

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

Final report

20 January 2023

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The Competition and Markets Authority has excluded from this published version of the final report information which the inquiry group considers should be excluded having regard to the three considerations set out in section 244 of the Enterprise Act 2002 (specified information: considerations relevant to disclosure). The omissions are indicated by [✂]. Some numbers have been replaced by a range. These are shown in square brackets. Non-sensitive wording is also indicated in square brackets.

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Glossary

Summary

Overview of our findings

1. The Competition and Markets Authority (**CMA**) has found that the acquisition by Cérélia Group Holding SAS (**Cérélia**) of certain assets relating to the United Kingdom (**UK**) and Ireland dough business of General Mills, Inc. (**GMI**), operated under the 'Jus-Rol' brand (**Jus-Rol Business**) (Cérélia and GMI – together, the **Parties**) (the **Merger**) has resulted in a substantial lessening of competition (**SLC**) in the wholesale supply of dough-to-bake (**DTB**) products to grocery retailers in the UK, harming the interests of these retailers and, potentially, end-consumers of these products.
2. On 4 November 2022, we announced our Provisional Findings, in which we provisionally concluded that the Merger would result in an SLC. Following consultation (and continued further evidence-gathering and analysis where appropriate to respond to matters raised on consultation), we have now made our final decision, which we summarise here. The report and its appendices, which will be published together with or shortly after this summary, constitute the CMA's Final Report.
3. The Parties proposed remedies intended to address the competition concerns we identified. We found – following a thorough assessment – that these remedies would be insufficient to restore the competition that would be lost as a result of the Merger.
4. We have decided that only an asset divestment involving the sale of the entire Jus-Rol Business, akin to an unwinding of the Merger, to a suitable purchaser would be an effective remedy to address the SLC.

What are DTB products?

5. DTB products include ingredient pastry dough (i.e., shortcrust, puff and filo pastry dough), pizza dough and other ready-to-bake (**RTB**) dough products (including RTB croissant dough, pain au chocolat dough, cinnamon swirl dough, gingerbread dough, cookie dough). DTB products are manufactured by combining flour with a liquid (e.g., water) and/or fat (butter, olive oil etc.) and sometimes with flavoured toppings. They are primarily sold in grocery retailers in the chilled shelves as part of the butter, spreads and margarine (**BSM**) category of products. A smaller proportion are also available as frozen products, or at ambient temperatures.

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

Who are the businesses and what services do they provide?

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

plant manufactures ingredient pastry dough, pizza dough, cookie dough, brownie dough and gingerbread dough.

14. Cérélia is the second largest supplier of DTB products to grocery retailers in the UK (after Jus-Rol) by value with a share of supply that is more than double the size of the next largest supplier. Cérélia is also the largest supplier of DTB products to meet the PL product needs of grocery retailers by a considerable margin.

Our assessment

Why are we examining this Merger?

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

How have we examined this Merger?

18. In assessing the competitive effects of the merger, the CMA must determine if either an SLC has resulted, or it has not; or if there is an expectation (i.e. a more than 50% chance) that an SLC may be expected to result, or it would not.
19. To determine whether this is the case, we have gathered information from a wide variety of sources, using our statutory powers to ensure that we have as complete a picture as possible under the constraints of the statutory timetable to understand the implications of the Merger on competition. The evidence we have gathered has been tested rigorously, and the context in which the evidence was produced has been considered when deciding how much weight to give it.
20. At phase 2, as with phase 1, we have focused our investigations on one possible way in which the Merger could give rise to an SLC. This 'theory of harm' was whether the Merger may be expected to result in an SLC as a result of horizontal unilateral effects in the wholesale supply of DTB products to grocery retailers in the UK. What we mean by this is the possibility that the Merger could remove from the market a business that was competing with Cérélia in the supply of these products. We describe this as 'horizontal' effects because, in this respect, Cérélia and Jus-Rol would both be active at the same level of the supply chain (i.e. offering DTB products to grocery retailers).
21. We conclude that the Merger has resulted in an SLC on this basis. This is discussed in further detail below.

What evidence have we looked at?

22. In assessing the Merger, we looked at a wide range of evidence that we considered in the round to reach our decision.
23. We considered evidence from the Parties submitted during the phase 1 inquiry, responses to our informal and formal requests for information and internal documents during phase 2, site visits, the Main Party Hearings, in response to our Provisional Findings and other phase 2 submissions.
24. We spoke to and gathered evidence from other market participants in the industry (including both grocery retailer customers and competitors of the Parties) to understand better the competitive landscape for the supply of DTB products, and to get their views on the impact of the Merger.

25. We calculated market shares. In keeping with the established approach to market definition set out in the CMA's guidance, we have considered the appropriate product market definition in this case from the starting point of whether the Parties are considered as alternatives by customers (grocery retailers). This takes into account the differences between the Parties' activities, as well as the similarities in the light of grocery retailers' requirements. We have also considered what other suppliers are considered as alternatives by customers and evidence of the ability to readily adapt manufacturing processes to supply different types of products. On that basis, we have concluded that the relevant market is the wholesale supply of DTB products to grocery retailers in the UK.
26. As well as the size of the Parties' market shares, our assessment also took into account the stability of those shares and the strength of competitive constraints on the Parties.
27. We examined the Parties' own internal documents, which show how they run their businesses and provide some insight into how they view their rivals.
28. We have had some regard to tendering evidence. However, given that we have only seen evidence of tendering within the PL channel (described further below), we would not expect to see the Parties competing against each other head-to-head in tenders.
29. We have looked closely at how the sector operates at the retail and wholesale level and considered the interaction between consumer demand and wholesaler demand.
30. We have also considered the incentives of the Merged Entity and whether these mean that it would not be profitable to it to increase prices or degrade its offering to grocery retailers as a result of the Merger.

What did this evidence tell us...?

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

31. In order to provide a comparator and determine the impact that the Merger may have on competition, we have considered what would have happened had the Merger not taken place. This is known as the counterfactual.
32. Following an assessment of GMI's internal documents which discussed its options in some detail, our view is that it was likely that, in the absence of the Merger, GMI would have continued to own and operate the Jus-Rol Business

in the short to medium term whilst seeking an alternate buyer. Our assessment of the effects of the Merger are therefore considered in comparison to a scenario in which, had the Merger not gone ahead, the most likely scenario would have been GMI continuing to operate Jus-Rol in line with pre-merger conditions.

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

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

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

37. Large grocery retailers, which account for the large majority of DTB products sold in the UK, told us that their ability to trade off the Parties in their negotiations is an important constraint which enables them to get a good deal when purchasing DTB products.
38. These grocery retailers told us that they may not typically explicitly pit their PL supplier against their branded supplier but that the availability of both is a source of competitive tension that would be lost by the Merger, thereby reducing their ability to protect against potential price rises (or other kind of worsening in the Parties' DTB offerings). The Parties' internal documents also show some evidence of this kind of constraint operating in practice.
39. We consider that the constraint between the Parties is important for both channels, noting that PL in particular (for which Cérélia is the leading supplier) operates as a pricing discipline on Jus-Rol. Post-merger, the strong market positions held by each of Cérélia and Jus-Rol will be consolidated within the Merged Entity, resulting in the loss of the constraint between the Parties which will, in turn, affect retailers' ability to resist a price rise (or other worsening in the Parties' offerings).
40. There is significant overlap in the product ranges that the Parties supply to grocery retailers. While some retailers might only buy some of the products within the Parties' ranges at present, we found that the DTB product category should, for the purposes of assessing competition, be considered as a whole (because retailers consider all DTB products together and suppliers are able to alter and expand the types of DTB product that they offer to grocery retailers).
41. While, as noted above, there are important differences in the offerings of the Parties, the relative importance of the competitive constraint offered by the Parties upon each other also depends on the available alternatives. As discussed further below, we found that there were few credible alternatives for grocery retailers purchasing DTB products, which makes the loss of the competition between the Parties particularly important.
42. The Parties told us that because Cérélia already manufactures most of the Jus-Rol products sold in the UK, there could be no existing competition between the Parties which would be lost by the merger. We note that this submission is not fully supported by the data that the Parties have provided. We also note, more broadly, that Cérélia's role in manufacturing Jus-Rol products is based on a contractual relationship, which is materially different in

nature to a merger. A contractual relationship does not result in a lasting change in market structure, has limited duration and may be renegotiated or terminated even before its initial term.

43. In this regard, the Merger would result in material changes in competitive dynamics and market structure:
- (a) Post-Merger, Cérélia would have control over all aspects of the wholesale offering to retailers across both channels, which it does not have at present. In particular, Cérélia would have control over pricing of both the PL products bought by retailers from Cérélia and Jus-Rol products and could determine pricing to maximise joint profits (which is not the case at present).
 - (b) The Merger would also 'cement' Cérélia's role as the manufacturer of Jus-Rol products. As a result of the transaction, GMI would lose its ability to independently decide its commercial strategy, including whether to terminate the agreement with Cérélia and appoint an alternative supplier, take the production back in-house, or take any other course of action relating to its Jus-Rol products.
44. We therefore found that the Parties' submissions, that it would not be profitable to raise prices or degrade the quality of both Jus-Rol products and Cérélia's manufacturing services to retailers for the PL channel, were not supported by the evidence available to us.

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

45. We have found that the competitive constraint on the Parties from alternative suppliers is limited, both individually and in aggregate. The Merged Entity would be the largest supplier of DTB products to UK grocery retailers by a considerable margin, combining the first and second largest existing suppliers. The Merged Entity would face limited competition from other firms. Only two other suppliers (Bells and Henglein, which are both predominantly PL suppliers) have material shares of supply and their shares are substantially lower than either of the Parties.
46. We found there to be no credible alternative suppliers of branded products with an equivalent range at the national level. Retailers tend to stock primarily Jus-Rol and generally do not see other brands as strong alternatives. We are not aware of any examples of retailers switching branded products in the past five years.

47. Switching PL suppliers does occur more frequently. Across the six largest grocery retailers (accounting for 90% of the DTB market), there have been five instances of switching PL supplier in six years, although two of these five instances were in 2017.
48. The presence of other alternative PL suppliers means that retailers have more options in that channel and so the relative importance of the constraint of Jus-Rol on Cérélia is not as high as vice versa. However, the weakness of the constraint from those alternative PL suppliers, and the not immaterial costs involved in switching PL supplier (given the more complex PL procurement process), compared to simply flexing volume requirements from an existing PL supplier to a branded supplier, means that the constraint provided by Jus-Rol on Cérélia is nonetheless important.
49. We have carefully considered whether the competitive threat from alternative PL suppliers would be sufficient to prevent the Merged Entity from degrading important aspects of its competitive offering following the Merger. Taking into account the attractiveness of these alternative options to retailers, the switching costs that retailers would face, and the existence of limited buyer power resulting from the lack of alternatives, we believe that retailers would be unlikely to switch for small, but significant, price rises.
50. We also considered what, if any, scope there was for some competitive constraint to be provided from outside our defined market, through the potential for substitution from products from outside the retail sector (e.g., from suppliers currently active in the foodservice and food manufacturing sectors). However, we found evidence of material differences in customer demand and supplier capabilities between the foodservice and food manufacturing sectors and the retail sector. These include different packaging requirements, a foodservice focus on frozen products, and higher technical specifications/requirements of retailers. These differences suggest it is not straightforward for suppliers of foodservice customers to also supply grocery retailers, which limits the scope for these to act as credible alternatives for grocery retailers.

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

51. A very high proportion of sales of DTB products at the wholesale level are to large grocery retailers.
52. While grocery retailers in the UK are sophisticated buyers who are trying to achieve the best deals and can benchmark commodity prices or limit promotional space, their ability to constrain DTB suppliers primarily depends

on the existence of alternative options to respond to a deterioration in competitive conditions (e.g. by switching to an alternative supplier, sponsoring entry or starting to self-supply). In some cases, special purchasing requirements (such as the desire not to use products containing ethanol), volume requirements (for example around Christmas, when demand for DTB products hugely increases) and strict purchaser approval processes may limit their realistic supply options further.

53. The ability of grocery retailers to leverage the constraint between the PL and branded channels will decrease due to the merger, as the largest PL supplier and the largest branded DTB supplier will combine. As noted, we also conclude that the Parties face limited competitive constraints from alternative suppliers which limits the retailers' ability to switch away from their suppliers.
54. While the Parties submitted that the threat of grocery retailers "delisting" their products suggested a degree of buyer power held by the supermarkets, we do not consider that this eventuality, which limits choice, to be in the interests of grocery retailers or end-consumers.

....about any countervailing factors?

55. Once we have decided that a Merger could give rise to an SLC, we also consider whether there are any factors that might prevent or mitigate against that SLC from arising. These are known as countervailing factors.
56. In this case, we focused on whether there could be any new entry or production expansion in the supply of DTB products that could prevent an SLC from arising. The CMA generally considers that entry and/or expansion preventing an SLC from arising will be rare and will seek to ensure that the evidence is robust when presented with claims of this nature.
57. We therefore considered this question by looking at any recent history of entry and expansion, seeking the views of third parties who may potentially sponsor or support entry and expansion, looking at the conditions and incentives to enter or expand in the supply of DTB products to the UK grocery retail market generally and seeking to identify any third parties with specific entry and expansion plans. Given the important differences in how products in the branded and PL channels are procured by grocery retailers, we considered the potential for entry and expansion in each channel separately.
58. Whilst past entry and expansion suggests that entry into the branded space is possible, we consider this most likely in a specific product type, rather than across the full range of DTB products offered by Jus-Rol. We found that there would potentially be significant investment required to launch a new DTB

brand of a scale that could effectively constrain the merged entity. Jus-Rol holds a long-standing market position as the UK's only national grocery retail DTB brand, which does not suggest that a branded competitor is likely to emerge as a strong alternative to Jus-Rol in a timely manner. The relatively small size of the overall market and degree of profitability we observed also suggest that entry from a branded supplier in an adjacent market is unlikely.

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

Conclusions

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

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

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

What happens next?

68. The CMA will now take steps to implement the remedies described above and will consult publicly on the approach to be taken.
69. In line with guidance, the CMA will implement its remedy decision within 12 weeks of publication of the Final Report. The CMA may extend this time period once by up to six weeks.

Findings

1. The reference

- 1.1 On 15 June 2022, the Competition and Markets Authority (**CMA**) in exercise of its duty under section 22(1) of the Enterprise Act 2002 (the **Act**) referred the completed acquisition by Cérélia Group Holding SAS (**Cérélia**) (either directly or indirectly) of certain assets relating to the UK and Ireland dough business of General Mills, Inc. (**GMI**), operated under the ‘Jus-Rol’ brand (the **Jus-Rol Business**) (the **Merger**) for further investigation and report by a group of CMA panel members (the **Inquiry Group**). Cérélia and the Jus-Rol Business are together referred to as the **Parties** and for statements referring to the future, the **Merged Entity**.
- 1.2 In exercise of its duty under section 35(1) of the Act, the CMA must decide:
- (a) Whether a relevant merger situation (**RMS**) has been created, and
 - (b) If so, whether the creation of that situation has resulted or may be expected to result, in a substantial lessening of competition (**SLC**) within any market or markets in the United Kingdom (**UK**) for goods and services.
- 1.3 We are required to prepare and publish a final report by 24 January 2023.
- 1.4 Our terms of reference are set out in Appendix A.
- 1.5 This document, together with its appendices, constitutes the Inquiry Group’s findings published and notified to Cérélia and GMI in line with the CMA’s procedure.¹ Further information can be found on our webpage.²

2. The Parties, the Merger and its rationale

Introduction

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

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

² Cérélia / Jus-Rol Merger inquiry.

(b) the Merger background, details, valuation and other information;

(c) Parties' rationale for the Merger.

The Parties

Cérélia (The Buyer)

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

Figure 2.1: Cérélia's main business activities



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

2.3 The private equity firm Ardian France SA (**Ardian**) is the controlling shareholder of the Cérélia Group of companies⁴. Ardian also has a stake in a Spanish bakery products supplier called Monbake.

2.4 In the UK, Cérélia operates under the name 'BakeAway', with a manufacturing plant in Corby, Northamptonshire. Cérélia describes its predominant activity in the UK as the manufacturing and packaging (co-packing) of dough-to-bake

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

⁴ MN, paragraph 83.

(DTB) and pancake products for third parties⁵ such as consumer-brand owners and grocery retailers who market these products to end-consumers under their own PL brands. The Corby plant manufactures ingredient pastry dough, pizza dough, cookie dough, brownie dough and gingerbread dough. Pre-Merger, Cérélia's UK business (CUK) did not own any consumer brands and manufactured nearly all of Jus-Rol's chilled DTB products (except filo pastry). CUK also imports DTB products for UK sales from its manufacturing plants in France.⁶

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

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

[REDACTED]

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

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

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

[REDACTED]

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

⁵ MN, paragraph 8

⁶ MN, paragraph 112.

⁷ With the remaining revenues generated in the Republic of Ireland.

⁸ Cérélia response to the CMA's section 109 Notice (**Phase 2 s.109**) (1), 14 July 2022, Annex S109.1.24.001.

⁹ Cérélia response to the CMA's section 109 Notice (**Phase 2 s.109**) (1), 14 July 2022, Annex S109.24.006.

GMI (The Seller)

- 2.9 Prior to the Merger, the Jus-Rol Business was owned by GMI, a US-based global manufacturer and marketer of consumer and pet food, headquartered in Minneapolis, USA. GMI's product portfolio includes several prominent consumer brands such as Cheerios, Pillsbury, Betty Crocker, Nature Valley, Old El Paso, Blue Buffalo, and Häagen-Dazs amongst others, representing total worldwide retail sales of c.\$18.1 billion from all consumer brands.¹⁰ In the UK, the Jus-Rol Business supplies branded DTB products to grocery retailers and foodservice customers.
- 2.10 In 2021, GMI adopted its "Accelerate" Growth Strategy, which aimed to reshape its product portfolio and re-focus on certain designated core product categories and brands (discussed in more detail below). In-line with this strategy, [REDACTED]¹¹ for the future of the brand (see 2.17- 2.26 below).

Jus-Rol Business (the Target)

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

Figure 2.4: Jus-Rol product portfolio

[REDACTED]

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

- 2.13 Pre-Merger, Jus-Rol products were predominantly (c. [REDACTED]%)¹² manufactured by C er lia [REDACTED]. The remaining products were manufactured by [REDACTED]. [REDACTED].¹³

¹⁰ See [General Mills makes food the world loves - General Mills](#), accessed by the CMA on 28 October 2022.

¹¹ MN, Annex 22b.05, '[REDACTED]', 11 January 2021, [REDACTED].

¹² MN, paragraph 119(a).

¹³ GMI's virtual site visit presentation, 26 July 2022, slide 12.

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

- 2.14 The turnover of the Jus-Rol Business in the financial year ending 31 May 2021 was approximately £[REDACTED] million with £[REDACTED] million generated in the UK¹⁴ and the remaining coming from the Republic of Ireland. In the last three years, UK sales have [REDACTED]¹⁵ as can be seen in the Figure 2.5 below. [REDACTED].

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

[REDACTED]

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

- 2.15 Figure 2.6 below shows a disaggregated view of trends in Jus-Rol's revenues split by grocery retailers.¹⁶ [REDACTED] in the most recent financial year (2021-22) after [REDACTED] in the previous two years. In this period, the top five retailers accounted for c. [REDACTED]% of sales. The remaining [REDACTED]% amounted to c. £[REDACTED]million of revenues.

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

[REDACTED]

Source: CMA internal analysis of Jus-Rol data.

- 2.16 Figure 2.7 below gives a disaggregated view of gross margins, [REDACTED] in the most recent year, which GMI submits is driven by [REDACTED].¹⁷

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

[REDACTED]

Source: CMA internal analysis of Jus-Rol data.

The Merger

Background

- 2.17 In [REDACTED].¹⁸ [REDACTED]. The formal process to acquire Jus-Rol was initiated [REDACTED].

¹⁴ MN, paragraph 139.

¹⁵ GMI response to the CMA's section 109 Notice (**Phase 2 s.109**) (2), 30 June 2022, Annex 18.4.

¹⁶ CMA analysis based on data in Annex 17.1 of GMI's part 1 response to s109 notice, dated 30 June 2022.

¹⁷ GMI's response to the CMA's s109 notice, 30 June 2022, annex 18.4.

¹⁸ C r lia response to the CMA's section 109 Notice (**Phase 2 s.109**) (2), 28 February 2022, paragraph 2.

2.18 [REDACTED]¹⁹ [REDACTED].

Merger details

2.19 On 24 November 2021,²⁰ GMI and Cérélia entered into a series of agreements for Cérélia to acquire certain assets relating to the (UK) Jus-Rol business for a consideration of USD [REDACTED] million ([REDACTED])²¹ including:

(a) an APA which covers the acquisition of goodwill, trademarks, inventory, business records, deposits and receivables, and contracts exclusively related to the Jus-Rol Business, for a total consideration of USD [REDACTED] million;²² and

(b) a Patent and Know-How Licence under which Cérélia [REDACTED].²³ [REDACTED]. [REDACTED];²⁴

(c) a Transitional Services Agreement (**TSA**) under which General Mills [REDACTED] is providing transitional services to the Jus-Rol Business [REDACTED];²⁵ and

(d) an Equipment Sale Agreement (the **ESA**) under which [REDACTED].²⁶

2.20 The Merger was not conditional on any regulatory clearances and was completed on 31 January 2022.²⁷

Related transaction

2.21 On 24 November 2021, Cérélia SAS and GMI entered into a transaction under which Cérélia SAS agreed to purchase GMI's German dough business for a consideration of c.\$[REDACTED] million,²⁸ which comprises mainly IP assets and retailer contracts relating to the 'Knack & Back' brand (the **German Transaction**). This transaction was approved by the German Bundeskartellamt in April 2022. [REDACTED].²⁹

¹⁹ MN, paragraphs 130 and 131.

²⁰ MN, paragraph 88.

²¹ MN, paragraph 92.

²² MN, paragraphs 3, 90 and 92. Cérélia response to the CMA's section 109 Notice (**Phase 2 s.109**) (1), 4 February 2022, Annex 3-a.

²³ MN, paragraph 89(a). Cérélia response to the CMA's section 109 Notice (**Phase 2 s.109**) (1), 4 February 2022, Annex 3-c.

²⁴ Parties' response to the CMA's fourth s109 notice, 31 March 2022, question 2.

²⁵ Cérélia stated that [REDACTED].

²⁶ MN, paragraph 126 and annex 4.

²⁷ MN, paragraph 6.

²⁸ Cérélia Internal Document, Annex S109.2.11.001 to Phase 2 s.109 (2), 'Germany Asset Purchase Agreement', 24 November 2021.

²⁹ MN, paragraph 126.

Jus-Rol valuation

2.22 In the valuation model provided to the CMA,³⁰ Cérélia valued the combined Jus-Rol and the German dough businesses at c.EUR [REDACTED] million (pre-transaction costs of EUR [REDACTED] million). The model uses a [REDACTED] methodology [REDACTED]. The model [REDACTED]³¹ [REDACTED]. Cérélia has submitted³² [REDACTED].

[REDACTED]

2.23 [REDACTED]³³ [REDACTED].

2.24 [REDACTED]³⁴ [REDACTED]³⁵

Figure 2.8: [REDACTED]

[REDACTED]

Source: [REDACTED]

2.25 [REDACTED].³⁶

2.26 [REDACTED]³⁷ [REDACTED].³⁸

The Parties' rationale for the Merger

Cérélia

2.27 Cérélia submitted that the Merger is motivated by its desire to increase overall market penetration³⁹ and sales in the UK DTB category which at c.47% significantly lags behind many European countries like France (c.85%) and Italy (c.69%).⁴⁰ Cérélia submitted that it wants to capitalise on the opportunity created by the recent increase in home-baking by UK households (e.g. the popularity of the 'Great British Bake Off' TV show has increased interest in home-baking, in part driven by events related to the Covid-19 pandemic).⁴¹

³⁰ Cérélia Internal Document, Annex S109.1.3.001 to Phase 2 s.109 (1), '[REDACTED]', 27 October 2021.

³¹ CUK's part 1 response to s109 notice, 30 June 2022, paragraph 3.2(b).

³² CUK's part 1 response to s109 notice, 30 June 2022, paragraph 3.2(a).

³³ Annex 22b.05 [REDACTED].

³⁴ MN, paragraph 159.

³⁵ Annex 22b.05 [REDACTED].

³⁶ MN, paragraph 159.

³⁷ Annex 1.1 – [REDACTED].

³⁸ MN, paragraph 160.

³⁹ Percentage of households buying a product once per year, Cérélia, main party hearing transcript, page 58.

⁴⁰ Kantar UK market penetration data quoted in MN at paragraph 530.

⁴¹ MN, paragraph 97.

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

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

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

Source: CMA analysis on MN.

- 2.29 Cérélia submitted that it intends to use the Jus-Rol brand as a vehicle for investing in marketing and new product development (**NPD**) initiatives and grow the overall penetration and sales of the DTB category in the UK.⁴² It said that driving further growth in the category would be beneficial not only to Cérélia as a manufacturer but also to grocery retailers and to consumers, who would benefit from a larger range of products.⁴³ Cérélia also submitted that its ownership of a consumer brand would facilitate increased product innovation, because that innovation could be implemented across a product offering to multiple retailers (rather than on a PL by PL basis), thus targeting a larger consumer base.⁴⁴ Cérélia also claimed that in comparable countries with higher market penetration than the UK, there exists a “strong” brand which it considers is driving (category wide) innovation.
- 2.30 In May 2022, Cérélia commissioned a report [REDACTED] authored by the consultancy [REDACTED].⁴⁵ The CMA notes that the report was commissioned relatively recently, and only after the CMA had begun its review of the transaction, but has nonetheless taken the conclusions of the report into account. The [REDACTED] report highlights a lack of effective brand leadership from an end-consumer perspective. Specifically, in respect of Jus-Rol, the report notes:
- ‘[REDACTED]’.
- 2.31 The [REDACTED] Report further identifies [REDACTED]. [REDACTED]. Cérélia has submitted that the above points of differentiation present an opportunity for Jus-Rol to add value to the sector under Cérélia’s ownership.⁴⁶ The CMA considers the extent to which branded products and PL products are differentiated to a material extent in Chapter 7.

⁴² MN, paragraph 99.

⁴³ Cérélia, main party hearing transcript, page 17.

⁴⁴ Cérélia, main party hearing transcript, page 16.

⁴⁵ Annex S109.1.5.001 – [REDACTED]

⁴⁶ Paragraph 5.3 of Part 1 of CUUK’s response dated 07 July 2022 to s109 notice.

Conclusion on Cérélia Deal Rationale

- 2.32 The evidence the CMA has reviewed is in line with the Parties' submissions as to their stated deal rationale. The CMA notes however, that the Parties' transaction rationale is not necessarily determinative of the question of what if any structural change on competition will result from the Merger and the impact the Merger will have on the merging firms' economic incentives.⁴⁷ This question is considered in the subsequent chapters. The question of potential Merger specific efficiencies is also considered in a later chapter.

GMI

- 2.33 From the perspective of GMI, the sale of the Jus-Rol Business forms part of its overall 'Accelerate' strategy to reshape its product portfolio and re-focus on certain designated core product categories and brands.⁴⁸ GMI has said that it wants to focus on five key businesses globally: Cereal, Pet Food, Ice Cream, Snack Bars, and Mexican Food. According to GMI, these categories are expected to lead the company's sales growth and profitability in the future.⁴⁹
- 2.34 GMI submitted that its 'Accelerate' strategy meant that the Jus-Rol brand was a de-prioritised part of the business, not receiving any further significant investment, which was instead directed at brands where GMI felt the best growth opportunities existed. As a result, GMI was looking for an opportunity to better deploy its capital, both human and financial, which led to the Merger.⁵⁰

3. Relevant merger situation

- 3.1 A completed merger must meet the following two criteria, set out in sections 23 and 26 of the Act, to constitute a relevant merger situation (**RMS**):
- (a) two or more enterprises have ceased to be distinct enterprises;
 - (b) one of the following two conditions is satisfied:
 - (i) the value of the turnover in the UK of the enterprise being taken over exceeds £70 million (the turnover test); and

⁴⁷ [Merger Assessment Guidelines \(MAGs\)](#), paragraph 2.26.

⁴⁸ MN, paragraph 100.

⁴⁹ [GMI - General Mills Outlines "Accelerate" Growth Strategy at 2021 CAGNY Conference](#).

⁵⁰ GMI, main party hearing transcript, page 7.

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

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

Enterprises ceasing to be distinct

Enterprises

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

3.4 The Act defines an 'enterprise' as 'the activities, or part of the activities, of a business'. A 'business' is defined as including 'a professional practice and includes any other undertaking which is carried on for gain or reward or which is an undertaking in the course of which goods or services are supplied otherwise than free of charge'.⁵¹

3.5 An 'enterprise' may comprise any number of components, most commonly including some combination of the assets and records needed to carry on certain activities of the business, employees working in the business, and existing contracts and/or goodwill. However, the Act does not require that a business (or part thereof) be of any minimum scale, or include any particular combination of components, in order to constitute an enterprise.⁵²

3.6 The CMA's assessment of whether what is being acquired amounts to an enterprise will depend on the specific facts and circumstances of each case and the industry in question. No one single factor will necessarily be determinative. Rather, the CMA will make an assessment based on the totality of all relevant considerations.⁵³

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

⁵¹ Section 129(1) and (3) of the Act.

⁵² [Mergers: Guidance on the CMA's jurisdiction and procedure \(CMA2\)](#) (CMA2 revised), January 2021, paragraph 4.8).

⁵³ [CMA2](#) (CMA2 revised), January 2021, paragraph 4.10.

assets; (ii) the transfer of business data (including customer databases, lists or other customer relationships; (iii) the transfer of employees; (iv) consideration for the goodwill obtained by the purchaser; and/or (v) the transfer of trademarks, trade names, or domain names.⁵⁴ The CMA will also consider, as an important factor, whether the combination of components results in a degree of economic continuity in the activities of the business being transferred.⁵⁵

- 3.8 Cérélia is a company that operated as a going concern before the Merger with a range of assets and employees, and which contracts with customers to supply goods and services on commercial terms.
- 3.9 The Jus-Rol Business comprises goodwill, trademarks, inventory, business records, deposits and receivables, and contracts exclusively related to the Jus-Rol Business (as supported by the Merger arrangements referred to at paragraph 3.12 below). The Jus-Rol Business does not include any existing employees of GMI.
- 3.10 We consider that the components of the Jus-Rol Business, in particular the material customer contracts and IP rights to the Jus-Rol brand, would allow a degree of economic continuity in the activities of the Jus-Rol Business such that it would allow Cérélia to carry on the business of supplying Jus-Rol branded products to retailers in the UK (notwithstanding the fact that the Jus-Rol Business does not include existing employees of GMI). Accordingly, consistent with CMA guidance, we consider that Cérélia and the Jus-Rol Business is each a 'business' and that, accordingly, each constitutes an 'enterprise' for the purposes of the Act.⁵⁶

Ceasing to be distinct

- 3.11 The concept of 'ceasing to be distinct' is described in section 26 of the Act. This provides that any two enterprises cease to be distinct if they are brought under common ownership or common control.⁵⁷

⁵⁴ CMA2 (CMA2 revised), January 2021, paragraph 4.11.

⁵⁵ CMA2 (CMA2 revised), January 2021, paragraph 4.12.

⁵⁶ The Parties submitted that the Jus-Rol Business constitutes an 'enterprise' for the purposes of section 129 of the Act on the basis that the acquisition of the Jus-Rol Business would allow CUK to carry on the business of supplying Jus-Rol branded products to retailers in the UK (MN, paragraph 134).

⁵⁷ 'Control' is not limited to the acquisition of outright voting control but may include situations falling short of outright voting control. Section 26 of the Act distinguishes three levels of interest (in ascending order): (i) material influence (ii) de facto control, and (iii) a controlling interest (also known as 'de jure', or 'legal' control). Since the circumstances of the present case fall within 'common ownership' we have not considered the issue of 'control' further.

- 3.12 On 24 November 2021, GMI (either directly or indirectly) and Cérélia (either directly or indirectly) entered into a series of agreements for Cérélia to acquire certain assets relating to the Jus-Rol Business.⁵⁸ Cérélia completed its acquisition of the Jus-Rol Business on 31 January 2022, bringing the two enterprises under common ownership.⁵⁹ As a consequence, we are satisfied that both enterprises have ‘ceased to be distinct’ prior to the date on which the reference was made.
- 3.13 We therefore consider that the first limb of the jurisdictional test is met.

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

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

Turnover

- 3.15 The turnover test is satisfied where the value of the turnover in the UK of the enterprise being taken over exceeds £70 million. The Jus-Rol Business did not generate more than £70 million of turnover in the UK in its most recent financial year⁶⁰ and therefore the turnover threshold set out in section 23(1)(b) of the Act is not satisfied.

Share of supply

- 3.16 Under section 23 of the Act, the share of supply test is satisfied if the merged enterprises both either supply or acquire goods or services of a particular description in the UK, and will, after the merger, supply or acquire at least 25% or more of those goods or services in the UK as a whole, or in a substantial part of it. There must be an increment in the share of supply as a result of the merger (although the size of the increment is irrelevant).⁶¹

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

- 3.17 The starting point in the application of the share of supply test is to establish whether both merging parties supply or acquire the same category of goods

⁵⁸ The agreements include (i) an APA which covers the acquisition of goodwill, trademarks, inventory, business records, deposits and receivables, and contracts exclusively related to the Jus-Rol Business; (ii) a Patent and Know-How Licence under which Cérélia [redacted]; and (iii) an ESA under which [redacted].

⁵⁹ MN, paragraph 133.

⁶⁰ MN, paragraph 139.

⁶¹ CMA2, paragraph 4.65.

or services (of any description) in the UK. In other words, there must be a degree of horizontal overlap between the merging parties in the supply or procurement of goods or services (of any description) in the UK.

- 3.18 The CMA has a broad discretion to identify a specific category of goods or services supplied or acquired by the merger parties for the purposes of applying the share of supply test.⁶² The group of goods or services to which the jurisdictional test is applied does not have to correspond with the economic market definition adopted for the CMA's substantive assessment.⁶³ The CMA will have regard to any reasonable description of a set of goods or services to determine whether the share of supply test is met.⁶⁴
- 3.19 The CMA will consider the commercial reality of the merger parties' activities when assessing how goods or services are supplied, focussing on the substance rather than the legal form of arrangements.⁶⁵ Firms can engage in a variety of different business models and the forms of supply which firms may offer in competition with one another can vary significantly.
- 3.20 The test cannot capture mergers where the relationship between the merger parties is purely vertical in nature and where there is no overlap between the merger parties' activities based on any reasonable description of a set of goods or services.⁶⁶ The CMA has previously found that the share of supply test was satisfied where parties were active at the same level of the supply chain, in addition to being vertically related.⁶⁷
- 3.21 In the phase 1 investigation, C  r  lia submitted that the share of supply test is not met as there is no material horizontal overlap between the Parties' activities in the UK and no increment in the Parties' respective shares of supply.⁶⁸ However, the phase 1 decision concluded that the share of supply test was satisfied on the basis of a horizontal overlap between the Parties in the supply of DTB products to grocery retailers in the UK (notwithstanding any vertical relationship that may exist between the Parties). It noted, in particular, that C  r  lia recognised that both Parties are active in the supply of DTB products in the UK.⁶⁹

⁶² Sections 23(5) and 23(8) of the Act and CMA2, paragraph 4.59. See also [Sabre/Farelogix](#) [2021] CAT 11, paragraph 293.

⁶³ CMA2 (January 2021 (as amended on 4 January 2022)), paragraph 4.59(a).

⁶⁴ Section 23(5) of the Act and CMA2, paragraph 4.59.

⁶⁵ See [CMA2](#) (CMA2revised), January 2021, paragraph 4.59.

⁶⁶ CMA2, paragraph 4.59(e).

⁶⁷ CMA Decision: Completed acquisition by Google LLC of Looker Data Sciences, Inc. (13 February 2020).

⁶⁸ MN, paragraphs 136 and 137.

⁶⁹ MN, paragraph 7.

- 3.22 In line with the phase 1 approach, and for the reasons further set out in Chapter 8 of this Report, we consider that both Parties are active in the supply of DTB products to grocery retailers in the UK and there is a horizontal overlap between the Parties in the supply of DTB products to grocery retailers in the UK (in addition to the vertical relationship between the Parties arising from the services provided by CUK to the Jus-Rol Business). We consider that the supply of DTB products to grocery retailers is a reasonable description of a set of goods as it relies on products supplied by the Parties to the same group of customers in the UK. The fact that the Parties' customers are located in the UK means that the Merger has a sufficient UK nexus.
- 3.23 In light of both Parties' activities in the supply of DTB products to grocery retailers to customers located in the UK, we consider that the first condition of the share of supply test is satisfied.

The 25% threshold

- 3.24 The next step of the share of supply test requires the CMA to establish that the merging parties' pre-merger combined share of supply/procurement of goods/services of any description in the UK, or in a substantial part of the UK, is of at least 25% and that the merger leads to an increment in share of supply. The size of the increment is irrelevant.⁷⁰
- 3.25 The Act gives a wide discretion to the CMA to apply whatever measure (eg value, cost, price, quantity, capacity, or number of workers employed), or combination or measures, it considers appropriate to calculate the merging parties' share of supply or procurement and to determine whether the share of supply test is satisfied.⁷¹
- 3.26 Chapter 9 and appendix C provide details of how the CMA has reached its estimates of the shares of supply of the Parties.
- 3.27 On the basis of our estimates (see Chapter 9), the Parties' combined share in the wholesale supply of DTB products to grocery retailers (by value) in the UK is forecasted to be [60-70%] in 2023, with an increment of [30-40%] arising from the Jus-Rol Business' sales of branded products.

⁷⁰ This was illustrated in Tesco/Spar where the OFT considered that the share of supply test was met in circumstances where Tesco acquired a single store on the basis that this store would increase Tesco's share, even though the increase would be very substantially below 0.1%. See also para 4.54 of the Guidance which states that where an enterprise already supplies or acquires 25% of any particular goods or services, the test is satisfied so long as its share is increased as a result of the merger, regardless of the size of the increment.

⁷¹ Section 23(5) of the Act.

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

Conclusion on jurisdiction

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

(a) the enterprises of C er lia and the Jus-Rol Business have ceased to be distinct; and

(b) the share of supply test is met.

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

4. Counterfactual

Introduction

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

4.2 The chapter covers the following:

(a) The CMA's framework for assessing the counterfactual;

(b) Parties' views on the appropriate counterfactual; and

(c) CMA's assessment and views on the counterfactual.

The CMA's framework for assessment of the counterfactual

4.3 Applying the SLC test involves a comparison of the prospects for competition with the merger against the competitive situation without the merger. The latter is called the 'counterfactual'. The counterfactual is not a statutory test but rather an analytical tool used in answering the question of whether the merger gives rise to an SLC.⁷²

⁷² MAGs, paragraph 3.1.

- 4.4 The counterfactual may consist of the prevailing, or pre-merger, conditions of competition, or conditions of competition that involve stronger or weaker⁷³ competition between the merger firms than under the prevailing conditions of competition.⁷⁴ The appropriate counterfactual may increase or reduce the prospects of an SLC finding by the CMA.⁷⁵
- 4.5 The CMA's conclusion on the counterfactual does not seek to ossify the market at a particular point in time. For example, an assessment based on the prevailing conditions of competition might reflect that, absent the merger under review, a merger firm would have continued making investments in improvements, innovations or new products.⁷⁶ Only events that would have happened in the absence of the merger under review—and are not a consequence of it—can be incorporated into the counterfactual.⁷⁷
- 4.6 In determining the counterfactual, the depth of analysis in the CMA's assessment is usually not to the same level as in its competitive assessment. Indeed, in many cases the counterfactual assessment is likely to be brief, although this will vary across cases.⁷⁸ The counterfactual is not intended to be a detailed description of the conditions of competition that would prevail absent the merger. Those conditions are better considered in the competitive assessment.⁷⁹
- 4.7 Establishing the appropriate counterfactual to assess the merger against is an inherently uncertain exercise and evidence relating to future developments absent the merger may be difficult to obtain. Uncertainty about the future will not in itself lead the CMA to assume the pre-merger situation to be the appropriate counterfactual. As part of its assessment, the CMA may consider the ability and incentive (including but not limited to evidence of intention) of the merger firms to pursue alternatives to the merger, which may include reviewing evidence of specific plans where available.⁸⁰

⁷³ We have used both “weak” and “limited” at various points throughout this report as descriptors. We consider these two terms to have equivalent meaning.

⁷⁴ MAGs, paragraph 3.2.

⁷⁵ MAGs, paragraph 3.2.

⁷⁶ MAGs, paragraph 3.3.

⁷⁷ MAGs, paragraph 3.4.

⁷⁸ MAGs, paragraph 3.6.

⁷⁹ MAGs, paragraph 3.7.

⁸⁰ MAGs, paragraph 3.14.

Parties' views on the appropriate counterfactual

- 4.8 [REDACTED]. The Merger was signed on 24 November 2021 and completed on 31 January 2022. Further details on the background and events leading up to the Merger have been covered in Chapter 2.
- 4.9 CUK submitted that the pre-Merger competitive situation would be the most appropriate counterfactual.⁸¹ The pre-Merger situation as summarised by Cérélia highlights underinvestment in the Jus-Rol brand by GMI which resulted in lost brand equity over time. Cérélia submitted that this situation was expected to continue into the future.
- 4.10 Cérélia also submitted that if GMI had not agreed to the Merger with Cérélia, [REDACTED].⁸² [REDACTED].⁸³
- 4.11 GMI submitted that, absent the Merger, in the short to medium term GMI would have [REDACTED].⁸⁴ GMI also submitted that, [REDACTED].⁸⁵

CMA's assessment

- 4.12 A GMI internal document summarises [REDACTED]⁸⁶ [REDACTED].
- 4.13 We consider that while the evidence we have seen suggests that GMI [REDACTED].
- 4.14 Cérélia's contract with GMI for the manufacturing of Jus-Rol products expires in [REDACTED].⁸⁷ GMI submitted that absent the Merger it had several options available which included restarting the contracting process by running a tender to identify "new options available in the market". However, this would have involved allocating resources to the process and would have happened only if GMI had concerns related to Cérélia's quality, service or competitiveness.⁸⁸ However, GMI added that based on its experience with Cérélia, absent the Merger it would most probably have extended the contract rather than allocate resources to running a tender.⁸⁹
- 4.15 The evidence that we have seen suggests that, in the absence of the Merger, GMI would have [REDACTED]. Given the limited evidence suggesting [REDACTED], we consider

⁸¹ MN, paragraph 156.

⁸² MN, paragraph 158.

⁸³ Para 19(b) of Cérélia's response to Questions 10 – 36 (dated 16 Feb 22) of the CMA's s.109 Notice.

⁸⁴ GMI response to Working Papers, paragraph 3.2.

⁸⁵ GMI response to Working Papers, paragraph 3.2.

⁸⁶ As evidenced on slide 3 of Annex 22b.05 [REDACTED]

⁸⁷ Cérélia Internal Document, Annex 12-3 to the Phase 1 s.109 (3), 'Co-Pack Agreement', 17 May 2021, page 2.

⁸⁸ GMI, main party hearing transcript, page 66.

⁸⁹ GMI, main party hearing transcript, page 67.

that the most likely scenario would have been GMI continuing to operate Jus-Rol in line with pre-Merger conditions. The implications of this are dealt with in Chapter 9.

5. Industry background

Introduction

- 5.1 This chapter provides an overview of the DTB products industry in the UK. It covers:
- (a) what DTB products are;
 - (b) an overview of industry participants;
 - (c) other sectors of the DTB market outside the groceries channel; and
 - (d) recent trends in the market.

DTB products

- 5.2 DTB products include ingredient pastry dough (ie shortcrust, puff and filo pastry dough), pizza dough and other RTB dough products (including RTB croissant dough, pain au chocolat dough, cinnamon swirl dough, gingerbread dough and cookie dough).⁹⁰ The value of sales of the DTB products sold by grocery retailers was £ [130-150] million in the UK in 2020, while the volume was c. [40-50] thousand tonnes.⁹¹
- 5.3 DTB products are manufactured by combining ingredients such as flour with a liquid (eg water) and/or fat (butter, olive oil etc) and sometimes with flavouring toppings, and are then sold to customers as a raw product to be baked for final consumption.⁹² They are often sold in supermarkets in the chilled shelves next to the butter, spreads and margarine (**BSM**) category of products.⁹³ A smaller proportion are also available as frozen products, or at ambient temperatures. Figure 5.1 below illustrates the manufacturing process for chilled DTB products.⁹⁴

⁹⁰ MN, paragraph 177.

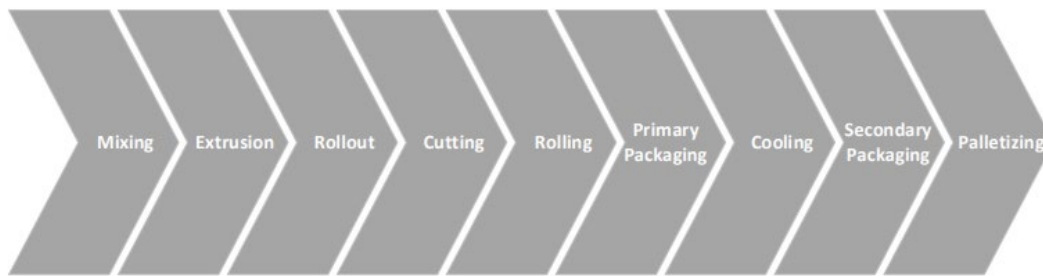
⁹¹ MN, table 8. Cérélia said that the 2021 Kantar chilled data shows that sales fell [5-10]% by value and [5-10]% by volume. Cérélia response to the Annotated Issues Statement and Working Papers, 13 September 2022, annex AIS.04.b, slide 8.

⁹² MN, paragraph 177.

⁹³ MN, paragraph 58.

⁹⁴ MN, paragraph 197.

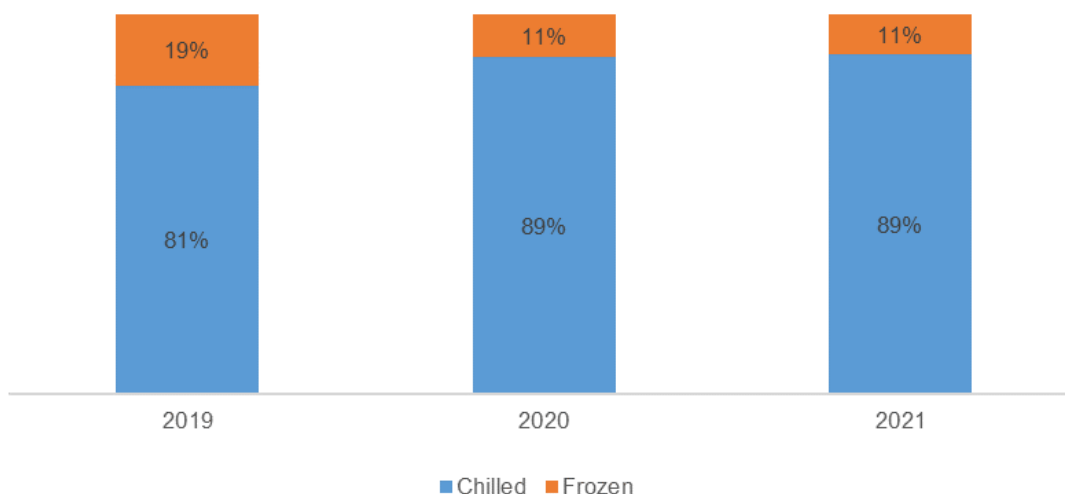
Figure 5.1: Manufacturing process for DTB products



Source: MN, paragraph 197.

5.4 As noted above, the vast majority of DTB products are sold in chilled or frozen form with a very small quantity sold at ambient temperatures.⁹⁵ Based on the data submitted by the Parties and third parties, the CMA has estimated that chilled DTB products accounted for slightly less than 90% of the value of retail sales of all DTB products in the UK in 2021, as shown in Figure 5.2 below.⁹⁶

Figure 5.2: Chilled vs Frozen trends in DTB products



Source: CMA internal analysis of third party revenue data⁹⁷

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

⁹⁵ Kantar data (Annex S109.1.41.002) of CUK's response dated 07 July 2022.

⁹⁶ Annex 9 of CUK phase 1 response to Question 9 of second s109.

⁹⁷ Sales of DTB products sold at ambient temperature are excluded due to being extremely low.

temperature-controlled storage and delivery. These freezing steps are often outsourced to third party service providers.⁹⁸

- 5.6 Pre-Merger, CUK and GMI were both active in the supply of DTB products in the UK.⁹⁹ However, with the exception of a limited number of products, such as filo pastry, vol au vents, pastry shapes (sold predominantly to UK foodservice customers) and canned DTB products, [REDACTED].¹⁰⁰ [REDACTED].¹⁰¹

Manufacturers

- 5.7 Manufacturers of DTB products for the UK market exist both within the UK and in the rest of Europe. Details of the major PL DTB product providers are covered in the Alternative Competitive Constraints section of Chapter 9.
- 5.8 There are other DTB manufacturers supplying DTB products to the foodservice and food manufacturing sectors (see paragraphs 6.12(a) and 6.12(b) respectively) which [REDACTED] capable of manufacturing for the grocery retail DTB market as the manufacturing processes are largely similar (barring packaging).¹⁰² Manufacturers from these adjacent sectors are covered in more detail in the sections on Alternative Competitive Constraints (see paragraph 9.281) and Entry and Expansion (see paragraph 10.52).
- 5.9 C r lia told us that whilst manufacturers do not own or control the rights to the end product, ‘some contract manufacturers (including C r lia) offer their ideas and category insights (for example, by sharing Kantar data), give feedback and collaboratively develop recipes with PL brand owners. Such collaboration between contract manufacturers and PL brand owners is a common feature across grocery categories’.¹⁰³ In contrast, manufacturers are limited to producing branded products strictly in-line with the specifications laid out by brand owners.
- 5.10 In this Final Report we refer to suppliers of branded DTB products or manufacturers who supply DTB products for use in retailers’ PL offering as “DTB suppliers” (**DTB suppliers**).

⁹⁸ MN, paragraphs 198, 203–204 and 243–247.

⁹⁹ MN, paragraph 7.

¹⁰⁰ MN, paragraphs 167 and 179.

¹⁰¹ See paragraph 38 of Appendix C.

¹⁰² MN, paragraphs 249 and 250.

¹⁰³ C r lia response to the Annotated Issues Statement and Working Papers, 12 September 2022, paragraph 2.12.

Brand owners

- 5.11 There are two categories of DTB brands available to the end-consumer. These are general consumer brands and PL consumer DTB brands.
- 5.12 General consumer brands like Jus-Rol are sold to end-consumers from a variety of sales channels like grocery retail stores (Tesco, Sainsbury's, Morrison's etc), local convenience stores and online platforms like Ocado, Amazon etc. The manufacturing of these branded products is carried out either in-house by the brand owners or outsourced to contract manufacturers like Cérélia. Brand owners independently develop recipes, marketing/sales strategies and negotiate wholesale prices with grocery retailers. They also provide additional services to grocery retailers such as supply and demand forecasting, promotional/marketing initiatives, and customer service, along with category management and insights.¹⁰⁴ [REDACTED].¹⁰⁵ Examples of consumer brands other than Jus-Rol include Bells, Picard, The Northern Dough Co., Dorset Pastry, Shire Foods, Theos, Munch!, Pizza Pilgrims, Genius Foods, Doughlicious etc.
- 5.13 PL consumer brands are owned and managed by various grocery retailers like Tesco, Sainsbury's, Morrison's etc. These brands are usually available exclusively within the stores of respective grocery retailers but some of them are also available at local convenience stores and on Amazon. They are manufactured by suppliers like Cérélia and others. Grocery retailers seek input from manufacturers to develop bespoke recipes for the retailers' respective PL brands.¹⁰⁶ The packaging design, retail pricing, brand management and marketing of PL brands are also exclusively carried out by their respective grocery retail owners.

Grocery retailers

- 5.14 All major UK grocery retailers sell DTB products. The top four grocery retailers (Tesco, Sainsbury's, Asda, Morrisons) have a [REDACTED] [70-80]% share of the UK DTB market at the retail level, with Aldi and Lidl accounting for a share around 13%.
- 5.15 Table 5.1 shows the share of DTB sales of grocery retailers by value for 2021, based on chilled Kantar data submitted by Cérélia.

¹⁰⁴ MN, paragraphs 420–424.

¹⁰⁵ GMI main party hearing transcript, page 34.

¹⁰⁶ MN, paragraph 365.

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

<i>Retailer</i>	<i>Share of DTB sales</i>	<i>Share of PL within retailer</i>	<i>Share of branded sales</i>
Tesco	[30-40]%	[40-50]%	[50-60]%
Sainsbury's	[10-20]%	[40-50]%	[60-70]%
Asda	[10-20]%	[60-70]%	[30-40]%
Morrisons	[10-20]%	[30-40]%	[60-70]%
Aldi ¹⁰⁷	[5-10]%	[90-100]%	[0-5]%
Waitrose	[5-10]%	[0-5]%	[90-100]%
Lidl	[5-10]%	[70-80]%	[20-30]%
Co-op	[0-5]%	[80-90]%	[10-20]%
M&S & other	[0-5]%	N/A	N/A
Total	100		

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

- 5.16 As set out above, grocery retailers can procure branded and/or PL DTB products, which they then sell onto end-consumers. The branded and PL products typically sit side-by-side and are found in the dairy aisle of grocery retailers. PL products in the DTB sector are generally a cheaper alternative to the branded products. This pricing dynamic is a typical feature of PL offerings across other product categories.
- 5.17 During festive periods,¹⁰⁸ a variety of brands (including [X]) from within the wider chilled category¹⁰⁹ compete for promotional space at the 'gondola end' of retailers' aisles.

Industry trends/seasonality

- 5.18 Data for household penetration of DTB products in the UK is presented in Table 2.1. Penetration increased in 2020 possibly driven by covid-19 related lockdowns, decreasing slightly in 2021 (still above 2019 levels). Table 5.2 below shows the overall DTB sales for the period 2018-2020¹¹⁰. The significant increase in 2020 sales, both in terms of value and volume confirm the effect of increase in household penetration in 2020.

¹⁰⁷ Aldi has subsequently moved into the fourth position of the largest grocery retailers in the UK. C erelia's email of 29 September 2022 quoting Kantar data.

¹⁰⁸ No PL products other than meat are displayed at the gondola end.

¹⁰⁹ Butter, juices, yoghurt – page 23 of GMI MPH transcript.

¹¹⁰ Up to date Kantar data for 2021 not available.

Table 5.2: DTB sales in value and volume

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

Source: CMA analysis of Kantar data.

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

Figure 5.3: Market trends in DTB products

[REDACTED]

Source: CMA internal analysis of Nielsen market data

- 5.20 GMI's internal documents highlight certain other key trends influencing consumer choices and consequently the downstream sales of DTB products, including:¹¹¹

(a) [REDACTED].

(b) [REDACTED].

(c) [REDACTED].

(d) [REDACTED].

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

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

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

6. Our approach to the competitive assessment

Introduction

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

Features of the sector and our competitive assessment

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

¹¹³ [MAGs](#), paragraph 2.3.

considerations are particularly relevant in this case because there is differentiation between the Parties and their activities across the value chain. Grocery retailers buy DTB products from C er elia in the PL channel and from Jus-Rol in the branded channel (although, for the reasons set out later in this report, we have ultimately found that the Parties compete because there is cross-channel competition for retailers' shelf space). In addition, there is a pre-existing vertical relationship between the Parties which is relevant to the assessment of the competitive dynamics.

Market Definition

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

¹¹⁴ [MAGs](#), paragraph 9.1.

¹¹⁵ [Meta v CMA](#) [2022] CAT 26, paragraph 64(1).

¹¹⁶ See also [MAGs](#), paragraph 9.4.

¹¹⁷ [MAGs](#), paragraph 9.6.

6.11 The Parties have submitted that the Merger is purely vertical in nature and the CMA erred in its phase 1 Decision by analysing the Merger through a horizontal lens.¹¹⁸ The Parties consider that the theory of harm as set out in the phase 1 Decision is in fact an essentially vertical foreclosure theory of harm.¹¹⁹ We address these points in Chapter 8 (see paragraphs 8.4 to 8.24), and in Chapter 9 (see paragraphs 9.141 to 9.143). While we have carefully considered the implications of the pre-existing vertical link between the Parties, we nevertheless consider that the horizontal framework is appropriate to assess any competition concerns potentially arising from the Merger.

Other sectors of the DTB market

6.12 Besides the grocery retailers, as described above, there are two other sectors of the DTB market¹²⁰ through which DTB products are sold to end-consumers in the UK.¹²¹

(a) Foodservice: customers in this Sector comprise caterers who buy DTB products to sell to their end customers, as well as bakeries, restaurants and independent shops which purchase DTB products to produce and bake finished products in-store to serve their customers.

(b) Food manufacturing: customers in this Sector purchase DTB products to manufacture a finished product for sale to consumers (eg round pastry dough as a pastry lid in a pie product or pizza dough for a pizza product). These customers typically buy bespoke products made to specifications which suit their manufacturing process but also purchase 'off the shelf' dough forms, standard sizes of blocks, rolls, sheets, etc.

6.13 Supply to the grocery retailers involves both chilled and frozen DTB products whereas the foodservice and food manufacturing sector primarily involves frozen DTB products in large pack sizes.¹²² Neither Cérélia nor Jus-Rol are active in the supply chain for the supply of DTB products to food manufacturing customers.¹²³ Cérélia does not supply foodservice businesses directly. Its activities in the foodservice sector are limited to manufacturing products for Jus-Rol which is active in both the retail and foodservice sectors.

¹¹⁸ Cérélia initial submission, 1 July 2022, paragraphs 3.1 and 3.3.

¹¹⁹ Cérélia initial submission, 1 July 2022, paragraph 3.6.

¹²⁰ MN, paragraphs 163 and 164.

¹²¹ Cérélia has submitted that there is no meaningful distinction in supplying DTB products to grocery retailers, foodservice or food manufacturing sectors as the manufacturing process is very similar irrespective of the sector.

¹²² MN, paragraph 250(a).

¹²³ MN, paragraph 171.

6.14 The various sectors of the DTB market are considered in more detail in Chapter 8.

Theory of harm

6.15 We assessed whether the Merger may be expected to result in an SLC as a result of horizontal unilateral effects in the wholesale supply of DTB products to grocery retailers in the UK.

6.16 Horizontal unilateral effects can arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged entity profitably to raise prices or degrade non-price aspects of its competitive offering (such as quality, range, service and innovation) on its own and without needing to coordinate with its rivals. Unilateral effects giving rise to an SLC can occur in relation to customers at any level of a supply chain, for example at a wholesale level or retail level (or both) and is not limited to end-consumers.¹²⁴

6.17 The concern under horizontal unilateral effects essentially relates to the elimination of a competitive constraint by removing an alternative to which customers could switch. The CMA's main consideration is whether there are sufficient remaining good alternatives to constrain the merged entity post-merger. Where there are few existing suppliers, the merger firms enjoy a strong position or exert a strong constraint on each other, or the remaining constraints on the merger firms are weak, competition concerns are likely. Furthermore, in markets with a limited likelihood of entry or expansion, any given lessening of competition will give rise to greater competition concerns.¹²⁵

6.18 Through our competitive assessment we consider:

- (a) the nature of competition between suppliers at the wholesale level (in particular between suppliers selling PL products and branded products to retailers);
- (b) the closeness of competition between the Parties;
- (c) the strength of any alternative competitive constraints on the Parties; and
- (d) the nature of any harm arising from the Merger.

¹²⁴ MAGs, paragraph 4.1.

¹²⁵ MAGs, paragraph 4.3.

6.19 In this case, as set out below, we have considered product differentiation and the contractual vertical link between the Parties as part of our Competitive Assessment.

Differentiation and potential asymmetry of constraint

6.20 As part of our assessment, we have considered closeness of competition and the extent to which the Parties' products are differentiated.

6.21 In differentiated markets, horizontal unilateral effects are more likely where the merger firms are close competitors or where their products are close substitutes. The more closely the merger firms compete the greater the likelihood of unilateral effects because the merged entity will recapture a more significant share of the sales lost in response to a price increase (or another worsening in the offering), making the price rise more profitable. The merger firms need not be each other's closest competitors for unilateral effects to arise. It is sufficient that the merger firms compete closely and that the remaining competitive constraints are not sufficient to offset the loss of competition between them resulting from the merger.¹²⁶

6.22 In line with our guidance, we note that closeness of competition is a relative concept and that even where there is a degree of differentiation between the merger firms' products, they may nevertheless still be close competitors, for example if rivals' products are more differentiated or if there are few rivals. The CMA will consider the overall closeness of competition between the merger firms in the context of the other constraints that would remain post-merger. For example, where the CMA finds evidence that competition mainly takes place among few firms, any two would normally be sufficiently close competitors that the elimination of competition between them would raise competition concerns, subject to evidence to the contrary. The smaller the number of significant players, the stronger the prima facie expectation that any two firms are close competitors. In such a scenario, the CMA will require persuasive evidence that the merger firms are not close competitors in order to allay any competition concerns.¹²⁷

6.23 Differentiation is relevant in this case because while the final DTB end-product is similar whether it is a Jus-Rol product or a DTB product which a retailer has purchased from C er lia to sell under its PL brand, there are meaningful differences in the services that the Parties offer to grocery retailers, flowing from their different business models. Accordingly, we consider the extent of

¹²⁶ MAGs, paragraph 4.8.

¹²⁷ MAGs, paragraph 4.10.

differentiation between the offerings of the Parties when assessing closeness of competition.

- 6.24 The constraints exerted by the merger firms on each other may be asymmetric, such that one merger firm may be a close competitive constraint on the other, without the reverse being the case.¹²⁸ We have considered the relative strength of the existing constraint of both C er lia on Jus-Rol and Jus-Rol on C er lia and have taken into account potential asymmetries where relevant to our assessment. In particular, we have considered potential asymmetry of incentive to degrade price, quality, range and service (**PQRS**) post-merger. We have also assessed whether there may be a different incentive for the Merged Entity to divert sales towards the Jus-Rol channel, relative to the PL channel, and the incentives to degrade both channels.
- 6.25 The potential presence of such an asymmetry does not preclude the finding of an SLC – the SLC may arise from the loss of a one-side constraint.¹²⁹ This is because consumers can still be harmed by the loss of competitive pressure resulting from the merger, even if this loss impacts significantly more on one firm than the other, provided the loss of competition overall is considered to be substantial.¹³⁰

Consideration of vertical relationships within the supply chain

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

¹²⁸ **MAGs**, paragraph 4.11. For example, large supermarkets may be a good alternative for customers of convenience stores, while convenience stores may be a poor alternative for customers of large supermarkets.

¹²⁹ See, for example, *JD Sports Fashion plc / Footasylum plc merger inquiry*, CMA Decision of 5 November 2021; *J Sainsbury PLC / Asda Group Ltd merger inquiry* CMA Decision of 25 April 2019; Anticipated acquisition by Asda Stores Limited of Netto Foodstores Limited, OFT decision of 23 September 2010; and *Completed acquisition by Wm Morrison Supermarkets plc of 30 stores from Co-operative Group Limited*, Case ME/4132/09, OFT decision of 10 July 2009.

¹³⁰ *JD Sports Fashion plc / Footasylum plc merger inquiry*, CMA Decision of 5 November 2021 at paragraph 11.7.

between C r lia and GMI has a limited duration and may be renegotiated or terminated.

Countervailing factors

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

Evidence gathered

- 6.30 The CMA does not have a prescriptive list of evidence that it will take into account in its assessments. Instead, the CMA will in each case undertake reasonable evidence gathering, consider the relevant available evidence and decide the weight to place on that evidence in its decision-making.¹³¹ The CMA also has a wide margin of appreciation in its use of evidence. Given the case-specific nature of merger investigations, the CMA may apply different analytical methodologies and approaches in different cases. In assessing the evidence, the CMA is not required to make precise predictions about the future such as whether any particular innovations will take place or whether a specific price rise or particular degrading of service quality will take place after a merger.¹³²
- 6.31 We have gathered and taken account of a large range of evidence as part of our assessment. We have based our decision on a range of evidence including shares of supply, capacity, internal documents, and views and other

¹³¹ MAGs, paragraph 2.19.

¹³² MAGs, paragraph 2.21.

information submitted by the Parties and third parties including customers (retailers) and competitors.

- 6.32 We have had regard to tendering evidence. Given the channel-specific nature of the competitive process for the supply of DTB products to grocery retailers, we would not expect to see the Parties competing against each other head-to-head in tenders. We note that absence of interaction in tender data does not necessarily mean that the Parties are not material competitors to each other.
- 6.33 In considering the weight to be placed on each piece of evidence, we have taken into account factors such as the nature of competition in the market, the robustness of the data/methodology adopted, the nature of the party providing the information or view (and what their incentives in relation to the outcome of our investigation might be), the age of the information or document, context, author and recipient of a document, and the purpose for which it was produced. We have not relied on any one piece of evidence to inform our decision; rather, we have assessed all of the evidence together and in the round, including giving due regard to the extent that our view on the interpretation of a piece of evidence is corroborated by other evidence available to us.
- 6.34 In its response to the Provisional Findings Report, GMI stated that it is a '*relatively neutral player*' in the proceedings (with the implication that its evidence should be given greater weight than that ordinarily given to uncorroborated evidence from a merging party with interest in the outcome of the proceedings), and that the CMA has on multiple occasions ignored its evidence.¹³³ The CMA disagrees with the statement that it has ignored GMI's evidence and submissions, which are noted and considered in detail throughout this Final Report. With regard to GMI's submission that it is a '*relatively neutral player*' in the proceedings, we note that pursuant to the APA governing the transaction, GMI has a binding contractual obligation to provide C  r  lia with '[~~]~~' and separately to '[~~]~~'.¹³⁴ We note that this is not consistent with GMI's submission that it is a 'neutral' player in the CMA's merger review process.
- 6.35 We set out below the different pieces of evidence we have reviewed in this case. A detailed assessment of the evidence is provided in the remaining chapters of our Final Report.

¹³³ [GMI's response to the provisional findings](#), 28 November 2022, paragraph 4.5.

¹³⁴ APA, paragraphs 7.1-7.3.

- (a) *Submissions from the Parties*: We considered evidence from the Parties submitted during the phase 1 inquiry, responses to our informal and formal requests for information and documents during phase 2, site visits, the Main Party Hearings and other phase 2 submissions. As in any inquiry, in using views of the Parties, we have given due regard to a range of factors, including the extent to which the views were corroborated by other evidence available to us.
- (b) *Share of supply estimates*: We have considered estimated wholesale supply shares of DTB products to grocery retailers in the UK and how these have changed over time. In this case, shares of supply provide a useful indication of suppliers' position in the market. We have considered the relative stability of shares of supply over time. We consider the implications of our shares of supply estimates alongside other evidence to understand the Parties' individual and combined significance in the supply of DTB products to retailers.¹³⁵
- (c) *Tender data*: We recognise that we do not, in this case, have evidence showing head-to-head competition between the Parties in tenders or bids for contracts. We have taken into account this feature of the market in our assessment. However, as set out below, we have found that tender data in this case does not capture the competitive interactions between the Parties because the tendering phase is channel-specific: PL suppliers compete with other PL suppliers to be selected as the retailer's PL supplier for all of or a range of that retailer's PL DTB products, whereas by contrast we are not aware of branded suppliers competing in tenders with other branded suppliers. However, as set out in paragraphs 7.30 to 7.35, there is also competition across the PL and branded channels as the selected DTB suppliers seek to secure shelf space and sell greater volumes of their products.
- (d) *Internal documents*:
- (i) We gathered several thousand internal documents.¹³⁶ We assessed documents produced at senior leadership and sales manager levels. We gathered evidence relating to which suppliers the Parties: (i) price benchmark against; (ii) monitor; and (iii) appear to respond to.¹³⁷ We carried out targeted searches in internal documents. The Parties made

¹³⁵ See Chapter 9.

¹³⁶ At Phase 2, we received 7,794 documents from C erelia and 2,780 documents from GMI.

¹³⁷ We considered (i) any regularly produced monitoring and benchmarking documents; (ii) any other regularly reporting documents; (iii) any one-off competitor and benchmarking documents; and (iv) any one-off documents where competitors are discussed.

a number of submissions in their response to the Provisional Findings on the internal documentary evidence and the CMA's interpretation of that evidence. In order to assess the weight that should be put on those submissions, and to ensure that any relevant evidence was properly taken into account in its assessment of the competitive interaction between the Parties, the CMA considered it appropriate to conduct further analysis of the internal documents that it had on file after the Provisional Findings.

- (ii) We have considered how the Parties monitor each other, and the expressions of competition between the Parties that arise in internal correspondence or in engagement with customers. Where we draw inferences from internal documents, we have sought the Parties' views and/or the views of the third party involved. We have considered whether the internal documents paint a picture that is consistent with the Parties' representations and whether they are consistent with what third parties have told us.
- (iii) We consider that in this case internal documents do not provide complete insight into competitive conditions, for two key reasons. First, the nature of the competitive process means the Parties may be expected to focus on how best to serve their retailer customers relative to any alternative suppliers within their respective channels (PL and branded). Second, third parties told us that ongoing negotiations between suppliers and retailers often take place orally (so there may, in practice, be limited contemporaneous written records of these negotiations). In addition, the amount of documentary evidence from GMI may be limited as a result of [REDACTED] and its short document retention period.¹³⁸ Notwithstanding these limitations, we found a material number of documents that we consider are relevant to our assessment of the impact of the Merger on competition. Moreover, we note that the absence of internal documents pointing to, for example, direct competitive interactions between the merger firms may not be probative where merger firms do not normally generate documents in the ordinary course of business and have document retention policies whereby documents are regularly deleted.¹³⁹

¹³⁸ GMI has a [REDACTED] retention policy.

¹³⁹ [MAGs](#), paragraph 2,29(d).

- (iv) We have sought supporting documentary evidence from third parties. Where this is not available, we have taken this into account when evaluating the evidence, including the reasons given (such as the oral or unspoken nature of the dealings).
- (e) *Evidence from third parties:* Our guidance explains that we may take into account the views of competitors and informed third parties. We recognise that some third parties have an interest in the outcome of our inquiry. We have given due regard to a range of factors including: the incentives of the party giving that view; the extent to which the party had knowledge that was relevant to the subject areas being explored as part of our assessment and the extent to which the view was corroborated by other evidence available to us. For the reasons set out above and in particular the fact that internal documents do not provide complete insight into competitive conditions, we have found that third-party evidence is a particularly important source of evidence in this investigation. We set out further our approach to third-party evidence gathering.
- (i) We have undertaken customer research with all large retailer customers of the Parties.
- (ii) Our evidence gathering focused on qualitative evidence, including holding calls and hearings where possible, supplemented by email questions including to follow up on issues of central importance to this inquiry. Over the course of phase 1 and phase 2, we received a significant number of written questionnaire responses including from large retailers and competitors. In phase 1 we received 20 responses while we received 29 responses in phase 2.¹⁴⁰ We followed up with key third parties and in particular we sent additional questions to the large retailers collectively representing a very large proportion of demand in the overall DTB market seeking further evidence in relation to pre-Merger competition between the Parties and how the Merger will materially impact future negotiations, including to test certain submissions the Parties had made to us. In phase 2 we held calls with seven retailers [X] and three competitors [X] mainly to further assess the nature of the competitive interactions between the Parties and the extent of any constraints for existing competitors. In addition,

¹⁴⁰ The responses were split fairly evenly between retailers and competitors.

we received two third-party responses to our Provisional Findings Report.¹⁴¹

- (iii) We have used the results of this research to draw qualitative conclusions where appropriate, alongside other evidence. Similarly, we have taken into account the role a third party plays commercially when evaluating their evidence, including retailers' product range and the scale of their operations in the DTB market.
- (iv) We also gathered evidence and views on the nature of competition and the competitive conditions in the relevant markets from a range of suppliers.

Submissions on procedural issues

- 6.36 During the course of the inquiry, we received submissions regarding the conduct of the inquiry and the CMA's approach to the evidence. These submissions were made both on an *ad hoc* basis in correspondence by email and letter (addressed to various recipients at the CMA, including the Inquiry Chair and CEO) and in formal submissions.
- 6.37 The CMA's merger control procedures are designed to enable it to fulfil its duty to promote competition for the benefit of consumers in an efficient manner, while ensuring that merging parties' rights to due process are fully respected.¹⁴² As set out in well-established case law, it is for the CMA, in a merger inquiry, to evaluate what evidence is necessary to collect in order "*to acquaint itself with the relevant information to enable it to answer each statutory question*" and – in doing so – it has a wide margin of appreciation.¹⁴³
- 6.38 While the CMA is required to ensure that the merging parties' rights of due process are fully respected, it may not be able to accommodate all requests made by merging parties during the course of proceedings (eg for additional opportunities to engage with CMA staff or decision makers or for access to underlying evidence), particularly where this would not be consistent with the statutory framework within which the CMA operates or would undermine the efficient conduct of the CMA's investigation.
- 6.39 In this section of the report, we have, in the interests of transparency, summarised the submissions that the Parties have raised on the conduct of

¹⁴¹ [Eccelso's response to the provisional findings](#), 18 November 2022. [The Retail Mind's response to the provisional findings](#), 9 December 2022.

¹⁴² [CMA2](#) (CMA2 Revised), January 2021, paragraph 1.1.

¹⁴³ [BAA Limited v Competition Commission](#), [2012] CAT 3, paragraph 20(3).

our investigation and set out our position on the matters raised. For matters raised with the CMA in correspondence, responses were also provided promptly to the Parties during the course of our proceedings.

Cérélia's requests for disclosure of certain documents

- 6.40 On a number of occasions (both prior to and following the publication of the Provisional Findings¹⁴⁴), Cérélia wrote to the CMA requesting disclosure of certain underlying documents and evidence relied on by the CMA in reaching its views. Cérélia further submitted that the Provisional Findings contained insufficient information to enable it to make informed submissions, as is its right as part of a fair procedure.
- 6.41 Among other things, Cérélia requested disclosure of questionnaires sent to UK grocery retailers; the questionnaire sent to a supplier of PL DTB products after the publication of Provisional Findings; the responses of certain third parties to the CMA's questionnaires and other requests for information; and the transcripts of oral hearings with third parties.¹⁴⁵
- 6.42 The CMA responded to Cérélia's repeated disclosure requests (many of which covered the same underlying documents) in detailed correspondence, explaining its position with reference to the CMA's guidance and relevant case law.
- 6.43 Prior to publication of the Provisional Findings, Cérélia was provided with certain documents summarising the CMA's emerging thinking at that stage of the inquiry, including an issues statement, an annotated issues statement, eight separate working papers and a list of relevant internal documents. These documents contained sufficient information to enable the Parties to understand the CMA's emerging thinking and prepare for the main party hearing.¹⁴⁶ It was therefore not necessary or appropriate to disclose the underlying evidence requested by Cérélia at this stage of the process.
- 6.44 As set out in the CMA's guidance, the Provisional Findings are the main means the CMA uses to satisfy its duty to consult under section 104 of the Act.¹⁴⁷ In the recent *Meta* judgment, the Competition Appeal Tribunal (**CAT**) confirmed in relation to this duty that: '*a person affected by a decision only*

¹⁴⁴ Letters from Cérélia to the CMA dated 10 August 2022; 6 October 2022; 10 November 2022; 21 November 2022; 6 December 2022, 21 December 2022 and 17 January 2023.

¹⁴⁵ Letters from Cérélia to the CMA dated 10 August 2022; 6 October 2022; 10 November 2022; 21 November 2022; 6 December 2022, 21 December 2022 and 17 January 2023.

¹⁴⁶ [CMA2](#) (CMA2 Revised), January 2021, paragraphs 11.30–11.31 and 12.5.

¹⁴⁷ [CMA2](#) (CMA2 Revised), January 2021, paragraph 12.13.

*needs to be informed of the gist of the case he or she has to answer. Gist is acutely context sensitive, and a decision-maker will have a wide margin of appreciation in deciding what the gist of a decision is.*¹⁴⁸ The Provisional Findings clearly fulfilled this function. In particular, the Provisional Findings described the evidence relied upon by the CMA in sufficient detail for the Parties to understand this evidence and the CMA's assessment. In line with the *Meta* judgment, the CMA also provided Cérélia's external advisers with access to the full unredacted version of the Provisional Findings in a confidentiality ring.

- 6.45 There is no general right of 'access to file' in merger inquiries.¹⁴⁹ The case law makes clear that disclosure of underlying evidence is not necessary to disclose the 'gist' of the case and is undesirable and inappropriate due to the detrimental impact this would have on the process. In the *Eurotunnel* judgment, the CAT confirmed that the CMA is not obliged to disclose '*all inculpatory and exculpatory material including transcripts or summaries of evidence provided to it by third parties*'.¹⁵⁰ The CAT further noted in the *Tobii* judgment that: '*It is for the CMA to conduct its own investigation within a relatively short time frame and to gather, analyse and pull together the evidence. It is not desirable or appropriate for the CMA to provide the underlying evidence to the affected party, so as to enable the affected party itself to carry out its own analysis and review of the underlying evidence. To require disclosure to such a level would have a detrimental impact on the process. It may lead to persons becoming less willing to co-operate, as well as delays in a field where decisions on mergers should be made as quickly as reasonably practicable.*'¹⁵¹
- 6.46 In addition, some of the documents requested by Cérélia contained 'specified information', disclosure of which is subject to the restrictions in Part 9 of the Act. The CMA therefore also had regard to the considerations in section 244 of the Act when determining the appropriateness of disclosure of these documents. The CMA considered that it was not necessary to disclose these documents to provide Cérélia with the gist of the case (or for any other reason). Certain of these documents contained third-party confidential information whose disclosure might significantly harm the legitimate business interests of those third parties. Applying the balancing exercise under section

¹⁴⁸ [Meta Platforms Inc v CMA \[2022\] CAT 26](#), paragraph 148(4).

¹⁴⁹ [CMA2](#) (CMA2 Revised), January 2021, paragraph 13.9.

¹⁵⁰ [Groupe Eurotunnel v Competition Commission \[2013\] CAT 30](#), paragraph 221.

¹⁵¹ [Tobii AB v CMA \[2020\] CAT 1](#), paragraph 146.

244 of the Act, the CMA considered that disclosure of these documents would not be appropriate for this reason also.

- 6.47 We are therefore satisfied that Cérélia has been provided with sufficient information such that it had all the necessary information required to understand fully the gist of the CMA's case and the evidence relied on by the CMA.

Cérélia's submission on access to the CMA staff team

- 6.48 In a letter dated 6 October 2022,¹⁵² Cérélia raised concerns about a lack of engagement by the CMA staff team in dialogue with the Parties and their external advisers. In particular, Cérélia noted that the CMA had rejected its requests for a call with the CMA staff team to discuss certain aspects of the case on four separate occasions in late July and August 2022.
- 6.49 A CMA phase 2 investigation is a formal process designed to enable the inquiry group to determine the statutory questions within the statutory time limit. The conduct of the inquiry is determined by the inquiry group, with the key stages set out in the published administrative timetable. The CMA gathers relevant information and evidence throughout the process, including from the merging parties. Merging parties are invited to make written submissions at certain key stages in the process.¹⁵³ There are also various opportunities for the Parties to make oral representations, including at the site visit, the main party hearing and, where the CMA has provisionally found an SLC, the response hearing. As noted in the guidance, the process is not well suited to accommodating unsolicited submissions outside these key stages of the inquiry.¹⁵⁴
- 6.50 In this case, the Parties were afforded the opportunity to make submissions in accordance with the CMA's standard process, as set out in the guidance. At phase 2, this included their initial phase 2 submission, their response to the issues statement, their response to the annotated issues statement and working papers, their response to the Provisional Findings and their response to a supplementary evidence paper. They also made oral representations at the site visit, the main party hearing and the response hearing. This is in addition to the Parties' extensive written responses to the CMA's requests for information throughout the process.

¹⁵² Letter from Cérélia to the CMA, dated 6 October 2022.

¹⁵³ [CMA2](#) (CMA2 Revised), January 2021, paragraph 11.12.

¹⁵⁴ [CMA2](#) (CMA2 Revised), January 2021, paragraph 11.13.

