

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

## Summary of Final Report

Published: 20 January 2023

### Overview of our findings

1. The Competition and Markets Authority (**CMA**) has 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 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. On 4 November 2022, we announced our Provisional Findings, in which we provisionally concluded that the Merger would result in an SLC. Following consultation (and continued further evidence-gathering and analysis where appropriate to respond to matters raised on consultation), we have now made our final decision, which we summarise here. The report and its appendices, which will be published together with or shortly after this summary, constitute the CMA's Final Report.
3. The Parties proposed remedies intended to address the competition concerns we identified. We found – following a thorough assessment – that these remedies would be insufficient to restore the competition that would be lost as a result of the Merger.

4. We have decided that only an asset divestment involving the sale of the entire Jus-Rol Business, akin to an unwinding of the Merger, to a suitable purchaser would be an effective remedy to address the SLC.

## **What are DTB products?**

5. 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, and 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.
6. 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?**

7. 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.
8. 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.
9. The Jus-Rol Business’ UK product range is available either chilled or frozen in sheets, block and ready to bake 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.
10. 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.

11. Cérélia is by far the second largest supplier of DTB products in the UK and the largest supplier of PL products to grocery retailers.
12. Cérélia is a joint stock company headquartered in Paris, France. Cérélia is controlled by funds affiliated with the private equity firm Ardian France SA (Ardian). Cérélia produces pies, pizzas, pastry dough, crepes, pancakes, waffles, cookie dough and ready to eat cookies for its own brands and for PL brands of its customers from nine manufacturing sites in Europe.
13. 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 supply of DTB products to 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 UK. The Corby plant manufactures ingredient pastry dough, pizza dough, cookie dough, brownie dough and gingerbread dough.
14. 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?**

15. 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.
16. 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).

17. As explained above, C er lia and the Jus-Rol Business are both active in the UK and provide products to UK customers. We 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?**

18. 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.
19. 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.
20. 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 C er lia in the supply of these products. We describe this as 'horizontal' effects because, in this respect, C er lia and Jus-Rol would both be active at the same level of the supply chain (i.e. offering DTB products to grocery retailers).
21. We conclude that the Merger has resulted result in an SLC on this basis. This is discussed in further detail below.

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

22. In assessing the Merger, we looked at a wide range of evidence that we considered in the round to reach our decision.

23. 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, in response to our Provisional Findings and other phase 2 submissions.
24. 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.
25. 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 concluded that the relevant market is the wholesale supply of DTB products to grocery retailers in the UK.
26. 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.
27. We examined the Parties' own internal documents, which show how they run their businesses and provide some insight into how they view their rivals.
28. We have had some regard to tendering evidence. However, given that we have only seen evidence of tendering within the PL channel (described further below), we would not expect to see the Parties competing against each other head-to-head in tenders.
29. We have looked closely at how the sector operates at the retail and wholesale level and considered the interaction between consumer demand and wholesaler demand.
30. We have also considered the incentives of the Merged Entity and whether these mean that it would not be profitable to it to increase prices or degrade its offering to grocery retailers as a result of the Merger.

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

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

31. 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.
32. Following an assessment of GMI's internal documents which discussed its options in some detail, our 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?**

33. PL and branded DTB products have very similar physical characteristics and are used by end consumers for the same purpose. Around 80% of DTB products supplied in the UK are sold by grocery retailers that provide both PL and branded DTB products. Other retailers, accounting for a limited share of the market, stock only PL DTB products or only branded DTB products, although we found that they may still consider the offering in the other channel when making purchasing decisions.
34. We found that the Parties' offerings to grocery retailers differ in some important respects because of the differences in the way that products from each channel are supplied to grocery retailers. The PL channel typically requires a more iterative negotiation process between the grocery retailer and the supplier where the retailer typically has a high degree of involvement in the specification of the PL products. In contrast, branded supply is offered to retailers on a 'take it or leave it' basis.
35. When grocery retailers run tenders to select their DTB suppliers, these are specific to a particular channel (i.e., PL or branded). This means that the Parties do not compete head-to-head in tenders. However, there is also cross-channel competition. Because the physical characteristics and intended use of PL and branded DTB products are very similar, retailers (and end-consumers) view them to be substitutes. Grocery retailers have a finite

amount of shelf space for DTB products, and there is competition between PL and branded DTB suppliers for this space.

