

## **C r lia / Jus-Rol: final report**

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# Appendix A: Terms of Reference

## Terms of reference

1. In exercise of its duty under section 22(1) of the Enterprise Act 2002 (the **Act**) the Competition and Markets Authority (**CMA**) believes that it is or may be the case that:
  - (a) a relevant merger situation has been created, in that:
    - (i) enterprises carried on by C r lia Group Holding SAS (either directly or through entities under its common ownership or common control or over which it exerts material influence within the meaning of section 26 of the Act) have ceased to be distinct from enterprises consisting of the UK and Ireland dough business (Jus-Rol) of General Mills, Inc., and
    - (ii) the condition specified in section 23(2)(b) of the Act is satisfied; and
  - (b) the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition within a market or markets in the United Kingdom (**UK**) for goods or services, including in the wholesale supply of dough-to-bake products to grocery retailers in the UK.
2. Therefore, in exercise of its duty under section 22(1) of the Act, the CMA hereby makes a reference to its chair for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 in order that the group may investigate and report, within a period ending on 29 November 2022 on the following questions in accordance with section 36(1) of the Act:
  - (a) whether a relevant merger situation has been created; and
  - (b) if so, whether the creation of that situation has resulted, or may be expected to result in a substantial lessening of competition within any market or markets in the UK for goods or services.

**Sorcha O'Carroll**  
**Senior Director, Mergers**  
**Competition and Markets Authority**  
**15 June 2022**

## Appendix B: Conduct of the inquiry

1. On 15 June 2022, the CMA [referred](#) 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. (the **Parties**) for an in-depth Phase 2 inquiry.
2. We published the biographies of the members of the group conducting the inquiry on the inquiry [webpage](#) on 15 June 2022 and the relevant administrative timetable was published on the inquiry [webpage](#) on 15 July 2022.
3. The original administrative timetable for the inquiry was published on the inquiry [webpage](#) on 15 July 2022. At commencement of the inquiry, the statutory deadline was 29 November 2022. On 5 October 2022 we published on the inquiry [webpage](#) a notice under section 39(3) of the Act extending the statutory deadline by eight weeks to 24 January 2023. A revised version of the administrative timetable was published on the same day.
4. We invited interested parties to comment on the completed acquisition. We sent detailed requests for information to the Parties' competitors and customers, and a number of these also provided us with further information by video conference calls as well as by responding to supplementary written questions. Evidence submitted to the CMA during Phase 1 was also considered in Phase 2.
5. We received written evidence from the Parties in the form of submissions and responses to information requests. Cérélia's initial submission was published on the inquiry [webpage](#) on 15 July 2022.
6. On 15 July 2022, the CMA published an [Issues Statement](#) on the inquiry webpage setting out the areas on which the Phase 2 inquiry would focus. A non-confidential version of Cérélia's response was published on the inquiry [webpage](#) on 11 August 2022.
7. On 26 and 28 July 2022 members of the inquiry group, accompanied by CMA staff, attended site visits with the Parties and their advisers. The GMI site visit on 26 July 2022 was held via video conference. For the Cérélia site visit on 28 July 2022, some attendees were present in person and some attended via video conference.
8. During our inquiry, we sent the Parties a number of working papers for comment. We also provided the Parties and third parties with extracts from

our working papers for comments on accuracy and confidentiality. The Parties were also sent an annotated issues statement, which outlined our emerging thinking to date prior to their respective main party hearings, which were held separately with each Party on 6 September 2022. The parties provided comments on our annotated issues statement and working papers separately on 12 and 14 September 2022

9. On 4 November 2022 we published a summary of our provisional findings on the inquiry [webpage](#) and disclosed a confidential version of the provisional findings into the confidentiality ring. On 7 November 2022 we published a non-confidential version of our provisional findings on the inquiry [webpage](#). As we provisionally concluded that the Merger had resulted in the creation of a relevant merger situation, and that the creation of that situation had resulted in, or may be expected to result in a substantial lessening of competition (**SLC**), a notice of possible remedies (**Remedies Notice**) was also published on the inquiry [webpage](#) on 4 November 2022. Interested parties were invited to comment on the Remedies Notice and the provisional findings.
10. Non-confidential versions of responses to the provisional findings and to the Remedies Notice were published on the inquiry [webpage](#). The non-confidential version of the Parties' responses to the provisional findings were published on 13 December 2022.
11. We held response hearings with the Parties on 1 December 2022, and subsequently shared a Remedies Working Paper with them on 16 December 2022 for comment. A confidential version of the Remedies Working Paper was also disclosed into the confidentiality ring on 16 December 2022. We received responses from the Parties on 23 December 2022.
12. After issuing the provisional findings and the Remedies Notice, we had a limited number of oral hearings with customers, competitors and potential purchasers to clarify our understanding of certain issues. Evidence was also obtained from third parties using written requests. We also reviewed further documentary evidence from the CMA's investigation into the Merger. On 19 December 2022, we shared a consultation paper on the additional evidence gathered since the provisional findings with the Parties and provided them with an opportunity to respond to the consultation paper. A confidential version of the consultation paper was also disclosed into the confidentiality ring on 19 December 2022. We received responses to this consultation paper from the Parties on 3 January 2023.
13. A non-confidential version of the final report has been published on the inquiry [webpage](#).

14. The Initial Enforcement Order issued in phase 1 remains in force.
15. We would like to thank all those who have assisted us in our inquiry.

## Appendix C: Shares of supply

1. In this Appendix we discuss the shares of wholesale supply of DTB products to grocery retailers in the UK.
2. We set out:
  - (a) the Parties' submissions;
  - (b) our assessment of:
    - (i) forecast shares of wholesale supply;
    - (ii) shares of wholesale supply over time; and
    - (iii) manufacturers' shares of supply over time.

### Parties' submissions

3. Cérélia provided shares of retail supply of DTB products for 2012-2023 based on Kantar reports for the years 2018-2020.<sup>1</sup> The Kantar reports record the monthly value of sales at the retail level (ie sales to end-consumers) of branded and PL DTB products, and identify the source of these products (ie PL, Jus-Rol or other branded). To arrive at shares of wholesale supply (ie sales to retailers), Cérélia supplemented this data by its understanding of the identity of the suppliers of PL products.<sup>2</sup>
4. Cérélia's estimates were based on two series of Kantar reports, namely Kantar chilled and Kantar frozen. The Kantar chilled reports provide the value of sales of chilled DTB products by retailer while the Kantar frozen reports provide the total value of sales of frozen DTB products (ie the PL, Jus-Rol or other branded sales are not broken down by retailer). Cérélia assumed that the split for frozen PL products per retailer was the same as that for the chilled products.<sup>3</sup>
5. Cérélia submitted that due to Kantar's sample size and methodology, its data disproportionately captures retailers with a larger number of distribution points and so was likely to underestimate the PL share of retailers with fewer distribution points (eg [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED]). It also submitted that the

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<sup>1</sup> Cérélia's response to the CMA's s109 Notice (phase 2 s.109) (1), 14 July 2022, question 44. Cérélia's response to the CMA's s109 Notice (phase 2 s.109) (2), 22 August 2022, question 6. Shares of supply estimates for 2022 and 2023 are chilled only. These estimates for 2022 and 2023 are forecasts that reflect changes in the supply arrangements.

<sup>2</sup> Cérélia's response to the CMA's s109 Notice (phase 2 s.109) (1), 14 July 2022, question 44, paragraph 44.5.

<sup>3</sup> Cérélia's response to the CMA's s109 Notice (phase 2 s.109) (1), 14 July 2022, question 44, paragraph 44.4.

data does not capture sales by online retailers (eg [X] and [X], that stock brands such as [X]), and underestimates sales by independent retailers which are more likely to stock independent UK brands (eg [X], [X] and [X]).<sup>4</sup>

6. GMI provided shares of retail supply based on Nielsen reports for the years 2020 and 2021. The Nielsen reports record the weekly value of sales to end-consumers broken down by brand or PL and retailer. GMI told us that it does not buy branded data for [X] or any data for [X], [X] or [X].<sup>5</sup>
7. GMI submitted that there may be some discrepancies between the data in the Nielsen reports and the corresponding Kantar data. In particular, it believes Kantar's panellists have a greater tendency to be customers of the major retailers and to purchase PL products. Therefore, the Nielsen data may underestimate PL volumes and sales.<sup>6</sup>
8. In relation to the CMA's interpretation of the Parties' shares of supply, Cérélia submitted that:
  - (a) the 'wholesale' shares of supply conflate two distinct levels of the DTB supply chain, namely (i) manufacturing and (ii) brand operation (including both consumer brands and retailer PL brands);<sup>7</sup>
  - (b) by presenting 'wholesale' shares of supply, the CMA overlooks the fact that the vast majority of Jus-Rol products, [X], are also manufactured by Cérélia pre-merger. As such, the Transaction will not lead to any incremental share of supply in this respect;<sup>8</sup>
  - (c) Cérélia considers volume-based shares of supply to be more informative than value-based shares of supply in this context because the share of supply estimates provided to the CMA have been calculated using retail data from Kantar. Since the retailer and manufacturer revenues do not always move in lockstep, there is no expectation that retail values are a good proxy for contract manufacturing values;<sup>9</sup>
  - (d) in Valeo Foods/Tangerine Confectionary (2018) the CMA said that 'market shares often have limited weight in markets characterised by a small number of large customers that tender periodically...'.<sup>9</sup>

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<sup>4</sup> MN, paragraph 35.

<sup>5</sup> GMI's response to the CMA's s109 Notice (phase 2 s.109) (1), 14 July 2022, question 33.

<sup>6</sup> GMI's response to the CMA's s109 Notice (phase 2 s.109) (2), 24 August 2022, question 12, paragraph 12.10.

<sup>7</sup> Cérélia's response to the Shares of Supply Working Papers, 13 September 2022, paragraphs 2.

See Chapter 8 further details.

<sup>8</sup> Cérélia's response to the Shares of Supply Working Papers, 13 September 2022, paragraphs 2.

<sup>9</sup> Cérélia's response to the Shares of Supply Working Papers, 13 September 2022, paragraph 7.

Consequently, sector shares are not a reliable prima facie indicator of market power but reflect a concentrated customer base (six retailers accounting for most of the sales of DTB products) in a niche sector that in turn drives concentration at the wholesale level.<sup>10</sup> An analysis of competitive effects needs to focus on whether retailers are able to source their inputs on competitive terms and have the ability to switch suppliers of co-packing services;<sup>11</sup>

- (e) the CMA should not consider suppliers as material only if they already hold a material share as:
- (i) shares are not a good guide to identifying credible competitors in this market, given the lumpy nature of contracts and the limited number of customers; and/or
  - (ii) barriers to entry and expansion are low in this market, making it highly contestable;<sup>12</sup> and
  - (iii) Cérélia has [X] since early 2020.<sup>13</sup>

## Our assessment

9. We have primarily focused on assessing the shares of supply in the market that we have identified as the focus of our assessment – the wholesale supply of DTB products to grocery retailers in the UK.
10. We have relied upon retail level data as a proxy for the shares of supply at the wholesale level given that comprehensive wholesale level data was not available. Given that the data identifies the wholesale supplier of the products and matches this information to the value of sales, we consider that it is appropriate to use the retail sales data to estimate approximate shares of supply at the wholesale level.
11. We have used the Kantar data provided by Cérélia for our analysis as it provides a more complete picture in this case than the Nielsen data provided by GMI. This is because it includes shares for smaller retailers (unlike the Nielsen data as discussed in paragraph 6).