- 6.51 The CMA carefully considered each of Cérélia's pre-hearing offers/requests for an 'economist call' and provided a reasoned response to Cérélia explaining why the CMA did not wish to accept the request at that time,¹⁵⁵ in particular explaining that the CMA did not consider that such a call would assist the inquiry at that stage of the process. While, as noted above, such a step is not envisaged in the guidance, the CMA nevertheless continued to consider the merits of holding such a call and subsequently agreed to hold the 'economist call' with Cérélia's advisers on 20 September 2022. The submissions made on this call were taken into account when preparing the Provisional Findings.
- 6.52 Given that such a call does not typically form part of a CMA merger investigation (and was not otherwise necessary in the circumstances of this case in ensuring that the Parties' rights of due process were respected), there has been no procedural unfairness with respect to the CMA's engagement with the Parties (and, in particular, the timing of the 'economist call' requested by Cérélia).

Cérélia's submissions on the extension to the statutory timetable

- 6.53 On 5 October 2022, the CMA published a notice extending the statutory deadline for the inquiry by 8 weeks (pursuant to section 39(3) of the Act). In taking that decision, the CMA had regard to the complexity of the Inquiry, the need to consider the issues raised by the Parties and third parties, including the broad scope of the submissions made by the Parties in response to the Annotated Issues Statement and Working Papers and the need to reach a fully reasoned final decision in the statutory timeframe.
- 6.54 In correspondence with the CMA, Cérélia contended that the extension to the statutory timetable was not justified. Cérélia submitted that, in its view, this was not a complex case and the submissions received in the case were simple in nature and did not merit an extension.¹⁵⁶ We provided a detailed response to Cérélia on 13 October 2022.¹⁵⁷
- 6.55 In this case, we received a substantial volume of representations from the Parties in response to the Annotated Issues Statement and Working Papers.¹⁵⁸ We also note that Cérélia requested, on repeated occasions, that

¹⁵⁵ Emails from the CMA to Cérélia dated 22 July 2022; 8 August 2022; 20 August 2022, 31 August 2022; and 12 September 2022.

¹⁵⁶ Letter from Cérélia to the CMA dated 6 October 2022.

¹⁵⁷ Letter from the CMA to Cérélia dated 13 October 2022.

¹⁵⁸ This included two additional Frontier Economics Analysis models regarding entry and expansion and the quantitative analysis of input foreclosure, both of which were received on 13 September 2022 (following a request from Cérélia for an extension to the original deadline).

we should critically appraise the evidence on our file from third parties, to address what C  r  lia perceived as a risk that certain ambiguities in that evidence could have been misconstrued.

- 6.56 In the circumstances, we considered that it was necessary and appropriate for us to extend the statutory deadline to enable us to consider the evidence and the representations carefully, including by engaging with further evidence-gathering with third parties (which, as noted, also have due process rights).
- 6.57 When conducting a merger inquiry, the CMA is subject to a duty of expedition under section 103 of the Act. In accordance with this duty, the CMA seeks to ensure that all of its merger inquiries are completed as expeditiously as possible, while also ensuring that our information-gathering and analysis is sufficiently robust and that procedural rights of all parties (including third parties) are respected. The CMA continued to have regard to its duty of expedition throughout the process, although it was necessary to make use of the full 8-week extension to ensure that the CMA discharged its other duties under the Act, including reaching a robust and fully reasoned decision on the statutory questions.

C  r  lia's submissions on the timing of the CMA's information-gathering after publication of the Provisional Findings

- 6.58 In line with its standard practice, the CMA continued to collect and analyse evidence relevant to the investigation of the Merger after publication of the Provisional Findings. In doing so, we took account of the Parties' submissions in their responses to the Provisional Findings, and at the response hearings, in relation to the evidentiary basis for the provisional SLC decision. In particular, the CMA: (a) held oral hearings with three UK grocery retailers [REDACTED] which procure DTB products; (b) held oral hearings with a supplier of PL DTB products to UK grocery retailers [REDACTED]; and (c) sent a questionnaire to another supplier of PL DTB products to UK grocery retailers [REDACTED]. The CMA also reviewed further internal documents provided by the Parties (as discussed in the section below).
- 6.59 The CMA did not consider that this additional evidence changed our provisional finding that the Merger has resulted in an SLC in the wholesale supply of DTB products to grocery retailers in the UK. The CMA also did not consider that this additional evidence materially changed the reasoning that supported that provisional finding. However, in the interests of transparency, and to ensure that the CMA had the benefit of the Parties' submissions on this additional evidence, the CMA sent the Parties a short consultation paper summarising the additional evidence gathered after the publication of the Provisional Findings on 19 December 2022 (the **Consultation Paper**). The

Parties were invited to make any representations on the additional evidence by 3 January 2023.

- 6.60 In its response to the Consultation Paper, Cérélia submitted that the need to gather additional evidence after the publication of Provisional Findings was a consequence of deficiencies in the CMA's earlier investigation. In particular, Cérélia submitted that:
- (a) The CMA's investigation phase must take place prior to the Provisional Findings given that the latter is the primary means by which the CMA satisfies its statutory duty to consult.¹⁵⁹
 - (b) Any known inconsistencies and inaccuracies in third-party evidence should be addressed (including through the put-back process) and the evidence on the file thoroughly reviewed prior to public consultation on the Provisional Findings.¹⁶⁰
 - (c) The additional evidence described in the Consultation Paper did not result from new facts or evidence that have come to light as a result of the consultation through the Provisional Findings but relates largely to evidence already on the CMA's file before the Provisional Findings, which the CMA neglected properly to investigate in a timely fashion. In particular, Cérélia submitted that: (i) the additional evidence provided by two retailers [redacted] elaborates upon evidence they had given prior to the Provisional Findings and, in Cérélia's view, there was no new development that necessitated the gathering of additional evidence; (ii) the additional evidence provided by one other retailer [redacted] relates to a market development [redacted] that was brought to the CMA's attention before the publication of Provisional Findings and should have been addressed in the Provisional Findings; (iii) the additional evidence provided by one supplier [redacted] corrects factual errors in the Provisional Findings that arose as a consequence of inadequate interrogation and consideration of that original evidence by the CMA; and (iv) the additional internal documents cited in the Consultation Paper were provided to the CMA in July 2022 and should have been identified prior to the Provisional Findings.
- 6.61 The fact that the CMA continued to gather evidence in the case following publication of the Provisional Findings does not reveal any procedural defect in the CMA's investigation. Merger investigations are an iterative process in which evidence is gathered as necessary throughout the process to enable

¹⁵⁹Cérélia Response to the Consultation Paper, paragraph 5.2.

¹⁶⁰Cérélia Response to the Consultation Paper, paragraph 5.2.

the CMA to determine the statutory questions. The CMA's Guidance is clear that '*information-gathering takes place throughout the inquiry*'¹⁶¹ and it is not uncommon for the CMA to continue to gather evidence relevant to its substantive assessment following the publication of provisional findings.

- 6.62 As noted above, the CMA is required '*to acquaint itself with the relevant information to enable it to answer each statutory question*' and – in doing so – it has a wide margin of appreciation.¹⁶² In the circumstances of this case, the CMA considered it appropriate to conduct targeted additional evidence-gathering and analysis following publication of the Provisional Findings. It is entirely proper for the CMA to have ensured that it had the necessary evidence properly to assess the theory of harm under consideration, taking into account the Parties' submissions in their responses to the Provisional Findings and at the response hearings.
- 6.63 Both [X] and [X] are large retailers whose views are important for this investigation. While [X] had provided written evidence before the publication of the Provisional Findings, we considered it appropriate to hold an oral hearing with this retailer mainly to further explore its previous submissions on the nature of the competitive interactions between the Parties and the extent of any constraints from existing competitors. The oral hearing with [X] allowed us to clarify pre-Provisional Findings evidence on the existing competition between the Parties.
- 6.64 In respect of the third retailer [X], the relevant market development [X] was only brought to the CMA's attention by Cérélia on 26 October 2022, shortly before publication of the Provisional Findings. There was insufficient time to verify and seek further information on this development, and to assess the extent to which this might impact the CMA's provisional findings on the degree of the competitive constraint imposed by [X], ahead of Provisional Findings. The CMA therefore considered it appropriate to follow up on this market development after publication of the Provisional Findings.¹⁶³
- 6.65 The CMA accepts that the additional evidence from [X] clarifies certain factual points arising from [X] evidence as set out in the Provisional Findings. This is wholly consistent with the purpose of the CMA's process of continuing its evidence-gathering following the provisional findings, which are specifically intended to enable the merging parties and third parties to make representations to the CMA on its analysis before the CMA reaches its final

¹⁶¹ CMA2 (CMA2 Revised), January 2021, paragraph 10.9.

¹⁶² BAA Limited v Competition Commission, [2012] CAT 3, paragraph 20(3).

¹⁶³ The CAT's judgment in JD Sports Fashion Plc v CMA suggests that a CMA decision not to make further enquiries may be justified by reference to the statutory timeline (paragraph 154).

decision. The CMA engaged with [§] prior to the publication of the Provisional Findings and the need for further clarification was not apparent on the face of the evidence provided. As such, the CMA strongly disagrees with the suggestion that the clarifications arose as a consequence of inadequate interrogation or consideration of the evidence on the CMA's file. In any case, the CMA explained the clarification to the Parties in the Consultation Paper and provided them with an opportunity to comment on this revised factual position. The CMA has taken into account the Parties' submissions on this issue in this Final Report.

Cérélia's submission on the scope of the CMA's information-gathering following publication of the Provisional Findings

- 6.66 Cérélia submitted that the CMA 'cherry-picked' the retailers and suppliers from which it gathered further evidence following publication of the Provisional Findings, demonstrating confirmation bias. In particular, Cérélia submitted that:
- (a) The additional evidence-gathering exercise should rationally address the totality of the relevant evidence rather than focus on bolstering what the CMA recognises to be particularly weak parts of its existing case.¹⁶⁴
 - (b) Neither of the two retailers [§] whose evidence Cérélia alleges the CMA placed particular weight on in the Provisional Findings in identifying the SLC was approached to provide further evidence as to '*the nature of the competitive interactions between the Parties and the extent of any constraints from existing competitors*'.¹⁶⁵
 - (c) The failure to gather additional evidence from one retailer [§] is a significant omission because that retailer gave evidence in the Remedies Working Paper (**RWP**) that, in its view, [§] which results in a material alteration to the retailer's position on the Merger.¹⁶⁶
 - (d) The failure to approach one other smaller retailer [§] for further evidence is another significant omission as this retailer, [§], carries a branded and PL DTB offer and the relevant competitive dynamics for this retailer [§] are the same as those for other retailers.¹⁶⁷

¹⁶⁴ Cérélia Response to the Consultation Paper, paragraph 5.7.

¹⁶⁵ Cérélia Response to the Consultation Paper, paragraph 5.7(a).

¹⁶⁶ Cérélia Response to the Consultation Paper, paragraph 5.7(b).

¹⁶⁷ Cérélia Response to the Consultation Paper, paragraph 5.7(c).

- (e) The CMA did not adjust any of its reasoning or conclusions to take account of the evidence provided by one retailer [redacted], albeit the CMA acknowledged that this retailer's evidence is inconsistent and the CMA intends to afford less weight to this evidence.¹⁶⁸

6.67 As noted above, it is for the CMA to evaluate what evidence is necessary to answer each of the statutory questions and, in so doing, it has a wide margin of appreciation. Contrary to Cérélia's submission that the CMA's third-party engagement post-Provisional Findings results in undue selectivity and confirmation bias, the CMA notes that:

- (a) The CMA focused on collecting additional third party-evidence that was likely to enhance our understanding of the key issues under consideration (including in light of the Parties' submissions). Accordingly, we sought further clarification primarily from major UK grocery retailers and suppliers of DTB products for which we considered the evidence on file warranted further elaboration.
- (b) The CMA did not solely seek further information from third parties whose evidence was supportive of the CMA's theory of harm. This was not a relevant consideration when identifying the particular third parties for further evidence-gathering. In relation to the retailers, the CMA sought further evidence from one retailer whose initial evidence was supportive of the theory of harm [redacted] and two whose evidence was not in line with the theory of harm in the Provisional Findings [redacted]. Moreover, with regard to the evidence from key competitors, the CMA was careful to test what it had previously understood about the limitations of their significance as competitive constraints (e.g., the extent of [redacted] capacity constraints and the extent to which [redacted] affected its credibility as an alternative provider to major UK grocery retailers).
- (c) The CMA does not accept Cérélia's submission that the fact that the CMA did not gather additional evidence from two other grocery retailers [redacted] was a significant omission. Rather, the CMA considered that the evidence from those retailers was clear and did not require further elaboration.
- (d) Contrary to Cérélia's submission, the CMA considers that the evidence given by one retailer [redacted] in response to the RWP is consistent with that retailer's previously stated concerns about the likely merger effect and the theory of harm articulated in the Provisional Findings. We note in particular that in suggesting this remedy [redacted] emphasised that it '*could*

¹⁶⁸ Cérélia Response to the Consultation Paper, paragraph 5.7(d).

prevent the merged entity from using its stronger market position to overinflate its costs relative to its input costs and ultimately drive unjustified cost price increases for branded pastry’, re-emphasising the likely merger effect it had previously articulated.

- 6.68 Finally, the CMA does not accept that it failed to investigate the reason for the apparent inconsistency in the [X] evidence. Beyond seeking to test the evidence provided and identify any apparent inconsistencies, the CMA cannot control the nature of the responses it receives from third parties. Instead, the CMA must assess the probity of that evidence as provided. It is unclear to the CMA in what respect the Parties submit that its reasoning or conclusions should be adjusted in light of this evidence, particularly given its lower weight. As explained throughout the Final Report, the CMA considers that its reasoning and conclusions are adequately supported by the available evidence.

C r lia’s submissions on the timing of the CMA’s post-Provisional Findings internal documents review process

- 6.69 C r lia submitted that the additional internal documents cited in the Consultation Paper were provided to the CMA in July 2022 and that there is no reason the CMA could not have identified them prior to the Provisional Findings. C r lia submitted that the fact that these documents were not identified at an earlier stage is evidence of the inadequacy of the CMA’s process.¹⁶⁹
- 6.70 In its merger investigations, the CMA typically requests large volumes of documents from merging parties. As set out in our guidance, there is no prescriptive list of the documents that the CMA will take into account in making our assessments. In each case, the CMA will consider the relevant available evidence and decide the weight to place on that evidence in its decision-making.¹⁷⁰
- 6.71 The CMA would not typically (nor is it required to) conduct a review of all documents submitted by the merging parties. Practically, such a review would not be possible given the limited time available for the CMA to conduct its formal investigation in accordance with the statutory deadlines. The CMA will instead prioritise its review of sub-sets of those documents, for example by reviewing certain types of documents, documents prepared or received by certain individuals or documents that contain identified key words. Parties are

¹⁶⁹ C r lia Response to the Consultation Paper, paragraph 5.3(d).

¹⁷⁰ MAGs, paragraph 2.19.

typically required to upload internal documents to the CMA's document review platform in order to enable technology-assisted reviews.

- 6.72 There is no specific point in time during an investigation by which the CMA's review of the internal documentary evidence needs to be completed. Rather, this is an iterative process and the CMA will continue to analyse evidence relevant to an inquiry in the period after the publication of our provisional findings in light of the submissions made by the merging parties and third parties.
- 6.73 In this case, the Parties made a number of submissions in their response to the Provisional Findings on the internal documentary evidence and the CMA's interpretation of that evidence. These submissions included that *'of the "several thousand" internal documents the CMA gathered from the Parties, the CMA has identified no evidence that the implicit competition tension was understood by the Parties or otherwise existed'*.¹⁷¹ In order to assess the weight that should be put on this submission, and to ensure that any relevant evidence was properly taken into account in its assessment of the competitive interaction between the Parties, the CMA considered it appropriate to conduct further analysis of the internal documents that it had on file.
- 6.74 The Consultation Paper identified 14 additional internal documents that were relevant to certain aspects of the competitive assessment which the CMA intended to rely upon in this Final Report. These internal documents, along with an indication of their relevance to the competitive assessment of the Merger, were summarised in the Consultation Paper. The Parties had an opportunity to make representations on this additional evidence, which the CMA has taken into account in this Final Report.

Cérélia's submissions on procedural issues regarding the supplementary evidence consultation process

- 6.75 Cérélia submitted that the consultation that led to the Consultation Paper was inadequate. Cérélia submitted that a lawful consultation provides consultees (including third parties) with adequate notice of the CMA's provisional views. Cérélia submitted that where the provisional views have changed materially and the CMA re-consults, the CMA is bound to inform consultees of that fact and the CMA has failed to do so.¹⁷² Cérélia further submitted that the evidence contained in the Consultation Paper must logically form part of the gist of the CMA's case on which a full consultation is mandated. However,

¹⁷¹ [Cérélia Response to the Provisional Findings](#), paragraph 2.14(c).

¹⁷² [Cérélia Response to the Consultation Paper](#), paragraph 5.4.

C r lia alleged that the CMA had already decided (without considering the Parties' responses) that the additional evidence changes neither its provisional SLC nor the remedies it is seeking.

- 6.76 Under section 104 of the Act, the CMA has a duty to consult where it proposes to make a relevant decision that is likely to be adverse to the interests of the merger parties. As set out in our guidance, and consistent with settled precedent, the Provisional Findings are the main means by which the CMA fulfils this duty in relation to its competitive assessment.¹⁷³ In the context of remedies, the CMA discharges its duty to consult by issuing a RWP to the merger parties, which contains a detailed assessment of the different remedy options and sets out the provisional decision on remedies.¹⁷⁴
- 6.77 It may be appropriate for the CMA to issue updated provisional findings where 'the CMA changes its provisional decisions on the statutory questions (or, exceptionally, where the 'gist' of the CMA's case fundamentally evolves) as a result of evidence received following publication of its provisional findings'. In such circumstances, 'it may be appropriate for the CMA to publish on its website, or otherwise disclose to the merger parties and relevant third parties, a description of its reasons for changing its provisional decision in order to provide parties with an opportunity to comment prior to publication of the final report'.¹⁷⁵
- 6.78 The additional evidence collated and identified after the publication of Provisional Findings in this case did not meet that threshold. It did not alter our provisional decisions on the statutory questions set out in the Provisional Findings Report, nor did it result in a fundamental evolution of the gist of the CMA's case. The CMA clearly explained this in the Consultation Paper: '*We do not currently consider that this additional evidence changes our provisional finding that the Merger has resulted or would result in an SLC in the wholesale supply of DTB products to grocery retailers in the UK. We also do not consider that this additional evidence materially changes the reasoning that supports that provisional finding.*' As such, there was no need to revise the Provisional Findings report or conduct a further consultation on any revised findings.
- 6.79 However, the CMA's views on all aspects of the substantive assessment (including those to which the additional evidence relates) remained provisional at this stage of the process. The Consultation Paper made clear that: '*no final*

¹⁷³ CMA2 (CMA2 Revised), January 2021, paragraphs 12.12-12.13 and 13.4.

¹⁷⁴ CMA2 (CMA2 Revised), January 2021, paragraph 13.18.

¹⁷⁵ CMA2 (CMA2 Revised), January 2021, paragraph 13.21.

decision on the SLC has yet been taken and we are continuing to consider the submissions made by the Parties in response to the Provisional Findings, along with all of the other evidence available to the CMA. The CMA took into account the Parties' representations on the additional evidence prior to making its decision on the statutory questions. The CMA's views on these submissions are set out in the relevant sections of this Final Report.

C r lia's submission that the CMA has prejudged the outcome of the inquiry

6.80 In response to the Consultation Paper, C r lia further submitted that the CMA has prejudged the outcome of the inquiry and the Consultation Paper is a meaningless exercise. In particular, C r lia submitted that:

- (a) The position set out in the Consultation Paper, that the additional evidence does not change either its provisional SLC or the remedies, suggested that CMA had already decided (without considering the Parties' responses) on the outcome of the inquiry and the Consultation Paper appears to be a meaningless exercise.¹⁷⁶
- (b) By denying the Parties the opportunity to comment on the Consultation Paper prior to responding to the proposed remedies, it is clear that the CMA had no intention of changing its view on the SLC and, consequently, the remedies.¹⁷⁷
- (c) Given the extended statutory deadline of 24 January 2023, the Parties' response to the Consultation paper on 3 January 2023 cannot substantively be taken into account in the Group's assessment of either the SLC or the remedies as the CMA's internal decision-making timetable simply does not allow for this.¹⁷⁸
- (d) If the CMA does remain open to the possibility of changing its provisional SLC finding after considering the Parties' response to the Consultation Paper, the CMA violates C r lia's right to a fair procedure by refusing to afford C r lia the opportunity to respond to the additional evidence before responding to the RWP.¹⁷⁹

6.81 The Consultation Paper was provided to the Parties on 19 December 2022 and the Parties were afforded an opportunity to respond by 9am on Tuesday 3 January 2023 *"in order for the Group to have an opportunity to take these*

¹⁷⁶ C r lia Response to the Consultation Paper, paragraph 5.9.

¹⁷⁷ C r lia Response to the Consultation Paper, paragraph 5.9(a).

¹⁷⁸ C r lia Response to the Consultation Paper, paragraph 5.9(b).

¹⁷⁹ C r lia Response to the Consultation Paper, paragraph 5.11.

*representations into account, alongside all the other evidence gathered by the CMA, in reaching its final decision*¹⁸⁰. As noted above, the Consultation Paper explicitly confirmed that “*no final decision on the SLC [had] yet been taken*”.¹⁸¹

- 6.82 The CMA was therefore clear that no SLC decision had been made at the time of issuing the Consultation Paper. While the CMA stated its provisional view that the additional evidence contained in the Consultation Paper did not change its previous provisional SLC finding, the CMA was clear that this was subject to the Parties’ submissions.
- 6.83 The inquiry group’s final review phase involved the review of the Provisional Findings in light of representations received from the Parties, including those submitted in response to the Consultation Paper. The inquiry group did not decide any of the statutory questions (including the SLC question) until they had the opportunity to review and consider the Parties’ submissions. The inquiry group remained open to the possibility of changing their provisional finding.
- 6.84 The CMA does not accept that its conclusion was pre-determined either in substance or in practice. The inquiry group promptly discussed the Parties’ submissions at a Group Meeting held the day after receipt. The inquiry group carefully considered the Parties’ submissions to the Consultation Paper and reached a final decision in respect of the SLC on 10 January 2023.
- 6.85 The CMA also does not accept C  r  lia’s submission that the CMA’s refusal to allow the Parties to comment on the Consultation Paper prior to responding to the proposed remedies show that the CMA had no intention of changing its view on the SLC and, consequently, the remedies.¹⁸²
- 6.86 Due to the strict timelines of a phase 2 investigation, there is not enough time in the inquiry process to resolve the SLC question before engaging with merging parties on remedies. As such, our standard approach, as explained in our Guidance, is to consult on *possible* remedies through the RWP, while the Group continues to consider whether the merger gives rise to an SLC.¹⁸³ As the Remedies Guidance explains: ‘*Where the Inquiry Group reaches a provisional finding of an SLC, at the same time as publishing its provisional finding (or as soon as practicable thereafter), the CMA will consult on*

¹⁸⁰ Consultation Paper, paragraph 8.

¹⁸¹ Consultation Paper, paragraph 9.

¹⁸² This issue was raised by C  r  lia in its Response to the Consultation Paper dated 3 January 2023.

¹⁸³ [Merger Remedies Guidance](#), paragraph 4.64.

possible remedies to address the SLC (emphasis added).¹⁸⁴ The Remedies Guidance further explains that: *‘Following consultation on the RWP and any further discussions and meetings with parties that the CMA considers necessary, the CMA will take its final decision on **both the competition issues and any remedies**’*¹⁸⁵ (emphasis added).

- 6.87 The issuing of the Consultation Paper did not require a departure from the CMA’s standard practice in this respect. As noted above, the CMA did not consider that the additional evidence altered the provisional decisions on the statutory questions set out in the Provisional Findings Report, nor did it result in a fundamental evolution of the gist of the CMA’s case. As such, the Consultation Paper had no impact on the possible remedies on which the CMA was consulting in the RWP.
- 6.88 In these circumstances, we were satisfied that C er elia’s rights of due process did not require an extension of the deadline to respond to the RWP to allow C er elia to respond first to the Consultation Paper.

7. Features of the sector and our competitive framework

Introduction

- 7.1 As set out in the CMA’s guidance, the CMA will, in its merger assessments, develop a general understanding of the competitive process, including of the competitive parameters that are most important to the process of competition in the relevant industry.¹⁸⁶ The CMA is not, however, required to separately assess the expected impact of a merger on each parameter of competition in order to identify an SLC.¹⁸⁷
- 7.2 We have considered evidence on various aspects of competition in order to understand how competition in the supply of DTB products to grocery retailers works.
- 7.3 In this section, we consider the following:
- (a) The role of consumer brands and PL products in the DTB retail sector.
 - (b) How grocery retailers decide which DTB products to stock and how much.

¹⁸⁴ [Merger Remedies Guidance](#), paragraph 4.56.

¹⁸⁵ [Merger Remedies Guidance](#), paragraph 4.65.

¹⁸⁶ [MAGs](#), paragraph 2.3.

¹⁸⁷ [MAGs](#), paragraph 2.22.

- (c) How grocery retailers choose and agree terms with their DTB supplier(s).
- (d) What grocery retailers look for in a DTB supplier.
- (e) The extent to which retailers multi-source.
- (f) How easy it is for grocery retailers to switch suppliers.
- (g) The relationship between competition for DTB products at the retail level and at the wholesale level.

Branded and PL DTB products

- 7.4 Grocery retailers may stock both branded and PL products across much of their product range.¹⁸⁸ Branded products are sold under the brand name of the suppliers that sell them to retailers and are usually sold by multiple different retailers. PL products¹⁸⁹ (also known as ‘own brand’ or ‘own label’ products) are products sold exclusively by a given retailer with their own packaging and branding. Throughout this report we use the terms ‘PL channel’ and ‘branded channel’ to refer to these different product groups.
- 7.5 The general prominence of PL products sold by UK grocery retailers has increased over time. The PL share of all products sold by grocery retailers in the UK was estimated to be c. 51% in 2013, growing to c. 60% in 2021.¹⁹⁰ Some commentators have suggested that PL products, which are typically sold at a lower price point than their branded equivalents, are currently becoming more popular among consumers in the UK due to rising costs of living.¹⁹¹ A number of grocery retailers that operate a primarily PL model, such as Aldi and Lidl, are also growing their presence within the UK market. For DTB products, PL is expected to make up 54% of the products sold by UK retailers in 2023, with 46% branded. The PL share of DTB products has increased from 46% since 2018.¹⁹²

¹⁸⁸ The CC’s Groceries market investigation (2008) noted that ‘The sale of own-label products as a share of total grocery sales has increased substantially overall since their widespread introduction in the 1960s’, para 9.75. Since the CC’s report was published, the UK grocery market has evolved, with a number of new players emerging. Notably, Aldi and Lidl, who are primarily focused their own PL products, have become important players.

¹⁸⁹ Retailers also sometimes sell white label products. For PL products, the retailer has some control over the product specifications, whereas with white label goods, the manufacturer has full control over the product specifications and the retailer merely applies their branding.

¹⁹⁰ See [Statista](#), ‘PL share of total grocery retail sales volume in the United Kingdom (UK) from 2013 to 2021’, accessed by the CMA on 29 September 2022.

¹⁹¹ See [Reuters](#), ‘PL ousting big brands as cost of living crisis grows’, accessed by the CMA on 29 September 2022.

¹⁹² CMA analysis based on the Parties’ data (C erelia response to the CMA’s section 109 Notice (phase 2 s.109) (5), 22 August 2022, question 3).

7.6 For DTB products specifically, most of the largest retailers in the UK stock both PL and branded DTB products. As a result, at least [70-80]% of DTB products bought in the UK grocery sector are sold by retailers that sell both types of products.¹⁹³ [X], which accounts for [5-10]% of the retail supply of DTB products, stocks only PL, and [X], which accounts for [5-10]% of the retail supply of DTB products, stocks only branded DTB products. [X], which accounts for [5-10%] of the retail supply of DTB products, [X]. [X], which accounts for [0-5%] of the retail supply of DTB products, has only recently (in April 2022) started selling branded products.¹⁹⁴

Grocery retailers' purchasing decisions

7.7 Retailers told the CMA that their decisions whether to stock PL DTB products, branded DTB products, or both, and how much of these products to stock, are driven by a number of commercial factors.

7.8 Grocery retailers' purchasing decisions are informed by what their customers (end-consumers) want to buy. For example, one retailer [X] commented that 'our start place [for ranging decisions] is coming from a position of: how do we best serve the needs of our customers'¹⁹⁵ and another [X] that 'our decisions on which products we sell in which stores are customer and category led'.¹⁹⁶ Grocery retailers are responsive to the demand preferences of their end-consumers based on the quantities of DTB products being bought at the retail level. Retailers respond to these retail demand preferences by purchasing more or less of the DTB products at the wholesale level. This is corroborated by third party evidence. For example, a buyer from [X] commented that '[if] there is more volume [ie demand from consumers] on one line, you would buy more of it as a result of that'.¹⁹⁷

7.9 As a result, the CMA is of the view that competition at the wholesale level is linked to the competitive dynamics at the retail level. That is, the demand for DTB products at the retail level significantly influences the amount that the grocery retailers purchase at the wholesale level (i.e. it is a 'derived demand').¹⁹⁸

¹⁹³ CMA analysis based on the Parties' data (C r lia response to the CMA's section 109 Notice (phase 2 s.109) (2) 14 August 2022, question 5). 15 responses to the CMA's customer questionnaire, questions 2 and 4.

¹⁹⁴ 15 responses to the CMA's phase 2 customer questionnaire, questions 2 and 4. [X].

¹⁹⁵ Transcript of a call with [X], [X] 2022, page 4, lines 14-15.

¹⁹⁶ [X] response to the CMA phase 2 customer questionnaire, [X] 2022.

¹⁹⁷ Transcript of a call with [X], [X] 2022, page 7, line 5.

¹⁹⁸ We note that this is the case irrespective of the fact that the Parties' function and interactions with grocery retailers differ due to the differences we have described below in the PL and branded procurement process.

- 7.10 However, retailers' decisions about which DTB products to stock and the volume that they purchase are also informed by broader commercial and strategic considerations including: (i) the shelf space available for DTB products; (ii) how profitable selling a product is for the retailer given the retail margin it is able to achieve; (iii) the retailer's desire to provide their end-consumers with choice; and (iv) the importance they place on innovation/NPD and marketing campaigns which may help to generate interest and growth in the DTB category and better meet the anticipated needs of their end-consumers.
- 7.11 For example, the large retailers (ie the traditional "Big Four" grocery retailers Tesco, Sainsbury's, Asda and Morrisons) generally choose to stock both branded and PL DTB products to give end-consumers more choice. These retailers explained that PL DTB products typically offer a cheaper alternative and act as an entry point to the category, whereas branded DTB products typically offer a wider range of products at a higher price point.¹⁹⁹ In reference to its decision to stock PL and branded DTB products, another retailer [redacted] told us that they 'want to ensure that [their] range offers customers a choice of products at appropriate and reasonable price points'.²⁰⁰
- 7.12 Some retailers, including Aldi, Lidl and M&S, have a preference for stocking PL products over branded ones. One of them [redacted] told us that this is to avoid cross-over between PL and branded products in order to drive efficiencies.²⁰¹ Others, including Amazon, Ocado, Waitrose, Nisa, Booker and Booths, only sell branded DTB products. However, we note that there is some fluidity to the stocking decisions of these retailers with [redacted] deciding to add branded DTB products alongside its PL range when it was unable to source a PL product that met its requirements for certain product lines.²⁰² In addition, [redacted] sometimes sells branded products as limited time 'specials' alongside its PL products.
- 7.13 Retailers that stock both PL and branded DTB products will not necessarily do so across their full range of products and regularly change the amount of product they purchase across each of the channels over time, as detailed in paragraphs 7.30 to 7.34 below. A retailer may even stop stocking a PL or branded DTB product entirely if the product is selling poorly or otherwise not meeting the retailer's commercial requirements – the CMA has found

¹⁹⁹ Response to CMA phase 2 customer questionnaire from [redacted], [redacted] 2022. Response to CMA phase 2 customer questionnaire from [redacted], [redacted] 2022. Response to CMA phase 2 customer questionnaire from [redacted], [redacted] 2022. Response to CMA phase 2 customer questionnaire from [redacted], [redacted] 2022.

²⁰⁰ Written submission from [redacted], [redacted] 2022, paragraph 6c.

²⁰¹ Note of a call with [redacted], [redacted] 2022, paragraph 8.

²⁰² Response to CMA phase 2 customer questionnaire from [redacted], 22 July 2022, questions 8 and 21.

evidence of such ‘delisting’ events for certain underperforming stock keeping units (SKUs).²⁰³ Besides the products’ ability to meet the needs of their end-customers and their commercial interests, most retailers that stock both PL and branded DTB products indicated they did not have a particular preference for one channel over the other.²⁰⁴

Supply process

- 7.14 In this section we consider how grocery retailers select and interact with DTB product suppliers, including how this differs across the PL and branded product channels.
- 7.15 We set out in more detail how the activities of the Parties compare across the value chain in Chapter 9. We focus here on the interaction between grocery retailers and their suppliers.
- 7.16 In the UK DTB retail market, there are distinct sets of suppliers to retailers in the PL and branded channels, with the exception of [REDACTED], which has a branded offering and will also be supplying DTB products in the PL channel to a large retailer [REDACTED] from [REDACTED].²⁰⁵
- 7.17 The Parties supply different channels, with retailers purchasing PL DTB products from C erelia, and purchasing branded DTB products from Jus-Rol.²⁰⁶ As explained in Chapter 2, however, C erelia is Jus-Rol’s contract manufacturer and so it manufactures DTB products for both channels.
- 7.18 Grocery retailers have consistently told us that, when they run tenders, these are specific to a particular channel (ie. PL or branded). In particular, once they have decided whether they wish to sell PL products, branded products or both, they then seek suppliers separately within the chosen channel(s).
- 7.19 In the following subsections, we describe how grocery retailers generally procure DTB products for their PL channel, and how the process for branded DTB products compares. While each grocery retailer may follow a slightly different process, here we outline the general approach common to most retailers.

²⁰³ Email from [REDACTED].

²⁰⁴ 12 responses to the CMA’s phase 2 customer questionnaire, question 26.

²⁰⁵ 15 responses to the CMA phase 2 customer questionnaire, questions 2 and 4. 11 responses to CMA phase 2 competitor questionnaire, questions 2 and 5.

²⁰⁶ As explained in Chapter 9 (paragraphs 9.29–9.30), C erelia has [REDACTED].

PL supply process

- 7.20 Cérélia told us that negotiation of pricing and terms for PL DTB products [REDACTED]. Cérélia told us that to the extent it is aware, [REDACTED], and this was corroborated by third party evidence.²⁰⁷ Cérélia told us that other retailers [REDACTED]. Instead, they [REDACTED].²⁰⁸
- 7.21 We found that grocery retailers will typically enter into a supply agreement with their DTB supplier(s) which governs the relationship between the supplier and the retailer. The supply agreement typically covers wholesale price, product specification (including the recipe), supply frequency, agreements on planned promotions, and review mechanisms, though not supply volumes.²⁰⁹ Wholesale prices are therefore, to an extent, fixed until there is a further renegotiation and change to the supply agreement, with the volume of products ordered fluctuating subject to the quantity demanded by the retailer at the prevailing price. Orders are placed by retailers on a rolling basis based on short-term forecasts provided by retailers [REDACTED].²¹⁰ Each order placed by the retailer, once accepted by the supplier, constitutes a distinct contractual agreement whereby each party is bound by certain terms.²¹¹
- 7.22 Supply agreements typically have no fixed term and can be terminated at any point by giving reasonable notice in accordance with the Groceries Supply Code of Practice (**GSCOP**) regime.²¹² Two thirds (six out of nine) of retailers submitted that they review the terms of their agreement on an annual basis.²¹³ If the review is unsatisfactory, or if the retailer or the supplier is unhappy with their agreement at any other point, they may choose to renegotiate the supply agreement. This can happen through a tender process or a bilateral (re)negotiation of the terms of the supply agreement – we set out the key elements of each of these processes below.
- 7.23 As noted above, some retailers will simply conduct bilateral negotiations with their supplier if the terms of the existing agreement do not meet the needs of either party and will reserve tender processes for instances where they wish to launch new products, replace their supplier for existing products or where they are unable to reach an agreed outcome as part of a renegotiation with

²⁰⁷ 9 responses to the CMA's customer questionnaire, question 9.

²⁰⁸ MN, paragraph 317.

²⁰⁹ 9 responses to the CMA's customer questionnaire, question 9.

²¹⁰ We note that retailers may also provide non-binding forecasts for a longer period of time. MN, paragraph 382c.

²¹¹ 9 responses to the CMA's customer questionnaire, question 9.

²¹² This is often interpreted to be [REDACTED] however this is not fixed, and reasonable notice will depend on the individual circumstances of each case. MN, paragraph 54.

²¹³ 9 responses to the CMA's customer questionnaire, question 9.

their existing supplier.²¹⁴ Other retailers will conduct tenders on a fixed basis (eg every year) in order to ensure they are getting the best deal from their supplier.

Tender process

- 7.24 Where a tender does take place, the grocery retailer will typically create a product brief with the specifications of the product(s)²¹⁵ it requires and then run a tender process where the bids of different PL suppliers are compared.²¹⁶ The outcome of this tender process is the selection of the preferred PL supplier.²¹⁷
- 7.25 The tendering process typically involves the following steps:
- (a) The product brief setting out the scope of the tender and an invite to tender is sent to suppliers. This could include details like technical requirements, product specifications, forecasts and target costs.
 - (b) Generally, there are several rounds of submissions where the supplier submits a proposal (including samples as required), and the grocery retailer gives feedback on product quality to the suppliers and requests changes.
 - (c) Before awarding the agreement, suppliers' sites may be audited, including an assessment of the suppliers' capacity.²¹⁸
- 7.26 Retailers typically have a high degree of involvement in the specifications of PL products. A significant part of this involvement consists of collaborating with the PL supplier on recipe development.

Bilateral renegotiations

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

²¹⁴ MN, paragraph 317. Response to the CMA customer questionnaire from [REDACTED], [REDACTED] 2022. Response to the CMA customer questionnaire from [REDACTED], [REDACTED] 2022. Response to the CMA customer questionnaire from [REDACTED], [REDACTED] 2022.

²¹⁵ C  r  lia response to the CMA's section 109 Notice (**phase 2 s.109**) 1, 14 July 2022, question 46.

²¹⁶ 10 responses to the CMA's customer questionnaire, question 22.

²¹⁷ C  r  lia response to the CMA's section 109 Notice (**phase 2 s.109**) 1, 14 July 2022, question 46.

²¹⁸ Response to the CMA customer questionnaire from [REDACTED], [REDACTED] 2022, question 14. Response to the CMA customer questionnaire from [REDACTED], [REDACTED] 2022, question 13.

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

- (b) Changes in price proposed by the supplier, for example to reflect changes in input costs;
- (c) Changes or issues with the quality of the product; or
- (d) NPD initiated by either the grocery retailer or, more occasionally, the supplier.²¹⁹

Branded supply process

- 7.28 The supply process for branded DTB products is similar to the process for PL DTB products but is generally less complex. This is due to the fact that for branded DTB products, recipe and product development is entirely carried out by the supplier (the brand owner) with little to no involvement by the grocery retailer.²²⁰ In addition, we have not seen evidence of tender processes being used for branded supply. We understand that this is due to the limited supplier options in the branded channel, which we consider in detail in Chapter 9 (see paragraphs 9.268 to 9.280).
- 7.29 Instead, renegotiations between the grocery retailer and the branded DTB product supplier occur approximately on an annual basis, and the contracts retailers have with their branded DTB suppliers are often rolled over from year to year with little or no negotiation.²²¹ In addition to the factors retailers discuss with PL suppliers (ie range, price, product quality and product development), discussions with branded suppliers will cover [redacted].²²²

Cross channel competition

- 7.30 As noted in Paragraph 7.6, at least [70-80]% of DTB products supplied in the UK are sold by grocery retailers that provide both PL and branded DTB products. Retailers have told us that they have a finite amount of shelf space for DTB products and they have to decide how much will be allocated to the PL and branded channels across the product range.²²³

²¹⁹ C er lia response to the CMA's request for information (**Phase 1 RFI**) (1), 21 March 2022, question 46.

²²⁰ Response to the CMA questionnaire from [redacted], [redacted] 2022, question 13.

²²¹ GMI response to the CMA's section 109 Notice (**phase 1 s.109**) (2), 28 February 2022, question 7.

²²² GMI response to the CMA's section 109 Notice (**phase 1 s.109**) (2), 28 February 2022, question 7.

²²³ As explained in paragraph 7.6, most of the largest retailers in the UK stock both PL and branded DTB products but some retailers choose to stock only PL or only branded DTB products.

- 7.31 For example, one retailer [REDACTED] told us that it has a determined space for this area (DTB products) so if there is a more competitive price on PL, it might expand its (PL) range and take out branded products or vice versa. It also told us that if it saw a cost-price increase on a product that made it uncompetitive it would look to remove it and increase another product.²²⁴
- 7.32 Another retailer [REDACTED] submitted that it [REDACTED] and that [REDACTED]. It said that [REDACTED].²²⁵
- 7.33 As set out in Chapter 9, these views are corroborated by evidence from other third parties and the Parties' internal documents which show that PL and branded DTB products are typically close substitutes which compete for shelf space. For example, a GMI '[REDACTED]' document indicates that there is existing competition for shelf space between branded and PL, stating that there is '[REDACTED]'.²²⁶ A GMI presentation assesses Jus-Rol Sheets relative to PL. On the factors influencing Jus-Rol Sheets, the presentation [REDACTED].²²⁷
- 7.34 As such there is an ongoing process by which retailers select their optimal volume mix²²⁸ of PL and branded products (based on the offerings of suppliers) to best serve their end-consumers and their commercial interests. We refer to this mechanism as 'rebalancing' or 'flexing' between PL and branded products.²²⁹
- 7.35 DTB suppliers will consider the impact of their offering across PQRS on expected volumes which in turn drive profits. The supplier is therefore incentivised to provide the retailer with a good deal because if it does not (e.g. if it raises its price (too much) or fails to develop new products etc), the retailer may (i) switch to another supplier for that channel or (ii) subsequently allocate more shelf space to the other channel.²³⁰ For example, during a tender or renegotiation of a PL supplier's offering to a retailer, the supplier is constrained not only by any risk that it will be replaced by an alternative PL supplier but also by the prospect that, if it remains the selected PL supplier, it may lose sales to the branded channel. As a result, there is competition between DTB suppliers not only within the PL and branded channels but also across the channels.

²²⁴ Transcript of a call with [REDACTED], [REDACTED] 2022, page 7, lines 16 to 21.

²²⁵ Transcript of a call with [REDACTED], [REDACTED] 2022, page 9-10.

²²⁶ [REDACTED] page 4.

²²⁷ [REDACTED] page 18.

²²⁸ We consider the terms 'volume mix' and 'shelf space' can be used interchangeably in this context on the basis that more shelf space is typically allocated to better selling products.

²²⁹ Where the Parties are the suppliers to a retailer, this entails the retailer switching its purchases of Jus-Rol's branded product to their PL product supplied by C er lia in the PL channel, or vice versa.

²³⁰ Or at the extreme delist their product(s) and decide to only stock product(s) via the other channel.

- 7.36 As established in our Guidance, the CMA views competition as a process of rivalry between firms seeking to win customers' business over time by offering them a better deal.²³¹ The competitive tension between DTB suppliers (whether within or across the channels) therefore incentivises them to cut price, increase output, improve quality, enhance efficiency, or introduce new and better products. The supply process outlined above illustrates that there are periodic opportunities for suppliers to improve their offering for the terms included in supply agreements (e.g. price and quality at that point in time), but efforts by suppliers to more generally boost their efficiency, enhance the quality of their products and innovate to introduce new and better products constitute an ongoing process which drives better outcomes for customers over time.
- 7.37 We note that cross-channel competition is likely to be more important for at least [70-80]% of the market where retailers typically stock both PL and branded DTB products.²³² As set out in paragraph 7.12, some other retailers (which comprise a minority of the overall market) adopt a business model that involves typically stocking only PL or branded DTB products. These retailers are therefore unlikely to benefit through the rebalancing mechanism described above. A retailer's business model is typically driven by its position in the market and the needs of its targeted end-consumers. The choice whether to stock just PL, just branded or both across their full DTB offering is therefore less likely to be affected by changes in pricing or quality that might occur as a result of the Merger. This is consistent with the fact that retailers' choices are typically not informed by running tender processes that include both PL and branded suppliers as outlined above.²³³ ²³⁴ However, the nature of competition as a general and dynamic process of rivalry means that these retailers may nonetheless benefit from improvements to suppliers' offerings arising from the cross-channel competition in the wider market, and we have seen evidence that even those retailers who only stock one category of product consider competitive parameters in the other category in their procurement decisions.²³⁵
- 7.38 Cross-channel competition is key to our investigation as the Parties supply DTB products to grocery retailers in different channels. As set out in Chapter

²³¹ MAGs, paragraph 2.2

²³² See paragraph 7.6 above.

²³³ While it is acknowledged that retailers' choice over whether to stock both PL and branded DTB products may change over time, there was little evidence to indicate such changes were expected to occur except for a limited number of SKUs.

²³⁴ In addition, concerns raised by third parties in relation to the Merger have primarily related to a loss of wholesale competition between incumbent suppliers and the ability of retailers to 'trade off' the Parties in their respective supply into the PL and branded channels.

²³⁵ Paragraph 9.78(b) in Chapter 9 provides an example of this from one of the Parties' internal documents [REDACTED].

5, Cérélia supplies DTB products to retailers in the PL channel and Jus-Rol supplies branded products. We consider the evidence on the importance of the cross-channel competition between the Parties in Chapter 9.

Parameters of competition

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

7.40 The Parties submitted that:

(a) Manufacturers, whether supplying into the PL or the branded channel, compete on the parameters of price, product quality and reliability of service.²³⁶

(b) While price, quality and service level are important for retailers, they do not mean the same thing in the context of consumer brands (such as Jus-Rol) and contract manufacturing services. For example, when considering what consumer brands to stock in their stores, 'quality' and 'service level' discussions often focus heavily on brand equity and promotional/marketing activity. In the context of contract manufacturing services for PL provision, by contrast, the focus is much more on which supplier can manufacture products that meet the retailer's brief in terms of product quality, appearance and taste for the lowest possible price.²³⁷

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

Third-party evidence

7.42 In relation to price:

(a) All customers (nine out of nine) indicated that, in their relationship with their PL suppliers, price is an important factor to them.²³⁸

²³⁶ MN, paragraph 358.

²³⁷ Cérélia response to the Annotated Issues Statement and Working Papers, 13 September 2022, annex AIS.05.b, page 21.

²³⁸ 9 responses to the CMA's customer questionnaire, question 10.

- (b) The majority (ten out of 11) of customers indicated that, in their relationship with their branded suppliers, price is an important factor to them.²³⁹
- (c) One supplier into the PL channel [redacted] told us that the business of manufacturing DTB products is driven by price and quality but that the focus in the UK is generally on price.²⁴⁰ It also told us that [redacted].²⁴¹
- (d) One grocery retailer [redacted] told the CMA that price is 'extremely important' in its relationship with both branded and PL suppliers due to the grocery market being highly competitive.²⁴²

7.43 In relation to quality:

- (a) The majority of customers indicated that, in their relationship with their PL (eight out of nine) and branded (seven out of 11) suppliers, quality is an important factor to them.²⁴³
- (b) One PL supplier [redacted] primarily because of the superior quality of its product offering.²⁴⁴
- (c) Three grocery retailers [redacted] ranked quality as the most important factor in their relationship with their PL supplier. Similarly, two retailers [redacted] ranked quality as the most important factor in their relationship with their branded supplier.²⁴⁵ One grocery retailer [redacted] told us that before switching [redacted] and concerns around quality.²⁴⁶

7.44 In relation to service level:

- (a) The majority of customers indicated that, in their relationship with their PL (six out of nine) and branded suppliers (eight out of 11), service is an important factor to them.²⁴⁷
- (b) One supplier of branded and PL DTB goods [redacted] told us that [redacted].²⁴⁸

²³⁹ 11 responses to the CMA's customer questionnaire, question 10.

²⁴⁰ Note of a call with [redacted], [redacted] 2022, paragraph 9.

²⁴¹ Note of a call with [redacted], [redacted] 2022, paragraph 11.

²⁴² Response to the CMA customer questionnaire from [redacted], [redacted] 2022, question 10.

²⁴³ 11 responses to the CMA's customer questionnaire, question 10.

²⁴⁴ Note of a call with [redacted], [redacted] 2022, paragraph 15.

²⁴⁵ 4 responses to the CMA's customer questionnaire, question 10.

²⁴⁶ Note of a call with [redacted], [redacted] 2022, paragraph 7.

²⁴⁷ 11 responses to the CMA's customer questionnaire, question 10.

²⁴⁸ Note of a call with [redacted], [redacted] 2022, paragraph 4.

- (c) For both PL and branded products, two grocery retailers [REDACTED] ranked service level and surety of supply respectively as the most important factor to them in their relationship with their suppliers and one said that a primary concern to them is to have the product available to sell in the first instance.²⁴⁹ Another grocery retailer [REDACTED] commented that ‘continuity of supply is key’.²⁵⁰

Evidence from tenders

- 7.45 [REDACTED], a large retailer [REDACTED] carried out a tender triggered by [REDACTED].²⁵¹ It explained that, at each stage of the review, PL suppliers were given feedback on product quality and any changes requested as well as on the commercial viability of their proposals. The retailer also completed cost modelling analysis on key ingredients to ascertain the cost breakdowns, considered which suppliers were able to offer the best commercial proposition and assessed the available capacity of different players.²⁵²
- 7.46 Evidence from an email from the retailer to Cérélia in relation to the outcome of the tender indicated that [REDACTED].²⁵³ This tender is discussed in more detail in Chapter 9 (see paragraphs 9.177 and 9.178).
- 7.47 [REDACTED], a retailer [REDACTED] carried out a tender for its PL ready rolled puff and shortcrust pastry. Suppliers were asked for a product of a similar or improved quality to the retailer’s current one, to quote their most competitive prices and to break down their costs. In a Cérélia internal document discussing the progress of Cérélia’s bid for this tender, a CUK Sales Manager noted that [REDACTED].²⁵⁴

Other parameters of competition

- 7.48 The majority (six out of nine) of customers indicated that innovation is also an important factor to them in their relationship with their PL supplier and a

²⁴⁹ Response to the CMA customer questionnaire from [REDACTED], [REDACTED] 2022, question 10. Response to the CMA customer questionnaire from [REDACTED], [REDACTED] 2022, question 10.

²⁵⁰ Response to the CMA customer questionnaire from [REDACTED], [REDACTED] 2022, question 10.

²⁵¹ Cérélia Internal Document, Annex 2-1 to the Phase 1 s.109 (3), [REDACTED], 14 March 2022. Note of a call with [REDACTED], [REDACTED]2022, paragraph 3.

²⁵² Response to the CMA customer questionnaire from [REDACTED], question 14.

²⁵³ Cérélia Internal Document, Annex ME_6988_22_004647 to the Phase 2 s.109 (1), [REDACTED], 10 June 2022.

²⁵⁴ Cérélia response to the CMA’s s.109 of 30 June 2022, question 48a, ‘RE: Tender - Ready Rolled Puff and Shortcrust Pastry’, ME_6988_22_007613 and ‘RE: Confidential - [REDACTED] tender update and next steps’, ME_6988_22_003632.

minority (five out of 11) indicated this was important to them in their relationship with their branded supplier.²⁵⁵

- 7.49 When asked about a specific PL manufacturer [X], one grocery retailer [X] highlighted its limitations in range of products as a reason why it was not a suitable supplier.²⁵⁶
- 7.50 One retailer [X] mentioned its strict requirements in relation to the ingredients used in its PL products. [X].²⁵⁷ However, we have not heard other retailers raising this concern and some [X]. So, whilst we consider that the use of specific ingredients can be a parameter of competition in certain circumstances, this is not always the case.
- 7.51 Sustainability, in terms of packaging requirements and ingredients, was also considered an important factor. A majority of retailers (five out of nine) referenced it for their relationships with PL suppliers and just under half (four out of ten) referenced it for branded suppliers.²⁵⁸
- 7.52 While responses from third parties, on the whole, highlighted similar factors that were important to them for both their PL and branded supplier, there were some differences.
- 7.53 Two retailers [X] mentioned that marketing was important to them in their relationship with their branded supplier but not with their PL supplier. The explanation given by one of them [X] was that this was important to drive sales of the branded product.²⁵⁹
- 7.54 One retailer [X] mentioned that customer-centric planning, ‘incrementality’ (ie growing overall sales rather than reallocating sales between products) and customer and market insight were important factors to it when considering the risks and benefits between supplying PL and branded products. The explanations it gave for why these factors are important were focused on ‘ensuring that its range offers customers a choice of products (creating an optimal balance across PL and branded), at appropriate and reasonable price points’.²⁶⁰

²⁵⁵ 11 responses to the CMA’s customer questionnaire, question 10.

²⁵⁶ Response to the CMA customer questionnaire from [X], [X] 2022, question 18.

²⁵⁷ Response to the CMA customer questionnaire from [X], [X] 2022, question 18.

²⁵⁸ 10 responses to the CMA’s customer questionnaire, question 10.

²⁵⁹ Response to the CMA customer questionnaire from [X], [X] 2022, question 10. Response to the CMA customer questionnaire from [X], [X] 2022, question 10.

²⁶⁰ Response to the CMA customer questionnaire from [X], [X] 2022, question 10.

Conclusions on factors on which suppliers compete

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

Multi-sourcing

- 7.57 Multi-sourcing refers to the ability and tendency of customers to source a product from more than one supplier at the same time.
- 7.58 The degree of multi-sourcing in the market impacts not only the range of products that retailers stock but also affects the competitiveness of different suppliers and how easy it is for retailers to switch supplier.
- 7.59 In the context of this Merger inquiry, we consider the following forms of multi-sourcing:
- (a) Whether retailers use more than one branded DTB supplier.
 - (b) Whether retailers use more than one PL DTB supplier.
- 7.60 The question of whether to stock PL and branded products has been discussed in paragraphs 7.7 to 7.13. As part of our assessment, we distinguish between multi-sourcing where retailers use different suppliers for different DTB products across their range (eg using one supplier for ingredient pastry and another for pizza dough) and multi-sourcing where retailers use different suppliers for the same individual products/SKUs (eg using two different suppliers to supply ready rolled puff pastry).

Multi-sourcing branded products

- 7.61 Most (eight out of 14) of the customers who stock branded products and that responded to our inquiry indicated that they only stock Jus-Rol. For all customers who sold more than one branded product (six out of 14), these brands were stocked in addition to, not instead of, Jus-Rol.²⁶¹ Other brands

²⁶¹ 14 responses to the CMA's customer questionnaire, question 4.

sold alongside Jus-Rol include Bells, Theos, Dorset Pastry, The Northern Dough Co., Shire and Feuilles de Filo. These brands are usually present within one or two DTB product types (eg filo pastry or pizza dough) for a particular retailer. In some cases, these other brands are present in the same DTB product type. For example, one retailer [REDACTED] sold three different branded puff pastry alternatives.²⁶²

- 7.62 One retailer [REDACTED], accounting for less than [0-5%] of the market, stated that multiple brands were listed as a result of recent innovations in dough products such as sourdough and brioche frozen dough.²⁶³

Multi-sourcing PL products

- 7.63 Cérélia submitted that:

- (a) Many retailers multi-source supply for their PL products,²⁶⁴ [REDACTED].²⁶⁵
- (b) [REDACTED].²⁶⁶
- (c) [REDACTED].²⁶⁷
- (d) [REDACTED],²⁶⁸ [REDACTED].²⁶⁹

- 7.64 We found that there are instances of retailers sourcing DTB inputs for different PL products from different DTB suppliers (eg PL ingredient pastry from one supplier and PL pizza dough from another). A majority (six out of nine) of the customers that sell PL products who responded to our phase 2 questionnaire indicated they use more than one PL DTB supplier.²⁷⁰

- 7.65 We note that RTB products include PL frozen breakfast goods, which most retailers stock and for which they generally use a different supplier than the supplier used for their other DTB products (chilled DTB and frozen ingredient pastry products). As set out in Chapter 9 (paragraphs 9.221 to 9.223), none of the suppliers producing these products were mentioned in the Parties' or third

²⁶² In Cérélia's response to the Alternative Competitive Constraints Working Paper, Cérélia submitted that retailers were supplied by several brands not listed by the CMA. One major retailer [REDACTED] identified as only stocking Jus-Rol is also supplied by a small supplier for one DTB product, which was also submitted by the supplier. Other brands referenced by Cérélia could not be corroborated by third-party submissions, whether from retailers or suppliers.

²⁶³ Response to the CMA customer questionnaire from [REDACTED], [REDACTED] 2022, question 8.

²⁶⁴ MN, paragraph 500.

²⁶⁵ Cérélia's response to the Phase 1 Issues Letter, 11 May 2022, paragraph 6.15.

²⁶⁶ MN, paragraphs 501 to 509.

²⁶⁷ [Cérélia's response to the Issues Statement](#), 2 August 2022, paragraphs 4.13 and 4.14.

²⁶⁸ MN, paragraph 503.

²⁶⁹ MN, paragraph 503.

²⁷⁰ 9 responses to the CMA's customer questionnaire, question 2.

parties' submissions and we are not aware of any of them having competed in tenders against Cérélia. Therefore, we consider the use of alternative suppliers for these products to be of limited significance for the competitive dynamics of this market.

- 7.66 We found no instances of grocery retailers currently sourcing the same DTB product type (eg puff pastry) from more than one PL supplier. Cérélia submitted that [REDACTED].²⁷¹
- 7.67 We found that there are a variety of reasons why grocery retailers do not multi-source more frequently for their PL DTB products, including:
- (a) Some retailers [REDACTED] indicated that their choice was driven by the options available to them. This was either because they were satisfied with their supplier, or because of a lack of good alternative manufacturers.
 - (b) One retailer [REDACTED] said that single-sourcing drives cost synergies.
 - (c) Another retailer [REDACTED] said it does not multi-source because it valued surety of supply.²⁷²
- 7.68 Moreover, one DTB supplier [REDACTED] mentioned that suppliers might be driving the lack of multi-sourcing since they would not want to supply small quantities of products to a customer. We note that this is consistent with some evidence from Cérélia's internal documents. For example, emails between Cérélia and retailers suggest that Cérélia [REDACTED].²⁷³
- 7.69 In the Main Party Hearings, Cérélia also submitted that, [REDACTED].²⁷⁴

Conclusions on multi-sourcing

- 7.70 Most retailers stock both branded and PL products. While multi-sourcing of DTB products to PL products is not uncommon, retailers tend to purchase the bulk of DTB products from a single supplier, and where they do use more than one PL supplier this typically relates to different types of DTB products. There is evidence that different branded suppliers are used more frequently, and these do sometimes relate to the same product types. However, the branded products are typically Jus-Rol products, and where retailers use alternative

²⁷¹ Cérélia response to the Annotated Issues Statement and Working Papers, 13 September 2022, annex AIS.05.b, page 31.

²⁷² 10 responses to the CMA's customer questionnaire, question 3.

²⁷³ Cérélia Internal Document, Annex ME_6988_22_006183 to the Phase 2 s.109 (1), [REDACTED], 20 November 2018. Cérélia Internal Document, Annex ME_6988_22_005885 to the Phase 2 s.109 (1), [REDACTED], 14 September 2021.

²⁷⁴ Cérélia, main party hearing transcript, page 58, line 25.

branded suppliers in addition to Jus-Rol, those suppliers often account for relatively small quantities or more niche products.²⁷⁵

- 7.71 This multi-sourcing behaviour means that end-consumers typically have a choice between the retailer's PL DTB product and a small number of branded products – although, for many types of DTB products, this is often confined to only Jus-Rol branded products.
- 7.72 The tendency for retailers not to use more than one supplier for a given DTB product type means that switching suppliers tends to involve moving large volumes to a new supplier, making switching more challenging than would be the case if retailers were switching volumes between existing suppliers.
- 7.73 A recent example of a large retailer [X] choosing to multi-source for different DTB products demonstrates that multi-sourcing is possible and may be a tool for retailers that want to test a supplier or switch incrementally. However, we note that there is still a general preference to source the majority of PL products from one supplier and this indicates that suppliers who are better able to meet the volume and range requirements of larger retailers may have a competitive advantage relative to smaller suppliers with a narrower product set.

Switching costs

- 7.74 Switching occurs when a customer changes its supplier. This supplier change could relate to the totality of a customer's purchases or to marginal units ordered.
- 7.75 The costs involved in switching can take different forms and can be either monetary or non-monetary. For example, when running a tender, customers will spend time producing documents, searching the market, and carrying out the tendering process. Other switching costs may occur post-tender, including finalising the recipe formulation, onboarding/completion of the retailers' checks on the new supplier, cementing logistics arrangements, etc.
- 7.76 The presence of significant switching costs may limit the ability of alternative suppliers to impose a competitive constraint on the Merged Entity because they reduce their ability to attract customers. In the presence of high switching costs, retailers will find it difficult to source DTB products from alternative

²⁷⁵ As covered in Appendix C, other branded suppliers have a share of supply of only 7%.

suppliers and potential new suppliers will find it difficult to enter the market (with smaller suppliers also finding it more difficult to expand).

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

7.78 Cérélia submitted that:

(a) While there may be some costs to switching suppliers, these are simply part of the ordinary course of switching in any retail sector in the UK and that, if these factors were to comprise material barriers to switching, no PL sector product in the UK could be regarded as contestable.²⁷⁶

(b) [redacted] is not a long time for a retailer to switch to an alternative PL supplier and is consistent with the time usually taken to switch suppliers in other grocery sectors.²⁷⁷

(c) [redacted].²⁷⁸

7.79 In response to the Provisional Findings Report, Cérélia submitted that:

(a) switching of PL suppliers occurs relatively frequently and the CMA has misrepresented the evidence. Any assessment of switching frequency must have regard to the highly consolidated nature of the customer base, in which only six retailers account for 90% of the DTB market.²⁷⁹

(b) there are a number of recent examples of switching, including [redacted] which has recently switched [redacted] (amounting to >[redacted] in the UK).²⁸⁰

(c) of the six years covered by the CMA's analysis²⁸¹, two fall into the Covid pandemic period which resulted in both an unexpected rise in demand (which has now tailed off) and supply chain challenges, which made retailers focus more than usual on security of supply issues.

²⁷⁶ Cérélia's response to the Phase 1 Issues Letter, 11 May 2022, paragraph 6.54.

²⁷⁷ Cérélia's response to the Phase 1 Issues Letter, 11 May 2022, paragraph 6.57.

²⁷⁸ Cérélia, main party hearing transcript, page 70, lines 6 to 9.

²⁷⁹ [Cérélia's response to provisional findings](#), 28 November 2022, paragraphs 3.34, 4.30-4.32.

²⁸⁰ Cérélia response hearing economic remarks, slide 8.

²⁸¹ Switching events are considered for the years 2017 to 2023. These are discussed in paragraph 7.80 and 7.81.

Switching to a new supplier

- 7.80 Switching within the branded channel is extremely rare. We are not aware of any examples of retailers switching branded products in the past five years. GMI told us that [redacted] instances since 1 January 2019 in which grocery retailers switched, or threatened to switch, from supplying Jus-Rol branded DTB products to those of an alternative supplier.²⁸² This is consistent with the limited alternative supply options available in the branded channel as set out in Chapter 9. In this subsection we therefore focus primarily on switching between suppliers within the PL channel.
- 7.81 Switching of PL suppliers does occur; however, it does not happen frequently. Across the six largest grocery retailers (accounting for 90% of the DTB retail market), there have been five instances of switching PL supplier in six years. They were carried out by three retailers: [redacted]. The Parties provided no further examples of switching to suggest that it happens more frequently. In addition, we have not seen any evidence that indicates that the pandemic materially affected retailers' willingness or ability to switch. For example, one retailer [redacted] switched in 2021. We do not consider that our characterisation of this evidence, that switching does not happen frequently, is inaccurate or a misrepresentation of that evidence. We consider this to be infrequent because only one of the large grocery retailers has switched since 2017 and because, as explained in paragraph 7.27, grocery retailers often review the terms of their agreements with suppliers annually, meaning there will have been a significant number of occasions on which retailers have decided not to switch.
- 7.82 Moreover, though there is a consolidated customer base in this market, this is also true of suppliers. The Parties' combined share will comprise almost [redacted] of the total DTB wholesale market in 2023 (by value) and four suppliers in total [redacted] account for an estimated [redacted]% [80-90%] share of wholesale supply of DTB in 2023 (by value).²⁸³
- 7.83 When switching does occur, it may only relate to certain products or SKUs, eg [redacted].²⁸⁴
- 7.84 Any switching must take place within the requirements imposed on retailers by GSCOP. Before terminating a contract or delisting a supplier's products, a retailer must provide reasonable notice to the supplier. This notice period will depend on, but is not limited to, the duration of the supply agreement or the

²⁸² GMI response to the CMA's section 109 Notice (Phase 1 s.109) (2), 28 February 2022, question 39.

²⁸³ See Table 1 in Appendix C.

²⁸⁴ Response to the CMA customer questionnaire from [redacted], [redacted] 2022, question 2.

frequency with which orders are placed by the retailer.²⁸⁵ When delisting products, this period also includes allowing the supplier sufficient time to have the decision reviewed and providing written reasons for the retailer's decision.²⁸⁶

- 7.85 A majority of retailers (seven out of nine) submitted that contracts with PL suppliers were typically 12 months long, with prices reviewed annually. Only a minority (three out of nine) of retailers said prices were, or could also be, reviewed more frequently according to inflation and commodity fluctuations.²⁸⁷
- 7.86 A small number of third parties characterised switching costs as low. When asked how easy or difficult it is to switch suppliers of PL DTB products, one retailer [REDACTED] (out of nine) said that it was easy. Another retailer [REDACTED] submitted that, assuming that the correct GSCOP time frames and processes have been adhered to, in theory it is possible to switch with relative ease.²⁸⁸ A competitor [REDACTED] told us that some products could be transferred at short notice provided the recipe is already developed and that product standards are not perceived as a barrier.²⁸⁹
- 7.87 Whilst some of their responses were consistent with C erelia's submissions on what is involved in switching, a number of third parties nevertheless characterised switching as difficult. When asked how easy or difficult it is to switch suppliers in the PL channel, more than half of the customers (five out of nine) submitted that it was either difficult or very difficult.²⁹⁰ In relation to switching, third parties commented that:
- (a) [REDACTED] It would take approximately six to nine months to switch supplier, as it takes time to reformulate the recipe, identify the best quality products and agree the terms of supply.²⁹¹
 - (b) [REDACTED] A brand new supplier would require a long transition period of a minimum of 12 months.²⁹²
 - (c) [REDACTED] Switching PL DTB supplier usually takes at least one year.²⁹³

²⁸⁵ GSCOP, paragraph 1.

²⁸⁶ GSCOP, paragraph 16(2).

²⁸⁷ 9 responses to the CMA's Phase 1 customer questionnaire, question 9.

²⁸⁸ 9 responses to the CMA's customer questionnaire, question 22.

²⁸⁹ Note of a call with [REDACTED], [REDACTED] 2022, paragraph 14.

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

²⁹¹ Response to the CMA customer questionnaire from [REDACTED], [REDACTED] 2022, question 22.

²⁹² Note of a call with [REDACTED], [REDACTED] 2022, paragraph 31.

²⁹³ Note of a call with [REDACTED], [REDACTED] 2022, paragraph 19.

(d) [redacted] It would have to give reasonable notice of any switch, so the timescales are a barrier.²⁹⁴

- 7.88 In their responses to the phase 1 questionnaire, a majority of customers (five out of eight) referenced the time needed for teams to agree on the product itself, whether or not this is done in a tender process, and to audit the supplier. Customers (three out of eight) also mentioned the need for suppliers to adjust their manufacturing processes in order to meet capacity and product specification requirements, if they did not already meet them when chosen (the time taken to do this is factored into the estimates given by retailers in paragraph 7.87 above).²⁹⁵
- 7.89 As well as switching within channels, retailers can also switch from a supplier in one channel to a new supplier in a different channel. We note that the switching costs involved in this may depend upon the direction in which the switch takes place. In particular, we consider that the cost of switching from an existing PL to a new branded supplier is likely to be lower than switching in the other direction given that, for branded products, retailers do not have to work with the supplier to develop the product as is the case in the PL channel.

Switching between existing suppliers

- 7.90 Rather than switching to a new supplier, retailers may choose to switch volumes between existing suppliers. Since supply agreements typically do not specify the volumes to be purchased, this can be varied at short notice (assuming suppliers do not have capacity constraints) and switching volumes between existing suppliers is likely to be relatively easy and costless.
- 7.91 Such switching could take place within the PL or branded channels if retailers use more than one supplier in each. However, as set out in the multi-sourcing section above, it is unusual for retailers to have more than one supplier for a given DTB product type in each channel. Switching volumes between existing DTB suppliers therefore would typically occur across the PL and branded channels through the 'rebalancing' or 'flexing' mechanism described above (see paragraphs 7.30 to 7.38).
- 7.92 The ability to switch volumes may depend on the direction in which retailers are switching. For example, one retailer [redacted] submitted that its ability to switch from PL to branded is limited because PL serves as the entry price point for

²⁹⁴ Response to the CMA customer questionnaire from [redacted], [redacted] 2022, question 22.

²⁹⁵ 8 responses to the CMA's customer questionnaire, question 13.

the category but that it had in the past switched from branded products to PL in response to a price rise.

Conclusions on switching costs

- 7.93 Switching can occur in several different ways in this market. Retailers can switch between branded product suppliers or between PL suppliers. They can also switch by adjusting the volumes they purchase between their existing branded and PL suppliers. These different types of switching have different levels of associated switching costs.
- 7.94 Since retailers collaborate with their PL suppliers on developing the final product, switching to a new PL supplier likely has a higher cost than switching branded supplier. Although retailers do not switch PL supplier frequently, the fact that they tend to review their supply contracts regularly suggests they are prepared to switch if they judge it necessary.
- 7.95 Switching volumes between existing suppliers – typically between branded and PL suppliers – is likely to incur the lowest level of switching costs as this is simply a case of ordering more volume from one supplier and less from the other.

The relationship between competition at the wholesale level and competition at the retail level

- 7.96 In this section we consider the implications of the relationship between demand at the wholesale level and demand at the retail level for our competitive assessment.

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

- 7.97 In keeping with the description of the sector set out above, we have observed that there are competitive interactions between PL and branded DTB products at both the wholesale and retail levels:
- (a) Retailers decide how much PL and branded DTB products (if any) to buy and from which suppliers (wholesale competition).

(b) Where both PL and branded products are sold by a retailer, PL and branded DTB products compete with each other to be bought by end-consumers off the shelf (retail competition).²⁹⁶

7.98 Our investigation is focused on the wholesale level as this is the level at which retailers purchase DTB products from the Parties. Retailers purchase DTB products from Cérélia in the PL channel and from Jus-Rol in the branded channel.

7.99 However, as summarised above, we consider that demand at the wholesale level is linked to demand at the retail level. In paragraphs 7.8 to 7.10 above, we set out that the current and anticipated demand preferences of end-consumers at the retail level are key drivers of the purchasing decisions of grocery retailers at the wholesale level.

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

7.101 If retailers' purchasing behaviour is driven to a significant extent by demand at the retail level and there is no change in suppliers (i.e., the retailer continues to buy its DTB products through the Parties), then an increase in demand for the branded products at the retail level will necessarily result in more DTB products being purchased from Jus-Rol. Similarly, an increase in demand for PL products at the retail level (for example due to an improvement in PQRS) will necessarily result in more DTB products subsequently being purchased from Cérélia.

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

7.102 The competitive dynamics at the retail and wholesale levels will not be identical because retailers may have considerations other than satisfying the

²⁹⁶ We note that while it is feasible that end-consumers might switch to a different retailer based on their DTB product offering (inter-retailer competition), the evidence we have received indicates that this is unlikely to occur because (i) DTB products are typically a small proportion of an end-consumer's shopping basket, (ii) the level of differentiation across DTB products is limited (see below) and (iii) DTB products are often an 'impulse purchase'.

short term volume requirements of their end-consumers when deciding which DTB products to buy from suppliers, as set out in paragraph 7.10. Wherever possible, we have therefore sought to distinguish between the retail and wholesale levels as part of our evidence gathering and have considered the evidence for competition between the Parties specifically at the wholesale level in Chapters 8 and 9. However, we note that the interconnected nature of the competition at the retail and wholesale levels means that the two levels cannot always be clearly separated and evidence of competition at the retail level is a relevant factor that should be taken into account as part of the competitive assessment.²⁹⁷

8. Market definition

Introduction / Framework of assessment

- 8.1 The assessment of the relevant market (or markets) is an analytical tool that forms part of the analysis of competitive effects of the merger,²⁹⁸ and is intended to assist the CMA in reaching a properly based outcome.²⁹⁹ Market definition involves identifying the most significant competitive alternatives available to the parties and includes the sources of competition to the parties that are the immediate determinants of the effects of the merger.³⁰⁰ However, the CMA's assessment of the competitive effects of the merger does not need to be based on a highly specific description of any particular market.³⁰¹ In this context, we have identified the appropriate product and geographic market in which we will assess the competitive effects of the Merger. As set out in Chapter 6, our investigation assesses the following theory of harm: horizontal unilateral effects in the wholesale supply of DTB products to grocery retailers in the UK. In this chapter we set out how we have identified the relevant market.

²⁹⁷ For example, see response of [X] 2022 to question 25 of the CMA customer questionnaire where this dynamic appears to have caused some third-party customers/retailers to use the terms PL for C r lia and branded for Jus-Rol interchangeably.

²⁹⁸ MAGs, paragraph 9.1.

²⁹⁹ Meta Platforms, Inc. v Competition and Markets Authority, CAT 26 [2022], paragraph 41.

³⁰⁰ MAGs, paragraph 9.2.

³⁰¹ MAGs, paragraph 9.5.

The Parties' submissions on market definition

- 8.2 The Parties consider that the production of DTB products involves two distinct vertically related economic activities – (i) the upstream manufacturing of the products and (ii) downstream brand ownership/operation.³⁰² They submit that:
- (a) Cérélia does not operate in the downstream market. Instead, it is the retailers, with their PL brands that are active at this level of the supply chain, operating as brand owners and competing with Jus-Rol.³⁰³
 - (b) There is similarly no increment in upstream manufacturing since GMI is not a provider of contract manufacturing services to third parties.³⁰⁴
- 8.3 Consequently, the Parties submit that the CMA is committing an error (the **Conflation Error**) by conflating these two levels of the supply chain – manufacturing and brand operation – into a single, homogenous activity (ie wholesale supply of DTB products).³⁰⁵ In response to our Provisional Findings Report, the Parties submitted that, by treating this transaction as horizontal, the CMA has departed from its approach to the PepsiCo/Pioneer merger, where the market test confirmed that there were important differences between the supply of branded consumer grocery goods and co-packing services to retailers. The Parties stated that this departure appears to have been influenced by the uncorroborated assertions of two retailers that do not reflect the market reality.³⁰⁶
- 8.4 We recognise that the Parties have a vertical relationship, with Cérélia manufacturing the majority of the Jus-Rol DTB products that are sold in the UK (and have, as described in detail elsewhere in the report, taken that into account in our assessment of the Merger). We note, however, that the existence of a vertical relationship of this nature does not preclude that the Parties compete horizontally.
- 8.5 In keeping with the approach set out in the CMA's guidance, product market definition starts with the relevant products of the merging parties.³⁰⁷ In assessing what competitive alternatives should be included in the relevant

³⁰² Cérélia's response to the Annotated Issues Statement and Working Papers, 13 September 2022, paragraph 2.15.

³⁰³ Cérélia's response to the Annotated Issues Statement and Working Papers, 13 September 2022, annex AIS.03.a, paragraph 10.ii.

³⁰⁴ Cérélia's response to the Annotated Issues Statement and Working Papers, 13 September 2022, annex AIS.03.a, paragraph 10.iii.

³⁰⁵ Cérélia's response to the Annotated Issues Statement and Working Papers, 13 September 2022, paragraph 2.16.

³⁰⁶ [Cérélia's response to the Provisional Findings](#), 28 November 2022, paragraphs 1.10 and 4.16 – 4.20.

³⁰⁷ [MAGs](#), paragraph 9.6.

market, the CMA will pay particular regard to demand-side factors (the behaviour of customers). The CMA may also consider supply-side factors.³⁰⁸

- 8.6 The Parties submit that there is (i) upstream, a market for the supply of the dough; and (ii) downstream, a market where the branded DTB products and PL DTB products stocked by the grocery retailer in question compete. We consider, however, that this characterisation is not fully consistent with the evidence that we have received during our investigation. Accordingly, in keeping with the established approach to market definition set out in the CMA's guidance, we have considered the appropriate product market definition in this case from the starting point of whether the Parties are considered as alternatives by customers (grocery retailers). This takes into account the differences between the Parties' activities, as well as the similarities in the light of grocery retailers' requirements. We have also considered which other suppliers are considered as alternatives by customers.
- 8.7 We have considered in our assessment:
- (a) The product market within which the Parties compete:
- (i) Whether the Parties' activities (the supply of DTB products through the PL and branded channels) are such that they fall within the same product market (taking into account whether the Parties are considered as alternatives by customers).
 - (ii) Whether all DTB product types (and wider BSM products) fall within the same product market.
 - (iii) Whether frozen and chilled DTB products fall within the same product market.
 - (iv) Whether the product market definition should include the supply of DTB products to the foodservice and food manufacturing sectors in addition to the retail sector.
- (b) The geographic market within which the Parties compete.

³⁰⁸ MAGs, paragraph 9.6.

Product market

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

The Parties' activities

- 8.9 Cérélia has told the CMA that the Jus-Rol business is providing a retailer with a product which is substantively different from the co-manufacturing services that retailers (and GMI itself) obtain from Cérélia and other co-manufacturers.³⁰⁹
- 8.10 Specifically, Cérélia has submitted that it only supplies a manufacturing input to brand owners and does not supply retailers with a finished branded DTB product.³¹⁰ It said that it is not possible to put Cérélia's manufacturing services on a retailer's shelf on a stand-alone basis.³¹¹ It stated that while 'retailer-branded PL products' and 'consumer-brand products' compete on retailers' shelves, Cérélia does not itself compete with either 'consumer-brand products' or 'retailer-branded PL products'.³¹²
- 8.11 Our investigation has found that both Parties supply DTB products at the wholesale level, although Jus-Rol only supplies branded DTB products, while Cérélia supplies DTB products mostly to PL buyers in the UK, with the exception of [redacted].³¹³ Therefore, the Parties only partially overlap in the supply of branded DTB products; generally, they sell their products to retailers through the two different channels (PL and branded DTB products) identified in Chapter 7 (see paragraph 7.17).
- 8.12 In light of this differentiation, and in accordance with our guidance, we have carefully considered the demand-side and supply-side substitution between the supply of DTB products and supply of branded DTB products.

³⁰⁹ Cérélia's response to Annotated Issues Statement and Working Papers, 13 September 2022, paragraphs 2 to 2.19.

³¹⁰ Cérélia's response to Annotated Issues Statement and Working Papers, 13 September 2022, paragraph 2.4.

³¹¹ Cérélia's response to Annotated Issues Statement and Working Papers, 13 September 2022, paragraph 2.13.

³¹² Cérélia's response to Annotated Issues Statement and Working Papers, 13 September 2022, paragraph 2.14.

³¹³ MN, paragraph 115. Cérélia supplies pancake products in the UK, both as a co-packer and under its own 'Abra-ca-Debora' brand. Cérélia submits that its pancake suppliers are not relevant to the competitive assessment of the merger as Jus-Rol does not supply any pancake products. MN, footnote 1.

