 Cérélia is not aware of any issues at this point which have not been addressed elsewhere in this submission.

Appropriate timescale for achieving a divestiture

- 5.18 Cérélia considers that a timescale of 8-10 months from the finalisation of any remedy terms would be required to identify a suitable purchaser, agree APA terms and agree production services terms and transitional services support which may be required. The implementation period post APA signing would require further analysis but should not be unreasonably long.
- 5.19 Divestment of the Jus-Rol UK Business would be a lengthy and costly process; in particular when compared with the much swifter and more straightforward remedy options proposed by Cérélia above (i.e. the Jus-Rol Distribution Remedy or the Line Divestment).

Whether any additional risks may arise during the divestiture period and whether the functions of the MT should be amended to oversee the divestiture

- 5.20 As noted above, the Jus-Rol UK Business (including the Jus-Rol UK Divestment Package) has been managed effectively on a standalone basis since the CMA's IEO became effective almost 10 months ago. Further, it is not difficult to carve out the Jus-Rol UK Business divestment Package from the Jus-Rol APA assets. There is therefore no need for an expanded role for the MT to oversee the divestiture.

Whether the circumstances of this merger necessitate an independent divestiture trustee

- 5.21 As explained above, the circumstances of this merger, particularly in light of effective transitional arrangements that would remain in place during the divestiture period, means that an independent divestiture trustee is not required.

Conclusion on the proposal for a Jus-Rol UK Business divestment

- 5.22 Putting the above comments aside, it remains Cérélia's position that a Jus-Rol UK Divestment Package would be a disproportionate remedy to the provisional SLC and its theoretical adverse effects, ie it would be unlawful for the CMA to require it, given the presence of equally effective and, importantly, proportionate alternatives.
- 5.23 To impose this remedy would also come at significant cost to consumers and all other stakeholders, in the form of the loss of the benefits that Cérélia's ownership of the Jus-Rol brand would bring, as encapsulated in the deal rationale.
- 5.24 Cérélia – formerly with its investment in its Corby factory, and now with its investment in Jus-Rol – has been the major investor in the UK DTB market for a number of years. It has a plan for future investment which it is ready to execute, if allowed, despite the current challenging economic environment.

6. Conclusion

- 6.1 For the reasons set out in this response to the Remedies Notice, it is not open to the CMA to require a Jus-Rol UK Business divestment. This would be a disproportionate remedy when compared to the narrow scope of the SLC identified in the PFs, which, even on the CMA's own case, only results in limited potential for adverse effects on the market. Should any remedy be required at all (which Cérélia considers is not the case), other equally effective remedies for addressing the identified provisional SLC in a comprehensive and clear-cut manner would be available instead.