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<sup>10</sup> Cérélia's response to the phase 1 Issues Letter, 11 May 2022, paragraph 4.1.

<sup>11</sup> Cérélia's response to the phase 1 Issues Letter, 11 May 2022, paragraph 4.2.

<sup>12</sup> Cérélia's response to the Shares of Supply Working Papers, 13 September 2022, paragraphs 4(ii).

<sup>13</sup> [Cérélia's response to the Issues Statement](#), 2 August 2022, paragraph 4.19.



12. We think that the Kantar data provided by C er lia is the most appropriate dataset to use notwithstanding the Parties' criticisms in paragraph 5. We note that:
- (a) In relation to the submission that the Kantar data is likely to underestimate the PL share of retailers with fewer distribution points (eg [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED]):
- (i) We cross-checked [REDACTED] and [REDACTED] retail value of PL sales (as provided by these retailers) to that in the Kantar data in 2020.<sup>14</sup> This cross-check does not suggest that the Kantar data underestimates the shares of supply of the PL DTB products stocked at these retailers as the figures provided by [REDACTED] and [REDACTED] are lower than in the Kantar data.<sup>15</sup>
- (ii) [REDACTED] with limited sales ([REDACTED]) while [REDACTED] and [REDACTED] are smaller retailers.<sup>16</sup> Therefore, it appears that the shares of supply estimates based on Kantar data are not likely to be materially affected by any underestimation of the PL sales of these retailers.
- (b) In relation to the submission that the Kantar data does not capture sales by online retailers (eg [REDACTED] and [REDACTED], that stock brands such as [REDACTED]), we do not consider that the inclusion of such online retailers would materially alter the share of supply estimates give that:
- (i) [REDACTED] and [REDACTED] do not have PL products.
- (ii) [REDACTED] DTB sales by value in the first half of 2022 was approximately  [REDACTED] and around [REDACTED]% of that were Jus-Rol sales.<sup>17</sup>
- (iii) [REDACTED] DTB sales by value in the first half of 2022 was approximately  [REDACTED] and around [REDACTED]% of that were Jus-Rol sales.<sup>18</sup>
- (c) In relation to the submission that the Kantar data underestimates sales by independent retailers which are more likely to stock independent UK brands (eg [REDACTED], [REDACTED] and [REDACTED]), we consider that any potential underestimation of sales by independent retailers would not materially

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<sup>14</sup> Response to the CMA questionnaire from [REDACTED], [REDACTED], question 4. Response to the CMA questionnaire from [REDACTED], [REDACTED], question 4.

<sup>15</sup> For comparison, [REDACTED] and [REDACTED] retail sales were also similarly lower than in the Kantar data. Response to the CMA questionnaire from [REDACTED], [REDACTED], question 4. Email from [REDACTED] to the CMA, [REDACTED]. Response to the CMA questionnaire from [REDACTED], [REDACTED], question 4. Email from [REDACTED] to the CMA, [REDACTED].

<sup>16</sup> See Table 5.1 in Industry Background. Response to the CMA questionnaire from [REDACTED], [REDACTED] 2022, question 4. Email from [REDACTED] to the CMA, [REDACTED].

<sup>17</sup> Response to the CMA questionnaire from [REDACTED], [REDACTED], question 5.

<sup>18</sup> Response to the CMA questionnaire from [REDACTED], [REDACTED], question 5.

alter the shares of supply estimates. We have not seen any evidence that would indicate that any of the other brands would be more prevalent than indicated by the estimates.

13. We consider that shares of supply presented by value of sales is more appropriate than by volume of sales. While revenues of retailers and revenues of wholesale DTB suppliers may not move in lockstep, any inaccuracies resulting from this is likely outweighed by the fact that value of sales captures brand value and/or quality on top of volumes.<sup>19</sup> Presenting shares in volume terms does not capture these important differences across suppliers (for example, some firms may supply relatively more higher quality products (such as all butter DTB products which demands a higher price) than others). Notwithstanding our view that shares of supply presented by value of sales is more appropriate than by volume of sales, we also present shares by volume of sales for information.
14. In the remainder of this section, we set out:
  - (a) forecast shares of wholesale supply;
  - (b) shares of wholesale supply over time; and
  - (c) manufacturers' shares of supply over time.

### ***Forecast shares of wholesale supply of DTB products to grocery retailers in the UK***

15. There have been recent changes in the supply arrangements in the market for wholesale supply of DTB products to grocery retailers in the UK, such as the [REDACTED], which affect shares of wholesale supply materially.<sup>20</sup> Therefore, we consider it is appropriate to present the forecast estimates for 2021-2023, which reflect these recent changes in the supply arrangements. Shares for 2021 are also forecast estimates as Cérélia was only able to provide Kantar data for 2018-2020.
16. Cérélia provided forecast shares of supply estimates for 2021-2023 based on Kantar data for 2020, adjusted to reflect the following recent changes in supply arrangements:<sup>21</sup>
  - (a) In 2022, [REDACTED]. All sales of these products have been [REDACTED].

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<sup>19</sup> [REDACTED].

<sup>20</sup> See Chapter 9.

<sup>21</sup> Shares of supply estimates for 2022 and 2023 are chilled only, while estimate for 2021 and chilled and frozen combined. Cérélia's response to the CMA's s109 Notice (phase 2 s.109) (2), 22 August 2022, question 6.

(b) In July 2021, [REDACTED].<sup>22</sup> All sales to [REDACTED] have been [REDACTED].<sup>23</sup>

(c) In October 2022, [REDACTED]. The expected volumes have been [REDACTED].

(d) In October 2022, [REDACTED]. The expected volumes have been [REDACTED].

(e) In January 2023, [REDACTED].<sup>24</sup> [REDACTED] manufactures [REDACTED].<sup>25</sup>

17. Based on third-party information, we are not aware of any other changes in supply arrangements than described in paragraph 16 above, therefore, our analysis does not differ from the forecast estimates Cérélia submitted.
18. Cérélia was able to provide Kantar data until 2020 only. A limitation of these forecast estimates 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 and any change in PL manufacturers' shares due to discounters having higher shares is also not captured.<sup>26</sup> These limitations are further exacerbated by the fact the 2020 was a pandemic year which may temporarily have altered purchasing behaviour and resulted in large increase in demand for home baking and consequently in DTB products. These limit the weight we can put on these forecast Table 1 estimates.
19. The forecast estimates are presented in below by value.

**Table 1: Forecast shares of wholesale supply estimates for DTB products by value to grocery retailers in the UK in 2021-2023**

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

<sup>22</sup> MN, paragraph 52.

<sup>23</sup> Cérélia's response to the CMA's s109 Notice (phase 2 s.109) (2), 22 August 2022, question 3.

<sup>24</sup> Based on Cérélia's data, Cérélia response to the CMA's s109 Notice (phase 2 s.109) (1), 14 July 2022, question 50.

<sup>25</sup> Response to the CMA questionnaire from [REDACTED], [REDACTED], question 2.

<sup>26</sup> For example, Aldi is the fourth largest grocery retailers in the UK, overtaking Morrisons. See [BBC](#), accessed by the CMA on 2 October 2022.

\* [REDACTED], 2 August 2022, 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 s109 Notice (phase 2 s.109) (1), 14 July 2022, questions 44 and 50. Cérélia's response to the CMA's s109 Notice (phase 2 s.109) (2), 22 August 2022, question 6.).

20. As shown in Table 1, the Parties' combined share in the wholesale supply of DTB products to grocery retailers in the UK is forecasted to be [60-70]% in 2023.<sup>27</sup> The recent changes in supply arrangements (see paragraph 16), in [REDACTED], mean that Cérélia has lost share [REDACTED] (from [30-40]% to [20-30]% as shown in Table 1).
21. The transaction combines the two largest suppliers by value in the wholesale DTB market in the UK across all three years. All other suppliers in the market have significantly lower shares of supply than the Parties (both combined and individually). The supplier with the next highest share after the Parties is [REDACTED] ([10-20]% share), followed by [REDACTED] ([5-10]% [REDACTED]), and then other smaller wholesale suppliers of PL DTB products (together accounting for [10-20]%) and a long tail of very small consumer brands (together accounting for 7%).<sup>28</sup>
22. Based on Nielsen data for 2021, we understand that Northern Dough, Pret A Manger, Theos, Bells and PizzaExpress ([REDACTED]) are the largest brands other than Jus-Rol, however, none of them has more than [0-5]% share of wholesale supply.<sup>29</sup> [REDACTED].<sup>30</sup> [REDACTED].<sup>31</sup>
23. More than 90% (by value) of other PL shares are related to frozen sales, in particular to PL frozen ready-to-bake sales. Based on the third-party information available to us, the manufacturers of these PL frozen ready-to-bake products are [REDACTED].<sup>32</sup>
24. As explained in paragraph 13, we consider that shares of supply by value (as set out in Table 1) is a more appropriate metric than by volume. However, for information, Table 2 shows the forecast estimates by volume.<sup>33</sup>

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<sup>27</sup> Calculations of shares of supply include all of Cérélia's sales of PL DTB products and the Jus-Rol Business' branded products supplied to grocery retailers in the UK. It does not include [REDACTED].

<sup>28</sup> Note that the [5-10]% share of [REDACTED] [REDACTED] as we did not have that granular data within the Kantar dataset.

<sup>29</sup> GMI's response to the CMA's s109 Notice (phase 2 s.109) (2), 24 August 2022, question 8. [REDACTED].

<sup>30</sup> Based on Nielsen data, in 12 months to 27 August 2022 the value of [REDACTED] sales was £[REDACTED] million, while in 2021, the largest other brand ([REDACTED]) had £[REDACTED] million sales. In terms of volume, based on its actual and budgeted sales data, [REDACTED]. Based on Nielsen data, in 2021 the largest other brand had [REDACTED] sales. Cérélia's response to the CMA's s109 Notice (phase 2 s.109) (3), 14 September 2022, question 1.

<sup>31</sup> MN, paragraph 115.

<sup>32</sup> These suppliers are discussed in further detail in Chapter 9. Email from [REDACTED] to the CMA, [REDACTED]. Email from [REDACTED] to the CMA, [REDACTED]. Email from [REDACTED] to the CMA, [REDACTED]. Email from [REDACTED] to the CMA, [REDACTED].

<sup>33</sup> The methodology of the forecast estimates by volume is the same as for the methodology for forecast estimates by value.

**Table 2: Forecast shares of wholesale supply estimates for DTB products by volume to grocery retailers in the UK in 2021-2023**

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

\* [REDACTED] Note of a call with [REDACTED], 2 August 2022, 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 (C r lia's response to the CMA's s109 Notice (phase 2 s.109) (1), 14 July 2022, questions 44 and 50. C r lia's response to the CMA's s109 Notice (phase 2 s.109) (2), 22 August 2022, question 6.).

25. Shares by volume (Table 2) show a similar picture to shares by value (Table 1). By this measure too, the transaction combines the two largest suppliers in the wholesale DTB market in the UK across all three years. The Parties have high forecast combined share in 2023 ([50-60]% share) and individual shares ([30-40]% and [20-30]% respectively) which are much higher than the supplier with the next highest share, [REDACTED] ([10-20]% share), followed by [REDACTED] ([0-5]%).<sup>34</sup>

### **Shares of wholesale supply of DTB products to grocery retailers in the UK over time**

26. In this subsection, we present historical shares to discuss trends over time. These provide useful information to help us understand whether shares changed materially over time because of the concentrated nature of the customer base and lumpy contracts. However, we consider that the historical shares are less appropriate to assess the current strength of the suppliers in the market than forecast shares as these do not take into account recent important changes in supply arrangements (see paragraph 16).