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

- 8.13 To understand the degree to which the Parties' activities place them within the same product market, we have sought to understand whether their customers view the products they supply as substitutes.
- 8.14 Both Parties supply DTB products at the wholesale level to grocery retailers - in both cases, retailers place orders for certain volumes of specific DTB products from the Parties, which the retailers then sell to end-consumers at the retail level. Retailers adjust the balance of their purchasing volumes of DTB products in the PL channel and branded channel. As described in Chapter 7, retailers consider several factors when switching between PL and branded products.
- 8.15 When asked about what factors were important to them in their relationship with PL and branded suppliers respectively, retailers generally mentioned the same factors for each. The most commonly mentioned of these factors were price, quality and service level, and third parties indicated that the elements of the Parties' offerings that differed (eg branding and promotion activities undertaken by Jus-Rol and not C er lia) were of secondary importance (see paragraphs 7.39 to 7.56 in Chapter 7 for more details).
- 8.16 The majority of the retailers that responded to our inquiry stated that they considered C er lia and Jus-Rol to be competitors in the wholesale supply of DTB products, although there was a more mixed response from competitors (see paragraphs 9.53 and 9.62 9.62for more details).
- 8.17 All retailers who responded to our phase 2 questionnaire that stock both branded and PL DTB products said that, in response to an increase in the wholesale price of DTB products for PL beyond the level it thought reasonable, they would consider buying more of the equivalent branded products instead.³¹⁴ Similarly, all retailers who responded to our phase 2 questionnaire that stock both branded and PL DTB products said that, in response to an increase in the wholesale price of branded products beyond the level they thought reasonable, they would consider buying more of the equivalent PL products instead.³¹⁵
- 8.18 Internal documents from Jus-Rol show that it monitors the performance and quality of PL products. For example, a GMI promotional pricing analysis

³¹⁴ 8 responses to the CMA's customer questionnaire, question 31.

³¹⁵ 9 responses to the CMA's customer questionnaire, question 32.

[REDACTED].³¹⁶ As set out in Chapter 9, some of the Parties' internal documents also show that there is competition for shelf-space between them. For example, an email between BakeAway and a Buyer for [REDACTED].³¹⁷ The email from BakeAway refers to [REDACTED]. The retailer responds that '[REDACTED]'. This is evidence of [REDACTED]. A category insight for GMI indicates that [REDACTED].³¹⁸ A GMI presentation assesses Jus-Rol Sheets relative to PL and states that '[REDACTED]'.³¹⁹

- 8.19 Internal documents also show grocery retailers substituting PL and branded DTB products as part of their ongoing purchasing decisions, including by reference to end-consumer substitution between branded and PL DTB products. A number of retailers also provided examples of stocking decisions that included changing Jus-Rol products for PL products. One retailer [REDACTED] said that it has delisted a number of specialist Jus-Rol products due to poor performance. In most instances it replaced these with branded like-for-like or PL products.³²⁰ Another retailer [REDACTED] also said that it has replaced Jus-Rol products with PL products.³²¹ As referred to above, an email from one retailer [REDACTED] is an example of the decision to delist PL products because [REDACTED].³²²

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

- 8.20 We have also sought to understand whether DTB suppliers themselves view products supplied to grocery retailers for sale as PL products, and branded DTB products, as substitutes.
- 8.21 C r lia submitted that manufacturing costs (for equivalent recipes and equivalent production runs) are [REDACTED].³²³
- 8.22 When asked about adapting their manufacturing process to produce PL products, competitors that currently supply branded products but not PL products [REDACTED] said that they could adapt to produce the PL equivalents of their branded products. One competitor [REDACTED] said it would be relatively easy, although may require BRC accreditation for food safety.³²⁴

³¹⁶ GMI Internal Document, Annex 11.A.01 to the MN, [REDACTED], 28 August 2020.

³¹⁷ [REDACTED]

³¹⁸ [REDACTED] page 4.

³¹⁹ [REDACTED] page 18.

³²⁰ Response to the CMA customer questionnaire from [REDACTED], [REDACTED] 2022, question 15.

³²¹ Response to the CMA customer questionnaire from [REDACTED], [REDACTED] 2022, question 15.

³²² [REDACTED]

³²³ C r lia's response to the Phase 1 Issues Letter, 11 May 2022, paragraph 8.12.

³²⁴ Response to the CMA competitor questionnaire from [REDACTED], [REDACTED] 2022, question 3. BRC (British Retail Consortium) Global provides independent food safety accreditation. Their accreditations are recognised by supermarkets and large organisations as proof that high food safety standards are in place.

- 8.23 In light of the demand-side and supply-side factors set out above, we consider that the market definition should include both DTB products supplied to grocery retailers in the PL channel, and branded DTB products supplied at the wholesale level.
- 8.24 We note the Parties' contention that Jus-Rol competes at the retail level, and that they view this competition as taking place with grocery retailers, and not C er lia.³²⁵ Whilst we consider that there is a link between retail and wholesale demand, we note that Jus-Rol's only direct commercial offer is to grocery retailers at the wholesale level, and not end-consumers at the retail level.³²⁶ In addition, we found that the most important parameters of competition are price, quality and service level, and these are directly related to Jus-Rol's consumer appeal and rate of (retail) sale. End-consumer demand is therefore relevant commercially to Jus-Rol insofar as it influences the volumes sold at the wholesale level. We consider that the evidence in this case should be viewed in this practical commercial context.
- 8.25 In reaching this conclusion in paragraph 8.23, we have considered the relevance of the PepsiCo/Pioneer Phase 1 decision but note that the CMA has an obligation to assess each case on its own facts at the time the case comes before the CMA with regard to the evidence presented in that case.³²⁷ We have therefore conducted our analysis in this case with regard to the evidence before us, rather than seeking to apply or follow the conclusions derived from evidence in previous CMA decisions. As such, we have not sought to compare and contrast PepsiCo/Pioneer with the circumstances of the present case but would in any event note that there is a number of differences between them.³²⁸ We therefore do not consider that the CMA has erred in its approach to its analysis of this case.

³²⁵ [C er lia's response to the Provisional findings](#), 28 November 2022 and paragraph 3.30 – 3.31, 4.14 – 4.15 and [GMI's response to the Provisional Findings](#), 28 November 2022, paragraph 2.4.

³²⁶ See paragraphs 7.97 to 7.102.

³²⁷ CAT Judgment – [Ecolab Inc. v Competition and Markets Authority](#), 2020, paragraph 93

³²⁸ PepsiCo/Pioneer is a merger in different markets, namely in the supply of granola and porridge in the UK ([Anticipated acquisition by PepsiCo, Inc. of Pioneer Food Group Limited \(publishing.service.gov.uk\)](#), paragraph 3). While the DTB and granola segments appear to both be simple, commoditised segments, the branded channel appears more competitive in the granola segment, with both Parties owning an established brand and their combined share remaining below 20% within the channel ([Anticipated acquisition by PepsiCo, Inc. of Pioneer Food Group Limited \(publishing.service.gov.uk\)](#), Table 1). In addition, the third-party evidence significantly differs from the evidence received in this case. For example, in PepsiCo/Pioneer, third parties considered that the PL and branded suppliers do not compete ([Anticipated acquisition by PepsiCo, Inc. of Pioneer Food Group Limited \(publishing.service.gov.uk\)](#), paragraph 37). As discussed in paragraph 8.17, in this case, all retailers who responded to our phase 2 questionnaire that stock both branded and PL DTB products said that, in response to an increase in the wholesale price of PL DTB products beyond the level it thought reasonable, they would consider buying more of the equivalent branded product instead.

Product types and customer sectors

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

Product types

- 8.27 We have considered the overlapping product types/product ranges supplied by the Parties.
- 8.28 Cérélia supplies grocery retailer customers with DTB products, including ingredient pastry dough, pizza dough, cookie dough and gingerbread dough, under the trading name BakeAway.³²⁹ In the UK, Cérélia has no brand of its own with respect to DTB products, but sells pancakes under its brand Abra-ca-Debora. Cérélia Group, Cérélia's holding company, supplies dough and pancake products. Outside of the UK, Cérélia supplies cookie dough, pancake, crepes, pizza dough, pastry dough and pastry products under its own brands English Bay Bakery, Creapan, Jan, Pop! Bakery and Croustipate.³³⁰
- 8.29 Jus-Rol supplies grocery retailer and foodservice customers with DTB products, including ingredient pastry dough, pizza dough balls, pizza dough kits and sharing bread dough (supplied in cans) and certain breakfast dough products supplied in cans.³³¹
- 8.30 The Parties submitted that the product scope should include all DTB product types including ingredient pastry, pizza dough and other types of dough including cookie and brownie dough and breakfast dough products.³³² The Parties submitted that from a demand-side perspective, grocery retailers typically take a holistic approach to negotiating supply,³³³ and from a supply-side perspective, the manufacturing process is very similar across DTB products.³³⁴ GMI submitted that, for its chilled products, it was competing against branded butters, branded juices and branded yoghurts and retailers

³²⁹ MN, paragraph 81.

³³⁰ MN, paragraph 82.

³³¹ MN, paragraph 10.

³³² MN, paragraph 230.

³³³ MN, paragraph 237.

³³⁴ MN, paragraph 233.

consider the stocking of DTB products in the context of the wider BSM category.³³⁵

- 8.31 The Parties overlap in the supply of DTB products. Although there are some differences in product offering, for example Cérélia does not supply canned dough products whereas Jus-Rol does, both parties supply the main types of DTB products. In particular, both Cérélia and Jus-Rol sell puff pastry, shortcrust pastry, filo pastry,³³⁶ pizza dough and RTB products.³³⁷
- 8.32 Regarding the question of whether the product market should include products from the wider BSM category, all (11 out of 11) retailers who responded to our phase 2 questionnaire said that they did not consider that DTB products compete with BSM or other dairy products.³³⁸ One retailer [X] told us that it could shift volumes from DTB products to products in the wider BSM category but this would be detrimental to its customers because it would involve removing choice and making themselves less competitive.³³⁹ For these reasons, we do not consider that the market definition should include products in the wider BSM category.
- 8.33 Regarding the question of whether the product market should include all DTB products:
- (a) Retailers tend to run tenders for specific DTB products rather than for any type of DTB product indicating that demand-side substitutability is low.³⁴⁰
 - (b) However, there is evidence of strong supply-side substitutability between different types of DTB products because most (seven out of nine) of the other DTB suppliers who responded to our questionnaire indicated they would be able to adapt their manufacturing process to produce those DTB products they do not currently produce with relative ease. The remaining DTB suppliers cited lack of space and/or equipment as the reason why they were not able to easily produce other DTB products.³⁴¹
- 8.34 As discussed in Chapter 7 (paragraph 7.70), retailers typically source the majority, or even all, of their PL products from a single supplier. This is also true for the branded channel.

³³⁵ GMI, main party hearing transcript, pages 11 and 24.

³³⁶ Cérélia supplies Filo pastry to retailers, [X]. MN, paragraph 184.

³³⁷ MN, paragraphs 9 and 10.

³³⁸ 11 responses to the CMA's customer questionnaire, question 28.

³³⁹ Transcript of call with [X], [X] 2022, page 17, lines 20–25.

³⁴⁰ Cérélia Internal Document, Annex 2-1 to the Phase 1 s.109 (3), [X], 14 March 2022. Note of a call with [X], [X] 2022, paragraph 3.

³⁴¹ Nine responses to the CMA's competitor questionnaire, question 3.

- 8.35 Evidence from the Parties' internal documents suggests that DTB products are often referred to as a whole. However, we also found occasional references to specific DTB products (eg pizza dough) or subgroups of products (eg ingredient pastry, ready-rolled, or blocks).³⁴²
- 8.36 The above evidence shows that DTB products are typically considered and sourced by retailers as a distinct category. While there is limited demand-side substitutability between DTB products, the supply-side substitutability between DTB products is strong.
- 8.37 For these reasons, we consider that the product market definition should include all types of DTB products, but not wider BSM products.

Chilled and frozen products

- 8.38 The Parties submitted that there is a single product market for supplying chilled and frozen PL DTB products because the basic production process used to manufacture each is identical apart from minor differences such as adding preservatives to chilled products and freezing for frozen products.³⁴³
- 8.39 Both Parties supply a number of both frozen and chilled DTB products to retailers.³⁴⁴
- 8.40 From a demand-side perspective, responses from retailers to our phase 2 questionnaire suggest that retailers consider frozen and chilled DTB products to be interchangeable, depending on shelf space. For example, some responses indicated an increase in shelf space offered to frozen products due to innovation in that area.³⁴⁵
- 8.41 Evidence from the Parties and from third parties indicates that there is supply-side substitutability between chilled and frozen products. C  r  lia and Jus-Rol supply retailers with both chilled and frozen products. Furthermore, while only one [redacted] of the suppliers who responded to our phase 1 questionnaire currently supplies both chilled and frozen PL DTB products, two [redacted] suppliers said they would be able to produce both frozen and chilled PL products by simply adapting their current manufacturing process.³⁴⁶ In particular, one of them [redacted] told us that, although it predominately supplies chilled pastry, it

³⁴² For example, [redacted] C  r  lia [redacted] often provide an overview of the DTB market as a whole including all product types before breaking this down and looking at specific products or subgroups of products.

³⁴³ MN, paragraphs 242 and 243.

³⁴⁴ C  r  lia's response to the CMA's section 109 Notice (**Phase 2 s.109**) (2), 25 August 2022, questions 3 and 14.

³⁴⁵ Response to the CMA customer questionnaire from [redacted], [redacted] 2022, questions 7 and 8. Response to the CMA customer questionnaire from [redacted], [redacted] 2022, questions 7 and 8.

³⁴⁶ 3 responses to the CMA's competitor questionnaire, question 3.

would be able to manufacture frozen pastry if necessary.³⁴⁷ The other [redacted] told us that the blast freezing facilities it has on site would allow the production of frozen products.³⁴⁸

- 8.42 As discussed in Chapter 7 (paragraph 7.70), retailers tend to source all their PL products, whether chilled or frozen, from one single supplier. Similarly, they tend to source all their branded products, whether chilled or frozen, from one single supplier.
- 8.43 Evidence from internal documents suggests that typically no distinction is made between chilled and frozen products during the normal course of business.³⁴⁹
- 8.44 For these reasons, we consider the product market definition should include both chilled and frozen DTB products.

Customer sectors

- 8.45 As discussed in Chapter 5, besides the grocery retail sector, there are two other groups of customers that purchase DTB products in the UK, namely the foodservice and food manufacturing sectors.
- 8.46 The Parties submitted that:
- (a) The foodservice channel comprises caterers who buy DTB products to sell to their end-consumers, as well as bakeries, restaurants and independent shops that purchase DTB products to produce and bake finished products in-store to serve to their end-consumers.³⁵⁰
 - (b) The food manufacturing sector comprises customers that purchase DTB products to manufacture a finished product for sale to end-consumers (eg round pastry dough as a pastry lid in a pie product or pizza dough for a pizza product). These customers typically buy bespoke products made to specifications which suit their manufacturing process but also purchase 'off the shelf' dough forms, standard sizes of blocks, rolls, sheets etc.³⁵¹
 - (c) There should be no distinction between the retail, foodservice and food manufacturing customer groups and they should all be included within a

³⁴⁷ Response to the CMA's competitor question from [redacted], [redacted] 2022, question 3.

³⁴⁸ Response to the CMA's competitor question from [redacted], [redacted] 2022, question 3.

³⁴⁹ In our document review, we did not identify documents that would suggest that the Parties make a material distinction between chilled and frozen products. For example, see Cérélia's [redacted] May 2021 and [redacted] March 2020 documents.

³⁵⁰ MN, paragraph 163.b.

³⁵¹ MN, paragraph 164.

single market.³⁵² This is because the manufacturing processes are very similar for each sector.³⁵³

- (d) Suppliers of DTB products in the foodservice sector are already manufacturing the same DTB products as those in the retail sector, and they already meet all necessary food safety regulations. Different packaging being required for the retail and foodservice sectors does not represent a barrier to supply-side substitution.³⁵⁴
- (e) [X] means that at least [X], representing more than [X]% of the total annual DTB contract manufacturing demand of retailers.³⁵⁵
- (f) They do not believe that the foodservice sector is small relative to the retail sector and, although the Parties are not able to provide a precise estimate for the size of the foodservice sector overall, they understand that the supply of frozen croissants alone is more than twice the size of the entire DTB grocery sector, at an estimated US\$360 million in 2021.³⁵⁶
- (g) Current manufacturers of baked goods for retailers are also readily available to manufacture DTB products for retailers. [X]. The recent entry into the DTB sector by [X] is a compelling recent real-life example of the competitive threat coming from baked goods manufacturers.³⁵⁷
- (h) Cérélia and [X] supply products sold by Jus-Rol for both the retail and foodservice sectors.³⁵⁸ However, Cérélia also submitted that, as it does not directly supply foodservice or food manufacturing customers, it therefore 'does not have good visibility over these sectors'.³⁵⁹

8.47 The Parties only overlap in the supply of DTB products to retail customers. Jus-Rol also supplies DTB products to foodservice customers, but Cérélia does not. Neither party supplies DTB products to food manufacturing customers.³⁶⁰ Below we consider whether the market definition should include

³⁵² MN, paragraph 255.

³⁵³ MN, paragraph 250.

³⁵⁴ Cérélia response to the Annotated Issues Statement and Working Papers, 13 September 2022, annex AIS.03.a, paragraph 12.

³⁵⁵ Cérélia response to the Annotated Issues Statement and Working Papers, 13 September 2022, annex AIS.03.a, paragraph 12.

³⁵⁶ Cérélia response to the Annotated Issues Statement and Working Papers, 13 September 2022, annex AIS.03.a, paragraph 13.

³⁵⁷ Cérélia response to the Annotated Issues Statement and Working Papers, 13 September 2022, annex AIS.03.a, paragraphs 16 and 17.

³⁵⁸ MN, paragraph 251.

³⁵⁹ MN, paragraph 249.

³⁶⁰ Cérélia's response to the CMA's section 109 Notice (**Phase 2 s.109**) (2), 22 August 2022, question 14.

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

- 8.48 Most of the evidence we have received relates to the foodservice sector, rather than the food manufacturing sector. We note that neither of the Parties are active in this sector (so the Parties' insight into the position of food manufacturers is limited). We consider, however, that both foodservice and food manufacturing products are likely to be required to be repurposed in similar ways to be able to be sold to retail customers and, therefore, that the evidence we present is likely to be relevant for both sectors.
- 8.49 From a demand-side perspective, most (nine out of 11) retailers said they would consider switching to a PL product supplier that is currently only active in the foodservice sector, provided that the supplier had the capabilities to be present in the retail sector.³⁶¹ However, concerns were raised that this was not often possible or likely. For example:
- (a) One large retailer [redacted] said its volume needs and the need to adapt manufacturing lines for packing made it an 'unlikely solution' in the short to medium term.³⁶²
 - (b) A retailer [redacted] said that it had not been 'historically considered, due to expected issues over technical specifications'.³⁶³
 - (c) All retailers who would consider it mentioned the need to meet technical and supply capabilities.
- 8.50 The fact that none of the retailers considered they would be flexible on certain product characteristics and that products would need to be adapted to meet the same requirements as those produced by retail suppliers indicates that demand-side substitution between the foodservice and retail sectors is low.
- 8.51 Half (five out of ten) of the suppliers who responded to our phase 2 questionnaire indicated that they supply customers in the foodservice sector. Two suppliers indicated they only supply the foodservice sectors [redacted]. Three suppliers [redacted] indicated they provide products to both the retail and foodservice sectors. Five suppliers [redacted] only provide to the retail sector.³⁶⁴
- 8.52 One competitor [redacted] who is planning to start supplying to the retail PL sector told us that a significant part of its business consists in supplying food

³⁶¹ 11 responses to the CMA's customer questionnaire, question 24.

³⁶² Response to the CMA customer questionnaire from [redacted], [redacted] 2022, question 24.

³⁶³ Response to the CMA customer questionnaire from [redacted], [redacted] 2022, question 24.

³⁶⁴ 10 responses to CMA phase 2 competitor questionnaire, question 2 and question 19.

manufacturers with DTB products.³⁶⁵ Another competitor [REDACTED] manufactures dough products which it uses as inputs to produce other products, such as sausage rolls. It recently repurposed a production line for dough for sausage rolls to produce DTB products for a retailer.³⁶⁶

8.53 From a supply-side perspective, when asked whether suppliers currently only active in the foodservice sector would be able to meet the needs of grocery retailers, answers were mixed. Some suppliers (three out of seven questionnaire respondents) [REDACTED] indicated substitution between foodservice and retail sectors and said that products for foodservice and grocery retailers are similar.³⁶⁷ [REDACTED] However, we note that [REDACTED]. Other suppliers (four out of seven questionnaire respondents) said that the two sectors are different, including because:

- (a) products for foodservice are primarily frozen while those for retail are mainly chilled;³⁶⁸
- (b) some products for the retail sector are relatively expensive and would not be suitable for the foodservice sector which often requires a cheaper product;³⁶⁹
- (c) they would require new machinery to produce for the retail sector;³⁷⁰
- (d) foodservice volumes are significantly higher than those for grocery retailers and the packaging requirements and capabilities are very different;³⁷¹ and
- (e) the technical requirements are higher in retail, different machinery is required and the quality assurance standards in retail are higher.³⁷²

8.54 We found only a limited number of the Parties' internal documents discussing the foodservice or food manufacturing sectors.

8.55 One document relevant to the foodservice sector is a 2017 email from BakeAway to GMI which discusses the feasibility of [REDACTED]. The email states that

³⁶⁵ Note of a call with [REDACTED], [REDACTED]2022, paragraphs 1 and 2.

³⁶⁶ Note of a call with [REDACTED], [REDACTED]2022, paragraph 9.

³⁶⁷ Seven responses to CMA phase 2 competitor questionnaire.

³⁶⁸ [REDACTED] response to CMA phase 2 competitor questionnaire, [REDACTED] 2022, question 20.

³⁶⁹ [REDACTED] response to CMA phase 2 competitor questionnaire, [REDACTED] 2022, question 20.

³⁷⁰ [REDACTED] response to the CMA phase 2 competitor questionnaire, [REDACTED] 2022, question 20.

³⁷¹ [REDACTED] response to the CMA phase 2 competitor questionnaire, [REDACTED] 2022, question 20.

³⁷² [REDACTED] response to the CMA phase 2 competitor questionnaire, [REDACTED] 2022, question 20.

[REDACTED].³⁷³ This aligns with some suppliers' views that manufacturing processes for the retail and foodservice sectors differ.

- 8.56 We consider that it would be possible for suppliers active in the foodservice sector to start supplying customers in the retail sector. However, they could not do so seamlessly and without making changes to their manufacturing arrangements, indicating low supply-side substitution between the retail and foodservice sectors.
- 8.57 Because of the low level of demand-side substitutability and limited level of supply-side substitutability, we consider that the product market definition should not include the foodservice and food manufacturing sectors. However, given the existence of some supply-side substitutability, we will consider the out-of-market constraint on the Parties from suppliers active in these sectors in the competitive assessment.

Conclusions on the wholesale product market

- 8.58 In summary, we consider that:
- (a) DTB products supplied to grocery retailers for sale through the PL channel, and branded DTB products, are part of the same product market. This is because:
- (i) Evidence shows that there is strong demand-side substitutability for supply of PL and branded DTB products at the wholesale level. For example, retailers said that in response to an increase in the wholesale price of DTB products supplied via the PL channel, beyond the level they thought reasonable, they would consider buying more of the equivalent branded products instead, and vice versa.
 - (ii) Evidence also shows that there is strong supply-side substitutability for supply of DTB products supplied via the PL channel and branded DTB products at the wholesale level. For example, both products have near-identical manufacturing costs and third-party suppliers indicate that they would be able to switch from supplying one to the other with relative ease.
- (b) The relevant product market should include all DTB products but not BSM products. This is because evidence shows that:

³⁷³ C er lia Internal Document, Annex ME_6988_22_002103 to the Phase 2 s.109 (1), [REDACTED], 17 August 2017.

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

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

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

Geographic market

- 8.61 The Parties submitted that the geographic market for the supply of DTB products is at least as wide as the EEA and UK.³⁷⁴ The Parties said there is significant cross-border supply of products into the UK from EEA-based manufacturers (eg [X]) and that the Parties manufacture products for the UK in other European countries.³⁷⁵ They also said that EEA suppliers are competitive from a price and quality perspective and there are low transport costs and no regulatory or production differences which could act as barriers.³⁷⁶
- 8.62 Both Parties supply DTB products in the UK. Cérélia sells DTB products across Europe. As of 2021, all its PL production sold in the UK came from its UK facility, and the majority of DTB products supplied to Jus-Rol were also produced in the UK.³⁷⁷ Jus-Rol only sells products in the UK and the Republic of Ireland. Some DTB suppliers selling in the UK, like Henglein, have production facilities only outside the UK.³⁷⁸
- 8.63 Retailers (except [X]) negotiate commercial terms with suppliers of DTB products through national procurement processes and only for the UK market.³⁷⁹
- 8.64 The largest grocery retailers who responded to our phase 2 questionnaire source PL products from suppliers based in the UK. Most (six out of eight) of the respondents to our phase 2 questionnaires, irrespective of their size, said they would be willing to switch to a PL supplier where the product is manufactured outside the UK.³⁸⁰
- 8.65 However, some retailers said that there were certain factors that would have to be taken into consideration if sourcing from suppliers outside of the UK. For instance, one large retailer [X] said it would have to look at cost, because it might cost more to ship over. In addition, this retailer told the CMA that '[it] might lose date life' and, if this were the case, it would have less time to sell the product, so this also needs to be factored into the choice of supplier.³⁸¹ Another retailer [X] set out that new post-Brexit regulations have posed

³⁷⁴ MN, paragraph 266.

³⁷⁵ MN, paragraphs 264 and 267–276.

³⁷⁶ MN, paragraphs 265 and 277–282.

³⁷⁷ MN, Table 1.

³⁷⁸ Cérélia response to the Phase 1 Issues Letter, 11 May 2022, Annex 'DTB production in UK vs EU'.

³⁷⁹ 10 Responses to the CMA's customer questionnaire, question 9. [X] noted 'although negotiations occur centrally, there may be country-specific variations in relation to the recipe, weight, type of packaging, etc'. Note of a call with [X], [X] 2022, paragraph 3.

³⁸⁰ 8 responses to CMA phase 2 customer questionnaire, question 23.

³⁸¹ Transcript of a call with [X], [X] 2022, page 21.

challenges when sourcing outside of the UK, but also said that these have not arisen in relation to DTB products, or if they have, these have been resolved swiftly.³⁸²

- 8.66 There is also some evidence of regional variation in competitive constraints across the UK. For example, the Bells brand is relatively stronger in Scotland (eg Tesco currently only stocks Bells branded DTB products in its Scottish stores).³⁸³
- 8.67 In Chapter 9, we will consider further the strength of suppliers based in continental Europe.

Conclusions on geographic market

- 8.68 The evidence considered above shows that grocery retailers tend to have national procurement strategies for DTB products for the UK market only. As such, the competitive parameters (eg price and quality) are negotiated on a UK-specific basis (including where the procurement processes are wider than the UK). For these reasons, we conclude that the relevant geographic market for the wholesale supply of DTB products to grocery retailers is UK only.
- 8.69 However, there is evidence that suppliers based outside the UK may place a constraint to UK-based suppliers and that UK-based retailers are willing to switch to an EEA-based supplier if needed. Therefore, we will account for competitive constraints coming from suppliers based in the EEA and not currently supplying UK customers in our competitive assessment. Similarly, we account for any regional strength of certain suppliers in our competitive assessment.

Conclusion and our views on market definition

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

³⁸² Note of a call with [REDACTED], [REDACTED] 2022, paragraph 5.

³⁸³ Note of a call with [REDACTED], [REDACTED] 2022, paragraph 1.

9. Competitive assessment

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

Shares of supply

- 9.3 In this section we present our analysis of shares of wholesale supply of DTB products to grocery retailers in the UK. Further details of our analysis are in Appendix C.
- 9.4 The concern under horizontal unilateral effects essentially relates to the elimination of a competitive constraint by removing an alternative that customers could switch to. One way in which the CMA may assess whether there are sufficient remaining alternatives is through a consideration of measures of market concentration, such as shares of supply.³⁸⁴ While the focus of the CMA's assessment is on the change in the competitive constraints on the merger firms arising from the merger, where one merger

³⁸⁴ [MAGs](#), paragraphs 4.3 – 4.4.

firm has a strong position in the market, even small increments in market power may give rise to competition concerns.³⁸⁵

- 9.5 In differentiated markets, horizontal unilateral effects are more likely where the merger firms are close competitors or where their products are close substitutes.³⁸⁶ Shares of supply can also be useful evidence when assessing closeness of competition. This will particularly be so when there is persuasive evidence on demand- and supply-side substitution as to which potential substitutes should be included or excluded, and when, although differentiated, the degree of differentiation between firms is more limited. In such circumstances, a firm with a higher share of supply is more likely to be a close competitor to its rivals, and therefore a merger that removes the competitive constraint such a firm exerts on its rivals would be more likely to raise competition concerns.³⁸⁷
- 9.6 In other cases, such as where the boundaries of the market are not as clear-cut, where reliable estimates of shares of supply are not readily available, or where there is a high degree of differentiation, the CMA may rely to a greater extent on other sources of evidence on closeness of competition.³⁸⁸
- 9.7 In this case, in our view, shares of supply provide an important indication of suppliers' position in the market and the degree of market concentration. Across all measures adopted here and across all time periods, the Parties are the first and second largest wholesale suppliers of DTB products to grocery retailers in the UK, each with a considerably larger share than the next largest competitor. However, the small number of retailer customers, and the nature of the tender processes to supply them in the PL channel, mean that shares of supply can be subject to fluctuations, and we have found evidence of differentiation between the products supplied by the Parties. We therefore consider the implications of our shares of supply estimates alongside other evidence to understand the Parties' individual and combined significance in the supply of DTB products to retailers.
- 9.8 We have used Kantar data provided by Cérélia for our analysis as we think that provides the most complete picture available.³⁸⁹ Given that there have been recent changes in supply arrangements, which have a significant impact on shares of supply, we consider it is appropriate to present shares for the period 2021-2023, which include the forecasted impact of these changes for

³⁸⁵ MAGs, paragraph 4.12(a).

³⁸⁶ MAGs, paragraph 4.8.

³⁸⁷ MAGs, paragraph 4.14.

³⁸⁸ MAGs, paragraph 4.15.

³⁸⁹ See paragraph 12 of Appendix C.

when they come into effect in 2023.³⁹⁰ We note that these forecast estimates are subject to limitations as shares across brands and retailers may have changed (see paragraph 18 of Appendix C).³⁹¹

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

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

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

† Other branded includes brands like Bells, Dorset Pastry, Northern Dough Co, Picard, Pret A Manger, Shire Foods, and Theos. Based on a different data source, we understand that Bells' branded products had approximately [0-5]% share of wholesale supply (see paragraph 22 of Appendix C) in 2021. Given that these estimates are based on 2020 data, it does not include PizzaExpress sales.

Note: Percentages may not total due to rounding.

Source: CMA analysis based on the Parties' data (Cérélia's response to the CMA's section 109 Notice (phase 2 s.109) (1), 14 July 2022, questions 44 and 50. Cérélia's response to the CMA's section 109 Notice (phase 2 s.109) (2), 22 August 2022, question 6.). GMI's response to the CMA's s109 Notice (phase 2 s.109) (2), 24 August 2022, question 8.

- 9.9 Based on the above methodology, the Parties currently have a very high combined share in the wholesale supply of DTB products to grocery retailers in the UK.³⁹² Further, that high share has been sustained over time and sustained at least up to forecast for 2023, and the only other suppliers with notable (although significantly lower) shares are [X] and [X].
- 9.10 Based on Cérélia's shares of supply estimates and our understanding of recent changes in supply agreements, we estimate that for 2023, by value, Jus-Rol has a forecast share of supply of [40-50]%, Cérélia of [20-30]%, [X] of [10-20]% and [X] of [5-10]%.³⁹³
- 9.11 Details on how shares of supply have changed over time are provided in Appendix C. Cérélia's share of supply increased [X] between 2012 and 2020,

³⁹⁰ See Alternative Competitive Constraints section. Shares for 2021 are also forecast estimates as Cérélia was only able to provide Kantar data for 2018-2020.

³⁹¹ Cérélia was able to provide Kantar data until 2020 only.

³⁹² The fact that Cérélia currently manufactures [X] of Jus-Rol products by value currently means that the 'increment' we have calculated is not equivalent to the additional manufacturing volume Cérélia will produce as a result of the merger.

³⁹³ These shares of supply reflect recent changes in supply arrangements (eg [X] share of supply reflects the recent award of the [X]).

while [X] share [X] during that period. [X] in recent years, C r lia has [X].³⁹⁴

- 9.12 Between 2018 and 2020, Jus-Rol's share of supply decreased, losing share to PL suppliers rather than to other branded suppliers.³⁹⁵
- 9.13 [X] and [X] ([X]) are the only other alternative suppliers with material shares, although their value of sales will each remain considerably smaller than that of the Merged Entity.
- 9.14 Overall, the shares of supply indicate that the Parties have a strong position in the wholesale supply of DTB products to retailers in the UK. They each account for a significantly larger proportion of sales than any other competitor, their high shares have been sustained over time, and the only other competitors with material shares of supply in the market are [X] and [X].

Closeness of competition

Introduction

- 9.15 This section considers how closely the Parties compete. Horizontal unilateral effects are more likely where the merger firms are close competitors or where their products are close substitutes. This is because the merged entity will be able to recapture a larger share of the sales lost following a price increase (or another worsening in the offering), making the price rise more profitable.³⁹⁶
- 9.16 As set out in Chapter 6 and in our Merger Assessment Guidelines (**MAGs**), we also note, in relation to our consideration of the closeness of competition, that:
- (a) Where the CMA finds evidence that competition mainly takes place among few firms, any two would normally be sufficiently close competitors such that the elimination of competition between them would raise competition concerns, subject to evidence to the contrary. The smaller the number of significant players, the stronger the *prima facie* expectation that any of the two firms are close competitors. In such a scenario, the CMA

³⁹⁴ This does not take into account any retendering of contracts where the current supplier was successful. See paragraph 16 in Appendix C for further detail. [X].

³⁹⁵ See Table 4 in Appendix C. C r lia was able to provide Kantar data until 2020 only. A limitation of the forecast estimates presented in Table 9.1 for 2021-2023 is that, if the shares across brands and retailers have changed substantially since 2020, this makes these estimates less accurate as these changes will not be captured. For example, any change in Jus-Rol's shares since 2020 is not captured.

³⁹⁶ **MAGs**, paragraph 4.8.

will require persuasive evidence that the merger firms are not close competitors in order to allay any competition concerns.³⁹⁷

(b) Closeness of competition is a relative concept. The issue is not whether the Parties are the closest or even ‘particularly’ close competitors but whether they are sufficiently close competitors for the Merger to raise competition concerns. The Parties’ products may be differentiated from each other but can still be close competitors if rivals’ products are more differentiated or if there are few rivals.³⁹⁸

(c) The CMA will consider the overall closeness of competition between the merger firms in the context of the other constraints that would remain post-merger.³⁹⁹

9.17 In relation to closeness of competition, the Parties submitted that while Jus-Rol and PL products do compete for consumers at the retail level, the Parties do not compete to supply retailers at the wholesale level.⁴⁰⁰

9.18 In this section we consider:

(a) the evidence on competition between the Parties in their supply to retailers at the wholesale level;

(b) the evidence on competition between PL and branded products at the retail level; and

(c) the vertical relationship between the Parties.

9.19 As discussed in Chapter 7 (see paragraph 7.97 to 7.102), we consider that competition between the Parties at the wholesale level is linked to the competitive dynamics between PL and branded products at the retail level and it is important to consider the evidence for both.

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

³⁹⁷ MAGs, paragraph 4.10.

³⁹⁸ MAGs, paragraph 4.10.

³⁹⁹ MAGs, paragraph 4.10.

⁴⁰⁰ Cérélia’s response to the phase 1 Issues Letter, 11 May 2022, paragraph 5.2.

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

9.21 In this section we consider:

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

The nature of the Parties' offerings to retailers

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

Activities performed by the Parties

- *The Parties' submissions*

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

9.24 For example, the Parties stated that:

- (a) The Parties are not supplying the same 'products'.⁴⁰¹ This is because while Cérélia is a manufacturer, GMI is a brand owner.⁴⁰² Cérélia is principally active in the co-packing of DTB products for third-party brand owners which involves both the manufacturing and packaging of DTB products to meet the needs of customers.⁴⁰³ Jus-Rol, on the other hand, is only active in the supply of DTB products to end-consumers via the

⁴⁰¹ Cérélia's response to the phase 1 Issues Letter, 11 May 2022, paragraph 1.7.

⁴⁰² MN, paragraph 161.

⁴⁰³ MN, paragraph 174.

retail and foodservice sectors.⁴⁰⁴ GMI is a consumer brand owner which owns, manages and operates the consumer brand Jus-Rol.⁴⁰⁵

- (b) When sourcing PL products, retailers will determine the recipe, ingredients used, packaging, retail prices and marketing.⁴⁰⁶ Cérélia may [X].⁴⁰⁷ [X].⁴⁰⁸ In contrast, Jus-Rol makes all decisions in relation to the recipe, packaging, branding and marketing. As such, there is no collaborative development process with retailers.⁴⁰⁹ It behaves in a similar manner to retailers, in determining the design and marketing of DTB brands.⁴¹⁰ Jus-Rol recommends retail prices and makes significant promotional proposals and contributions.⁴¹¹ Furthermore, it supplies marketing displays tailored for specific retailers and provides product forecasting services. It also provides customer services such as running a direct consumer careline.⁴¹²
- (c) It does not make sense to classify PL products that Cérélia manufactures as 'Cérélia products' without also classifying Jus-Rol products that Cérélia manufactures as 'Cérélia products'. If the CMA takes the view that Cérélia currently 'controls' the PL products which it manufactures, it follows that it also currently 'controls' the Jus-Rol products it manufactures.⁴¹³ In response to the Provisional Findings Report, Cérélia submitted that the CMA should consider PL DTB SKUs as the retailers' products and not Cérélia's. It submitted that, as a result, any consumer switching from Jus-Rol to PL cannot be depicted as a move from GMI/Jus-Rol to Cérélia.⁴¹⁴ Similarly, GMI submitted in response to the Provisional Findings Report that, as supply is sourced separately in the branded and PL channels, any switching between the Parties' products takes place between Jus-Rol and the retailer's PL brand, not between Jus-Rol and the retailer's PL manufacturer.⁴¹⁵

⁴⁰⁴ MN, paragraph 161.

⁴⁰⁵ MN, paragraph 212a.

⁴⁰⁶ MN, paragraph 215; response to phase 1 decision, paragraphs 2.8 and 3.4c.

⁴⁰⁷ [Cérélia's initial phase 2 Submission](#), 1 July 2022, paragraph 3.4c; Cérélia's response to the phase 1 Issues Letter, 11 May 2022, paragraph 2.5; Cérélia's response to the CMA's request for information (phase 1 RFI) (1) Cérélia, 11 March 2022, Q2; Cérélia's response to Closeness of Competition Working Paper, slide 22; Cérélia's response to the CMA's request for information (phase 2 s.109) (1), 7 July 2022, paragraphs 19.1 and 22.3.

⁴⁰⁸ Cérélia's response to the CMA's section 109 Notice (phase 2 s.109) (1), 14 July 2022, paragraph 40.4.

⁴⁰⁹ Cérélia's response to the phase 1 Issues Letter, 11 May 2022, paragraph 5.5.

⁴¹⁰ MN, paragraph 219.

⁴¹¹ [Cérélia's initial phase 2 Submission](#), 1 July 2022, paragraph 3.4d; GMI's response to the CMA's section 109 Notice (phase 2 s.109) (1), 14 July 2022, paragraph 27.1.

⁴¹² Cérélia's response to the CMA's request for information (phase 1 RFI) (1), 11 March 2022, Q2.

⁴¹³ Cérélia response to the Annotated Issues Statement and Working Papers, 13 September 2022, annex AIS.06.a, paragraph 6.ii.

⁴¹⁴ [Cérélia's response to the Provisional Findings](#), 28 November 2022, paragraphs 4.6 – 4.8.

⁴¹⁵ [GMI's response to the Provisional Findings](#), 28 November 2022, paragraph 2.7.

- *Evidence*

- 9.25 The evidence shows that Cérélia and Jus-Rol provide a similar overall service to retailers: they both supply DTB products to retailers for onward sale to end-consumers.
- 9.26 In particular we note that both Parties are contracted to supply their DTB products to retailers. Under these supply contracts, the main terms of supply are agreed with the exception of the final volumes of DTB products ordered which may be flexed by retailers over time. In both cases, the DTB products are supplied in their final finished packaging suitable for retail sale.⁴¹⁶
- 9.27 The evidence also shows that both Parties provide added services to retailers, albeit the type of services they provide is different.
- (a) Whereas Cérélia formulates recipes based on retailers' briefs and occasionally makes product development recommendations, Jus-Rol [REDACTED], [REDACTED].⁴¹⁷ Internal documents show that Cérélia [REDACTED]. [REDACTED].⁴¹⁸ In response to the AIS, Cérélia submitted that developing recipes to meet retailer briefs is part of a contract manufacturer's role in every grocery sector but the retailer retains the ultimate decision-making power.⁴¹⁹
- (b) Jus-Rol has full control of package size and design while Cérélia only occasionally makes packaging size recommendations to retailers and is not involved in the design of retailers' PL packaging.⁴²⁰
- (c) Both Jus-Rol and Cérélia provide [REDACTED] to retailers.⁴²¹
- (d) Jus-Rol [REDACTED]. Cérélia [REDACTED].⁴²²
- (e) A major retailer [REDACTED] stated that both PL and branded suppliers will provide additional services to retailers. It said that PL suppliers will work with the retailer to develop recipes, while branded suppliers typically will

⁴¹⁶ MN at paragraph 8 in relation to PL products.

⁴¹⁷ [REDACTED]. Cérélia's response to CMA's section 109 Notice (phase 1 s.109) (3), Cérélia, 14 March 2022, page 5.

⁴¹⁸ Email from Cérélia account manager to [REDACTED], dated 19 November 2018. Cérélia presentations '[REDACTED]', January and February 2021.

⁴¹⁹ Cérélia's response to AIS (Cérélia's response to internal documents), 13 September 2022, page 9. Cérélia also submitted said that the CMA accepted that the development of recipes may be a collaborative process between co-manufacturers and retailers in Pepsico/Pioneer.

⁴²⁰ [Cérélia's initial phase 2 Submission](#), 1 July 2022, paragraph 3.4d; Cérélia's response to the phase 1 Issues Letter, 11 May 2022, paragraph 5.5.

⁴²¹ [Cérélia's initial phase 2 Submission](#), 1 July 2022, paragraph 3.4c; Cérélia's response to the phase 1 Issues, 11 May 2022, paragraph 2.5. GMI site visit, 26 July 2022, slide 29.

⁴²² [Cérélia's initial phase 2 Submission](#), 1 July 2022, paragraph 3.4d; GMI's response to the CMA's section 109 Notice (phase 2 s.109) (1), 14 July 2022, paragraph 27.1; Cérélia's response to the CMA's section 109 Notice. (phase 2 s.109) (1) ME6988 - Notice under section 109 - 30 June 2022 - CUK confidential response and document submissions dated 14 July 2022 (002).pdf, 14 July 2022, paragraph 40.4.

not share recipes. Both types of suppliers will offer market analysis and recommendations on range and distribution, although branded suppliers will also offer promotional strategy. The submissions of other retailers and competitors were broadly consistent with this.⁴²³

(f) Cérélia and Jus-Rol have developed different business models for the manufacture of the DTB products they supply to retailers. Cérélia [redacted] while [redacted], with the exception of a limited number of products, such as filo pastry, vol au vents, pastry shapes (sold predominantly to UK foodservice customers) and canned DTB products, [redacted].⁴²⁴ [redacted].⁴²⁵

9.28 Third parties indicated that the elements of the Parties' offerings that differed (eg branding and promotion activities undertaken by Jus-Rol but not Cérélia) were of secondary importance.⁴²⁶

9.29 Cérélia [redacted] with [redacted] to use the [redacted] brand in connection with the supply of [redacted] DTB products in [redacted].⁴²⁷ The agreement with [redacted][redacted].

9.30 Cérélia explained that [redacted] owns and controls the overall brand strategy and has worked with Cérélia to implement that strategy with retailers in the DTB category (specifically, [redacted] dough).⁴²⁸ In addition, [redacted].⁴²⁹ Cérélia therefore has control over most of the parameters of competition as set out in Chapter 7, ie it has control over price, product quality and product development. [redacted].⁴³⁰

- *Our assessment*

9.31 Both Parties are undertaking the same activity of supplying DTB products to retailers for onward sale to their retail end-consumers.

9.32 There are differences in the services that the Parties offer to grocery retailers, flowing predominantly from the fact that they supply into different channels (Cérélia in the PL channel and Jus-Rol in the branded channel). In addition, the Parties have adopted different business models for the manufacture of the products they supply. We have considered these differences in our

⁴²³ Response to the CMA phase 2 customer questionnaire, [redacted] 2022, question 13. Response to the CMA phase 2 competitor questionnaire, [redacted] 2022, question 8.

⁴²⁴ MN, paragraphs 167 and 179.

⁴²⁵ See paragraph 38 of Appendix C.

⁴²⁶ Responses to the CMA phase 1 customer questionnaire, question 10.

⁴²⁷ MN, paragraph 115.

⁴²⁸ Enquiry Letter, 2 February 2022, question 29.1.

⁴²⁹ Cérélia's response to the CMA's Working Paper on Market Definition, paragraph 8.

⁴³⁰ MN, paragraphs 393 and 395.

competitive assessment but consider that they do not prevent the Parties from competing closely from the point of view of their retailer customers.

9.33 We note also that Cérélia's involvement in selling the [X] branded [X] products is extensive. While the ownership of the brand may ultimately sit with [X], Cérélia's role mirrors that of the supplier of a branded product competing closely and directly with Jus-Rol within the branded channel (see paragraph 9.30 above and 9.47 to 9.49 below where we consider the scale of the overlap between the Parties in the branded pizza dough segment).

9.34 We therefore consider that, while there are differences in the services they offer, the Parties engage in substantively similar activities, and compete to supply the same customers.

The Parties' products

- *Characteristics of the overlapping products*

- *Evidence*

9.35 At the Main Party Hearing, Cérélia said that the product characteristics of PL and branded products are [X].⁴³¹

9.36 Third-party views are largely consistent with the position that there are no major differences in the Parties' overlapping products:

(a) A retailer [X] said that PL products offer a cheaper alternative to branded products and act as an entry point to the category, whereas branded products provide more quality assurance and a wider range.⁴³² That same retailer [X] considered that '[the Parties] manufacture the same product'.⁴³³

(b) A retailer [X] told us that PL products were used as an entry price point, with branded products providing an opportunity for customers to upgrade.⁴³⁴

(c) In reference to its decision to stock PL and branded products, one retailer [X] told us that they 'want to ensure that [its] range offers customers a

⁴³¹ Cérélia, main party hearing transcript, page 73, line 19.

⁴³² [X] response to CMA phase 2 customer questionnaire, [X] 2022, question 27.

⁴³³ Note of a call with [X], [X] 2022, page 7 line 9.

⁴³⁴ Note of a call with [X], [X] 2022, page 4, lines 21-24.

choice of products [...] at appropriate and reasonable price points'.⁴³⁵
That retailer is of the view that the Parties are competitors in that they 'do the same job'.⁴³⁶

(d) Other customers [X] stated that the Parties supply similar products.⁴³⁷

(e) Third parties also considered there to be substantial similarity across the DTB product range, including the Parties' products. For example, a major retailer [X] stated that for their key products of puff and shortcrust pastry, they are 'interchangeable products from brand to PL with little differentiation from a recipe perspective'.⁴³⁸

9.37 Wholesale prices of Jus-Rol are generally at a higher price point [X]. Typically, there is a brand premium with the wholesale prices of Jus-Rol products [X] [X]% [X].⁴³⁹

9.38 Retailers also offer a more 'premium' PL range, for example, Asda's Extra Special, M&S PL range, Sainsbury's Taste the Difference, Tesco's Finest or Waitrose' PL range.⁴⁴⁰ These premium PL products are more similar to the Jus-Rol products as their recipes are often all-butter or butter-enriched and sold at a higher price point ([X] at the retail level). However, these more 'premium' PL products represent only [X].⁴⁴¹

o *Our assessment*

9.39 The evidence indicates that differences in quality between DTB products manufactured on a contract basis by Cérélia for grocery retailers, and branded DTB products sold to retailers by Jus-Rol, are limited, in particular in relation to the 'premium' PL range of retailers.

9.40 Differences in wholesale prices suggest some differentiation between the overlapping products supplied by the Parties to retailers even when adjusted for quality (by comparing products with and without butter used). This

⁴³⁵ Written submission from [X], [X] 2022, paragraph 6c.

⁴³⁶ [X] response to CMA phase 2 customer questionnaire, [X] 2022, question 25.

⁴³⁷ Responses to the CMA phase 2 customer questionnaire, [X] 2022, question 25.

⁴³⁸ By contrast, this large retailer [X] in response to the question whether the Parties compete with each other said that they 'do not provide like-for-like products'. Response to the CMA customer questionnaire from [X], [X] 2022, questions 25 and 27.

⁴³⁹ CMA's analysis based on Parties' wholesale prices data. [X]. Cérélia response to the CMA's request for information (phase 2 RFI) (1), 7 July 2022, question 16.

⁴⁴⁰ Cérélia response to the CMA's section 109 Notice (phase 2 s.109) (1), 7 July 2022, question 20.

⁴⁴¹ Cérélia had £[X] million revenue in 2020 from manufacturing [X] PL products. This represented [X] of its revenue from manufacturing [X] PL products in 2020. Cérélia response to the CMA's request for information (phase 2 RFI) (1), 7 July 2022, questions 15 and 43.

variation in prices is therefore likely driven by differences in the brand value attached to these products.

9.41 Overall, the physical characteristics and intended use of the Parties' products are very similar and retailers and end-consumers view them to be substitutes.

- *Product range*

- *Evidence*

9.42 Cérélia supplies PL ingredient pastry, pizza dough and RTB (such as cookie dough, brownie dough and gingerbread dough) products to grocery retailers. GMI supplies Jus-Rol ingredient pastry, pizza dough and RTB (supplied in cans, such as croissant dough, pain au chocolat dough and cinnamon swirl dough) products to grocery retailers.⁴⁴²

9.43 Cérélia stated that the Parties' product ranges are not identical. This is because Cérélia does not produce [REDACTED], in contrast to GMI/Hellenic-manufactured products.⁴⁴³ It also submitted that it is unable to produce Jus-Rol's entire product range.⁴⁴⁴ [REDACTED]. Cérélia submitted that therefore there is no competition between the DTB products manufactured for the PL channel by Cérélia and the products manufactured by GMI/[REDACTED].⁴⁴⁵ Cérélia also stated that it entered into a licence agreement with [REDACTED] to use the brand in connection with the supply of [REDACTED] DTB products.⁴⁴⁶

9.44 A Cérélia internal document ([REDACTED] to [REDACTED]), [REDACTED].⁴⁴⁷ Cérélia submitted that as part of a recent agreement with [REDACTED], Cérélia would be able to list [REDACTED] products if [REDACTED].

9.45 GMI supplies Jus-Rol pizza dough products, in particular pizza dough balls and pizza dough kits (supplied in cans) to retailers in the UK.⁴⁴⁸ These pizza dough sales are at approximately [REDACTED]% of Jus-Rol DTB sales to retailers by value in the first half of 2022. These pizza dough products are sold at Lidl, Ocado, Sainsbury's, Tesco and Waitrose.⁴⁴⁹

⁴⁴² MN, paragraphs 9-10.

⁴⁴³ Cérélia's response to the CMA's section 109 Notice (phase 2 s.109) (2), 22 August 2022, paragraph 14.3.

⁴⁴⁴ Cérélia's response to the CMA's section 109 Notice (phase 2 s.109) (2), 22 August 2022, paragraph 14.

⁴⁴⁵ Cérélia's response to the CMA's section 109 Notice (phase 2 s.109) (2), 22 August 2022, paragraph 15.

⁴⁴⁶ MN, paragraph 115.

⁴⁴⁷ Cérélia's response to s109 (phase 1) (2), 2022, question 8, Annex 8 'Asda Pastry & Dough Opportunity', February 2021.

⁴⁴⁸ MN, paragraph 10.

⁴⁴⁹ GMI's response to the CMA's section 109 Notice (phase 2 s.109) (1), 14 July 2022, question 31.

○ *Our assessment*

- 9.46 We found that the Parties significantly overlap in the product ranges that they offer. Both Jus-Rol's products and the DTB products manufactured by Cérélia for the PL channel cover the same types of ingredient pastry, including puff pastry and short pastry. This is key as ingredient pastry represents the largest proportion of the DTB market.⁴⁵⁰
- 9.47 In addition, the Parties overlap in pizza dough products and in RTB products to a lesser extent. Cérélia manufactures PL pizza dough and some PL RTB products for retailers (cookie and brownie dough, and seasonal products such as gingerbread dough kits), albeit not in a canned package.⁴⁵¹ However, we have not seen evidence that would indicate that the canned packaging format is particularly important to retailers and to end-customers.
- 9.48 We note that sales of [X] products supplied by Cérélia are not insignificant, at approximately [X]% of Cérélia's DTB sales to retailers by value in the first half of 2022 and [X] (see paragraph 22 in Appendix C).⁴⁵² [X] has a material presence within the pizza dough products sector.⁴⁵³ Even though [X] was only launched in [X], our understanding is that it is one of the largest (if not the largest) brand other than Jus-Rol in the UK retail DTB market.⁴⁵⁴ We understand that these [X] products are sold at Tesco, Sainsbury's, Asda and Morrisons.⁴⁵⁵
- 9.49 We consider that Cérélia's role in selling branded [X] pizza dough products to retailers means that Cérélia and Jus-Rol are competing closely in this pizza dough product space.

Evidence of competition between the Parties

- 9.50 In this subsection, we discuss the following evidence of competition between the Parties:
- (a) the Parties' views on competition between themselves;
 - (b) third-party views on competition between the Parties;
 - (a) the available tendering evidence;

⁴⁵⁰ See Chapter 5.

⁴⁵¹ Cérélia's response to the CMA's section 109 Notice (phase 2 s.109) (2), 22 August 2022, question 17.

⁴⁵² Cérélia's response to Shares of Supply WP (marked-up), slide 14.

⁴⁵³ MN, paragraph 115.

⁴⁵⁴ [X]. Cérélia's response to the CMA's section 109 Notice (phase 2 s.109) (3), 14 September 2022, question 1.

⁴⁵⁵ Annex 25a, [X].

- (b) evidence from the Parties' internal documents; and
- (c) the Parties' views on our assessment of competition between them.

The Parties' views on competition between the Parties

9.51 The Parties submit that they do not compete with each other to supply grocery retailers at the wholesale level.⁴⁵⁶ In particular, the Parties submitted that:

- (a) Where a retailer refers to volume and cost tension, it is simply referring to the fact that it has visibility over Jus-Rol's manufacturing costs and this then allows it to focus its discussion with Jus-Rol around the margin it should be paid for its brand equity. This would be the case regardless of the PL supplier.⁴⁵⁷
- (b) Retailers never [REDACTED] when negotiating DTB PL terms with Cérélia and always refer to [REDACTED].⁴⁵⁸ When negotiating with Jus-Rol, retailers [REDACTED].⁴⁵⁹
- (c) [REDACTED].⁴⁶⁰
- (d) Retailer negotiation is about Jus-Rol's own metrics, [REDACTED].⁴⁶¹ PL contract manufacturing terms are never a feature of GMI's negotiations with retailers.
- (e) When considering allocating shelf space to Jus-Rol, retailers will consider delisting Jus-Rol products and replacing them with the equivalent PL products.⁴⁶² However, the fact that retailers decide on the proportion of PL and Jus-Rol products (which their PL products may copy) to stock on shelf is not evidence of retailers leveraging PL terms in negotiations with Jus-Rol.⁴⁶³

- *Grocery retailer views on competition between the Parties*

9.52 Third parties were asked whether the Parties compete, and which suppliers were alternatives to each of the Parties.⁴⁶⁴

⁴⁵⁶ Cérélia's response to the phase 1 Issues Letter, 11 May 2022, paragraph 5.2.

⁴⁵⁷ Cérélia's response to the phase 1 Issues Letter, 11 May 2022, paragraph 8.11.

⁴⁵⁸ [Cérélia's initial phase 2 Submission](#), 1 July 2022, paragraph 3.8c.

⁴⁵⁹ Cérélia's response to the phase 1 Issues Letter, 11 May 2022, paragraph 2.8c.

⁴⁶⁰ Cérélia's response to the CMA's section 109 Notice (Phase 2 s.109) (1), 14 July 2022, question 39.

⁴⁶¹ Cérélia's response to the phase 1 Issues Letter, 11 May 2022, paragraph 2.21.

⁴⁶² Cérélia's response to the phase 1 Issues Letter, 11 May 2022, paragraph 2.20b.

⁴⁶³ Cérélia's response to the phase 1 Issues Letter, 11 May 2022, paragraph 2.9b.

⁴⁶⁴ CMA phase 2 customer questionnaire, question 18, question 19 and question 25.

- 9.53 The large majority (seven out of ten) of the retailers that responded to our inquiry stated that they considered Cérélia and Jus-Rol to be competitors in the wholesale supply of DTB products.⁴⁶⁵ This was primarily due to the similarity of their products, with one large retailer [REDACTED] saying that they ‘do the same job’.⁴⁶⁶ Another large retailer [REDACTED] initially submitted that the Parties did not compete because they ‘do not provide like-for-like products’.⁴⁶⁷ However, this retailer [REDACTED] later said the Parties do compete to an extent because they have ‘similar products’.⁴⁶⁸
- 9.54 Two-thirds of the grocery retailers (six out of nine) who responded to our questionnaire [REDACTED] told us that there is a degree of competitive tension between the Parties that they can use as a lever in negotiations.⁴⁶⁹ [REDACTED] such that this view was shared by grocery retailers that together account for the majority of supply of DTB products in the UK.
- (a) A large retailer [REDACTED] stated that changing volumes of PL and Jus-Rol products in response to their offers was a lever the retailer is able to pull if the Parties increase price or decrease quality. Due to the limited presence of alternative suppliers in the UK, rebalancing own label and brand proportions is seen as a more important and viable option than switching suppliers entirely. This retailer stated that the ability to flex volume is enhanced by the fact that branded and own label DTB products are very similar.⁴⁷⁰ The same retailer [REDACTED] stated that [REDACTED].⁴⁷¹
- (b) Another large retailer [REDACTED] told us that the price differential, with branded products typically expected to be more premium, was key in separate negotiations with the Parties, helping the retailer assess meaningfully value for money and competitiveness. It told us that having at least two distinct suppliers provides the retailer with an objective, independent benchmark for use in negotiations with suppliers. It explained that, although a branded product might carry a price premium, it would use separate supplier negotiations to assess the cost price position of each, and the differential between them, to help assess value for money and

⁴⁶⁵ Responses to CMA phase 2 customer questionnaire, question 25.

⁴⁶⁶ [REDACTED] response to CMA phase 2 customer questionnaire, question 25.

⁴⁶⁷ [REDACTED] response to CMA phase 2 customer questionnaire, question 25.

⁴⁶⁸ Transcript of a call with [REDACTED], [REDACTED] 2022, page 10. Note that we discuss the limitations and inconsistencies in [REDACTED] evidence elsewhere in this report and have consequently placed a lower weight on its evidence (see paragraph 9.349 below).

⁴⁶⁹ Responses to CMA phase 2 customer questionnaire, question 17; Written submission from [REDACTED], [REDACTED] 2022, page 2. See paragraph 9.94(a) to (d) for a discussion of how the evidence from grocery retailers has been weighted.

⁴⁷⁰ Transcript of a call with [REDACTED], [REDACTED] 2022, page 9. We explain this dynamic in more detail earlier in paragraph 9.25–9.26

⁴⁷¹ Transcript of a call with [REDACTED], [REDACTED] 2022, pages 7-8.

competitiveness.⁴⁷² It [REDACTED] further described that there is limited shelf space for DTB products and that the way it makes decisions about who gets what share of the space has a competitive element to it in the background, with more shelf space being awarded to products which perform better (ie to the supplier which gives a better offer in terms of cost of goods, promotional investment and so on). Pre-Merger, it has two suppliers it can have a conversation with and make a choice of what share of shelf space to give its PL versus branded products. It said that, post-Merger, some of that competitive tension would be lost, as there will be only one supplier to talk to about how that share of space works. It explained that it will not give granular details about one supplier's offer to the other in the context of negotiations but both suppliers know that it has a relationship with the other, such that there ought to be at least implicit knowledge that, given the finite shelf space, if one supplier is performing better it is more likely to be granted more space on the shelves. It told us that this is an important dynamic for getting a good deal for its customers, as it is what drives the supplier to continuously improve, by offering better products, service and/or better cost prices. Additionally, it submitted that the competitive tension also plays out where it does not stock equivalent versions of the Parties' DTB products. It said that this tension plays out in its overall relationship, such as the 'innovation pipeline'. This is because there is an incentive for suppliers to keep performing well as this maintains a good relationship, which improves their chances of continued business and being chosen as the supplier to launch a new product with. It said that innovation is one of the main ways the competitive tension between the Parties plays out because 'innovation is arguably the main differentiator between what are otherwise homogenous and substitutable products'.⁴⁷³

- (c) Another large retailer [REDACTED] submitted that the Parties compete for the space allocated to DTB products by retailers, [REDACTED]. This is because the nature of the category forces the retailer to manage a mix of own label and branded products, rather than simply expanding the range it stocks (expanding its range does not necessarily lead to significantly more volume being sold).⁴⁷⁴ [REDACTED] It said that it has [REDACTED]. It [REDACTED] indicated that this leverage is slightly mitigated by the fact that C er elia produces the majority of the Jus-Rol products supplied to the retailer.⁴⁷⁵ It maintains, however, that there is competition between the Parties in terms of pricing to drive

⁴⁷² Written submission from [REDACTED], [REDACTED] 2022, page 1.

⁴⁷³ Transcript of a call with [REDACTED], [REDACTED] 2022, pages 7-12.

⁴⁷⁴ Transcript of a call with [REDACTED], [REDACTED] 2022, page 4.

⁴⁷⁵ Transcript of a call with [REDACTED], [REDACTED] 2022, page 7.

sales.⁴⁷⁶ It [X] submitted that use of this leverage has taken place in every negotiation over the last few years and comes in the form of retail pricing, promotional strategy and adjusting ranges.⁴⁷⁷

(d) Another large retailer [X] described the potential to use the competitive tension between the Parties in negotiations. It [X] explained that pre-Merger it could ‘flex modular space’ (ie vary the share of the shelf) between its PL and branded suppliers to its commercial advantage and in response to end-consumer needs. For example, if Jus-Rol were to significantly increase prices pre-Merger, it could consider stocking more PL products. However, this retailer also said that conversations around [X].⁴⁷⁸

- *Grocery retailer views on the direction of the constraint between the Parties*

9.55 Large retailers also provided evidence in relation to the direction of the constraint of C er lia on Jus-Rol, and vice versa:

- (a) [X] submitted that the constraint of trading the Parties off against each other works in both directions (ie trading PL off against Jus-Rol as well as trading Jus-Rol off against PL products).⁴⁷⁹ For instance, the retailer could decide to lower prices to drive more volume, if the brand is investing more in efficiencies and this would provide the best commercial proposal.⁴⁸⁰
- (b) [X] also stated that the constraint works in both directions as the benchmark which manifests as a result of the differential can be used in negotiations with either supplier.⁴⁸¹
- (c) [X] submitted that, from a pricing perspective, the products [X] in the PL channel provide a greater constraint on the price of Jus-Rol than the other way round due to the nature of the lower price point for the PL product.⁴⁸²

⁴⁷⁶ Transcript of a call with [X], [X] 2022, page 9.

⁴⁷⁷ Email from [X], [X] 2022. See further ‘Evidence on the nature of the constraint’.

⁴⁷⁸ Transcript of a call with [X], [X] 2022, page 7 – 8. Note that we discuss the limitations and inconsistencies in [X] evidence elsewhere in this report and have consequently placed a lower weight on its evidence (see paragraph 9.349 below).

⁴⁷⁹ Transcript of a call with [X], [X] 2022, page 10.

⁴⁸⁰ Transcript of a call with [X], [X] 2022, page 8.

⁴⁸¹ Written submission from [X], [X] 2022, question 2.

⁴⁸² Transcript of a call with [X], [X] 2022, page 10.

- *Grocery retailer views of the constraint on wholesale prices deriving from competition between the Parties*

- 9.56 In relation to the constraint of wholesale prices deriving from competition between the Parties, the Parties submit that they both compete on price and quality within their respective channels. Cérélia aims to provide retailers with competitive prices and quality, whereas GMI competes on price, the margin for the effective wholesale price, service, rate of sale and category insight.⁴⁸³ However, they do not accept that this competition takes place across the two supply channels.
- 9.57 When asked whether wholesale prices of PL products helped determine the wholesale prices of branded products (and vice versa), more than half (four out of seven) of the customers that responded [X], including [X] of the largest grocery retailers by market share, said they did – on the basis that PL wholesale pricing helps generate pricing discipline for the branded channel (since they would expect PL products to cost less than branded products).⁴⁸⁴ One large retailer [X] further stated that the Merger would mean that it would be ‘unable to offset the brand vs. [PL] for range changes and commercial competitiveness to ensure we have great prices’.⁴⁸⁵
- 9.58 In addition, one other large retailer [X], when talking about [X] relations with suppliers, explained that it looks at the price differential between the PL product ([X]) and [X] and that it ‘[trades] competitors off against each other’.⁴⁸⁶ It explained that ‘the presence of [at least] two separate and viable suppliers each offering high quality products creates competitive tension in any negotiation, and is something that we leverage (implicitly) to generate jeopardy and negotiate a good commercial outcome for us and our customers’.⁴⁸⁷
- 9.59 By contrast, one smaller retailer [X] said that the wholesale price negotiated with PL suppliers has no bearing on the wholesale price negotiated with branded suppliers and that commercial viability was instead prioritised.⁴⁸⁸

⁴⁸³ Cérélia’s initial phase 2 Submission, 1 July 2022, paragraph 3.4c. GMI site visit, slide 29.

⁴⁸⁴ Responses to CMA phase 1 customer questionnaire, question 16c.

⁴⁸⁵ [X] response to CMA phase 1 customer questionnaire, question 17.

⁴⁸⁶ [X] response to CMA phase 1 customer questionnaire, question 13.

⁴⁸⁷ Written submission from [X], [X] 2022, page 1.

⁴⁸⁸ [X] response to CMA phase 1 customer questionnaire, question 16a and 16b. We do however note the weakness in the logic of this submission, as the commercial viability of a product is driven by its popularity with end-consumers relative to alternative products (ie relative to the other channel), and the margins earned by the retailer relative to alternative products (ie relative to the other channel).

- *Grocery retailer views on the nature of the constraint*

9.60 Large retailers described the constraint between the Parties as being implicit in nature.

- (a) One large retailer [REDACTED], when describing the potential lever of switching volumes between PL and branded supply, described a commercial process that focused on the supplier's competitiveness and the profitability for the retailer, rather than comparing explicitly across channels. While it [REDACTED] indicated that, in discussions with either of the Parties, it would not necessarily directly reference an offer from the other Party and that it had not particularly needed to do so in negotiations, it also told us that the option to switch between its existing PL supplier and Jus-Rol was more important than the option to change supplier.⁴⁸⁹
- (b) Another large retailer [REDACTED] submitted that a competitive tension between the Parties is implicitly present in any negotiation. It stated that the presence of the Parties as alternatives provides 'an objective, independent 'benchmark' to assess factors such as value for money, competitiveness of the deal offered, quality etc'.⁴⁹⁰ It explained that it would typically not refer directly to the constraint from the other Party, focusing instead on the best possible offer each supplier could produce, but that it is nevertheless a competitive pressure which would be lost as a result of the Merger.⁴⁹¹ It further explained that discussions were centred around the best possible offer each supplier could produce.⁴⁹² [REDACTED].⁴⁹³ It told us that this is because it must comply with GSCOP regulations.⁴⁹⁴ It explained that it considered GSCOP regulations to allow a retailer to mention other suppliers by name but prevent it from discussing the details of any commercial proposals made by a supplier.⁴⁹⁵
- (c) [REDACTED] [REDACTED] similarly submitted that, as far as it was aware, specific references to other parties were not usually made during negotiations.⁴⁹⁶ While noting that there may be some conversations that take place outside of email exchanges, it also noted that this type of leverage has not

⁴⁸⁹ Transcript of a call with [REDACTED], [REDACTED] 2022, page 9. Earlier in the call, [REDACTED] explained that 'there are not many branded suppliers out there; it is mainly Jus Rol' and so the reference to changing supplier appears to primarily relate to the PL channel.

⁴⁹⁰ Written submission from [REDACTED], [REDACTED] 2022, page 1.

⁴⁹¹ Written submission from [REDACTED], [REDACTED] 2022, page 4.

⁴⁹² Written submission from [REDACTED], [REDACTED] 2022, page 1.

⁴⁹³ Written submission from [REDACTED], [REDACTED] 2022, page 2.

⁴⁹⁴ Transcript of a call with [REDACTED], [REDACTED] 2022, page 8-9 and 11.

⁴⁹⁵ [REDACTED], [REDACTED] 2022.

⁴⁹⁶ Transcript of call with [REDACTED], [REDACTED] 2022, pages 14-15.

tended to be necessary in practice, as it had not experienced unjustified cost inflation or (in respect to Jus-Rol) reduction in promotional funding.

- 9.61 A number of retailers provided examples of stocking decisions that included changing Jus-Rol products for PL. One retailer [X] said that it has delisted a number of specialist Jus-Rol products due [X]. In most instances it replaced these with branded like-for-like or PL products.⁴⁹⁷ Another retailer [X] also said that it has replaced Jus-Rol products with PL products.⁴⁹⁸

Competitor views on competition between the Parties

- *Evidence*

- 9.62 Competitors that responded to our Inquiry presented a mixed view on whether or not C er lia and Jus-Rol compete, with more than half (four out of seven) [X] considering that they do compete and less than half (three out of seven) [X] considering that they do not.⁴⁹⁹

- 9.63 One competitor [X] stated of the wholesale supply of DTB products, ‘in this sector PL always competes with the market leading brand in terms of price and promotional activity’. By contrast, [X] highlighted the difference in PL and branded channels as the basis for their position that the Parties do not compete at the wholesale level.

- 9.64 When asked to list and to rank in terms of closeness alternative suppliers to the Parties, only one competitor [X] mentioned Jus-Rol and C er lia as alternatives to each other, marking them as competing very closely.⁵⁰⁰

- *Our assessment*

- 9.65 We have carefully considered a significant volume of evidence from third parties in relation to competition between the Parties. We note the mixed response from suppliers, but consider that this is, to some extent, likely to reflect the channel-specific nature of the tendering process and each supplier’s position and focus on its own rivals within that channel.

- 9.66 The majority of retailers that responded to us as part of our inquiry told us that the Parties compete and we note that this group [X] such that this view was

⁴⁹⁷ [X] response to CMA phase 1 customer questionnaire, [X] 2022, question 15.

⁴⁹⁸ [X] response to CMA phase 1 customer questionnaire, [X] 2022, question 15.

⁴⁹⁹ Responses to CMA phase 2 competitor questionnaire, question 22.

⁵⁰⁰ [X] response to CMA phase 2 competitor questionnaire, question 13 and question 14.

shared by grocery retailers that together account for the majority of supply of DTB products in the UK.

- 9.67 We note, in particular, that the largest retailer customers of the Parties overall articulated a broadly consistent and coherent view that there is an implicit but important constraint between the Parties which will be lost as a result of the Merger.

Tendering evidence

- 9.68 In support of their position that they are not competitors, the Parties submit that they have never tendered or bid against each other for a retailer contract.⁵⁰¹

- *Evidence and our assessment*

- 9.69 The tender evidence available confirms that the Parties do not compete head-to-head in tenders or bids for contracts to supply retailers. We note, however, that the reason for this is that, as set out in Chapter 7, tenders, to the extent they occur, are channel-specific. PL suppliers compete directly with other PL suppliers in tenders, and tenders do not take place for the supply of branded products. As a result, tenders do not capture the full competitive dynamics for the supply of DTB products because there is also an ongoing process of cross-channel competition that takes place outside any PL tendering process.
- 9.70 In particular, we have found that retailers' decisions about how much product to purchase across the two channels is not agreed as part of the tender process but is determined through ongoing discrete orders where retailers can flex their demand between the PL and branded options. It is through this competition for retailer shelf space (as described by grocery retailers above) that the constraint between the Parties occurs.

Internal documentary evidence on competition

- *The Parties' submissions*

- 9.71 In relation to internal documents generally, the Parties said in their submissions prior to our Provisional Findings that:

⁵⁰¹ [C er lia's initial phase 2 Submission](#), 1 July 2022, paragraph 3.8a.

- (a) The Parties do not perceive each other as directly competing and do not monitor each other's performance.⁵⁰² References to PL in the Parties' documents are not and cannot be construed as references to Cérélia, but only to finished PL products (regardless of their manufacturer, which it usually not known and which varies over time).⁵⁰³
- (b) There are limited mentions of Jus-Rol in Cérélia's internal documents and vice versa (with the exception of references in the context of the existing contract manufacturing arrangement between Cérélia and GMI).⁵⁰⁴
- (c) Cérélia submitted that [REDACTED].⁵⁰⁵
- (d) GMI submitted that its internal [REDACTED]. [REDACTED] the respective PL manufacturer for any given PL DTB product at the relevant point in time (nor does GMI usually even know who the manufacturer is and even if it knew it would not consider such information relevant for its negotiations with retailers). From GMI's perspective, [REDACTED].⁵⁰⁶

9.72 In response to our provisional findings and Consultation Paper, the Parties made a number of additional submissions about documentary evidence upon which we have relied. The CMA has considered these submissions in detail and sets out our view on them in Appendix D.

- *The Parties' internal documents*

- *Cérélia documents*

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

9.74 In this regard, Cérélia has noted that a number of the documents that we considered are relevant to our assessment of competition are not 'competitive analysis' documents. We note, however, that the CMA would not typically limit its analysis of evidence to documents that are specifically intended to analyse

⁵⁰² Cérélia's initial phase 2 Submission, 1 July 2022, paragraph 3.8b.

⁵⁰³ Cérélia's response to the phase 1 Issues Letter, 11 May 2022, paragraph 2.8d.

⁵⁰⁴ Cérélia's response to the phase 1 Issues Letter, 11 May 2022, paragraph 5.22 and 5.26.

⁵⁰⁵ Cérélia's response to the phase 1 Issues Letter, 16 May 2022.

⁵⁰⁶ GMI response to the CMA's section 109 Notice (phase 2 s109), 7 July 2022, paragraph 10.4.

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 believe that it is appropriate to limit our review to documents that are dedicated to ‘competitive analysis’.

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

(a) In an email between the Cérélia National Account Manager and [REDACTED],⁵⁰⁷ [REDACTED]. The Cérélia National Account Manager [REDACTED]. [REDACTED].

(b) An internal document from Cérélia’s National Account Manager shows [REDACTED].⁵⁰⁸ In this email, when evaluating DTB products supplied by Cérélia in the PL channel, [REDACTED]. In the Main Party Hearings, Cérélia stated that [REDACTED]. Cérélia said that [REDACTED].⁵⁰⁹ However, further internal documents show that [REDACTED]. For example, internal emails discussing [REDACTED].⁵¹⁰ Moreover, we consider that the [REDACTED] request evidences that, even for those retailers which do not stock both Jus-Rol and Cérélia products (which is a minority of the overall market), there remains a degree of competitive tension between the Parties’ offerings on competitive parameters including price and quality.

9.76 In relation to these [REDACTED].⁵¹¹ Cérélia further submitted that there [REDACTED].⁵¹²

9.77 We also identified Cérélia documents referencing [REDACTED] sales and prices, which we consider show that Cérélia considers that information to be relevant to its commercial decisions:

(a) A presentation on the [REDACTED] shows Cérélia [REDACTED].⁵¹³ The CMA notes that [REDACTED] 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

⁵⁰⁷ [REDACTED].

⁵⁰⁸ [REDACTED].

⁵⁰⁹ Cérélia, main party hearing transcript, pages 38–39.

⁵¹⁰ [REDACTED], 2 August 2019. Cérélia internal emails [REDACTED], 18 September 2019. [REDACTED], 24 February 2021.

⁵¹¹ Response to AIS (Cérélia’s response to internal documents), 13 September 2022, page 10.

⁵¹² Response to AIS (Cérélia’s response to internal documents), 13 September 2022, page 10.

⁵¹³ [REDACTED], slide 9. See also row C7 in Appendix D.

retailers at the wholesale level. The title of the Slide ('[REDACTED]') indicates that the analysis the slide offers is in relation [REDACTED]. [REDACTED].

- (b) A Cérélia internal document shows [REDACTED].⁵¹⁴ As noted above, in light of the nature of Cérélia's commercial offering, we consider that retail pricing is being used to infer the potential range of pricing to grocery retailers at the wholesale level.
- (c) In a presentation [REDACTED].⁵¹⁵ In response to the AIS, Cérélia submitted that that [REDACTED].⁵¹⁶ Whilst we accept that providing category data to retailers is often standard, we note that this document has not been prepared for an external audience and so should be considered as evidence of Cérélia monitoring [REDACTED] performance for its own commercial purposes.
- (d) A Cérélia internal data analysis⁵¹⁷ shows both percentage shares [REDACTED]. 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 [REDACTED] 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, we consider that it shows Cérélia considers that Jus-Rol products fall within a '[REDACTED]' that also comprises PL products that Cérélia supplies.
- (e) A Cérélia internal document monitors the performance of Jus-Rol products and compares PL with Jus-Rol products.⁵¹⁸ The document provides an analysis by Cérélia of trends in the relative volumes distributed by [REDACTED] of each of PL and branded DTB products. [REDACTED]. The CMA therefore considers [REDACTED], changes in the distribution of one category of product come at the expense of the other type of product, evidencing the "rebalancing" constraint described elsewhere in this report. The monitoring of the changes in these volumes reflects the ongoing competitive rivalry between these products to increase relative volumes.

⁵¹⁴ '[REDACTED] May 2021.xlsx'.

⁵¹⁵ '[REDACTED]', September 2021.

⁵¹⁶ Response to AIS (Cérélia's response to internal documents), 13 September 2022, page 12.

⁵¹⁷ Cérélia [REDACTED]. See also row C5 of Appendix D.

⁵¹⁸ Cérélia [REDACTED]. See also row C4 of Appendix D.

9.78 We also identified internal documents that indicate that Jus-Rol constrains C  r  lia:

- (a) A presentation [REDACTED] considered the competitive environment in the UK chilled dough category. We note that the document was created before C  r  lia had a UK presence, and consider that it therefore should be given less weight than documents that reflect C  r  lia's direct operational experience in the UK. However, as it was prepared to [REDACTED], we consider that it was based on detailed analysis and consideration, including as to the competitive conditions in the relevant market and therefore merits some weight in our investigation. The 'key learning' on the competitive environment was stated to be that '[REDACTED]'.⁵¹⁹ In addition, the CMA notes that [REDACTED]. We consider this evidences a distinction between the wholesale and retail levels of the supply chain, [REDACTED]. We consider that the document therefore suggests that there is direct competitive tension between GMI's offering and that of BakeAway (which C  r  lia was to acquire), and distinct wholesale and retail markets.
- (b) As noted above, in an email chain from [REDACTED] relating to [REDACTED].⁵²⁰ The C  r  lia National Account Manager expressly describes [REDACTED]. The '[REDACTED]' described are the [REDACTED] and Jus-Rol, i.e., [REDACTED].
- (c) An email exchange between BakeAway and a Buyer for [REDACTED] captures the competitive constraint imposed by Jus-Rol on PL products produced by BakeAway⁵²¹ and is consistent with how grocery retailers have described the constraint between the Parties:
- (i) The email provides a clear example of C  r  lia competing for shelf space with Jus-Rol. [REDACTED].
- (ii) The impact of this competition with Jus-Rol can be seen as C  r  lia offers to produce [REDACTED]. This is evident from the language used, with the C  r  lia National Account Manager stating that: '[REDACTED]'. In addition to the offer to provide [REDACTED], there is clear competition on quality grounds as the National Account Manager offers [REDACTED]. In addition, there are references to C  r  lia's ongoing [REDACTED] and C  r  lia's National Account Manager says that C  r  lia can '[REDACTED]'. We consider that this shows that the competitive tension between the Parties is affecting commercial negotiations with retailers and does so in a way that goes beyond any static snapshot of the SKUs offered to grocery retailers at

⁵¹⁹ [REDACTED], page 8. See also row C6 of Appendix D.

⁵²⁰ [REDACTED]. See also row C8 of Appendix D.

⁵²¹ [REDACTED]. See also rows C9 and C10 in Appendix D.

the time and includes a focus on product development and innovation.

(iii) The document also evidences the ‘implicit’ nature of the constraint, [REDACTED].