36. DTB suppliers are therefore incentivised to offer retailers a good deal not only to secure their position as the preferred supplier in their respective channel, but also to win sales from suppliers in the other channel. This cross-channel competition results in a rivalry or competitive tension between the Parties, as C er lia seeks to win sales in the PL channel from Jus-Rol in the branded channel and vice versa.

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

37. 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 negotiations is an important constraint which enables them to get a good deal when purchasing DTB products.
38. 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). The Parties' internal documents also show some evidence of this kind of constraint operating in practice.
39. We consider that the constraint between the Parties is important for both channels, noting that PL in particular (for which C er lia is the leading supplier) operates as a pricing discipline on Jus-Rol. Post-merger, the strong market positions held by each of C er lia 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 grocery retailers' ability to resist a price rise (or other worsening in the Parties' offerings).
40. There is significant overlap in the product ranges that the Parties supply to grocery retailers. While some retailers might only buy some of the products within the Parties' ranges at present, we found that the DTB product category should, for the purposes of assessing competition, be considered as a whole (because retailers consider all DTB products together and suppliers are able to alter and expand the types of DTB product that they offer to grocery retailers).
41. While, as noted above, there are important differences in the offerings of the Parties, the relative importance of the competitive constraint offered by the 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 loss of the competition between the Parties particularly important.

42. 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. We also note, more broadly, 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.
43. 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.
44. We therefore found that the Parties' submissions, 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, were not supported by the evidence available to us.

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

45. 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.

46. 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.
47. 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.
48. 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 supplier to a branded supplier, means that the constraint provided by Jus-Rol on Cérélia is nonetheless important.
49. 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.
50. 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 foodservice and food manufacturing sectors). However, we found evidence of material differences in customer demand and supplier capabilities between the foodservice 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 for grocery retailers.

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

51. A very high proportion of sales of DTB products at the wholesale level are to large grocery retailers.
52. 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 switching to an alternative supplier, 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.
53. The ability of grocery retailers to leverage the constraint between the PL and branded channels will decrease due to the merger, as the largest PL supplier and the largest branded DTB supplier will combine. As noted, we also conclude that the Parties face limited competitive constraints from alternative suppliers which limits the retailers' ability to switch away from their suppliers.
54. While the Parties submitted that the 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?**

55. 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.
56. 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.
57. 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.

58. 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.
59. 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.
60. 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.
61. 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.
62. 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.

63. Our assessment has therefore 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.

## **Conclusions**

64. As a result of our investigation and our assessment, we have concluded that the completed acquisition by C er lia of the Jus-Rol Business has resulted in the creation of a relevant merger situation.
65. We have also 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 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.

## **What must be done to remedy the SLC we have found?**

66. We considered different options for C er lia to sell off all or part of the Jus-Rol Business and two alternative remedies proposed by C er lia. We examined whether they would be effective at replacing the competition lost by the Merger, whether there would be any customer benefits resulting from the merger that would be lost due to their implementation, the requirements for a suitable purchaser for the business to be sold, and the process that should be followed to sell the business.
67. We have decided that only an asset divestment involving the sale of the entire Jus-Rol Business, akin to an unwinding of the Merger, to a suitable purchaser would be an effective remedy to address the SLC and the harm it would cause to competition, and that requiring this would not be disproportionate.

## **What happens next?**

68. The CMA will now take steps to implement the remedies described above and will consult publicly on the approach to be taken.

69. In line with guidance, the CMA will implement its remedy decision within 12 weeks of publication of the Final Report. The CMA may extend this time period once by up to six weeks.