27. C r lia provided historical shares of supply estimates for the years 2012-2020. These are based on Kantar data on retail sales for the years 2018-2020 and C r lia's knowledge of historical supply agreements.<sup>35</sup>

<sup>34</sup> Calculations of shares of supply include all of C r lia's sales of PL DTB products and the Jus-Rol Business' branded products supplied to grocery retailers in the UK. [REDACTED].

<sup>35</sup> C r lia's response to the CMA's s109 Notice (phase 2 s.109) (1), 14 July 2022, question 44, paragraph 44.3.

28. Table 3 presents a subset of this data: shares of wholesale supply for DTB products by value to grocery retailers in the UK in 2018-2020 (for the years which Cérélia had Kantar data), therefore, these estimates are not affected by the limitations discussed in paragraph 18 above.

**Table 3: Shares of wholesale supply estimates for DTB products by value to grocery retailers in the UK in 2018-2020**

Supplier	%		
	2018	2019	2020
Jus-Rol	[40-50]	[40-50]	[40-50]
Cérélia	[20-30]	[30-40]	[30-40]
[X]	[5-10]	[5-10]	[5-10]
Other PL	[10-20]	[10-20]	[10-20]
Other branded	8	7	7
Total	100	100	100
Parties combined	[70-80]	[70-80]	[70-80]

Note: Percentages may not total due to rounding.

Source: Cérélia's response to the CMA's s109 Notice (phase 2 s.109) (1), 14 July 2022, question 44

29. Table 3 shows that the Parties had a very high combined share of supply in 2018, 2019 and 2020 ([70-80]%, [70-80]% and [70-80]% respectively), as well as having higher shares on an individual basis than any other individual supplier. By volume, the Parties' combined shares in 2018 – 2020 were [60-70]%, [60-70]% and [60-70]% respectively, showing a similar picture to shares by value.

30. We note that Jus-Rol's share of supply (by value) dropped from [40-50]% to [40-50]% between 2018 and 2020. It appears to have lost share to PL suppliers rather than to other branded suppliers. By volume, Jus-Rol's share of supply dropped [X], from [40-50]% to [30-40]% between 2018 and 2020.<sup>36</sup>

31. We understand that Cérélia's share increased over this period mainly due to [X].<sup>37</sup> By volume, Cérélia's share of supply increased from [20-30]% to [30-40]% between 2018 and 2020.<sup>38</sup>

32. For information we have also presented shares of wholesale supply for PL DTB products to grocery retailers in the UK by value between 2012 and 2020 at Figure 1 below. To calculate shares of supply for 2012-2017, Cérélia assumed retail sales volumes and values in 2012-2017 are equal to those in

<sup>36</sup> Cérélia's response to the CMA's s109 Notice (phase 2 s.109) (1), 14 July 2022, question 44, paragraph 44.3.

<sup>37</sup> [X]. Cérélia's response to the Shares of Supply Working Papers (Marked-up WP), 13 September 2022, slide 20. For more detail on switching, please see Chapter 9.

<sup>38</sup> Cérélia's response to the CMA's s109 Notice (phase 2 s.109) (1), 14 July 2022, question 44, paragraph 44.3.

2018. This is with the exception of [REDACTED].<sup>39</sup> Therefore, a limitation of the estimates for 2012-2017 is that, if the shares across retailers have changed substantially in this period, this makes these historical estimates less accurate as these changes will not be captured. In Figure 1 we have included forecast estimates discussed in Table 1 for 2021-2023 with dashed lines.

33. We have not included Jus-Rol products in Figure 1 as Cérélia's estimates cannot reflect any changes in Jus-Rol's share over the period given the estimates are based only on retail sales data for 2018-2020.

**Figure 1: Shares of wholesale supply estimates for PL DTB products by value to grocery retailers in the UK in 2012-2023**

[REDACTED]

Source: CMA analysis based on Cérélia's response to the CMA's s109 Notice (phase 2 s.109) (1), 14 July 2022, question 44 and 50. Cérélia's response to the CMA's s109 Notice (phase 2 s.109) (2), 22 August 2022, question 6.

34. In 2020, by value, Cérélia had a significant share of wholesale supply of PL DTB products ([60-70]%) which is a substantial increase from its supply in 2012 ([20-30]%). The only other wholesale supplier of PL products with material share is [REDACTED], whose share in 2020 [REDACTED] was [REDACTED], [REDACTED]. The main switching events which drove the shift in share from [REDACTED] to Cérélia were [REDACTED] switching some volumes from [REDACTED] to Cérélia in 2013 and in 2017 and [REDACTED] switching from [REDACTED] to Cérélia in 2017.<sup>40</sup> By volume the trends over time are similar as by value.<sup>41</sup>
35. For information, in 2020, by value, Jus-Rol had a significant share of wholesale supply of branded DTB products ([80-90]%), which is similar to its supply in 2018 ([80-90]%).

### ***Manufacturing shares of DTB products supplied to grocery retailers in the UK over time***

36. In this sub-section we discuss the manufacturing shares of DTB products supplied to grocery retailers in the UK. We are discussing these to provide context for our analysis of the vertical links between the Parties, however, we note that the supply of DTB products to retailers in the UK is the relevant market for the purposes of our assessment of the Merger (see Chapter 8).
37. Cérélia provided shares of manufacturing for Jus-Rol products from 2012 to 2021 which we have reproduced in Figure 2.

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<sup>39</sup> Cérélia's response to the CMA's s109 Notice (phase 2 s.109) (1), 14 July 2022, question 44, paragraph 44.13.

<sup>40</sup> For more detail on switching, please see Chapter 9.

<sup>41</sup> Cérélia's response to the CMA's s109 Notice (phase 2 s.109) (1), 14 July 2022, question 44, paragraph 44.3.

**Figure 2: Share of manufacturing of Jus-Rol products by value in 2012-2021**

[REDACTED]

Source: Cérélia's response to the CMA's s109 Notice (phase 2 s.109) (1), 14 July 2022, question 44

38. From 2012 to 2015, GMI [REDACTED]. In 2016, Jus-Rol closed its factory in the UK and transferred production of some of its product to its factory in Greece and sourced the rest from [REDACTED] and Cérélia.<sup>42</sup> In 2021 around [REDACTED] of the value of Jus-Rol's revenue came from products manufactured by Cérélia (and almost [REDACTED] by volume).<sup>43</sup>
39. Based on this and on shares of wholesale supply submitted by Cérélia we calculated manufacturing shares of supply for DTB products to grocery retailers in the UK which are presented in Table 4.

**Table 4: Shares of manufacturing of DTB products supplied to grocery retailers in the UK by value in 2018-2020**

	%		
<i>Supplier</i>	<i>2018</i>	<i>2019</i>	<i>2020</i>
<i>GMI</i>	[20-30]	[20-30]	[10-20]
<i>Cérélia</i>	[40-50]	[40-50]	[60-70]
[REDACTED]	[5-10]	[5-10]	[5-10]
[REDACTED]*	[0-5]	[0-5]	[0-5]
<i>Other</i>	[10-20]	[10-20]	[10-20]
<i>Total</i>	100	100	100

\* [REDACTED].

Note: Percentages may not total due to rounding.

Source: Cérélia's response to the CMA's s109 Notice (phase 2 s.109) (1), 14 July 2022, question 44

40. Between 2018 and 2020, the increase in Cérélia's manufacturing share of supply was driven by its increasing share of manufacturing for Jus-Rol products. As shown in Table 4, the Merger would result in an [10-20]% increase by value in Cérélia's manufacturing share due to it taking on the manufacturing of the Jus-Rol products still manufactured by GMI. By volume, the Merger would result in a [5-10]% increase in Cérélia's manufacturing share due to it taking on the manufacturing of the Jus-Rol products still manufactured by GMI.<sup>44</sup>

<sup>42</sup> GMI's site visit presentation, 26 July 2022, slide 12

<sup>43</sup> In 2021 [REDACTED] of the volume of Jus-Rol's sales came from products manufactured by Cérélia. Cérélia's response to the CMA's s109 Notice (phase 2 s.109) (1), 14 July 2022, question 44.

<sup>44</sup> In 2020, Cérélia's manufacturing share of supply was [50-60]%. Cérélia's response to the CMA's s109 Notice (phase 2 s.109) (1), 14 July 2022, question 44.



41. GMI only manufactures canned Jus-Rol dough products.<sup>45</sup> Cérélia submitted that [X]. It also submitted that [X].<sup>46</sup>
42. The Jus-Rol canned products are pizza dough and ready-to-bake products within the DTB products.<sup>47</sup> 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>48</sup>

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<sup>45</sup> MN, paragraph 120.

<sup>46</sup> Cérélia response to the Shares of Supply Working Papers (Marked-up WP), 13 September 2022, slide 26

<sup>47</sup> Cérélia's response to the CMA's s109 Notice (phase 2 s.109) (2), 22 August 2022, question 14.

<sup>48</sup> Cérélia's response to the CMA's s109 Notice (phase 2 s.109) (2), 22 August 2022, question 17.

## Appendix D: Submissions on Internal Documents

### Supplementary Table on Documentary Evidence

Parties' submissions		CMA's response
<b>A</b>	<b>Cérélia Submissions in Response to the Provisional Findings</b>	
1	<p>Cérélia submitted that in the Provisional Findings Report, the CMA erroneously interpreted the documents on the implicit rebalancing threat as being in support of the SLC and ignores the Parties' detailed submissions in relation to their actual context and meaning. For instance:</p> <ul style="list-style-type: none"> <li>• the CMA repeatedly wrongly relies on references in Jus-Rol documents to PL competition as evidence that the Parties compete upstream. Cérélia submits that this confuses competition between the Parties (which did not exist) with retail competition, where Jus-Rol competes with retailer PL brands.</li> <li>• GMI does not reference Cérélia in internal documents which analyse Jus-Rol's competitors. Cérélia considers Jus-Rol principally in the context of its category reviews, which are aimed at understanding category developments more generally, and which cover both consumer brands and retailer PL brands.<sup>1</sup></li> </ul>	<p>We have considered in detail the Parties' submissions on the internal documents upon which it has relied and set out individual responses to each parties' submission on each individual internal document in the main body of the Final Report and in this table.</p> <p>With regard to the two specific points made by Cérélia, we note that both points are in relation to the interpretation of GMI, rather than Cérélia, documents and duplicate submissions made by GMI on those documents. We have therefore dealt with both submissions below and in the Final Report when considering GMI submissions on the internal document evidence.</p>
<b>B</b>	<b>GMI Submissions in Response to the Provisional Findings</b>	
1	GMI submitted that the documentary evidence provided by large retailers and cited by the CMA to support the	We do not agree with this characterisation of the documentary evidence to which was referred to GMI and consider that the documents do

<sup>1</sup> [Cérélia's response to the provisional findings](#), 28 November, paragraphs 2.15-2.17.