(d) Emails between GMI and BakeAway regarding [REDACTED] discuss the scope of a [REDACTED] provided by C erelia to GMI as part of its manufacturing arrangement.⁵²² In the document it is stated that ‘[REDACTED]’. The CMA considers that the clear implication of the [REDACTED] is that [REDACTED].

9.79 As noted above, C erelia made a range of submissions challenging the CMA’s interpretation of these documents, which the CMA has considered in detail. The Parties’ submissions, and the CMA’s response to them, are set out in Appendix D.

o *GMI documents*

9.80 Due to GMI’s document retention policy (which results in the destruction of documents after [REDACTED]), we mainly had access to internal documents created after Merger discussions with C erelia had started, limiting the overall volume of available evidence. We also note that the CMA is generally likely to attach more evidentiary weight to documents generated before merging parties were contemplating or aware of a merger.⁵²³ We found that GMI’s documents frequently discuss the constraint from PL.

9.81 Notwithstanding these limitations, we found documents in which GMI monitors and analyses competition for shelf space between Jus-Rol and PL:

(a) A category insight presentation notes that there is ‘[REDACTED]’.⁵²⁴ The presentation also displays the [REDACTED].⁵²⁵

(b) A GMI presentation assesses Jus-Rol Sheets relative to PL. On the factors influencing Jus-Rol Sheets, the presentation considers ‘Promotion’ and states that ‘[REDACTED]’ than PL.⁵²⁶

9.82 We also identified documents in which Jus-Rol monitors and analyses the retail price differential between Jus-Rol and PL:

⁵²² [REDACTED]. See also row C11 and D11 in Appendix D.

⁵²³ MAGs, paragraph 2.29.

⁵²⁴ [REDACTED], page 4. See also Row D10 in Appendix D.

⁵²⁵ [REDACTED], page 24. See also Row D10 in Appendix D.

⁵²⁶ [REDACTED], page 18. See also Row D9 in Appendix D.

- (a) A GMI presentation assesses Jus-Rol sheets relative to PL. On ‘Price’, the presentation states that over the last three years, Jus-Rol [redacted] by [redacted]% whereas PL [redacted] by [redacted]%.⁵²⁷
- (b) Another GMI presentation on the dough/mix price for [redacted] compares Jus-Rol and PL retail pricing.⁵²⁸ One slide sets out that [redacted].⁵²⁹
- (c) In GMI slides on a ‘[redacted]’, Jus-Rol and PL are compared throughout.⁵³⁰ The retail price differential with PL is said to be important and needs ‘[redacted]’.⁵³¹

9.83 In addition, we identified a number of documents that indicate that GMI views PL as a constraint and that it uses PL as a benchmark:

- (a) In an internal presentation dated March 2020, GMI discussed [redacted].⁵³²
- (b) A [redacted].⁵³³
- (c) A GMI presentation setting out [redacted] shows competition between branded and PL dough. It states that branded dough RTB products ‘[redacted]’.⁵³⁴
- (d) The Jus-Rol ‘[redacted]’ presentation from [redacted], compares Jus-Rol and PL on price and volume. The presentation states that Jus-Rol [redacted].⁵³⁵
- (e) A GMI presentation evidences the constraint on Jus-Rol from PL and states that ‘[redacted]’.⁵³⁶

9.84 While GMI typically refers to ‘PL’ supply in these documents, without specifying the retailer or the manufacturer, we believe that they suggest a universal constraint posed by the underlying provider of that PL product, who determines key competitive parameters such as wholesale price and quality, and by C erelia in particular. As noted in the Shares of Supply Appendix, C erelia is, by far, the largest PL supplier in the UK market, with a value share more than two times as large as the next largest provider, being the main PL supplier for [redacted] and supplying close to half of [redacted] PL needs.⁵³⁷ In documents where individual grocery retailers’ PL offerings are singled out, the CMA has

⁵²⁷ [redacted], page 18. See also Row D9 in Appendix D.

⁵²⁸ [redacted], slides 5-9. See also Row D5 in Appendix D.

⁵²⁹ [redacted], slide 5. See also Row D5 in Appendix D.

⁵³⁰ [redacted], pages 3 and 4. See also Row D6 in Appendix D.

⁵³¹ [redacted], page 4. See also Row D6 in Appendix D.

⁵³² [redacted], March 2020, slide 27 and 36

⁵³³ [redacted], 28 August 2020.

⁵³⁴ [redacted], page 20. See also Row D4 of GMI’s submissions in response to Consultation Paper in Appendix D.

⁵³⁵ [redacted].

⁵³⁶ [redacted].

⁵³⁷ See Shares of Supply Appendix at Table 1.

in a number of instances been able to confirm that those retail offerings are provided by Cérélia.⁵³⁸ Moreover, we [REDACTED] to any material extent.

9.85 The CMA has also clearly described, in its assessment 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. The CMA has 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.

9.86 As noted above, GMI also made a range of specific submissions in response to the Provisional Findings and Consultation Paper challenging the CMA’s interpretation of individual documents, which the CMA has considered in detail. These submissions, and the CMA’s response to them, are set out in Appendix D.

- *Internal documents relevant to the grocery retailer evidence of the constraint on wholesale prices deriving from competition between the Parties*

9.87 We found some evidence in GMI’s internal documents of a customer making direct wholesale pricing comparisons between Jus-Rol and PL products. An email chain between [REDACTED] and GMI from 31 May 2022 shows [REDACTED].⁵³⁹ In its response to our Working Papers, GMI submitted that [REDACTED].⁵⁴⁰ GMI further submitted that [REDACTED], which we address immediately below.

- *Internal documents relevant to the grocery retailer evidence on the nature of the constraint*

9.88 When asked for contemporaneous internal documents referencing the competitive tension described, the retailers that had described the constraint between the Parties told us that such documents were generally not available – pointing to the implicit nature of the commercial tension or leverage.

9.89 However, commercial interactions with retailers captured in the Parties’ internal documents indicate that retailers consider replacing Jus-Rol products

⁵³⁸ See for example the discussion in Row D5 of the Appendix D.

⁵³⁹ Email from [REDACTED] to GMI, 31 May 2022.

⁵⁴⁰ GMI response to the Annotated Issues Statement and Working Papers, 12 September 2022, paragraph 5.1.2.

with equivalent PL products (and vice versa) when assessing their product range. For example:

- (a) An email from one retailer [REDACTED] to a GMI account manager in 2020 shows the retailer [REDACTED].⁵⁴¹
- (b) An internal email between GMI staff in 2019 describes one retailer [REDACTED].⁵⁴² GMI submitted that the decision to [REDACTED] was part of that retailer [REDACTED] and that this should not be read as these products being taken out and replaced with PL products.⁵⁴³ When we asked the retailer [REDACTED] [REDACTED], it said that [REDACTED].⁵⁴⁴ [REDACTED].⁵⁴⁵
- (c) In a 2021 category review, Cérélia, as a retailer's [REDACTED] PL manufacturer, recommended that that retailer [REDACTED].⁵⁴⁶ Cérélia submitted that the provision of category insights is standard practice and required by retailers from their contract manufacturers and this does not confer any control over a retailer's PL range.⁵⁴⁷ Cérélia also submitted that all recommendations were objectively justified, that [REDACTED] and that the retailer [REDACTED] ultimately rejected Cérélia's recommendations.⁵⁴⁸ In other circumstances, Cérélia has recommended [REDACTED] where this would benefit the entire category, (see paragraph (d) below).⁵⁴⁹ We do not dispute any of these submissions but also do not consider them to be particularly relevant in this context, given that they are not inconsistent with the position that retailers consider replacing Jus-Rol products with equivalent PL products. [REDACTED].⁵⁵⁰
- (d) Cérélia said that it has recommended [REDACTED]. In March 2021, it recommended [REDACTED]. [REDACTED].⁵⁵¹ Cérélia notes that this is consistent with its position as set out above at paragraph (c), that category management recommendations are made on an objective basis.⁵⁵² Notwithstanding this position (which we do not dispute), we note that [REDACTED].

⁵⁴¹ [REDACTED].

⁵⁴² '[REDACTED]', 12 June 2019.

⁵⁴³ Cérélia, main party hearing transcript, page 30.

⁵⁴⁴ [REDACTED].

⁵⁴⁵ [REDACTED].

⁵⁴⁶ [REDACTED], February 2021. [REDACTED].

⁵⁴⁷ Response to AIS (Cérélia's response to internal documents), 13 September 2022, pages 4 and 10.

⁵⁴⁸ [REDACTED].

⁵⁴⁹ Response to AIS (Cérélia's response to internal documents), 13 September 2022, pages 4 and 10.

⁵⁵⁰ [REDACTED].

⁵⁵¹ Response to AIS (Cérélia's response to internal documents), 13 September 2022, pages 4-5. Annex 24a.28 – [REDACTED], slides 3 and 23

⁵⁵² Response to AIS (Cérélia's response to internal documents), 13 September 2022, pages 4-5. Annex 24a.28 – [REDACTED], slides 3 and 23

- (e) An email between BakeAway and a Buyer for [REDACTED] also evidences the competitive constraint imposed by Jus-Rol on PL products produced by BakeAway.⁵⁵³ BakeAway states that '[REDACTED]'.⁵⁵⁴ The email from [REDACTED] sets out that the '[REDACTED]' which meant the delisting of certain products was necessary.⁵⁵⁵ This is evidence that there is competition between Jus-Rol and PL products for retail customers' shelf space and that retailers may make the decision to delist PL products but to retain branded Jus-Rol products.
- (f) The email between BakeAway and [REDACTED] also indicates the implicit nature of this constraint. In response to BakeAway stating that [REDACTED] was '[REDACTED]' it said, '[REDACTED]'.⁵⁵⁶

- *Our assessment*

- 9.90 Consistent with our understanding of the market, the Parties' internal documents suggest they monitor each other and regard each other as competitors. There is particularly strong evidence that GMI regards PL products as the primary competitive constraint on Jus-Rol.
- 9.91 The CMA notes that Cérélia monitors PL DTB suppliers more frequently than it tracks Jus-Rol/GMI (see Alternative Competitive Constraints section below). However, there is nonetheless clear evidence that Cérélia monitors the sales and retail prices of Jus-Rol products [REDACTED], and that it regards Jus-Rol as a competitor.
- 9.92 In addition, GMI's internal documents show that it monitors and benchmarks Jus-Rol against PL products. As described in paragraph 9.84 above, while references to PL that we have seen are typically generic and do not name wholesale suppliers or retailers, we believe that they suggest a universal constraint posed by the underlying provider of that PL product, who determines many of the key competitive parameters such as wholesale price and quality, and by Cérélia, in particular, as by far the largest PL supplier in the UK market, with a value share of more than two times as large as the next largest provider. GMI's internal documents do not [REDACTED].

⁵⁵³ [REDACTED]. See also Row C10 in Appendix D.

⁵⁵⁴ [REDACTED]. See also Row C10 in Appendix D.

⁵⁵⁵ [REDACTED]. See also Row C10 in Appendix D.

⁵⁵⁶ [REDACTED]. See also Row C10 in Appendix D.

The Parties' views on our assessment of competition between them

- *Lack of evidence of a competitive constraint*
 - *The Parties' submissions*

9.93 In response to the Provisional Findings Report and the Consultation Paper:

- (a) C er lia submitted that the CMA's case that a competitive constraint exists between the Parties in negotiations is based on a problematic 'evidential bedrock' and, in particular the unsubstantiated assertions by two large retailers. They submitted that neither of the two retailers was able to recall a specific instance or provide any evidence that they ever communicated a threat to rebalance volumes between PL and branded products to either Party, or produce an internal document which referred to this allegedly significant competitive 'lever'. They submitted that neither retailer was able to identify any actual effects of this rebalancing threat and that, even if it were to exist it must be ineffective and not influence the Parties' terms, as it is not perceived by the Parties or mentioned in any of their internal documents.⁵⁵⁷ GMI submitted that, in some cases, the documents provided by retailers cited by the CMA as evidence of the competitive constraint between the Parties do not support the interpretations placed on them. GMI also said that the CMA gave little weight to its submissions regarding documentary evidence (including submissions on the background and circumstances surrounding the documentary evidence) but that unsupported qualitative evidence provided by retailers is accepted at face value.⁵⁵⁸ Lastly, C er lia submitted that [REDACTED] retailers did not even raise the implicit threat.⁵⁵⁹
- (b) GMI submitted that the CMA's position is not consistent with GMI's direct experience of the market. GMI has never encountered the "trading off" strategy in practice from any retailer. Furthermore, retailers have never referred to PL manufacturers in commercial negotiations with GMI, [REDACTED]. In addition, GMI never perceived itself to be subject to any constraint from PL manufacturers in negotiations with retailers and it does not recognise C er lia, or any other co-manufacturer supplying contract manufacturing

⁵⁵⁷ [C er lia's response to the Provisional Findings](#), 28 November 2022, paragraph 1.5, 2.1 – 2.11, 2.14(b) and (c), 2.18(a) and [GMI's response to the Provisional Findings](#), 28 November 2022, paragraph 2.7, 3.1 – 3.4 and 4.1 – 4.2

⁵⁵⁸ [GMI's response to the Provisional Findings](#), 28 November 2022, paragraph 3.3, 3.5 and 4.3 – 4.4

⁵⁵⁹ [C er lia's response to the Provisional Findings](#), 28 November 2022, paragraph 2.18(a)

services to brands (whether PL or otherwise), to be a competitor of the Jus-Rol business or as providing any appreciable constraint upon it.⁵⁶⁰

- (c) Cérélia submitted that the CMA's SLC assumes that there are ongoing price discussions between the Parties and retailers but provides no evidence of this and states that there are no such frequent discussions with either Party. Cérélia submitted graphs to demonstrate that per-unit sales prices to large retailers were [REDACTED] as evidence that [REDACTED].⁵⁶¹
- (d) Cérélia submitted that the CMA's SLC would only constrain the Parties if they attempted to degrade their offers between 'primary channel-specific competition' events when their commercial terms are set. Cérélia submitted that the Provisional Findings Report contain no evidence that the Parties have ever attempted to degrade their offers between these points in time. It stated that the prevailing competitive outcomes are delivered by channel-specific competition and that the CMA has committed a fundamental error of assessment in disregarding the absence of competition between the Parties and the effective competition within the PL channel and the 'brand channel'.⁵⁶²
- (e) Cérélia set out that pricing is set following channel-specific competition and the Provisional Findings Report contains no evidence that there are in fact any ongoing purchasing decisions in which trading terms are re-assessed. Instead, the ongoing purchasing decisions which retailers make are solely in relation to what volumes to order. [REDACTED].⁵⁶³
- (f) Cérélia submitted that, even if a retailer does not 'give granular detail about other suppliers' offers', if the 'implicit knowledge' of the rebalancing threat 'is an important dynamic in terms of getting a good deal as it is what drives the supplier to continuously improve and get better', any rational decision-maker would expect there to be some evidence somewhere of awareness on the part of the supplier and on the part of the retailer of how it was able to 'turn to the other supplier and leverage that position in order to obtain a more favourable outcome for the business'. In Cérélia's view there was no such evidence of this in the Provisional Findings Report and there is still no evidence of this provided in the Consultation Paper.⁵⁶⁴ Cérélia submitted that the additional retailer evidence described in the

⁵⁶⁰ [GMI's response to the Provisional Findings](#), 28 November 2022, paragraph 2.7 and 4.1 – 4.2.

⁵⁶¹ [Cérélia's response to the Provisional Findings](#), 28 November 2022, paragraph 1.6 and 2.39 – 2.42 including figures 1 – 4 and [Cérélia's response to the Provisional Findings - Annex 1](#)

⁵⁶² [Cérélia's response to the Provisional Findings](#), 28 November 2022, paragraphs 3.28 – 3.30.

⁵⁶³ [Cérélia's response to the Provisional Findings](#), 28 November 2022, paragraph 3.20.

⁵⁶⁴ [Cérélia's response to the Consultation Paper](#), 3 January 2023, paragraph 2.18.

Consultation Paper as to the factors that drive shelf space decisions confirms that such decisions are not driven by the terms offered by the Parties relative to one another but by other factors, primarily consumer demand. Consistent with this, the Consultation Paper, like the Provisional Findings Report before it, evidences not a single example of a retailer having actually used the implicit rebalancing threat in practice to obtain better terms.⁵⁶⁵

(g) GMI submitted that the additional evidence obtained from third parties is also undermined by the absence of supporting documentary evidence. It said that the CMA is not entitled to reinforce its Provisional Findings Report with evidence that it acknowledges is deficient, especially where the Provisional Findings are primarily supported by evidence from retailers and where GMI has already criticised that evidence as being weak and unsupported by documentary evidence.⁵⁶⁶

o *Our assessment*

9.94 We note the evidence provided by retailers (as set out above) that the competitive dynamic is not typically explicit. We consider that this is generally consistent with the position reflected in the Parties' internal documents and in other DTB suppliers' descriptions of the channel-specific commercial negotiations with retailers. Contrary to the Parties' submissions, the CMA considers that there are several reasons why the evidence provided by retailers should be given material weight in assessing whether the Merger gives rise to competition concerns.

(a) Firstly, the evidence provided by the large UK grocery retailers is highly consistent. Three of the four large retailers explained the implicit constraint and [redacted] articulated some degree of concern about the Merger in similar terms (although we note that [redacted] was unable to specifically conclude on the effects of the Merger). We have set out our reasons as to why [redacted] evidence should be given less weight elsewhere in this document (see paragraph 9.351 below).

(b) Second, these large retailers comprise a clear majority of the total market and are likely to be more directly impacted by the Merger. Whilst we do not consider that competition between the Parties is limited to grocery retailers that stock directly equivalent categories of product across both the PL and branded channels, we consider that customers in this position

⁵⁶⁵ C  r  lia's response to the Consultation Paper, 3 January 2023, paragraph 1.9.

⁵⁶⁶ GMI's response to the Consultation Paper, 3 January 2023, paragraphs 4.1 and 4.3

are likely to be best-placed to provide insight into how this competitive dynamic plays out in practice. In any case, the evidence upon which the CMA has relied in reaching its conclusions has not come exclusively from large retailers but also includes a retailer with a small share of the overall supply of DTB products [X], which suggests it is not only large retailers who consider the Merger to give rise to a lessening of competition, as well as the range of other evidence set out in this report (including, in particular, the Parties' own internal documents).

- (c) Third, as carefully articulated in the Provisional Findings Report, the grocery retailers who mentioned the concern described the competitive constraint as 'implicit' in nature. Given this description, we would therefore not expect to see it being communicated to the Merger Parties, particularly in a small market with few alternative suppliers where the available supply options to grocery retailers would generally be expected to be well-understood by market participants (although, as noted above, we have identified frequent references to PL products supplied by C r lia in GMI's internal documents). To assess the Parties' submissions, we also sought to clarify with grocery retailers why they might not overtly name the provider of a competing offer, and they have articulated a number of reasons to explain this position.⁵⁶⁷ We found documentary evidence corroborating these reasons. For example, in an email exchange between a retailer [X] and C r lia, the buyer refuses to disclose the identity of the provider of a competing offer, with the buyer referencing perceived UK competition law, confidentiality and GSCOP issues in support of this (see paragraph 9.78(c)(iii)). This exchange is directly in line with the response provided by the retailer during its oral hearings with us.
- (d) Finally, as noted above, the evidence provided by retailers is supported by other evidence available to the CMA. As noted elsewhere in this report, the position that a competitive constraint exists between the Parties in negotiations is consistent with evidence from the Parties' internal documents and evidence provided by a number of other third parties (eg DTB suppliers).⁵⁶⁸ In particular, we note above, in our assessment of the Parties' internal documents (above and in Appendix D), that the Parties

⁵⁶⁷ We investigated the extent to which GSCOP is likely to prohibit retailers making references to the other Party in negotiations and while we note that while there is no mechanism which explicitly covers this scenario, the use of direct leveraging could be seen as a breach of the broad principle of "fair dealing". This principle requires that grocery retailers "conduct [their] trading relationships with Suppliers in good faith, without distinction between formal or informal arrangements, without duress and in recognition of the Suppliers' need for certainty as regards the risks and costs of trading, particularly in relation to production, delivery and payment issues."

⁵⁶⁸ As set out in paragraph 9.62 to 9.64, the views of other DTB suppliers on competition between the Parties was mixed.

monitor each other and regard each other as competitors, and that there is particularly strong evidence that GMI regards PL products as the primary competitive constraint on Jus-Rol.

- 9.95 The CMA strongly disagrees with Cérélia's contention that there is not '*some evidence somewhere*' in support of the existence of an ability to trade off the Parties' respective offerings. In particular, the CMA notes that third parties have consistently described the rebalancing threat in hearings and questionnaires, in one case describing it as arising in 'every negotiation over the last few years'.⁵⁶⁹ As described above in paragraph 9.75 to 9.92, the CMA has also obtained documentary evidence of the constraint between Parties, of retailers being unwilling to share details of competing offers (confirming the 'implicit' nature of the competitive leveraging), and in particular of GMI monitoring and benchmarking itself against PL products (including those supplied by Cérélia).
- 9.96 With regards to the pricing data submitted by Cérélia, it is not the case that short-term supply changes would necessarily be expected to affect Cérélia's prices in the short-term. As set out in Chapter 7, the CMA views competition as a process of rivalry between firms seeking to win customers' business over time by offering them a better deal.⁵⁷⁰ The competitive tension between DTB suppliers (whether within or across the channels) therefore incentivises them to cut price, increase output, improve quality, enhance efficiency, or introduce new and better products. We found that prices are, in principle, typically fixed between negotiations (although we note the potential ability of PL suppliers to request pricing variations without triggering an entirely new tender process) and instead it is primarily volumes which can fluctuate, along with progress in innovation and the development of new products. The CMA notes, in any event, that pre-Merger pricing trends provide limited insight into the potential impact of the Merger, given that the data could reflect the existence of an ongoing constraint from Jus-Rol at negotiation events limiting Cérélia's ability to increase prices (when this constraint is absent post-Merger). For these reasons, we did not put weight on the trading data analysis submitted by Cérélia.
- 9.97 We also note that Cérélia's position that outcomes are delivered only by 'channel-specific competition' is not supported by the available evidence. Firstly, the CMA notes that while, as previously explained, there is evidence of a direct competitive process (eg through tenders) in the PL channel, given

⁵⁶⁹ [REDACTED].

⁵⁷⁰ MAGs, paragraph 2.2.

Jus-Rol's market position, there is no equivalent competitive process for branded products. In addition, we have found that competition between the PL and branded channels is important in shaping the competitive offerings of DTB suppliers (as set out in detail elsewhere in this report).

- *Retailers unable to exercise constraint*
 - *The Parties' submissions*

9.98 In response to the Provisional Findings:

- (a) Cérélia submitted that any volume flexing between Jus-Rol and PL is driven by consumer choice. It said that any attempt by retailers to ignore consumer demand during purchasing decisions would be irrational and as such this provides a significant constraint on the ability of retailers to flex volumes between Jus-Rol and PL products.⁵⁷¹ Cérélia also submitted that it would be irrational for a retailer to seek to defeat a 'small but significant price rise' in a PL SKU by reallocating volumes to a Jus-Rol SKU, which is typically more expensive for both the retailer and consumer.⁵⁷²
- (b) GMI submitted that retailers rebalancing their portfolios between branded and PL DTB products is not evidence of competitive rivalry between Cérélia and Jus-Rol. GMI said that these are routine purchasing decisions made by retailers regarding inventory which are influenced by product demand. It stated that the CMA materially underestimates the constraint of (retail) derived demand on the extent to which retailers can flex volumes between Jus-Rol and their PL products.⁵⁷³
- (c) Cérélia believes that the CMA relying on evidence of retailers adjusting the mix of consumer brand and PL SKUs as evidence of the implicit rebalancing threat is a manifest error of assessment. Retailers adjust their mix of Jus-Rol and PL DTB SKUs to reflect actual and anticipated consumer demand, and this has nothing to do with any alleged implicit rebalancing threat. The evidence shows that this retailer behaviour is driven by consumer choices.⁵⁷⁴

⁵⁷¹ [Cérélia's response to the Provisional Findings](#), 28 November 2022, paragraphs 3.12 – 3.16

⁵⁷² [Cérélia's response to the Provisional Findings](#), 28 November 2022, paragraphs 3.17 – 3.19.

⁵⁷³ [GMI's response to the Provisional Findings](#), 28 November 2022, paragraphs 2.4 – 2.5.

⁵⁷⁴ [Cérélia's response to the Provisional Findings](#), 28 November 2022, paragraphs 2.31-2.34, 2.39, 2.42, 3.20.

- *Our assessment*

- 9.99 As we set out in Chapter 7 (see paragraph 7.102), competition at the wholesale level and retail level is linked to an extent, although the competitive dynamics at each level will not be identical, as retailers may have considerations other than satisfying consumer needs when deciding which DTB products to buy from suppliers (see paragraph 7.10). The CMA considers that Cérélia's characterisation of the nature of the constraint is overly narrow (being based on a relatively static assessment of only one of multiple parameters of competition) and inconsistent with the evidence available to the CMA on competitive dynamics.
- 9.100 In this regard, the majority of grocery retailers that responded to our inquiry viewed the Parties as competitors. The evidence supports the view that retailers flex their purchases across both channels to reflect price and quality needs, and in this context in particular, the Parties are material competitors. Grocery retailers accounting for a significant share of the DTB market also told us that the Parties compete for volumes purchased by them, which they use (alongside other factors) to drive down prices.
- 9.101 We have found that it is possible for retailers to adjust the share of their shelves allocated to PL and branded products. While the preferences of end-consumers are an important factor in these stocking decisions, retailers take into account various commercial considerations, such as which supplier gives the best offer on cost of goods. Regardless of whether retailers pass on a wholesale price increase to their end-consumers, we have found that their optimal shelf allocation across PL and branded products will shift away from the channel which deteriorates its offer.
- 9.102 In addition, we have found evidence that retailers adjust their mix between the PL and branded products to reflect anticipated end-consumer demand and we consider that this will include their anticipation of how retail demand will change in response to a deterioration in the offering (across PQRS). In this way the link between end-consumer choices and the demand of the retailers is a key driver of the rebalancing constraint between the Parties. That is, the Parties have an incentive to keep their supply offers competitively priced, as there is a threat that they may lose volumes and sales to the other channel if they deteriorate their offer. We therefore conclude that the evidence supports the view that the Parties exert a material competitive constraint on each other. While noting Cérélia's PL pricing is more commonly cited as a constraint on Jus-Rol, we have found that the constraint is significant in both channels.
- 9.103 With regard to price competition specifically, the CMA considers that, regardless of the price differential in absolute terms (which the CMA notes

reflects the degree of differentiation between the Parties), there is strong evidence of competitive benchmarking on the relative prices of the Parties' offerings. Branded products are compared to PL products for retailers to assess whether the 'brand margin' or 'brand equity' relative to PL products can be justified, given their closeness in product functionality. This means that there is material competition on price between the Parties, notwithstanding some difference in absolute pricing. For example, Jus-Rol internal documents monitor the 'indexing' of the retail pricing of their products compared to PL alternatives, and [REDACTED].⁵⁷⁵ We consider that this is directly relevant to the relative pricing of the wholesale offering each supplier makes to grocery retailers, which is the only direct commercial channel through which the Parties distribute their products. This is ultimately because Jus-Rol and PL equivalent products are close substitutes and there is a lack of alternatives, such that if the price in one channel were to significantly increase, demand will switch to the other channel.

- *The reliability of third-party evidence*
 - *The Parties' submissions*

9.104 In response to the Consultation Paper:

- (a) Cérélia submitted that the additional evidence the CMA obtained from two grocery retailers [REDACTED] (see paragraphs 9.53, 9.54(b) and 9.54(d)), as discussed in relation to the competitive interactions between the Parties, is inconsistent as between those retailers, inconsistent with the evidence summarised in the Provisional Findings Report, and does not support the CMA's SLC as articulated in the Provisional Findings Report.⁵⁷⁶
- (b) Cérélia submitted that the statement of one retailer [REDACTED] that 'who gets which share of space has a competitive element to it in the background, based on what each supplier is able to offer it in terms of, e.g., cost of goods and promotional investment' is entirely new and is unclear. In particular, Cérélia submitted that it is not explained how this statement should be evaluated and what weight it is being afforded in the light of the other evidence. Cérélia submitted that there is no explanation, for example, of how this retailer considers that suppliers' offers, relative to

⁵⁷⁵ [REDACTED]. See also Row D5 in Appendix D.

⁵⁷⁶ Cérélia's response to the Consultation Paper, 3 January 2023, paragraph 2.12.

one another, could alter the balance of consumer demand between PL and branded products.⁵⁷⁷

- (c) Cérélia submitted that [redacted] assertion the Parties supply it with ‘homogenous and substitutable products’ ignores the fact that GMI/Jus-Rol supplies it with consumer branded products for which retailers are prepared to pay GMI [redacted] more than they pay Cérélia for co-packing functionally equivalent PL SKUs. Cérélia submitted that [redacted] itself recognised in previous submissions that there is a significant ‘price differential’ between the Parties’ products which reflected the Jus-Rol brand equity. In Cérélia’s view, these submissions are self-evidently inconsistent.⁵⁷⁸
- (d) Cérélia submitted that the second retailer’s [redacted] evidence is hearsay: ‘the primary conversations of which they were aware in relation to space rationalization between the Merger Parties were undertaken by the representative’s predecessor’. Cérélia submitted that part of that hearsay ‘evidence’ was that ‘if, pre-Merger, Jus-Rol significantly increased its prices, this retailer may consider stocking and, therefore, buying more PL products if it saw a massive impact to its customer volumes’. In Cérélia’s view, this additional ‘evidence’ is both wholly speculative and inconsistent with that retailer’s previous evidence that the Parties did not compete because they ‘do not provide like-for-like products’.⁵⁷⁹ Similarly, GMI responded to the Consultation Paper that the additional evidence obtained from one retailer [redacted] amounts to what is effectively an ‘about-face on its previous evidence to the CMA’ and is provided by a business representative who was not personally involved in commercial negotiations with the Parties.⁵⁸⁰
- (e) Cérélia submitted that, even taken at face value, the second retailer [redacted] is only explaining what it might do in response to an entirely hypothetical significant increase in Jus-Rol prices which then has a ‘massive’ impact on customer volumes. Cérélia submitted that, [redacted], GMI [redacted] for Jus-Rol products and Cérélia has provided compelling evidence in the past why, post-Merger, it would have no ability or incentive to increase Jus-Rol prices (or degrade any other aspect of Jus-Rol).⁵⁸¹

⁵⁷⁷ Cérélia’s response to the Consultation Paper, 3 January 2023, paragraphs 2.13-2.14.

⁵⁷⁸ Cérélia’s response to the Consultation Paper, 3 January 2023, paragraph 2.29.

⁵⁷⁹ Cérélia’s response to the Consultation Paper, 3 January 2023, paragraph 2.15.

⁵⁸⁰ GMI’s response to the Consultation Paper, 3 January 2023, paragraph 3.1 and 4.2

⁵⁸¹ Cérélia’s response to the Consultation Paper, 3 January 2023, paragraph 2.16.

(f) GMI submitted that, without access to the additional information provided to third parties and the questions asked of them during the additional evidence gathering, it is impossible to understand why retailers failed to describe the supposed competitive constraint between the Parties in their original submissions to the CMA, especially if the constraint is so integral to their relationship with suppliers, only for the retailers to directly contradict their previous responses by describing this competitive constraint after publication of the Provisional Findings Report, which articulated that constraint.⁵⁸²

o *Our assessment*

9.105 We note that the Parties have made a number of submissions which relate to the way in which the CMA has gathered and used evidence in the investigation. An explanation of the principles that guide the CMA's approach to gathering and using evidence is set out, in general terms, in Chapter 6 above. We deal with the specific submissions in relation to individual pieces of evidence under the headings below.

9.106 The CMA does not agree with the characterisation that the statement of one retailer [X] is unclear (see paragraph 9.104(b)), particularly when viewed in its fuller context, which firstly describes the context of 'limited shelf space for DTB products'. In light of this limited shelf space, a process of competitive rivalry is implied, confirmed by the subsequent overt description of the process of shelf space allocation as having a 'competitive element'. Further detail is then provided that this competitive element plays out, by way of example, with regard to competitive parameters such as cost of goods sold and promotional investment. The CMA therefore considers the statement to provide strong evidence of the implicit competitive constraint between the Parties' product offerings articulated in paragraph 9.67.

9.107 With regard to C erelia's submission that it is not clear what weight is given to the evidence in question, the CMA notes that in line with its clear guidance, it is not the practice of the CMA to consider specific pieces of evidence in isolation when considering the question of an SLC.⁵⁸³ Therefore there is no need for the CMA to explain how much weight is being given to specific pieces of evidence; instead the CMA's conclusions are based on the totality of the evidence available to it.

⁵⁸² GMI's response to the Consultation Paper, 3 January 2023, paragraph 3.1 and 4.1

⁵⁸³ MAGs, paragraph 2.23.

- 9.108 While the CMA does not agree with the Parties' characterisation of this evidence (see paragraph 9.104(a)), for the reasons set out above, it notes that a distinction should be drawn between one retailer's [redacted] evidence, which has remained consistent throughout the CMA's investigation, and another retailer's [redacted] evidence, which has contained a degree of inconsistency with regards to the question as to whether the Parties compete (ultimately concluding that they do 'to a certain extent'). For the reasons outlined in paragraph 9.351, the CMA has therefore placed a lower weight on the second retailer's [redacted] evidence than the first retailer's [redacted] evidence, although we think that certain aspects of the second retailer's [redacted] evidence upon which the buyer provided direct testimony do merit some weight, and in particular that the more detailed responses provided in the supplementary call merit greater weight than the less detailed explanations previously given in writing.
- 9.109 The CMA acknowledges the inconsistency in a retailer's [redacted] evidence and has already set out above (and later in paragraph 9.351) how it intends to apply a lower weight to it as a result. However, in relation to Cérélia's comment in paragraph 9.104(d), the CMA also notes that only the 'primary conversations' relating to space rationalisation between the Merger Parties (which the CMA considers evidences a degree of competition for shelf space) were described as being undertaken by the representative's predecessor, and not the other matters covered in the hearing. In the CMA's view it is therefore not correct to describe this evidence in its entirety as hearsay or to entirely discount it. In particular, the evidence cannot be described as 'wholly speculative', but rather appears to be drawn from the personal experience of the buyer concerned.
- 9.110 In relation to Cérélia's submission set out at paragraph 9.104(e), the CMA notes that one retailer's [redacted] response to an entirely hypothetical significant increase in Jus-Rol prices is conditional on the impact of a price increase on end-consumer demand. However, the CMA also notes that this is entirely consistent with the 'derived demand' dynamic described in Chapter 7 (see paragraph 7.8 and 7.9). The CMA considers that a customer's options in response to a hypothetical price increase are widely recognised as being relevant to assessing the extent of substitutability between products and therefore the degree of competitive rivalry in the market. Cérélia's and GMI's arguments in relation to their apparent absence of price increases are considered in more detail in paragraph 9.96. In broad terms, the CMA notes that the absence of price increases under pre-Merger conditions would generally be given relatively limited weight in any competitive assessment (given the existence of a competitive constraint between the Merger Parties in this circumstance), and that price is, in any event, only one parameter of

competition in this market. We discuss the Merged Entity's incentives relating to a degradation of Jus-Rol's offering later in paragraphs 9.387 to 9.391.

9.111 We consider that the new evidence received from third parties is clearly described in the Consultation Paper in sufficient detail for the Parties to understand the evidence and our assessment of it. As described in more detail in Chapter 6 above, there is no general right of 'access to file' in UK merger control proceedings and the disclosure of transcripts and questionnaires is not required to provide the gist of the case.

- *Nature of the constraint*
 - *The Parties' submissions*

9.112 In response to the Consultation Paper:

- (a) Cérélia submitted that the CMA expands its formulation of its SLC to encompass 'innovation'. In Cérélia's view, the CMA's widening of its SLC rests on inconsistent and uncorroborated comments from a single retailer, which is an inadequate evidential basis in itself. It submitted that one retailer's [redacted] evidence suggests that any competitive tension may only be 'potential', rather than 'actual' and the retailer's [redacted] described concern appears to shift from the ability to engage in cost benchmarking between the Parties, to the loss of potential competition in relation to the Parties' respective 'innovation pipeline'.⁵⁸⁴
- (b) Cérélia submitted that one retailer's [redacted] latest submissions regarding the significance of the 'innovation pipeline' are inconsistent with the CMA's own provisional views in the Provisional Findings Report and contradicted by the available business evidence. It submitted that the CMA's extension of the SLC based on innovation ignores the CMA's own findings in the Provisional Findings Report that the 'DTB market is not driven by innovation', a finding supported by the limited innovation that has taken place in the DTB segment. To the best of Cérélia's knowledge, [redacted].
- (c) Cérélia submitted that one retailer [redacted] appears to have been unable to provide any real-life examples of how any potential competition between the Parties' purported 'innovation pipeline' may have possibly played out in practice. Cérélia submitted that, even if innovation were (hypothetically) an important feature of competition for DTB products, the CMA has not

⁵⁸⁴ Cérélia's response to the Consultation Paper, 3 January 2023, paragraphs 1.10, 2.27-2.28.

found any evidence that any pressure on Cérélia to innovate pre-Merger came from Jus-Rol and not from rival contract manufacturers.⁵⁸⁵

- *Our assessment*

- 9.113 Cérélia’s suggestion that the CMA had, in the Consultation Paper, expanded its formulation of the SLC to encompass innovation is a substantial mischaracterisation of the CMA’s position. The description of references to innovation in the Consultation Paper were made in the context of providing the gist of evidence provided to the CMA by this grocery retailer [REDACTED]. Moreover, whilst the CMA continues to consider that the most important competitive parameters of competition are price, quality and service levels, the CMA had already noted the importance of innovation in Chapter 7 (paragraph 7.35) of the Provisional Findings. In any case, as explained in more detail in paragraphs 9.366 to 9.368, the CMA notes that it is not, when investigating a merger, required to separately assess the expected impact of a merger on each parameter of competition in order to identify an SLC.⁵⁸⁶
- 9.114 The CMA also notes that the documentary evidence described in paragraph 9.78(c), in which Cérélia offered, to a [REDACTED] buyer, [REDACTED] corroborates the statements made at the oral hearing by this retailer [REDACTED]. The CMA considers this to be material evidence of both the importance of innovation and of constraint that Jus-Rol exercise on Cérélia.

Competition between PL and branded products at the retail level

- 9.115 In Chapter 7 we set out how, in our view, competition at the wholesale level is interrelated and driven to a significant extent by the competitive dynamics between PL and branded products at the retail level (see paragraphs 7.97 to 7.102). That is, the demand for DTB products across the channels at the retail level significantly influences the amount that the Parties are asked to supply to retailers at the wholesale level (ie it is a ‘derived demand’).
- 9.116 In light of this connection between the retail and wholesale levels, we consider that it is important to understand the strength of competition between PL and branded products at the retail level. We next set out the evidence for competition between PL DTB products and Jus-Rol’s products at the retail level.

⁵⁸⁵ Cérélia’s response to the Consultation Paper, 3 January 2023, paragraph 2.34.

⁵⁸⁶ MAGs, paragraph 2.23.

- 9.117 Cérélia initially submitted that branded and PL DTB products are differentiated products, which do not compete closely at the retail level.⁵⁸⁷ In a later submission, Cérélia submitted that it is common ground that Jus-Rol branded products and PL products do compete for consumers at the retail level,⁵⁸⁸ and that Jus-Rol is lacking differentiation compared to PL products.⁵⁸⁹
- 9.118 GMI submitted that many retailers, such as Sainsbury's, have changed their PL product packaging to resemble consumer brands, such as Jus-Rol, more closely, and that this makes the distinction between PL and Jus-Rol harder to see for consumers.⁵⁹⁰

Evidence on competition between PL and branded DTB products at the retail level

Evidence on differentiation between PL and branded DTB products at the retail level

- 9.119 There are elements of differentiation between PL and branded DTB products sold to end-consumers, in particular in relation to pricing strategies, the target end-consumers (for example, the demographic profile of the consumer) and packaging.
- 9.120 While PL products are sold at lower price points, branded products, such as Jus-Rol, are typically sold for a higher price.⁵⁹¹ The willingness to pay this 'brand premium' indicates that some end-consumers consider branded products to be of a higher quality than the equivalent PL products. Other reasons for the willingness to pay the 'brand premium' may be that consumers value the quality assurance provided by brands, the more exciting packaging of branded products, new recipes and use suggestions.⁵⁹²
- 9.121 GMI submitted that '[X]'.⁵⁹³ Data provided by GMI show that [X].⁵⁹⁴ One retailer [X] also said that within its chilled category the branded products have a small loyal base whereas PL products serve the masses more.⁵⁹⁵
- 9.122 There are also differences in packaging with branded products tending to be more effective in attracting shopper attention, eg with a more attractive and

⁵⁸⁷ MN, paragraph 294.

⁵⁸⁸ Cérélia's response to the phase 1 Issues Letter, 11 May 2022, paragraph 5.2.

⁵⁸⁹ Cérélia's response to the phase 1 Issues Letter, 11 May 2022, paragraph 5.15ci. Cérélia, main party hearing transcript, pages 19-21.

⁵⁹⁰ GMI Site visit, 26 July 2022, slide 28.

⁵⁹¹ Cérélia's response to the phase 1 Issues Letter, 11 May 2022, paragraph 8.11.

⁵⁹² MN, paragraph 294.a.

⁵⁹³ GMI site visit, 26 July 2022, slide 8.

⁵⁹⁴ GMI site visit, 26 July 2022, slide 8.

⁵⁹⁵ [X] response to CMA phase 2 customer questionnaire, [X] 2022, question 27.

category-specific packaging design compared to own-label, which adheres to own-label brand guidelines across product categories.⁵⁹⁶

Evidence on substitutability between PL and DTB products at the retail level

- 9.123 We have found that there is strong evidence that PL and branded DTB products are physically very similar, and end-consumers do often see the two products as direct substitutes for each other.
- 9.124 Packaging aside, the physical characteristics of branded and PL products, like ingredients and shapes, are very similar. For example, a major retailer [REDACTED] stated that puff and shortcrust pastry are ‘interchangeable products from brand to PL with little differentiation from a recipe perspective’.⁵⁹⁷ Moreover, at the Main Party Hearings, Cérélia said that the product characteristics of PL and branded products are [REDACTED].⁵⁹⁸ We heard similar comments from third parties. This similarity in product means that consumers view them as functionally equivalent. One internal presentation [REDACTED].⁵⁹⁹
- 9.125 The decreasing differentiation between PL and branded products referred to by the Parties is supported by evidence from the Parties’ internal documents. For example:
- (a) A regional review slide-deck from GMI refers to [REDACTED].⁶⁰⁰
- (b) A 2020 GMI presentation comments that ‘[REDACTED]’ and [REDACTED].⁶⁰¹
- 9.126 Internal documents from Jus-Rol also indicate that consumers treat branded and PL products as substitutes. For example, in a Jus-Rol email explaining a decision to delist certain Jus-Rol products, the [REDACTED].⁶⁰² Moreover, a GMI presentation indicates that [REDACTED].⁶⁰³
- 9.127 An internal document from Cérélia highlights the substitutability of PL and Jus-Rol products. [REDACTED].⁶⁰⁴
- 9.128 Evidence from third parties also indicates that PL and branded products are considered as alternatives by customers at the retail level:

⁵⁹⁶ MN, paragraph 418.

⁵⁹⁷ [REDACTED] response to CMA phase 2 customer questionnaire, [REDACTED] 2022, question 27.

⁵⁹⁸ Cérélia, main party hearing transcript, page 73.

⁵⁹⁹ GMI Annex 20c, 30 November 2021, slide 21.

⁶⁰⁰ [REDACTED], 1 November 2021.

⁶⁰¹ [REDACTED], 29 April 2020; [REDACTED], 1 March 2020.

⁶⁰² [REDACTED], 21 February 2022.

⁶⁰³ [REDACTED], 1 March 2020.

⁶⁰⁴ [REDACTED].

- (a) A retailer [REDACTED] said that ‘there is some brand loyalty, but customers do switch between branded and [PL], in particular when Jus-Rol is on promotion’.⁶⁰⁵ In addition, it submitted that there is ‘a high degree of cross-shop’ across PL and branded chilled pastry.⁶⁰⁶ This retailer also stated that customers that shop both PL and branded within chilled pastry ([REDACTED]%) represent half of the category’s total value of sales.⁶⁰⁷
- (b) In an email to Jus-Rol, [REDACTED].⁶⁰⁸
- (c) The large majority (six out of seven) of the retailers who responded to our customer questionnaire and stock both PL and branded products said the two products compete with each other.⁶⁰⁹
- (d) The majority (six out of eight) of competitors that responded to the question of whether branded DTB products and PL products compete with one another at the retail level, considered that they do compete.⁶¹⁰
- (e) One retailer [REDACTED] submitted that consumers would trade between branded and PL products dependent on need and availability.⁶¹¹

9.129 We have considered the extent to which end-consumers are faced with the choice between PL and branded DTB products when shopping. In Table 9.2, we show the share of DTB products stocked in physical stores by retailers according to whether they are PL or Jus-Rol (branded) products. Smaller stores typically only stock either PL or branded products, not both. However, this is not true in large stores. All of the retailers listed in Table 9.2 stock both PL and Jus-Rol products in their online channel.⁶¹²

Table 9.2: percentage of retailers’ stores stocking PL and/or Jus-Rol products

Retailer	PL (%)	Stores (#)	Convenience stores		PL (%)	Stores (#)	Other physical stores	
			Jus-Rol (%)	Stores (#)			Jus-Rol (%)	Stores (#)
Retailer 1	[0-5%]	[REDACTED]	[90-100%]	[REDACTED]	[90-100%]	[REDACTED]	[90-100%]	[REDACTED]

⁶⁰⁵ [REDACTED] response to CMA customer questionnaire, [REDACTED] 2022, question 25.

⁶⁰⁶ Note of a call with [REDACTED], [REDACTED] 2022, paragraph 9.

⁶⁰⁷ Note of a call with [REDACTED], [REDACTED] 2022, paragraph 9; Response to the CMA customer questionnaire from [REDACTED], [REDACTED] 2022, question 27.

⁶⁰⁸ '[REDACTED].docx', 21 February 2022

⁶⁰⁹ Responses to CMA phase 2 customer questionnaire, question 27.

⁶¹⁰ Responses to CMA phase 2 competitor questionnaire, question 23.

⁶¹¹ [REDACTED] response to CMA phase 2 customer questionnaire, [REDACTED] 2022, question 27.

⁶¹² Response to CMA phase 2 customer questionnaire, question 29. [REDACTED] and [REDACTED] said that the availability of products online depends on the store type. In particular, [REDACTED] said that online orders will be picked from local convenience stores, some of which would not have the products available.

Retailer 2	[0-5%]	[X]	[60-70%]	[X]	[90-100%]	[X]	[30-40%]	[X]
Retailer 3	[20-30%]	[X]	[10-20%]	[X]	[70-80%]	[X]	[80-90%]	[X]
Retailer 4	N/A	[X]	N/A	[X]	[90-100%]	[X]	[90-100%]	[X]
Retailer 5	N/A	[X]	[80-90%]	[X]	N/A	[X]	[90-100%]	[X]
Retailer 6	[70-80%]	[X]	[30-40%]	[X]	N/A	[X]	N/A	[X]
Retailer 7	N/A	[X]	N/A	[X]	[40-50%]	[X]	[X]	[X]
Retailer 8	N/A	[X]	N/A	[X]	[50-60%]	[X]	[10-20%]	[X]

Source: Responses to CMA customer questionnaire, question 29.
Note: table includes those retailers who responded to question 29.

Our assessment

- 9.130 We have found that there are elements of differentiation between PL and branded DTB products sold to end-consumers, in particular in relation to pricing strategies, the target end-consumers and packaging.
- 9.131 However, we have found that, overall, there is strong evidence that PL and branded products are similar products which compete closely for end-consumers at the retail level.
- 9.132 This is particularly the case because end-consumers are often choosing between only one branded product and the equivalent PL product (and, in the vast majority of cases, between a PL product for which C er lia is the contracted supplier and Jus-Rol).⁶¹³
- 9.133 The evidence above suggests that the PL products for which C er lia is the contracted supplier and Jus-Rol products compete closely for end-consumers. As discussed in Chapter 7 (see paragraphs 7.97 to 7.102), competition at the retail level is linked to competition at the wholesale level, and this should be taken into account in our assessment of closeness of competition. This close competition at the retail level is an indication of closeness of competition between the Parties at the wholesale level.

The vertical relationship between the Parties

- 9.134 In this section we discuss the impact of the vertical relationship between the Parties on the nature of their competitive relationship.

Parties' representations

- 9.135 C er lia notes that it has been manufacturing products for Jus-Rol since 2015 and is contracted to continue to do so [X]. C er lia supplies approximately

⁶¹³ We set out in Chapter 7 that the CMA is not aware of any instances of retailers sourcing the same DTB product from multiple suppliers within the PL and branded channels.

[X] of Jus-Rol's products sold in the UK. Cérélia submits that the [X] comprises canned products and filo pastry, none of which compete with the DTB products purchased from Cérélia by PL buyers.⁶¹⁴

9.136 The Parties submit that this supply relationship means that Cérélia does not compete with Jus-Rol to supply grocery retailers. Cérélia submits that [X] and so [X]. As such, it submits that any attempts by grocery retailers to play off Cérélia and Jus-Rol products [X]. It stated that this means there can be no Merger-specific loss of competition.⁶¹⁵ The Parties submit that it is not clear that the CMA reminded retailers about the pre-Merger vertical link when asking questions – resulting in mixed and confused feedback. They submit that the Provisional Findings Report does not set out satisfactorily why the retailers considered that the pre-Merger vertical link between Cérélia and GMI/Jus-Rol did not affect their previous submissions.⁶¹⁶

9.137 In the Main Party Hearings, Cérélia stated that, [X].⁶¹⁷

Views of third parties

9.138 Only one third party suggested that the existence of the Parties' contractual relationship could mean the Parties may be less closely competing than they otherwise would be. One key competitor [X] stated that, as Cérélia manufactured both branded and PL products, there was 'no competition within Cérélia'.⁶¹⁸

9.139 However, when large retailers (including retailers currently supplied by Cérélia) were specifically asked about this issue, they indicated that they did not consider it to undermine their view that Cérélia was constrained by Jus-Rol. For example:

(a) A retailer [X] said that although its leverage is slightly reduced by the fact that Cérélia produces the majority of Jus-Rol products, there remained a competitive tension between the Parties in terms of pricing to drive sales.⁶¹⁹

⁶¹⁴ Cérélia's response to the CMA's section 109 Notice (phase 2 s.109) (2), 22 August 2022, paragraphs 14 and 15.

⁶¹⁵ [Cérélia's response to the Issues Statement](#), 2 August 2022, paragraph 5.14.

⁶¹⁶ [Cérélia's response to the provisional findings](#), 28 November, paragraph 4.56.

⁶¹⁷ Cérélia, main party hearing transcript, page 20.

⁶¹⁸ [X] response to CMA phase 2 competitor questionnaire, question 22.

⁶¹⁹ Transcript of a call with [X], [X] 2022, page 7, line 9.

- (b) Another retailer [REDACTED] said that although Cérélia may manufacture PL and Jus-Rol, ‘our agreement is with two different trading teams’ and that they ‘have two very different, separate negotiations and separate prices’.⁶²⁰
- (c) A retailer [REDACTED] said in relation to Cérélia and Jus-Rol, that ‘the presence of at least two viable suppliers offering high quality products creates competitive tension in negotiations’. It also noted that [REDACTED] it did not change its view on this.⁶²¹ It [REDACTED] explained that it has a [REDACTED] which it can leverage to obtain more favourable outcomes, despite the vertical link meaning that Cérélia can influence the cost of both Parties’ products.⁶²² The retailer [REDACTED] also indicated that there is a significant number of inputs which are not commoditised and therefore their costs cannot be tracked publicly.⁶²³ Examples of such costs included labour costs, manufacturing costs, logistics costs, and other production/input costs. The precise breakdown of the Parties’ expenditure on costs such as these is not something that would be publicly available and so there is a limit to the cost benchmarking that can be completed.

Evidence on Cérélia’s view of the channels

- 9.140 As noted above, Cérélia submitted [REDACTED]. We consider that this position is not fully supported by the underlying evidence available to us. In particular:
- (a) Based on the information supplied by Cérélia, [REDACTED], this is not the case over time and [REDACTED]. For example, in the first half of 2022, [REDACTED].⁶²⁴
- (b) The [REDACTED] provided is, in any case, in the CMA’s view ambiguous and is heavily dependent upon [REDACTED]. We note, in this regard, that Cérélia emphasised the limitations of its [REDACTED] in its RFI response.⁶²⁵ On this basis, we consider that it is appropriate to put relatively limited weight on the [REDACTED] in general.
- (c) Cérélia’s role in the manufacturing of Jus-Rol products is subject to a contractual arrangement which expires in [REDACTED]. As with any contract, there is a risk that the contract may not be renewed (or could be terminated) and that Cérélia would cease to have any role in the supply of Jus-Rol products. Cérélia therefore faces two forms of contractual risk in relation

⁶²⁰ Transcript of a call with [REDACTED], [REDACTED] 2022, page 10.

⁶²¹ Written submission from [REDACTED], [REDACTED] 2022, question 2(b)(ii).

⁶²² Transcript of a call with [REDACTED], [REDACTED] 2022, page 15.

⁶²³ Transcript of a call with [REDACTED], [REDACTED] 2022, page 31, lines 1 to 6.

⁶²⁴ Cérélia’s response to s109 (phase 2) (3), 14 September 2022.

⁶²⁵ Cérélia’s response to s109 (phase 2) (2), 22 August 2022, question 1.

to the supply of Jus-Rol: the risk that Jus-Rol loses contracts to supply grocery retailers, and the risk that C  r  lia loses its own contract to supply Jus-Rol. In comparison, C  r  lia faces only one form of contractual risk in relation to its PL supply activities: the risk that it loses contracts to supply retailers.

- (d) We identified one internal document that indicates that [REDACTED]. In an email titled '[REDACTED]' in [REDACTED], discussing [REDACTED] during the pandemic, CUK's Managing Director said: '[REDACTED]'.⁶²⁶

Our assessment

- 9.141 We note that C  r  lia's role in manufacturing Jus-Rol products is based on a contractual relationship, and that a contractual relationship is materially different in nature to a merger.⁶²⁷ A contractual relationship does not result in a lasting change in market structure, has limited duration and may be renegotiated or terminated even before its initial term. The implications for competition of a non-structural, term-limited contractual relationship, are different from the ownership of a target business. The Merger would, in contrast to the previous outsourcing arrangement (which is a type of arrangement that typically fall outside the scope of merger control),⁶²⁸ bring about a permanent change in the market structure.
- 9.142 Notwithstanding the existing vertical link between the Parties, the Merger would result in material changes in competitive dynamics and market structure:
- (a) Post-Merger, C  r  lia would have control over the entire commercial strategy relating to Jus-Rol products, including all aspects of the wholesale PQRS offering to retailers across both channels, which it does not have at present. In particular, C  r  lia would have control over pricing of both the PL products supplied by C  r  lia in the PL channel and Jus-Rol products (including its brand-equity margin) and could determine price points (and therefore relative pricing) to maximise joint profits.
- (b) The Merger would also 'cement' C  r  lia's role as the manufacturer of Jus-Rol products. As, post-transaction, C  r  lia would control all aspects of the commercial strategy, it would no longer be exposed to the risk that GMI

⁶²⁶ [REDACTED], 23 April 2020

⁶²⁷ See, to that effect, [MAGs](#) paragraph 7.15 and Anticipated acquisition by Cellnex UK Limited of the passive infrastructure assets of CK Hutchison Networks Europe Investment S.A.R.L., 3 March 2022, Final Report paragraph 8.76.

⁶²⁸ [MAGs](#), paragraph 4.13.

could find an alternative manufacturer for Jus-Rol products, including GMI taking production back in-house (in other words, the Merger turns the link between Cérélia and Jus-Rol from a contractual link into a structural link).

(c) Lastly, even if Cérélia were [✂], this was not true for GMI, which was unambiguously worse off if retailers switched sales from Jus-Rol to the PL channel (and therefore incentivised to compete to avoid this happening).

9.143 Nevertheless, we consider that the existing vertical link is relevant to our assessment. In particular, Jus-Rol's use of Cérélia for manufacturing means that Jus-Rol is a weaker competitor than if Cérélia did not manufacture Jus-Rol products. This is because Cérélia will currently recapture a material share of any sales diverted from its PL products to the Jus-Rol branded channel. However, we do not believe that this means that there can be no SLC brought about by the Merger.

Further submissions

9.144 In its response to the Provisional Findings, Cérélia disputed what it considered was the CMA's position that Jus-Rol could one day switch to an alternative co-packer, suggesting that there could be competition between the Parties in the future. Cérélia added that given that the CMA's counterfactual is the pre-Merger conditions of competition, where Jus-Rol is being manufactured by Cérélia, the CMA's hypothesis appears to posit a change to the counterfactual and is not a permissible counterfactual.⁶²⁹ Cérélia submitted that it is not for the CMA to imagine a more competitive world that could exist under different conditions, adding that such a change in the counterfactual is not a relevant test for whether a merger results in an SLC.⁶³⁰

9.145 We consider the above a mischaracterisation of the counterfactual posited by the CMA. The pre-Merger conditions of competition are that Cérélia manufactures the Jus-Rol products under contract and, given that this relationship is contractual rather than structural, there is the potential for GMI to stop using Cérélia as its manufacturer (which influences Cérélia's commercial behaviour). In this context, it is important to note that the CMA's guidelines are clear that a 'prevailing conditions of competition' counterfactual does not mean there cannot be any consideration of possible changes in the market: as the CMA's guidelines note, *'the CMA's conclusion on the*

⁶²⁹ [Cérélia's response to the provisional findings](#), 28 November, paragraph 4.28.

⁶³⁰ Cérélia Response Hearing Transcript, page 19 and 20.

counterfactual does not seek to ossify the market at a particular point in time'.⁶³¹

- 9.146 Cérélia submitted that there is also an inconsistency in the CMA's reasoning when it suggests that GMI could readily switch co-packers whereas retailers may not be able to do so.⁶³²
- 9.147 The CMA notes that GMI may be more willing to switch due to its different demand preferences. GMI would not be restricted by the (large) retailers' preferences in relation to their PL suppliers. For example, we have observed that concerns expressed by retailers in relation to PL products (such as origin and ingredients (eg ethanol)) do not appear to apply in relation to branded products which do not carry the retailer's name.
- 9.148 Cérélia further submitted that GMI starting to manufacture again, after several years of outsourcing production, would amount to a 'market entry' event. It said that the CMA cannot discount the threat of market entry of rival DTB manufacturers and at the same time rely on market entry by GMI.⁶³³
- 9.149 The CMA has not relied on the possibility of GMI recommencing production as a material factor in its analysis. In particular, the CMA considers that entry of GMI as a PL supplier is unlikely given that it closed and sold its factory in the UK and it has deprioritised the Jus-Rol brand. While in theory GMI could bring production in-house as one of the several options available to it when its contract with Cérélia expires, there is no evidence of an imminent or stated desire by GMI to do so. We have not made any case for GMI's (timely, likely or sufficient) 'market-entry' while discounting entry by other manufacturers. Therefore, we consider that there is no contradiction in our reasoning of the nature suggested by Cérélia.

Conclusion on closeness of competition

- 9.150 We have found that the Parties compete in the wholesale supply of DTB products to retailers. This is because we have found that the Parties supply products to retailers that are physically similar, and that retailers and end-consumers to a large extent regard as substitutes. There is a significant degree of overlap between the Parties' products and high levels of supply-side substitutability which results in competitive tension between them even when they are not currently selling the same products to a given retailer.

⁶³¹ MAGs, paragraph 3.3.

⁶³² Cérélia's response to the provisional findings, 28 November, paragraph 4.60.

⁶³³ Cérélia's response to the provisional findings, 28 November, paragraph 4.61.

- 9.151 As the Parties have argued, the DTB product supply process differs between the PL and branded channel, with the PL channel typically requiring a more iterative negotiation process between the retail buyer and the contract manufacturer, while branded supply is offered to retailers on a 'take it or leave it' basis. The fact that C er lia engages with retailers via the PL channel, while Jus-Rol engages as a branded supplier, means the Parties do not compete head-to-head in the same tender processes. However, we have found that there is nevertheless competition across the PL and branded channels such that C er lia and Jus-Rol do compete.
- 9.152 The evidence from third parties indicates that the Parties are close competitors. While some DTB suppliers were focussed on within-channel competition, third parties generally considered C er lia and Jus-Rol to be competitors. The largest retailer customers of the Parties that make up a large majority of the overall market articulated a consistent and coherent view that there is an implicit but important constraint between the Parties which will be lost as a result of the Merger. In particular, they explained that they value the ability to weigh up the Parties' offerings across the PL and branded channels in order to get a better deal in negotiations, particularly in terms of price and quality.⁶³⁴
- 9.153 The Parties' internal documents show that they monitor each other and regard each other as competitors. There is documentary evidence of the constraint between C er lia and Jus-Rol influencing market outcomes and negotiations with retailers at the wholesale level in a way that is consistent with the constraint described by retailers. There is particularly strong evidence that GMI regards PL products as the primary competitive constraint on Jus-Rol.
- 9.154 We have found that, overall, there is strong evidence that PL and branded products are similar products which compete closely for end-consumers at the retail level. We consider that this extensive evidence of close competition at the retail level is an indication of closeness of competition between the Parties at the wholesale level.
- 9.155 We also considered the vertical link between the Parties. While we recognise that C er lia's role as a contract manufacturer for Jus-Rol pre-Merger is likely to have had some effect on the extent of competition between the Parties pre-Merger, we note this does not mean that there can be no SLC brought about by the Merger, and consider that the Merger would result in material changes in competitive dynamics and market structure.

⁶³⁴ See evidence discussed in paragraph 9.60.

9.156 In the round, we consider that the evidence supports the view that there is material competitive interaction between the Parties. This competition between the Parties would be removed by the Merger, thereby reducing the ability of retailers to protect themselves against potential price rises by a particularly large supplier with full control over PQRS in both supply channels. However, in keeping with the position set out in the CMA's guidance that closeness of competition is a relative concept, the significance of the competitive constraint that the Parties exert on each other also depends upon the strength of the constraint from other competitors. The loss of competition between the Parties must therefore be assessed in the context of the alternative competitive constraints that they face. We consider these in the next section.

Alternative competitive constraints

Introduction

9.157 In this section, we consider the alternative competitive constraints on the Merged Entity. We discuss expansion of alternative competitive constraints in Chapter 10.

9.158 The MAGs state that the concern under a horizontal unilateral effects theory of harm relates to the elimination of a competitive constraint by removing an alternative that customers could switch to. The CMA's main consideration is whether there are sufficient remaining good alternatives to constrain the Merged Entity post-merger.⁶³⁵

9.159 The ability for customers to switch is key to the competitive process. If the costs (financial or otherwise) of switching from one supplier to another are high, the Merged Entity may be able to raise prices or degrade the quality of products without losing many customers.⁶³⁶ High switching costs may weaken the bargaining position of customers and make them less sensitive to changes in the price, quality or service levels.

9.160 The relative ease of switching between different channels (for example, branded and PL) is important when considering how retailers may act when faced with a price rise or a degradation of non-price aspects of a supplier's offering. If switching to a branded supplier is easier than switching to a PL

⁶³⁵ MAGs, paragraph 4.3.

⁶³⁶ MAGs, paragraph 5.4.9 (c).

supplier then this would strengthen the constraint posed by branded suppliers, including Jus-Rol, relative to that posed by alternative PL suppliers.

- 9.161 Where there are few existing suppliers, the merger firms enjoy a strong position or exert a strong constraint on each other, or the remaining constraints on the merger firms are weak, competition concerns are likely.⁶³⁷
- 9.162 The Parties submitted that effective competitive constraints will remain post-Merger and, in particular, that:
- (a) There will be at least six different DTB contract manufacturers, including manufacturers based in the UK and in Continental Europe.⁶³⁸
 - (b) [X] retailer PL products sold in the UK are manufactured by manufacturers other than Cérélia.⁶³⁹
 - (c) Cérélia's competitors have [X] DTB manufacturing contracts that have been put out to tender by UK retailers in recent years.⁶⁴⁰
 - (d) While rival consumer brands' offers may be less comprehensive than Jus-Rol's, there is a range of specialised brands that can compete with Jus-Rol.⁶⁴¹
 - (e) There is a wide range of suppliers active in the foodservice and food manufacturing sectors who could [X] supply grocery retailers.⁶⁴²
 - (f) The DTB sub-category [X] for retailers, and they can, and have in the past, reduced the shelf space devoted to DTB products. This is effectively another source of constraint.⁶⁴³
 - (g) For the SLC to have any effect, the retailer must be unable to switch at least a competitively significant amount of its DTB PL volumes to a rival co-packer over a reasonable period of time.⁶⁴⁴
 - (h) The CMA's concerns about DTB PL manufacturing capacity are unfounded and there is excess manufacturing capacity in the UK DTB PL

⁶³⁷ MAGs, paragraph 4.3.

⁶³⁸ Cérélia's response to the Issues Statement, 2 August 2022, paragraph 1.13.

⁶³⁹ See Appendix C for further discussion on shares of supply for PL DTB products. Cérélia's response to the Issues Statement, 2 August 2022, paragraph 1.14.

⁶⁴⁰ Cérélia's response to the Issues Statement, 2 August 2022, paragraph 1.14.

⁶⁴¹ Cérélia's response to the phase 1 Issues Letter, 11 May 2022, paragraph 7.1.

⁶⁴² Cérélia's response to the Issues Statement, 2 August 2022, paragraph 4.9; Cérélia's initial phase 2 Submission, 1 July 2022, paragraph 4.20; Cérélia response to the CMA's request for information (phase 2 RFI) (1), 7 July 2022, paragraphs 28.16-20.

⁶⁴³ Cérélia's initial phase 2 Submission, 1 July 2022, paragraph 4.16.

⁶⁴⁴ Cérélia's response to the provisional findings, 28 November, paragraphs 3.6.

market. There are more co-packers in the market than significant customers.⁶⁴⁵ In a market with only five large retailers, there are at least six active UK and non-UK DTB co-packers; some with significant excess capacity, such as [X] and [X]. Co-packers therefore have to compete fiercely for volumes.⁶⁴⁶

- (i) There is more capacity for the UK DTB PL market than retailer customer demand. The entire UK PL market for chilled DTB products can be met with [X] production lines at sufficient capacity, or at most [X] production lines. The CMA itself acknowledges that a single production line can meet the entire requirements of a large retailer on competitive terms.⁶⁴⁷
- (j) Contract manufacturers are able to flex output at short notice, as demonstrated by their response to the temporary surge in demand for DTB products during the pandemic.⁶⁴⁸
- (k) Cérélia submitted that the significant spare capacity to serve DTB PL contracts is now explicitly acknowledged by the CMA in the RWP where it confirms that there is “excess manufacturing capacity in the market”.⁶⁴⁹ The CMA notes that this is a misstatement of the position in the RWP: the excess manufacturing capacity referred to in the RWP was that held by [X].

9.163 In this section, we first discuss switching. Then, we consider the constraints posed on the Merged Entity from within our defined market by:

- (a) PL suppliers; and
- (b) alternative consumer brands.

9.164 We then consider the out-of-market constraints from:

- (a) non-retail suppliers; and
- (b) retailers’ option to buy fewer DTB products and sell other products instead.

⁶⁴⁵ Cérélia’s response to the provisional findings, 28 November, paragraph 4.38.

⁶⁴⁶ Cérélia’s response to the provisional findings, 28 November, paragraph 4.21.

⁶⁴⁷ Cérélia’s response to the provisional findings, 28 November, paragraphs 4.21.

⁶⁴⁸ Cérélia response hearing economic remarks, slide 8 and Annex 1. The Kantar chilled data shows [X] from the 2020 record year to 2021 of the DTB sales by value. Cérélia said that there was a further [X] in sales from 2021 to 2022, however its magnitude is currently unclear as the Kantar data for 2022 is not available yet. By volume from 2020 to 2021 the chilled DTB sales to retailers in the UK [X]. Cérélia’s response to the CMA’s s109 Notice (phase 2 s.109) (2), 22 August 2022, question 6.

⁶⁴⁹ Cérélia’s response to the Consultation Paper, 3 January 2023, paragraph 3.6.

9.165 Finally, we provide our conclusion on the alternative competitive constraints.

Switching

9.166 We have assessed switching from paragraph 7.74 in Chapter 7. There, we considered the nature and cost of the switching process for retail buyers looking to change either PL or branded supplier.

9.167 For PL, we found that it takes resources and effort on the part of retail buyers to identify and onboard a new supplier, and we do not observe frequent switching in this market. However, given that the switching process is familiar to grocery retailers and the fact that retailers tend to review their DTB product supply arrangements regularly, we conclude that switching costs are not a major barrier to switching PL supplier.

9.168 For branded, we found that switching costs for retail buyers are lower than is the case for PL switching, however switching rarely occurs in the branded channel, likely due to a lack of viable alternative suppliers (see paragraph 9.280).

Constraint from PL suppliers

9.169 In this section we assess evidence in relation to the constraint from:

(a) UK-based PL suppliers; and

(b) EEA-based PL suppliers.

9.170 As set out in Chapter 7, there is competition both within the PL and branded channels and across the channels. Alternative PL suppliers may therefore provide an important constraint on Cérélia because, once a grocery retailer has decided to supply a PL DTB product, alternative PL suppliers participate in the same tender processes as Cérélia, and they are in direct competition for the grocery retailer to select them as their PL supplier.

UK-based PL suppliers

9.171 In this subsection, we first assess evidence related to the two key UK-based suppliers of PL products after Cérélia, namely Bells and Cranswick.⁶⁵⁰ Then, we assess other UK-based PL suppliers from paragraph 9.213.

⁶⁵⁰ We consider these suppliers to be key for a number of reasons including their shares of supply, references to them in internal documents, the parties' views on them and third parties' views on them.

Bells

- Evidence

- 9.172 Bells is a Scottish manufacturer of DTB products, which supplies both branded and PL products.⁶⁵¹ In 2022, most of Bells' revenue [REDACTED]. DTB products for retail sale generate approximately £[REDACTED] million for Bells in revenue, which is approximately [REDACTED]% of its total revenues. Bells told us that its DTB business is important to it, despite [REDACTED], because it is a [REDACTED].⁶⁵² Bells' main DTB products are branded ready-rolled puff pastry and puff pastry blocks that are predominantly sold in a chilled state to retailers.⁶⁵³
- 9.173 Bells also supplies DTB products to food manufacturers, accounting for approximately [REDACTED]% of its turnover, and supplied a small amount of PL DTB products to [REDACTED] and [REDACTED].⁶⁵⁴ However, it stopped supplying PL products to these retailers in September 2022 [REDACTED]. Bells' share of supply of all DTB supply to UK grocery retailers was [0-5]% in 2021.⁶⁵⁵
- 9.174 Bells' maximum DTB production capacity is [REDACTED] per year.⁶⁵⁶ In contrast, Cérélia's DTB UK production capacity is around [REDACTED].⁶⁵⁷
- 9.175 The Parties submitted that:
- (a) Bells supplies both branded and PL DTB products [REDACTED].⁶⁵⁸
 - (b) [REDACTED].⁶⁵⁹
 - (c) [REDACTED].⁶⁶⁰
 - (d) According to the CMA's own share of supply calculations, [REDACTED] contract to supply [REDACTED] ([REDACTED]) is equivalent to [REDACTED]. Cérélia submitted that the evidence [REDACTED] is that [REDACTED]. Cérélia submitted that it therefore follows that [REDACTED].⁶⁶¹
- (i) [REDACTED].

⁶⁵¹ MN, paragraph 206(e).

⁶⁵² Note of a call with [REDACTED], [REDACTED] 2022, paragraph 1.

⁶⁵³ Note of a call with [REDACTED], [REDACTED] 2022, paragraph 2.

⁶⁵⁴ Note of a call with [REDACTED], [REDACTED] 2022, paragraph 2; Note of a call with [REDACTED], [REDACTED] 2022, paragraph 5.

⁶⁵⁵ See paragraph 22 in Appendix C.

⁶⁵⁶ Response to the CMA questionnaire from [REDACTED], [REDACTED] 2022, question 15.

⁶⁵⁷ Cérélia Group's production capacity is around [REDACTED] in Europe (excluding the UK). Email from Cérélia to the, 29 September 2022. Cérélia's site visit presentation (morning session), 28 July 2022, slide 20.

⁶⁵⁸ MN, paragraph 206.

⁶⁵⁹ MN, paragraph 482.

⁶⁶⁰ MN, paragraph 253.

⁶⁶¹ [REDACTED].

(ii) [REDACTED].

(iii) [REDACTED].

- 9.176 Bells told us that it has a strong brand presence in Scotland for pies and pastry, has been manufacturing pastry since the early 1970s and has a reputation for producing good quality pastry.⁶⁶²
- 9.177 In [REDACTED].⁶⁶³ On this basis, we forecast that Bells' share of supply of all DTB products to UK retailers [REDACTED] [5-10]% in 2023.⁶⁶⁴ In relation to this, [REDACTED] told us that:
- (a) it did not believe [REDACTED];⁶⁶⁵
- (b) [REDACTED];⁶⁶⁶ and
- (c) [REDACTED].⁶⁶⁷
- 9.178 Bells said that [REDACTED]. Bells also said that [REDACTED].⁶⁶⁸
- 9.179 Bells told us that it currently produces [REDACTED] per year for the food manufacturing sector.
- 9.180 Bells told us that, from an operational perspective, it [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].⁶⁶⁹
- 9.181 [REDACTED].⁶⁷⁰ Moreover, if it switched from the food manufacturing sector to the retail sector, [REDACTED]. Depending on the product and customer, [REDACTED] for food manufacturing products compared to retail products.⁶⁷¹
- 9.182 Bells told us that separately to shifting production from food manufacturing to retail, it could also [REDACTED]. [REDACTED].⁶⁷² However, it would [REDACTED].⁶⁷³

⁶⁶² Note of a call with [REDACTED], [REDACTED] 2022, paragraph 4.

⁶⁶³ Response to the CMA customer questionnaire from [REDACTED], [REDACTED] 2021, question 2.

⁶⁶⁴ Note that the [REDACTED]% share of [REDACTED] do not include its branded DTB sales as we did not have that granular data within the Kantar dataset (see paragraph 21 in Appendix C).

⁶⁶⁵ Response to the CMA questionnaire from [REDACTED], [REDACTED] 2022, question 17.

⁶⁶⁶ Note of a call with [REDACTED], [REDACTED] 2022, paragraph 17.

⁶⁶⁷ Response to the CMA questionnaire from [REDACTED], [REDACTED] 2022, question 18.

⁶⁶⁸ Note of a call with [REDACTED], [REDACTED] 2022, paragraph 5.

⁶⁶⁹ Note of a call with [REDACTED], [REDACTED] 2022, paragraph 6.

⁶⁷⁰ Note of a call with [REDACTED], [REDACTED] 2022, paragraph 9.

⁶⁷¹ Note of a call with [REDACTED], [REDACTED] 2022, paragraph 5.

⁶⁷² Note of a call with [REDACTED], [REDACTED] 2022, paragraph 7.

⁶⁷³ Note of a call with [REDACTED], [REDACTED] 2022, paragraph 12.

- 9.183 Bells also told us that, [REDACTED]. [REDACTED].⁶⁷⁴ [REDACTED].⁶⁷⁵ We also consider the ability of Bells to expand when assessing entry and expansion in the DTB market in Chapter 10.
- 9.184 One [REDACTED] (out of nine) customer that responded to our phase 1 questionnaire mentioned Bells as being one of the main suppliers of PL products.⁶⁷⁶ However, we also note that that Bells has, since that evidence was provided, stopped supplying PL products to [REDACTED].⁶⁷⁷
- 9.185 One [REDACTED] (out of seven) customer that responded to our phase 2 questionnaire submitted that if it was to switch PL supplier, it would switch to Bells. This retailer [REDACTED] commented that Bells is a puff pastry specialist and is able to produce in line with its guidelines but that factory capacity and ability to expand is a concern.⁶⁷⁸
- 9.186 One grocery retailer [REDACTED] told us that it has probably had some limited interactions with Bells, but from its understanding, Bells [REDACTED].⁶⁷⁹ Another grocery retailer [REDACTED], told us that it had previously considered Bells as part of an exercise to consider the competitiveness of its current offering from C  r  lia. It concluded that, from a cost base point of view and a quality point of view, C  r  lia provided superior products.⁶⁸⁰
- 9.187 Another grocery retailer [REDACTED] said that it holds tenders for the majority of its product lines on an annual basis and [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].⁶⁸¹
- 9.188 None of the (seven) competitors who responded to our phase 2 questionnaire listed Bells as a DTB supplier they saw as a competitor to themselves.⁶⁸² Similarly, none of the (eight) competitors saw Bells as an alternative or competitor to C  r  lia.⁶⁸³ Only one (out of eight) competitor [REDACTED] considered

⁶⁷⁴ Note of a call with [REDACTED], [REDACTED] 2022, paragraph 10 and 13.

⁶⁷⁵ Note of a call with [REDACTED], [REDACTED] 2022, paragraph 13.

⁶⁷⁶ Response to the CMA phase 1 customer questionnaire, February 2022, question 11.

⁶⁷⁷ Note of a call with [REDACTED], [REDACTED] 2022, paragraph 2.

⁶⁷⁸ Response to the CMA phase 2 customer questionnaire from [REDACTED], July 2022, question 18. C  r  lia argued that the construction of this question was vague and did not make clear to retailers they may list more than one supplier, and this is an opaque market so recall of potential suppliers may be poor. Respondents were given five boxes in which to list alternative suppliers so we consider that it was clear they could list multiple suppliers. Furthermore, whilst the full range of options may not be known to retailers, this is a market in which the customers are relatively sophisticated, so it is unclear why they would be unable to recall potential suppliers. Notwithstanding this, the response from customers to this question only forms one piece of evidence of our alternative competitive constraints assessment (C  r  lia's response to Alternative Competitive Constraints Working Paper, paragraph 6(ii)).

⁶⁷⁹ Note of a call with [REDACTED], [REDACTED], page 6.

⁶⁸⁰ Note of a call with [REDACTED], [REDACTED], page 5.

⁶⁸¹ Note of a call with [REDACTED], [REDACTED], paragraphs 5 and 12.

⁶⁸² Response to the CMA phase 2 competitor questionnaire, [REDACTED] 2022, question 12.

⁶⁸³ Response to the CMA phase 2 competitor questionnaire, [REDACTED] 2022, question 13.

Bells to be an alternative or competitor supplier to Jus-Rol in the UK, citing the similarity of products.⁶⁸⁴

- 9.189 Internal documents indicate [REDACTED]. For example:
- (a) In an internal email in May 2018 [REDACTED] included a link to [REDACTED] website and wrote '[REDACTED]' and CUK's Managing Director stated that '[REDACTED]'.⁶⁸⁵
 - (b) In April 2018, [REDACTED] described [REDACTED] as '[REDACTED]', [REDACTED].⁶⁸⁶
 - (c) When [REDACTED].⁶⁸⁷
 - (d) An internal document from May 2021 also shows [REDACTED].⁶⁸⁸
 - (e) When [REDACTED].⁶⁸⁹
- 9.190 On the other hand, internal documents concerning negotiations with [REDACTED] indicate that, [REDACTED]. In an internal email from 2021, in reference to a discussion with the [REDACTED] buyer about [REDACTED], a Cérélia employee said that [REDACTED].⁶⁹⁰ The Cérélia employee had said to [REDACTED].⁶⁹¹ In the end, [REDACTED].⁶⁹²
- 9.191 [REDACTED].⁶⁹³
- *Our assessment*
- 9.192 Internal documents suggest Cérélia perceives Bells as a constraint (although that evidence is mixed on the strength of this constraint). Evidence from retailers, except [REDACTED], suggests that Bells is not currently perceived as a strong alternative supplier.
- 9.193 We recognise that Bells may be able to meet the PL needs of an additional large retailer [REDACTED]. The share of supply calculations to which Cérélia refers give Bells an anticipated share of supply of [5-10]% of the total DTB market in the UK, arising almost entirely from its win in the [REDACTED] contract. Even if Bells was to win an equivalent size contract again ([REDACTED]), its share of the market would be approximately [10-20]%.

⁶⁸⁴ Response to the CMA phase 2 competitor questionnaire from [REDACTED], [REDACTED] 2022, question 14.

⁶⁸⁵ Cérélia Internal Document, Document ME_6988_22_006083 to RFI, '[REDACTED]', 17 May 2018.