Parties' submissions		CMA's response
	existence of the material constraint is weak and, in some cases, the cited documents do not support the interpretations placed on them by the CMA. <sup>2</sup>	provide evidence of competitive interaction between C�r�lia and Jus-Rol. We have provided further detail about the inferences drawn from the relevant documents in the main body of the Final Report and, with regard to the Parties submissions on them more generally, by each specific document to which the Parties refer, below.
2	GMI submitted that Jus-Rol's commercial negotiations with retailers focus on justifying Jus-Rol's consumer appeal and rate of (retail) sale. Similarly, Jus-Rol's marketing efforts are directed at consumers. GMI submitted that from its perspective, it is consumers that drive what retailers buy. GMI submitted that, in its view, the PFs recognise that (retail) derived demand constrains the extent to which retailers can flex volumes between Jus-Rol and their PL products, but also submitted that it considers that the CMA materially underestimates this constraint. <sup>3</sup>	We consider that we have already engaged with (in both the Provisional Findings, for example at paragraph 9.74 of the Competitive Assessment Chapter, and the additional Consultation Paper) and explained why we do not accept GMI's contention that the references outlined in the relevant documents relate only to competition at the retail level and therefore apparently have no bearing on GMI and C�r�lia's respective offerings to grocery retailers. For the sake of clarity, we would restate that we accept and have described the link between retail level and wholesale level competition, which means that references to retail level competition are also relevant to the competition we have found at the wholesale level, (which we reiterate is the only level at which each of the Merger parties offer their products and therefore their commercial focus).
3	GMI submitted that in its view, that the first and only time GMI has ever encountered a reference to PL DTB products in the context of its commercial negotiations with retailers, was when a retailer [REDACTED]. GMI submitted that with regard to this particular document: <sup>4</sup> <ul style="list-style-type: none"> <li>• This clearly a cost benchmarking comment and not a "trading off" tactic.</li> <li>• It is understood that at the time of the email chain, [REDACTED] was carrying out a [REDACTED] for its PL products, in</li> </ul>	We note, and have considered GMI's submissions in relation to this document. With regards to the specific points made by GMI: <ul style="list-style-type: none"> <li>• We do not consider that the nature of the behaviour by the [REDACTED] buyer can simply be described as 'cost benchmarking' or that in any case 'cost benchmarking' is distinct from a process of leveraging competing commercial offers. Our interpretation is instead that the [REDACTED] buyer is making clear that it has an alternative purchasing option available which it regards as functionally equivalent and more cost competitive and is using this to strengthen its commercial position in negotiations with</li> </ul>

<sup>2</sup> [GMI's response to the provisional findings](#), 28 November 2022, paragraph 3.5.

<sup>3</sup> [GMI's response to the provisional findings](#), 28 November 2022, paragraph 2.6.

<sup>4</sup> [GMI's response to the provisional findings](#), 28 November 2022, paragraphs 2.8-2.9 referring to [REDACTED].

Parties' submissions	CMA's response
<p>the course of which [X] received multiple, competitive tender proposals from a number of PL manufacturers.</p> <ul style="list-style-type: none"> <li>• It was no threat to delist in favour of PL. This is consistent with [X] statement at the Main Party Hearing that "we have never had a threat of, "If you do not do this, I will replace you with own label" ... It is just not a tension that exists."</li> <li>• It refers to [X] in the context of justifying an input cost price increase. As described in the Main Party Hearing, GMI is generally unaware of the capacity of manufacturers supplying brands (including retailer own brands) with co-manufacturing services, however, it would observe that this statement suggests that [X] perceives there to be a range of options.</li> <li>• It relates to the underlying costs of a known GMI input, which [X] separately obtains – "the costs we are seeing from the supply base and more specifically where this product is produced is not aligned to what General Mills are presenting" – rather than the brand value (i.e. the additional element supplied by the Jus-Rol brand in the value chain).</li> <li>• The premise of the [X] buyer referencing co-manufacturing offers in the [X] Email Chain was rejected by GMI, with focus on the underlying commodities at play.</li> <li>• The focus of the conversation then moves to the actual cost increases for GMI, and to GMI's potential promotional support – i.e. the reference to manufacturer's prices is of no relevance to the ongoing negotiation.</li> </ul>	<p>GMI. This directly evidences the competitive constraint between the Parties that the CMA has described in its final report, and in our view suggests a degree of inconsistency with [X] evidence at the Main Party Hearing that "<i>this is not a tension that exists</i>".</p> <ul style="list-style-type: none"> <li>• We have engaged with [X] directly about its views as to the credible PL and branded supply options to it from its perspective, including as a result of its [X], which is considered in detail in the Provisional Findings and Final Report (see [X]).[X] has clearly and consistently articulated that it considers [X].</li> <li>• We have been careful to explain that the competitive dynamic between the Parties is a broader one, and may be exercised in a range of ways, including options short of full "delisting" of a product range.</li> <li>• We accept that [X] refers to [X], however, as described already, we have considered in detail through our investigation the availability and potential limits of alternative suppliers and concluded, with regard to the entirety of this evidence, that there are few credible alternative suppliers in the relevant market than the Merger parties. We would note in particular that [X] statement refers only to relative pricing; it does not purport to consider the overall suitability of these manufacturers for their PL needs.</li> <li>• We do not consider GMI's commercial decision in response to the email to be determinative of whether a competitive tension exists: we would note that in any commercial negotiation, a party, even one subject to competitive pressures, will weigh and make an individual decision as to the most commercially desirable response. That decision may be driven by a range of considerations. We are instead concerned about the broader process of rivalry at play, which the email suggests [X] is seeking to use to extract better commercial terms.</li> <li>• With regard to GMI's submissions about control of margins, we do not accept that a grocery retailers' ability to set retail pricing</li> </ul>

Parties' submissions		CMA's response
	<ul style="list-style-type: none"> <li>The [X] buyer's response notes on the margin [X] is making on Jus-Rol products: "[X]Whether you feel the margin is disproportionate or not on blocks is not relevant. The market has been priced where it is on these products at least the last two years and this is accepted rate on your brand in the market place. The market on singles has also reflects (sic) this regardless of the RRP on when [X] change retails, which are at our discretion." Presumably, [X] takes the same view in the retail pricing of its own brand DTB products, emphasising that it is the retailer who controls the end-consumer competitive interaction between Jus-Rol and PL products.</li> </ul>	<p>means that it 'controls the end-consumer competitive interaction between Jus-Rol and PL products,' or that in any case that that suggests there is no competition between the Parties at the wholesale level. We have clearly described the link between retail level and wholesale level competition but has also been clear about the material differences between competition at these two levels.</p>
4	<p>GMI submitted that the example of an email from one retailer [X] to a General Mills account manager in 2020, which shows the retailer "[X]", contains nothing to indicate that [X].<sup>5</sup> GMI submitted that [X] and that '[X]'.</p>	<p>We note that the message in question describes [X] which we consider is reasonable to infer relates to the functional characteristics of the products in question. We do not therefore consider that the reference can be interpreted as referring to [X]. We would note that GMI's proposed interpretation of this document would also be inconsistent with the other evidence [X] has provided us, which suggests that the products it regards as substitutable with Jus-Rol products are PL products.</p>
5	<p>GMI submitted that the same (reasons as summarised in Row B4 above) is true for the internal email between GMI staff in 2019 which describes one retailer [X]. GMI explained in its response to the Working Papers that this was a "ranging" decision taken by the retailer, where ranging decisions often takes place in the context of a</p>	<p>We agree that the document in question relates to a 'ranging' decision but considers that that ranging decision evidences an ongoing competitive process whereby grocery retailers leverage competitive tension between Jus-Rol and PL products in order to achieve the most desirable commercial outcome for them in their wholesale purchasing decisions. We note that the email in question expressly notes, in GMI's own wording, the degree of interaction between Jus-Rol and PL products at this level.</p>

<sup>5</sup> [GMI's response to the provisional findings](#), 28 November 2022, paragraph 3.5. referring to [X].

Parties' submissions		CMA's response
	<p>delisting across Butters, Spreads and the Home Baking range.<sup>6</sup></p> <p>Furthermore, when asked by the CMA, [X]. It is unclear how the CMA can rely on this email as evidence of retailers replacing Jus-Rol products with equivalent PL products when [X]. This is especially so given that the retailer may be referring to [X].<sup>7</sup></p>	<p>We have engaged with [X] in detail to understand the competitive dynamics it has described, and [X] provided GMI with the opportunity to comment upon the evidence it has provided. We consider this email to be entirely consistent with the competitive process described by [X] in its evidence to the CMA.</p>
6	<p>As for the 2021 category review referred to by the CMA,<sup>8</sup> it is unclear how the [X] recommendation that the retailer [X] could be evidence of a retailer replacing Jus-Rol products when that suggestion was rejected by the retailer [X]. That outcome also appears to be inconsistent with the CMA's general findings that retailers' inventory decisions are largely driven by customer demand.<sup>9</sup></p>	<p>We note that the document in question is a Cérélia, rather than GMI document, for which we do not consider GMI to be in a position to comment. However, for the sake of completeness, we consider that the most logical interpretation of the phrase '[X]', is that Cérélia considers that the PL products supplied by it are functionally and commercially equivalent to Jus-Rol products and should be treated as such by grocery retailers. We consider this as strong evidence consistent with our analysis of the competitive dynamics, and as a factor undermining Cérélia's submissions that it does not regard the products it offers as competing with those of Jus-Rol.</p> <p>We do not consider that [X] decision in this particular instance to reject that recommendation suggests there is no ongoing competitive process, particularly when: i) the documentary evidence shows it in fact making such a trade-off by way of a delisting decision on a different occasion (see Row B5 above); ii) the recommendation, to completely delist, presents the most extreme of the possible scenarios [X] could make (as opposed to for example, reducing its purchasing volumes in a way</p>

<sup>6</sup> GMI's response to the provisional findings, 28 November 2022, paragraph 3.5. referring to [X].

<sup>7</sup> GMI's response to the provisional findings, 28 November 2022, paragraph 3.5.

<sup>8</sup> [X].

<sup>9</sup> GMI's response to the provisional findings, 28 November 2022, paragraph 3.5.

Parties' submissions		CMA's response
		also described by the CMA); and iii) [X] has clearly and consistently described [X] in its direct evidence to the CMA.
<b>C</b>	<b>Cérélia Submissions in Response to the Consultation Paper</b>	
1	Cérélia submitted that the additional internal documents to which the CMA refers to do not provide evidence of competitive tension between Cérélia and Jus-Rol. <sup>10</sup> Cérélia submitted that such documents as there are relate to (i) where Cérélia internally discussed retailers' threats to switch volumes to other co-packers and (ii) where retailers pressured Cérélia to offer better terms by reference to threats posed by competing co-packers (not Jus-Rol). <sup>11</sup>	We do not agree with this characterisation of the documentary evidence to which was referred to Cérélia and consider that the documents do provide evidence of 'competitive tension' between Cérélia and Jus-Rol. We have provided further detail about the inferences drawn from the relevant documents in the main body of the Final Report and, with regard to the Parties' submissions on them more generally, below.
2	Cérélia submitted that the Consultation Paper does not state which Cérélia documents are relevant to whether Cérélia considers Jus-Rol in its internal competitive analysis. <sup>12</sup>	We provided Cérélia with our view as to the relevance of each individual document with regard to specific sections of the Provisional Findings in the table supplied as part of the additional Consultation Paper. We also gave page references to direct the Parties to the parts of the document that we considered relevant. We consider that this provided the Parties with adequate information to engage with our provisional views on the relevance of the documents in question, which we note Cérélia has cited in its submissions here.
3	Cérélia submitted that the internal documents included in the Consultation Paper cannot rationally be described as evidencing an "internal competitive analysis" of Cérélia's competitive constraints. <sup>13</sup>	We note that the CMA would not typically limit its analysis of evidence to documents that are specifically intended to analyse competition but will instead take into account internal documents that provide material insight into competition, even if not prepared explicitly for that purpose. Accordingly, while we have taken the broader context of each document (including the purpose for which the document was prepared) into account in assessing the weight that it should be given, we do not

<sup>10</sup> Cérélia response to the Consultation Paper, 3 January 2023, paragraph 4.1.

<sup>11</sup> Cérélia response to the Consultation Paper, 3 January 2023, paragraph 2.19.

<sup>12</sup> Cérélia response to the Consultation Paper, 3 January 2023, paragraph 4.3.

<sup>13</sup> Cérélia response to the Consultation Paper, 3 January 2023, paragraph 4.3.

Parties' submissions		CMA's response
		believe that it is appropriate to limit our review to documents that are dedicated to 'competitive analysis'.
4	<p>In relation to document [REDACTED], Cérélia submitted that:<sup>14</sup></p> <ul style="list-style-type: none"> <li>• The document does not contain any analysis of Cérélia's competitive constraints.</li> <li>• If by "analysis" the CMA means the Kantar data embedded in the email exchange, these data do not mention "Cérélia" or a single other consumer brand or contract manufacturer.</li> <li>• The fact that the CMA refers to this as "internal competitive analysis" confirms that the CMA continues to commit the Conflation Error by equating "Cérélia" with "PL" and/or conflating competition between consumers brands and PL SKUs at the retail level with competition at the "wholesale level".</li> <li>• The data is requested by Cérélia ahead of a meeting with [REDACTED] to support a discussion with [REDACTED]. This data seeks to capture consumer shopping decisions by consumer brand and PL channel to inform the discussion of what an optimal product mix may look like to best serve [REDACTED] shoppers. As Cérélia has told the CMA on multiple occasions, any credible contract manufacturer would have to present to, and talk about, trends in the segment with its customers in order to demonstrate knowledge of the segment.</li> </ul>	<p>We note Cérélia's submissions in respect of this document. However, we do not agree with or accept the interpretation Cérélia contends should be given to the document and in particular the submission that it does not contain any analysis of Cérélia's competitive constraints.</p> <p>We note that the document in question provides an analysis by Cérélia of trends in the relative volumes distributed by [REDACTED] of each of PL and branded DTB products. Under three separate sub-categories of DTB products, PL and branded volumes are presented in a bar format to show what proportion of overall distribution each comprises (i.e., the total of PL and branded volumes given sums to 100%, representing [REDACTED] overall distribution of these categories of DTB product). Trends in this relative volume are also given. We therefore consider this to be a clear example of the "zero-sum" nature of the distribution of each of PL (supplied by Cérélia) and branded (supplied by Jus-Rol) products offered to [REDACTED]; i.e., as represented in the bars provided, changes in the distribution of one category of product come at the expense of the other type of product, evidencing the "rebalancing" constraint we have described. The monitoring of the changes in these volumes reflects the ongoing competitive rivalry between these products to increase relative volumes.</p> <p>With regard to Cérélia's submissions that the document '<i>confirms that the CMA continues to commit the Conflation Error by equating "Cérélia" with "PL" and/or conflating competition between consumers brands and PL SKUs at the retail level with competition at the "wholesale level"</i>', we have explained in detail in both the Provisional Findings and Final Report why we have adopted our approach to market definition, and in</p>

<sup>14</sup> Cérélia response to the Consultation Paper, 3 January 2023, paragraph 4.4 to 4.6.



Parties' submissions		CMA's response
		<p>particular the evidence upon which we have relied (which is outside the scope of this appendix). We also note that this interpretation is inconsistent with Cérélia's own description of Jus-Rol as "<i>the competition</i>" (see Row C8 below) in a contemporaneous internal document. We agree that the data given is at the retail level, which we consider most likely reflects data availability: in particular, we understand (including from GMI's submissions) that wholesale level data on pricing and volumes would not be available to the Parties, so that retail level information is the best available source. We would also note that as explained in the Final Report and additional evidence consultation, neither Cérélia nor GMI directly offer their products at this level, which we consider suggests that retail level data is being used to inform wholesale level commercial decisions by the Parties.</p> <p>We note the further information Cérélia has provided about the purpose to which this data was apparently used. However, for the reasons explained above, we consider that discussion, and in particular what Cérélia describes as the desire to '<i>inform the discussion of what an optimal product mix may look like to best serve [redacted] shoppers</i>' to incorporate a competitive element, consistent with a process of rivalry in the stocking and ongoing ordering of Cérélia and Jus-Rol's respective products.</p>
5	<p>In relation to document '[redacted]'. ME_6988_22_002680, Cérélia submitted that:<sup>15</sup></p> <ul style="list-style-type: none"> <li>The data presented in this email exchange compares the DTB retail segment share of Jus-Rol with PL brands. As has been explained to the CMA many times before, it is not rational to equate "PL" with "Cérélia" or retail competition for consumer</li> </ul>	<p>We note Cérélia's submissions in respect of this document. However, we do not agree with or accept Cérélia's submissions that 'it is not rational to equate 'PL' with 'Cérélia' or 'retail competition for consumer demand with competition at the upstream level where Cérélia competes'. We consider that this point in essence relates to the product market definition which we have adopted. As noted in Row C1 above, we have explained in detail in both the Provisional Findings and Final Report why we have adopted our approach to market definition, and in</p>

<sup>15</sup> Cérélia response to the Consultation Paper, 3 January 2023, paragraph 4.7 to 4.8.

Parties' submissions	CMA's response
<p>demand with competition at the upstream level where Cérélia competes.</p> <ul style="list-style-type: none"> <li>The document clearly seeks to inform an internal analysis of DTB category growth prospects and the role Jus-Rol is (or is not) playing in driving such growth. The document confirms that category growth in grocery segments is typically and most effectively driven by consumer brand led investment.</li> </ul>	<p>particular the evidence upon which we have relied (which is outside the scope of this table).</p> <p>More broadly, we note that the document in question shows both percentage shares by product category and percentage change trends in the 'pastry and dough...total market', which is broken down as comprising Jus-Rol (named expressly and stated to comprise approximately 91% of the total product category to which it relates) and 'Total PL'. We consider this document to be relevant to our analysis in several respects. First, it shows express monitoring of Jus-Rol share change by Cérélia, which suggests that Cérélia considers that information relevant to its commercial decisions. Secondly, it shows that as evident from data held by Cérélia and used by it in internal analysis, Jus-Rol comprises virtually the entire product category to which it relates, which suggests that its use of the term "branded" in internal documents may appropriately be inferred as including Jus-Rol products. Thirdly, contrary to Cérélia's submissions about what it regards as the relevant product market, and the alleged error in defining a 'wholesale' level DTB market, it shows Cérélia considers that Jus-Rol products fall within a 'pastry and dough...total market' that also comprises PL products that Cérélia supplies. We therefore consider the document to evidence that Cérélia conceives of, and expressly references a competitive tension between PL products (which it primarily manufactures) and Jus-Rol products.</p> <p>Finally, the CMA notes Cérélia's submissions that <i>'the document confirms that category growth in grocery segments is typically and most effectively driven by consumer brand led investment'</i>. In our view this cannot necessarily be inferred from the document but even if true would not in any case preclude the absence of competition between the Parties on this or other material competitive parameters.</p>

Parties' submissions		CMA's response
6	<p>In relation to document '[REDACTED]', Cérélia submitted that:<sup>16</sup></p> <ul style="list-style-type: none"> <li>• It was created before Cérélia had any presence in the UK.</li> <li>• The document [REDACTED].</li> <li>• Clearly demonstrates the vertical nature of the relationship between the Parties.</li> <li>• Slide 8 clearly distinguishes the upstream manufacturing market in which BakeAway, [REDACTED] and GMI itself were active from the retail segment of the grocery market where GMI's Jus-Rol competes with retailers' PL brands. At the time, Cérélia, GMI, BakeAway and [REDACTED] (all companies mentioned in the top row capturing DTB manufacturing activity) were providing manufacturing services in respect of DTB products sold in the UK. These products competed in the downstream market and the competitors in this downstream market are set out in the bottom row: [REDACTED].</li> <li>• Slide 8 directly corroborates – by way of contemporaneous business documents – that there is a distinct market for the manufacturing of DTB products for brand owners, including both consumer brand owners and retailers. Cérélia's competitors can be found at this level of the market.</li> </ul>	<p>We note Cérélia's submissions in respect of this document. However, we do not agree with or accept the interpretation Cérélia contends should be given to the document.</p> <p>We accept that the document was created before Cérélia had a UK presence, and therefore should be given less weight than documents arising from Cérélia's direct operational experience. However, as it was prepared to inform [REDACTED] it therefore can be inferred to be based on detailed commercial due diligence, including as to the competitive conditions in the relevant market and therefore merits some weight being accorded to it in our analysis. These competitive conditions are expressly covered in a specific slide on the 'competitive environment' (Slide 8). Whilst we note that a distinction is drawn between branded and PL channels in that assessment, both are included in the same analysis of the overall 'competitive environment', consistent with the approach described in our competitive analysis, which notes the presence of both channel specific and cross-channel competition in the overall market for DTB products. Moreover, the lead point in the description of 'key learnings' about the competitive environment expressly describes the threat to Jus-Rol from PL offerings: '[REDACTED]'. The CMA notes that Cérélia has not provided any alternative explanation as to why this would be included in the 'competitive assessment' if Cérélia did not regard BakeAway supplied PL products as competing with Jus-Rol.</p> <p>In addition, we note that there are two horizontal levels featured within the diagram, separated by a horizontal line, which it is reasonable to infer suggest a distinction between the wholesale and retail levels of the supply chain, with the lower level giving the brand names under which the products are offered at retail (i.e. Jus-Rol or the Grocery retailers</p>

<sup>16</sup> Cérélia response to the Consultation Paper, 3 January 2023, paragraph 4.9 to 4.12.

Parties' submissions		CMA's response
		brands). We note that GMI's offering is positioned at the same level as that of BakeAway, separated from the grocery retailers' names by the horizontal line. This is contrary to Cérélia's suggestion that the document illustrates a distinct upstream market for PL manufacturing versus downstream products and that therefore the document ' <i>clearly demonstrates the vertical nature of the relationship between the Parties</i> '. Instead, we consider that the document suggests a direct competitive tension between GMI's offering and that of BakeAway (which Cérélia is to acquire), and distinct wholesale and retail markets.
7	<p>In relation to document '[REDACTED]', Cérélia submitted that:<sup>17</sup></p> <ul style="list-style-type: none"> <li>Assuming the CMA meant to refer to slide 9 of the deck, it is clear that this slide does not evidence competitive interaction between Jus-Rol and Cérélia. The references to '[REDACTED]'.</li> <li>It is uncontroversial that retail pricing affects consumer choices but this is not a parameter of competition over which Cérélia, as a contract manufacturer, has any control. In addition, the CMA has clear evidence that there is no close correlation between Cérélia's terms to retailers and the retail prices retailers set for their PL SKUs at the retail level.</li> </ul>	<p>We note Cérélia's submissions but disagree with the interpretation that it suggests should be given to this document. We agree that the '[REDACTED]', which we consider most likely reflects data availability: in particular, we understand (including from GMI's submissions: see Row D2 below) that wholesale level pricing of competitors would not be available to the Parties, so that retail level pricing is the best available pricing information source and can be used to infer the potential range of pricing to grocery retailers at the wholesale level.</p> <p>As we have explained throughout the Final Report, as a commercial matter we consider that the most likely and credible reason Cérélia would have for analysing retail level prices is to influence and inform wholesale level pricing, given that their only commercial offer is at the wholesale, rather than the retail level. In any case, the purpose to which this data is being used appears clear from the document, with the title of the Slide ('[REDACTED]') making clear that the analysis the slide offers is in relation to Cérélia's ability to increase its pricing to grocery retailers. [REDACTED]. For these reasons we also reject the parties second submission that retail pricing '<i>is not a parameter of competition over which Cérélia, as a contract manufacturer, has any control</i>'. As has already been</p>

<sup>17</sup> Cérélia response to the Consultation Paper, 3 January 2023, paragraph 4.14.