⁶⁸⁶ Cérélia Internal Document, Document ME_6988_22_006075 for RFI, '[REDACTED]', 9 April 2018.

⁶⁸⁷ Cérélia Internal Document, Document ME_6988_22_004655, [REDACTED], 17 June 2022. [REDACTED].

⁶⁸⁸ Cérélia Internal Document, Document ME_6988_22_004264 to RFI, '[REDACTED]', 13 October 2021.

⁶⁸⁹ Cérélia Internal Document, Document ME_6988_22_002458 to RFI, [REDACTED], 18 May 2020.

⁶⁹⁰ Cérélia Internal Document, Document ME_6988_22_004167 to RFI, '[REDACTED]', 18 May 2021.

⁶⁹¹ Cérélia Internal Document, Document ME_6988_22_004218, '[REDACTED]', 19 May 2021.

⁶⁹² [REDACTED] Cérélia's response to the CMA's request for information (phase 1 s109) (2), 21 February 2022, Annex 8.

⁶⁹³ [REDACTED]. As with other areas, we did not review such documents exhaustively.

- 9.194 On this basis (and assuming that any contract won by Bells would be at the expense of the Parties rather than another provider in the market), Bells would remain less than one quarter of the size of the Merged Entity, which would hold a share of [50-60]%, and have [X] (whereas the Parties would [X]).
- 9.195 Accordingly, even if Bells can take on a contract equivalent to the size of [X], we note that the market position of Bells would remain modest and that it would be significantly smaller than the Merged Entity. We note, in addition, that the majority of grocery retailers do not consider Bells to be a credible alternative supplier to the Parties. On this basis, we consider that Bells provides a limited constraint on the Merged Entity. We note that Bells' ability to expand in the longer term [X] (see paragraph 9.180 and 9.183); we consider this in more detail in Chapter 10 (see paragraph 10.47).
- 9.196 C r lia submitted that the evidence [X] demonstrates that the CMA's provisional conclusions in the Provisional Findings Report were incorrect [X].⁶⁹⁴
- 9.197 The CMA agrees that the [X] clarifies that [X]. We have taken this information into account in our final assessment of the constraint posed by Bells.
- 9.198 Ultimately, we continue to consider that Bells provides only a limited constraint on the Merged Entity. In particular, we believe that the ultimate conclusion set out in the Provisional Findings – that Bells would exercise limited competitive pressure on the merging parties over the next one to two years – remains unchanged [X] in relation to how Bells [X]. The other evidence that we took into account in assessing the strength of Bells as a competitor, including the uncertainty around its appetite for further expansion into the retail DTB segment, its limited overall market position, even if it were successful in winning an additional large retailer contract (particularly in comparison to the Merged Entity), and its perception with customers, remains unchanged.

⁶⁹⁴ [X].

Cranswick

- *Evidence*

- 9.199 The core of Cranswick's business is outside the DTB market. Cranswick is primarily a manufacturer of baked pastry goods like sausage rolls and pies.
- 9.200 Cranswick entered the DTB market in 2021 after winning the contract for PL all-butter puff pastry for [REDACTED]. We estimate that this contract provides Cranswick with [0-5]% share of all DTB supply to UK retailers.⁶⁹⁵
- 9.201 Cranswick obtained the contract for [REDACTED] PL puff pastry on the back of its existing relationship with [REDACTED]. To manufacture DTB products for [REDACTED] it uses machinery that was already being used to manufacture sausage roll products for [REDACTED].⁶⁹⁶
- 9.202 Cranswick's maximum DTB production capacity is [REDACTED] per year.⁶⁹⁷ In contrast, Cérélia's DTB UK production capacity is around [REDACTED].⁶⁹⁸
- 9.203 The Parties submitted that:
- (a) Cranswick recently started supplying [REDACTED] with all-butter puff pastry, [REDACTED].⁶⁹⁹ [REDACTED].⁷⁰⁰
 - (b) Cranswick has [REDACTED]. [REDACTED].⁷⁰¹
 - (c) [REDACTED].⁷⁰²
- 9.204 Cranswick told the CMA that it believes [REDACTED] primarily because of the superior quality and consistency of Cranswick's product and that price was not the key factor.⁷⁰³ However, it noted that:
- (a) in order to be more competitive more generally in the DTB market, Cranswick would need to [REDACTED]. It said that [REDACTED];⁷⁰⁴

⁶⁹⁵ MN, paragraph 206c; [REDACTED] response to the CMA phase 2 competitor questionnaire, [REDACTED] 2022, question 3.

⁶⁹⁶ Note of a call with [REDACTED], [REDACTED] 2022, paragraph 9.

⁶⁹⁷ Response to the CMA phase 2 competitor questionnaire from [REDACTED], [REDACTED] 2022, question 15.

⁶⁹⁸ Cérélia Group's production capacity is around [REDACTED] in Europe (excluding the UK). Email from Cérélia to the CMA, 29 September 2022. Cérélia's site visit presentation (morning session), 28 July 2022, slide 20.

⁶⁹⁹ MN, paragraph 45c.

⁷⁰⁰ MN, paragraph 475. [REDACTED]. MN, paragraph 206c.

⁷⁰¹ Cérélia response to the CMA's request for information (phase 2 RFI) (1), 7 July 2022, paragraph 35.7.

⁷⁰² Cérélia's response to the phase 1 Issues Letter, 11 May 2022, paragraph 2.34.

⁷⁰³ Note of a call with [REDACTED], [REDACTED] 2022, paragraph 15; response to the CMA questionnaire from [REDACTED], [REDACTED] 2022, question 10.

⁷⁰⁴ Note of a call with [REDACTED], [REDACTED] 2022, paragraph 10 and 27.

(b) customer preferences in the DTB market favour lower price and quality products, like those made by the Parties;⁷⁰⁵

(c) it does not have [REDACTED];⁷⁰⁶ and

(d) it does not [REDACTED].⁷⁰⁷

9.205 Furthermore, in its response to our phase 2 questionnaire, Cranswick submitted that it competes only weakly with each of the Parties due to the fact that it supplies more premium artisan products than the Parties.⁷⁰⁸

9.206 A third of (three out of nine) the customers that responded to our phase 1 questionnaire mentioned Cranswick as being one of the main suppliers of PL DTB goods.⁷⁰⁹ However, only one [REDACTED] of the (seven) customers that responded to our phase 2 questionnaire (including those (three) retailers that had listed Cranswick as a main supplier of PL products) submitted that if they were to switch to an alternative supplier of PL products, they would switch to Cranswick.⁷¹⁰

9.207 None of the (six, excluding Cranswick) competitors who responded listed Cranswick as a DTB supplier they saw as a competitor to themselves.⁷¹¹ Similarly, none of the (eight) respondent competitors identified Cranswick as an alternative or competitor to Cérélia in the UK.⁷¹² None of the (eight) competitors named Cranswick as an alternative or competitor to Jus-Rol in the UK.⁷¹³

9.208 Prior to the Cranswick contract, Cérélia supplied [REDACTED] with DTB products in the PL channel. [REDACTED] told us that [REDACTED] [REDACTED].⁷¹⁴ However, it also stated that, looking forward, [REDACTED].⁷¹⁵ [REDACTED] stated that it is [REDACTED].⁷¹⁶

9.209 Some internal documents suggest Cérélia may be concerned about Cranswick as a competitor at the premium end of the PL sector. For example:

⁷⁰⁵ Response to the CMA competitor questionnaire from [REDACTED], [REDACTED] 2022, question 10.

⁷⁰⁶ Response to the CMA competitor questionnaire from [REDACTED], [REDACTED] 2022, question 10.

⁷⁰⁷ Response to the CMA competitor questionnaire from [REDACTED], [REDACTED] 2022, question 10a, 17, and 18.

⁷⁰⁸ Response to the CMA competitor questionnaire from [REDACTED], [REDACTED] 2022, question 12.

⁷⁰⁹ Response to the CMA Customer questionnaire, [REDACTED] 2022, question 11.

⁷¹⁰ Response to the CMA Customer questionnaire, [REDACTED] 2022, question 18.

⁷¹¹ Response to the CMA Competitor questionnaire, [REDACTED] 2022, question 12.

⁷¹² Response to the CMA Competitor questionnaire, [REDACTED] 2022, question 13.

⁷¹³ Response to the CMA Competitor questionnaire, [REDACTED] 2022, question 14.

⁷¹⁴ Response to the CMA Customer questionnaire, [REDACTED] 2022, question 13.

⁷¹⁵ Response to the CMA Customer questionnaire, [REDACTED] 2022, question 13; response to the CMA competitor questionnaire from [REDACTED], [REDACTED] 2022, question 18.

⁷¹⁶ [REDACTED] response to CMA phase 2 customer questionnaire, [REDACTED] 2022, question 18; Written submission from [REDACTED], [REDACTED] 2022.

- (a) In an internal email, in reference to the [REDACTED] product submitted by Cérélia in the [REDACTED], [REDACTED] '[REDACTED]'.⁷¹⁷
- (b) Cranswick is also mentioned in [REDACTED].⁷¹⁸ However, [REDACTED].⁷¹⁹
- (c) In internal emails [REDACTED], Cérélia mentioned the possibility of [REDACTED] using Cranswick (the PL supplier for [REDACTED]) as a reference for their [REDACTED].⁷²⁰
- (d) In internal emails, Cérélia [REDACTED].⁷²¹
- (e) A 'Chilled Food Association' newsletter from [REDACTED] is announced as a new member company of the group with a brief description of it, amongst other news items, was included in Cérélia's internal documents.⁷²²

9.210 Other than the above, we have not seen relevant references to Cranswick in Cérélia's internal documents, in terms of it being a competitive constraint. We searched for mentions of Cranswick in Cérélia's internal documents and, beyond the documents already identified, other instances where Cranswick was mentioned were usually inconsequential.

9.211 We have not found any internal documents from Jus-Rol referencing Cranswick.

- *Our assessment*

9.212 Overall, we recognise that in 2021 Cranswick started to supply [REDACTED], and that it has been listed as a main alternative by some third parties. However, the core of its business is outside the DTB market, currently it has [REDACTED], it has achieved a very small degree of market penetration and [REDACTED]. [REDACTED]. Evidence from retailers, including [REDACTED], suggests that Cranswick is not a strong alternative supplier to Cérélia or Jus-Rol. Overall, we conclude that Cranswick provides a very weak competitive constraint on the Parties.

⁷¹⁷ Cérélia Internal Document, Document ME_6988_22_003177 to RFI, 'FW: 3rd Submission Feedback Pastry & Cookie Dough', 19 April 2022.

⁷¹⁸ Cérélia Internal Document, Document ME_6988_22_004655, '[REDACTED]', 17 June 2022. Cérélia said that [REDACTED]. [REDACTED]. (Cérélia's response to internal documents, pages 5-6).

⁷¹⁹ Cérélia response to the AIS and Working papers, 13 September 2022, annex AIS.09.a, pages 5-6.

⁷²⁰ Cérélia Internal Document, Document ME_6988_22_003201 to RFI, '[REDACTED]', 7 May 2022.

⁷²¹ Cérélia Internal Document, Document ME_6988_22_002855 to RFI, '[REDACTED]', 21 July 2021.

⁷²² Cérélia Internal Document, Document ME_6988_22_004812 to RFI, '[REDACTED]', dated 19 October 2021.

Other UK-based PL suppliers

9.213 In this section, we assess evidence related to other PL suppliers based in the UK.

- *Evidence*

9.214 The Parties submitted that there are at least three other UK-based PL suppliers that serve retailers in the UK:

(a) Dorset Pastry – a supplier of [REDACTED] to the retail and foodservice channels. Cérélia also believes that it supplies [REDACTED] with [REDACTED].⁷²³

(b) Shire Foods – which supplies [REDACTED] to [REDACTED].⁷²⁴

(c) St James Pastry – which supplies [REDACTED] to [REDACTED].⁷²⁵

9.215 [REDACTED] submitted that Dorset Pastry does not currently supply it with PL DTB products, and we have not seen any instances of it supplying other retailers with PL products.⁷²⁶ We will consider Dorset Pastry further in the branded suppliers section below (see from paragraph 9.268).

9.216 [REDACTED] currently produces an average of [REDACTED] of pastry per week [REDACTED] and told us that, while in theory it could make [REDACTED] every 24 hours [REDACTED] per year, this would impact the rest of the business.⁷²⁷ In contrast, Cérélia's DTB production capacity in the UK alone is around [REDACTED].⁷²⁸ It also told us that to compete on the same terms as Cérélia or Jus-Rol it would need a dedicated pastry processing site and that selling pastry for it is a 'secondary focus'.⁷²⁹ We estimate that Shire Foods has [0-5]% share of all DTB supply to UK retailers.⁷³⁰

9.217 We understand that St James Pastry is a filo specialist and currently does not produce other DTB products.⁷³¹

⁷²³ MN, paragraph 206f.

⁷²⁴ Cérélia, main party hearing transcript, page 55 and [REDACTED] response to the CMA phase 2 competitor questionnaire, [REDACTED] 2022, question 2. [REDACTED] is a grocery and general merchandise retailer. [REDACTED], [REDACTED], accessed by the CMA on 11 October 2022.

⁷²⁵ MN, paragraph 206d.

⁷²⁶ [REDACTED] stocks frozen PL puff pastry sheets and shortcrust pastry sheets. Its supplier for these lines is [REDACTED] which acts on behalf of a European manufacturer, although [REDACTED] does not know who this is. [REDACTED] told us that [REDACTED] served notice on it so they will switch to [REDACTED] to replace these lines [REDACTED].

⁷²⁷ [REDACTED] response to the CMA phase 2 competitor questionnaire, [REDACTED] 2022, question 15.

⁷²⁸ Cérélia Group's production capacity is around [REDACTED] in Europe (excluding the UK). Email from Cérélia to the CMA, 29 September 2022. Cérélia's site visit presentation (morning session), 28 July 2022, slide 20.

⁷²⁹ [REDACTED] response to the CMA phase 2 competitor questionnaire, [REDACTED] 2022, question 15.

⁷³⁰ [REDACTED] response to the CMA phase 2 competitor questionnaire, [REDACTED] 2022, question 6.

⁷³¹ [REDACTED] response to the CMA phase 2 competitor questionnaire, [REDACTED] 2022, questions 4, 6, 7.

- *Our assessment*

9.218 Our assessment of third-party evidence indicates that none of these producers, through their PL supply, are likely to pose a material constraint on either Cérélia or Jus-Rol. In particular:

- (a) None of the (nine) customers who responded to the phase 1 questionnaire listed any of these suppliers as being among the main PL suppliers in the UK.⁷³²
- (b) When asked who they would switch to if they were to switch PL supplier, none of the (seven) customers who responded to the phase 2 questionnaire listed any of these suppliers as an alternative PL supplier. The only additional UK-based PL supplier that was mentioned by one of these customers was Bakkavor [REDACTED] but it was not seen as meeting requirements.⁷³³
- (c) Competitors' responses are generally aligned with retailers' views. When asked to identify PL suppliers that are alternatives or competitors to Cérélia, only one competitor [REDACTED] (out of eight) considered St James Pastry as an alternative to Cérélia.⁷³⁴ The same competitor was also the only one (out of eight) to consider St James Pastry as an alternative to Jus-Rol.⁷³⁵ However, this was mainly restricted to filo pastry in both cases.
- (d) None (zero out of seven) of the competitors identified Dorset Pastry, Shire Foods, or St James Pastry as a DTB supplier they competed with.⁷³⁶
- (e) A minority (two out of eight) [REDACTED] of competitors stated that there were no DTB suppliers that were alternatives or competitors to Jus-Rol in the UK, with a third [REDACTED] saying the question was not applicable.⁷³⁷

9.219 Our review of the Parties' internal documents indicates that these other UK-based PL suppliers are monitored to a minimal extent.

⁷³² Response to the CMA customer questionnaire, [REDACTED] 2022, question 11.

⁷³³ Response to the CMA phase 2 customer questionnaire, [REDACTED] 2022, question 18.

⁷³⁴ Response to the CMA phase 2 competitor questionnaire, [REDACTED] 2022, question 13.

⁷³⁵ Response to the CMA phase 2 competitor questionnaire, [REDACTED] 2022, question 14.

⁷³⁶ Response to the CMA phase 2 competitor questionnaire, [REDACTED] 2022, question 12.

⁷³⁷ Response to the CMA phase 2 competitor questionnaire, [REDACTED] 2022, question 14.

Other UK-based PL frozen ready-to-bake suppliers

- *Evidence*

- 9.220 As discussed in paragraph 23 in Appendix C, by value approximately [10-20]% of the wholesale DTB market relates to frozen sales, in particular to PL frozen RTB sales.
- 9.221 Based on the third-party information available to the CMA, the manufacturers of these PL frozen RTB products are Bridor and Lantmannen Unibake at [REDACTED]; Delifrance UK at [REDACTED]; Delifrance UK at [REDACTED]; CP Foods, Lantmannen Unibake and Turners at [REDACTED]; Gourmand Pastries at [REDACTED]. Cérélia submits that there are a number of manufacturers which the CMA has identified as manufacturers of PL frozen breakfast goods for retailers, including [REDACTED] and [REDACTED], which currently manufacture frozen croissants for multiple large UK retailers. These manufacturers have already received UK retailer approval and are familiar with retailer processes and requirements.⁷³⁸ While these suppliers are already working with UK retailers, none of these suppliers were mentioned in the Parties' submissions or in third-party responses as a competitive constraint. [REDACTED] was mentioned in Cérélia's '[REDACTED]' slide-deck, although with no detail on its differences to Cérélia.⁷³⁹ Beyond this, no references were found in internal documents that indicate that these suppliers are perceived as competitive constraints.
- 9.222 In addition, we are not aware that these suppliers have ever tendered against Cérélia in supplying PL DTB products to grocery retailers in the UK.

- *Our assessment*

- 9.223 Based on the evidence discussed in paragraphs 9.220 to 9.222, we consider that the PL frozen RTB suppliers do not provide a material competitive constraint on the Parties.
- 9.224 Therefore, we conclude that none of these other suppliers, individually and in aggregate, provide a material competitive constraint on the Parties.

⁷³⁸ Cérélia's response to the provisional findings, 28 November, paragraph 4.39.

⁷³⁹ Cérélia Internal Document, Document ME_6988_22_004655, '[REDACTED]', 17 June 2022. We note that the credibility of this internal document is heavily disputed by the parties (see paragraph 9.208(b)). Cérélia said that [REDACTED]. [REDACTED]. [REDACTED]. (Cérélia's response to internal documents, pages 5-6).

Non-UK based PL suppliers

9.225 In this section, we first assess evidence related to the two key non-UK based suppliers of PL DTB products in the UK, namely Henglein and Wewalka.⁷⁴⁰ Then, we assess other non-UK based PL suppliers from paragraph 9.258

Henglein

- *Evidence*

9.226 Henglein is a large supplier of DTB products based in Germany. It currently manufactures, in Germany, PL shortcrust, puff pastry, and filo pastry products for three UK retailers: [REDACTED], [REDACTED], and [REDACTED].⁷⁴¹ Henglein has a [REDACTED] with Golden Acre foods in the UK whereby the latter is responsible for distributing products to UK customers and managing relationships with retailers.⁷⁴²

9.227 Henglein's share of supply for UK PL [REDACTED] (see paragraph 34 in Appendix C). This [REDACTED], including two with [REDACTED] in 2013 and 2017, and one with [REDACTED] in 2017.

9.228 However, more recently, Henglein [REDACTED]: [REDACTED] in 2019⁷⁴³ and [REDACTED] in 2021.⁷⁴⁴ Henglein's 2023 forecast share of supply is [10-20]% of all DTB supply to UK retailers.

9.229 [REDACTED] recently decided to expand its range to include a PL pizza dough product, and the contract for supply of this product was won by [REDACTED]. Although [REDACTED] did not provide information on other bidders for the contract, Cérélia submitted it believed it had won against [REDACTED].⁷⁴⁵

9.230 Henglein's current DTB production volume (for serving the UK and mainland Europe) is [REDACTED] per year and its maximum capacity is [REDACTED] per year.⁷⁴⁶ It said that it [REDACTED].⁷⁴⁷ By comparison, Cérélia's DTB production capacity in the UK is around [REDACTED].⁷⁴⁸

9.231 Cérélia submitted that:

⁷⁴⁰ We consider these suppliers to be key for a number of reasons including their shares of supply, references to them in internal documents, the parties' views on them and third parties' views on them.

⁷⁴¹ [REDACTED] response to the CMA phase 2 competitor questionnaire, [REDACTED] 2022, question 2, paragraph 206a.

⁷⁴² Note of a call with [REDACTED], [REDACTED] 2022, paragraph 2.

⁷⁴³ Note of a call with [REDACTED], [REDACTED] 2022, paragraph 5.

⁷⁴⁴ Response to the CMA phase 2 customer questionnaire, [REDACTED] 2022, question 21.

⁷⁴⁵ Cérélia response to the CMA's request for information (phase 2 RFI) (2), 25 August 2022, paragraph 26.2.

⁷⁴⁶ [REDACTED] response to the CMA phase 2 competitor questionnaire, [REDACTED] 2022, question 15.

⁷⁴⁷ Written submission from [REDACTED], [REDACTED] 2022.

⁷⁴⁸ Cérélia Group's production capacity is around [REDACTED] in Europe (excluding the UK). Email from Cérélia to the CMA, 29 September 2022. Cérélia's site visit presentation (morning session), 28 July 2022, slide 20.

- (a) Continental European suppliers face no material disadvantages and [redacted] DTB products are manufactured outside of the UK.⁷⁴⁹
- (b) [redacted]:
- (i) A tender for [redacted] in 2019. [redacted].⁷⁵⁰
 - (ii) A tender for [redacted] in 2021. [redacted].⁷⁵¹
- (c) A number of suppliers, including Henglein, are highly likely to have sufficient capacity to supply a large UK retailer.⁷⁵²
- (d) [redacted] the Provisional Findings Report [redacted] suggest that the CMA misunderstood the size of the contracts Henglein serves. Cérélia submitted that the contracts Henglein has are not ‘smaller supply contracts’. Henglein’s contract to supply [redacted] is for approximately [redacted] kilotons, which is greater than [redacted] total annual DTB PL volumes ([redacted] kilotons) and it is only the [redacted] volumes that are greater than these.⁷⁵³
- (e) [redacted] confirms that Henglein ‘[redacted]’, [redacted]. In Cérélia’s view, it is, consequently, unclear how the CMA can, on the evidence before it and on which it relies, conclude that the constraint posed by Henglein is weaker for larger retailers.⁷⁵⁴
- (f) The evidence [redacted] contradicts concerns recorded in the Provisional Findings Report as having been expressed by some retailers in relation to Henglein and used to discount Henglein as a competitive constraint:
- (i) Use of ethanol: [redacted]. [redacted].
 - (ii) Retailers’ preference for UK-based supply: [redacted] has confirmed that it does not have a preference for UK or continental European production and importing products from Europe does not, in its experience, cause issues. [redacted] also states that Brexit-related issues have been overcome (and offers, by way of evidence, the fact it has had no issue with the importation of [redacted]).⁷⁵⁵

⁷⁴⁹ Cérélia’s response to the Issues Statement, 2 August 2022, paragraph 4.26.

⁷⁵⁰ MN, paragraph 53.

⁷⁵¹ MN, paragraph 495.

⁷⁵² Cérélia’s response to the phase 1 Issues Letter, 11 May 2022, paragraph 6.58.

⁷⁵³ [redacted].

⁷⁵⁴ [redacted].

⁷⁵⁵ [redacted].

- 9.232 Henglein told us that it produces a very similar product to that produced by C r lia and Jus-Rol with slight differences in shape, size and packaging format.⁷⁵⁶ It does not, however, produce frozen, canned or block products.⁷⁵⁷ It said its philosophy is to use natural ingredients (eg alcohol) only and to keep the production process most effective and not to produce a lot of different formulations for one product.⁷⁵⁸ It said that [REDACTED]. It told us that [REDACTED].⁷⁵⁹
- 9.233 [REDACTED] told us that its decision to switch from Henglein in 2013 and 2017 to C r lia was driven by the product quality, the ingredients used by the suppliers, and [REDACTED] desire to reduce supply-chain complexity and its carbon footprint by moving to UK-based production.⁷⁶⁰
- 9.234 [REDACTED] told us that Golden Acre (Henglein) ultimately won the business in 2019 due to its commercial strength and that, despite cost increases, it scored highly in terms of quality and price. It also told us that suppliers were asked to commit to invest if volumes grew and Golden Acre (Henglein) agreed to do so.⁷⁶¹
- 9.235 In the CMA's phase 1 questionnaire, three customers [REDACTED], [REDACTED] and [REDACTED] (out of nine) mentioned Henglein as being amongst the main suppliers of PL products.⁷⁶²
- 9.236 In our phase 2 questionnaire, customer views were mixed (three out of seven) about Henglein being an alternative PL supplier that they would switch to if they were switching.⁷⁶³ One of these [REDACTED] said that Henglein has 'good service levels and quality', was commercially competitive and, therefore, considered that it fully meets its requirements.⁷⁶⁴ Another retailer [REDACTED], said it has no concerns regarding its current supplier being based outside of the UK.⁷⁶⁵
- 9.237 On the other hand, some large retailers expressed concerns over the ability of Henglein to meet their product specifications. For example, [REDACTED] submitted that it would not use Henglein as a supplier because it uses alcohol in its recipe and is unwilling to change this,⁷⁶⁶ and [REDACTED] stated that while Golden Acre

⁷⁵⁶ Note of a call with [REDACTED], [REDACTED] 2022, paragraph 3.

⁷⁵⁷ Note of a call with [REDACTED], [REDACTED] 2022, paragraph 3. Response to the CMA competitor questionnaire, [REDACTED] 2022, question 14.

⁷⁵⁸ [REDACTED] response to the CMA phase 2 competitor questionnaire, [REDACTED] 2022, question 3a. Note of a call with [REDACTED], [REDACTED] 2022, paragraph 8.

⁷⁵⁹ Written response from [REDACTED], [REDACTED] 2022

⁷⁶⁰ Written submission from [REDACTED], [REDACTED] 2022.

⁷⁶¹ Note of a call with [REDACTED], [REDACTED] 2022, paragraph 6.

⁷⁶² Response to the CMA phase 1 customer questionnaire, [REDACTED] 2022, question 11.

⁷⁶³ Responses to the CMA phase 2 customer questionnaire, [REDACTED] 2022, question 18.

⁷⁶⁴ [REDACTED] response to the CMA phase 2 customer questionnaire, [REDACTED] 2022, question 18.

⁷⁶⁵ Note of a call with [REDACTED], [REDACTED] 2022, paragraph 5.

⁷⁶⁶ Response to the CMA phase 2 customer questionnaire, [REDACTED] 2022, question 18

(Henglein) could potentially serve its full product range, it is unclear if it 'could meet its technical requirements.'⁷⁶⁷ In addition, [REDACTED] stated that Henglein offers almost the entire range of products, but 'there are key products missing'.⁷⁶⁸

- 9.238 None (out of six, excluding Henglein) of the competitors who responded considered Henglein to be a DTB supplier they competed with.⁷⁶⁹ Only Henglein and its UK agent Golden Acre (two out of eight) saw themselves as a DTB supplier which could be an alternative to C  r  lia in the UK.⁷⁷⁰ Only Henglein (out of eight) saw itself as an alternative to Jus-Rol in the UK, although its UK agent Golden Acre stated that there were no significant branded alternatives (within this sector) in the UK.⁷⁷¹
- 9.239 A number of third parties viewed the fact of being based in Europe as a material competitive disadvantage (see paragraph 8.65):
- (a) A retailer [REDACTED] said that transportation costs and border frictions when sourcing from Europe are an obstacle to switching supplier.⁷⁷²
 - (b) Another retailer [REDACTED] stated a preference to source from UK-based manufacturers due to sustainability concerns and transport costs.⁷⁷³
 - (c) A competitor [REDACTED] told us that the trend for 'made in Britain' products can prevent retailers switching away from C  r  lia, which is 'the only UK manufacturer'.⁷⁷⁴
- 9.240 C  r  lia's internal documents indicate that it sees Henglein as a competitor and, in certain documents, C  r  lia indicates [REDACTED]. [REDACTED] documents mentioning Henglein were identified by the CMA as relevant for the question of whether it is a competitive threat.⁷⁷⁵ For example:
- (a) Henglein [REDACTED].⁷⁷⁶ [REDACTED], as set out at paragraph 9.209(b) above.⁷⁷⁷
 - (b) One internal email from 2020 [REDACTED] noted the potential risks Brexit represented for suppliers based in Europe. In particular, the email stated

⁷⁶⁷ Response to the CMA phase 2 customer questionnaire, [REDACTED] 2022, question 15.

⁷⁶⁸ Response to the CMA phase 2 customer questionnaire, [REDACTED] 2022, question 18.

⁷⁶⁹ Response to the CMA phase 2 competitor questionnaire, [REDACTED] 2022, questions 12.

⁷⁷⁰ Response to the CMA phase 2 competitor questionnaire, [REDACTED] 2022, questions 13.

⁷⁷¹ Response to the CMA phase 2 competitor questionnaire, [REDACTED] 2022, question 14.

⁷⁷² Response to the CMA phase 1 customer questionnaire, [REDACTED] 2022, question 12.

⁷⁷³ Response to the CMA phase 2 customer questionnaire, [REDACTED] 2022, question 23.

⁷⁷⁴ Response to the CMA phase 1 competitor questionnaire, [REDACTED] 2022, question 13.

⁷⁷⁵ As with other document searches, this review was not exhaustive.

⁷⁷⁶ C  r  lia Internal Document, Document ME_6988_22_004655, '[REDACTED]', 17 June 2022. C  r  lia said [REDACTED]. [REDACTED]. [REDACTED]. C  r  lia response to the AIS and Working papers, 13 September 2022, annex AIS.09.a, pages 5-6.

⁷⁷⁷ C  r  lia response to the AIS and Working papers, 13 September 2022, annex AIS.09.a, 13 September 2022, pages 5-6.

that '[REDACTED]'.⁷⁷⁸ However, more recent internal emails indicate that [REDACTED]. In internal emails from 2021, it is stated that:

(i) '[REDACTED]';⁷⁷⁹ and

(ii) '[REDACTED]'.⁷⁸⁰

(c) The evidence from internal documents on how competitive Henglein is on price is mixed.

(i) In one internal email from 2021, CUK's Managing Director noted that '[REDACTED]' but also that '[REDACTED]'.

(ii) In an internal email in relation to the [REDACTED] tender in 2021 discussing [REDACTED]. In this email it was also noted that '[REDACTED]'. [REDACTED] ultimately awarded the contract to [REDACTED].⁷⁸¹

9.241 Henglein [REDACTED].⁷⁸²

- *Our assessment*

9.242 Henglein's [REDACTED] indicates that its competitiveness in the UK may have [REDACTED] since 2012 (see paragraph 34 in Appendix C). However, its market share remains material [REDACTED] (see paragraph 9.228).

9.243 Third-party evidence indicates there are some gaps in Henglein's range, but it offers the main DTB products. Retailers' views were mixed, with a minority considering Henglein as a strong alternative supplier. Some large retailers did not consider Henglein an attractive alternative due to its use of alcohol, gaps in its range and retailers' preference for UK-based supply.⁷⁸³ However, some retailers, including its current customers, considered it a strong alternative. Henglein's positioning as a non-UK based supplier is seen by retailers to pose some barriers although only to a degree. While Henglein appears [REDACTED], it confirmed that [REDACTED].

9.244 As already outlined, the CMA's concern about the limited nature of the constraint imposed by Henglein arises not from its absence of capacity but

⁷⁷⁸ Cérélia Internal Document, Document ME_6988_22_007507 to RFI, 'Re: [REDACTED] FW: Pastry', 24 September 2020.

⁷⁷⁹ Cérélia internal document, Document ME_6988_22_005245, '[REDACTED]', 11 April 2021.

⁷⁸⁰ Cérélia internal document, Document ME_6988_22_007581, '[REDACTED]', 14 January 2021.

⁷⁸¹ Cérélia Internal Document, Document ME_6988_22_005931 for RFI, '[REDACTED]', 14/09/2021; In Cérélia's response to the WPs, Cérélia submitted that [REDACTED].

⁷⁸² [REDACTED].

⁷⁸³ See paragraphs 9.235–9.236 and 9.238 for a discussion of the evidence.

from the expressed preferences of major larger UK grocery retailers to use UK-based suppliers, and suppliers whose recipe formulation does not include alcohol or are otherwise able to meet their technical requirements.

9.245 The CMA considers Cérélia's submissions, set out at paragraph 9.231(d) to 9.231(f), to rest on a mischaracterisation of the additional evidence received. We note that key grocery retailers comprising a large proportion of the market (notably [redacted] and [redacted]) do not consider Henglein a credible alternative for different reasons.

(a) With regard to the question of whether recipe formulation (and in particular its use of ethanol in its recipes), affected its competitive proposition to UK grocery retailers, the CMA notes that Henglein itself [redacted] in some circumstances. Henglein noted that its recipe formulation [redacted]. However, direct evidence we received from [redacted] was that they did not consider Henglein as a viable alternative partly due to its use of ethanol. [redacted] said that "[redacted]."⁷⁸⁴ With regard to the use of products containing ethanol by other grocery retailers, we note the distinction that grocery retailers expressed between their own-brand products and those of branded products, for which recipe formulation was outside their control. In addition, [redacted] also told us that it was unclear if Henglein could meet their technical requirements.⁷⁸⁵

(b) In relation to the question of retailers' preference for non-UK-based suppliers, Henglein itself acknowledged that its ability to compete in the UK had been affected by recent changes in market conditions (including Brexit). In particular, it listed less flexibility resulting from customs handling, the existence of custom fee and entry costs, exchange rates, and the increase in transportation and petrol costs which made it expensive to export into the UK. This is in line with evidence we received from both [redacted] and [redacted] that suggested they had a preference for UK-based suppliers in order to reduce supply chain disruption risks and reduce their carbon footprint.⁷⁸⁶

9.246 More broadly, the CMA does not consider that this evidence alters its assessment that Henglein offers only a limited competitive constraint on the Parties for a range of reasons. Despite Henglein's established position in the UK retail market and its apparent ability to meet the capacity requirements of larger retailers, the CMA notes that Henglein's presence in the UK has [redacted]

⁷⁸⁴ [redacted] response to the phase 2 customer questionnaire, [redacted] 2022, question 18.

⁷⁸⁵ Response to the CMA phase 2 customer questionnaire, [redacted] 2022, question 15.

⁷⁸⁶ [redacted] response to the phase 2 questionnaire, [redacted] 2022, question 23(a).

since 2016,⁷⁸⁷ in particular due to [REDACTED] (involving each of [REDACTED] and [REDACTED]).⁷⁸⁸ Henglein's estimated share in 2023 would therefore be only slightly over one-sixth of the Merged entity.⁷⁸⁹ As described in paragraph 9.237 there also are further limitations of Henglein's offer making it less suitable for large retailers (such as product specification issues and gaps in its product range). We also consider that the constraint is likely to be confined to PL supply, with minimal impact on Jus-Rol.

Wewalka

- *Evidence*

- 9.247 Wewalka is a family-owned Austrian supplier of fresh dough to customers across Europe and the UK. It has factories in both Austria and Hungary, although its production capacity is unknown. It supplies PL pizza dough in the UK but has a wider product range in Europe.⁷⁹⁰
- 9.248 We understand that Wewalka has a small share of UK retailer supply [0-5]%.⁷⁹¹ This is largely made of volumes of [REDACTED].⁷⁹² It occasionally supplies [REDACTED] with special items.⁷⁹³ Wewalka told us that [REDACTED].⁷⁹⁴
- 9.249 Wewalka was mentioned less frequently than Henglein in the submissions of competitors and retailers, consistent with its relatively minor presence in the UK.
- 9.250 In our phase 1 questionnaire, three customers [REDACTED], [REDACTED] and [REDACTED] (out of nine) mentioned Wewalka as being amongst the main suppliers of PL products in the UK.⁷⁹⁵
- 9.251 In our phase 2 questionnaire, one customer (out of eight) [REDACTED] mentioned Wewalka as being an alternative PL supplier they would switch to.⁷⁹⁶ The

⁷⁸⁷ See Figure 1 in Shares of Supply Appendix C.

⁷⁸⁸ See paragraph 9.226.

⁷⁸⁹ See Shares of Supply Appendix C.

⁷⁹⁰ C r lia response to Alternative Competitive Constraints WP (marked-up), 13 September 2022, slide 39.

⁷⁹¹ [REDACTED] response to the CMA phase 1 customer questionnaire, [REDACTED] 2022, question 5.

⁷⁹² From [REDACTED] C r lia [REDACTED]. (C r lia response to the CMA's section 109 Notice (phase 2 s.109) (2), 25 August 2022, paragraph 6.4e).

⁷⁹³ Note of a call with [REDACTED], [REDACTED] 2022, paragraph 6.

⁷⁹⁴ Written response from [REDACTED], [REDACTED] 2022.

⁷⁹⁵ Responses to the CMA phase 1 customer questionnaire, [REDACTED] 2022, question 11.

⁷⁹⁶ Response to the CMA phase 2 customer questionnaire, [REDACTED] 2022, question 18.

customer said that Wewalka has [REDACTED].⁷⁹⁷ Another retailer [REDACTED] said it has no concerns regarding its current supplier being based outside of the UK.⁷⁹⁸

- 9.252 In response to the phase 2 questionnaire, two competitors (out of seven) mentioned Wewalka when asked to identify the DTB product suppliers they competed with. However, these two competitors viewed Wewalka as competing most closely with other European suppliers of PL DTB products. For example, [REDACTED] viewed Wewalka as a very close competitor to itself, [REDACTED].⁷⁹⁹ [REDACTED] also noted that Wewalka produces in Austria and Hungary so would have to transport products 800 miles further than it to supply to the UK.⁸⁰⁰
- 9.253 Two (out of eight) competitors identified Wewalka as an alternative to C er lia in the UK.⁸⁰¹ Only one (out of eight) [REDACTED] identified Wewalka as an alternative to Jus-Rol in the UK, although highlighted its lack of frozen products as a weakness.⁸⁰²
- 9.254 A number of third parties viewed the fact of being based in Europe as a material competitive disadvantage (see paragraph 9.239).
- 9.255 C er lia’s internal documents indicate that it sees Wewalka as competitor and in certain documents [REDACTED]. These include:
- (a) [REDACTED].⁸⁰³ [REDACTED], as set out at paragraph 9.209(b) above.⁸⁰⁴
 - (b) In an internal email, Wewalka [REDACTED].⁸⁰⁵
- 9.256 Wewalka [REDACTED].⁸⁰⁶
- *Our assessment*
- 9.257 Wewalka currently only supplies very limited volumes of DTB products to the UK and [REDACTED].⁸⁰⁷ Accordingly, we consider it to be a very weak constraint on

⁷⁹⁷ Response to the CMA phase 2 customer questionnaire, [REDACTED] 2022, question 18.

⁷⁹⁸ Note of a call with [REDACTED], [REDACTED] 2022, paragraph 5.

⁷⁹⁹ Response to the CMA phase 2 competitor questionnaire, [REDACTED] 2022, question 12.

⁸⁰⁰ Note of a call with [REDACTED], [REDACTED] 2022, paragraph 22.

⁸⁰¹ Response to the CMA phase 2 competitor questionnaire, [REDACTED] 2022, question 13.

⁸⁰² Response to the CMA phase 2 competitor questionnaire, [REDACTED] 2022, question 14.

⁸⁰³ C er lia Internal Document, Document ME_6988_22_004655, '[REDACTED]', 17 June 2022. C er lia said [REDACTED]. [REDACTED]. C er lia response to the AIS and Working papers, 13 September 2022, annex AIS.09.a, pages 5-6.

⁸⁰⁴ C er lia response to the AIS and Working papers, 13 September 2022, annex AIS.09.a, 13 September 2022, pages 5-6.

⁸⁰⁵ C er lia internal document, Document ME_6988_22_003165 for RFI, '[REDACTED]', 2 April 2022.

⁸⁰⁶ [REDACTED]. As with other areas, we did not review such documents exhaustively.

⁸⁰⁷ See paragraph 9.247.

the Parties, and we think that constraint is confined to PL supply given its PL offering, with little, if any, constraint on Jus-Rol branded product.

Other non-UK based PL suppliers

- *Evidence*

- 9.258 In this section, we assess evidence related to other PL suppliers based and manufacturing outside the UK.
- 9.259 [REDACTED]: Hellenic Dough – a Greece-based manufacturer which supplies Jus-Rol [REDACTED] for sale to UK retailers and foodservice suppliers. It also supplies branded products under the [REDACTED] brand.⁸⁰⁸
- 9.260 Hellenic Dough said that it supplies [REDACTED] with frozen RTB products and [REDACTED] with chilled filo pastry.⁸⁰⁹ It told us that its yearly revenue in the UK is approximately £[REDACTED] which would give it a market share of [0-5]% of all DTB supply to UK retailers.⁸¹⁰ Its current DTB production volume (worldwide) is [REDACTED] and its capacity is [REDACTED] tonnes.⁸¹¹ In contrast, Cérélia's DTB production capacity in the UK alone is around [REDACTED].⁸¹²
- 9.261 None (out of nine) of the customers who responded to our phase 1 questionnaire indicated that Hellenic Dough was a main PL supplier.⁸¹³
- 9.262 When asked who they would switch to if they were to switch to an alternative supplier of PL products, none of the (eight) customers who responded to our phase 2 questionnaire mentioned Hellenic Dough. The only other non-UK based PL supplier that was mentioned was Odysea by one retailer [REDACTED] who submitted that Odysea did not meet its requirements and was very resource constrained at the moment.⁸¹⁴
- 9.263 None (out of six, excluding Hellenic Dough) of the competitors who responded to our phase 2 questionnaire identified Hellenic Dough as a DTB supplier they competed with.⁸¹⁵

⁸⁰⁸ MN, paragraph 206b.

⁸⁰⁹ [REDACTED].

⁸¹⁰ [REDACTED] response to the CMA phase 1 competitor questionnaire, [REDACTED] 2022, question 5.

⁸¹¹ [REDACTED] response to the CMA phase 2 competitor questionnaire, [REDACTED] 2022, questions 2, 4 and 15.

⁸¹² Cérélia [REDACTED]. Email from Cérélia to the CMA, 29 September 2022. Cérélia's site visit presentation (morning session), 28 July 2022, slide 20.

⁸¹³ Response to the CMA phase 1 customer questionnaire, [REDACTED] 2022, question 11.

⁸¹⁴ Response to the CMA phase 2 customer questionnaire, [REDACTED] 2022, question 18.

⁸¹⁵ Response to the CMA phase 2 competitor questionnaire, [REDACTED] 2022, questions 12.

9.264 When asked which DTB suppliers are alternatives or competitors to Cérélia in the UK, none (out of eight) of the competitors who responded to our phase 2 questionnaire mentioned Hellenic Dough. Other suppliers that were identified as alternatives to Cérélia in the UK were Casa Tarradellas, A1 Foods, and Vandemoortele.⁸¹⁶ One competitor (out of eight) [REDACTED] named Vandemoortele as a strong alternative to Jus-Rol in the UK.⁸¹⁷

9.265 Our review of the Parties' internal documents indicates that Hellenic Dough is monitored to a minimal extent.⁸¹⁸ Only one document mentioning Hellenic Dough was identified as relevant to the question of whether it is a competitive constraint. This was a [REDACTED].⁸¹⁹

- *Our assessment*

9.266 While Hellenic Dough [REDACTED], the Parties' internal documents and evidence from retailers and suppliers [REDACTED]. This is also the case for the other non-UK based PL suppliers mentioned by third parties (apart from [REDACTED]). In addition, these firms [REDACTED]. Therefore, we conclude that these other non-UK based PL suppliers, individually or in aggregate, are likely to pose an extremely weak constraint on either Cérélia or Jus-Rol.

CMA's conclusion on the degree of constraint from PL suppliers

9.267 We have assessed each potentially significant PL provider's capacity in detail and have incorporated it into our assessment. For the reasons set out above, we conclude that PL suppliers, individually and in aggregate, exert only a limited competitive constraint on Cérélia, and even less of a constraint on Jus-Rol given the branded nature of its product. We have found that:

(a) PL suppliers based in the UK provide only a limited competitive constraint on the Parties. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED] is not willing to invest to expand in the DTB market and its presence in the retail sector may cease soon. Other UK-based PL suppliers, such as [REDACTED], [REDACTED] and [REDACTED], represent only a small portion of sales in the market and are not considered strong alternative suppliers by retailers.

(b) PL suppliers based in the EEA offer some competitive constraint. In particular, while the competition that Henglein is likely to offer in relation to

⁸¹⁶ Response to the CMA phase 2 competitor questionnaire, [REDACTED] 2022, question 13.

⁸¹⁷ Response to the CMA phase 2 competitor questionnaire, [REDACTED] 2022, question 14.

⁸¹⁸ [REDACTED]. As with other areas, we did not review such documents exhaustively.

⁸¹⁹ Cérélia Internal Document, Document CJR-000001287, '[REDACTED]', 13 July 2022.

its current retail customers is material, the CMA considers that the constraint imposed by Henglein is limited in light of the expressed [REDACTED].

- (c) [REDACTED] currently only supplies very limited volumes of DTB products to the UK [REDACTED], so we consider it to be a very weak constraint on the Parties. While [REDACTED] has large spare capacity, it and other non-UK based PL suppliers represent only a small portion of sales in the market and are not considered strong alternative suppliers by retailers.

Constraint from alternative consumer brands

Evidence

- 9.268 In this section, the alternative consumer brands considered will include those currently supplying retailers and those mentioned by the Parties in their submissions. The brands are therefore Bells, Theos, Dorset Pastry, Picard, The Northern Dough Co., Feuilles de Filo, Alesis Bakery, Schulstad, St James Pastry and Shire.⁸²⁰
- 9.269 Cérélia submitted that:
- (a) Retailers would be able to switch to alternative branded products.⁸²¹
These alternatives include a wide variety of products and brands.⁸²²
There are numerous suppliers which self-supply branded products.⁸²³
- (b) Growth of e-commerce and increasing availability of low-cost delivery means branded products have even easier access to an effective route to market.⁸²⁴
- (c) Breadth of product range does not determine the strength of a brand and some competing brands may have brand recognition for a few specific products that are more effective than the Jus-Rol brand.⁸²⁵

⁸²⁰ Responses to CMA phase 2 customer questionnaire, [REDACTED] 2022, question 4. MN, paragraph 207.

⁸²¹ MN, paragraph 562b.

⁸²² MN, paragraphs 427-446. Ingredient pastry products: Dorset Pastry, Frasers, Genius, JR Feuilles, Picard, Sue's Gluten-free Kitchen, Shire, Theo's. Pizza dough products: Costa & Mollica, Don Marcos, Munch!, Napolina, PizzaExpress, Pizza Pilgrims, Schar, The Northern Dough Co. Cookie and breakfast dough products: Doughlicious, Picard, Pret-a-Manger, The Northern Dough Co.

⁸²³ MN, paragraph 208.

⁸²⁴ MN, paragraph 447.

⁸²⁵ MN, paragraph 448.

(d) In its Working Paper responses, Cérélia submitted that the CMA did not place enough weight on existing or potential suppliers, either already in the market or in relevant markets.⁸²⁶

- 9.270 As mentioned in Appendix C, paragraphs 21 and 22, branded suppliers other than Jus-Rol – in aggregate – represent only [5-10]% of the market as of 2021 and no firm has more than [0-5]% market share of all DTB supply to UK retailers.
- 9.271 GMI submitted [REDACTED]. In regard to this, GMI noted that, [REDACTED].⁸²⁷
- 9.272 Most (eight out of 14) of the retailers who responded to the phase 2 questionnaire and who stock branded products, including three of the four major retailers, indicated that they only stocked one brand of DTB product, namely Jus-Rol. For the remaining retailers (six out of 14), all of whom sold more than one branded product, Jus-Rol's was one of these. Despite stocking more than one brand, the majority of these (five of the six) retailers use Jus-Rol for the majority of their DTB products with other brands limited to just one or two DTB products each.⁸²⁸
- 9.273 All (out of eight) of the customers who responded to our phase 1 questionnaire named Jus-Rol as the main consumer brand active in the supply of branded products in the UK.⁸²⁹ It was often identified as the UK's brand leader with good quality products and promotional support.
- 9.274 When asked who they would switch to if they were to switch to an alternative supplier of branded products, a majority (four out of six) of customers who only stock Jus-Rol did not name any branded alternatives in their response to the phase 2 questionnaire. One major retailer [REDACTED] referenced Bells but noted that this was only in Scotland and said there were otherwise limited alternatives.⁸³⁰
- 9.275 Almost all (five out of six) of the customers who stocked more than one brand (including Jus-Rol) responded to the question who they would switch to if they were to switch to an alternative supplier of branded products. Two retailers [REDACTED] and [REDACTED] interpreted the question as asking who could replace specifically

⁸²⁶ Cérélia response to Alternative Competitive Constraints Working Paper, 13 September 2022, paragraph 6v.

⁸²⁷ GMI response to the CMA's section 109 Notice (phase 2 s.109) (1), 30 June 2022, Q39.

⁸²⁸ Responses to CMA phase 2 customer questionnaire, [REDACTED] 2022, question 4; In Cérélia's response to the Alternative Competitive Constraints Working Paper, Cérélia submitted that retailers were supplied by several brands not listed by the CMA. One major retailer [REDACTED] identified as only stocking Jus-Rol is also supplied by a small supplier for one DTB product, which was also submitted by the supplier. Other brands referenced by Cérélia could not be corroborated by third-party submissions, whether from retailers or suppliers.

⁸²⁹ Responses to CMA phase 1 customer questionnaire, [REDACTED] 2022, question 11b.

⁸³⁰ Response to the CMA phase 2 customer questionnaire, [REDACTED] 2022, question 19.

Jus-Rol's offering as Jus-Rol provides the majority of their DTB products. Of these, no brand was named which could meet the needs of the retailers in terms of volume, affordability and breadth of range at the same level that Jus-Rol could. A third retailer [redacted] could not name any alternatives and a fourth [redacted] said it had never explored moving as it was happy with its current supplier. The final [redacted] stated that it did not have enough knowledge of the market to comment.⁸³¹

- 9.276 Only one competitor (out of eight) [redacted] saw Bells (the branded aspect) as an alternative or competitor to Jus-Rol in its response to the phase 2 questionnaire, stating that Bells and Jus-Rol had similar products and quality.⁸³²
- 9.277 None (out of seven) competitors who responded referenced any of the alternative consumer brands identified in paragraph 9.268 as a DTB supplier they competed with.⁸³³
- 9.278 Our review of the Parties' internal documents indicates that no other brand is closely monitored by the Parties. In particular, [redacted]. This is further discussed in the Closeness of Competition section above. For example:
- (a) A GMI internal presentation assessing the competition faced by Jus-Rol [redacted].⁸³⁴
 - (b) Another GMI internal presentation looking at competition faced by Jus-Rol states that '[redacted]' and notes that '[in the UK] [redacted]'.⁸³⁵
 - (c) A GMI internal presentation notes that '[redacted]% of our loss is due to [redacted]'. A graphic showing the magnitude of switching only includes [redacted].⁸³⁶
 - (d) A GMI presentation summarising the performance of the DTB category at Asda compares [redacted].⁸³⁷
 - (e) A Jus-Rol Christmas review in 2021 states that [redacted], although [redacted] was highlighted or prioritised over these.⁸³⁸

⁸³¹ Response to the CMA phase 2 customer questionnaire, [redacted] 2022 question 19.

⁸³² Response to the CMA phase 2 competitor questionnaire, [redacted] 2022, question 14.

⁸³³ Response to the CMA phase 2 competitor questionnaire, [redacted] 2022, question 12.

⁸³⁴ GMI Internal Document, Document HSF00003713 for RFI, '[redacted]', 11 February 2019.

⁸³⁵ GMI Internal Document, Annex 12.B.07 to RFI, '[redacted]', 1 February 2020.

⁸³⁶ GMI Internal Document, Annex 04.A.01 to RFI, '[redacted]', 1 November 2021.

⁸³⁷ GMI Internal Document, Annex HSF00002933 to RFI, '[redacted]', 30 July 2019.

⁸³⁸ GMI Internal Document, Annex HSF00001986 to RFI, '[redacted]', 26 January 2022.

(f) A C  ria board meeting assesses the transaction rationale and states that '[REDACTED]'.⁸³⁹

9.279 Internal documents from Jus-Rol show it [REDACTED]. For example:

(a) Several documents show Jus-Rol comparing [REDACTED] to [REDACTED] (as well as to [REDACTED]).⁸⁴⁰

(b) A presentation for Jus-Rol compared [REDACTED] of various brands, including [REDACTED], and stated that '[REDACTED]'.⁸⁴¹

(c) [REDACTED] was seen as a brand 'loser' rather than 'winner' when comparing [REDACTED] over Christmas in 2021, in contrast to [REDACTED] being a 'winner'.⁸⁴²

Our assessment

9.280 While there are several alternative brands, the evidence we have reviewed, including market shares, internal docs and third-party evidence, suggests that alternative branded products impose little to no material constraint on either of the Parties, in particular in ingredient pastry products. While Jus-Rol faces more competition in case of niche DTB products, retailers tend to stock primarily Jus-Rol and generally do not see other brands as strong alternatives. Therefore, our conclusion is that alternative branded suppliers provide a weak competitive constraint on the Parties.

Constraint from non-retail suppliers (out of market constraint)

Evidence

9.281 The suppliers considered in this section are those who supply DTB products to customers in the foodservice and food manufacturing sectors.⁸⁴³ According to C  ria's submissions, these are primarily [REDACTED].⁸⁴⁴ [REDACTED] also supply foodservice customers, alongside providing PL or branded products. This is discussed further from paragraph 8.45. While C  ria has submitted that Shire supplies foodservice customers, Shire told us that it is not active in the

⁸³⁹ C  ria Internal Document, Document CJR-000000298, '[REDACTED]', 2 February 2022; in marked-up WP, C  ria submit that [REDACTED]; C  ria also submitted that 'branded' was used as shorthand for 'consumer brand' and that Jus-Rol faces competition from PL brands as well as consumer brands. Response to internal documents.

⁸⁴⁰ GMI Internal Document, Annex HSF00002933 to RFI, '[REDACTED]', 30 July 2019 and GMI Internal Document, Annex HSF00003057 to RFI, '[REDACTED]', 20 February 2020.

⁸⁴¹ GMI Internal Document, Annex HSF00001986 to RFI, '[REDACTED]', 26 January 2022.

⁸⁴² GMI Internal Document, Annex HSF00001997 to RFI, '[REDACTED]', 23 March 2022.

⁸⁴³ The Parties' earlier submissions (and therefore our evidence gathering) focused more on foodservice than food manufacturing. We therefore have more information on the former than the latter.

⁸⁴⁴ MN, paragraph 209.

sector.⁸⁴⁵ Although all these firms were sent questionnaires, [X] did not respond.

9.282 Cérélia submitted that:

- (a) A number of suppliers already manufacture either DTB products for the foodservice sector or dough-based products (eg pies) for the retail and/or foodservice sector. These suppliers would require [X] investment to supply DTB products to UK retailers.⁸⁴⁶ These include [X].⁸⁴⁷
- (b) The production processes for supplying PL DTB products and supplying DTB products to foodservice and food manufacturing customers are essentially the same.⁸⁴⁸ The only distinctions are that (i) retailers require both chilled and frozen DTB products whereas foodservice and food manufacturing customers require large quantities of frozen DTB products⁸⁴⁹ and (ii) additional packaging equipment is required to supply the retail channel. Suppliers to the foodservice and food manufacturing channel that already supply the retail channel are likely to have this equipment.⁸⁵⁰
- (c) Suppliers of DTB products can and do supply DTB products for more than one distribution channel. Cérélia and [X] manufacture products for Jus-Rol which are sold through both channels.⁸⁵¹
- (d) A number of suppliers, including Bells, Cranswick, Shire, and William Sword, which primarily supply the foodservice and food manufacturing sectors also supply branded or PL DTB products to retailers.⁸⁵²
- (e) The additional evidence discussed in the Consultation Paper contradicts the CMA's provisional conclusions in the Provisional Findings Report regarding the ease with which suppliers in the foodservice channel can switch their supplies to the DTB retail channel. In particular, Cérélia submitted that the additional evidence from [X] not only confirms that it could switch capacity from foodservice to retail in a relatively short period

⁸⁴⁵ Response to the CMA Competitor questionnaire, [X] 2022, question 19.

⁸⁴⁶ MN, paragraph 539.

⁸⁴⁷ MN, paragraph 209.

⁸⁴⁸ MN, paragraphs 209 and 249.

⁸⁴⁹ MN, paragraph 250.

⁸⁵⁰ MN, paragraph 250.

⁸⁵¹ MN, paragraph 251.

⁸⁵² MN, paragraph 252.

at relatively insignificant cost, but that it would have strong incentives to do so given the attractiveness of the retail sector.⁸⁵³

(f) That [redacted], and [redacted], demonstrate how easily any foodservice supplier with spare capacity can switch to supplying the retail channel, thereby imposing a strong competitive constraint on Cérélia. Cérélia submitted that, as the CMA observed in the RWP, given its standardized nature, any dough production line can easily be repurposed and put to 'alternative use'. In Cérélia's view, the CMA therefore accepts that a foodservice line could easily be repurposed to manufacture retail DTB SKUs.⁸⁵⁴

(g) All grocery retailers bar [redacted] have told the CMA that they would consider foodservice suppliers. Retailers have also indicated their willingness to consider potential suppliers from adjacent sectors.⁸⁵⁵

9.283 As described in paragraph 8.51, half (five out of ten) of the suppliers of DTB products who responded to our phase 2 questionnaire indicated that they supply customers in the foodservice sector. Of these, two [redacted] and [redacted] exclusively supply foodservice customers, and the other three [redacted], [redacted], [redacted] also supply grocery retailers with either PL or branded products.⁸⁵⁶

9.284 When asked whether suppliers currently only active in the foodservice sector would be able to meet the needs of grocery retailers, views were mixed. Less than half (three out of seven) of respondents said that foodservice suppliers would be able to do so due to the similarity of products, although 'major investment' would be needed. More than half (the remaining four out of seven) considered this would not be possible, highlighting the need for new machinery in order to meet different packaging requirements.⁸⁵⁷

9.285 A third (three out of nine) [redacted], [redacted], [redacted] of customers who responded to our phase 1 questionnaire said that they would not consider switching their PL supplier to one currently active in the foodservice sector but not the retail sector.⁸⁵⁸ Reasons included capacity, quality and cost issues. Only one customer [redacted] could name an example of a current foodservice supplier that would be able to start supplying the retail sector, although these were [redacted] and [redacted] who already do so. A majority (four out of six) of respondents who

⁸⁵³ Cérélia's response to Consultation Paper, 3 January 2023, paragraph 3.15.

⁸⁵⁴ Cérélia's response to Consultation Paper, 3 January 2023, paragraph 3.18.

⁸⁵⁵ [Cérélia's response to the provisional findings](#), 28 November, paragraph 4.39.

⁸⁵⁶ Response to the CMA phase 2 competitor questionnaire, [redacted] 2022, question 19

⁸⁵⁷ Response to CMA phase 2 competitor questionnaire, [redacted] 2022, question 20; in their ACC WP response, Cérélia stated that three positive responses indicates the existence of at least three potential entrants from the foodservice sector. This should be considered in combination with the fact that at least five retailers said they would be willing to consider a foodservice supplier for their PL products.

⁸⁵⁸ Response to CMA phase 2 customer questionnaire, [redacted] 2022, question 14.

said they would consider it stated that this was dependent on the supplier's ability to meet their volume requirements and specifications. One retailer [REDACTED] said that foodservice suppliers may be able to offer competitive products and prices.

- 9.286 Similarly, a large majority (nine out of 11) of customers who responded to our phase 2 questionnaire said they would consider switching to a supplier currently only in the foodservice sector for their PL products. No examples were named and four highlighted that they considered it an unlikely possibility, for example due to volume needs or technical specifications.⁸⁵⁹
- 9.287 When asked whether they would consider switching capacity from foodservice customers to grocery retailers given the opportunity to do so, a majority (two out of three) of the competitors who replied to our phase 1 questionnaire said they would ([REDACTED], the only two other foodservice suppliers [REDACTED] and [REDACTED] did not respond and this may have been because they already supply outside of the foodservice sector).⁸⁶⁰ One supplier [REDACTED] said they could switch capacity easily and quickly and had been approached by smaller grocery retailers. However, it mentioned that there was little opportunity to do so due to the strong brand presence of [REDACTED] in the market.
- 9.288 Only two competitors responded when asked to rank the main foodservice suppliers in the UK.⁸⁶¹ Cérélia was named by one supplier [REDACTED] as the only main foodservice supplier for UK customers, referencing its wide product range and ability to manufacture different packaging types alongside a UK-based production site. The second competitor [REDACTED] listed Jus-Rol, Pukka Pastry and Pin-It Pastry as its ranking of suppliers but said they were only known by their brand names to smaller wholesalers.
- 9.289 Of the suppliers of DTB products that responded to our phase 2 questionnaire, none who are only active in the foodservice sector or who earn a majority of their revenues from this sector indicated they were planning to significantly expand their manufacturing capacity in the next 18 to 24 months.⁸⁶²

⁸⁵⁹ Response to CMA phase 2 competitor questionnaire, [REDACTED] 2022, question 24.

⁸⁶⁰ Response to CMA phase 1 competitor questionnaire, [REDACTED] 2022, question 12.

⁸⁶¹ Response to the CMA phase 1 competitor questionnaire, [REDACTED] 2022, question 11.

⁸⁶² Response to the CMA phase 2 competitor questionnaire, [REDACTED] 2022, question 17.

- 9.290 Only one (out of eight) [redacted] competitor identified Pin-It Pastry as an alternative to Jus-Rol in the UK.⁸⁶³ Two (out of eight) [redacted] and [redacted] competitors identified Pin-It Pastry as an alternative to Cérélia in the UK.⁸⁶⁴
- 9.291 One (out of eight) competitor [redacted] identified Vandemoortele and another [redacted] named A1 Foods as an alternative to Cérélia in the UK.⁸⁶⁵
- 9.292 The CMA found limited internal documents from the Parties discussing the foodservice sector. For example:
- (a) One spreadsheet was found showing Cérélia [redacted], although it does not specify the individual suppliers.⁸⁶⁶
- (b) A 2017 email from BakeAway to GMI discusses [redacted].⁸⁶⁷
- (c) A Cérélia email from 2018 mentions [redacted].⁸⁶⁸
- 9.293 We do not have information on the exact size of the foodservice sector. Cérélia submitted that it believes the supply of frozen croissants to restaurants, cafes, retailers and other businesses in the UK to singlehandedly be larger than the entire DTB grocery sector, at an estimated US\$360 million in 2021.⁸⁶⁹
- 9.294 The revenues earned from the foodservice sector by respondents to our phase 2 questionnaire are small, even in 2019 (before the pandemic negatively impacted their revenues). It appears that the total volumes of any of these manufacturers in the foodservice sector are less than the wholesale revenues earned by supplying DTB products to a major retailer.⁸⁷⁰ While noting the limitations to the analysis that is possible in the light of the available evidence, this suggests that these foodservice suppliers may operate on a smaller scale than that required for supplying a major retailer.

Our assessment

- 9.295 As set out in Chapter 8, we consider that there is scope, in theory, for some demand and supply-side substitutability between products supplied for the

⁸⁶³ Response to the CMA phase 2 competitor questionnaire, [redacted] 2022, question 14.

⁸⁶⁴ Response to the CMA phase 2 competitor questionnaire, [redacted] 2022, question 13.

⁸⁶⁵ Response to the CMA phase 2 competitor questionnaire, [redacted] 2022, question 13.

⁸⁶⁶ Cérélia Internal Document, Document ME_6988_22_003336, '[redacted]', 3 June 2021.

⁸⁶⁷ Cérélia Internal Document, Document ME_6988_22_002103, 'FW: Summary visit Corby and Sliedrecht', 17 July 2017

⁸⁶⁸ Cérélia Internal Document, Document ME_6988_22_006075 for RFI, '[redacted]', 9 April 2018.

⁸⁶⁹ Annex AIS.04.b – WP (SS) mark-up.DOCX, slide 28.

⁸⁷⁰ Response to the CMA phase 2 competitor questionnaire, [redacted] 2022, question 4 and question 7.

retail and foodservice sectors given the similarities between these products. However, there is also evidence of differences between the two sectors. These include different packaging requirements (although as noted above, foodservice suppliers are likely to have the required packaging equipment), a foodservice focus on frozen products, and higher technical specifications/requirements of retailers. These differences suggest it is not straightforward for suppliers of foodservice customers to also supply grocery retailers.⁸⁷¹

- 9.296 In assessing the significance of any potential constraint imposed on the Parties by foodservice providers, we considered a wide range of evidence before reaching our conclusion. We note that the position of Bells is not representative in considering the constraint posed by food manufacturing providers. Bells can be distinguished from a pure food manufacturing supplier in that it had already established a presence in the retail DTB market prior to [REDACTED] by supplying branded DTB products to retail suppliers in Scotland and PL products to [REDACTED] and [REDACTED]. This meant it had DTB production expertise and allowed it to overcome the potential unwillingness of grocery retailers to switch to an untested food manufacturing supplier. Even accounting for this difference, we also note that Bells [REDACTED].
- 9.297 With regard to the ability to ‘repurpose’ dough production lines, we agree that there is some degree of potential supply-side substitutability, as noted in paragraph 9.295. However, we also found evidence of differences between the two sectors. These include different packaging requirements (although as noted above, foodservice suppliers are likely to have the required packaging equipment), a foodservice focus on frozen products, and higher technical specifications/requirements of retailers. These differences suggest it is not straightforward for suppliers of foodservice customers to also supply grocery retailers. We also found that food manufacturing providers may have limited incentive to switch as evidence provided to us by [REDACTED].
- 9.298 We acknowledged in our Provisional Findings Report that grocery retailers are willing to consider foodservice suppliers and have taken this into account in our assessment. However, we have not seen evidence of foodservice operators supplying large volumes to retailers or looking to significantly expand such that they would be able to supply large grocery retailers if they could switch volumes from foodservice to retail.

⁸⁷¹ Cérélia’s response to Alternative Competitive Constraints Working Paper, 13 September 2022. Cérélia submitted that these are not material barriers as foodservice suppliers already have most of the equipment required and their factories meet food manufacturing requirements.

- 9.299 We are not aware of any material and successful contract wins from foodservice providers recently.⁸⁷² Given that foodservice revenues appear to have fallen as a result of the pandemic while DTB sales at grocery retailers have increased, this suggests that foodservice suppliers have not constrained the Parties. Otherwise, the foodservice suppliers would have started supplying retail customers recently if it were a profitable option for them.
- 9.300 Internal documents of the Parties do not suggest this group of suppliers imposes a meaningful constraint on them.
- 9.301 For these reasons, we consider the current constraint on the Parties from suppliers focused on the foodservice sector to be weak.

Constraints on the Merged Entity from retailers' option to buy less DTB product (out of market constraint)

- 9.302 This section focuses on retailers' ability to constrain the Parties by buying less DTB products in total, and devote more shelf space to other products (eg BSM category).

Evidence

- 9.303 Cérélia submitted that:
- (a) Buyer power of UK retailers is bolstered by the fact that ingredient pastry is not a 'must have' product line for retailers and is easily replaced with other products in the BSM category.⁸⁷³
 - (b) Retailers can, and have in the past, reduced the shelf space devoted to DTB products.⁸⁷⁴ This is made easier by the fact that only a small proportion of their overall sales are made up of DTB goods.⁸⁷⁵
- 9.304 One retailer [REDACTED] told us that it offers a pastry product in every single one of its physical stores. This retailer [REDACTED] said that this demonstrates the importance of the product category to customers.⁸⁷⁶ Another retailer [REDACTED] said that reducing the range is an option to resist a price increase from DTB suppliers.⁸⁷⁷ One competitor [REDACTED] told us that there are some DTB products retailers simply

⁸⁷² [REDACTED]. Prior to this contract win, [REDACTED] supplied DTB products to food manufacturers and PL and branded DTB products to retailers.

⁸⁷³ MN, paragraph 58.

⁸⁷⁴ [Cérélia initial submission](#), 1 July 2022, paragraph 4.16.

⁸⁷⁵ [Cérélia's response to the Issues Statement](#), 2 August 2022, paragraph 4.43.

⁸⁷⁶ Note of a call with [REDACTED], [REDACTED] 2022, paragraph 13.

⁸⁷⁷ Note of a call with [REDACTED], [REDACTED] 2022, page 24, line 21.

need to stock (such as puff pastry) but some smaller lines are not important to them and they could threaten to delist these.⁸⁷⁸

- 9.305 We asked retailers about the options available to them if they were not happy with their PL or branded suppliers' offering. A small minority of the customers (one out of ten for PL and two out of 12 for branded) stated delisting as an option available them, for either PL or branded DTB products.⁸⁷⁹ We also asked retailers whether they had decreased the range of PL or branded DTB products in the last 5 years. Similarly, a small minority of the customers (two out of ten for PL and three out of 12 for branded) had decreased the range of PL or branded DTB products.⁸⁸⁰
- 9.306 Evidence from Cérélia's internal documents shows, in the CMA's view, how the presence of alternative suppliers is key to the balance of the bargaining position between retailers and suppliers. For example, in an internal email, [REDACTED].⁸⁸¹ In Cérélia's response to the ACC WP, it submitted that this evidence should also be read in the context of Cérélia competing against [REDACTED] as the incumbent co-packer for [REDACTED] pastry dough. At the date of the email, [REDACTED] had a [REDACTED] arrangement in which it used Cérélia [REDACTED].⁸⁸²

Our assessment

- 9.307 In principle, the CMA does not consider that a customer's option to 'buy less' is a constraint that should be given material weight in the assessment of a merger, given that this is an outcome that would, ultimately, be worse for consumers.
- 9.308 In any case, the extent to which retailers can constrain the Parties by simply 'buying less' DTB product altogether, and devoting more shelf space to other products (eg BSM category), appears to be limited. Most retailers indicated that their customers expect the core DTB products to be available to them.
- 9.309 Buyer power is discussed in further detail below (see from paragraph 9.314).

Our current view on alternative competitive constraints

- 9.310 In the sections above, we have reviewed the Parties' submissions on the competitive constraints exerted by alternative suppliers. We have also

⁸⁷⁸ Note of a call with [REDACTED], [REDACTED] 2022, paragraph 17.

⁸⁷⁹ Response to the CMA phase 2 customer questionnaire, [REDACTED] 2022, questions 15-16.

⁸⁸⁰ Responses to the CMA phase 2 customer questionnaire, [REDACTED] 2022, questions 11-12.

⁸⁸¹ Cérélia Internal Document, Document ME_6988_22_007507 to RFI, '[REDACTED]', 24 September 2020.

⁸⁸² Cérélia response to Alternative Competitive Constraints Working Paper (marked-up), 13 September 2022, slide 35.

reviewed evidence from third parties and internal documents. Overall, we have found that:

- (a) PL suppliers based in the UK (specifically Bells and Cranswick) provide only a limited competitive constraint on the Parties. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].
- (b) PL suppliers based in the EEA (specifically Henglein and Wewalka) offer some competitive constraint. In particular, we consider Henglein to represent a material constraint mainly in respect of its current retail customers, but a more limited competitive constraint in respect of other large retailers. This is because Henglein, although it has some spare capacity, presents a less compelling offer to them due to their expressed preferences to use UK-based suppliers, and suppliers whose recipe formulation does not include alcohol or are otherwise able to meet the grocery retailers' technical requirements.
- (c) On the other hand, Wewalka currently only supplies very limited volumes of DTB products to the UK [REDACTED], so we consider it to be a very weak constraint on the Parties.
- (d) Other PL suppliers represent only a minimal portion of sales in the market and are not considered strong alternative suppliers by retailers.
- (e) Alternative branded products have a small presence in the market and are rarely considered substitutes to either of the Parties' products. Therefore, we consider them to pose a weak competitive constraint on the Parties.

9.311 We have also considered out-of-market constraints. While there is evidence that suppliers serving only or mainly the foodservice sector provide some level of constraint, our assessment indicates that this constraint is weak. The extent to which the retailers can constrain the Parties by simply 'buying less' DTB product appears limited.

9.312 Moreover, we consider that the aggregate competitive constraint on the Parties from alternative suppliers is limited. The Merged Entity will be the largest supplier of DTB products to UK retailers, with a [60-70]% share of supply, and will face limited competition, with the stronger of the competitor firms (Bells and Henglein) having a substantially lower share of the market, [REDACTED], or presenting a less compelling offer to the largest retailers in case of Henglein.

9.313 For these reasons, we conclude that the Parties face limited competitive constraints from alternative suppliers, both individually and in aggregate.

Buyer power

- 9.314 As recognised in Chapter 5 (see Table 5.1) the DTB retail product market is characterised by four large grocery retailers holding approximately [70-80%] share of supply by value, with the remainder of supply accounted for by a number of much smaller retailers.
- 9.315 Cérélia submitted that:
- (a) Retailers have strong buyer power as recognised in GMI / Saxby (2006);⁸⁸³
 - (b) Sales are concentrated among a small number of powerful retailers;⁸⁸⁴
 - (c) Commodity benchmarking for cost pricing [redacted];⁸⁸⁵
 - (d) The Merger would strengthen retailers' bargaining position in relation to Jus-Rol products because, [redacted];⁸⁸⁶
 - (e) Cérélia's retailer customers (large and small) are all sophisticated buyers able to exercise significant buyer power by relying on each of the features of the DTB contract manufacturing sector to extract competitive terms from their contract manufacturers.⁸⁸⁷
 - (f) In response to the Provisional Findings Report, Cérélia submitted that the switch of even small volumes to another co-packer by a grocery retailer has a disproportionate effect on the incumbent co-packer as there is a threat that the balance of its volumes could be lost. [redacted]. These dynamics are not affected by the transaction.⁸⁸⁸
 - (g) Cérélia submitted that PL co-pack switching threats are real and credible in particular because (i) switching costs are not material and (ii) retailers test their co-pack terms in the PL channel annually, which means that retailers frequently consider switching. It submitted that its internal documents evidence that switching threats are taken seriously and that [redacted]). It also submitted that the CMA fails to apply the analysis to Cérélia's

⁸⁸³ MN, paragraph 57.

⁸⁸⁴ MN, paragraph 59.

⁸⁸⁵ Cérélia's response to the Annotated Issues Statement, 13 September 2022, paragraphs 4.7-4.9, and [Cérélia's response to the provisional findings](#), 28 November 2022, paragraphs 3.21 – 3.26, and 3.36.

⁸⁸⁶ MN, paragraph 61.

⁸⁸⁷ Cérélia stated the following features of the market: [redacted]. Cérélia's response to the Annotated Issues Statement, 13 September 2022, paragraphs 3.8 and 3.43.

⁸⁸⁸ [Cérélia's response to the provisional findings](#), 28 November, paragraphs 4.36-4.37.

incentives to offer retailers competitive terms to prevent them from switching at short notice.⁸⁸⁹

- 9.316 Cérélia's submissions are based on the size and sophistication of grocery retailers leading to buyer power. Size and sophistication, in themselves, do not necessarily result in buyer power capable of preventing an SLC. As set out in our MAGs, where a retailer has the ability and incentive to trigger new entry, it may be able to restore competitive conditions to the levels that would have prevailed absent the merger.⁸⁹⁰ Most other forms of buyer power that do not result in new entry – for example, buyer power based on a customer's size, sophistication, or ability to switch easily – are unlikely to prevent an SLC that would otherwise arise from the elimination of competition between the Parties. This is because retailers' buyer power depends on the availability of good alternative suppliers they can switch to, which in the context of an SLC will have been reduced.⁸⁹¹
- 9.317 In this section, we assess Cérélia's submissions on buyer power by summarising grocery retailers' options to respond to a deterioration in PQRS, and considering the negotiating strength of the largest retailers, as well as the impact of the Merger on their negotiating strength.

Evidence

- 9.318 Retailers' ability to constrain DTB suppliers primarily depends on their options to respond to a deterioration in PQRS. While retailers are sophisticated buyers who are trying to achieve the best deals and can benchmark commodity prices or limit promotional space, their ability pre-Merger depends on the availability of the following options:
- (a) PL/branded product rebalancing where the retailer buys more of the product through the other channel from its current supplier;
 - (b) switching to a new supplier (PL or branded);
 - (c) buying fewer DTB products; and/or
 - (d) sponsoring entry and/or expansion.
- 9.319 In responding to our inquiry, grocery retailers have described a number of commercial tools by which they seek to ensure prices are competitive. This

⁸⁸⁹ Cérélia's response to the provisional findings, 28 November, paragraphs 3.35, 4.23-4.29.

⁸⁹⁰ MAGs, paragraph 4.19.

⁸⁹¹ MAGs, paragraph 4.20.

includes tendering within each channel, negotiating on price by reference to commodity pricing, range reviews, and rebalancing the quantity of their purchases across the PL and branded channels (as well as across the wider dairy category) or by reference to promotional activity/product placement devoted to branded products.

- 9.320 In response to the question of options available to customers if they are not happy with their PL product supplier's offering, customers had mixed views. Less than half (four out of ten) [redacted], [redacted], [redacted], [redacted] stated that they would consider switching supplier. Half (five out of ten) [redacted], [redacted], [redacted], [redacted], [redacted] of customers that responded to our inquiry stated that there are no or limited alternative suppliers of DTB products for PL. A minority (three out of ten) [redacted], [redacted], [redacted] said that they would discuss the manufacturing process, recipes or package size with their supplier to find value.⁸⁹²
- 9.321 In response to the question of options available to customers if they are not happy with their branded product supplier's offering, the majority (seven out of twelve) [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted] of the customers that responded to our inquiry stated that there are no or limited alternative suppliers of branded DTB products. Two (out of twelve) [redacted] and [redacted] said that they could limit promotions.⁸⁹³
- 9.322 A number of third parties confirmed that commodity prices are transparent and that this enables certain retailers to appraise any price rise by a retailer by reference to the commodity price. Two large retailers [redacted] and [redacted] indicated that this is often one of the primary points of focus when discussing prices with suppliers.⁸⁹⁴ This transparency on supplier costs was also referenced by [redacted].⁸⁹⁵
- 9.323 However, a large retailer [redacted] submitted that while they would still be able to use commodity prices for benchmarking following the Merger, their ability to mitigate their exposure to unjustified inflation by rebalancing volumes between brand and PL would be reduced.⁸⁹⁶ That large retailer acknowledges that it would have some 'natural leverage' from being a 'significant part of the volume' at the Merged Entity's site, and they could 'impact on the volumes of that site'. However, they warned that this would probably be to the detriment

⁸⁹² Responses to the CMA's customer questionnaire, question 15.

⁸⁹³ Responses to the CMA's customer questionnaire, question 16.

⁸⁹⁴ Note of a call with [redacted],[redacted] 2022, page 11-13. Note of a call with [redacted], [redacted] 2022, page 27.

⁸⁹⁵ Written submission from [redacted], [redacted] 2022, question 3.

⁸⁹⁶ Note of a call with [redacted], [redacted], 2022, pages 11-13.

of customers and that this is a growing category, and that they would not want to dampen that growth.

- 9.324 Another large retailer [REDACTED] told us that there is a significant number of inputs for DTB products which are not commoditised and for which expenditure details are not publicly available, despite their influence on the price of the products. It [REDACTED] of such input costs.⁸⁹⁷
- 9.325 Another large retailer [REDACTED], stated that changing volumes of PL and Jus-Rol products is a lever it can pull if the Parties increase price or decrease quality. However, due to the limited presence of alternative suppliers in the UK, rebalancing quantities between PL and branded products is recognised to be a more important option than switching suppliers entirely.⁸⁹⁸ [REDACTED] stated that the Merger will mean that it will no longer have the ability to flex volumes between PL and Jus-Rol, leaving ‘no room for negotiation’ due to a limited choice of credible alternative suppliers (to switch) to in response to a price increase.⁸⁹⁹ While this retailer confirmed that it would be willing to run a competitive tender and to look at Europe for its supply, it also highlighted a number of risks with any such approach, including the risk of surety of supply, whether the suppliers would be able to meet or prioritise their needs, and delay in the process.
- 9.326 This large retailer [REDACTED] told us that suppliers owning other non-DTB brands can potentially improve the retailer’s negotiating position across the board.⁹⁰⁰
- 9.327 Another large retailer [REDACTED] said that it seeks to negotiate a deal on the best commercial terms possible. It submitted that if such negotiations were unsuccessful, it may decide to delist one product, in favour of the product available in the other channel (ie switching PL for branded and vice versa) or, if the price was across both channels, it may rationalise or delist both. However, it submitted that the Merger would lead to a loss in its ability to compare and challenge Cérélia’s costs. This ability is a competitive tension used as a benchmark in negotiations, the ability to meaningfully compare and challenge quality and other factors between the various products, as well as potentially the access to NPD and innovations in the category.⁹⁰¹

⁸⁹⁷ Transcript of a call with [REDACTED], [REDACTED] 2022, page 29.