Parties' submissions		CMA's response
		<p>explained in the main body of the Final Report, we consider that there is a strong link between the competitive dynamics at the wholesale level and the retail level.</p> <p>We also note the potential link between this monitoring and the price analysis that Cérélia has submitted, which shows that Cérélia's pricing to retailers has remained largely stable since 2016. We note that this slide further reinforces our view that this finding is not inconsistent with the potential for that flat pricing to have arisen from the competitive constraint imposed by the Jus-Rol offering to grocery retailers, which is closer than the relative pricing in absolute terms suggests in light of the functional substitutability of the products across the two channels.</p>
8	<p>In relation to document '[REDACTED]', Cérélia submitted that:<sup>18</sup></p> <ul style="list-style-type: none"> <li>• The [REDACTED].</li> <li>• It is clear that the purpose of the exercise was not responding to an Implicit Rebalancing Threat – indeed, this is clear from the fact that none of the three retailers mentioned ([REDACTED]) stock Jus-Rol and therefore could not have engaged in such “rebalancing” decisions. The document therefore also does not provide any support for the CMA's SLC analysis.</li> </ul>	<p>We note Cérélia's submissions but consider that the email provides clear evidence that Cérélia sees itself as competing against the Jus-Rol offering in order to sell to grocery retailers, notwithstanding the manufacturing link between it and Jus-Rol. Contrary to the Parties submissions, we note that the Cérélia National Account Manager expressly describes the [REDACTED] as being '[REDACTED]'. The '[REDACTED]' described are [REDACTED] and Jus-Rol, i.e., the Cérélia National Account Manager expressly describes Jus-Rol as a competitor.</p> <p>More broadly, we consider that the willingness of Cérélia to invest in [REDACTED] relative to core Jus-Rol products underlies that competition in the market goes beyond pricing: product quality is a clear emphasis. This is evidenced by the business case for the [REDACTED] being described, which is for '<i>building the case with [REDACTED] and possibly [REDACTED].</i>' This is consistent with the findings as to the relevant parameters of competition and emphasises that pricing is only one important aspect of the competition that takes place.</p>

<sup>18</sup> Cérélia response to the Consultation Paper, 3 January 2023, paragraph 4.19 to 4.20.

Parties' submissions		CMA's response
		With regard to Cérélia's submissions about the fact that none of the retailers mentioned currently stock Jus-Rol and therefore cannot have engaged in "rebalancing" decisions, we note that this 'rebalancing' constraint is only one element of a more general competitive constraint that arises in commercial conversations with grocery retailers. As this [X] exercise evidences, Jus-Rol products impose a constraint on the Cérélia offering in other commercial decisions, such as decisions about product listing, as well.
9	<p>In relation to the exchange [X], Cérélia submitted that:<sup>19</sup></p> <ul style="list-style-type: none"> <li>• The CMA overlooks the fact that at the time Cérélia was manufacturing [X] PL [X] and therefore the email exchange related to functionally equivalent DTB SKUs which [X] was procuring from GMI and Cérélia at the time.</li> <li>• The only addition Cérélia offered to make to [X] was the addition of [X] – it is irrational to conclude on this basis that Jus-Rol's [X] was not "functionally equivalent" to the [X] product Cérélia was manufacturing for [X] at the time.</li> </ul>	<p>We note Cérélia's submissions but do not consider they alter the interpretation to be drawn from this document that Cérélia makes commercial proposals to retailers across the DTB category, including to offer to produce PL products not currently within its existing product range but which offer a match to an equivalent Jus-Rol product. This is evident from the language used, which states '[X]'. We consider that the competitive tension between the Jus-Rol product and the PL alternative is therefore clear: consistent with our theory of harm, [X] may choose between procuring a PL product supplied by Cérélia or a branded product supplied by Jus-Rol, and that tension goes beyond any static snapshot of the SKUs offered to grocery retailers at the time.</p> <p>We do not consider it material that Cérélia was already manufacturing [X] PL [X] at the time; if anything this emphasises the degree of existing competitive tension between currently offered (as well as potential) products from Cérélia and Jus-Rol. Moreover, contrary to the Parties submissions, the proposed product amendment was regarded as a material differentiator commercially such that Cérélia's National Account Manager was willing to offer to commission production of this product to one the UK's largest grocery retailers.</p>

<sup>19</sup> Cérélia Response to the Consultation Paper, 3 January 2023, paragraph 4.22 to 4.23.

Parties' submissions		CMA's response
10	<p>In relation to document '[REDACTED]', Cérélia submitted that:<sup>20</sup></p> <ul style="list-style-type: none"> <li>• At no stage of this email exchange does the [REDACTED] buyer attempt to “leverage” Jus-Rol’s (or any other party’s) offer in negotiations with Cérélia.</li> <li>• There is no negotiation at all: [REDACTED] simply informs Cérélia of its decision.</li> <li>• The [REDACTED] buyer goes on to assure Cérélia that “[REDACTED]”. The document is therefore evidence of an absence of “playing off” Jus-Rol and Cérélia.</li> <li>• The document confirms that [REDACTED] is itself a DTB category expert which is able to take informed unilateral decisions as to what it views as the optimal mix of SKUs in terms of product characteristics and in terms of consumer brand / PL mix.</li> <li>• The document’s messaging and tenor is in stark contrast to how retailers negotiate with Cérélia where retailers actually wish to “play off” Cérélia against a rival. In such cases, retailers have no qualms about explicitly making threats to shift volume from Cérélia to a third party (ie other contract manufacturers).</li> </ul>	<p>We consider that Cérélia’s submissions fail to recognise the nature of the competitive constraint we have described, and the fact that other instances in which Cérélia experiences competitive rivalry (such as tender processes) may differ from the implicit constraint the CMA has described. We note that grocery retailers, [REDACTED] have expressly described the relevant competitive constraint as ‘implicit’ in nature.<sup>21</sup> [REDACTED].<sup>22</sup> This document expressly evidences that, with the buyer noting that: ‘[REDACTED]’.</p> <p>More broadly, we consider that the document evidences an ongoing rivalry for shelf-space, with commercial considerations driven by the competitiveness of the relevant product offering informing stocking decisions. Cérélia’s submissions in part appear to accept this, noting that [REDACTED] is ‘a DTB category expert which is able to take informed unilateral decisions as to what it views as the optimal mix of SKUs in terms of product characteristics and in terms of consumer brand / PL mix’. In our view, informed by the submissions of grocery retailers [REDACTED], it is however a process of competitive rivalry on key commercial parameters that is underpinning this dynamic.</p> <p>We do not accept Cérélia’s submission that [REDACTED] statement that [REDACTED]’ suggests an absence of competitive rivalry between Cérélia and Jus-Rol;<sup>23</sup> we consider this to be describing the background context in which the process of competitive rivalry (including for shelf space and ongoing volumes) is taking place.</p>
11	<p>In relation to document [REDACTED], Cérélia submitted that:<sup>24</sup></p>	<p>We disagree with Cérélia’s characterisation of the [REDACTED] in question as relating to protection from <u>retailer</u> PL brands. This is evident from the wording used: ‘[REDACTED]’. The clear implication of the [REDACTED] is that if Cérélia</p>

<sup>20</sup> Cérélia response to the Consultation Paper, 3 January 2023, paragraph 4.25 to 4.28.

<sup>21</sup> Transcript of a call with [REDACTED], [REDACTED] 2022, page 27.

<sup>22</sup> Transcript of a call with [REDACTED], [REDACTED] 2022, pages 8-9.

<sup>23</sup> Transcript of a call with [REDACTED], [REDACTED] 2022, pages 11-12.

<sup>24</sup> Cérélia response to the Consultation Paper, 3 January 2023, paragraph 4.32 to 4.33.

Parties' submissions		CMA's response
	<ul style="list-style-type: none"> <li>The meaning is clear when read in the context of discussions between a co-packer and its customer – [REDACTED].</li> <li>The [REDACTED] demonstrates the vertical nature of the relationship between the Parties.</li> </ul>	<p>were to supply retailers with an equivalent PL product, competition between the products would mean that Jus-Rol would expect to lose sales to the PL product manufactured by Cérélia.</p> <p>We would again note that this is also evident from a simple commercial interpretation of the purchasing decisions described by grocery retailers as being available to them; to either purchase PL products from Cérélia, or purchase Jus-Rol branded products from GMI. Moreover, contrary to the submissions of the Parties that the competitive constraint in question must be limited to areas where there is a direct overlap of closely related product SKUs within the wider DTB segment, we note that the need for a non-compete evidences the wider process of rivalry that exists between them in relation to both existing and potential products.</p> <p>With regard to the Parties submission that the [REDACTED] demonstrates the vertical nature of the relationship between the Parties, we clearly recognise as a factual proposition that Cérélia does have a manufacturing relationship with GMI and Jus-Rol. However, we have been clear that this does not describe the totality of the relationship between them and in particular also preclude competition between them in regard to other aspects of Cérélia's wider commercial offering.</p>
<b>D</b>	<b>GMI Submissions in Response to the Consultation Paper</b>	
1	<ul style="list-style-type: none"> <li>GMI submitted that the CMA has restated that GMI's internal documents "[REDACTED]" despite GMI having explained that these documents are evidence of competition at the retail level rather than the wholesale level vis-à-vis Cérélia.<sup>25</sup></li> <li>The CMA records this as the "contention" of GMI at paragraph 27 of the Consultation Paper but places</li> </ul>	<p>The CMA considers that it has already engaged with (in both the Provisional Findings, for example at paragraph 9.74 of the Competitive Assessment Chapter, and the additional Consultation Paper) and explained why it does not accept GMI's contention that the references outlined in the relevant documents relate only to competition at the retail level and therefore apparently have no bearing on GMI and Cérélia's respective offerings to grocery retailers. For the sake of clarity, we would</p>

<sup>25</sup> GMI response to the Consultation Paper, 3 January 2023, paragraph 5.1.



Parties' submissions		CMA's response
	<p>greater weight on the fact that "GMI's only direct commercial relationship (and revenue stream) is at the wholesale level, not the retail level". This misses the point that the revenue generated by GMI at the wholesale level is determined by what is sold at the retail level and as such is influenced by competition between Jus-Rol products and retailers' PL products.<sup>26</sup></p> <ul style="list-style-type: none"> <li>The CMA has not explained in detail how, in its view, the additional GMI documents evidence the provisional conclusion it describes at paragraph 27. This not only nullifies the purpose and effect of the Consultation Paper but it also makes it difficult for GMI to properly respond to the CMA's findings.<sup>27</sup></li> </ul>	<p>restate that we accept and have described the link between retail level and wholesale level competition, which means that references to retail level competition are also relevant to the competition we have found at the wholesale level, (which we reiterate is the only level at which each of the merger parties offer their products).</p> <p>We provided GMI with our view as to the relevance of each individual document with regard to specific sections of the Provisional Findings in the table supplied as part of the additional Consultation Paper. We also gave page references to direct the Parties to the parts of the document that we considered relevant. We consider that this provides the Parties with adequate information to engage with our provisional views on the relevance of the documents in question, which we note GMI has cited in its submissions here.</p>
2	<ul style="list-style-type: none"> <li>GMI submitted that the supplementary documents cited by the CMA concern [redacted]. GMI explained in its Response to the WPs that these are dynamics that take place fundamentally at the retail level and not at the wholesale level.<sup>28</sup></li> <li>GMI also states that [redacted].<sup>29</sup></li> </ul>	<p>See D1 above.</p> <p>In relation to GMI's second point, we do not consider that the absence of wholesale pricing data means that GMI does not consider or analyse wholesale pricing of PL products. As explained elsewhere, the only pricing GMI can directly control is its wholesale pricing to grocery retailers. As explained in C7 above, we consider (and have seen evidence) that the unavailability of direct wholesale pricing information means that both C�er�lia and GMI must use retail level pricing to infer the likely ranges of pricing to grocery retailers at the wholesale level. As we have explained throughout the Final Report, as a commercial matter we consider that the most likely and credible reason GMI would have for analysing retail level prices is to influence and inform wholesale level</p>

<sup>26</sup> GMI response to the Consultation Paper, 3 January 2023, paragraph 5.1.