⁸⁹⁸ Note of a call with [REDACTED], [REDACTED] 2022, page 8 line 2 to page 9 line 17.

⁸⁹⁹ Note of a call with [REDACTED], [REDACTED] 2022, page 16 line 2-14.

⁹⁰⁰ Note of a call with [REDACTED], [REDACTED] 2022, page 18 lines 17 to page 19 line 3.

⁹⁰¹ Written submission from [REDACTED], [REDACTED] 2022, question 3.

9.328 Evidence from C erelia’s internal documents shows, in the CMA’s view, how the presence of alternative suppliers is key to the balance of the bargaining position between retailers and suppliers (see paragraph 9.306).

Our assessment

9.329 At the start of this section, we listed the four options available to grocery retailers pre-Merger in order to constrain DTB suppliers (see paragraph 9.318). Taking those options in turn:

- (a) We consider that the retailers’ option to rebalance PL/branded product will decrease due to the Merger, as the largest PL and branded DTB suppliers combine (see paragraph 9.156).
- (b) As discussed in paragraph 9.313 in the Alternative competitive constraints section, we conclude that the Parties face limited competitive constraints from alternative suppliers, which limits the grocery retailers’ ability to switch suppliers. In relation to multi-sourcing of PL products we found that customers tend to switch their entire volumes of DTB product types (eg pizza dough or shortcrust pastry), rather than smaller volumes, making switching more difficult (see paragraph 7.70).
- (c) For the reasons set out above, the CMA does not consider that customers’ ability to ‘buy less’ is a constraint that should be given material weight, given that this would result in a worsening of the options available to consumers. In any case, retailers’ ability to constrain the Merged Entity by buying fewer DTB products, and devoting more shelf space to other products, appears limited (see paragraph 9.307). Most retailers indicated that their customers expect the core DTB products to be available to them.
- (d) Further, we consider that the competitiveness of an offering is primarily determined by the credible alternatives available to consumers of the product, rather than the degree of cost transparency. Regardless of whether there is cost transparency, if a firm obtains enough market power it will be able to increase prices as there are insufficient alternative options. The CMA considers that there is already a small pool of alternative options to the Parties, particularly for retailers with larger demand needs, and this is further reduced by the Merger. Therefore, we do not consider that the commoditised nature of DTB products will ensure that retailers can obtain competitive terms from each of the Parties post-Merger.

(e) Another lever the retailers could possibly use in response to the Merger is to sponsor entry or expansion of alternative DTB suppliers, possibly countervailing the effects of the Merger. However, as discussed below in Chapter 10, while the CMA has found some appetite to sponsor entry or expansion, the majority of retailers including the largest ones are generally not willing to consider explicit sponsorship. [X] told us that, given the current supply dynamics in the DTB products, awarding new business to an existing or new supplier on the back of a tender (as in the case of [X]) was its preferred mode of sponsoring to create new capacity in the own label category.⁹⁰² Other grocery retailers have not identified specific candidates for imminent sponsorship as discussed in paragraphs 10.93 to 10.101.

9.330 We consider that the larger retailers have some negotiating strength as they are sophisticated businesses used to dealing with suppliers and each retailer is an important route for suppliers in this concentrated market. In addition, suppliers want to keep capacity filled and their fear of losing large PL contracts may increase retailers' leverage when threatening to switch PL suppliers. However, we note that buyer power is largely a function of retailers' options and as noted above we have found that their alternative options are limited, and reduced by the Merger.

9.331 We also note that the small grocery retailers are unlikely to have the same degree of negotiating strength, in the sense of being able to sponsor entry or expansion, or push back on an attempt to increase prices.⁹⁰³ However, acting in the other direction, their lower volume requirements mean it would likely be easier for them to find alternative suppliers.

Conclusion on buyer power

9.332 Customers in this case include some very large, sophisticated grocery retailers, which command a degree of negotiating strength and have at their disposal a range of means by which they seek to negotiate with suppliers of DTB products.

9.333 However, a customer's buyer power depends on the availability of good alternatives they can switch to. In the light of our assessment of the alternative suppliers active in the market, the limited switching by grocery retailers and the limited scope for market entry, we conclude that buyer power

⁹⁰² Note of a call with [X], [X] 2022, paragraph 18.

⁹⁰³ One of the small grocery retailers [X] specifically highlighted its lack of buyer power. Responses to the CMA's customer questionnaire from [X], [X] 2022, question 33.

constrains the Merging firms to a limited extent and that ability to exercise any buyer power will be reduced by the Merger.

Conclusion on the impact of the Merger on competition

- 9.334 Having considered both the competitive constraint between the Parties, and the other constraints on the Parties, we now assess their relative importance.
- 9.335 We found that the Parties' offerings to retailers are differentiated and the constraint between them does not typically manifest itself through direct competitive interactions (in particular through head-to-head competition in tenders).⁹⁰⁴ However, this lack of direct competition largely reflects the nature of competition in this market, in which a grocery retailer selects its preferred supplier within each of the distinct channels. For the reasons set out in earlier sections of our findings, an assessment limited to direct competition would not fully reflect the nature of competition in the market, and in particular the competitive tension that exists between the PL and branded channels.
- 9.336 Large grocery retailers have told us that their ability to trade off the Parties in their negotiations is an important constraint which enables them to get a better deal for consumers. Grocery retailers told us that they may not typically pit their PL supplier against their branded supplier but that it is a source of competitive tension that would be lost by the Merger, thereby reducing their ability to protect against potential price rises by a particularly large supplier covering both supply channels.
- 9.337 We have found that the competitive constraint on the Parties from alternative suppliers is limited, both individually and in aggregate. The Merged Entity will be the largest supplier of DTB products to UK retailers, with a [60-70]% share of supply, and will face limited competition from other firms. Only two other suppliers (Bells and Henglein, which are predominantly PL suppliers) have material shares of supply, but their individual shares are substantially lower than either of the Parties' and both are seen as materially weaker alternatives to the Parties; Bells has [X] and Henglein's offer is less compelling for the largest retailers. We have found there to be no credible branded alternatives at the national level.
- 9.338 The presence of other alternative PL suppliers means that retailers have more options in that channel and so the relative importance of the constraint of Jus-Rol on Cérélia is not as high as vice versa. However, the weakness of the

⁹⁰⁴ With the exception of the pizza dough product type where Cérélia also supplies branded ([X]) pizza dough which competes with Jus-Rol's equivalent branded products.

constraint from those alternative PL suppliers and the presence of not immaterial switching costs indicate that the constraint provided by Jus-Rol on C er lia is still important and material.

- 9.339 We have carefully considered whether the competitive threat from Henglein and Bells would be sufficient to prevent the Merged Entity from degrading PQRS as a result of the Merger. For example, although Henglein may not be an attractive option for certain large retailers, we have considered whether they might revise this position in the event of a price rise.⁹⁰⁵ In addition, we have considered retailers' ability to constrain suppliers by closely monitoring commodity prices, undertaking range reviews and using their ability to adjust purchase volumes.
- 9.340 We consider that it is unlikely that retailers would switch to a new supplier in response to a small but significant price rise given (i) the evidence on the relative unattractiveness and capacity constraints of the alternative options, (ii) the existence of limited buyer power resulting from the lack of alternatives; and (iii) the existence of some switching costs.
- 9.341 As noted above, closeness of competition is a relative concept. Where there is a degree of differentiation between the merger firms' products, they may nevertheless still be close competitors if rivals' products are more differentiated, or if there are few rivals.⁹⁰⁶ On this basis, and having regard to the evidence in the round, we consider that the pre-Merger constraint between the Parties is important, the Parties are close competitors, and the competitive constraint provided by alternative suppliers will be insufficient to offset the effects of the Merger.
- 9.342 Below we consider the potential harm resulting from this Merger as a consequence of the loss described above, including an assessment of third-party views, principles for assessing harm from the loss of rivalry between competitors and the Parties' submissions in this area.

Third party views on the impact of the Merger on competition

- 9.343 We asked third parties to provide any views on the impact on competition of the Merger.

⁹⁰⁵ We also consider whether a change to the current alternative competitive constraints might occur as a countervailing factor in Chapter 10. For example, whether retailers might further support the expansion of [~~§~~] capacity or/and consider sponsoring the entry of a new supplier.

⁹⁰⁶ [MAGs](#), paragraph 4.10.

Grocery retailers' views

Evidence

- 9.344 We found that, amongst the grocery retailers who replied to our inquiry, the majority of them (based on the value of sales of DTB products made by retailers) considered that the Merger could reduce competition:
- (a) A retailer [redacted], [redacted] noted that post-Merger a large proportion of the supply would be owned by one company which may lead to challenges around product quality and price. It may also affect security of supply.⁹⁰⁷
 - (b) Another retailer [redacted] stated that the Merger would mean that it will no longer have the ability to flex volumes between PL and Jus-Rol, leaving 'no room for negotiation' with limited choice of credible alternative suppliers it could go to following a price increase for example. The retailer also stated that (outside of the DTB sector), it had in the past experienced suppliers of both PL and branded products threatening to cease production of their PL products if a change in the branded product was not accepted by retailers.⁹⁰⁸ In order to mitigate this risk that retailer explained that it prefers to keep discussions between PL and branded 'very separate'.⁹⁰⁹
 - (c) Another retailer [redacted] submitted that while it may have good transparency on costs at present, which enables it to apply pressure in commercial negotiations, the Merger would lead to a loss in the ability to compare and challenge cost of two viable rivals, the competitive tension used as a benchmark in negotiations, the ability to meaningfully compare and challenge quality between the various products, as well as potentially the access to NPD and innovations in the category.⁹¹⁰ That same retailer listed a number of concerns resulting from the Merger and in particular that the Merged Entity (i) may increase the price of the PL products, and that it would be able to do so because of the lack of real alternatives in the UK; (ii) may stop supplying that retailer its PL product altogether; (iii) may deteriorate the quality of the PL product; and (iv) may impact price and range of other related sectors like branded pizza DTB products.⁹¹¹

⁹⁰⁷ [redacted] response to the CMA phase 2 customer questionnaire, question 33.

⁹⁰⁸ Transcript of a call with [redacted], [redacted] 2022, page 16.

⁹⁰⁹ Transcript of a call with [redacted], [redacted] 2022, pages 16 and 17.

⁹¹⁰ Written submission from [redacted], [redacted] 2022.

⁹¹¹ [redacted] response to CMA phase 2 customer questionnaire, question 33.

- (d) A customer [redacted] noted that it would limit competition in a market already presenting limited alternatives for pastry products such as puff pastry and filo pastry.⁹¹²
- (e) [redacted] submitted that it considered the Merger would reduce the level of competition within the market by combining two potential sources of supply in an already very limited pool of potential suppliers. [redacted] obtain leverage in negotiations with these suppliers and it was concerned that the Merger would [redacted].⁹¹³

9.345 The other grocery retailers which replied to our inquiry either did not have a view on the impact of the Merger on competition or considered it would have little or no impact:

- (a) [redacted] One of the large grocery retailers stated that it did not have a view on whether the Merger would impact competition.⁹¹⁴
- (b) [redacted] A retailer said it did not have a strong view on the impact of this Merger. It stated Jus-Rol is a relatively small brand in GMI's portfolio, and it understood that Cérélia had already been manufacturing Jus-Rol for a number of years. It said that it did not plan to place any further business with Cérélia.⁹¹⁵
- (c) [redacted] One small retailer did not comment on the impact on competition but thought the Merger would have a minimal impact on it as a purchaser of branded products only.⁹¹⁶
- (d) [redacted] One retailer considered that on balance the Merger would not impact the market significantly.⁹¹⁷ However it also noted that it did not have 'significant views' on the impact of the Merger.
- (e) [redacted] One retailer did not have concerns.⁹¹⁸
- (f) [redacted] There were some retailers that responded to our questionnaire but did not provide a view on the impact of the Merger on competition.⁹¹⁹

⁹¹² [redacted] response to CMA phase 2 customer questionnaire, question 33.

⁹¹³ [redacted] response to CMA phase 2 questionnaire, question 33.

⁹¹⁴ [redacted] response to CMA phase 2 customer questionnaire, question 33.

⁹¹⁵ [redacted] response to CMA phase 2 customer questionnaire, question 33.

⁹¹⁶ [redacted] response to CMA phase 2 customer questionnaire, question 33.

⁹¹⁷ [redacted] response to CMA phase 2 customer questionnaire, question 33.

⁹¹⁸ [redacted] response to CMA phase 2 customer questionnaire, question 33.

⁹¹⁹ Responses to CMA phase 2 customer questionnaire, question 33.

(g) [redacted] said that '[t]he acquisition makes little difference to us at this stage. We [redacted] do a [redacted] amount of business in [redacted] with Cérélia and Jus-Rol. [redacted] Cérélia'.⁹²⁰

Assessment

- 9.346 Most of the large grocery retailers clearly expressed concerns about the impact of the Merger on their negotiations. In particular, their submissions point to an expected loss of competition as an important check on pricing that would be lost as a result of the Merger.
- 9.347 We note that most of the grocery retailers who did not have strong views on the impact of the Merger on competition represented a smaller part of the market by value. For some of these retailers, this is influenced by their business model, for example, a choice not to stock both PL and branded DTB products; for others, this points to their view of the relative differentiation as between the PL and branded supply channels or their view of alternative PL suppliers.
- 9.348 In weighing the third-party customer evidence received, the CMA has focused on the proportion of the total market represented, rather than the absolute number of total complaints. This reflects the commercial reality of what the Parties themselves have described as 'the highly consolidated nature of the customer base' for their products.⁹²¹
- 9.349 Overall, and in contrast to Cérélia's submissions, [redacted] in the UK explained the implicit constraint and two further retailers raised concerns about the Merger. These five retailers have a combined market share by value of [redacted] [60-70]% (ie [redacted]).
- 9.350 In response to the Provisional Findings Report, Cérélia submitted that particular weight should be given to [redacted] submissions, as these are validated by its recent switching experience.⁹²² Since the publication of the Provisional Findings Report, we sought further clarification in relation to [redacted] evidence. Pre-Provisional Findings, [redacted] submitted that the Parties did not compete because they 'do not provide like-for-like products'. Post-Provisional Findings, [redacted] clarified that Cérélia and Jus-Rol do compete with each other in the DTB space to a certain extent because they have similar products. [redacted], which comprises [redacted][10-20]% of the market by value and is considered one of the

⁹²⁰ [redacted] response to CMA phase 1 questionnaire, question 18.

⁹²¹ Cérélia's response to the Provisional Findings, 28 November 2022, paragraph 4.31.

⁹²² Cérélia's response to the Provisional Findings, 28 November 2022, paragraph 2.18(b).

'Big Four' large retailers, was unable to conclude upon the likely impact of the Merger, but nonetheless articulated a concern about the loss of its ability to 'flex modular volumes' between the Parties (which we consider closely resembles the implicit constraint described by others) and expressed some degree of concern about the potential for market 'dominance' as a result of the Merger.

- 9.351 We note that [redacted] ability to give a view on the impact of any competitive tension in negotiations was constrained by the limited time that the retailer's representative had been in their current role. The representative told us that the primary conversations of which they were aware in relation to space rationalisation between the Parties were carried out by the representative's predecessor. Overall, we note the limitations and degree of inconsistency in respect of the [redacted] evidence and have accordingly placed a lower weight on this evidence. Additionally, although [redacted] has experience with switching PL supplier, this occurred in [redacted] and other retailers have switched more recently.⁹²³
- 9.352 The remaining third-party customer responses comprise less than 20% of the overall market, and of these the majority by number (six out of ten) did not provide any view about the impact of the Merger. Less than half (four out of ten) of this remaining 20% of the market said that they did not have concern about the Merger; the CMA notes that three of these mainly stock only one of PL or branded products.

Competitors' views

Evidence

- 9.353 Half (five out of ten) of competitors that responded to our inquiry considered that the Merger would have a detrimental impact on the market:
- (a) One competitor [redacted] explained that 'the transaction will strengthen Cérélia's position towards retailers because they will own the Jus-Rol brand, which is the only brand in UK and they do the PL business'.⁹²⁴ However, in response to the question whether Cérélia and Jus-Rol compete with each other, this competitor stated that '[b]rand and PL are produced by Cérélia, therefore no competition within Cérélia'.⁹²⁵

⁹²³ A retailer [redacted] switched twice recently (in [redacted]) and a large retailer [redacted] switched in [redacted].

⁹²⁴ [redacted] response to CMA phase 2 competitor questionnaire, question 24.

⁹²⁵ [redacted] response to CMA phase 2 competitor questionnaire, question 22.

- (b) [redacted] One competitor considered that the Merger would have an impact on competition but also that it should not have a significant impact on its own business.⁹²⁶
- (c) [redacted] One competitor submitted that the Merged Entity will command 100% of pastry products to what it characterised as the ‘big five’ supermarkets, with a detrimental effect on consumers and SMEs producing DTB products for the foodservice and other sectors.⁹²⁷
- (d) [redacted] One competitor submitted that the Merger will adversely impact competition because Jus-Rol is the leading brand and will also be supplying the large retailers with their PL pastry requirements and because of limited alternative suppliers in the UK.⁹²⁸

9.354 One supplier [redacted] submitted that the Merger would have a ‘mildly negative impact on competition’ due to reduction of competition between branded and PL products.⁹²⁹ Other competitors [redacted] did not have any views on the impact of the Merger on competition.⁹³⁰ Two suppliers [redacted] however stated that the Merger could have a negative impact on their business.⁹³¹

Assessment

9.355 Half (five out of ten) of the competitors who replied to our inquiry thought that the Merger would have a negative impact on competition. The main concern raised was that the Merged Entity would be supplying all or nearly all DTB requirements of the large grocery retailers. There were some competitors [redacted] that responded to our questionnaire but did not provide a view on the impact of the Merger on competition.⁹³²

Views of other third parties

Evidence

9.356 A third party (Eccelso) submitted that the Merger has a negative impact on price competition but a positive impact on brand diversity, investment, and

⁹²⁶ [redacted] response to CMA phase 2 competitor questionnaire, question 24.

⁹²⁷ [redacted] response to CMA phase 2 competitor questionnaire, question 24.

⁹²⁸ [redacted] response to CMA phase 2 competitor questionnaire, question 24.

⁹²⁹ [redacted] response to CMA phase 2 competitor questionnaire, question 24.

⁹³⁰ Responses to CMA phase 2 competitor questionnaire, question 24.

⁹³¹ Responses to CMA phase 2 competitor questionnaire, question 24.

⁹³² Responses to CMA phase 2 competitor questionnaire, question 33.

innovation. Its argument is based on the position that retailers' strategy is to reduce brand diversity.⁹³³

- 9.357 Eccelso said that UK retailers do not embrace brand diversity but, rather, favour own brand, which gives them leverage to demand profit on return of over 40%. There are alternative competitors to produce retailer own brands of chilled and frozen pastry in the UK (Scotland), Ireland and quite a few branded pastry manufacturers in France, Belgium, and Germany. The problem is that the continental producers are not easily tempted to produce own label for UK retailers due to high investments required and supply chain risks, for poor return and loss of brand identity. Therefore, this third party would maintain that the proposed acquisition of the Jus-Rol brand by Cérélia has less impact on retail pricing (particularly own label) than the price positioning of the retailers themselves and their desire to maintain high margins and play off suppliers against each other. It stated that retailers themselves do not innovate; they copy. It said that the whole purpose of the retailer own brand is persuade consumers away from the brand leader by introducing a lower cost "copy" own brand to enhance margins significantly in favour of the retailer. It submitted that the initial conclusion by the CMA has been unduly influenced by retailer representations. It is skewed in favour of retailers' strategy to reduce brand diversity in favour of their own brands.⁹³⁴
- 9.358 Another third party (The Retail Mind) submitted that retailers are indifferent to whether their supplier supplies both PL and branded products. It submitted that due to the lack of certainty from retailers, suppliers rarely make large investments. It submitted that Cérélia is interested in the growth of the category following its large investment while prohibiting the Merger would result in higher prices, reduce quality, and remove innovation.⁹³⁵
- 9.359 This third party stated the CMA's decision will deprive this market from investment which is not in the interest of a healthy competitive industry and the consumer. For many years the category that Cérélia operate in was lacking in opportunities, for the retailer, supplier, and the consumer. It submitted that under investment in a category is a sign that the retailers have too much power. Cérélia has invested significantly into a new production facility. This production facility has brought jobs back to the UK and has brought more innovation into the category and most importantly for the retailers it has brought a level of stability.⁹³⁶

⁹³³ [Eccelso's response to the provisional findings](#), 18 November 2022, pages 1-3.

⁹³⁴ [Eccelso's response to the provisional findings](#), 18 November 2022, pages 1-3.

⁹³⁵ [The Retail Mind's response to the provisional findings](#), 9 December 2022, pages 1-2.

⁹³⁶ [The Retail Mind's response to the provisional findings](#), 9 December 2022, page 2.

9.360 It submitted that, as an independent expert with a particular interest in GSCOP regulations, it is extremely concerned that the CMA is giving weight to retailers' behaviour that goes against everything GSCOP stands for. GSCOP became law in 2010, which encompasses the principle of fair dealing. Retailers saying that they will delist suppliers if they are not happy with them is not in line with this principle. Two of the retailers' responses have suggested that they are concerned about the Merger. It is because they are concerned about their own profits, not that the customer will get a worse deal.⁹³⁷

Assessment

9.361 In considering the weight to be placed on each piece of evidence, we have taken into account relevant factors, including the extent to which the party had knowledge that was relevant to the subject areas being explored as part of our assessment, the incentives of the party giving that view and the extent to which the view was corroborated by other evidence available to us.

9.362 In considering the submissions from Eccelso and The Retail Mind we have taken into account the fact that these third parties are not customers or competitors of the Parties.

9.363 We also note that the evidence submitted often contradicts the evidence provided by direct market participants and contemporaneous evidence (eg the Retail Mind's view that prohibiting the Merger would result in higher prices is contradicted and not shared by other third parties). In addition, these submissions do not explain how prohibiting the Merger would cause the impacts listed. For example it is unexplained why it would be in the retailers' interest to restrict growth in the long term. The submissions also did not explain how the negotiating position of the retailers will change and what remaining levers they will have.

9.364 In light of the above, we have therefore given more weight to the evidence provided by grocery retailers and competitors.

⁹³⁷ [The Retail Mind's response to the provisional findings](#), 9 December 2022, page 1.

The effects of the loss of competition between the Parties

Analysis of incentives in horizontal unilateral effects

- 9.365 As established in our Guidance, the CMA views competition as a process of rivalry between firms seeking to win customers' business over time by offering them a better deal. Rivalry creates incentives for firms to cut price, increase output, improve quality, enhance efficiency, or introduce new and better products. This is because rivalry provides the opportunity for successful firms to take business away from competitors, and poses the threat that firms will lose business to others if they do not compete successfully.⁹³⁸ When levels of rivalry are reduced, firms' competitive incentives may be dulled, to the detriment of customers. Some mergers will lessen competition but not substantially so, because sufficient post-merger competitive constraints will remain to ensure that rivalry continues to discipline the commercial behaviour of the merger firms. However, some mergers lead to a lessening of competition that is substantial. Since merger assessments are prospective, an element of judgement is necessary in deciding whether any loss of competition is substantial rather than any exact quantitative measurement.⁹³⁹
- 9.366 In this regard, the CAT has previously held that where the CMA finds evidence that (a) the merging parties are close competitors, who compete on a variety of aspects of PQRS; and that (b) sufficiently demonstrates that the merger will result in an SLC,⁹⁴⁰ there is no need to undertake a 'granular exercise' in respect of each of the parameters of competition.⁹⁴¹ Accordingly, the CMA is not required to conduct a granular analysis of the likely impact of the Merger on (eg) pricing.
- 9.367 In order to assess whether such a chain of causation is established by the evidence in this case, we have approached our assessment of the Merger as follows:
- (i) We have considered how suppliers compete in the relevant market and found that the pre-Merger constraint between the Parties is important and that there are limited alternative suppliers which could constrain any deterioration in the Merged Entity's offering;

⁹³⁸ MAGs, paragraph 2.2.

⁹³⁹ MAGs, paragraph 2.7.

⁹⁴⁰ 'Substantial' in any given case will depend on the facts and may be taken to mean 'worthy of consideration for the purposes of the Act'; this is a matter which calls for an element of judgement (*R v MMC ex p South Yorkshire Transport Ltd* [1993] 1 WLR 23).

⁹⁴¹ CAT Judgment – *JD Sports Fashion plc v Competition and Markets Authority*, 2020, paragraph 99.

- (ii) We have found that there are various aspects of PQRS that the Parties compete on, which are important to customers and which the Merged Entity would be able to deteriorate to the detriment of customers; and
- (iii) In our view, this – subject to countervailing factors – represents a substantial loss of competition, and that, accordingly, the Merged Entity’s competitive incentives are likely to be meaningfully dulled, creating an incentive for the Merged Entity to deteriorate any of these aspects of PQRS.

9.368 While, as noted above, the CMA is not required to quantify the likely effects of the Merger on individual competitive parameters, the Parties have submitted that certain factors arise in this case which mean that they would not have an incentive to deteriorate any aspect of PQRS post-Merger. Some of the Parties’ submissions are based on the position that Cérélia and Jus-Rol should not be considered horizontal competitors and therefore analyse the Parties’ incentives within the framework of a vertical effects analysis. For the reasons set out in detail above, we consider that it is more appropriate to assess the Merger on the basis that the Parties are horizontal competitors and we therefore do not believe that it is necessary to address, in full, the Parties’ submissions which are based on a vertical effects framework.⁹⁴² We have, however, addressed the submissions of the Parties in relation to their incentives that we consider to be relevant to our horizontal unilateral effects theory of harm.⁹⁴³

Scope of the SLC

9.369 Cérélia states that the CMA’s implicit rebalancing threat can only arise when a retailer sources Cérélia co-packed PL SKUs and Jus-Rol SKUs in the same retail DTB product sub-segments (**the SLC SKUs**).⁹⁴⁴ Cérélia submitted that the SLC’s scope, in retailer and product terms, would be narrow, affecting only (i) a minority of grocery retailers, and (ii) a subset of DTB product segments sold by those retailers. Therefore, the magnitude of any SLC’s effects (for affected products) would also be very limited.⁹⁴⁵

⁹⁴² For example, Cérélia’s response to the Annotated Issues Statement and Working Papers, 13 September 2022, annex AIS.11.a – Foreclosure incentives analysis; this quantitative analysis relates to a vertical input foreclosure theory of harm.

⁹⁴³ [Cérélia’s response to the Issues Statement](#), 2 August 2022, paragraph 5.2.

⁹⁴⁴ [Cérélia’s response to the provisional findings](#), 28 November, paragraph 1.8.

⁹⁴⁵ [Cérélia’s response to the provisional findings](#), 28 November, paragraph 1.8.

- 9.370 The CMA notes that this submission appears to be in tension with the Parties' previously stated position that the DTB product category should be considered as a whole in the product market definition,⁹⁴⁶ since:
- (a) retailers typically take a "holistic" approach to negotiating supply, considering all DTB products in the round; and
 - (b) the manufacturing process is similar across DTB products (paragraph 8.30),⁹⁴⁷ with competitors that currently only produce a more limited range of products within the DTB category able to alter and expand the types of SKUs they offer to grocery retailers.⁹⁴⁸
- 9.371 For example, in their MN, the Parties told us that 'the breadth of product range does not necessarily determine the strength of a brand',⁹⁴⁹ and that 'once a brand has established a DTB product in the retail channel, it can expand its supply to other DTB products with relative ease. A DTB brand does not typically have to be associated with a specific product once it has entered the DTB segment'.⁹⁵⁰
- 9.372 A series of examples were also provided of fluidity in the product offerings of providers (for example through NPD) once present in the DTB category at some level, which we consider undermines the Parties' argument that we should view competition as confined to a static snapshot of the presently offered SKUs.
- 9.373 For example, the Parties told us that: 'The Northern Dough Co, having mainly supplied branded frozen pizza dough, launched a range of new sweet and savoury products in 2020, including sourdough bread dough, brioche bread dough and cookie dough; Doughlicious launched a new range of savoury biscuit dough in 2021. Jus-Rol launched pizza, sharing bread and cookie dough products in 2018. Similarly, retailer own-labels carry a range of DTB products which typically include ingredient pastry, pizza dough, cookie dough and breakfast dough products.'⁹⁵¹
- 9.374 This fluidity in the scope of DTB providers product offerings was not limited to branded products; C er elia also told us that: 'the short-term and informal nature of contractual arrangements means that a co-packer such as CUK can

⁹⁴⁶ MN, paragraph 20.

⁹⁴⁷ MN, paragraph 237 specifies that 'retailers and brand owners typically adopt a holistic approach to negotiating the supply of co-packing services for different types of DTB products'.

⁹⁴⁸ MN, paragraphs 209, 288, 426 - 448.

⁹⁴⁹ MN, paragraph 448.

⁹⁵⁰ MN, paragraph 30.

⁹⁵¹ MN, paragraph 30.

be replaced at short notice [REDACTED]. To support the position that Bells provides an effective constraint, Cérélia also told us that: '[REDACTED]'.⁹⁵²

- 9.375 More generally, while we accept that the Parties may exert a stronger competitive constraint on each other in certain market segments, this does not mean that there is no constraint or SLC when the Parties do not provide the same SKU to a retailer at present. As set out in Chapter 7, competition is a process of rivalry between firms seeking to win customers' business over time by offering them a better deal (paragraph 7.36) and so the competitive constraint between the Parties can have an effect both where Cérélia and Jus-Rol are existing options for a retailer or may be in the future. For example, a retailer may currently only be supplied a specific DTB SKU by Jus-Rol but this does not mean that Cérélia's market presence has not disciplined Jus-Rol's price offering based on the knowledge that the retailer could procure a PL version of the SKU from Cérélia.
- 9.376 As noted above, this is consistent with our market definition, which includes all DTB products, in line with evidence of strong supply-side substitutability, and the Parties' submissions regarding product scope (paragraph 8.30). The Parties explained that the manufacturing process is similar across DTB products and there is evidence that Cérélia is willing to adapt its recipes and product offering to match branded products (see paragraph 9.78(c)), suggesting a degree of ongoing, dynamic competition beyond the specific SKUs supplied at a given point in time.
- 9.377 This position is consistent with evidence provided by a retailer [REDACTED], which explained that the competitive tension between the Parties plays out beyond the specific product segments in which they overlap, such as in terms of innovation to offer new products. It said that the constraint creates an incentive for the Parties to continuously perform well, as maintaining a good relationship with a retailer improves their chances of continued business and being selected to supply new products.⁹⁵³
- 9.378 Finally, as discussed in paragraph 7.37, we note that the Merger is unlikely to influence a retailer's decision of whether to stock only branded/PL products or both. As such, the supply options may not change for retailers which offer only branded or PL. With respect to these retailers, we acknowledge there is likely to be less of a merger effect, although we note that a product deterioration or price increase from a lack of constraint in other channels may spill over to affect these channels too. In any case, we note that such retailers account for

⁹⁵² MN, paragraph 482.

⁹⁵³ Transcript of call with [REDACTED], [REDACTED] 2022, page 13, lines 21 to 25.

a minority ([20-30]% by value) of the total DTB products sold in the UK (paragraph 7.6).

The nature of harm and the Parties' incentives

- 9.379 Cérélia's submissions distinguish between (i) degrading products supplied to retailers by Jus-Rol, (ii) degrading the terms of supply of Cérélia's contract manufacturing services, or (iii) a worsening of terms across both channels. Cérélia submitted that the Merged Entity has no incentive or ability to raise prices or otherwise deteriorate its offer in any of these scenarios post-Merger.⁹⁵⁴
- 9.380 Unilateral effects may arise in differentiated product markets because a price increase becomes less costly when the products or services of two merging firms are brought under common ownership or control. Absent the merger, firms face a trade-off when considering whether to raise prices or reduce quality, range or service. On the one hand, the firm will incur a cost because some customers will switch away, and the firm will lose the profits they would have earned on those customers. On the other hand, the firm also gains, because it makes a bigger profit on the customers that remain (because of the higher price, or the lower cost associated with reduced quality, range or service). After the merger, it would no longer be as costly for the merged entity to raise prices or reduce quality: it would recoup the profit on recaptured sales from those customers who would switch to the products of the other merger firm.⁹⁵⁵
- 9.381 In this regard, we note (by way of context to the analysis that follows in the next section) that, post-Merger, Cérélia would have full control over the PQRS offering of both the DTB products supplied by Cérélia in the PL channel and branded products supplied by Jus-Rol. It would therefore be able to determine price points (and therefore relative pricing) to maximise joint profits across the two channels, including through degrading both channels simultaneously. We note that a variety of strategies would be open to Cérélia – eg it could adjust its commercial strategies over time, change the offerings incrementally and/or to a variety of degrees. As in any merger investigation, it is therefore difficult to definitively predict which of the multiple possible scenarios Cérélia may adopt at any given point in the future (and we are not required, in reaching a view on the statutory questions that the Group is required to decide, to conclude upon any specific scenario).⁹⁵⁶ Instead, Cérélia would be able, in the

⁹⁵⁴ MN, paragraph 30.

⁹⁵⁵ MAGs, paragraphs 4.6 & 4.7.

⁹⁵⁶ [Intercontinental Exchange, Inc v CMA](#), [2017] CAT 6, paragraphs 245-246.

CMA's view, as a result of the loss of competition brought about by the Merger to pursue different commercial strategies over time in order to maximise its profits.

- 9.382 Nevertheless, we have considered the Parties' submissions on the possibility of worsening terms in each of the Jus-Rol channel, the PL channel and both channels, as these may provide further insight into the Parties' incentives and the nature of harm that could result from the Merger under our horizontal unilateral effects theory of harm. In our view, this analysis is heavily dependent on the ambiguous data submitted and at best provides only a partial explanation as to whether certain commercial scenarios are more or less likely.
- 9.383 We note in particular that the margins data and incentives arguments are only relevant to the degradation of the PL and branded channels in isolation, and that with regard to the third scenario, the degradation of both channels, the Parties' submissions instead rely on the existence of alternative competitive constraints (i.e. they relate to their ability to degrade both channels, and do not make any submission in relation to their incentive to do so).

Incentives to degrade the Jus-Rol channel

Parties' submissions

- 9.384 With respect to the incentive to raise prices or degrade the quality of Jus-Rol's products, the Parties submit that:
- (a) It would earn additional margins on any sales of Jus-Rol that divert to retailer own brand products as a result of price rises, or the degradation of, Jus-Rol products; however
 - (b) the recapture of these sales would not be profit enhancing for the Merged Entity because Cérélia already manufactures both PL and Jus-Rol products [REDACTED];⁹⁵⁷ and
 - (c) Pre-Merger GMI was already [REDACTED] and so any change would result in a decrease in profits.⁹⁵⁸
- 9.385 In response to the Provisional Findings Report, Cérélia submitted that:

⁹⁵⁷ Cérélia's response to the Issues Statement, 2 August 2022, paragraphs 5.4 and 5.5.

⁹⁵⁸ Cérélia's response to the Issues Statement, 2 August 2022, paragraph 5.6.

- (a) the CMA does not properly engage with Cérélia's arguments that the Merged Entity would have no incentive to raise the price of Jus-Rol post-Merger or with the evidence provided in support. Cérélia submits that in particular:⁹⁵⁹
- (i) GMI does not consider any upstream profit margins associated with the manufacture of Jus-Rol products since it outsources the manufacturing to Cérélia;
 - (ii) post-Merger any price increase beyond the current profit maximising level would be financially irrational; and this conclusion is not affected by the fact that the Merged Entity would be able to recoup some of these revenues if switching customers choose Cérélia's PL products instead; while the Merged Entity would be able to compensate for the 'manufacturing margin' element lost from the equivalent Jus-Rol sale, the 'brand margin' would never be recouped.

9.386 Cérélia said that the CMA fails even to acknowledge that [X] and, unlike GMI today, Cérélia would factor this [X] into its Jus-Rol price setting, alongside the increased profits (from higher volumes) on PL manufacturing.⁹⁶⁰

Our assessment

9.387 The CMA acknowledges that the incentives of the Merged Entity are affected by the vertical relationship between the Parties. In particular, the Merged Entity will take into account not only the Jus-Rol brand equity margin, but also the manufacturing margin previously earned by Cérélia in the branded channel when setting its PQRS offering.⁹⁶¹

9.388 We also acknowledge that, if manufacturing margins are similar across the PL and branded channels or larger in the branded channel, it would appear, in theory, to not make economic sense for the Merged Entity to degrade the Jus-Rol channel post-Merger if the expectation were that customers would divert from Jus-Rol to the PL alternative in response. Under these conditions, the margin on any sales recaptured in the PL channel would be offset by the loss of the manufacturing margin in the branded channel. However, an incentive to

⁹⁵⁹ Cérélia's response to the provisional findings, 28 November, paragraphs 4.48-4.50.

⁹⁶⁰ Cérélia response hearing economic remarks, slide 5.

⁹⁶¹ We note that the manufacturing margin is a function of both the underlying costs of manufacturing the DTB products and the profit margin negotiated with the buyer of the manufactured DTB products. Post-Merger, the manufacturing margin in the branded channel becomes an artificial construct because the Merged Entity is in effect manufacturing for itself (previously for Jus-Rol) and there is no longer a negotiation with a buyer for the products before the addition of the equity brand value (ie before the sale of the Jus-Rol product to grocery retailers). For our assessment, we assume the allocations between the manufacturing margin and the Jus-Rol equity brand margin remain unchanged post-Merger.

degrade the Jus-Rol offering could be present if the manufacturing margin in the PL channel was greater than in the branded channel.

- 9.389 As set out in paragraph 9.140(b), in the CMA's view the margin data provided by the Parties [X]. The CMA therefore does not consider that we can fully rely on current margin data in order to assess the Parties' incentives to raise prices post-Merger. However, we acknowledge that [X], the incentive for the Merged Entity to divert sales from the more profitable branded channel (which benefits from the Jus-Rol equity brand premium) to the PL channel (which does not) is likely to be limited.⁹⁶²
- 9.390 On the other hand, we note that, even if the incentive for the Merged Entity to degrade the Jus-Rol products relative to the PL channel post-Merger is limited, there is still some loss of constraint on Jus-Rol in the branded channel because of the Merger. Pre-Merger, Jus-Rol is unambiguously worse off if grocery retailers switch sales to the PL channel and Jus-Rol was therefore under competitive pressure to ensure its offering remained attractive relative to any competing products in the PL channel (including 'dynamic' changes over time such as quality improvements or NPD).
- 9.391 Post-Merger, the Merged Entity will have full knowledge of both Cérélia's PL offering and the Jus-Rol offering and will therefore have a deep insight into the quality threshold Jus-Rol products need to meet before losing sales to the PL channel. The loss of this rivalry may weaken the incentive for the Merged Entity to improve the Jus-Rol offering relative to the counterfactual (absent the Merger).

Incentives to degrade the PL channel

Parties' submissions

- 9.392 The Parties submit that it would not be profitable to raise prices or degrade the quality of the DTB products Cérélia supplies to retailers in the PL channel because:
- (a) Jus-Rol does not exert a competitive constraint on Cérélia pre-Merger;⁹⁶³
and

⁹⁶² In arriving at this position, we have considered the evidence (for example in paragraphs 9.36 and 9.37 that indicates the ingredients and manufacturing process for the PL and Jus-Rol products are similar.

⁹⁶³ [Cérélia's response to the Issues Statement](#), 2 August 2022, paragraphs 5.12 to 5.13.

(b) Cérélia does not have the ability to worsen its terms of supply to retailers as it would result in retailers switching to alternative PL product suppliers.⁹⁶⁴

9.393 In response to the Provisional Findings Report, Cérélia submitted that:

- (a) The Provisional Findings Report fails to reflect the CMA's finding that Cérélia currently recaptures a material share of any sales diverted from sales in the PL channel to Jus-Rol. Given that the CMA notes that the margin data [X], it cannot then suggest that [X]. Cérélia submits that it cannot be the prospect of sales migrating from PL products to Jus-Rol that is acting as a competitive constraint on Cérélia's PL co-packing services pre-Merger.⁹⁶⁵
- (b) The CMA's balancing of the evidence in relation to the incentive to raise PL co-packing prices post-Merger is irrational; in contrast to the dismissal of significant economic submissions, and the comment that certain margin data evidence is not probative, the Provisional Findings Report then does place weight on the statements made by retailers as to the relevance of the pre-Transaction vertical link.⁹⁶⁶
- (c) There is no prospect of the Merger leading Cérélia to worsen the terms of its PL contract manufacturing services. The Merger will not remove an existing competitive constraint on Cérélia's PL services and Cérélia's PL contract manufacturing terms remain constrained by the same competing contract manufacturers as they were pre-Merger.⁹⁶⁷

Our assessment

9.394 As set out above, we consider the Parties do compete and the Merger will remove a constraint on Cérélia's supply of DTB products into the PL channel which existed pre-Merger. In addition, given the limitations of the alternative suppliers available in the market, their limited attractiveness to large retailers and the presence of not immaterial switching costs, we consider it unlikely retailers would switch PL suppliers to the extent assumed by the Parties,

⁹⁶⁴ Cérélia response to the Annotated Issues Statement and Working Papers, 13 September 2022, paragraph 6.3.

⁹⁶⁵ [Cérélia's response to the provisional findings](#), 28 November, paragraph 4.53.

⁹⁶⁶ [Cérélia's response to the provisional findings](#), 28 November, paragraphs 4.54-4.55.

⁹⁶⁷ Cérélia response hearing economic remarks, slide 5.

leaving the Merged Entity able to profitably increase its prices or degrade the quality of its offering to grocery retailers in the PL channel.⁹⁶⁸

- 9.395 We note that the incentive to degrade the PL channel to divert sales towards the branded channel may be strong as the Jus-Rol equity brand premium means that the branded channel is likely to be more profitable for the Merged Entity.⁹⁶⁹ The Merged Entity's incentives may change significantly because it will not only recapture the manufacturing margin on the sales that divert to Jus-Rol but will also gain the brand premium earned by the Jus-Rol products. In addition, the risk that GMI ceases the Jus-Rol manufacturing contract falls away (the contractual relationship becomes a structural one), further boosting the attractiveness of moving sales into the branded channel relative to the pre-Merger position.

Incentives to degrade across both channels

Parties' submissions

- 9.396 The Parties submit that it would not be profitable to raise prices or degrade the quality of both Jus-Rol products and Cérélia's manufacturing services to retailers for the PL channel because:
- (a) Any deterioration of Cérélia's offer to retailers can be expected to lead to a loss of its contract manufacturing supply contracts within the PL channel;⁹⁷⁰ and
 - (b) It would not be profitable for the Merged Entity to attempt to worsen the terms on which it supplies Jus-Rol to retailers since this would inevitably lead to end-consumers switching to the retailers' own brand products which would now be supplied by rival contract manufacturers.⁹⁷¹
- 9.397 In response to the Provisional Findings Report, Cérélia submitted that the CMA must explain why it would be profitable for Cérélia simultaneously to worsen its terms across the two channels when it would not be profitable for it

⁹⁶⁸ We note that the Parties' 'foreclosure incentives analysis' (Cérélia's response to the Annotated Issues Statement and Working Papers, 13 September 2022, annex AIS.11.a) considers a similar dynamic with an assessment of diversion from the PL channel to the Jus-Rol channel under a vertical framework. The Parties find no incentive to degrade the PL channel based on the assumptions that a significant proportion of sales will be lost to alternative PL suppliers and not be recaptured by Jus-Rol – again, these assumptions are not consistent with our findings.

⁹⁶⁹ [REDACTED], Cérélia response to the Annotated Issues Statement and Working Papers, 13 September 2022, annex AIS.11.a – Foreclosure incentives analysis, Table 1.

⁹⁷⁰ Cérélia's response to the Issues Statement, 2 August 2022, paragraph 5.19.

⁹⁷¹ Cérélia's response to the Issues Statement, 2 August 2022, paragraph 5.20.

to worsen the terms for either of these channels individually.⁹⁷² In addition, Cérélia stated that the conduct which would give rise to the CMA's SLC are inconsistent with the transaction rationale, and not in Cérélia's interests.⁹⁷³

Our assessment

- 9.398 The Parties' submissions regarding a price rise by the Merged Entity across both channels being unprofitable are again based on the position that it faces significant competition from alternative PL suppliers. This position is not supported by our findings as we have found that the competitive constraint on the Parties from alternative suppliers is limited.
- 9.399 In addition, the CMA does not agree that it is not profitable for the Merged Entity to worsen terms in either of the PL or branded channels individually. As set out above, while the incentive to degrade the offering in the Jus-Rol channel alone is likely to be limited, we have found that the incentive to degrade the PL channel may be strong.
- 9.400 The following illustrates an example of how it could be profitable for the Merged Entity to worsen its terms across both of the channels:
- (a) Pre-Merger, the PQRS of the Cérélia PL offering and the Jus-Rol offering were set by the Parties separately. We have found evidence that the Parties constrained each other and competed to make their products attractive relative to the offering in the other channel. For example, if Jus-Rol increased its prices when prices in the PL channel remained unchanged, its branded products would become relatively more expensive and Jus-Rol would risk losing sales to the PL channel.
 - (b) Post-Merger, the Merged Entity will have control of the offering of both Cérélia and Jus-Rol and would be able to degrade the products supplied to grocery retailers in both channels simultaneously (eg through a proportionate price increase in both channels). The price increase of the Jus-Rol products will now be less costly compared to the pre-Merger situation as retailers are likely to remain largely indifferent between the channels even at the elevated price levels. Some sales may be lost from retailers buying less DTB product across both channels⁹⁷⁴ but diversion to the PL channel is likely to be limited compared to the pre-Merger scenario. As a result, the price increase is likely to be profitable for the

⁹⁷² Cérélia response hearing economic remarks, slide 6.

⁹⁷³ [Cérélia's response to the provisional findings](#), 28 November, paragraph 2.14 (f).

⁹⁷⁴ Assuming a standard downward sloping demand curve.

Merged Entity. Contrary to the Parties' submissions, the CMA considers that these economic incentives are not necessarily inconsistent with elements of the deal rationale (for example, supporting investment into the promotion of branded products).

- 9.401 We therefore consider that the Parties' submissions that it would not be profitable to raise prices or degrade the quality of both Jus-Rol products and Cérélia's manufacturing services to retailers for the PL channel are not supported by the available evidence.

Price matching

- 9.402 We have also considered the possibility that price-matching behaviour between grocery retailers might impact the incentives of the Merged Entity or affect the harm that could arise as a result of the Merger.
- 9.403 The Parties submitted that retailers would need to pass on any cost increases to end-consumers in the form of higher retail prices to cause volumes to be shifted between the Jus-Rol and PL channels. They submitted that it is unclear that this would happen as the grocery retailers face competitive pressure from rival retailers. For example, grocery retailers supplied with DTB products by Cérélia in the PL channel might seek to price match with other retailers – such as Aldi and Lidl – whose products were not manufactured by Cérélia, and who would therefore not be under any pressure to increase their own retail prices.⁹⁷⁵ The Parties appear to argue that the lack of pass-through of any price increase would prevent downstream switching and/or harm that would otherwise flow from an SLC at the wholesale level.
- 9.404 We note that our MAGs specify that unilateral effects giving rise to an SLC can occur in relation to customers at any level of a supply chain, for example at the wholesale level or retail level (or both) and is not limited to end-consumers.⁹⁷⁶ Our theory of harm is focused on the supply of DTB products to grocery retailers and so harm has occurred to customers if the wholesale prices for the Parties' retailer customers increase as a result of the Merger, regardless of whether they are willing or able to pass on those higher prices to end-consumers at the retail level.

⁹⁷⁵ Cérélia response to the Annotated Issues Statement and Working Papers, 13 September 2022, paragraph 6.4.d.i.

⁹⁷⁶ MAGs, paragraph 4.1.

- 9.405 In addition, our view is that, even if retailers were to engage in such price matching behaviour, this would not prevent the harm that could arise from the Merger affecting end-consumers, in particular for the following reasons:
- (a) Price matching typically only relates to a subset of products rather than the full range;⁹⁷⁷
 - (b) Aldi and Lidl typically only stock PL products⁹⁷⁸ and so price matching to those retailers would not affect the Jus-Rol products supplied by the Merged Entity – in the event of a price rise in the Jus-Rol channel; and
 - (c) End-consumers would be exposed to potential harm from a deterioration in other aspects of Cérélia’s offering (e.g. quality or innovation), even if retailers were price matching, with such harm being passed on to end-consumers (in the form of lower quality products).
- 9.406 We therefore do not consider that any price matching activities used by the Parties’ customers would prevent harm occurring as a result of the Merger.

Nature of the SLC

- 9.407 In response to the Consultation Paper, the Parties submitted that the nature of the CMA's provisional SLC finding that 'the Merger has resulted or would result in an SLC in the wholesale supply of DTB products to grocery retailers in the UK' had materially changed, as had the reasoning on which it relies.⁹⁷⁹ The Parties submitted that the CMA set out that the Merger would lead to a loss of an 'actual' – albeit implicit – competitive constraint between the Parties in the Provisional Findings Report;⁹⁸⁰ however, in response to the Consultation Paper, the Parties submit that the SLC is recast as the loss of 'potential competitive tension between the Parties in negotiations with retailers'. Cérélia said that an SLC based on the loss of actual competitive tension is materially different, factually and legally, from one based on the loss of potential competitive tension.⁹⁸¹
- 9.408 Cérélia further submitted in response to the Consultation Paper that there is no explanation for what is meant by 'potential' in this context and that the

⁹⁷⁷ For example, Sainsbury’s claims on its website to have price matched Aldi on ‘150 fresh Sainsbury’s own-label and branded products plus other grocery and frozen products’ ([‘Sainsbury’s, Aldi Price Match’](#), accessed by the CMA on 21 October 2022). Moreover, Tesco claims on its website to have price matched Aldi ‘on hundreds of comparable products’ ([‘Tesco, Aldi Price Match’](#), accessed by the CMA on 21 October 2022).

⁹⁷⁸ Albeit Lidl sometimes stocks branded DTB products as ‘specials’.

⁹⁷⁹ Cérélia response to the Consultation Paper, 3 January 2023, paragraph 1.7.

⁹⁸⁰ Cérélia response to the Consultation Paper, 3 January 2023, paragraph 1.5.

⁹⁸¹ Cérélia response to the Consultation Paper, 3 January 2023, paragraph 1.6 and 1.7.

CMA's new theory of harm concerning the loss of 'potential' competitive tension does not describe, as in the MAGs, a situation where either Party might change its offering. It said that the word 'potential' appears instead to merely qualify the claimed 'competitive tension', in recognition of the fact that there is no evidence of any such dynamic. In addition, it submitted that the CMA asserts that the evidence submitted by retailers (summarised at paragraphs 9.76 to 9.83 of the Provisional Findings Report) relates to this 'potential' competitive tension and that, in its view, this is not correct, as the evidence and SLC was described in the Provisional Findings Report in respect of an actual competitive constraint arising as a consequence of the implicit rebalancing threat that the CMA had identified.⁹⁸²

9.409 We consider that the Consultation Paper, when viewed in its totality, is clear and explicit that the CMA's reasoning in relation to the theory of harm (which as the Parties have noted correctly relates to a loss of actual competition between them) did not change following the Provisional Findings. The CMA considers that the Parties' submissions in this regard are based on a wilful mischaracterisation of the use of the word 'potential' in the Consultation Paper in a context that was entirely unrelated to a 'potential competition' theory of harm. The relevant sentence refers to 'potential competitive tension' between the Parties to reflect the neutral framing of the CMA's questions to third parties (i.e. because it would have been inappropriate for the CMA to have initiated its information-gathering with third parties on the basis that there is competitive tension between the Parties – particularly where that has been disputed by the Parties). As set out throughout the Provisional Findings, Consultation Paper and in this Final Report, the CMA considers that there is an actual loss of competition between the Parties. The CMA therefore considers that it is not necessary to engage with the Parties' further submissions on this point.

Our conclusion on our competitive assessment

9.410 We have found that the Merger will bring together the two largest suppliers in the wholesale supply of DTB products in the UK. The Merger leads to a combined share of [60-70]% and an increment of [30-40]%. The evidence shows that pre-Merger both Jus-Rol and Cérélia have strong positions in their respective channels (branded and PL)⁹⁸³ and that they compete to supply retailers.

⁹⁸² Cérélia response to the Consultation Paper, 3 January 2023, paragraphs 1.7 to 1.9.

⁹⁸³ With Cérélia also having a significant presence in the branded pizza dough product space through its supply of [🍕] branded products.

- 9.411 In particular, we have found that for grocery retailers which have chosen to stock PL and branded DTB products, the cross channel competitive constraint between the Parties is important to allow them to secure a good deal in their commercial negotiations.
- 9.412 We have found there to be weak alternative constraints on the Parties, there being only a few credible PL suppliers, with no PL supplier holding more than a [10-20]% share of supply, and no nationally established branded alternatives. Therefore, we consider that the constraint between the Parties is important for both channels, noting that PL in particular (for which C er elia is the leading supplier) operates as a pricing discipline on Jus-Rol. Post-Merger, these strong market positions will be consolidated within the Merged Entity, creating a structural change in the market. There will be a lost constraint between the Parties, which will affect retailers' ability to resist a price rise. We consider that the Parties will have both the ability and incentive to raise prices or degrade other aspects of PQRS as a result of the Merger, potentially across both channels and to varying degrees.
- 9.413 On the basis of the evidence set out above, taken in the round, we conclude that, subject to our findings on countervailing factors, the Merger has resulted in an SLC in the wholesale supply of DTB products to grocery retailers in the UK.
- 9.414 We next consider whether there are any countervailing factors (specifically entry and/or expansion) that could prevent an SLC arising from the Merger.

10. Countervailing factors

Introduction

- 10.1 We considered whether there are any countervailing factors that may prevent the SLC we found from arising, as set out in this Chapter. Specifically, we considered the effect of entry and expansion and any efficiencies arising from the Merger. In considering entry and expansion, we looked at whether competition in the supply of PL and branded DTB products to UK grocery retailers may be affected as new firms enter and expand to compete against the Merged Entity and whether such activity may countervail the SLC we found. We also considered whether any efficiencies arising specifically from the Merger may also enhance rivalry such that the Merger does not give rise to an SLC.

Entry and Expansion

- 10.2 In merger inquiries, the CMA considers entry and expansion as one of several potential countervailing factors that might prevent an SLC from arising. In this Chapter, we assess whether entry and/or expansion could be a countervailing factor to an SLC finding⁹⁸⁴. In particular, this Chapter focuses on whether entry or expansion may be timely, likely and sufficient in the supply of DTB products to grocery retailers in the UK ('the relevant market') so as to offset the harm identified.
- 10.3 The Guidance explains the factors relating to timeliness, likelihood and sufficiency of entry or expansion as follows:
- (a) *Timeliness*: to prevent an SLC, entry and/or expansion must be sufficiently timely and sustained to constrain the merged entity. The timeliness of entry or expansion is assessed on a case-by-case basis, depending on the characteristics and dynamics of the market, but the CMA would normally consider entry or expansion that has a significant impact on competition within two years to be timely.⁹⁸⁵
 - (b) *Likelihood*: in considering the likelihood of entry or expansion, the CMA will consider both the scale of any barriers to entry and/or expansion that may impact on the likelihood of entry or expansion and also whether firms have the ability and incentive to enter the market.⁹⁸⁶
 - (c) *Sufficiency*: to prevent an SLC, entry or expansion should be of sufficient scope to deter or defeat any attempt by the merged firm to exploit any lessening of competition resulting from the merger.⁹⁸⁷
- 10.4 The Guidance also states that the CMA will consider how the merger may affect the likelihood of new entry or expansion, for example the merger may increase barriers to entry and/or expansion by strengthening the merged entity's incumbency advantage, or a larger merged entity might also be perceived to increase the risk involved in entry or expansion since the larger the firm, the more it might be expected to defend its position in the market.⁹⁸⁸ Entry is also less likely where barriers are substantial relative to available profits.⁹⁸⁹ The Guidance identifies common barriers but also notes that

⁹⁸⁴ MAGs, paragraph 8.28.

⁹⁸⁵ MAGs, paragraph 8.33.

⁹⁸⁶ MAGs, paragraph 8.35-8.36.

⁹⁸⁷ MAGs, paragraph 8.37-8.39.

⁹⁸⁸ MAGs, paragraph 8.43.

⁹⁸⁹ MAGs, paragraph 8.40.

barriers to entry or expansion are liable to vary depending on the nature of the market.⁹⁹⁰

10.5 The CMA considers that entry and/or expansion preventing an SLC from arising would be rare.⁹⁹¹ The CMA's evaluation of a selection of some of its past cases has shown that in some instances, when it has relied on entry or expansion to clear mergers, that entry or expansion did not in fact materialise.⁹⁹² The CMA will therefore seek to ensure that the evidence is robust when presented with claims of entry or expansion being timely, likely and sufficient to prevent an SLC from arising.

10.6 This Chapter is structured as follows:

- (a) Nature of the market;
- (b) Summary of the Parties' submissions;
- (c) Third-party evidence in relation to:
 - (i) competitor expansion plans;
 - (ii) entry from adjacent sectors;
 - (iii) competitor views on barriers to entry and expansion;
 - (iv) Retailers' sponsorship of new entry or expansion;
 - (v) Retailers' views on barriers to switching supplier;
- (d) Market conditions and incentives to invest;
- (e) Recent history of entry and expansion;
- (f) Evaluation of the economic modelling submitted by the Parties;
- (g) Impact of future tendering exercises; and
- (h) Our conclusions on entry and expansion.

⁹⁹⁰ MAGs, paragraph 8.41.

⁹⁹¹ MAGs, paragraphs 8.29.

⁹⁹² MAGs, paragraphs 8.29.

Nature of the Market

- 10.7 In this section we summarise some features of the tendering process for the supply of DTB products to UK grocery retailers, and its implications for our entry and expansion assessment.

The tendering process

- 10.8 This section summarises our findings of the tendering process, taken from Chapter 7 which explains how the supply process works. We found that UK grocery retailers conduct supplier reviews for their PL supply reasonably frequently. Most grocery retailers conduct tenders on an ad hoc basis, with a limited number conducting annual reviews.
- 10.9 In a PL tendering process, grocery retailers generally issue a product brief setting out the scope of the tender and send an invitation to tender to suppliers. There are then several rounds of submissions where the supplier submits a proposal (including samples as required), and the grocery retailer gives feedback on product quality to the suppliers and requests changes. Before awarding the agreement, suppliers' sites may be audited, including any assessment of the suppliers' capacity.
- 10.10 We have not seen any evidence of the tender process being used for branded supply but the evidence available indicates that retailers typically have annual discussions with their branded DTB product supplier.
- 10.11 Supply agreements, both for PL and branded products, typically have no fixed term and can be terminated by giving reasonable notice in accordance with the GSCOP regime⁹⁹³. Orders are placed by retailers on a rolling basis based on short-term forecasts provided by retailers typically two weeks in advance.
- 10.12 A supply agreement review can be spurred by a grocery retailer product range review, supplier-initiated price change proposals, quality issues or requirements or product development. These negotiations can result in a new supply agreement, lead to a tendering exercise or lead to no change.
- 10.13 We found that grocery retailers consider price, quality, and service level to be the most important factors on which suppliers of DTB products compete.

⁹⁹³ Reasonable Notice means a period of notice, the reasonableness of which will depend on the circumstances of the individual case. See [Groceries Supply Code of Practice](#), 4 August 2009.

Implications for our assessment

- 10.14 As a countervailing factor, entry or expansion must sufficiently replace any rivalry lost as a result of the Merger. In the context of this case, entry therefore refers to the entry of a new supplier of DTB products to grocery retailers, whether a manufacturer (like C  r  lia) or a brand owner (like Jus-Rol).
- 10.15 There are several ways in which entry or expansion can be achieved. In assessing expansion, we have sought to establish whether a current market participant is likely to materially enhance its competitive capabilities and whether that counterbalances the harm to competition as set out in our competitive assessment.⁹⁹⁴ The clearest example in this industry would be a smaller provider investing in expanding its production capacity. As with entry, expansion could be achieved by a grocery retail DTB supplier, or by a brand owner.
- 10.16 C  r  lia supplies DTB products in the PL channel, whereas Jus-Rol is a branded DTB supplier. This means that there are different sources from which entry or expansion could occur.
- 10.17 As set out in the tender process section above, see paragraphs 10.8 to 10.13, the market is characterised by grocery retailers regularly reviewing their PL supply and holding at least annual discussions with their branded suppliers. These regular reviews, which can result in a retailer going out to tender if unsatisfied with current suppliers, coupled with the fact that supply agreements are typically not subject to long fixed-length terms, create opportunities for entry or expansion in both PL and branded DTB supply through the (potentially relatively frequent) future tendering exercises or informal equivalents.
- 10.18 The CMA generally places more weight on detailed consideration of entry or expansion by new or existing suppliers and previous experience of entry and expansion (including how frequent and recent it has been).⁹⁹⁵ However, given the market features present in this case, we will also consider the structure of the market (including the relatively frequent opportunities to compete for customers' supply requirements) as part of our assessment of whether entry or expansion will be timely, likely, and sufficient to offset an SLC (see paragraphs 10.2 to 10.5).

⁹⁹⁴ The competitive assessment examines the current competitive constraint imposed by existing market participants based on their current capabilities.

⁹⁹⁵ [MAGs](#), paragraph 8.30.

Summary of Cérélia's views on entry and expansion

- 10.19 In this section, we summarise the views of Cérélia about entry and expansion conditions in the relevant market.

Cérélia submission on the GMI/Saxby case

- 10.20 In its response to the Issues Statement, Cérélia noted the GMI/Saxby OFT case⁹⁹⁶ in 2006 where the OFT found barriers to entry and expansion to be low.⁹⁹⁷ GMI/Saxby overlapped primarily in the supply of frozen and chilled ingredient pastry to the retail, foodservice and bakery/manufacturing sectors. Cérélia noted that, in that case, the OFT concluded that 'low barriers to entry and expansion, combined with the presence of strong buyer power are considered to exert a significant constraint on the parties post-Merger sufficient to offset any loss of competition arising from the Merger'.⁹⁹⁸
- 10.21 Cérélia submitted that the 'fundamental production process for DTB products has not changed since GMI/Saxby and, as a result, barriers to entry and expansion remain low'.⁹⁹⁹
- 10.22 We have considered the relevance of this decision but note that the CMA has an obligation to assess each case on its own facts at the time the case comes before the CMA with regard to the evidence presented in that case.¹⁰⁰⁰ The Phase 1 GMI/Saxby decision was issued over 15 years ago and the evidence we have seen suggests that the market dynamics were different from today. As a result, in reaching a view on the barriers to entry and expansion, we examine the evidence available to us and the market as it is today.

Cérélia's submissions on entry/expansion from adjacent Sectors¹⁰⁰¹

- 10.23 Cérélia submitted that there are numerous suppliers in adjacent Sectors which could easily expand into co-packing DTB products for retailers because they currently produce dough-based products on their existing production lines. In particular, Cérélia referred to foodservice DTB suppliers and

⁹⁹⁶ See [General Mills UK Ltd / Saxby Bros Ltd](#).

⁹⁹⁷ Saxbys concentrated on the manufacture and marketing of chilled ingredient pastry and un-baked goods to the retail sector and was acquired by GMI in 2006.

⁹⁹⁸ [Full text decision Anticipated acquisition by General Mills UK Limited of Saxby Bros Limited](#), 6 December 2006, paragraph 62, page 16.

⁹⁹⁹ [Cérélia response to the Issues Statement](#), paragraph 6.1, page 41.

¹⁰⁰⁰ [Ecolab Inc. v Competition and Markets Authority](#), [2020] CAT 12, paragraph 93.

¹⁰⁰¹ Where existing DTB suppliers have spare capacity, we have considered this in the competitive assessment. In this chapter, we have focused on investment in new capacity.

suppliers of baked or ready-to-eat pastry, pie and pizza dough-based products (eg [REDACTED]).¹⁰⁰²

- 10.24 With regard to foodservice DTB suppliers, Cérélia noted that the Phase 1 Decision indicated that certain foodservice DTB suppliers could ‘immediately’ start supplying DTB SKUs to retailers.¹⁰⁰³
- 10.25 With regard to suppliers of baked or ready-to-eat products, Cérélia submitted that these suppliers are already supplying UK retailers with other PL products.¹⁰⁰⁴ Cérélia submitted that [REDACTED].¹⁰⁰⁵
- 10.26 [REDACTED].¹⁰⁰⁶ In Cérélia’s view, this demonstrates the ease with which a supplier in an adjacent Sector can redeploy existing dough manufacturing equipment to offer DTB co-pack services to retailers.¹⁰⁰⁷ During the Main Party Hearing Cérélia reiterated that barriers to entry and expansion are low and competition could come from anywhere, [REDACTED] as an example of entry from an adjacent Sector due to low barriers.¹⁰⁰⁸
- 10.27 Similarly, Cérélia submitted that [REDACTED].¹⁰⁰⁹
- 10.28 Cérélia noted that The Northern Dough Co. ‘expanded beyond branded pizza dough and launched four new sweet and savoury products, including sourdough bread dough, brioche bread dough and cookie dough’.¹⁰¹⁰
- 10.29 Cérélia also noted that there are a number of strong existing brands in adjacent sectors which are well placed to expand in the DTB sector (eg [REDACTED] and [REDACTED]). Cérélia submitted that this could be done [REDACTED].¹⁰¹¹ Cérélia also submitted that the UK grocery sector is famous for supporting the launch of new innovative and disruptive brands (citing Innocent, Dorset Cereals and Tyrrells crisps as examples).¹⁰¹²

¹⁰⁰² Cérélia initial submission, paragraph 4.20, page 17. Cérélia response to the Issues Statement, paragraph 6.6, page 43.

¹⁰⁰³ Phase 1 Decision, paragraph 119(b)

¹⁰⁰⁴ Cérélia initial submission, paragraph 4.20, page 17.

¹⁰⁰⁵ Cérélia response to the Issues Statement, paragraph 6.9, page 43.

¹⁰⁰⁶ Cérélia response to the Issues Statement, paragraph 6.9, page 43.

¹⁰⁰⁷ Cérélia initial submission, paragraph 4.20, page 17.

¹⁰⁰⁸ Cérélia, main party hearing transcript, page 52, lines 13-16.

¹⁰⁰⁹ MN, paragraph 482, page 122.

¹⁰¹⁰ MN, paragraph 290, page 77.

¹⁰¹¹ Cérélia response to Annotated Issues Statement, paragraph 4.6. Cérélia’s response to the Alternative Constraints Working Paper.

¹⁰¹² Cérélia response to Annotated Issues Statement, paragraph 4.6.

- 10.30 Cérélia stated that it believes that there are at least [redacted] production lines in the UK that it considers could be used to manufacture DTB products. Cérélia noted that there would be many more production lines across the EU.¹⁰¹³

Cérélia's submissions on barriers to entry/expansion

Scalability

- 10.31 Cérélia submitted that there are a number of smaller DTB suppliers already active in the grocery retail market who could expand their activities to meet additional demand.¹⁰¹⁴
- 10.32 Cérélia submitted that DTB production is scalable as most costs are variable or semi-variable. It considers the basic 'unit' of production in DTB manufacturing to be the production line, which typically has an operational annual capacity of [redacted], [redacted]. Cérélia considers that this allows a provider to serve a large national retailer [redacted].¹⁰¹⁵
- 10.33 Cérélia submitted that the same equipment is versatile and can be used to produce a wide range of DTB products. [redacted].¹⁰¹⁶

Time and cost

- 10.34 Cérélia submitted that the equipment used in manufacturing DTB products is standardised and widely available.¹⁰¹⁷ Cérélia considered that the equipment that makes up a DTB production line can be ordered and installed on site in [redacted], [redacted] whether by someone expanding in the market or a new competitor entering.¹⁰¹⁸
- 10.35 Cérélia told us that it estimates that the total cost of an entirely new production line (bought first-hand) would amount to £[redacted] and [redacted]. Cérélia also submitted the cost would be considerably lower if the production line were acquired second hand, which Cérélia noted was [redacted].¹⁰¹⁹

¹⁰¹³ Cérélia response to the Issues Statement, paragraph 6.7, page 43.

¹⁰¹⁴ Cérélia response to the Issues Statement, paragraph 6.3, page 41.

¹⁰¹⁵ Cérélia response to the Issues Statement, paragraph 6.5 (a), page 42.

¹⁰¹⁶ Cérélia response to the Issues Statement, paragraph 6.5 (d), page 42.

¹⁰¹⁷ Cérélia response to the Issues Statement, paragraph 6.5 (b), page 42.

¹⁰¹⁸ Cérélia response to the Issues Statement, paragraph 6.5 (c), page 42.

¹⁰¹⁹ Cérélia response to the Issues Statement, paragraph 6.5 (e), page 42.

Economic capacity expansion modelling exercise

- 10.36 Cérélia submitted that the barriers to entry and expansion are low and, because they are low, entry/expansion would be likely, timely and sufficient to prevent an SLC in the hypothetical event that retailers could not turn to existing competitors.¹⁰²⁰ Cérélia provided us with a 'bottom-up capacity expansion' modelling exercise carried out by Cérélia's economic advisers.
- 10.37 Two scenarios were modelled, [REDACTED] and the second [REDACTED].
- 10.38 The model looked at the [REDACTED].^{1021,1022}
- 10.39 Cérélia submitted that the modelled timeframes are likely an overestimate because conservatively it assumes [REDACTED].¹⁰²³ The analysis also assumes [REDACTED].

CMA assessment

Third-party evidence

- 10.40 In this section, we summarise the third-party evidence received to date on entry and expansion in relation to the supply of PL DTB products to UK retailers.
- 10.41 This section sets out the following evidence:
- (a) views of third parties on expansion plans and investment intentions (this includes suppliers of DTB products to UK grocery retailers,¹⁰²⁴ suppliers to the foodservice industry and a large UK-based pastry company who does not supply DTB to UK grocery retailers but is active in foodservice and the manufacture and supply of baked goods to grocery retailers);¹⁰²⁵
 - (b) entry from adjacent sectors;
 - (c) views of third parties on barriers to expansion;
 - (d) views of retailers on sponsorship of new entry or expansion; and

¹⁰²⁰ Cérélia response to the CMA's Working Paper on Entry and Expansion, paragraph 7, page 2.

¹⁰²¹ Annex AIS.12.a - Entry and expansion business case.

¹⁰²² Annex AIS.12.b - Entry and expansion model.

¹⁰²³ Annex AIS.12.a - Entry and expansion business case.

¹⁰²⁴ Some of the competitors are also active in foodservice or the manufacture of baked goods and we have indicated this below, where known.

¹⁰²⁵ [REDACTED] are active in foodservice and the manufacture of baked products.

(e) views of retailers on barriers to switching DTB supplier.

Expansion plans of DTB manufacturers (for the PL channel) and branded DTB product suppliers

- 10.42 In this section, we set out the views from existing suppliers of DTB products (including PL and branded DTB products) to UK grocery retailers on their capacity expansion plans and investment intentions.
- 10.43 We asked third parties if they had the ability to expand to meet the entire DTB supply needs of a leading UK grocery retailer, whether they have any plans to expand capacity in the next two years or invest in product development.
- 10.44 A competitor [redacted], said it has no imminent plans (within the next 18 to 24 months) to expand manufacturing capacity into the UK as it does not currently anticipate an increase in demand which would necessitate such an expansion. [redacted]. In response to our questionnaire, this competitor said that it had the ability to meet the entire supply needs of any leading grocery retailer in the UK by increasing production within its current manufacturing spare capacity [redacted].¹⁰²⁶
- 10.45 A manufacturer of DTB products based in continental Europe, [redacted], who manufactured [redacted], told us that it has recently added capacity with a [redacted] manufacturing plant, outside of the UK, and is also investing in new [redacted] categories and [redacted] assortment.¹⁰²⁷
- 10.46 Three competitors, who [redacted], [redacted], [redacted] and [redacted]], all said that they have no plans to significantly expand manufacturing capacity in the next 18 to 24 months.¹⁰²⁸
- 10.47 A competitor [redacted] that [redacted], whose UK DTB grocery retail revenues account for [redacted] of total revenues, said that it is willing to consider expansion but had no imminent plans to increase manufacturing capacity.¹⁰²⁹ On a follow up call, [redacted] told us that it can take on an additional contract, (equivalent in capacity to its current [redacted] contract) without the need to invest in any new capacity. However, as set out in paragraph 9.183, any further contract would [redacted].¹⁰³⁰ [redacted].¹⁰³¹

¹⁰²⁶ [redacted] response to CMA phase 2 competitor questionnaire.

¹⁰²⁷ [redacted] response to CMA phase 2 competitor questionnaire, [redacted] 2022, question 17.

¹⁰²⁸ [redacted], [redacted] and [redacted] responses to CMA phase 2 competitor questionnaire [redacted], question 17.

¹⁰²⁹ Note of a call with [redacted], [redacted] 2022.

¹⁰³⁰ Note of a call with [redacted], [redacted] 2022, paragraph 10 and 13.

¹⁰³¹ Note of a call with [redacted], [redacted] 2022, paragraph 13.

- 10.48 A producer of [redacted] dough, that focusses on supplying outside the UK, [redacted], told us that it does not have big business in UK and ‘our plans are not to increase the business in UK’.¹⁰³²
- 10.49 A major [redacted] that produces a range of baked pastry products, [redacted], told us it had no plans to invest in new manufacturing capacity or product development as it wants to remain dedicated to supplying [redacted].¹⁰³³
- 10.50 A supplier of [redacted] pastry to the [redacted] channels, [redacted], told us that it has looked into expansion but in the current economic environment, rising inflation, Brexit and in the supplier’s view ‘market dominance by Cérélia and Jus-Rol’ in the UK, the risk was deemed to be too great.¹⁰³⁴
- 10.51 Overall, in relation to pre-existing plans, the evidence from third parties indicates that UK and continental European firms active in the supply of DTB products to UK retailers have no plans to expand beyond the current levels of manufacturing capacity in the foreseeable future. In particular, evidence from [redacted] suggests it would not consider making any expansion decision before [redacted]. As a result, any expansion is uncertain and would happen only in the longer term. We assess the possibility of entry or expansion from a DTB manufacturer or brand owner prompted by a supplier through a future tendering process in the section entitled Impact of future tendering exercises (see paragraphs 10.140 to 10.180).

Entry from adjacent sectors

- 10.52 Cérélia submitted that there is a significant threat from suppliers in adjacent markets such as foodservice DTB suppliers and suppliers of baked/ready to eat pastry goods (see paragraphs 10.23 to 10.30). In this section, we set out the views from suppliers in adjacent markets on their entry/expansion plans in the UK grocery retail DTB market.
- 10.53 A large supplier that serves the foodservice Sector and supplies baked goods to retailers, [redacted], told us that it is not looking at expanding into serving grocery retailers.¹⁰³⁵

¹⁰³² [redacted] submission of [redacted].

¹⁰³³ Note of a call with [redacted], [redacted] 2022.

¹⁰³⁴ [redacted] response to CMA phase 2 competitor questionnaire.

¹⁰³⁵ [redacted] response to CMA phase 2 competitor questionnaire.

- 10.54 [X] told us that it is unable to expand production while consolidating its current position and has no plans to add new manufacturing capacity due to the current political and economic situation.¹⁰³⁶
- 10.55 A supplier that primarily caters to the foodservice and food manufacturing channels, [X] told us that it was unable to increase current production as that would require new equipment which could take 6-8 months to arrive and that 'it's impossible to penetrate the market'.¹⁰³⁷
- 10.56 C r lia submitted that the barriers to entry and expansion for branded products are low, citing the likes of [X] as a successful market entrant into DTB [X], and suppliers of branded products in adjacent Sectors (eg dairy) as potential entrants (see paragraph 10.29).
- 10.57 C r lia is [X] contract manufacturer. [X] told us it has '[X]'.¹⁰³⁸ The recent entry of [X] is already taken into consideration in our competitive assessment. [X] told us that it is focused on the pizza dough sector of the DTB market.
- 10.58 With regard to entry from the wider dairy Sector, at the Main Party Hearing, GMI cited [X], a company with a well-known brand within dairy, particularly butters, that entered the pastry market, with a number of products such as sheets and blocks.¹⁰³⁹ However, GMI also noted that [X] has since exited the DTB market.¹⁰⁴⁰
- 10.59 We received responses from smaller branded DTB manufacturers like [X], [X] and [X], who told us that they did not have immediate plans to invest in or increase their capabilities (see paragraphs 10.47 to 10.50).
- 10.60 With regard to the threat from adjacent Sectors, the CMA considers that a DTB foodservice supplier or a supplier of baked pastry goods may already have much of the expertise and equipment needed to supply DTB goods to UK grocery retailers. This is supported by the fact that a number of companies that supply DTB products to UK grocery retailers also supply either DTB products to the foodservice sector or baked goods.¹⁰⁴¹
- 10.61 The evidence indicates that entry from the adjacent Sectors is possible. However, we have found no evidence of specific entry plans by any supplier.

¹⁰³⁶ [X] response to CMA phase 2 competitor questionnaire.

¹⁰³⁷ [X] response to CMA phase 2 competitor questionnaire.

¹⁰³⁸ [X] response to RFI, dated [X] 2022.

¹⁰³⁹ [X]

¹⁰⁴⁰ GMI, main party hearing transcript, page 49, lines 10-25.

¹⁰⁴¹ [X], [X], [X], [X] and [X].

The only recent¹⁰⁴² example, which is cited by Cérélia is that of [redacted], a supplier of [redacted] products which is now supplying DTB products to [redacted]. This entry impacts [redacted]% of the market by supply (see Table 5.1 in Chapter 5), and as noted above, [redacted].¹⁰⁴³ [redacted], which supplies DTB in the foodservice sector is not looking at expanding into serving grocery retailers. We assess the possibility of entry or expansion from a DTB manufacturer or brand owner prompted by a supplier through a future tendering process in the section entitled Impact of future tendering exercises (see paragraphs 10.140 to 10.180).

Competitor views on barriers to entry and expansion

- 10.62 Third parties, including all of those above, were asked to explain reasons for their expansion and investment plans and their ability to compete for contracts.
- 10.63 We set out below the key themes emerging from third party evidence:
- (a) Barriers to competing for new contracts;
 - (b) Financial barriers to increasing production capacity;
 - (c) Economies of scale in DTB manufacturing, which may prevent small scale entry and expansion acting as an effective competitive constraint; and
 - (d) Barriers to establishing a branded product.

Barriers to competing for new contracts

- 10.64 The CMA sought feedback from third parties identified as competitors by Cérélia as to whether there are any barriers to them competing for new contracts for the supply of DTB products to grocery retailers for their PL requirements in the UK. The feedback received indicates that there is a range of potential barriers for wholesale suppliers to compete for new retail contracts in the UK, including:

¹⁰⁴² Early 2022, MN, paragraph 492.

¹⁰⁴³ [redacted] response to CMA phase 2 customer questionnaire.

- (a) [X] and [X] told the CMA of the importance of scale, volume and scope in terms of product variety to meet grocery retailers' needs and ability to price competitively;¹⁰⁴⁴
- (b) [X] told us that requirements in terms of Capex expenditure to operate at scale are a barrier in the industry;¹⁰⁴⁵
- (c) [X] told us manufacturing standards (customer production standards) are stringent (e.g. [X] has high requirements), and are not easy to accommodate within existing processes and production flows as they may differ from European standards;¹⁰⁴⁶
- (d) [X] told us that recipe formulation (it takes approximately nine months to set up a new product including product development of the recipes along with all necessary tests and analysis) is a barrier to entry or expansion and that in order to supply UK retailers with PL DTB products, a supplier would need a UK-based sales team, a proven track record of serving large retailers and adequate transportation logistics in place;^{1047, 1048}
- (e) [X] and [X] both told us that the breadth of DTB products offered is a potential barrier insofar as grocery retailers tend to gravitate to suppliers who can fill a range rather than supply a single product making it much more difficult for small companies like them to compete;¹⁰⁴⁹
- (f) [X] cited transportation, including as a result of Brexit-related border frictions (leading to higher transport costs and higher storage and wastage costs, and higher buffer stocks needed to compensate for risk of delays);¹⁰⁵⁰ and [X] cited grocery retailers' preference to source from British suppliers where possible.¹⁰⁵¹

10.65 Overall, the evidence from third parties indicates that firms active in the supply of manufacturing and packaging of DTB products to retailers in respect of their PL brands face some challenges in the context of investing in capacity-based expansion or expanding through competing for new contracts.

¹⁰⁴⁴ [X] and [X] responses to the CMA's phase 1 competitor questionnaire. The importance of scale was also identified by one of C er lia's customers as a significant challenge in changing supplier ([X] response to CMA's grocery retailer phase 1 questionnaire).

¹⁰⁴⁵ [X] response to CMA phase 1 competitor questionnaire.

¹⁰⁴⁶ [X] response to CMA phase 1 competitor questionnaire and note of a call with [X], [X] 2022.

¹⁰⁴⁷ Note of a call with [X], [X] 2022.

¹⁰⁴⁸ [X] response to CMA phase 1 competitor questionnaire.

¹⁰⁴⁹ [X] and [X] responses to CMA phase 1 competitor questionnaire.

¹⁰⁵⁰ [X] response to CMA phase 1 competitor questionnaire; Note of a call with [X], [X] 2022.

¹⁰⁵¹ [X] response to CMA phase 1 competitor questionnaire; Note of a call with [X] 2022.

Financial barriers to increasing production capacity

- 10.66 Cérélia submitted (see paragraphs 10.36 to 10.39) that [REDACTED] and a range of DTB products, and that a new line costs just under £[REDACTED]million and would take [REDACTED] to be operational. Cérélia also submitted that DTB products are relatively simple to formulate, and ingredients can be easily purchased.
- 10.67 In order to be more competitive in the DTB space, [REDACTED], a major food manufacturer who produces a range of [REDACTED] pastry products, told us that it would need to make significant investments, which is not perceived as attractive considering this is a low margin Sector.¹⁰⁵²
- 10.68 As set out above (see paragraphs 10.46, 10.47 and 10.50), when describing their reasons for not expanding capacity, three suppliers raised difficulties in the market conditions (including the political and economic conditions, inflation, Brexit and delays in capacity building, as well as difficulties in achieving market penetration to justify the investment), such that any expansion would not be an economically viable option.
- 10.69 We sought further evidence on the time and cost it would take to expand manufacturing capacity, which is summarised below. The submissions by [REDACTED] and [REDACTED] appear broadly in line with those made by Cérélia. [REDACTED] submission is significantly higher due to it including site acquisition and factory construction.
- (a) [REDACTED] submitted the cost would be £[REDACTED] (including the cost of site acquisition and construction). It estimates it would take [REDACTED] months for ordering equipment and obtaining approvals and [REDACTED] years to be fully commissioned. Its estimate was based on establishing a facility similar to its existing pastry set-up with a manufacturing capacity of c50kT per year. It noted costs would potentially be significantly lower if an existing food manufacturing facility were to be repurposed.¹⁰⁵³
- (b) [REDACTED] submitted the cost would be £[REDACTED] and require [REDACTED]. This was based on a very rough estimate, taking account of flour processing, pastry mixing, production line and packing line to service a large retailer ([REDACTED]).¹⁰⁵⁴
- (c) [REDACTED] submitted the cost would be £[REDACTED] (including a mixer, laminator, freezing equipment and wrapping but not building costs). It estimated [REDACTED] would be required to get equipment, train staff, organise raw materials

¹⁰⁵² Note of a call with [REDACTED], [REDACTED] 2022.

¹⁰⁵³ [REDACTED] response to RFI dated [REDACTED] 2022.

¹⁰⁵⁴ [REDACTED] response to RFI dated [REDACTED] 2022.

contracts, packaging among other things. It also noted a limiting factor on time would be the supply of pastry laminators and that second-hand equipment is rarely available in Europe.¹⁰⁵⁵

- 10.70 The responses from [redacted] and [redacted] above broadly support the modelling provided by Cérélia [redacted] (see paragraph 10.36 to 10.39) [redacted]. That assessment found that [redacted].¹⁰⁵⁶
- 10.71 The available evidence suggests that production capacity could be [redacted]. This investment needs to be weighed against the chances of obtaining sufficient volumes from customers (see paragraphs 10.91 to 10.103 and 10.147 to 10.152). The attractiveness of the market would also impact the likelihood of such investment being forthcoming (see paragraphs 10.110 to 10.121).

Economies of scale

- 10.72 Economies of scale occur when the cost per unit of volume produced (eg pound per kilogram) declines as volume increases. The Guidance notes that, in the presence of economies of scale, large-scale entry or expansion will generally be successful only if it expands the total market significantly, or substantially replaces one or more existing firm; and if the entrant can afford the risk that such investment will involve, especially in terms of sunk costs.¹⁰⁵⁷
- 10.73 While we have not seen evidence indicating differences in the significance of economies of scale between the PL and branded channels, we note that retailers place greater emphasis on brand owners' ability to grow the category rather than offering a low price.
- 10.74 Cérélia disputes the importance of economies of scale in the production of DTB products, saying:
- (a) There are relatively limited economies of scale in DTB production and a manufacturer with a single DTB production line can operate with high levels of efficiency.¹⁰⁵⁸
 - (b) A manufacturer with a single production line can operate with high levels of efficiency, especially if [redacted]. This is because most costs can be

¹⁰⁵⁵ [redacted] response to RFI dated [redacted] 2022.

¹⁰⁵⁶ Frontier Economics consider [redacted] to be conservative and the time and cost is likely to be less.

¹⁰⁵⁷ MAGs, paragraph 8.41 (d).

¹⁰⁵⁸ Paragraph 35(1-9) of CUK response to s109 notice of 30 June 2022.

characterised as semi-variable so can be stepped up in increments as production requirements increase.¹⁰⁵⁹

- (c) The price competitiveness of smaller producers has been illustrated by [redacted] decision to switch to using [redacted] to manufacture all its PL [redacted] requirements (in preference to both Cérélia and other large European manufacturers). If [redacted] had been unable to price on competitive terms [redacted], it would not have won the [redacted] business.¹⁰⁶⁰
- (d) The fact that BakeAway was able to supply [redacted] demand in the UK from two lines shows that it is not necessary to have more production lines than this to produce efficiently.¹⁰⁶¹
- (e) The ingredients for DTB products are highly commoditised (flour, oil, etc) and are sold on global markets. Furthermore, DTB products account for only a tiny fraction of demand for these ingredients, meaning that even the largest DTB manufacturers are small customers from the perspective of these suppliers.¹⁰⁶²
- (f) While it is possible to be competitive at different operational scales, what does matter is [redacted].¹⁰⁶³

10.75 We note, however, that this position is not supported by the evidence we have gathered during our investigation. In particular:

- (a) GMI told us that [redacted].¹⁰⁶⁴
- (b) Five out of six of the DTB suppliers (both in the PL and branded channels) that responded to our phase 2 questionnaire indicated that economies of scale are very important in the supply of DTB products. Four out of six of respondents said that there are cost advantages of producing at larger volumes. Four out of six mentioned the ability to secure lower prices on raw ingredients as an important element of economies of scale.¹⁰⁶⁵

¹⁰⁵⁹ Cérélia response to the CMA's section 109 Notice (Phase 2 s.109) (1), 14 July 2022, question 35.

¹⁰⁶⁰ Cérélia response to the Annotated Issues Statement and Working Papers, 13 September 2022, annex AIS.05.a, paragraph 5.

¹⁰⁶¹ Cérélia response to the Annotated Issues Statement and Working Papers, 13 September 2022, annex AIS.05.a, paragraph 5.

¹⁰⁶² Cérélia response to the Annotated Issues Statement and Working Papers, 13 September 2022, annex AIS.05.a, paragraph 5.

¹⁰⁶³ Cérélia response to the Annotated Issues Statement and Working Papers, 13 September 2022, annex AIS.05.a, paragraph 5.

¹⁰⁶⁴ GMI, main party hearing transcript, page 60.

¹⁰⁶⁵ Responses the CMA phase 2 competitor questionnaire, question 11.

(c) One PL supplier [redacted] told us that [redacted].¹⁰⁶⁶

(d) One supplier [redacted] who submitted that economies of scale are somewhat important commented that there are cost advantages but only up to a certain volume and, after this volume is reached, the cost remains the same.¹⁰⁶⁷

10.76 Figure 10.1 below shows Cérélia's breakdown of per unit production costs.¹⁰⁶⁸

Figure 10.1: Breakdown of Cérélia's per unit costs

[redacted]

10.77 As Figure 10.1 above shows, [redacted], which lends some weight to Cérélia's argument that economies of scale may not be material in this industry.

10.78 At the Main Party Hearing, GMI told us that one of the reasons it closed its production facility in the UK was that it was not operating at sufficient capacity. The factory was operating 'about 50 per cent' and 'that was an example of an economy of scale which was not reached'.¹⁰⁶⁹

10.79 As explained in Chapter 7 (paragraphs 7.55 and 7.56), the primary factors based on which DTB suppliers compete for grocery retailers' business are ability to supply, price and quality. The importance of price to grocery retailer customers, and the need to have sufficient volumes to be able to operate with a competitive cost basis, indicates that economies of scale could act as a barrier to entry or expansion. As set out in the Tendering Process section (see paragraphs 10.140 to 10.180), the UK's grocery retailers regularly review the market and consider their commercial options (which can result in tender processes being initiated relatively frequently).

10.80 The UK's large national grocery retailers spend in excess of £120 million on DTB products annually, as covered in Chapter 5. Most of these products are currently purchased from Cérélia (for grocery retailers' own PL products) or from Jus-Rol. The contracts that a supplier could obtain from the large grocery retailers could be significant in scale, as evidenced by [redacted] switch to [redacted] which is expected to be approximately £[redacted] million per annum. We consider that economies of scale are a feature of the market; however, we also consider that a contract of the scale of the [redacted] could allow a supplier to

¹⁰⁶⁶ Note of a call with [redacted], [redacted] 2022, paragraph 24.

¹⁰⁶⁷ [redacted] response to the CMA phase 2 competitor questionnaire, question 11.

¹⁰⁶⁸ Slide 13 of Cérélia's site visit afternoon presentation.

¹⁰⁶⁹ GMI, main party hearing transcript, page 62, lines 2-5.

achieve sufficient economies of scale to be able it to compete effectively against Cérélia on price.

- 10.81 Overall, the evidence indicates that whilst economies of scale are a feature of the market, we consider that economies of scale can be achieved to some degree by operating a single production line at sufficient capacity which would enable smaller suppliers to compete on price to win a contract from a major grocery retailer. On a single production line the cost per unit can be brought down significantly by utilising the line at near capacity as is evidenced by the [redacted] deal.

Branded channel

- 10.82 If entry or expansion was to occur through branded DTB products, this would either come from the expansion of an existing small brand or the entry of a new brand, for example from an adjacent Sector. Both forms would require time and investment in marketing.
- 10.83 As noted in Chapter 7, the CMA has not seen evidence of grocery retailers tendering for a branded supplier.
- 10.84 [redacted], a [redacted], told us that it would be expensive for a new brand to enter the UK, as it would have to compete with Jus-Rol. This supplier commented that in the Dutch, Belgian and Scandinavian smaller markets there are only established brands as the Sector is too small to have PL. [redacted] said that in the UK, there is Jus-Rol and PLs, so entering the UK to compete with both of these would be expensive. [redacted] told us that it would have to build its brand up.¹⁰⁷⁰
- 10.85 [redacted] told us that in the DTB market, it is hard to establish a brand. [redacted] is not aware of any branded DTB supplier successfully entering an established market.¹⁰⁷¹
- 10.86 Jus-Rol has been the leading DTB brand in the UK for a long period of time. As noted in paragraphs 10.56 and 10.57, [redacted] is now in the DTB market, supplying DTB [redacted] to UK grocery retailers. This is evidence that branded entry is possible in practice, albeit that [redacted] is focused (and told us that [redacted]) on its area of speciality, [redacted], and also benefits from a strong established brand within that area of focus. Whilst this is evidence of entry from a closely related adjacent market, we note that [redacted] is unlikely to challenge Jus-Rol's

¹⁰⁷⁰ Note of a call with [redacted], [redacted] 2022.

¹⁰⁷¹ Note of a call with [redacted], [redacted] 2022.

position as the UK's largest branded supplier providing a range of DTB products.

- 10.87 The CMA understands that The Northern Dough Co. entered the market in relation to frozen DTB products (in frozen pizza dough; brioche; sourdough; cookie dough). We note, again, that The Northern Dough Co.'s range is limited in breadth (being limited to a small number of products in the frozen Sector) and scale.
- 10.88 As noted in paragraph 10.50, [redacted] has no current plans to expand capacity due to economic uncertainty.
- 10.89 Further, as noted in paragraph 10.58, [redacted], a branded grocery retail supplier in the wider dairy Sector, entered the DTB pastry market but subsequently exited [redacted].¹⁰⁷²
- 10.90 Whilst entry in particular product lines appears possible, establishing a supplier with a similar presence to Jus-Rol (ie a new brand with a significant presence across multiple popular product categories) is unlikely to occur or be successful at a sufficient scale to offset an SLC. The examples of branded entry we have found are only within small individual product lines and the evidence from [redacted] suggests the level of investment in promoting either a smaller DTB brand or a new brand entering the UK DTB market may be significant and the likelihood of successfully competing with Jus-Rol uncertain.

Grocery retailers' sponsorship of new entry or expansion

- 10.91 We asked grocery retailers whether or not they would be willing to consider sponsoring the expansion of smaller UK DTB suppliers, in either the PL or the branded supply channels. Within this context, sponsored entry refers to a third party who is encouraged and financially supported by one or more customers to enter or expand. We note that it could also be possible for entry or expansion from a DTB manufacturer or brand owner to arise through a future tendering process (see paragraphs 10.140 to 10.180). Switching of suppliers is considered in more detail in Chapter 7 paragraphs 7.74 to 7.95.
- 10.92 A grocery retailer [redacted], told us it is unlikely to sponsor any suppliers in this category through financial support or extended contracts.¹⁰⁷³

¹⁰⁷² GMI, main party hearing transcript, page 49, lines 10-25.

¹⁰⁷³ [redacted] response to working paper putback request of [redacted] 2022.

- 10.93 A grocery retailer [X] told us it will not consider sponsorship and has not changed suppliers in the last [X] years.¹⁰⁷⁴
- 10.94 A grocery retailer [X] told us it is [X].¹⁰⁷⁵ This retailer [X] noted that sponsoring an existing supplier would in principle be possible, although this would have to be accompanied by significant commitments to justify the Capex and there would be challenges associated with agreeing such long-term commitments. [X] also said that there would need to be a [X].¹⁰⁷⁶ However, this retailer also told the CMA that it could not state with certainty whether sponsorship is something it might consider, and if so, what that would entail.¹⁰⁷⁷
- 10.95 A grocery retailer [X], told us that sponsorship ‘entails competitive costs and media support’. This retailer told the CMA it is open to considering switching to manufacturers from [X] subject to ‘qualifying criteria.’¹⁰⁷⁸ This retailer told the CMA that it would take about 6 months to get a new supplier onboard. However, it had not specifically identified any new PL or branded suppliers to sponsor or switch to immediately and was not aware in specific terms of who the potential suppliers that might fill this role would be.
- 10.96 One grocery retailer, [X], responded to the CMA that it is willing to engage in conversations with suppliers about investment and capacity growth. However, this retailer told us that ‘At the moment there are no PL or branded suppliers that are willing to engage in conversations about investment except (C  ria). In general, we would like to engage with more suppliers on conversations about investment and capacity growth, but at the moment the market is not supporting this happening. We would absolutely consider funding, longer terms agreements etc. if the supplier was able to demonstrate a credible proposal’.¹⁰⁷⁹
- 10.97 That grocery retailer [X] has recently¹⁰⁸⁰ switched [X].¹⁰⁸¹ However, the retailer was previously supplied by C  ria and told the CMA that [X].¹⁰⁸²

¹⁰⁷⁴ [X] response to CMA phase 2 customer questionnaire.

¹⁰⁷⁵ [X] response to CMA phase 2 customer questionnaire.

¹⁰⁷⁶ Note of a call with [X] 2022.

¹⁰⁷⁷ Written submission from [X], [X] 2022.

¹⁰⁷⁸ [X] response to CMA phase 2 customer questionnaire.

¹⁰⁷⁹ [X] response to CMA phase 2 customer questionnaire.

¹⁰⁸⁰ [X].

¹⁰⁸¹ [X] is unable to supply shortcrust pastry.

¹⁰⁸² [X] response to CMA phase 2 customer questionnaire.

- 10.98 A grocery retailer [X], is not looking to sponsor any suppliers and has not changed suppliers of chilled pastry in the past [X] years.¹⁰⁸³
- 10.99 A grocery retailer [X] told us it would not sponsor as it does not consider itself as the retailer of choice for pastry products.¹⁰⁸⁴
- 10.100 A very small grocery retailer [X] told us it is willing to sponsor suppliers with know-how and long-term contracts in the next 18-24 months.¹⁰⁸⁵
- 10.101 A grocery retailer [X] told us that sponsoring PL or branded DTB suppliers is not a priority for its business, further adding that ‘it’s just not lucrative enough of a segment for us to be interested in exploring such funding’.¹⁰⁸⁶
- 10.102 In its response to the AIS, Cérélia said that the UK grocery sector is famous for supporting the launch of new innovative and disruptive brands like Innocent, Dorset Cereals and Tyrrells crisps.¹⁰⁸⁷ However we note that these brands operate in much larger markets (£600 million for smoothies¹⁰⁸⁸, £2.76 billion for breakfast cereals¹⁰⁸⁹ and £1.2 billion for crisps¹⁰⁹⁰ in 2021) compared to the approximately £[X] million DTB retail market and therefore any sponsorship in support of a marginal innovative brand is more likely to be forthcoming in these bigger markets. Therefore, we have placed little weight on these examples as evidence of sponsorship for entry in the DTB market which would be timely, likely and sufficient to countervail the effects of the Merger.
- 10.103 In its response to the Provisional Findings, Cérélia submitted that grocery retailers are able and willing to sponsor alternative PL manufacturers through the award of a contract and that it is ‘within the power’ of retailers to support capacity expansion at any point with only modest commitments on their part. Cérélia said that this could be as simple as offering [X] further adding that the CMA has failed to give significant weight to this option.¹⁰⁹¹
- 10.104 We have, as set out above, considered whether there is some appetite to sponsor entry or expansion.¹⁰⁹² We note, however, that a majority (5 out of 8) of retailers, including those that comprise the largest proportion of the DTB

¹⁰⁸³ [X] response to CMA phase 2 customer questionnaire.

¹⁰⁸⁴ [X] response to CMA phase 2 customer questionnaire.

¹⁰⁸⁵ [X] response to CMA phase 2 customer questionnaire.

¹⁰⁸⁶ [X] response to CMA phase 2 customer questionnaire.

¹⁰⁸⁷ Cérélia’s response to Annotated Issues Statement, 13 September, paragraph 4.6a.

¹⁰⁸⁸ See [UK: juice mixtures & smoothies revenue 2013-2026 | Statista](#), accessed by the CMA on 17 October 2022.

¹⁰⁸⁹ See [Breakfast cereals in the UK - statistics and facts | Statista](#) accessed by the CMA on 17 October 2022.

¹⁰⁹⁰ See [Crisps sales value Great Britain 2006-2021 | Statista](#) accessed by the CMA on 17 October 2022.

¹⁰⁹¹ [Cérélia’s response to the provisional findings](#), 28 November, paragraphs 4.40-4.43.

¹⁰⁹² Provisional Findings, paragraph 9.279 (d).

market, said that they would not consider sponsoring a supplier to improve their productivity or product quality/variety (including through offering long-term contracts, know-how and funding).¹⁰⁹³ Accordingly, while sponsorship is possible in theory, we continue to consider that there is insufficient evidence to conclude that sponsorship by grocery retailers in any format will be timely, likely and sufficient to countervail the effects of the SLC.

- 10.105 In line with this conclusion, the CMA has seen no evidence to suggest that grocery retailers have any imminent plans or are currently working towards supporting the launch of new brands that are innovative or disruptive by launching brand incubator programmes.
- 10.106 In addition to the submissions summarised in paragraph 10.103 above, Cérélia further submitted that the apparent reluctance of retailers to support entry and expansion by offering reasonable contractual certainty beyond the GSCOP mandated three months is no reason to discount the reality of the entry and expansion argument itself.¹⁰⁹⁴ We consider that while barriers to entry and expansion are not insurmountable and retailers have the ability to sponsor entry and expansion, their lack of willingness to do so is an important factor in our assessment. A hypothetical or theoretical possibility cannot act as a timely, likely, and sufficient countervailing factor to the effects of the SLC.

Retailers' views on barriers to switching

- 10.107 Grocery retailers provided the CMA with their views on the relative ease or challenges associated with switching DTB manufacturer.¹⁰⁹⁵ Switching dynamics and summary of evidence received from various grocery retailers are covered in paragraphs 7.74 to 7.95.
- 10.108 Overall, as set out in Chapter 7, the evidence from customers on barriers to switching is mixed. While the evidence indicates that switching PL suppliers is sometimes a lengthy and multi-step process, the evidence also indicates that switching costs (both monetary and non-monetary) are not particularly high and that the switching process is familiar to grocery retailers. The majority of customers (eight out of nine) submitted that switching is either possible, difficult or very difficult. However, a small number of third parties characterised switching as easy. Delay, disruption/transition-requirements and a lack of alternative supply options are seen as barriers to switching.

¹⁰⁹³ Phase 2 questionnaire Q44.

¹⁰⁹⁴ [Cérélia's response to the provisional findings](#), 28 November, paragraphs 4.45-4.46.

¹⁰⁹⁵ Responses did not distinguish between PL or branded manufacturers.

Moreover, the evidence set out in Chapter 7 indicates that switching in the PL channel is not frequent and nearly non-existent in the branded channel.

Market conditions and incentives to invest

- 10.109 In this section we consider if there are other market conditions which may influence the likelihood of entry or expansion, in particular:
- (a) Impact of market size and growth on likelihood of entry or expansion; and
 - (b) Impact of profitability on incentives.

Impact of market size and growth on likelihood of entry or expansion

- 10.110 The growth trajectory and/or growth prospects of an industry or market are important factors in predicting likelihood of entry or expansion. A high rate of growth in recent periods or a high prospect for growth in the immediate future will increase the likelihood of entry/expansion by new or incumbent players.
- 10.111 CMA analysis of Kantar data¹⁰⁹⁶ of chilled DTB products¹⁰⁹⁷ reveals a 3-year cumulative growth of [20-30]% by sales in the period ranging 2018-2021 as shown in Figure 10.2. 3-year cumulative growth in volumes for the same period is [20-30]% as shown in Figure 10.3.

Figure 10.2: Evolution of chilled DTB market by sales (Kantar data)

[✂]

Figure 10.3: Evolution of chilled DTB market by volumes (Kantar data)

[✂]

- 10.112 Both figures above show an upwards spike in sales and volumes in 2020 (and possibly 2021) which we understand to be driven by Covid-19 related lockdowns resulting in increased home baking. Annualised growth rate in sales is [5-10]%pa and volumes is [5-10]%pa.
- 10.113 Cérélia has submitted that its vision and rationale is for further growth opportunities arising from the Merger providing it with the ability to catch-up with other European countries (France, Italy, Germany) on household

¹⁰⁹⁶ Annex S109.1.41.002 of Cérélia response (part 2) to s109 notice of 30 June 2022.

¹⁰⁹⁷ Nielsen data (2020, 2021) of combined chilled and frozen sales (Annex S109.1.41.001) is broadly same.

penetration rates. Cérélia submits that the relatively limited past investment in the UK by brand owners and retailers and the recent increase in home-baking due to the popularity of the 'Great British Bake Off' TV show and Covid-19 related lockdowns provide further growth impetus.¹⁰⁹⁸

- 10.114 The chilled DTB market in the UK has experienced reasonable growth of c9% in the four-year period 2018-2021. Smaller manufacturers have told the CMA that they see the continuation of this growth. One manufacturer, [REDACTED], said that due to the cost-of-living issues, people will start to bake more at home to save money.¹⁰⁹⁹
- 10.115 However, whilst there has been clear growth of the overall market in relative terms over the past few years, the UK grocery retailer DTB market is small in absolute terms. Cérélia, which is the largest manufacturer by a significant margin in this Sector, had revenues of £[REDACTED] million for the financial year ending 30 June 2021.¹¹⁰⁰ Moreover, whilst there may be a general trend upwards over time, there has been a fall since the market peaked during the COVID-19 pandemic, which suggests this growth may not be sustained in the future.
- 10.116 The above evidence shows that the UK DTB market is small and is experiencing some growth but that sales have fallen since the end of the COVID-19 measures.

Profitability of incumbents

- 10.117 High profitability of incumbent players in a market/industry may be an important predictor of the likelihood of entry/expansion. Consistently high levels of profit in an industry/market are more likely to attract entry/expansion compared to markets that are not very profitable or are loss making.
- 10.118 Figure 10.4 below shows trends in profitability for Cérélia's pastry business.¹¹⁰¹ [REDACTED].

¹⁰⁹⁸ MN, paragraph 97.

¹⁰⁹⁹ [REDACTED] response to RFI dated [REDACTED] 2022.

¹¹⁰⁰ MN, paragraph 111.

¹¹⁰¹ Annex 109.1.24.001 of Cérélia part 1 response to s109 notice dated 30 June 2022.

Figure 10.4: CÉRÉLIA pastry business. Trends in Gross and Operating Margins

[✂]

[✂]

- 10.119 Figure 10.5 below shows trends in sales growth and profitability of Jus-Rol in the period 2019-2021.¹¹⁰² While sales have experienced minor growth, [✂].

Figure 10.5: Trends in Jus-Rol sales and gross margin

[✂]

- 10.120 In the MN, Cérélia provided the CMA with GMI's short-term financial forecasts for the operation of the Jus-Rol Business. These show that GMI [✂].¹¹⁰³ The CMA notes this only covered a year but did show sales down for the financial year ending 2021 versus underlying expectations.
- 10.121 The evidence suggests that this is an industry with low and fluctuating margins for both DTB PL suppliers and DTB brand owners.

Recent history of entry and expansion

- 10.122 In this section we look at the recent history of entry and expansion in the relevant market. This evidence may be informative of whether entry or expansion may be timely and/or likely post-Merger.
- 10.123 We considered the evidence for new entry and expansion in the market during the past five years. To be a sufficient countervailing factor, entry or expansion would need to increase the competitive constraint that rivals exert on the Merged Entity, for example by introducing additional capacity, or new or better competitive offerings. The history and experience of past entry or expansion can be informative in this regard. It should be noted that the impact of recent entry and expansion on competition is taken into consideration in Chapter 9.

Evidence on recent entry or expansion into PL and branded channels

- 10.124 Below we have set out evidence provided by Cérélia of actual entry/expansion in the last five years plus further examples we have been able to identify.

¹¹⁰² Annex 18.4 - [✂].

¹¹⁰³ MN, Annex 20.b – Dough S08 MBR Pre-Read.

New entry into DTB supply for PL

- 10.125 Cérélia submitted that it believes that in late 2020 to early 2021, a major food manufacturer [redacted] started supplying [redacted], [redacted] [redacted] [redacted]. Cérélia believes this manufacturer [redacted] was 'able to start this supply relationship by leveraging its existing relationship with [redacted] in the [redacted] category. [redacted].¹¹⁰⁴ [redacted] [redacted].¹¹⁰⁵ [redacted].¹¹⁰⁶

Expansion by existing DTB suppliers for PL

- 10.126 We are not aware of any recent major investments in manufacturing capacity or capabilities by any UK based DTB suppliers other than Cérélia's.
- 10.127 We are aware of a manufacturer of DTB products based in continental Europe, [redacted], who manufactured [redacted], who told us that it has recently added capacity with a [redacted] manufacturing plant, [redacted].
- 10.128 We understand that [redacted] was supplying some Jus-Rol products into the UK pre-Merger. [redacted].¹¹⁰⁷
- 10.129 We are also aware of Bells, a Scottish manufacturer which supplies both own brand and PL DTB products. As set out in the Alternative competitive constraints section in Chapter 9 (see paragraph 9.177), Cérélia [redacted].¹¹⁰⁸ [redacted]¹¹⁰⁹. However, the CMA understands that [redacted] or capabilities. Therefore, [redacted] (see paragraphs 9.180 to 9.183).

New entry into branded

- 10.130 Cérélia submitted that The Northern Dough Co. started in 2011 as a small business that sold a single pizza dough product in farmers' markets, won national listings in Sainsbury's and Waitrose and, in 2020-2021, expanded its range of new sweet and savoury products, including sourdough bread dough, brioche bread dough and cookie dough. Cérélia submitted that The Northern Dough Co.'s products are now distributed by the largest UK retailers including Sainsbury's, Waitrose, Tesco, Morrisons, Ocado, Booths and Wholefoods, as well as hyperlocal delivery services.¹¹¹⁰

¹¹⁰⁴ [redacted] response to CMA phase 2 competitor questionnaire.

¹¹⁰⁵ MN, paragraph 572, page 142.

¹¹⁰⁶ [redacted] response to CMA phase 2 customer questionnaire.

¹¹⁰⁷ MN, paragraph 573, page 142.

¹¹⁰⁸ Cérélia's phase 2 response to s109 notice, Question 50 Table 4. [redacted].

¹¹⁰⁹ [redacted].

¹¹¹⁰ MN, paragraph 579, page 142.

- 10.131 At the Main Party Hearing, GMI cited The Northern Dough Co. and Pret A Manger (**Pret**) as examples of recent consumer brand entries into the DTB market. GMI said that it ‘expect[s] that there is a potential for new consumer brands to come in, potentially in some smaller areas’.¹¹¹¹ While this an example of entry into the market, The Northern Dough Co. has a very small footprint and specialises in frozen DTB, not the larger chilled DTB Sector. The Parties did not provide any further submissions on Pret but the CMA understands that Pret, like The Northern Dough Co., is focused on the frozen DTB Sector.
- 10.132 Cérélia submitted that Doughlicious, which is a cookie dough brand, ‘launched two new product lines in late 2021, including a collection of RTB savoury biscuits and a collection of ready-to-eat frozen desserts wrapped in edible cookie dough’.¹¹¹²
- 10.133 We are aware that in [redacted], Cérélia [redacted] with [redacted] to use the [redacted] brand in connection with the supply of [redacted] DTB products. [redacted]. We understand that the [redacted] products [redacted] and sold at Tesco, Sainsbury’s, Asda, and Morrisons. [redacted] has said that it has [redacted].¹¹¹³

Exit by branded DTB suppliers

- 10.134 At the Main Party Hearing, GMI also cited [redacted], a company with a well-known brand within dairy, particularly butters, that entered the pastry market, with a number of products such as sheets and blocks. GMI also noted that [redacted] has since exited the DTB market.¹¹¹⁴

Our assessment of recent entry and expansion

- 10.135 We consider that entry and expansion outside of supply to the top six retailers (accounting for 90% of DTB sales) is unlikely to meet the ‘sufficiency’ part of the test for entry and expansion to be a countervailing factor.
- 10.136 For example, [redacted] is a clear example of a new DTB supplier entering the market. However, [redacted] is only serving a very small part of the market (see paragraphs 5.15 and 9.200). The evidence that [redacted] will become a stronger constraint is weak, particularly because we understand that [redacted] (see

¹¹¹¹ GMI, main party hearing transcript, page 14, lines 12-25.

¹¹¹² MN, paragraph 580, page 142.

¹¹¹³ [redacted] response to RFI dated [redacted] 2022.

¹¹¹⁴ GMI, main party hearing transcript, page 49, lines 10-25.

paragraph 10.97), and therefore it is not clear whether [X] will be able to maintain its existing market position.

- 10.137 With regards to expansion by existing DTB suppliers, [X] winning a contract with [X] shows that sizeable contracts can be won by smaller players in the market. [X].¹¹¹⁵ Moreover, the contract has not led to [X] investing in capacity at present. This is not an example of expansion. [X], an existing DTB supplier have added new capacity in continental Europe, but they are not focused on the UK market [X].
- 10.138 There has been some recent entry into the branded space, the most significant of which is [X] but only in relation to Pizza Dough. The Northern Dough Co. is a new entrant into the market that manufactures its own products but it is a small company (see paragraphs 9.3 to 9.14) and not widely used by the grocery retailers (see paragraphs 9.157 to 9.313) and specialises in frozen dough so does not compete in the much larger chilled section of the market.
- 10.139 Whilst not a recent event, the CMA notes that [X] entered the grocery retail DTB market just over ten years ago but has since exited. The CMA is not aware of any other companies exiting the market.

Impact of future tendering

- 10.140 As set out in paragraphs 10.42 to 10.61, we have not identified any current or potential rivals (including PL suppliers, branded suppliers, or manufacturers in adjacent markets) with plans to enter or expand in this market. In addition, none of the largest retailers are currently considering sponsorship in this market – see paragraphs 10.91 to 10.103.
- 10.141 In response to the CMA's entry and expansion working paper, Cérélia told us that DTB manufacturers are incentivised to continue to provide competitive services and there is surplus capacity in the market. As such, Cérélia submitted that the CMA should be assessing what would happen in the hypothetical scenario in which retailers were not happy with their DTB suppliers.¹¹¹⁶
- 10.142 In that scenario, the likelihood of entry or expansion into DTB supply is subject to three main factors: a grocery retailer's willingness to consider alternative suppliers; the likelihood of alternative suppliers being able to meet

¹¹¹⁵ [X] response to the CMA Phase 2 customer questionnaire, questions 17-19 and 22.

¹¹¹⁶ Cérélia mark-up of CMA Entry and Expansion Working Paper, Annex AIS.08.b, paragraph 39.

the requirements of a grocery retailer; and the incentives for actual or potential suppliers to consider bidding.

10.143 The MAGs note that a firm may only find it profitable to enter or expand if prices remain above pre-merger levels, and that such cases of entry or expansion are unlikely to restore pre-merger prices and are unlikely to prevent an SLC from arising.¹¹¹⁷

10.144 Within this context, in the following sections we look at:

- (a) the potential willingness of the grocery retailers to consider alternative suppliers going forward;
- (b) the ability of suppliers both in and outside the market to meet grocery retailers' needs;
- (c) the incentives for suppliers to enter or expand in response to a tendering exercise; and
- (d) the history of such entry or expansion.

10.145 The CMA considers that entry or expansion from a branded supplier is most likely to come from closely related adjacent markets into a specific product type, as we have seen in pizza dough [redacted] or in frozen [redacted].¹¹¹⁸ Such entry is unlikely to have a sufficient impact on the negative impacts of the Merger. A branded supplier operating in a single product type of the DTB market is unlikely to provide a material competitive constraint on Jus-Rol's position as the UK's leading DTB brand, a position it has enjoyed for a significant period of time. We have already found that there are likely to be significant costs involved in trying to gain brand recognition in the UK (see paragraphs 10.82 to 10.90). As already noted, the CMA has not seen any evidence of tendering for branded supply.

10.146 We therefore consider it more likely that future grocery retailer tendering events are more likely to encourage entry or expansion in the supply of DTB for PL purposes. As such, this section is primarily focused on the potential for a future tendering exercise as a route to encouraging entry or expansion in the supply of DTB products.

¹¹¹⁷ MAGs paragraph 8.36(b).

¹¹¹⁸ [redacted] response to RFI dated [redacted] 2022.

Grocery retailers' willingness to consider alternative DTB suppliers

- 10.147 In paragraphs 10.7 to 10.18, we summarised the features of the relevant market and its implications for the assessment of entry and expansion. In particular, we noted that grocery retailers review, on an ad-hoc but regular basis, their PL supply. If grocery retailers are not content with their current supplier, those reviews can result in tendering exercises which allow retailers to consider alternative DTB suppliers and can create an opportunity for expansion or entry in this market. The potential for expansion or entry to occur is strengthened by the reasonably simple nature of both the product and production method. As further explained below, tendering exercises could be used to encourage suppliers in adjacent Sectors (like baked goods or foodservice) to enter the market or a smaller DTB manufacturer to expand.
- 10.148 Tendering exercises could encourage suppliers in adjacent Sectors to enter the DTB market. One such sector is the foodservice sector that already produces DTB goods for a wide range of customers, just not grocery retailers. We asked grocery retailers if they would consider foodservice suppliers. Most (nine out of 11) of the retailers that we asked appeared willing to consider switching to, or at least open to actively considering, foodservice suppliers, subject to qualifying criteria (see paragraphs 10.107, 10.108).
- 10.149 The grocery retailers that can tender the largest and, therefore, most lucrative contracts are Tesco, Sainsbury's, Asda and Morrisons. All bar [redacted] said they would consider foodservice suppliers.¹¹¹⁹
- 10.150 [redacted] told us that they would consider foodservice suppliers 'as long as technical capability, surety of supply and ability to hit commercials'.¹¹²⁰ Whilst [redacted] told us they would not consider sponsorship, it did tell us that in the event it was unhappy it would look at who else was in the market and whether they have capacity.¹¹²¹
- 10.151 Tendering exercises could also encourage suppliers which are already supplying DTB products to retailers, but which are at present small in comparison to Cérélia. We have evidence of this in the [redacted] deal with [redacted], albeit that this exercise has not led to [redacted] investing in new capacity.¹¹²²
- 10.152 The evidence suggests that in the context of a tendering exercise there is some willingness from the grocery retailers to consider a range of potential

¹¹¹⁹ Responses to CMA phase 2 customer questionnaire, question 24.

¹¹²⁰ [redacted] response to CMA phase 2 customer questionnaire, question 24.

¹¹²¹ Transcript of a call with [redacted], [redacted] 2022, page 28.

¹¹²² [redacted] told the CMA that it had invested in some new equipment related to reconfiguring its existing capacity.

suppliers, including both smaller DTB suppliers, and suppliers active in foodservice and potentially other adjacent Sectors.

Ability of current or potential DTB suppliers to meet the needs of grocery retailers

- 10.153 As explained above, the UK's largest grocery retailers assess the DTB market regularly and appear reasonably open to consider not only current DTB suppliers, but also those in adjacent Sectors. However, this is subject to those suppliers meeting the grocery retailers' specific criteria. The grocery retailers told us they were not aware of any suppliers in the foodservice market who currently would meet these criteria.¹¹²³
- 10.154 For an existing PL supplier to expand they would need to invest in new capacity. Companies already active in the manufacturing of DTB products already have the necessary capabilities and know-how to operate in this market. In terms of upskilling and expanding the ancillary services that grocery retailers desire, the evidence indicates that whilst there are some barriers to be overcome, they are not large (see paragraphs 10.62 to 10.71). We therefore consider that the key hurdles for companies to successfully expand production capacity are resource and incentive. We come onto the potential incentives to expand production capacity in the following section (see paragraphs 10.159 to 10.170 below).
- 10.155 With regard to the ability of those in adjacent sectors to enter the PL space, we agree with Cérélia that those currently operating in the foodservice Sector and those supplying baked pastry goods are the most credible sources. Suppliers in the foodservice industry already supply DTB products and those in the baked goods could produce DTB products from their existing lines.
- 10.156 Whilst operating in related pastry manufacturing markets, these suppliers would still likely need to make some investments if they wished to enter the grocery retail DTB market even if they had available capacity. The investments would be business specific and depend on the area of the market they operated in. For example, foodservice suppliers would likely need to invest in packaging equipment and related expertise as this is not something most currently offer as they do not supply consumer products. Those suppliers that manufacture baked goods may have packaging expertise but are potentially going to have to invest in some DTB capabilities, which may involve acquiring personnel, but also infrastructure like refrigeration. These

¹¹²³ [redacted], [redacted], [redacted], [redacted], [redacted], [redacted] and [redacted] responses to CMA phase 2 customer questionnaire, question 24.

are not insurmountable barriers if retailers would consider such suppliers and the incentives to pursue such contracts existed.

- 10.157 In contrast to this, [X] told us that due to the volume needs a foodservice supplier would be an unlikely solution, giving the example of pack size complications given the different needs of the sectors, meaning that foodservice suppliers' existing lines may require adaptation, assuming there is capacity for additional volume.¹¹²⁴ Similarly both [X] and [X] told us that it is not aware of a foodservice supplier that could meet its needs.¹¹²⁵ [X] told us that it does not know of any potential suppliers, other than [X], that it could partner with.¹¹²⁶
- 10.158 Overall we consider that smaller players already in the UK grocery retail market could serve a large UK retailer with targeted and specific investments that would be unique to the situation of the supplier. In addition, those in adjacent markets such as foodservice could, in principle, service the grocery retail DTB market. However, the evidence suggests that grocery retailers are not aware of any third party in the foodservice sector that could meet their needs.

Incentives to enter and expand in response to a tender

- 10.159 In this section we consider the market conditions and the implications of this on the likelihood of smaller suppliers expanding or new entrants coming into the market before looking at the economics of establishing a new production line.

Market conditions

- 10.160 As set out in paragraphs 10.117 to 10.121 we found that Cérélia and the Jus-Rol business [X], and in the case of Cérélia, [X]. In addition, as set out in paragraphs 10.110 to 10.116, the market in absolute terms is not large, and its growth is slow, and has fallen from a peak experienced during the UK's COVID-19 lockdown in 2020.
- 10.161 This could suggest that the incentives for current or potential suppliers of PL services to expand or enter the market are low, as the market conditions are not attractive. However, in contrast to the general market conditions, if the largest retailers were to tender contracts, the value of these would be in the

¹¹²⁴ [X] response to CMA phase 2 customer questionnaire, question 24.

¹¹²⁵ [X] and [X], responses to CMA phase 2 customer questionnaire, question 24.

¹¹²⁶ Transcript of a call with [X], [X] 2022, page 20.

millions of pounds. As an example, [redacted] are expecting to supply [redacted] for [redacted] from [redacted]. [redacted] expect this to be worth approximately £[redacted] million per annum with [redacted] telling us that [redacted] has provided (non-binding) volume expectations for [redacted].¹¹²⁷

Incentives to expand production capacity

- 10.162 Cérélia produced an assessment of the time, costs and pay-back period for the installation of a new production line (see paragraph 10.36 to 10.39).
- 10.163 In our view, the analysis shows that within [redacted], a smaller supplier or a new market entrant could [redacted]. The analysis also showed that a supplier that secured a contract with a large UK retailer could expect to recoup its initial investment in approximately [redacted].
- 10.164 We received some evidence that supported the installation time and cost Cérélia used in its modelling (see paragraph 10.69). Cérélia's estimate, that it considers conservative, is that a new production line could be installed and capacity brought online [redacted] at a cost of somewhere between £[redacted]million. Cérélia estimate the payback period being [redacted], depending on whether the supplier was a smaller DTB supplier or came from an adjacent sector like foodservice.
- 10.165 With regard to the time period, the CMA is not aware of any such capacity commissioning at present. Whilst the installation of a new manufacturing line may occur in response to a future grocery retail tendering exercise, this pushes the entry/expansion event further into the future. [redacted] told us it would take six months to launch a product at a new supplier.¹¹²⁸ In addition, once a production line is installed, there will likely be a period of testing and audit exercises undertaken by the grocery retailer. The time for a tendering event to occur, the tendering exercise itself plus testing and auditing post the installation period potentially push such an expansion event further out than Cérélia suggests.
- 10.166 The £[redacted] million cost of installation, whilst not high in absolute terms must be assessed against the likelihood of achieving a profit and the requisite volumes required, to at the very least break-even. (By way of comparison we note, as set out above, that [redacted].)

¹¹²⁷ Note of a call with [redacted], [redacted] 2022.

¹¹²⁸ Note of a call with [redacted], [redacted] 2022.

- 10.167 Whilst [X] is not an example of expansion as [X] was already in the market and is not expanding capacity to take on these volumes, it does provide a useful example of retailers' willingness to consider small suppliers and of the value and volumes that can arise from retailer tendering exercises. We understand this [X] contract to involve volumes of slightly under [X] per annum, [X], there are likely to be issues around timeliness and risks to suppliers from relying on single customer contracts.
- 10.168 Leaving aside the revenue concerns, the Cérélia model assumes a large grocery retailer would shift a significant volume to a new supplier. The retailers' openness to considering alternatives and the [X] example provide evidence that retailers may be willing to consider this strategy. From the DTB manufacturer's point of view, there are risks attached to committing to expansion within the context of a tender award. In practice, the retailers do not currently commit to long term contracts, with most contracts being of no fixed term. Investing millions of pounds into such a market and being reliant on a single contract, that can be exited at fairly short notice,¹¹²⁹ would be a risk.
- 10.169 If the cost of expansion was reflected in the contract price to some extent and contracts are typically not fixed term, therefore potentially short-term, then it seems possible that contract prices could be materially higher. If prices were above pre-merger levels as a result, we would not regard this as entry that would countervail the adverse effects of the merger. Whilst grocery retailers could offer longer term contracts to encourage new entry/expansion if they were unhappy with their current supply options, it would nevertheless be a materially different contractual model and a change in behaviour to what we have seen in the recent past.
- 10.170 Our assessment on alternative competitive constraints (see paragraphs 9.157 to 9.313), which includes grocery retailers' assessment of their alternative options should quality be degraded, concluded that the grocery retailers' options are limited.

Past examples of tendering

- 10.171 We have considered whether past examples of the large retailers tendering contracts that led to either expansion by a small grocery retail DTB supplier or a new PL supplier entering the market either with spare capacity or new

¹¹²⁹ The GSCOP requires a period of notice, the reasonableness of which will depend on the circumstances of the individual case, see [Groceries Supply Code of Practice](#), 4 August 2009.

capacity, may support Cérélia's view that a future tendering exercise could trigger entry into the market.

- 10.172 As set out in paragraphs 10.124 to 10.139, there have been no significant examples of this happening. [REDACTED] are the best example of a new market entrant. However, this is a very small contract with [REDACTED].

CMA assessment of entry and expansion from a future tender

- 10.173 The evidence shows that grocery retailers are willing to consider alternative suppliers. Given the features of the market, they are likely to assess the DTB market, including what suppliers and potential suppliers exist, within a reasonable timeframe, in the context of a tendering process. Such an event could trigger entry or expansion in DTB grocery retail supply from suppliers in adjacent markets or smaller DTB suppliers.
- 10.174 However, grocery retailers impose requirements on suppliers that any new entrant would need to meet. These retailers told us that they are not aware of foodservice suppliers who could meet their requirements. In addition, the market has low margins and a slow historical trend of growth, adding to the risk that entry or expansion will not be successful. CMA guidance notes that if a firm only finds it profitable to enter or expand if prices remain above pre-merger levels, such cases of entry or expansion are unlikely to restore pre-merger prices and are unlikely to prevent an SLC from arising.¹¹³⁰
- 10.175 Cérélia produced a model that shows the upfront cost of installing a new production line could be recouped in approximately [REDACTED] if a large UK DTB supply contract was available. The CMA has some concerns over the revenues in the Cérélia model but putting that aside, at face value the model does provide evidence that in principle entry can be successful.
- 10.176 The model however relies on the winning and retaining of a large DTB contract. There is a risk of losing such a contract prior to recouping the investment due to the non-fixed term nature of contracts in this market. Whilst grocery retailers could offer a greater or longer guarantee, this would require a change in their behaviour.
- 10.177 The model provides little evidence that a supplier is likely going to expand capacity in a timely manner as whilst it may only take [REDACTED] to install a line, no suppliers have started this process, retailers are not looking to tender at present and post installation there will be a period of time set aside for quality

¹¹³⁰ MAGs, paragraph 8.36(b).

control before the grocery retailers start accepting stock in their stores. The CMA has not found any third party currently investing in capacity and no retailers are currently or imminently pursuing this approach with any supplier.

- 10.178 Assuming a grocery retailer was to assess the market within the next year, there would then be a tendering exercise only after which would a supplier consider investing in new capacity to serve DTB products to a large UK retailer. This raises questions around timeliness of such an event.
- 10.179 There is limited historical evidence to support future tendering exercises encouraging entry and expansion. The largest change in the market, [redacted], has not resulted in any current plans at [redacted] to invest in capacity. The [redacted] is a genuine example of a new market entrant bringing new manufacturing capacity to the grocery retail DTB market. However, we understand that [redacted] (see paragraph 10.97), and therefore it is not clear whether [redacted] will be able to maintain its existing market position.
- 10.180 Three DTB suppliers, [redacted] are very unlikely to invest in capacity. [redacted] told us that it is not currently planning on expanding capacity but is focused on reconfiguring its capacity for [redacted].¹¹³¹ [redacted] told us it could already serve a large UK retailer¹¹³² and [redacted] have recently already finished expanding their manufacturing capacity.¹¹³³

CMA summary assessment and conclusion on entry and expansion

- 10.181 In this final section, we draw together the evidence above to form a conclusion on whether or not entry or expansion would be timely, likely and sufficient to prevent an SLC from arising as a result of the Merger from either a brand owner or manufacturer of DTB products.
- 10.182 The CMA's approach to barriers to entry has been to test Cérélia's assertions that barriers to entry and expansion are low, by seeking and considering the views of third parties, looking at the history of entry and expansion, and looking at the conditions and incentives to enter or expand in the supply of DTB products to the UK grocery retail market. In particular, the CMA has also sought to identify third parties with specific plans that could impact its conclusion on the effects of the Merger.

¹¹³¹ [redacted] response to CMA phase 2 competitor questionnaire, questions 16 and 17.

¹¹³² [redacted] response to CMA phase 2 competitor questionnaire, question 16.

¹¹³³ [redacted] response to CMA phase 2 competitor questionnaire, question 17.

Entry and expansion from branded suppliers of DTB products

- 10.183 The CMA has not identified any branded suppliers looking to enter the market or any specific plans from those in the market to significantly expand or invest in their DTB business (see paragraphs 10.42 to 10.51).
- 10.184 The CMA has identified some recent entry from branded suppliers (see paragraphs 10.124 to 10.139), for example in the DTB pizza dough and frozen Sectors. The CMA is also aware of a branded DTB supplier, [X], who entered but exited the market in 2016.¹¹³⁴
- 10.185 Whilst past entry and expansion suggests that entry into the branded space is possible, history suggests this is most likely to be in a specific product type, rather than across a range of DTB products. Our evidence shows (see paragraphs 10.82 to 10.90), that there would potentially be significant investment required to launch a new brand. Jus-Rol has been the UK's largest DTB brand for a significant period of time.
- 10.186 Based on the above, the CMA considers that the size of the market and low margins suggest that entry from a branded supplier in an adjacent market is unlikely. The long-standing strong market position held by Jus-Rol, as the UK's only national grocery retail DTB brand, does not suggest that a brand competitor is likely to appear as a strong alternative to Jus-Rol in a timely manner.

Entry and expansion from suppliers of DTB products for PL purposes

- 10.187 The CMA has not identified any DTB manufacturers who supply DTB products that are looking to enter the market or any specific plans from those in the market to significantly expand their DTB business (see paragraphs 10.42 to 10.51).
- 10.188 We found some evidence of barriers to entry and expansion in relation to competing for new PL contracts and the cost of capacity expansion but did not find economies of scale to be a significant barrier (see paragraph 10.64 and 10.72 to 10.81). We also consider that the simple nature of the product and production process, both of which are the same or similar to products in the foodservice and baked pastry goods markets means that there are a number of potential market entrants (see paragraph 10.173).

¹¹³⁴ GMI, main party hearing transcript, page 47.

- 10.189 We consider Cérélia's submissions on the time it would take to add a new manufacturing line to be reasonable and we broadly agree with its assessment of the potential cost of entry. However, the CMA found no evidence of either PL or branded DTB suppliers having any plans to expand their manufacturing capacity in the next 18-24 months. Coupled with this, the grocery retailers are not currently conducting any tendering exercises. Both of these facts push the time it would take for new manufacturing capacity to enter the UK market further into the future.
- 10.190 [X], a [X] from 2021¹¹³⁵ said that it had no further plans to expand in the Sector (see paragraph 10.49). This is consistent with Cérélia's own experience, as it also confirmed it was not aware of any third parties entering or expanding.¹¹³⁶ [X] are uniquely well placed to expand capacity having [X] but told us they have no immediate plans to expand capacity but might consider it in the future (see paragraph 10.47). [X] told us it had no plans to expand, did not anticipate an increase in demand and would not need to invest in production capacity to meet the requirements of an additional UK retailer (see paragraph 10.44).
- 10.191 There is limited evidence that sponsorship is likely to occur in the future, with the major UK grocery retailers not considering sponsoring the entry or expansion of DTB suppliers of PL products in the near term nor looking to support innovative or disruptive brands. Four grocery retailers [X], [X], [X] and [X] also consider switching to be difficult. One of these grocery retailers [X] also noted that the commitments it would need to offer a new supplier would be 'significant' in order to justify the capital expenditure (see paragraphs 10.147 to 10.152).
- 10.192 Other manufacturers of DTB products identified a number of barriers to entry and expansion and reasons for their lack of plans, such as the need to have a UK-based sales team, a proven track record, transportation logistics, the level of investment required, the fact that it is a low margin Sector, the current economic environment, rising inflation, Brexit and the strong market position of Cérélia and Jus-Rol (see paragraphs 10.42 to 10.60 and 10.64). The Parties' margins support this being a volatile and low margin market (see paragraphs 10.117 to 10.121).
- 10.193 Whilst we have not received evidence of imminent entry or expansion, we did consider the likelihood of future entry or expansion occurring in response to a grocery retail tender, as Cérélia suggested this would be the route by which

¹¹³⁵ MN paragraph 492.

¹¹³⁶ Cérélia, main party hearing transcript, page 68, lines 8 to 25.

entry or expansion would occur. We found that the grocery retailers review their suppliers regularly, which, in the event they were unhappy could lead to a tendering exercise (see paragraphs 10.147 to 10.152).

- 10.194 We found a general willingness from the grocery retailers to consider, in the context of a tendering process, not only those already in the market, but those in adjacent Sectors, like foodservice, subject to them being able to meet the grocery retailers' requirements. However, none of the grocery retailers were able to identify such a supplier (see paragraphs 10.140 to 10.152). We consider that there are potential competitors in adjacent markets or smaller competitors already in the market who could enter or expand to serve a UK retailer if they chose to (see paragraphs 10.153 to 10.158).
- 10.195 We are not aware of any discussions that grocery retailers are having with competitors that we believe could encourage entry or expansion in this market. Therefore, the openness of grocery retailers to consider alternative suppliers and the ability of alternative suppliers to meet grocery retailers' needs must be weighed against the incentives for this to occur in the future. On incentives, we consider that the small size of the market and low margins suggest that entry, even from adjacent markets, is unlikely (see paragraphs 10.159 to 10.170).
- 10.196 Given no such discussions with grocery retailers are currently in progress we also have doubts as to whether entry or expansion via a future tender would be timely (see paragraph 10.162 to 10.165).
- 10.197 Recent history does not provide any support for the Parties' submission that potential future tendering exercises are likely to lead to entry or expansion in the supply of DTB products to grocery retailers. To invest in new capacity, a supplier would likely need to acquire a sizeable order from a grocery retailer. [X] recent contract with [X] is not an example of expansion, as it did not require investment in a new production line. Investing in a production line when such contracts have no fixed term further increases risk, thereby reducing the likelihood of successful entry at a scale sufficient to countervail the SLC.

Conclusion on entry and expansion

- 10.198 There is no evidence of imminent entry or expansion in the wholesale supply of DTB products to UK grocery retailers. This, combined with the extremely limited evidence of recent entry or expansion in the market suggests that future entry or expansion in a timely or sufficient manner is unlikely.

- 10.199 We considered potential entry or expansion as a response to a future tendering exercise by a grocery retailer, which C er lia considered the most likely scenario that would encourage future entry or expansion. Whilst we agree that, in principle, grocery retailers could help competitors expand or enter the UK DTB market, on balance we consider that the evidence from grocery retailers and competitors does not support it being timely, likely or sufficient to mitigate or prevent the SLC in the wholesale supply of DTB products.
- 10.200 We therefore conclude that entry and expansion would not be timely, likely or sufficient to mitigate or prevent the SLC we have found.

Merger efficiencies

- 10.201 We considered whether any efficiencies arising from the Merger could constitute a countervailing factor.
- 10.202 In some instances, mergers can give rise to efficiencies.¹¹³⁷ Rivalry-enhancing efficiencies change the incentives of the merger firms and induce them to act as stronger competitors to their rivals—for example, by reducing their marginal costs giving them the incentive to provide lower prices or a better quality, range or service.¹¹³⁸ They may prevent an SLC by offsetting any anticompetitive effects.¹¹³⁹
- 10.203 The CMA will use the following criteria when it assesses whether merger efficiencies mean that the merger does not result in an SLC. The merger efficiencies must:
- (a) enhance rivalry in the supply of those products where an SLC may otherwise arise;
 - (b) be timely, likely and sufficient to prevent an SLC from arising;
 - (c) be merger-specific; and
 - (d) benefit customers in the UK.¹¹⁴⁰
- 10.204 Cost and revenue synergies often form part of the rationale for mergers, and it is not uncommon for firms to make efficiency claims in merger proceedings.

¹¹³⁷ MAGs, paragraph 8.2.

¹¹³⁸ MAGs, paragraph 8.3 (a).

¹¹³⁹ MAGs, paragraph 8.4.

¹¹⁴⁰ MAGs, paragraph 8.8

Many efficiency claims by merger firms are not accepted by the CMA because the evidence supporting those claims is difficult to verify and substantiate.¹¹⁴¹

10.205 Most of the information relating to the synergies and cost reductions resulting from a merger is held by the merger firms.¹¹⁴² Therefore, it is for the Parties to demonstrate that the Merger will result in efficiencies.¹¹⁴³

10.206 Cérélia has made no rivalry-enhancing efficiency claims as part of this Inquiry.

10.207 Whilst not making any specific rivalry enhancing efficiency claims, Cérélia has made reference to consumer benefits in its Merger rationale (see paragraph 2.29). Cérélia submit that ‘under GMI’s ownership, the Jus-Rol Business has [REDACTED]. Cérélia said that it intends to make significant investments in Jus-Rol in short order with an aim to improve overall household penetration and category growth by reinvigorating the brand and its products, thereby delivering greater innovation and choice which would benefit retailers and ultimately UK consumers.¹¹⁴⁴

10.208 The evidence submitted by Cérélia in support of the Merger rationale and consumer benefits includes:

(a) a report commissioned in May 2022 (after the CMA had begun its review of the transaction), titled “[REDACTED]” authored by the [REDACTED].¹¹⁴⁵ The report highlights [REDACTED] from an end-consumer perspective and specifically in respect of Jus-Rol. It identifies [REDACTED] which Cérélia has submitted are an opportunity for Jus-Rol to add value to the sector.¹¹⁴⁶

(b) a valuation model¹¹⁴⁷ that shows a [REDACTED]¹¹⁴⁸ as an [REDACTED] in the three-year period from 2023 to 2025 and a Capex of EUR [REDACTED] in 2023 followed by [REDACTED] each in 2024 and 2025. Cérélia said¹¹⁴⁹ that these investments would go towards developing new nutritional recipes, recyclable packaging and marketing/advertising to establish Jus-Rol’s renewed brand proposition.

¹¹⁴¹ MAGs, paragraph 8.6.

¹¹⁴² MAGs, paragraph 8.7.

¹¹⁴³ MAGs, paragraph 8.15.

¹¹⁴⁴ MN, paragraph 584.

¹¹⁴⁵ Annex S109.1.5.001 – [REDACTED]

¹¹⁴⁶ CUK’s Part 1 response to s109 notice dated 7 July 2022, paragraph 5.3.

¹¹⁴⁷ Annex S109.1.3.001 – Project Delta_Business Plan v38 – standalone – [REDACTED].

¹¹⁴⁸ CUK’s part 1 response to s109 notice dated 30 June 2022, paragraph 3.2(b).

¹¹⁴⁹ CUK’s part 1 response to s109 notice dated 30 June 2022, paragraph 3.2(a).

Our assessment

- 10.209 As noted above at paragraph 10.207, the Parties have made no rivalry-enhancing efficiency claims as part of this inquiry.
- 10.210 We considered whether the consumer benefits submitted by Cérélia could meet the cumulative criteria set out in paragraph 10.203. However, we do not consider the consumer benefits submitted are efficiencies that are likely to prevent an SLC for the following reasons:
- (a) We do not consider that the Merger, which removes the constraint of a significant rival to Cérélia, is likely to strengthen the ability and incentive of Cérélia to act pro-competitively for the benefit of consumers. The cost of any increased innovation that would arise from Cérélia's plans would at least partially be borne by consumers [✂].
 - (b) With regards to Merger specificity, the CMA must assess whether the efficiencies are reliant on the merger in question or whether they would be brought about by other means.¹¹⁵⁰ In this case we consider that there are less anti-competitive ways to increase investment and promotion into the UK DTB sector. For example, Cérélia could invest in product development for the products it supplies to supermarkets, or develop a brand of its own, or Jus-Rol could increase its investment in the brand and its products.
- 10.211 The Parties have not sufficiently demonstrated that the Merger would result in improving overall innovation and choice to the ultimate benefit of UK consumers and therefore offset the adverse effects of the Merger on competition.
- 10.212 The CMA's assessment is that the Merger efficiencies submitted by Cérélia would not be timely, likely, and sufficient to mitigate or prevent an SLC from arising in the UK market for wholesale supply of DTB products.

Conclusion on countervailing factors

- 10.213 Based on our assessment set out in this chapter, we have concluded that there are no countervailing effects arising from entry and expansion or Merger efficiencies that could offset the effect of the SLC we found in the supply of PL and branded DTB products to UK grocery retailers.

¹¹⁵⁰ [MAGs](#), paragraph 8.16.

11. Conclusion on SLC

- 11.1 As a result of our assessment, we conclude that the Merger has resulted in the creation of an RMS.
- 11.2 We also conclude that the creation of that situation has resulted, or may be expected to result, in an SLC in the wholesale supply of DTB products to grocery retailers in the UK.

12. Remedies

- 12.1 This chapter considers remedies to address the SLC and its adverse effects identified from our competitive assessment (see paragraphs 9.410 to 9.414). We have concluded that the completed acquisition by Cérélia of the Jus-Rol business has resulted, or may be expected to result, in an SLC in the wholesale supply of DTB products to grocery retailers in the UK.
- 12.2 Our assessment of remedies has been prepared after consideration of written and oral responses received from Cérélia, GMI and third parties following the publication of the notice of possible remedies on 4 November 2022 (**Remedies Notice**) and the issuing of our provisional decision on remedies to Cérélia and GMI on 16 December 2022 in the form of a RWP.
- 12.3 We published a Remedies Notice,¹¹⁵¹ in which we sought views on possible remedies to the SLC. In particular, we sought responses on an asset divestment involving the sale of the entire Jus-Rol Business, akin to an unwinding of the Merger. We also invited views on whether there are other practicable remedies to address the SLC and any resulting adverse effects, including any behavioural remedies that could be required to support the effectiveness of a divestiture.
- 12.4 Cérélia responded to our Remedies Notice on 18 November 2022 and separate remedy hearings were held with Cérélia and GMI on 1 December 2022.
- 12.5 We provided Cérélia and GMI our provisional decision on remedies in the RWP. We have taken Cérélia's response to the RWP provided on 23 December 2022 into consideration in reaching a final view on remedies.

¹¹⁵¹ [The notice of possible remedies](#) sets out the actions which the CMA considers it might take for the purpose of remedying the SLC and resulting adverse effects identified in the Provisional Findings.

- 12.6 In addition to gathering evidence and views from C  r  lia and GMI, we contacted a number of third parties to discuss potential remedy options.¹¹⁵² When assessing how much weight to place on such evidence, the CMA has taken into account, in particular, that third parties will often have limited insight into the detail of the remedy proposals, uncertainty as to how they would be implemented and a lack of knowledge of the CMA's remedies framework.
- 12.7 The chapter is structured as follows:
- (a) CMA remedies assessment framework;
 - (b) an overview of remedy options;
 - (c) an assessment of the effectiveness of potential remedies;
 - (d) an assessment of the proportionality of the effective remedies identified, including an assessment of the relevant customer benefits (**RCBs**) identified by C  r  lia; and
 - (e) our decision on remedies.

CMA remedies assessment framework

- 12.8 Pursuant to [section 35\(3\)](#) of the Act, where the CMA decides that a completed merger may be expected to result in an SLC, it must decide the following:
- (a) whether the CMA should itself take action under [section 41\(2\)](#) of the Act for the purpose of remedying, mitigating or preventing the SLC concerned or any adverse effect which may be expected to result from the SLC;
 - (b) whether the CMA should recommend the taking of action by others for the purpose of remedying, mitigating or preventing the SLC concerned or any adverse effect which may be expected to result from the SLC; and
 - (c) in either case, if action should be taken, what action should be taken and what is to be remedied, mitigated or prevented.
- 12.9 The Act requires that the CMA, when considering possible remedial actions, shall 'in particular, have regard to the need to achieve as comprehensive a

¹¹⁵² The CMA had phone calls with [REDACTED]. We also requested a call with [REDACTED] but this was declined by them.

solution as is reasonable and practicable to the SLC and any adverse effects resulting from it'.¹¹⁵³

- 12.10 To fulfil this requirement, as set out in the Merger Remedies Guidance, the CMA will seek remedies that are effective in addressing the SLC and its resulting adverse effects. Between two remedies that the CMA considers equally effective, it will choose that which is least costly or least intrusive. The CMA will also seek to ensure that no remedy is disproportionate to the SLC and its adverse effects. In this consideration, the CMA may also have regard, in accordance with the Act,¹¹⁵⁴ to any RCBs arising from the merger.
- 12.11 The CMA will seek remedies that have a high degree of certainty of achieving their intended effect, namely remedies that the CMA has a high degree of confidence will be successful in stopping the SLC or preventing it from arising. As is made clear in the Merger Remedies Guidance, an effective remedy requires an acceptable risk profile because customers or suppliers of merger parties should not bear significant risks that remedies will not have the requisite impact on the SLC or its adverse effects.¹¹⁵⁵ The CMA exercises considerable judgement on this based on both the evidence and its experience. This high degree of certainty has been acknowledged by the CAT in *Ecolab* where the CAT found the CMA was fully entitled to find on the evidence that a proposed remedy was not effective as it lacked the high degree of certainty of achieving the intended effect.¹¹⁵⁶ The CAT also accepted the one-off nature of remedies intervention contributed to the need for a high degree of certainty.¹¹⁵⁷
- 12.12 A detailed description of the factors the CMA will examine in determining what remedial action is to be taken can be found in its Merger Remedies Guidance.

Nature of the SLC

- 12.13 We have concluded that the creation of the relevant merger situation has resulted or may be expected to result in an SLC in the wholesale supply of DTB products to grocery retailers in the UK.

¹¹⁵³ [Section 35\(4\)](#) of the Act. This has been tested in appeals: (a) The Court of Appeal in *Ryanair* stated this meant “deciding what will ensure that no SLC either continues or occurs” (see: [Ryanair Holdings PLC v CMA \[2015\] EWCA Civ 83](#) at 57); and (b) The CAT most recently in *Ecolab* noted this duty is encapsulated in the concept of an effective remedy. The CAT went on to observe that the “objective in seeking an effective divestiture remedy is to establish a competitor that will remove the loss of competition resulting from the Merger.” See [Ecolab Inc v CMA \[2020\] CAT 12 \(Ecolab\)](#) at 75 and 79.

¹¹⁵⁴ [Section 35\(5\)](#) of the Act. See also [Merger remedies guidance, CMA 87](#), paragraphs 3.1 – 3.4.

¹¹⁵⁵ [Merger remedies guidance, CMA 87](#), paragraph 3.5 (d).

¹¹⁵⁶ [Ecolab Inc v CMA \[2020\] CAT 12](#) at 88-89.

¹¹⁵⁷ [Ecolab Inc v CMA \[2020\] CAT 12](#) at 83.

- 12.14 We found that the Merger will bring together the two largest suppliers in the wholesale supply of DTB products in the UK. The Merger leads to a combined share of [60-70%] and an increment of [30-40%] (see paragraph 9.10).
- 12.15 The evidence shows that pre-Merger both Jus-Rol and Cérélia have strong positions in their respective channels (branded and PL)¹¹⁵⁸ and that they compete to supply retailers with DTB products. In particular, we found that that for grocery retailers which have chosen to stock PL and branded DTB products, the cross-channel competitive constraint between the Parties is important to allow them to secure a good deal in their commercial negotiations (see paragraph 9.152).

Overview of remedies options

- 12.16 As set out in the Mergers Remedies Guidance,¹¹⁵⁹ remedies are conventionally classified as either structural or behavioural:
- (a) Structural remedies, such as divestiture or prohibition, are generally one-off measures that seek to restore or maintain the competitive structure of the market by addressing the market participants and/or their shares of the market.
 - (b) Behavioural remedies are normally ongoing measures that are designed to regulate or constrain the behaviour of merger parties with the aim of restoring or maintaining the level of competition that would have been present absent the merger.
- 12.17 In merger inquiries, the CMA generally prefers structural remedies over behavioural remedies, because:¹¹⁶⁰
- (a) structural remedies are more likely to deal with an SLC and its resulting adverse effects directly and comprehensively at source by restoring rivalry;
 - (b) behavioural remedies are less likely to have an effective impact on the SLC and its resulting adverse effects, and are more likely to create significant costly distortions in market outcomes; and

¹¹⁵⁸ With Cérélia also having a significant presence in the [redacted].

¹¹⁵⁹ [Merger remedies guidance, CMA 87](#), paragraph 3.34. Some remedies, such as those relating to access to IP rights may have features of structural or behavioural remedies depending on their particular formulation.

¹¹⁶⁰ [Merger remedies guidance, CMA 87](#), paragraph 3.46.

- (c) structural remedies rarely require monitoring and enforcement once implemented.

Options set out in the Remedies Notice

- 12.18 In the Remedies Notice we set out one potential structural remedy: the full divestiture of the assets acquired as part of the Transaction comprising the Jus-Rol business. We considered that this would be similar to a prohibition of the Merger and it would re-create a similar market structure to that which existed at the time of the Merger.¹¹⁶¹ We therefore took the preliminary view that, subject to implementation considerations, a divestiture of the Jus-Rol Business would represent a comprehensive and effective remedy to all aspects of the SLC we had provisionally found, and consequently any resulting adverse effects.
- 12.19 We also said our initial view was that there were no other structural or smaller asset divestitures that would address the provisional SLC because the Merger primarily consists of only the Jus-Rol brand and contracts with grocery retail customers.
- 12.20 We invited views on aspects of remedy design which might be needed to make a divestiture remedy effective and to ensure that no new competition concerns would arise.
- 12.21 We invited views on other remedies but noted our provisional view that smaller asset divestitures or a fixed-term licensing remedy would not be effective at addressing our concerns.¹¹⁶²
- 12.22 In the Remedies Notice, we said that our preliminary view was that a behavioural remedy would be very unlikely to be an effective remedy to the SLC or any resulting adverse effects we had found. However, we said that we were willing to consider any remedy, including behavioural remedies, that were put forward as part of the consultation.

C r lia's response to the Remedies Notice

- 12.23 In response to the Remedies Notice, C r lia proposed two alternative remedy options:

¹¹⁶¹ [Notice of possible remedies, 4 November 2022, paragraph 15.](#)

¹¹⁶² Third parties in this case were often reluctant to engage with the remedy process. Following the publication of the Notice of Possible Remedies, we wrote to 29 third parties inviting written responses to the Remedies Notice. We received no substantive responses to this request.

- (a) **The Production Line Remedy** – we consider this to be a partial divestiture remedy and set out our assessment in further detail at paragraphs 12.163 to 12.223; and
- (b) **The Distribution Remedy** – we consider this to be a behavioural remedy and set out our assessment in further detail at paragraphs 12.225 to 12.278.

12.24 Following C er lia’s written response, we held hearings with both C er lia and GMI.

Third party remedy proposals

- 12.25 We held calls with nine third parties (two of which were held after the response hearings) and received written responses from two third parties ([REDACTED]) to written questions regarding remedies.¹¹⁶³
- 12.26 We received two further remedy suggestions from [REDACTED] and [REDACTED].¹¹⁶⁴
- (a) [REDACTED] suggested an open book pricing model that tracks raw materials, labour and energy, allowing comparison of any cost movements to public indices.¹¹⁶⁵
 - (b) [REDACTED] suggested that C er lia could make a subsidy or payment to a new party to help develop a second pastry brand to compete with Jus-Rol.¹¹⁶⁶
- 12.27 In our view, the proposed open book pricing remedy would only have a limited impact on the SLC. While customers would be aware of changes in prices that were not justified by changes in input costs, they would still be faced with the lack of alternative supply that we identified in our SLC assessment. In addition, this remedy does not address adverse effects in the form of lower quality or less innovation. As a result, we consider that this remedy would not provide an effective solution to the SLC and do not consider it further.
- 12.28 We also considered [REDACTED] suggestion of creating or developing a second brand to compete with Jus-Rol. This remedy would not directly address the SLC, which is a loss of competition between Jus-Rol and C er lia’s PL business. In addition, Jus-Rol is the UK’s leading and long-established DTB brand. As a result, the likelihood of the new brand successfully competing in a timely

¹¹⁶³ [REDACTED] response to written questions, [REDACTED] 2022; [REDACTED] response to written questions, [REDACTED] 2022.

¹¹⁶⁴ [REDACTED] Call Note, [REDACTED] 2022, paragraphs 12 and 13

¹¹⁶⁵ [REDACTED] response to written questions, question 7.

¹¹⁶⁶ [REDACTED] Call Note, [REDACTED] 2022, paragraphs 12 and 13

manner against Jus-Rol is highly uncertain and unlikely. As a result, we consider that this remedy proposal would not provide an effective solution to the SLC and do not consider it further.

12.29 In the rest of this paper, we set out our assessment of each of three remedy options. We start with an assessment of the divestiture of the Jus-Rol business, before considering the two options suggested by Cérélia. Having set out our assessment of the effectiveness of each remedy option, we turn to a consideration of any RCBs, the proportionality of remedy options, and the process for remedy implementation. Finally, we set out our conclusion on remedies.

Divestiture of the Jus-Rol business

12.30 To be effective in restoring or maintaining rivalry in a market where the CMA has decided that there is an SLC, a divestiture remedy will involve the sale of an appropriate divestiture package to a suitable purchaser through an effective divestiture process.¹¹⁶⁷ In reaching its view on effectiveness, the CMA will have regard to the following critical elements of the design of divestiture remedies, each of which we discuss in turn:

(a) The scope and composition of the divestiture package;

(b) Identification of a suitable purchaser; and

(c) The effectiveness of the divestiture process.¹¹⁶⁸

12.31 An effective structural remedy will address, at source, the loss of rivalry resulting from the merger by changing or restoring the structure of the market.¹¹⁶⁹ There are three categories of risk that could impair the effectiveness of any divestiture remedy – composition risk, purchaser risk and asset risk:¹¹⁷⁰

(a) composition risk arises if the scope of the divestiture package is too narrowly constrained or not appropriately configured to attract a suitable purchaser, or does not allow a purchaser to operate as an effective competitor;

¹¹⁶⁷ [Merger remedies guidance CMA87](#), paragraph 5.2.

¹¹⁶⁸ [Merger remedies guidance CMA87](#), paragraphs 5.2 and 5.3.

¹¹⁶⁹ [Merger remedies guidance CMA87](#), paragraph 3.38.

¹¹⁷⁰ [Merger remedies guidance CMA87](#), paragraph 5.3.

- (b) purchaser risk arises if a divestiture is made to a weak or otherwise inappropriate purchaser, or if a suitable purchaser is not available; and
 - (c) asset risk arises if the competitive capability of the divestiture package deteriorates before completion of the divestiture.
- 12.32 In considering the appropriate scope for a divestiture package, the CMA will seek to ensure that it:
 - (a) is sufficiently broad in scope to address all aspects of the SLC(s) and resulting adverse effects;
 - (b) would enable the eventual purchaser to operate the divested business as an effective competitor; and
 - (c) is sufficiently attractive to potential purchasers.
- 12.33 In identifying a divestiture package, the CMA will take, as its starting point, divestiture of all or part of the acquired business.¹¹⁷¹ In defining the scope of a divestiture package that will satisfactorily address an SLC, the CMA will normally seek to identify the smallest viable, stand-alone business that can compete successfully on an ongoing basis and that includes all the relevant operations pertinent to the area of competitive overlap.¹¹⁷²
- 12.34 The CMA will generally prefer the divestiture of an existing business, which can compete effectively on a stand-alone basis, independently of the merger parties, to the divestiture of part of a business or a collection of assets. This is because divestiture of a complete business is less likely to be subject to purchaser and composition risk and can generally be achieved with greater speed.
- 12.35 However, in the Remedies Notice we noted that Cérélia did not acquire a stand-alone business. Instead, Cérélia acquired certain assets, IP and customers pertaining to the Jus-Rol Business, from GMI. We set out the specifics of the structure of the APA in Annex A, and have taken this into account in our remedy design. As set out in the CMA's Merger Remedies Guidance, the licensing or assignment of IP (including patents, licences, brands and data) may be viewed generally as a specialised form of asset divestiture.¹¹⁷³

¹¹⁷¹ [Merger remedies guidance CMA87](#), paragraph 5.6.

¹¹⁷² [Merger remedies guidance CMA87](#), paragraph 5.7.

¹¹⁷³ [Merger remedies guidance CMA87](#), paragraph 6.1.

Description of remedy

- 12.36 We have found that Cérélia and Jus-Rol overlap in the supply of DTB products to grocery retail customers. In accordance with our guidance, the divestiture of the entire Jus-Rol business would represent a starting point for identifying a divestiture package as it restores the pre-Merger situation in the markets which are subject to an SLC.¹¹⁷⁴ In our assessment of effectiveness, we also consider whether the scope of the divestiture could be narrowed while retaining its effectiveness.
- 12.37 The divestiture of the entire Jus-Rol business would involve Cérélia divesting, to a suitable purchaser, the assets that it acquired as part of the Merger. 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.¹¹⁷⁵ In addition, Cérélia acquired various IP rights applicable to the UK and other European countries. These assets are listed in Appendix E.

Views of main parties and third parties on divestiture

- 12.38 Below we summarise the views of the Parties and of third parties.

Views of Cérélia on the overall effectiveness of full divestiture

- 12.39 Cérélia submitted that the full divestiture of the Jus-Rol business would be effective, but that it would be the most onerous effective remedy option and more so than other equally effective alternatives.¹¹⁷⁶ We set out a more detailed consideration of alternative remedies put forward by Cérélia at paragraphs 12.163 to 12.278 and of proportionality at paragraphs 12.322 to 12.335 below.
- 12.40 In response to our RWP, Cérélia submitted that, while full divestiture 'as a matter of economic logic would remove the SLC identified in the Provisional Findings, it would be complex, risky and disproportionate'¹¹⁷⁷. It said that the full divestiture remedy would bear significant purchaser risk such that there would be no realistic possibility of finding a buyer as motivated and committed to the success of the Jus-Rol brand as Cérélia¹¹⁷⁸. In making this assertion,

¹¹⁷⁴ [Merger remedies guidance CMA87](#), paragraph 5.6. 'In identifying a divestiture package, the CMA will take, as its starting point, divestiture of all or part of the acquired business. This is because restoration of the pre-merger situation in the markets subject to an SLC will generally represent a straightforward remedy.'

¹¹⁷⁵ MN, part 2, paragraph 3.

¹¹⁷⁶ [Cérélia Response to Notice of Possible Remedies](#), 18 November 2022, paragraph 1.10.

¹¹⁷⁷ Cérélia's response to RWP, 23 December, paragraph 2.1.

¹¹⁷⁸ Cérélia's response to RWP, 23 December, paragraph 2.2.

Cérélia drew upon its interpretation of evidence from GMI and various third parties¹¹⁷⁹ saying that ‘not a single third party could identify any concrete suitable purchaser, or even category of purchaser of the Jus-Rol business.’¹¹⁸⁰

12.41 Additionally, Cérélia said that even if a purchaser was found, the full divestiture of Jus-Rol could lead to:¹¹⁸¹

- (a) Continued underinvestment in the Jus-Rol brand combined with stagnation of the DTB market.
- (b) Jus-Rol production moving to continental Europe against a preference by grocery retailers for UK based suppliers.

Views on the scope of full divestiture

- *Product Scope*

12.42 Cérélia submitted that the scope of any divestiture should not include assets that it considers are unrelated to the SLC,¹¹⁸² on the basis of its view that any harm arising from the Merger is limited to the alleged loss of a rebalancing threat by retailers that stock the ‘SLC SKUs’. Cérélia considers that ‘non-SLC SKUs’ are not part of the SLC and should not be the subject of any remedy.^{1183,1184} Cérélia said that splitting the Jus-Rol brand into SLC and non-SLC SKUs would not complicate purchasing arrangements for grocery retailers, who have sophisticated buying teams capable of dealing with multiple brand owners.¹¹⁸⁵

12.43 With regards to innovation in a brand with a smaller portfolio of products, Cérélia said that ‘brands with a smaller product portfolio are the ones which have been innovative’, citing the example of the Northern Dough Co. having introduced various types of frozen pizza dough and cookie dough.¹¹⁸⁶

¹¹⁷⁹ [redacted].