<sup>27</sup> GMI response to the Consultation Paper, 3 January 2023, paragraph 5.1.

<sup>28</sup> GMI response to the Consultation Paper, 3 January 2023, paragraph 5.2.

<sup>29</sup> GMI response to the Consultation Paper, 3 January 2023, paragraph 5.2.

Parties' submissions		CMA's response
		pricing, given that their only commercial offer is at the wholesale, rather than the retail level.
3	<ul style="list-style-type: none"> <li>GMI submitted that [redacted]. Cérélia is never mentioned in any of the GMI supplementary documents. In fact, the nature and substance of these documents is so at odds with the interpretation that the CMA attempts to give to them at paragraph 27, that it gives the appearance that the additional evidence reflects a word search for "PL" and "own label", rather than a consideration of the documents in their proper context and in conjunction with GMI's previous submissions.<sup>30</sup></li> </ul>	<p>We do not consider that the fact that Cérélia is not mentioned expressly in the GMI supplementary documents means that GMI is not subject to a competitive constraint from Cérélia on key competitive parameters such as price and quality, which each of Cérélia and GMI set in making their respective offerings to grocery retailers. We have clearly described, in reflection of evidence obtained from grocery retailers, the 'implicit' nature of the constraint, and the specific reasons grocery retailers do not directly describe the competing offer underpinning ongoing processes of competitive tension. We have also been clear about the element of differentiation that exists between PL and branded products, and in particular described in detail the at times complex ways in which grocery retailers' procurement decisions are made.</p> <p>Moreover, we have found in our analysis of internal documents that GMI more commonly refers in general terms to the constraint from "PL" or "own-label" as a catch-all category rather than naming the PL offering of individual grocery retailers (see the specific examples described in Rows D5, D6, D7 and D8 below). We consider that that this undermines GMI's contentions that both: i) it views PL products as solely attributable to the individual grocery retailer concerned; and ii) that the terms used to describe competing products in its internal documents is definitive of the nature of the competitive constraint it faces from them or who provides that constraint. Instead, we consider that these documents suggest a universal constraint that is driven by the underlying supplier of the PL product, across multiple grocery retailers' offerings, and by Cérélia in particular. As noted in our Final Report, Cérélia is, by far, the largest PL supplier in the UK market, with a value share four times as</p>

<sup>30</sup> GMI response to the Consultation Paper, 3 January 2023, paragraph 5.3.

Parties' submissions		CMA's response
		large as the next largest provider. Moreover, we have not seen evidence indicating that GMI monitors and benchmarks Jus-Rol against other branded products.
4	<p>In relation to document '[REDACTED]', GMI submitted that:<sup>31</sup></p> <ul style="list-style-type: none"> <li>• The [REDACTED].</li> <li>• These are competitive dynamics that operate at the retail level, as are GMI's proposals to [REDACTED]. As GMI explained in its Response to the WPs, [REDACTED] is not a feature of the supply of PL products.</li> <li>• As GMI has submitted on numerous occasions, references in its documents to "PL competition" is to the competition from PL products supplied to consumers at the retail level, not to supply to retailers at the wholesale level, where GMI is</li> </ul>	<p>We do not accept that the clear and overt references to 'PL competition' can be as narrowly interpreted as GMI accepts. In particular, with regards to GMI's arguments that the documents in question evidence only retail level competition and that that has no bearing on wholesale level competition (see our response set out in D1 above).</p> <p>With regards to the argument that GMI is '<i>generally not even aware of who it's purported "competitor" as the PL supplier is</i>', see the CMA's response set out in D3 above.</p>

<sup>31</sup> GMI response to the Consultation Paper, 3 January 2023, paragraph 5.4.1.

Parties' submissions		CMA's response
	generally not even aware of who it's purported "competitor" as the PL supplier is.	
5	<p>In relation to document '[REDACTED]', GMI submitted that:<sup>32</sup></p> <ul style="list-style-type: none"> <li>• The [REDACTED].</li> <li>• [REDACTED]. GMI considers that this presentation evidences [REDACTED]. In fact, slides 16-18 show [REDACTED].</li> <li>• This demonstrates innovation in response to a product launched by [REDACTED] only, which is a ranging decision made by the retailer and not Cérélia.</li> </ul>	<p>We agree with GMI's submission that the document in question [REDACTED]. We note however, that viewed in its entirety, the document focuses [REDACTED]. For example, [REDACTED]. We consider that this undermines GMI's submission that the document should be interpreted as confirming GMI's position that it competes with retailers, rather than Cérélia. Instead, it suggests a universal constraint that is driven by the underlying supplier of the PL product, across multiple grocery retailers' offerings.</p> <p>As already noted, we do not in any case consider that the fact that Cérélia is not mentioned expressly means that GMI is not subject to a competitive constraint from Cérélia on key competitive parameters such as price and quality, which each of Cérélia and GMI set in making their respective offerings to grocery retailers. We have clearly described, in reflection of evidence obtained from grocery retailers, the 'implicit' nature of the constraint, and the specific reasons grocery retailers do not directly describe the competing offer underpinning ongoing processes of competitive tension. It has also been clear about the element of differentiation that exists between PL and branded products, and in particular described in detail the at times complex ways in which grocery retailers' procurement decisions are made.</p> <p>We note in particular that [REDACTED], further evidencing, in the CMA's view, that the competitive monitoring that GMI undertakes relates to key competitive parameters that Cérélia sets in its supply to relevant retailers. This position is further corroborated by the fact that [REDACTED] grocery retailers who described the parties' respective products as substitutes and outlined their concerns to the CMA about the competitive effects of the merger. We consider that GMI's submissions</p>

<sup>32</sup> GMI response to the Consultation Paper, 3 January 2023, paragraph 5.4.2.

Parties' submissions		CMA's response
		<p>should therefore be balanced against the directly contradictory submissions of the relevant grocery retailers themselves, and more broadly, we have noted the contractual obligation to which GMI is subject, which we consider means its evidence is not provided as the 'relatively neutral' third party it has characterised itself as in its submissions.</p> <p>With regard to the description, [REDACTED], of the new product launched by [REDACTED], we note again that this is a product supplied to [REDACTED] by C��ria. We note GMI's submission that 'this is a ranging decision made by the retailer and not C��ria'. However, it is not clear on the face of the document whether that is true, and we note that we have identified other documents whereby C��ria proactively makes new product suggestions to grocery retailers (see [REDACTED] above). In any case, even if suggested by [REDACTED], we note that if as is contemplated, Jus-Rol were to launch a new product to match the PL offering, this would mean that [REDACTED] would again face a trade-off between stocking its shelves with either the C��ria supplied product or the GMI supplied product, which it has told us [REDACTED].</p>
6	<p>In relation to document '[REDACTED]', GMI submitted that:<sup>33</sup></p> <ul style="list-style-type: none"> <li>• The key focus [REDACTED]. The reference to [REDACTED] refers to the [REDACTED].</li> <li>• [REDACTED] refers to the [REDACTED] in comparison to own label. However, this is positioned as [REDACTED].</li> </ul>	<p>We agree that the [REDACTED]. However, we note again that the emphasis of the document (and in particular [REDACTED]) is the constraint presented by PL (own label) as a whole (see for example, [REDACTED]), with the competitive challenge described in the same way across retailers, again suggesting a universal constraint rather than a retailer specific one. We note in particular that the document expressly describes the need to '[REDACTED]' versus PL (as a whole) [REDACTED].</p> <p>With regard to the [REDACTED], we note that this precedes and is a separate issue to the subsequent discussion of Jus-Rol versus own-label [REDACTED].</p>

<sup>33</sup> GMI response to the Consultation Paper, 3 January 2023, paragraph 5.4.3.

Parties' submissions		CMA's response
		For the reasons already outlined above in Row D2, we do not consider the fact that 'wholesale' [redacted] has any significant implication other than that data is not available to be directly analysed at this level. We have already also explained in Row D3 above why we do not consider the fact that Cérélia is not mentioned expressly in the GMI supplementary documents means that GMI is not subject to a competitive constraint from Cérélia on key competitive parameters such as price and quality, which each of Cérélia and GMI set in making their respective offerings to grocery retailers.
7	<p>In relation to document '[redacted]', GMI submitted that:<sup>34</sup></p> <ul style="list-style-type: none"> <li>[redacted] particularly in the context of [redacted].</li> <li>However, as GMI explained in its Response to the WPs, retail pricing is set unilaterally by the retailer having regard to a range of factors and is completely separate to wholesale pricing. Therefore, comparisons in GMI's documents to PL pricing do not demonstrate competition at the wholesale level or with Cérélia.</li> </ul>	<p>We agree with GMI that [redacted], and also note that individual retailer products are not mentioned, even as examples. We have explained above, and in particular in Row D3, why we consider this suggests a universal constraint from own label products as a category ([redacted]), rather than individual instances of competition with individual retailers' products.</p> <p>We have also explained already what we consider to be the link between analysis of retail pricing and competition through wholesale pricing in Row D2 above.</p>
8	<p>In relation to document '[redacted]', GMI submitted that:<sup>35</sup></p> <ul style="list-style-type: none"> <li>For the same reasons given in 5.4.4 above, it is clear that references to PL pricing do not demonstrate competition at the wholesale level or with Cérélia.</li> </ul>	<p>We have explained already what we consider to be the link between analysis of retail pricing and competition through wholesale pricing in Row D2 above.</p> <p>We have already also explained in Row D3 above why we do not consider that the fact that Cérélia is not mentioned expressly in the GMI supplementary documents means that GMI is not subject to a competitive constraint from Cérélia on key competitive parameters such as price and quality, which each of Cérélia and GMI set in making their respective offerings to grocery retailers.</p>

<sup>34</sup> GMI response to the Consultation Paper, 3 January 2023, paragraph 5.4.4.

<sup>35</sup> GMI response to the Consultation Paper, 3 January 2023, paragraph 5.4.5.

Parties' submissions		CMA's response
		We also observe that “own-label” is again mentioned generally and as a category in the references to which we directed GMI (see for example [REDACTED]), and also note again that individual retailer products are not mentioned, even as examples.
9	In relation to document '[REDACTED]', GMI submitted that: <sup>36</sup> <ul style="list-style-type: none"> <li>GMI has already explained that price and promotion are competitive dynamics at the retail level. Likewise, in-store visibility and shelf space allocation is a factor that is determined by retailers rather than wholesale suppliers such as C��r��lia. [REDACTED].</li> </ul>	We do not agree, for the reasons set out in the Final Report and including in Row D1 above, that price and promotion are only competitive dynamics at the retail level and not also at the wholesale level.  We agree that in-store visibility and shelf space allocation is a factor that is determined by retailers rather than wholesale suppliers; however, we consider that this discretion is exercised by retailers in response to a competitive process, informed by commercial performance on key competitive parameters such as price, quality, service and innovation.
10	In relation to document '[REDACTED]', GMI submitted that: <sup>37</sup> <ul style="list-style-type: none"> <li>[REDACTED] are made in respect of [REDACTED]. For the reasons given above, [REDACTED].</li> <li>[REDACTED], which GMI considers is evidence of competition between Jus-Rol and those retailers' PL brands at the retail level.</li> </ul>	We do not agree, for the reasons set out in the Final Report and including in Row D1 above, that the competitive dynamics mentioned, including for shelf space arise only at the retail level and not also at the wholesale level. We also note GMI's agreement that [REDACTED].  We note the Parties' submissions in relation to the individual slide mentioned ([REDACTED]) but consider however, that viewed in its entirety, the document focuses on the threat to Jus-Rol products from PL products as a category, and that [REDACTED] are used only in this instance as individual examples of the broader themes outlined.
11	In relation to document [REDACTED], GMI submitted that: <sup>38</sup> <ul style="list-style-type: none"> <li>It is not clear to GMI [REDACTED]. GMI considers this is a [REDACTED].</li> </ul>	See the responses provided in Row C11 in the section on C��r��lia Submissions in Response to the Consultation Paper above.

<sup>36</sup> GMI response to the Consultation Paper, 3 January 2023, paragraph 5.5.1.

<sup>37</sup> GMI response to the Consultation Paper, 3 January 2023, paragraph 5.5.2.

<sup>38</sup> GMI response to the Consultation Paper, 3 January 2023, paragraph 5.6.

Parties' submissions		CMA's response
	<ul style="list-style-type: none"> <li>• There would be little incentive for GMI to innovate if PL was able to immediately offer a cheaper alternative for new products. [X].</li> <li>• This document confirms the vertical nature of the relationship between the Parties.</li> </ul>	<p>We agree with the additional submission that [X], but have described the other parts of the document upon which we rely and the reasons for doing so.</p>



## Appendix E: Summary of Asset Purchase Agreement

1. Under the terms of the Asset Purchase Agreement<sup>1</sup> (**APA**) Cérélia agreed to purchase certain assets of the UK and Ireland dough business of General Mills, Inc. (**GMI**). These assets include the goodwill, trademarks, inventory, business records, deposits and receivables, and contracts exclusively related to the UK and Ireland dough business under the 'Jus-Rol' brand.<sup>2</sup>
2. Cérélia and GMI also entered into the following ancillary agreements:
  - (a) Patent and IP Know How Licence, under which GMI has granted Cérélia [REDACTED].
  - (b) Transitional Services Agreement, under which GMI is providing transitional services to the Jus-Rol Business [REDACTED] until the completion of the CMA's merger investigation.<sup>3</sup>
3. The Merger also includes certain intellectual property ('**IP**') and associated licensing agreements that pertain to the UK Jus-Rol business and are held by Cérélia SAS. We understand these to be the following IP rights:
  - (a) held by Cérélia SAS, which may be used in the production of Jus-Rol products:
    - (i) [REDACTED];
    - (ii) [REDACTED];
  - (b) IP rights licensed by the Seller pursuant to the terms of the Patent and Know-how Licence of [REDACTED]<sup>4</sup>:
    - (i) [REDACTED];
    - (ii) [REDACTED];
    - (iii) [REDACTED];
    - (iv) [REDACTED].

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<sup>1</sup> Cérélia response to s109 dated 2 February 2022, Annex 3-a Asset Purchase Agreement.

<sup>2</sup> Merger Notice, Merger details, paragraph 3.

<sup>3</sup> Merger Notice, The Target, paragraph 89.

<sup>4</sup> Cérélia response to s109 dated 2 February 2022, Annex 3-c Patent and Knowhow Licence

## Glossary

Term	Definition
<b>the Act</b>	The Enterprise Act 2002.
<b>APA</b>	Asset Purchase Agreement.
<b>Branded products</b>	DTB products that are sold under a brand name (eg Jus-Rol). This excludes grocery retailers' Private Label products.
<b>BSM category</b>	The category of grocery products including butter, spreads and margarine. The Parties consider chilled pastry to be a subset of this category.
<b>CAT</b>	Competition Appeal Tribunal
<b>C�r�lia</b>	C�r�lia Group Holding SAS, together with all entities under common ownership or common control or over which it exerts material influence within the meaning of section 26 of the Act but excluding the Jus-Rol Business.
<b>Channel</b>	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".
<b>CMA</b>	Competition and Markets Authority.
<b>Conflation Error</b>	The Parties submit that the CMA has made an error by conflating two distinct levels of the supply chain (upstream contract manufacturing of DTB products and downstream brand ownership) into a single activity (wholesale supply of DTB products).
<b>Consultation Paper</b>	The CMA's Consultation on Additional Evidence paper sent to the Parties on 19 December 2022 summarising the additional evidence gathered after publication of the Provisional Findings.
<b>CUK</b>	C�r�lia UK Limited, together with all entities under common ownership or common control or over which it exerts material influence within the meaning of section 26 of the Act but excluding the Jus-Rol Business.

<b>Term</b>	<b>Definition</b>
<b>Co-packer</b> Also: <b>Co-manufacturer</b>	A co-packer is a third-party company which manufactures, packages and labels products for its clients (retailers in this case). The service provided is tailored to the needs of the customers, from product range and ingredients to design and packaging.
<b>Delisting</b>	The complete removal of a product from a range sold by a retailer, rather than changing to an alternative supplier of the product (see switching).
<b>Dough-to-bake (DTB) products</b>	All products manufactured by combining basic ingredients such as flour, liquid and/or fat (sometimes with flavouring and toppings), which are sold to customers as a raw product to be baked for final consumption. Most are sold in chilled or frozen form. DTB includes ingredient pastry dough, pizza dough and ready-to-bake dough products such as cookie, brownie, gingerbread, croissant, pain au chocolate and cinnamon swirl dough.
<b>Dough-to-bake (DTB) suppliers</b>	Suppliers of branded DTB products or manufacturers who supply DTB products for use in retailers' PL offering.
<b>End-consumer</b>	Consumers that purchase products from grocery retailers.
the <b>ESA</b>	Equipment Sale Agreement.
<b>Food manufacturing</b>	Customers in this sector purchase DTB products to manufacture a finished product for sale to end-consumers (e.g., pizza dough for use in a pizza product).
<b>Foodservice</b>	Customers in the foodservice sector comprise caterers who buy DTB products to sell to their end-consumers, as well as bakeries, restaurants, and independent shops who bake finished products in-store to serve to end-consumers.
<b>GMI</b>	General Mills, Inc., together with all entities under common ownership or common control or over which it exerts material influence within the meaning of section 26 of the Act.
<b>Grocery sector</b> Also: <b>retail sector</b>	The supply of Private Label and Branded products to end-consumers in the UK, by grocery retailers who have previously bought these products from wholesale suppliers.

<b>Term</b>	<b>Definition</b>
	These retailers include large, national multiples as well as smaller retailers, including hybrid, online-only and brick-and-mortar retailers.
<b>GSCOP</b>	Groceries Supply Code of Practice.
<b>IEO</b>	Initial Enforcement Order
<b>Ingredient pastry – Also: <i>pastry dough</i></b>	Ingredient pastry is a sub-group of DTB products, referring to pre-made pastry dough (such as puff, shortcrust and filo pastry) for use in cooking/baking.
<b>Initial Divestiture Period</b>	The period in which the merger parties should achieve effective disposal of a divestiture package to a suitable purchaser
<b>Inquiry Group</b>	The appointed Panel Members and decision-makers of the CMA’s phase 2 investigation into the <b>Merger</b> .
<b>IP</b>	Intellectual Property
<b>the Jus-Rol Business</b>	The assets relating to the United Kingdom and Ireland dough business of General Mills, Inc. operated under the ‘Jus-Rol’ brand.
<b>Large retailers</b>	The traditional Big 4 grocery retailers in the UK (ie Tesco, Sainsbury’s, Asda and Morrisons).
<b>Manufacturing and packaging</b>	Manufacturing and packaging includes the services of product manufacturing, package assembly and fulfilment.
<b>MAGs</b>	Merger Assessment Guidelines (CMA129)
<b>Merger</b>	The acquisition by C�r�lia of the Jus-Rol Business.
<b>Merger Notice (MN)</b>	The Merger Notice submitted by CUK to the CMA on 29 March 2022.
<b>Multi-sourcing</b>	The ability to source the same DTB product from more than one supplier at a time (such as having two suppliers of puff pastry), as opposed to just one.

<b>Term</b>	<b>Definition</b>
<b>Non-retail suppliers</b>	Suppliers providing DTB products to non-retail sectors. Predominantly, non-retail suppliers supply the foodservice sector and, to a lesser extent, the food manufacturing sector.
<b>NPD</b>	New Product Development
<b>the Parties</b>	CUK and the Jus-Rol Business.
<b>PQRS</b>	Price, quality, range, and service.
<b>Private label (PL) products</b>	DTB products manufactured or packaged for sale to end-consumers under the name of the retailer (as opposed to that of the manufacturer), such as products in Tesco's Finest range.
<b>Product types</b>	Product types refer to Ingredient pastry, pizza dough, and RTB products.
<b>RCBs</b>	Relevant Customer Benefits
<b>Ready-to-bake (RTB) products</b> Also: <b>RBGs</b> – ready to bake goods	A sub-group of DTB products, encompassing those which do not need further preparation (as opposed to ingredient pastry). This includes croissant, pain au chocolat, cinnamon swirls, gingerbread and cookie dough.
<b>Relevant Market</b>	The wholesale supply of DTB products to grocery retailers in the UK.
<b>Remedies Notice</b>	Notice of Possible Remedies, published on 4 November 2022
<b>Retail</b>	The level of the supply chain where either Branded products or PL products are sold to end-consumers, by grocery retailers such as Tesco or Sainsbury's.
<b>RWP</b>	Remedies Working Paper, notified to the parties on 16 December 2022.
<b>Service level</b>	A supplier's ability to satisfy the number of units ordered by a retailer.
<b>SKU</b>	An abbreviation for Stock Keeping Unit, a unique identifier for each product to ease the tracking of inventory.
<b>SLC</b>	Substantial lessening of competition
<b>Switching</b>	The process through which a retailer changes the supplier of a product, without removing the product entirely from its range.

Term	Definition
<b>Switching costs</b>	The costs associated with Switching. They include both monetary and non-monetary costs. In this market they are: i) the cost of finding a suitable alternative supplier (e.g. running a tender process) and ii) establishing the supply arrangements from the chosen new supplier (e.g. finalising recipe formulation etc).
<b>Supply agreement</b>	A contract between two parties setting out binding terms and conditions for the supply of goods or services. The contract outlines both the specific operational requirements and processes suppliers must follow to trade with the buyer, along with the agreed-upon timing, price and quantity of the goods provided to the buyer / guaranteed for the supplier.
<b>TSA</b>	Transitional Services Agreement
<b>White label, own label products</b>	These terms are often used interchangeably with Private Label products, but there is a slight difference: white label products refer to generic products sold by a manufacturer to (possibly multiple) retailers whereas Private Label products are those sold by a manufacturer to retailers under an exclusive arrangement.
<b>Wholesale</b>	The level of the supply chain where either Branded products or PL products are sold to grocery retailers, by suppliers such as Jus Rol (branded) or Cérélia (PL).