¹¹⁸⁰ Cérélia’s response to RWP, 23 December, paragraph 2.5.

¹¹⁸¹ Cérélia’s response to RWP, 23 December, paragraphs 2.6a and 2.6b.

¹¹⁸² Cérélia’s response to RWP, 23 December, paragraphs 2.19.

¹¹⁸³ In its response to the Provisional Findings, Cérélia defined SLC SKUs as those when a retailer sourced both Cérélia manufactured PL SKUs and Jus-Rol SKUs in the same retail DTB product sub-segments. PL and Jus-Rol SKUs not sourced in the same sub-segment were defined as non SLC SKUs. [Cérélia’s response to the provisional findings](#), paragraph 3.5.

¹¹⁸⁴ Cérélia’s response to RWP, 23 December, paragraph 2.20.

¹¹⁸⁵ Cérélia’s response to RWP, 23 December, paragraph 2.22.

¹¹⁸⁶ Cérélia’s response to RWP, 23 December, paragraph 2.23.

- 12.44 In relation to our concerns around the possibility of a brand split not being accurately specified, Cérélia said that no difficulties have arisen in case of Cérélia licensing [REDACTED]. Cérélia added that retailers are familiar with such arrangements.¹¹⁸⁷
- *Geographic scope*
- 12.45 Cérélia submitted that the geographic scope of the remedies package should be limited to the UK. It said that the CMA's concern about consumer confusion arising from separate brands in each of Northern Ireland and the Republic of Ireland is without an explanation of how such a confusion would arise or how it would affect the remedy taker's ability to compete in the UK DTB market. Cérélia referred to Tayto Crisps and Jacobs cream crackers as successful examples of brand splitting between Northern Ireland and the Republic of Ireland.¹¹⁸⁸
- 12.46 Cérélia further said that potential inconvenience to some retailers does not justify the expansion beyond the UK, citing [REDACTED]. It added that UK retailers like [REDACTED] that are present in both UK and the Republic of Ireland have separate buyers and separate procurement processes between the two geographies.¹¹⁸⁹
- *Channel scope*
- 12.47 Cérélia submitted that the full divestiture remedy should be limited to the retail channel. It said that most companies supplying to foodservice or food manufacturing channels (besides grocery retail) have separate business units or divisions and marginally adjust the brand to address the other channels. Cérélia cited the example of Nestle and Unilever using adjusted brands like 'Nestle Professional' and 'Unilever Food Solutions' respectively to target foodservice customers. In this regard, Cérélia expressed its [REDACTED].¹¹⁹⁰
- 12.48 With regards to the implementation of brand separation options, Cérélia expressed a preference for providing a perpetual, irrevocable, transferable and royalty-free exclusive licence to a purchaser of the divestiture business, covering sales to grocery retailers in the relevant territory. It said that its preference is related to such an option requiring only a single transaction.¹¹⁹¹

¹¹⁸⁷ Cérélia's response to RWP, 23 December, paragraph 2.24.

¹¹⁸⁸ Cérélia's response to RWP, 23 December, paragraphs 2.29 and 2.30

¹¹⁸⁹ Cérélia's response to RWP, 23 December, paragraph 2.31.

¹¹⁹⁰ Cérélia's response to RWP, 23 December, paragraphs 2.36 and 2.37.

¹¹⁹¹ Cérélia's response to RWP, 23 December, paragraphs 2.40 and 2.41.

Views of GMI

- 12.49 GMI submitted that the full divestiture of the Jus-Rol business would address the SLC identified but did not think it was necessary to address the SLC, as there are other solutions such as the production line remedy and the distribution remedy that could also work in theory.¹¹⁹² In its response to the RWP, GMI limited its comments to the geographic scope of the Jus-Rol business and confirmed [REDACTED]. GMI said that it agreed with C  r  lia's submission that the Jus-Rol business [REDACTED].¹¹⁹³ GMI further elaborated that the Jus-Rol business [REDACTED]. [REDACTED]. It also said that from the retailers' point of view as well, [REDACTED].¹¹⁹⁴

Views of third parties

- 12.50 We sought the views of a variety of third parties, including customers and competitors, on whether divestiture of the Jus-Rol UK business would represent an effective remedy to the SLC, which are set out below.

Customers

- 12.51 A retailer [REDACTED] told us that divestiture of the Jus-Rol business as set out in the Remedies Notice would address the concerns identified by the CMA by effectively maintaining the status quo before the acquisition.¹¹⁹⁵ However this retailer also noted the following potential risks (although it found it difficult to predict the extent to which these risks would materialise).¹¹⁹⁶
- (a) The prospect of no suitable buyer emerging given the existence of very few other players in the DTB category operating with sufficient scale that could buy Jus-Rol. This retailer also noted that the buyer could quite likely be from another product category looking for an opportunity to expand their brand into DTB. However, this could risk underinvestment in the pastry space as an alternative buyer may not be as committed to making investments in Jus-Rol as submitted by C  r  lia.
 - (b) A prospective buyer switching manufacturing of Jus-Rol away from C  r  lia (potentially into Europe) would create inefficiencies at C  r  lia's Corby plant potentially resulting in increased prices in PL.

¹¹⁹² GMI Response Hearing Transcript, page 26 lines 17-23

¹¹⁹³ GMI response to RWP, 23 December, paragraph 2.1.

¹¹⁹⁴ GMI response to RWP, 23 December, paragraphs 3.1-3.3.

¹¹⁹⁵ [REDACTED] response to written questions, [REDACTED] 2022, question 1.

¹¹⁹⁶ [REDACTED] response to written questions, [REDACTED] 2022, question 2.

(c) A low-likelihood risk would be the potential closure of Cérélia's Corby plant if the Jus-Rol business was moved away resulting in inefficiencies and high prices. This would lead to retailers having to consider recipes including ethanol for their PL and sourcing from Henglein through Golden Acre.

- 12.52 This retailer [REDACTED] also told us that a suitable buyer for Jus-Rol would be 'someone with good category management expertise who would ideally leverage the scale benefits of a larger business already operating in the UK market.'¹¹⁹⁷ It further added that 'Golden Acre would not be a suitable purchaser as it would likely relocate Jus-Rol production to continental Europe. This would lead to cost inefficiencies at BakeAway [Cérélia's UK plant] which would result in higher costs for customers.'¹¹⁹⁸
- 12.53 A retailer [REDACTED] told us that a divestiture of the Jus-Rol business was an 'obvious remedy to put the market back to what it was pre-merger'. However, according to this retailer, the effectiveness of this divestiture package would come down to the ultimate buyer of the Jus-Rol business. This retailer considered that potential purchasers of Jus-Rol might include brand owners in the food sector, producers in adjacent sectors and private equity brand owners. However, it would have concerns with a purchaser that would manufacture outside the UK due to concerns around shortened shelf-life and food wastage.
- 12.54 With regard to imports from continental European suppliers, this retailer said that Brexit-related issues involving transport costs and logistics have been overcome, citing dairy products as an example where another branded supplier [REDACTED] no longer identified logistics or labour as problem areas.¹¹⁹⁹
- 12.55 A retailer [REDACTED] told us that the divestiture of the Jus-Rol business could remedy its concerns related to the Merger. However, it submitted that effectiveness would be dependent on the specific details of each remedy option. For the divestiture of the Jus-Rol business, it submitted that its primary concerns would be who the buyer is, what their credentials are and whether the buyer is based in the UK or continental Europe.¹²⁰⁰ This retailer told us that it would prefer a buyer that it already has a relationship with, and that it would most likely prefer that the potential purchaser was based in the UK. It told us that Cérélia continuing to manufacture Jus-Rol products would not be a concern,

¹¹⁹⁷ [REDACTED] response to written questions, [REDACTED] 2022, question 4.

¹¹⁹⁸ [REDACTED] response to written questions, [REDACTED] 2022, question 5.

¹¹⁹⁹ [REDACTED] Call Note, [REDACTED] 2022, paragraph 7.

¹²⁰⁰ [REDACTED] Call Transcript, [REDACTED] 2022, page 24, lines 20-25 and page 25, lines 1-4.

provided it did not look to materially alter its existing commercial relationships, as it would be similar to the pre-Merger situation.¹²⁰¹

12.56 A retailer [REDACTED] told us that it did not have a preference for UK production of Jus-Rol over Europe. It currently imports some frozen products from Europe which does not cause any issues.¹²⁰²

12.57 A retailer [REDACTED] told us that it did not have any views on remedies to address the SLC set out in the Provisional Findings.¹²⁰³

Competitors

12.58 A supplier [REDACTED], told us that it supports a divestiture package comprising the Jus-Rol business, but noted that, [REDACTED]. This supplier also noted that C er lia continuing to manufacture Jus-Rol products would negatively affect divestiture efforts. According to this supplier, any purchaser of Jus-Rol could be dependent on C er lia. However, it noted that there are potentially sufficient DTB manufacturers in continental Europe for the purchaser of Jus-Rol to switch to [REDACTED].¹²⁰⁴

12.59 This supplier would be concerned with C er lia maintaining the Jus-Rol brand in Europe, as this would affect the branded market in Europe. Should this supplier acquire Jus-Rol, it would ideally use an alternative UK manufacturer [REDACTED].¹²⁰⁵

12.60 This supplier also told us that private equity investors are unlikely to be interested in acquiring Jus-Rol due to [REDACTED]. This would not leave enough margin to invest in innovation.¹²⁰⁶

12.61 A supplier [REDACTED] told us that the effectiveness of a divestiture package comprising the Jus-Rol business would depend on who would take on the Jus-Rol assets and the purchaser's current operations. This supplier told us that the fact that whoever buys Jus-Rol would need to continue having a relationship with C er lia (due to lack of alternatives with appropriate scale) would make the remedy less effective. This supplier told us that [REDACTED].¹²⁰⁷

¹²⁰¹ [REDACTED] Call Transcript, [REDACTED] 2022, page 25, lines 15-23.

¹²⁰² [REDACTED] Call transcript [REDACTED] 2022, page 16, lines 7-11.

¹²⁰³ [REDACTED] call note, [REDACTED] 2022, paragraph 16.

¹²⁰⁴ [REDACTED] Call Note [REDACTED] 2022, paragraphs 4 and 5.

¹²⁰⁵ [REDACTED] Call Note [REDACTED] 2022, paragraph 6 and 7.

¹²⁰⁶ [REDACTED] Call Note [REDACTED] 2022, paragraph 8.

¹²⁰⁷ [REDACTED] call note, [REDACTED] 2022, paragraphs 18 and 19.

- 12.62 A supplier [redacted] told us that it is unlikely to be interested in buying the Jus-Rol brand, as it considered it potentially too expensive [redacted] to purchase.¹²⁰⁸ However it put forward its own proposal whereby C r lia would have to make a subsidy or payment to a new party to help develop a second pastry brand to compete with Jus-Rol. While this proposal would need support from a retailer, it would create a long-term competitor for Jus-Rol. According to this supplier, if a retailer supported the proposal, the rival brand could be on retailers' shelves in around two years from the research/formulation stage. [redacted].¹²⁰⁹
- 12.63 A manufacturer of chilled and frozen bakery and food products [redacted], told us that it thinks full divestiture would be effective at remedying the SLC as it would struggle to 'see what else could be done'. In its view, currently 'the entire market is in the hands of one player', and the remedy would ensure that there are at least two. According to this manufacturer, the purchaser would need experience supplying to multiple retailers and ideally experience in manufacturing, but could also be someone that outsourced production.¹²¹⁰

Effectiveness of a divestiture of the Jus-Rol business

- 12.64 The Merger Remedies Guidance sets out four aspects to be considered in assessing the effectiveness of a remedy:¹²¹¹
- (a) *Impact on the SLC and its resulting adverse effects*: normally, the CMA will seek to restore competitive rivalry through remedies that re-establish the structure of the market expected in the absence of the merger.
 - (b) *Appropriate duration and timing*: the CMA will prefer a remedy that quickly addresses competitive concerns, with the effect of the remedy sustained for the likely duration of the SLC.
 - (c) *Practicality*: a practical remedy should be capable of effective implementation, monitoring and enforcement.
 - (d) *Acceptable risk profile*: the CMA will seek remedies that have a high degree of certainty of achieving their intended effect. Customers or suppliers of merger parties should not bear significant risks that remedies will not have the requisite impact on the SLC or its adverse effects.

¹²⁰⁸ [redacted] Call Note, [redacted] 2022, paragraph 15.

¹²⁰⁹ [redacted] Call Note, [redacted] 2022, paragraphs 12 and 13.

¹²¹⁰ [redacted] call note, [redacted] 2022, paragraphs 4 and 5.

¹²¹¹ [Merger remedies guidance, CMA87](#), paragraph 3.5.

- 12.65 We consider that, in principle, a divestiture by C erelia of the Jus-Rol business would be effective in restoring the pre-merger market structure and associated levels of rivalry, thereby directly remedying the SLC that we have found. We note that, as with any completed merger, there will be an element of purchaser risk to be managed, as the Jus-Rol business is unlikely to revert to its previous ownership (as would be the case in an anticipated merger). We consider the extent to which these challenges can be overcome through the remedy design considerations, and oversight of the sales process, in the following sections.
- 12.66 Subject to managing purchaser risk and the other practical risks normally associated with any divestiture remedy, we do not envisage that a divestiture of the Jus-Rol business would encounter material implementation challenges. In addition, it will not require ongoing enforcement or monitoring.
- 12.67 In this context we note that the Jus-Rol business to be divested includes various trademarks and other IP rights. A remedy that requires an assignment or licence of an IP right that is exclusive, irrevocable and perpetual with no performance-related royalties will be treated by the CMA as structural in form and subject to similar consideration and evaluation as an asset divestiture.
- 12.68 The remainder of this section focuses on the risk profile of a divestiture of the Jus-Rol business, and how risks to effectiveness can be mitigated through remedy design.
- 12.69 We assess the risk profile of a divestiture remedy in its design. As discussed in paragraph 12.31 above, the three categories of risk that could impair the effectiveness of any divestiture remedy: composition risk, purchaser risk and asset risk.¹²¹²
- 12.70 An effective divestiture remedy must give us sufficient confidence that these practical risks can be properly addressed in its design. We therefore consider the following design issues:
- (a) the appropriate scope of the divestiture package;
 - (b) the identification and availability of suitable purchasers; and
 - (c) ensuring an effective divestiture process.

¹²¹² [Merger remedies guidance, CMA87](#), paragraph 5.3.

Our assessment of the scope of a divestiture of the Jus-Rol business

- 12.71 A summary of the CMA's guidance relating to assessing divestitures is set out above at paragraphs 12.30 to 12.35.
- 12.72 A divestiture of the Jus-Rol business would put the assets acquired by Cérélia into the hands of an independent third party with the capabilities to provide a similar constraint to that provided by Jus-Rol pre-merger. We therefore consider that it would be sufficient in scope to represent a comprehensive solution to the SLC we have found.
- 12.73 We address two further issues in this section. The first is the potential need for an ongoing manufacturing contract between Cérélia and the purchaser of the Jus-Rol business. We then consider whether the scope of the remedy could be narrowed, while still retaining its effectiveness.

Manufacturing

- 12.74 Pre-Merger, Cérélia manufactured certain Jus-Rol products (and continues to do so today). This has been the case since 2016, when GMI closed its UK factory and outsourced the manufacturing of certain DTB products to Cérélia. The scope of Jus-Rol products manufactured by Cérélia has expanded since 2016 and by mid-2020, Cérélia manufactured a significant proportion of Jus-Rol's products (around [X]%)¹²¹³ under a supply contract that expires in [X].
- 12.75 Cérélia's decision to expand its manufacturing capacity at the Corby plant (which became operational in March 2020)¹²¹⁴, was taken pre-Merger when Cérélia was under contract to manufacture Jus-Rol products. While the decision to expand would have been helped by the assurance of a Jus-Rol contract until early [X] (and possibly beyond) – in our view there would always have been some risk that the contract would not be renewed. Therefore, we would expect Cérélia's decision to invest in the Corby plant to have factored in the possibility of such a risk materialising.
- 12.76 The Jus-Rol business does not include any manufacturing capacity. It is possible that a purchaser of the business under this remedy would not have its own capacity, and we understand that spare capacity in other UK DTB plants is limited. We therefore consider that the remedy should include, at the option of the purchaser, an initial supply contract between the Jus-Rol business and Cérélia, so that the acquirer could compete effectively from the

¹²¹³ MN, paragraph 119(a).

¹²¹⁴ MN, paragraph 122.

date of completion. This contract would be negotiated between Cérélia and the purchaser of the Jus-Rol business as part of the divestiture. We would expect it to be on similar terms to the one in place at the time of the Merger, with a sufficient duration to allow a purchaser to assess and pursue alternative supply options if it so desired.

- 12.77 Whilst we have proposed including an initial supply contract with Cérélia as part of the divestiture package, we note that a purchaser would be free to choose an alternative manufacturer or manufacture Jus-Rol products itself, within or outside the UK. As part of a purchaser suitability assessment we would be seeking to ensure that any purchaser was committed to continuing to serve the UK market (see paragraphs 12.111 to 12.112).
- 12.78 We will consider the terms of any supply contract as part of our approval of the overall sale documents prior to the completion of the divestiture. This may include discussing the terms of any such agreement with the prospective purchaser.

Narrowing of Geographic Scope

- 12.79 In its response to the Remedies Notice, Cérélia said that there was ‘no basis for including the Jus-Rol brand outside the UK in the divestiture package.’ It said that ‘the use of the Jus-Rol brand outside the UK has no bearing on the competitive effectiveness of the brand in the UK, as the brand competes in a national market’ and that retailers negotiate only for the UK market. It said further that ‘the Jus-Rol brand in the Republic of Ireland was not necessary for the Jus-Rol Business Divestment Package to operate at sufficient scale to be competitive (with the Irish sales accounting for less than [X] % of Jus-Rol’s revenues in the last year).’¹²¹⁵
- 12.80 A remedy reflecting Cérélia’s submission would split control of the Jus-Rol brand, with the purchaser of the Jus-Rol business controlling the brand in the UK (either through ownership or through a perpetual, irrevocable, transferable and royalty-free exclusive licence) and Cérélia controlling the brand in the rest of Europe, although Jus-Rol is currently only sold in the UK and Republic of Ireland.¹²¹⁶ We note that Cérélia registered the rights to the Jus-Rol brand in the USA and has started to offer products there.

¹²¹⁵ Cérélia’s response to the Remedies Notice, paragraphs 5.10-5.11.

¹²¹⁶ At the Cérélia response hearing, Cérélia provided a number of examples, in other food sectors where brands were split. Cérélia Response Hearing Transcript, page 21-22.

- 12.81 We also note that, under the terms of the APA, the Merger comprises ‘certain assets of the UK and Ireland dough business of GMI’, suggesting that the two countries were considered as a single business within the rationale for the Merger. As our guidance states, in identifying a divestiture package, the CMA will take, as its starting point, divestiture of all or part of the acquired business.¹²¹⁷
- 12.82 There are three potential risks associated with a split control of the brand (whether in relation to geographic territories or customers), which may undermine the effectiveness of a divestiture remedy involving such split control. The first is that each brand owner develops the brand in a different way within their respective areas of control which might lead to confusion from customers who are expecting a uniform brand. The second is that brand investment is a fixed cost and splitting the brand leads to a lower quantity of sales over which that fixed cost can be recovered. The third risk is a practical one – the split may not be able to be accurately specified, leading to potential disputes between the two brand controllers.
- 12.83 We considered the extent to which narrowing the geographic scope of IP rights in the Jus-Rol business would increase these risks. We agree with C  r  lia’s submission that DTB markets are national, and also note that DTB products are used in people’s homes. This makes it very unlikely that a consumer located in Great Britain¹²¹⁸ would regularly buy Jus-Rol products in a foreign country, such as France. As a result, we do not consider that this would risk confusion. However, this may not be the case in Northern Ireland, which has both a single market and a land border with the Republic of Ireland, meaning that consumers may shop in either country, and retailers can import products into Northern Ireland. Having differently controlled brands in Northern Ireland and the Republic of Ireland may, in our view, create confusion and potentially undermine the ability of the divested business to compete as effectively as Jus-Rol is able to at present.¹²¹⁹
- 12.84 Turning to the second risk, apart from the recent entry into the USA referred to in paragraph 12.80 above, the Jus-Rol brand is not used outside the UK and Ireland. The divestiture business would therefore not gain any cost / efficiency benefit by having wider control of the Jus-Rol brand, and (given that the Republic of Ireland accounts for only approximately [X]% of the Jus-Rol business’s sales) only limited benefit from controlling the brand in the

¹²¹⁷ [Merger remedies guidance, CMA87](#), paragraph 5.6.

¹²¹⁸ ie consumers in England, Scotland and Wales.

¹²¹⁹ An example of a consumer brand that is different in each country is Tayto Crisps. See [You’re taking the crisp, right? How Tayto in the North are different from Tayto in the South – The Irish Times](#).

Republic of Ireland. Though the benefit may be small, there are potential increased costs and complexity for doing business and the small size of the Northern Ireland market may, in our view, reduce the attractiveness of operating in Northern Ireland.

- 12.85 In terms of the third risk, it is generally possible to define the territorial limits of brand control. However, having split control between Northern Ireland and the Republic of Ireland would potentially cause inconvenience to retailers that are present in both countries. [REDACTED].¹²²⁰ Separating Northern Ireland and the Republic of Ireland into separate businesses may make Jus-Rol a weaker competitor, particularly for customers in Northern Ireland, and reduce the attractiveness of the overall divestiture package to potential purchasers.
- 12.86 In response to the RWP, C er lia told us Jus-Rol’s current Republic of Ireland business [REDACTED], [REDACTED].¹²²¹ GMI told us that pre-merger [REDACTED].¹²²² While this may provide some demarcation when dealing with retailers, we still consider there to be risks around customer confusion, which may reduce the attractiveness of the divested business, both overall and in Northern Ireland.
- 12.87 Taking the above into account, our view is that the IP licences in the Jus-Rol divestiture business should cover the UK and Republic of Ireland, as restricting the licence just to the UK risks undermining the attractiveness of the divestiture package to a potential purchaser. However, it is possible that potential purchasers, who have not been currently identified, may consider this risk to be less significant. Therefore, we propose that the Republic of Ireland rights are included in the divestiture package offered to potential purchasers. However, the CMA will allow C er lia the option, as part of the divestiture process, to seek to agree a carve out of brand and other IP rights in the Republic of Ireland during the subsequent negotiations (in other words, excluding them from the divestiture), on terms acceptable to the CMA and to the purchaser. If C er lia fails to find a suitable purchaser willing to agree to this retention, the IP rights covering the Republic of Ireland remain within the divestiture package.
- 12.88 The IP rights in other territories may be retained by C er lia, as their exclusion from the divestiture package would not materially affect the risk profile of this remedy.

¹²²⁰ [REDACTED] Call Note, [REDACTED] 2022, paragraph 13.

¹²²¹ C er lia’s response to the RWP, paragraph 2.31.

¹²²² GMI response to RWP, 23 December, paragraphs 3.1

Narrowing of customer scope

- 12.89 In its response to the Remedies Notice, Cérélia submitted that the exclusive right to exploit Jus-Rol IP in relation to the UK foodservice and food manufacturing sector should not be part of the divestiture package.¹²²³
- 12.90 In identifying a divestiture package, the CMA will take, as its starting point, divestiture of all or part of the acquired business,¹²²⁴ which in this case includes foodservice and food manufacturing customers. However, the SLC we have found relates to the supply of DTB products to grocery retail customers. As a result, we have considered whether foodservice and food manufacturing customers could be excluded from the remedy, provided that this did not risk undermining the effectiveness of the remedy.
- 12.91 Excluding such customers would require the splitting of the Jus-Rol brand in the UK, a situation that does not currently exist. We considered the risks to effectiveness of brand splitting set out in paragraph 12.82 above, and also whether excluding these customers would make the remedy package unattractive to a potential purchaser.
- 12.92 In our view, foodservice and food manufacturing customers have distinct characteristics from grocery retailers. They have different product requirements, and do not retail Jus-Rol products directly to consumers, so there is unlikely to be confusion between two different brand owners. There are unlikely to be material synergies between brand and product development for the two customer groups, and it appears possible, in principle, to specify the demarcation of the brand control.
- 12.93 Grocery retail customers account for [X]% of the Jus-Rol business (see figure 2.4). Restricting the divestiture business to these customers would therefore make it slightly smaller than if foodservice and food manufacturing customers were included. This would potentially affect the attractiveness of the divestiture business if the remedy included production facilities, as there would be a lower volume of sales to cover these fixed production costs. However, this is not the case, and while we have found some economies of scale to be present (see paragraph 10.81) in the market, we do not think this would have a material impact on a divestiture business that does not have rights to the Jus-Rol brand for foodservice and food manufacturing customers.

¹²²³ [Cérélia's response to the Remedies Notice](#), paragraph 5.3 (e)

¹²²⁴ [Merger remedies guidance, CMA87](#), paragraph 5.6.

- 12.94 We consider that the retention by C r lia of the Jus-Rol IP rights in relation to foodservice and food manufacturing customers might not, in principle, undermine the effectiveness of the remedy. This is based on a view that this narrower scope could be appropriately specified and would not give rise to material risks around the precise specification of excluded customers, brand conflict or confusion by customers.
- 12.95 However, there remains a risk that the arrangements that would be required to facilitate brand sharing (such as brand guidelines) would impose a material restriction on the divestiture business's ability to use the Jus-Rol brand for the customer types that would fall within the scope of the remedy. This might make the divestiture unattractive to a purchaser.
- 12.96 In response to the RWP, [redacted].¹²²⁵ We agree that should C r lia retain the Foodservice segment it should agree a brand demarcation with the prospective purchaser to help reduce brand conflict and customer confusion. We would leave such negotiation to C r lia and prospective purchasers. We will liaise with prospective purchasers to ensure they have no concerns with the final negotiated position.
- 12.97 Our view is that the IP licences in the Jus-Rol divestiture business should cover all customers, as restricting the licence just to retailers risks undermining the attractiveness of the divestiture package to a potential purchaser. However, it is possible that potential purchasers, who have not been currently identified, may consider this risk to be less significant.
- 12.98 To address this issue, we propose that the foodservice and food manufacturing segments should be included in the divestiture package offered to the potential purchasers. However, the CMA will allow C r lia the option, as part of the divestiture process, to seek to agree a carve out of IP rights relating to foodservice and food manufacturing customers during the subsequent negotiations, on terms acceptable to the CMA and to the purchaser, and on condition that C r lia uses an adapted brand name ([redacted]). We would review all documentation in relation to these arrangements, including any brand guidelines, ahead of the divestiture completing to ensure the divestiture business retains the exclusive right to sell to all other customer types, including grocery retailers and directly to end-consumers using the Jus-Rol brand. If C r lia fails to find a purchaser willing to agree to it retaining the Jus-Rol foodservice and food manufacturing segments, these segments will be included in the divestiture package.

¹²²⁵ C r lia's response to the RWP, paragraph 2.36 – 2.37.

Narrowing of product scope

- 12.99 In its response to the remedies notice, Cérélia proposed that the Jus-Rol IP rights in the divestiture business should be restricted to those sub-categories where there is currently a direct product level overlap and customers are supplied by both Cérélia and Jus-Rol. These are ready rolled and block puff pastry, and ready rolled and block shortcrust pastry, all within the chilled range only.
- 12.100 In the response to the remedies notice, Cérélia indicated that the restriction should also only apply to those customers that currently are supplied by both Parties.¹²²⁶ However, in the response hearing it clarified that the proposed rights applied to all customers that might be supplied with one or more of the sub-categories above. In other words, the IP rights in the divestiture business would be restricted to the four product sub-categories, but would not be restricted to any specific retailer or retailers.
- 12.101 In its response to the RWP (paragraph 12.42), Cérélia submitted that some Grocery Retailer SKUs should not form part of the SLC identified by the CMA and consequently should not be the subject of any remedy. The SLC that we found (Chapter 11, paragraph 11.2) is in the wholesale supply of DTB products to grocery retailers in the UK, which includes products such as pizza dough and cookie dough where there is currently no overlap between Cérélia and Jus-Rol. Therefore, any remedy which excludes particular DTB products is unlikely to comprehensively address the SLC.
- 12.102 We also consider that exclusion of these products could undermine the effectiveness of the remedy.¹²²⁷ For example, if we were to exclude some SKUs, as Cérélia proposes, this would lead to a situation where some Jus-Rol DTB products would be produced by Cérélia and some by the purchaser of the divestiture business. These products would be next to each other on supermarket shelves, complicating merchandising arrangements by grocery retailers and leading to confusion among shoppers, particularly if there were packaging or recipe changes by one manufacturer. The divestiture business would also be restricted to a very narrow range of products, preventing it from innovating and introducing new products, either in the DTB or other categories. This would potentially lessen innovation in the market and also make the divestiture business significantly less attractive to a purchaser.

¹²²⁶ [Cérélia's response to the Remedies Notice](#), paragraphs 2.9 and 2.10.

¹²²⁷ [Merger remedies guidance, CMA87](#), paragraphs 5.6 – 5.7.

Finally, we have concerns that the brand split could not be accurately specified, particularly when trying to take into account new products.

- 12.103 We therefore consider that there should be no restriction on the scope of the Jus-Rol IP in relation to product sub-categories or SKUs, and that the divestiture package should include the Jus-Rol brand and IP rights in relation to any DTB products that the purchaser wishes to supply.

Our view on the scope of a divestiture of the Jus-Rol business

- 12.104 In considering the scope of the Jus-Rol IP rights, we have sought, consistent with the approach set out in the CMA's guidance, to identify the smallest viable, stand-alone business that can compete successfully on an ongoing basis and that includes all the relevant operations pertinent to the area of competitive overlap.¹²²⁸
- 12.105 Our view is that a divestiture of the Jus-Rol business should include, as a minimum, rights to the Jus-Rol brand and associated IP for products¹²²⁹ supplied to all customers in the UK and Republic of Ireland. However, as set out in paragraphs 12.87 and 12.98, Cérélia may retain rights in relation to customers in the Republic of Ireland, and for foodservice and food manufacturing customers in the UK, at the option of the purchaser (and on terms acceptable to the CMA).
- 12.106 In the RWP, we asked the Parties to consider two options for the divestiture of the rights, either:
- (a) Cérélia provides a perpetual, irrevocable, transferable and royalty-free exclusive license to a purchaser of the divestiture business, covering the conditions specified in paragraph 12.105 above; or
 - (b) Cérélia divests all of the Jus-Rol IP rights it acquired in the Merger, and the divestiture business provides a perpetual, irrevocable, transferable and royalty-free exclusive license back to Cérélia for the rights that it might retain as a result of the conditions set out in paragraph 12.105 above.

¹²²⁸ [Merger remedies guidance CMA87](#), paragraph 5.7.

¹²²⁹ Cérélia will be allowed to retain copies of any product IP needed to serve the foodservice segment.

- 12.107 In response to the RWP, Cérélia told us that it would prefer to continue to own the IP and license it to the purchaser (rather than the other way around) because this would be clearer and more efficient.¹²³⁰
- 12.108 We agree that this option may be more efficient for Cérélia. However, in our view this option would restrict the divestiture business rather than Cérélia. Our concern is first and foremost to ensure that the remedy presents a comprehensive solution to the SLC we have found. Carving out limited rights for a purchaser may give us less assurance that the purchaser will be provided with all it requires to operate competitively.¹²³¹ However, option (b) operates as a ‘reverse carve-out’, transferring this risk to Cérélia. We therefore prefer this option.
- 12.109 We have therefore concluded that Cérélia must divest all of the Jus-Rol IP rights it acquired in the Merger, with the divestiture business providing a perpetual, irrevocable, transferable and royalty-free exclusive licence back to Cérélia for the rights that it might retain as a result of the conditions set out in paragraph 12.105 above.
- 12.110 We would need to review and approve all the licensing terms in advance of the divestiture completing, as part of the approval of sales documentation.

Identification and availability of potential purchasers

- 12.111 In our Remedies Notice, we invited views on whether there were any specific factors which we should have regard to in assessing purchaser suitability, and whether there were risks that a suitable purchaser was not available.¹²³²
- 12.112 We would need to be satisfied that a prospective purchaser:
- (a) is independent of Cérélia;
 - (b) has the necessary capability to compete;
 - (c) is committed to competing in the relevant market; and
 - (a) that divestiture to the purchaser will not create further competition concerns.

¹²³⁰ Cérélia response to the RWP, paragraphs 2.40 – 2.41.

¹²³¹ The [Merger remedies guidance, CMA87](#) makes this point in relation to carving out assets from an underlying business at paragraph 5.14.

¹²³² [Remedies Notice](#), paragraph 23(e), page 6.

Views of the Parties on identification and availability of potential purchasers

- 12.113 C r lia told us that there may be available purchasers, but it cannot see anyone in the market who is as well suited as itself to take on the Jus-Rol brand in the UK.¹²³³
- 12.114 As set out in paragraphs 12.41 to 12.42, in response to the RWP C r lia considers the purchaser risk to be high for this remedy, it considers that no purchaser is likely to invest as much as it in Jus-Rol and it believes manufacturing could move abroad.
- 12.115 GMI told us that it has not done a survey of the market, but [REDACTED].¹²³⁴

Views of Third Parties on identification and availability of potential purchasers

- 12.116 Third-party views are set out in paragraphs 12.51 to 12.63. [REDACTED] at paragraph 12.51, noted not finding a suitable purchaser as a risk but that it could not quantify this. [REDACTED], paragraph 12.53, identified a number of suitable purchasers and [REDACTED], paragraph 12.55, noted a preference for a purchaser that it already has a relationship with.
- 12.117 With industry participants, [REDACTED], paragraph 12.58, noted that private equity might not be suitable purchasers. [REDACTED], paragraph 12.62, told us that it is not interested in buying the Jus-Rol brand, considering it too expensive to purchase.¹²³⁵
- 12.118 [REDACTED] told us that it would be potentially interested but this is not something to which it would give immediate consideration [REDACTED].¹²³⁶

Our assessment of identification and likely availability of potential purchasers

- 12.119 When implementing a divestiture remedy, we undertake a process to assess a purchaser's suitability as an acquirer. Purchasers are assessed against the CMA's standard criteria of independence, capability, commitment to enter the relevant the market, and absence of competition concerns.¹²³⁷ The relative importance that we will attach to each criterion will depend on the circumstances of the case. The criteria are designed to test whether a potential purchaser is suitable and capable of remedying the SLC by its acquisition and management of the divested business. We will gather both

¹²³³ C r lia Response Hearing Transcript, page 67 lines 8-10.

¹²³⁴ GMI Response Hearing Transcript, page 28 lines 1-19

¹²³⁵ [REDACTED] Call Note, [REDACTED] 2022, paragraph 15

¹²³⁶ [REDACTED] call note, [REDACTED] 2022, paragraph 18.

¹²³⁷ [Merger remedies guidance, CMA87](#), paragraph 5.21.

written and oral submissions from potential purchasers on all of the criteria as part of this process.

12.120 Whilst assessment of commitment to the relevant market is necessarily based on information provided by the potential purchasers, these submissions are carefully examined and tested, and further submissions may be requested until we are satisfied that a potential purchaser meets the criteria, or not. Through this rigorous process, we are able to exercise a level of scrutiny that ensures that any approved potential purchaser is suitable, noting that the selection of the ultimate purchaser is a matter for the divesting party, or divestiture trustee, if appointed.

12.121 With this in mind, we considered whether additional criteria for a suitable purchaser, beyond the ones set out in our guidance, should be included in our assessment.

Independence

12.122 This criterion specifies that the purchaser should not have a financial interest in, or other connection to, Cérélia that may compromise the purchaser's incentives to compete. We will examine and consider any connections between it and a potential purchaser of the divestiture package. This does not preclude the negotiation of a manufacturing contract between Cérélia and the purchaser (see paragraphs 12.76 to 12.78).

Capability

12.123 In assessing capability, we consider that a purchaser must have access to appropriate financial resources and expertise to enable the Jus-Rol business to be an effective competitor and develop over time.

12.124 The Jus-Rol business is a collection of assets, with the relevant expertise and know-how to run the business currently provided by GMI under a TSA. Consequently, the divestiture package does not include the relevant expertise required to run the business.

12.125 As a result, we would expect that a suitable purchaser should be able to demonstrate or have access to the following expertise:

- (a) Experience of managing and developing an established consumer grocery retail brand;
- (b) Established relationships with grocery retailers. This would preferably be in DTB or a closely related category such as dairy, but relationships in other categories would be considered;

(c) Experience of working with food manufacturers to produce and develop products.

12.126 Subject to demonstrating that they satisfy the above criteria, we do not consider that certain types of buyers (eg financial or private equity buyers) should be excluded.

Commitment to the relevant markets

12.127 To remedy the SLC we have identified, a suitable purchaser needs to show a commitment to developing and providing Jus-Rol branded DTB products to UK customers.

12.128 Cérélia has submitted (see paragraph 12.41) that a purchaser would not be as incentivised to invest in Jus-Rol as it would. We disagree with this assertion. A purchaser of the Jus-Rol business would have an incentive to compete in the supply of DTB products, and this may include investment in the brand and its offering. In addition, our finding that Cérélia would have additional market power as a result of the Merger may alter its incentives to invest in Jus-Rol for the benefit of consumers.

12.129 An assessment of a purchaser's business plans will be critical for us to understand the purchaser's commitment to the relevant markets. We would expect those plans to address the issues of managing and developing the Jus-Rol brand, and the approach to retailer engagement. We will also explore potential purchasers' approach to manufacturing products sold under the Jus-Rol brand, whether by Cérélia or others.

Free from competition concerns

12.130 Potential purchasers will be required to demonstrate to our satisfaction that they do not have market power in the supply of DTB products to grocery retailers and acquisition of the divestiture package must not otherwise raise competition concerns. If there is a realistic likelihood of these concerns arising, it is likely that a purchaser would not be approved.¹²³⁸

Likely availability of suitable purchasers

12.131 The Jus-Rol Business, as configured in our conclusion on scope at paragraphs 12.104 to 12.107 above, comprises an established, well-known consumer brand with a track record of sales and a very strong position in

¹²³⁸ [Merger remedies guidance, CMA87](#), paragraph 5.21(e).

branded DTB products. The business also includes ongoing contracts with major grocery retailers who, together, comprise a substantial part of the groceries market.

- 12.132 In response to the RWP, C er lia noted that not a single third party could identify any concrete suitable purchaser, or even category of purchaser of the Jus-Rol business.¹²³⁹ It is common for named potential purchasers not to be identified at this stage (given that no sales process has commenced); we only need to be assured that a suitable purchaser would be available.¹²⁴⁰ We do not need to know the identity of the purchaser at this stage. Neither the Parties nor third parties said no purchaser would be available.
- 12.133 Although we have specified additional criteria that a suitable purchaser will have to meet, we consider that there are a significant number of businesses that possess the capabilities set out in paragraph 12.125. Given this, and the attractiveness of the assets, there is likely to be a sufficient pool of potential buyers with the requisite experience.

Our view on identification and availability of purchasers

- 12.134 Based on the information available, we consider the purchaser risk with regards to a divestiture of the Jus-Rol business to be manageable.

Effective divestiture process

- 12.135 An effective divestiture process will safeguard the competitive potential of the divestiture package before disposal and will enable a suitable purchaser to be secured in an acceptable timescale, as well as allowing prospective purchasers to make an appropriately informed acquisition decision.¹²⁴¹
- 12.136 The incentives of merger parties may serve to increase the risks of divestiture. Although merger parties will normally have an incentive to maximise the disposal proceeds of a divestiture, they will also have incentives to limit the future competitive impact of a divestiture on themselves. Merger parties may therefore seek to divest to firms which they perceive as weaker competitors or may allow the competitiveness of the divestiture package to deteriorate during the divestiture process.¹²⁴²

¹²³⁹ C er lia response to the RWP, paragraph 2.5.

¹²⁴⁰ [Merger remedies guidance, CMA87](#), paragraph 5.3.

¹²⁴¹ [Merger remedies guidance, CMA87](#), paragraph 3.51.

¹²⁴² [Merger remedies guidance, CMA87](#), paragraph 5.4.

- 12.137 The circumstances of this case raise the following issues for consideration in relation to the divestiture process:
- (a) the appropriate timescale for divestiture to take place;
 - (b) whether, and under what circumstances, there is a need to appoint an external and independent trustee to complete a divestiture (a **Divestiture Trustee**) to mitigate the risk that the divestiture does not complete within the timescales specified; and
 - (c) the role of interim measures during the divestiture process.

12.138 We consider these in turn below.

Timescale allowed for divestiture

- 12.139 We considered what would be an appropriate timescale to allow Cérélia to implement the divestiture (the **Initial Divestiture Period**). The Initial Divestiture Period would normally run from the acceptance of final undertakings or the making of a final order (for which the Act provides a period of up to 12 weeks after the final report)¹²⁴³ until legal completion of an effective divestiture (ie a sale to a purchaser approved by the CMA).
- 12.140 In considering an appropriate Initial Divestiture Period, our Guidance states that we ‘will seek to balance factors which favour a shorter duration, such as minimising asset risk and giving rapid effect to the remedy, with factors that favour a longer duration, such as canvassing a sufficient selection of potential suitable purchasers and facilitating adequate due diligence’¹²⁴⁴. Our Guidance also states that the Initial Divestiture Period will normally not exceed six months.
- 12.141 In response to the Remedies Notice and at the Response Hearing, Cérélia told us that the divestiture of the Jus-Rol business would be a lengthy and costly process, [§], the negotiation of a TSA, while not having access to the Jus-Rol business because of the hold-separate measures put in place by the CMA.¹²⁴⁵ This would require a timescale of 8-10 months for achieving the divestiture.¹²⁴⁶

¹²⁴³ Section 41(A) of the Act.

¹²⁴⁴ Merger remedies guidance, CMA87, paragraph 5.41.

¹²⁴⁵ Cérélia Response Hearing Transcript, page 66 lines 4-25.

¹²⁴⁶ Cérélia’s response to the Remedies Notice, paragraphs 5.18 and 5.19.

- 12.142 We did not receive any substantial comments from third parties regarding the divestiture timeframe.
- 12.143 The divestiture package mainly consists of IP rights and contracts, and does not include physical assets or employees. It does not need to be carved out of an existing business, and in our assessment the package is likely to be attractive to a range of purchasers. As a result, we consider a divestiture of the Jus-Rol Business would be relatively straightforward to implement. The issues listed by Cérélia at paragraph 12.141 are either common to many of the divestiture remedies or could, in our view, be completed relatively quickly.
- 12.144 Based on the above and our past experience, we consider that a period of [X], [X], from the date of accepting undertakings or making an order should be sufficient time to market, negotiate and execute a sale of the business.

Provision for appointment of a Divestiture Trustee

- 12.145 It is the CMA's standard practice to provide for the appointment of a Divestiture Trustee to dispose of the divestiture package, if the divesting party (in this case, Cérélia) fails to achieve an effective disposal within the Initial Divestiture period, or if the CMA has reason to be concerned that Cérélia will not achieve an effective disposal within the Initial Divestiture Period. This helps ensure that Cérélia has a sufficient incentive to implement the divestiture promptly and effectively.
- 12.146 In our Remedies Notice, we invited views on whether the circumstances of this Merger necessitated the appointment of a Divestiture Trustee at the outset of the divestiture process.¹²⁴⁷
- 12.147 Cérélia told us that there was no need for an expanded role for the MT to oversee the divestiture. Cérélia submitted that the Jus-Rol UK Business is already being effectively managed on a standalone basis under the CMA's Initial Enforcement Order (IEO), and it is not difficult to carve out the Jus-Rol UK Business divestment Package from the Jus-Rol APA assets.¹²⁴⁸
- 12.148 On balance, we consider that a [X] divestiture period, a monitoring trustee (see paragraphs 12.153 to 12.156), plus the ability to appoint a Divestiture Trustee if progress towards divestiture is insufficient, or Cérélia fails to act in good faith, should be sufficient to address the potential risk.

¹²⁴⁷ Remedies Notice, paragraph 28-29, page 6.

¹²⁴⁸ Cérélia's response to the Remedies Notice, paragraph 5.20.

- 12.149 To ensure a timely completion of this remedy, we conclude that we should reserve the right to appoint a Divestiture Trustee including if:
- (a) C r lia fails to complete the divestiture process within the Initial Divestiture Period; or
 - (b) the CMA reasonably believes that there is a risk that the divestiture process would be delayed or fail to complete within the Initial Divestiture Period; or
 - (c) the CMA reasonably believes C r lia is not engaging constructively with the divestiture process.
- 12.150 In line with the CMA’s normal practice,¹²⁴⁹ a Divestiture Trustee, if appointed, would be tasked with completing the divestiture of the Jus-Rol Business to a potential purchaser approved by the CMA in a timely manner, [✂].

The role of interim measures during the divestiture process

- 12.151 We have put in place interim measures to govern the conduct of C r lia and Jus-Rol Business during the investigation,¹²⁵⁰ and these will expire upon final determination of the merger reference (that is, when the CMA accepts final Undertakings or makes a Final Order). In line with past practice – and in light of the ongoing need for these provisions – we consider it essential that similar provisions continue to apply to the divestiture business during the divestiture process and will be incorporated into the final Undertakings or a Final Order if one is required.
- 12.152 We consider that under a divestiture remedy, there would be a continuing need to preserve the independence and competitive capability of the Jus-Rol Business. As our Guidance acknowledges, although ‘merger parties will normally have an incentive to maximise the disposal proceeds of a divestiture, they will also have incentives to limit the future competitive impact of a divestiture on themselves’.¹²⁵¹ However, the Jus-Rol Business is currently being run independently of C r lia (by GMI as part of the TSA) and we would expect this to continue through the divestiture period.
- 12.153 We therefore consider that similar provisions to our existing interim measures should remain in force during the implementation of this remedy until completion of the divestiture of the Jus-Rol business remedy, and that the

¹²⁴⁹ [Merger remedies guidance, CMA87](#), paragraph 5.43.

¹²⁵⁰ [Initial Enforcement Order, 3 February 2022](#).

¹²⁵¹ [Merger remedies guidance, CMA87](#), paragraph 5.4.

existing Monitoring Trustee's appointment should continue to monitor the Parties' compliance with them.

- 12.154 We consider that the Monitoring Trustee should also be involved in certain aspects of the divestiture process (as appropriate), consistent with our Guidance,¹²⁵² in order to monitor the Parties' compliance with any final order or undertakings in relation to a divestiture of the Jus-Rol business remedy and to ensure an efficient divestiture process.
- 12.155 The Monitoring Trustee's role would include (but not be limited to):
- (a) monitoring Cérélia's progress in relation to the divestiture process;
 - (b) monitoring both Cérélia's and GMI's conduct during the divestiture process; and
 - (c) overseeing the operation of any data room and clean teams to ensure that robust controls and safeguards are put in place (and complied with) to ensure the Jus-Rol Business proprietary, confidential and commercially sensitive information is appropriately protected during any due diligence process.
- 12.156 We would adjust the Monitoring Trustee's mandate to reflect these new functions as part of any final order or undertakings.

Our view on effectiveness of a divestiture of the Jus-Rol business

- 12.157 We conclude that a divestiture of the entire Jus-Rol UK Business to a suitable purchaser through the process specified in paragraphs 12.139 to 12.156 would be an effective remedy to the SLC and resulting adverse effects.
- 12.158 As part of the divestiture process, Cérélia will, subject to purchaser and CMA approval of the proposed terms, have the right to carve-out brand and IP rights in relation to:
- (a) The Republic of Ireland in line with paragraphs 12.79 to 12.88.
 - (b) Foodservice and food manufacturing customers in line with paragraphs 12.89 to 12.98.
- 12.159 The carve-out(s) will only be approved if both the CMA and a prospective purchaser are content that the practicalities of such separation will not hinder

¹²⁵² [Merger remedies guidance, CMA87](#), paragraphs 4.43 and 5.38.

the competitiveness of the remaining Jus-Rol business, and therefore the effectiveness of the remedy. As part of its duty in informing the CMA on progress of the divestiture process, Cérélia must notify the CMA and the monitoring trustee of prospective purchasers' views on the two potential carve-outs identified above.

- 12.160 The divestiture will be implemented by way of a full divestiture of the Jus-Rol business with any carve-out executed by way of a reverse licence to Cérélia in line with the paragraphs 12.104 to 12.110.
- 12.161 Such a remedy would re-establish the Jus-Rol Business as an independent competitor to Cérélia and would have an acceptable risk profile. It therefore represents a comprehensive solution to every aspect of the SLC we have found.

Partial divestiture – The Production Line Remedy

- 12.162 In this section we consider the Production Line Remedy proposed by Cérélia in its response to the Remedies Notice. Cérélia provided further detail and clarification on this remedy at the response hearing and in its response to the RWP.

Description of remedy

- 12.163 The Production Line Remedy would consist of the divestiture of one of Cérélia's DTB production lines to an independent third party. Cérélia proposed that the divestiture would be to a purchaser with requisite dough products category expertise in the retail segment, and that that completion of the divestiture would be subject to CMA approval of the SPA.¹²⁵³

Parties' submissions on the Production Line Remedy

- 12.164 Cérélia submitted that the Production Line Remedy would be effective in resolving the provisional SLC and resulting adverse effects. It told us that this would constitute a structural remedy and would enhance the available outside options for grocery retailers by increasing the capacity of an existing PL supplier.¹²⁵⁴ Cérélia submitted that the remedy would re-establish the competitive dynamics whereby a grocery retailer who wished to stock PL

¹²⁵³ Cérélia's response to the Remedies Notice, paragraphs 4.6-4.8.

¹²⁵⁴ Cérélia's response to the Remedies Notice, paragraphs 4.3 and 4.9 (d).

would have access to additional capacity and the option of an additional credible DTB PL services supplier.¹²⁵⁵

- 12.165 Cérélia submitted that the Production Line Remedy would be a permanent solution and therefore an appropriate remedy in terms of duration and timing. Cérélia submitted that this remedy solution would be practical. It told us that it would be straightforward to implement and that a purchaser would not require specific, specialised or novel know-how or IP. Cérélia submitted that the Production Line Remedy would not require any ongoing compliance monitoring.
- 12.166 With regard to timeframe, Cérélia told us that it would expect the delivery and installation of a production line to take no longer than 4-8 weeks for a simple installation, or up to 12 weeks if the purchaser chose to add special customisations to the line. Cérélia noted that production would be functional within a further 4-6 weeks. As such, the process could take between 8-18 weeks. Cérélia explained that it could offer transitional services to assist with the transfer.
- 12.167 Cérélia noted that, if necessary, it could consider enhancing the remedy by ‘using its best endeavours to obtain the support and consent from a retailer customer to transfer at least one major retailer contract to the purchaser’.¹²⁵⁶
- 12.168 Cérélia also added that it would divest the manufacturing line at a discounted price relative to other available production lines in the secondary market. This would lower the risk of investment for any potential purchasers looking to expand capacity in the PL market.¹²⁵⁷
- 12.169 In response to the RWP, Cérélia said that the production line remedy addresses the CMA’s concern that there are insufficient independent options for manufacturing PL DTB products in the UK. It said that the remedy also addresses the concern around lack of commitment to investing in increasing production capacity by addressing what Cérélia calls the ‘investment hold-up’, resulting in more than a [X] percent enhancement in annual DTB capacity.¹²⁵⁸
- 12.170 Cérélia suggested that grocery retailers considered this remedy to be capable of mitigating the SLC, adding that the CMA’s concern and reasoning around uncertainty of customer switching and rejection of the views of grocery

¹²⁵⁵ Cérélia’s response to the Remedies Notice, paragraphs 4.3 and 4.9 (a).

¹²⁵⁶ Cérélia’s response to the Remedies Notice, paragraph 4.11.

¹²⁵⁷ Cérélia Response Hearing Transcript, page 46 lines 4-8.

¹²⁵⁸ Cérélia’s response to RWP, 23 December, paragraphs 3.1 and 3.2.

retailers is flawed. Cérélia elaborated that the CMA could specify that the purchaser should have an existing relationship with retailers, which could address the uncertainty related to switching. It cited potential remedy takers like [X] who could offer a competitively priced alternative to Cérélia upon purchasing Cérélia's production line.¹²⁵⁹

- 12.171 Cérélia further submitted that it has been able to build a successful business despite the market dynamic of retailers not awarding long-term contracts and ongoing supply arrangements being based on recipe specifications and regular volume forecasts. Based on this description of the market's workings, Cérélia contended that, in order to be a credible competitor in the DTB business, it is not necessary to be 'gifted' a long-term contract. All that is required is to have the capacity and expertise to serve a large retailer. Cérélia added that the CMA must take retailers' purported concerns about the suitability of a purchaser or the inconvenience of switching with a proverbial 'pinch of salt', citing the example of [X].¹²⁶⁰
- 12.172 Cérélia said that 'the CMA commits a fundamental error of assessment' when considering the 'inconvenience' of switching by retailers as a sound basis for dismissing the Production Line remedy. According to Cérélia, this directly contradicts the Provisional Findings wherein the CMA provisionally concluded that the process of switching does not amount to a material barrier.¹²⁶¹
- 12.173 In response to the RWP, Cérélia also said that the CMA's concern around the amount of capacity divested being lower than the merger increment was illogical and irrational as the Merger itself did not lead to any increment or additional concentration in PL DTB production capacity.¹²⁶²
- 12.174 Additionally, Cérélia submitted that the CMA's concern about a purchaser needing to own or buy significant additional assets could be addressed with a suitable purchaser assessment. If necessary, Cérélia would be open to discussing with any potential purchaser the extent of additional assets required to operate the production line effectively and efficiently. However, it added that all possible additional assets were readily available on the market, and therefore there was no procurement risk in this respect.¹²⁶³
- 12.175 Cérélia further emphasised that the time taken to set up the production line and for a retailer to switch contracts would be less than 6 months. Even if it

¹²⁵⁹ Cérélia's response to RWP, 23 December, paragraphs 3.3-3.6.

¹²⁶⁰ Cérélia's response to RWP, 23 December, paragraph 3.7.

¹²⁶¹ Cérélia's response to RWP, 23 December, paragraph 3.9.

¹²⁶² Cérélia's response to RWP, 23 December, paragraphs 3.11 and 3.13.

¹²⁶³ Cérélia's response to RWP, 23 December, paragraphs 3.15 and 3.16.

took up to a year, this was not significantly longer than the CMA's standard divestiture period of 6 months and the interim measures would continue to apply during the divestiture period¹²⁶⁴.

- 12.176 GMI told us that the production line remedy would be feasible and therefore effective in remedying the SLC. It further noted that such arrangements were frequent due to second hand production lines having value and demand from potential buyers.¹²⁶⁵ GMI also added that divesting the production line without any customer contracts would still be of value to a potential buyer in the context of the CMA's concerns around capacity in the market.¹²⁶⁶
- 12.177 GMI did not make any submissions on the Production Line remedy in response to the RWP.

Views of third parties

- 12.178 A retailer [redacted] told us that this remedy could mitigate the SLC arising from the merger especially if the UK manufacturer was able to purchase the production line and build scale at an alternative UK site.¹²⁶⁷ It told us that it thought the remedy would have a significant impact on Cérélia's strength in the UK and could bring a new player into the market. It would also be open to transferring volumes depending on 'who the supplier was, their track record, their relationship with [redacted] and if the cost and quality was acceptable', though it would not like to be forced to switch and [redacted].¹²⁶⁸
- 12.179 A retailer [redacted] told us that the effectiveness of the remedy would depend on which assets would be included in a divestiture package, as well as the scale of the divestiture. It told us that it is not aware of a suitable purchaser that would be able to supply it. It noted that there would be concerns over the risk of higher costs in the case of a purchaser of the Production Line Remedy based outside of the UK. This retailer told us that the potential transfer of its contracts alongside the production line would be dependent on the identity of the purchaser.¹²⁶⁹ With regard to timeframe of divestiture, this retailer noted that a purchaser would have to undergo due diligence checks with a retailer before transferring any contracts, and that this could take up to a year but added that it would vary on a case-by-case basis.¹²⁷⁰

¹²⁶⁴ Cérélia's response to RWP, 23 December, paragraphs 3.17-3.19.

¹²⁶⁵ GMI Response Hearing Transcript, page 22 lines 6-16.

¹²⁶⁶ GMI Response Hearing Transcript, page 24 lines 3-9.

¹²⁶⁷ [redacted] response to written questions, [redacted] 2022, question 2 (from questions asked on [redacted] 2022).

¹²⁶⁸ [redacted] Call Note [redacted] 2022, paragraphs 10 and 11.

¹²⁶⁹ [redacted] Call Transcript [redacted] 2022, page 21 line 25, page 22 lines 1-9 and page 23 lines 8-17.

¹²⁷⁰ [redacted] Call Transcript [redacted] 2022, page 23 lines 14-23.

- 12.180 A retailer [REDACTED] told us that there are a number of practical difficulties which are likely to arise as a result of the Production Line Remedy. It noted C r lia's suggestion that one contract could be divested alongside the production line but expressed concern that this would not be an effective solution, as in its view the remedy would only work in the case of the production line being capable of making all products specified in the contract rather than a subset. This retailer submitted that splitting a contract would make it less competitive compared to other DTB retailers.¹²⁷¹
- 12.181 This retailer also told us that it would be concerned about the identity of the rival manufacturer that would take on C r lia's divested line. It told us that there is a likelihood that a buyer would be from outside the UK and that this could lead to increased logistic costs and wastage. In terms of transferring its contract to the new buyer of C r lia's line, it would look at the buyer's historical profitability, technical abilities as well as the ability to scale.¹²⁷²
- 12.182 A supplier [REDACTED] also raised concerns around the risk of customer contracts not transferring with the production line. It said that, should C r lia be able to meet customer demand using its spare capacity, the divestiture package would become redundant. This supplier told us that requiring guaranteed volumes to be divested alongside the production line (eg for 12-18 months) would resolve this risk.¹²⁷³
- 12.183 With regard to the likelihood of finding a potential purchaser for the Production Line Remedy, this supplier told us that the physical size, model, and age of the machines are key factors related to the divestiture that a potential purchaser would have to consider. It submitted that other factors such as the availability of spare parts and servicing of the line, transportation costs, physical fitment in the building, and training of staff would be key considerations, but noted that these could be easily surmountable factors.¹²⁷⁴
- 12.184 A supplier [REDACTED] told us that that it did not believe that the divestiture of a manufacturing line to a competitor would be sufficient to remedy the SLC, as C r lia would still control the branded market in the UK.¹²⁷⁵
- 12.185 A supplier [REDACTED] told us that this remedy would make no difference as there is already plenty of capacity in the DTB sector in Europe. If C r lia persuaded a retailer to move supply to another manufacturer this would not increase

¹²⁷¹ [REDACTED] Call Note [REDACTED] 2022, paragraph 4.

¹²⁷² [REDACTED] Call Note [REDACTED] 2022, paragraphs 4, 5 and 6.

¹²⁷³ [REDACTED] Call Note [REDACTED] 2022, paragraphs 14 and 16.

¹²⁷⁴ [REDACTED] Call Note, [REDACTED] 2022, paragraphs 14 and 15.

¹²⁷⁵ [REDACTED] Call Note, [REDACTED] 2022, paragraph 9.

competition. There would also have to be multiple considerations alongside the divestiture of the production line, such as physical space issues and flour silos.¹²⁷⁶

- 12.186 A supplier [redacted] told us that the divestiture of one production line would not function as an effective remedy ‘as capacity could be covered by other production sites and lines and it is always possible to invest again’.¹²⁷⁷
- 12.187 A supplier [redacted] told us that, for the remedy to be effective, the divestiture of manufacturing line would have to be accompanied with a transfer of grocery retailer contracts. According to this supplier, machinery on its own is of very little help and could be easily obtained from elsewhere, further adding that it is very difficult for a new player to enter the market. This supplier said that the remedy would have to go beyond divestiture of a line combined with a transfer of contract, suggesting that Cérélia would need to be ordered to give up some of its business.¹²⁷⁸

Assessment of effectiveness of the Production Line Remedy

- 12.188 In considering the effectiveness of a partial divestiture remedy, we consider the same categories of risk that could impair the effectiveness of any divestiture remedy, ie composition risk, purchaser risk and asset risk (as set out further in the ‘Divestiture of the Jus-Rol business’ section at paragraphs 12.30 to 12.35 above).¹²⁷⁹ In line with the structure set out in relation to our consideration of the Divestiture of the Jus-Rol Business Remedy, this section first considers the scope of the Production Line Remedy.

Scope of the Production Line Remedy

- 12.189 As noted above at paragraph 12.33, in defining the scope of a divestiture package that will satisfactorily address the SLC, the CMA will normally seek to identify the smallest viable, standalone business that can compete successfully on an ongoing basis and that includes all the relevant operations pertinent to the area of competitive overlap. This may comprise a subsidiary or a division or the whole of the business acquired.¹²⁸⁰
- 12.190 The Production Line remedy involves the divestiture of a single Cérélia production line, with Cérélia offering to use its ‘best endeavours’ to obtain the

¹²⁷⁶ [redacted] Call Note, [redacted] 2022, paragraph 11.

¹²⁷⁷ [redacted] response to written questions, [redacted] 2022, question 13.

¹²⁷⁸ [redacted] call note, [redacted] 2022, paragraph 8.

¹²⁷⁹ [Merger remedies guidance, CMA87](#), paragraph 5.3.

¹²⁸⁰ [Merger remedies guidance, CMA87](#), paragraph 5.7.

support and consent from a retailer customer to transfer at least one major retailer contract to the purchaser’.

- 12.191 This divestiture therefore does not involve the assets acquired in the Merger, which included IP rights and retailer contracts but no production assets.
- 12.192 The CMA will consider a divestiture drawn from the acquiring business if this is not subject to greater risk in addressing the SLC.¹²⁸¹ In principle, a partial divestiture or a divestiture of assets could be an effective remedy depending on the nature of the market, the SLC and the composition of the divestiture. But, in order to be effective, such a remedy would need to restore the rivalry lost as a result of the merger.
- 12.193 As noted in paragraph 10.34, Cérélia has previously submitted that the equipment used in manufacturing DTB products is standardised and widely available. On this basis, we consider that it is not apparent how the divestiture of a single production line alone would materially change competitive dynamics within the market in which the SLC arises (given that the availability of such equipment has not been identified as a barrier to entry or expansion). In particular, given that Cérélia would have the capacity to support all its customers (and those of the Jus-Rol business) from its remaining lines, it is not clear how the remedy would materially impact on the effect of the Merger.
- 12.194 In assessing the effectiveness of divestiture remedies, the CMA will consider their impact on the SLC and resulting adverse effects. CMA guidance says ‘[t]he CMA views competition as a dynamic process of rivalry between firms seeking to win customers’ business over time. Restoring this process of rivalry through structural remedies, such as divestitures, which re-establish the structure of the market expected in the absence of the merger, should be expected to address the adverse effects at source.’¹²⁸²
- 12.195 The Production Line Remedy would not re-establish the pre-Merger structure of the market. While the Production Line Remedy would reduce post-Merger concentration to some extent, by divesting approximately [X]% of Cérélia’s production line capacity to a rival or new entrant, it would not address the adverse effects arising from the Merger at source, but rather mitigate those effects (to a limited extent) through an offsetting intervention.
- 12.196 Even if the Production Line Remedy included the transfer of customer contracts in proportion to the size of the divested assets (which is uncertain,

¹²⁸¹ [Merger remedies guidance, CMA87](#), paragraph 5.6.

¹²⁸² [Merger remedies guidance, CMA87](#), paragraph 3.5(a).

for the reasons set out below), Cérélia would remain the largest PL supplier in the market (see table 9.1), as well as now being the largest branded supplier in the market by an overwhelming margin. The Merged Entity would therefore hold a materially stronger competitive position than either Cérélia or Jus-Rol held pre-Merger.

- 12.197 While the CMA is focused on ensuring any remedy would sufficiently restore rivalry, without necessarily replicating the precise structure of the market pre-merger, Cérélia has submitted that the capacity of a production line would be able to satisfy ‘at least [X] % of the market’, which is significantly lower than the increment in share, of [30-40]%, brought about by the Merger.
- 12.198 On this basis, while an effective divestiture of a production line could provide large retail customers with a potential alternative source of production for their PL supply, we do not consider that the Production Line Remedy would be capable of restoring competition to the level that would have prevailed absent the merger, thereby comprehensively remedying the SLC.
- 12.199 We also have a number of practical concerns with the scope of the remedy, which we set out in the following sections.

Assets excluded from the Production Line Remedy

- 12.200 Cérélia has not provided further detail on what assets would be included in the Production Line Remedy. Production lines are modular, and include modules for ingredient mixing, lamination, chilled or frozen storage, and automated packaging and palletisation.
- 12.201 Any purchaser of the production line remedy would have to either own or buy these modules if they are not included in the divestiture package. The purchaser would also need to own related assets such as flour silos.
- 12.202 In response to the RWP, Cérélia suggested it could provide certain additional assets.¹²⁸³ Whilst some additional assets could be of value to a prospective purchaser, depending on their identity, Cérélia would not be able to provide assets such as Jus-Rol staff (as none acquired through the Transaction), buildings or customer relationships (all of which are important elements of the existing Cérélia business) in this remedy. We are therefore not confident that a promise of adding some assets to the package in the future would address our concerns.

¹²⁸³ Cérélia response to the RWP, paragraph 3.15 – 3.16.

12.203 We also note the evidence from third parties on the need for a purchaser to have sufficient space (and ready access to that space) to install the line, and additional space for storage of ingredients and finished products. A purchaser would also need to recruit and train additional staff to operate and maintain the line (see paragraph 12.183).

Retailer contracts

12.204 If the line is purchased by an untried supplier there is a risk that grocery retailers see no incentive to transfer from an established supplier to a one with little or no track record in supplying large retailers. However, we note that in the response hearing and the response to the RWP¹²⁸⁴ Cérélia offered to provide financial support to a retailer as part of its ‘best endeavours’ to obtain a transfer.

12.205 Even if a retailer would agree to a transfer, there are practical barriers (such as those noted by [X] around due diligence and onboarding) that would mean it would take a significant amount of time for the transfer to take place.¹²⁸⁵ Cérélia told us it would typically take [X] months to switch (see paragraph 7.78), while third parties told us it would take six months to ‘at least one year’ (see paragraph 7.87).

12.206 Cérélia suggested that a grocery retailer, [X], was supportive of the proposal.¹²⁸⁶ During a remedies call with this retailer, it said that divesting a production line could have a significant impact on Cérélia’s manufacturing strength in the UK and also bring in a new player into the market, or make an existing player more significant. It also added that while in theory it would be open to considering moving volumes to a purchaser of the production line, this would depend on several factors like track record, relationship, cost and quality and the retailer would not want to be forced into moving its contract to a different manufacturer. Further, the retailer said that if a new supplier purchased the production line, it could take years to onboard the new supplier.¹²⁸⁷ Two other grocery retailers highlighted a number of potential risks and concerns (see paragraphs 12.179 to 12.181).

12.207 Non-retail third party responses (see paragraphs 12.182 to 12.187) were unanimous in finding the production line remedy to be ineffective in remedying the SLC without a DTB customer contract to utilise the line for.

¹²⁸⁴ Cérélia response to the RWP, paragraph 3.4.

¹²⁸⁵ See paragraphs 7.81 to 7.89 for further analysis of switching costs.

¹²⁸⁶ Cérélia response to the RWP, paragraph 3.3.

¹²⁸⁷ [X] remedy call note, [X] 2022, paragraphs 10-12.

- 12.208 Cérélia does not consider it necessary to secure a long-term contract, stating that all that is required is to have the capacity and expertise to serve a large retailer.¹²⁸⁸ As noted in paragraph 12.193, we do not consider that a production line alone would materially enhance the competitive dynamics of the market. Third party responses as noted above are generally consistent with this position.
- 12.209 Without a contract in place, a purchaser would be unable to make sales and cover its set-up costs until it had won a contract and completed the steps set out in the paragraph above. We have found that switching of suppliers does not happen frequently – there have been only five instances in six years, and only one of the large grocery retailers has switched since 2017 (see paragraph 7.81).
- 12.210 We consider that it could take a significant amount of time before the purchaser of production assets could win significant customer orders – potentially over a year – during which the purchaser would likely incur some set-up costs (even if the line is acquired at a substantial discount) and not be earning income, and also during which the SLC will not have been remedied. It is also possible that during this time the purchaser could seek to utilise the line by manufacturing other products, for example from existing customers (such as pastry as an ingredient for foodservice businesses), further reducing the likelihood of it securing a retailer contract.

Our view on the scope of the Production Line Remedy

- 12.211 The Production Line Remedy does not seek to remedy the SLC directly by re-establishing the market structure and rivalry that would exist in the absence of the Merger. In addition to this inherent limitation on its effectiveness, it suffers from a number of further issues in relation to its scope. The amount of capacity divested is significantly lower than the merger increment, and any purchaser would either need to own or buy significant additional assets.
- 12.212 The infrequency of switching and time taken to transfer contracts lead us to find that it could take a significant amount of time before the purchaser of production assets could win significant customer orders during which the SLC will not have been remedied. Cérélia has not addressed our concerns about the cost of an empty line and the relative infrequency of switching.
- 12.213 Cérélia has not demonstrated to us how it would persuade a large retailer to switch its supply to the purchaser of the Production Line Remedy. It is not

¹²⁸⁸ Cérélia response to the RWP, paragraph 3.7.

within Cérélia's ability to guarantee this, and this is not a market where switching occurs regularly. Retailers told us that their willingness to switch would depend on the identity of the purchaser.

- 12.214 Any of these issues individually would present a material risk to the effectiveness of this remedy and would mean we could not have a high degree of certainty that it would be a comprehensive solution to the SLC we have found. Taken together, we therefore consider this remedy to have insufficient scope to provide an effective or comprehensive solution.
- 12.215 Given the above, even if effectively implemented, we do not consider that this remedy would be effective in remedying the competition lost as a result of the Merger.

Purchaser risk

- 12.216 We note that Cérélia considers that a suitable purchaser would be somebody already in the 'dough space', with retailer relationships on the foodservice side, and who just needs to dedicate a line to retail SKUs.¹²⁸⁹
- 12.217 We are not aware of any businesses, other than Cérélia, that focus exclusively on UK grocery retail DTB. We note that the standardised nature of the production line (see paragraph 12.193) increases the risk that the production line could be used for alternative uses other than to address the identified SLC. Given the challenges of attracting large customers to switch in this market, a purchaser of the production line could readily use it for other purposes that did not address our competition concerns, particularly if a retailer contract did not transfer.
- 12.218 One of the concerns of the grocery retailers was purchaser identity (see paragraphs 12.178 to 12.181). It is worth noting the purchaser pool for a production line remedy would be smaller than for the Jus-Rol business, as the purchaser pool would be limited to companies with DTB manufacturing expertise. Two of the companies cited by Cérélia as potential purchasers, [X] and [X] did not think the remedy would be effective. [X] said that customers may not move and noted that if Cérélia could still meet customer demand from its remaining capacity the remedy would become redundant. Similarly, [X] told us that the production line alone was of little value and could be obtained from elsewhere (see paragraphs 12.182 to 12.187).

¹²⁸⁹ Cérélia Response Hearing Transcript, page 51 lines 10-13.

12.219 The limitations in scope discussed above (see paragraphs 12.189 to 12.215) are likely in our view make the Production Line Remedy an unattractive proposition for a potential purchaser who was dedicated to serving the UK grocery retail DTB market. We therefore consider that there is a significant risk that a suitable purchaser for this remedy would not be found.

Our view on effectiveness of The Production Line Remedy

12.220 Whilst an asset divestiture could, in theory, be effective at addressing an SLC if it sufficiently restored rivalry, we consider that the Production Line Remedy would not comprehensively address our SLC and the resulting adverse effects.

12.221 Grocery retailers thought that, while the remedy was capable of mitigating the SLC, the effectiveness of such a remedy would be entirely reliant on the capabilities of a purchaser (see paragraphs 12.178 to 12.181). Furthermore, they had reservations about transferring a contract.¹²⁹⁰ None of the industry participants thought it would address the CMA's identified concerns (see paragraphs 12.182 to 12.187).

12.222 The proposed divestiture makes available materially less capacity than the increment arising from the Merger. A further significant issue with this proposal is the lack of retailer contracts to utilise the line. While Cérélia's proposal to use best endeavours to encourage a retailer to switch attempts to address this concern, evidence from third parties and past retailer behaviour suggests there is material uncertainty that such switching will take place. Absent such a contract, past switching evidence does not suggest that sufficient customer volumes are likely to switch in a timely manner to address our concerns. A production line without a customer does not address the SLC and its adverse effects, and there may be an incentive on a purchaser to use the line for non-DTB products if customers do not materialise.

12.223 Taking into account all the factors discussed above, our view is that the Production Line Remedy would not offer a comprehensive and effective remedy to the SLC that we have found.

Behavioural Remedy – The Distribution Remedy

12.224 In addition to the Production Line Remedy, Cérélia put forward a second, alternative remedy to that set out in the Remedies Notice (the **Distribution**

¹²⁹⁰ [X] told us it would not like to be forced to switch, [X] and [X] told us it would have reservations if the new supplier were based outside the UK.

Remedy). The Distribution Remedy can be described as a licensing remedy in which a third party contracts with Cérélia to distribute certain Jus-Rol products. We set out further detail on the description of the remedy at paragraphs 12.225 to 12.229 below.

Description of remedy

- 12.225 Cérélia proposed that the Distribution Remedy would entail Cérélia entering into an exclusive distribution agreement with an independent third-party distributor (the **Distributor**) to cover the distribution of each of the ‘Jus-Rol SLC SKUs¹²⁹¹ in the UK.’ Cérélia submitted that the distributor would become the sole supplier of such SKUs in the UK retail channel and would be responsible for ‘retailer facing’ negotiations for the Jus-Rol SLC SKUs. Cérélia would continue to own the Jus-Rol brand and manufacture the relevant SKUs.

Views of main parties and third parties on the Distribution Remedy

Views of Cérélia

- 12.226 Cérélia submitted that the Distribution Remedy would ‘capture the essential features of a structural remedy’ – specifically being a one-off event that addresses the structure of the market by introducing a new consumer branded player with respect to the Jus-Rol SLC SKUs. It told us that the Distribution Remedy would address the cause of the SLC at source, by ensuring that retailers would not negotiate the supply of Jus-Rol SLC SKUs with the Merged Entity and allowing them the benefit of any ability they consider they may have pre-Merger to ‘play off’ two independent suppliers in respect of the SLC SKUs.
- 12.227 As Cérélia would retain ownership of the Jus-Rol brand, it would also have incentives to invest in the brand which it believes will benefit not only the brand, but also other DTB suppliers, retailers, and ultimately end-consumers.¹²⁹²
- 12.228 With respect to the Jus-Rol SLC SKUs, the distributor will have the option to take the manufacturing of these products away from Cérélia if they have the desire to do so. If this were to happen, Cérélia would still have incentives to

¹²⁹¹ The SLC SKUs as identified by Cérélia are ready rolled and block puff pastry, and ready rolled and block shortcrust pastry, all within the chilled range only.

¹²⁹² [Cérélia's response to the Remedies Notice](#), paragraph 3.5.

develop the Jus-Rol brand as it will still have the non-SLC SKUs, and the rationale of the transaction is to grow the category.¹²⁹³

- 12.229 The Distribution Agreement would last no more than [X] years as this would give sufficient time for independent negotiations and for retailers to react to the change in market structure, though Cérélia is willing to discuss this length with the CMA.^{1294, 1295}
- 12.230 In response to the RWP, Cérélia said that the CMA ignores that in this remedy proposal, it is the licensee/distributor that would carry out negotiations with retailers for Jus-Rol SLC SKUs. Therefore, Cérélia would not have the ability to set wholesale prices. According to Cérélia, its ability to influence downstream prices to retailers by increasing the manufacturing prices to the distributors is a pre-Merger dynamic. Thus the Distribution Remedy would simply replace GMI with a distributor/ licensor without changing the pre-Merger status quo¹²⁹⁶.
- 12.231 Citing the example of the [X] category whereby [X] uses Cérélia for [X] and another licensee for [X] products, Cérélia said that retailers like [X] and [X] are well aware of such licencing/distribution arrangements. Cérélia was therefore unclear about the basis on which these retailers credibly claim that they do not know how the Distribution Remedy would work. As such, Cérélia submitted that since the CMA had interviewed retailers before the response hearing, it had not been able to obtain any meaningful feedback from them on the examples Cérélia provided at the response hearing.¹²⁹⁷
- 12.232 Cérélia also submitted that the CMA had disregarded Cérélia's submissions at the Response Hearing that 'the distributor would control all retailer-facing activity, have the option to engage in NPD, and to appoint an alternative contract manufacturer if it wishes to do so'. Thus, any concerns expressed by third parties like [X] are misplaced and as such can be addressed through remedy design by contractually delineating responsibilities between Cérélia and the distributor¹²⁹⁸.
- 12.233 Cérélia further emphasised that all of the third-party feedback referred to in the RWP was gathered before the Response Hearings. This was essentially before the Parties had a chance to engage with the CMA and address the CMA's clarificatory questions. Cérélia added that subsequent to the Response

¹²⁹³ Cérélia Response Hearing Transcript, page 28 lines 15-19 and page 30 lines 5-13.

¹²⁹⁴ [Cérélia's response to the Remedies Notice](#), paragraph 3.10.

¹²⁹⁵ Cérélia Response Hearing Transcript, page 31 lines 10-17.

¹²⁹⁶ Cérélia's response to RWP, 23 December, paragraphs 4.2-4.4.

¹²⁹⁷ Cérélia's response to RWP, 23 December, paragraphs 4.6,4.7.

¹²⁹⁸ Cérélia's response to RWP, 23 December, paragraphs 4.10.

Hearings, the CMA failed to test and reassess third party comments (raised prior to the Response Hearings) with the benefit of additional submissions and evidence from the Parties that would have addressed the concerns of the third parties.¹²⁹⁹

Views of GMI

- 12.234 During the remedies response hearing GMI told us that the so-called 'distribution' remedy proposal submitted by C  ria was essentially a licensing agreement rather than a distribution one. GMI has previously (for other products) used a different distribution arrangement whereby GMI manufactured the product, passed it to a distributor which had been provided with a license for the brand and worked with the distributor to build the brand. This had mostly been done in [REDACTED].¹³⁰⁰
- 12.235 GMI has also used the licensing model whereby it licensed out the brand (with agreements in relation to brand protection and development) and allowed the licensee to source its own manufacturing. There is [REDACTED]. GMI has good familiarity with such licensing models which it uses regularly and [REDACTED].¹³⁰¹
- 12.236 GMI further added that the differences between the distributor and licensee models sat at opposite ends of a spectrum with 'infinite varieties' of combinations in-between and there was 'not a single model' that could demonstrate how it works.¹³⁰²
- 12.237 For the remedy to be effective, GMI said that it is not impossible to identify and design a bespoke contract that works. GMI did not have any concerns about resistance from retailers due to [REDACTED].¹³⁰³
- 12.238 With regards to describing the characteristics or identity of a potential distributor/licensee, GMI said that it had not considered the remedy in detail to be able to identify specific candidates. In general, GMI said that there were companies who in the past had tried and taken opportunities to build their own brand and may now be looking for an opportunity to leverage an existing brand in the DTB category.¹³⁰⁴

¹²⁹⁹ C  ria's response to RWP, 23 December, paragraphs 4.11.

¹³⁰⁰ GMI Response Hearing Transcript, page 9 lines 6-16.

¹³⁰¹ GMI Response Hearing Transcript, page 9 lines 17-18, page 10 lines 1-2 and page 11 lines 6-15.

¹³⁰² GMI Response Hearing Transcript, page 12 lines 9-12, page 14 lines 6-10.

¹³⁰³ GMI Response Hearing Transcript, page 15 lines 17-25, page 16 lines 1-2, and page 17 lines 3-25.

¹³⁰⁴ GMI Response Hearing Transcript, page 20 lines 11-23.

12.239 GMI did not make any submissions related to the distribution remedy in response to the RWP.

Views of third parties

12.240 A retailer [REDACTED] told us that it was not sure how including an intermediary would work. It noted that Cérélia would still have control over the decision to increase prices of either or both PL and Jus-Rol. For example, if Cérélia increased prices to the independent distributor, then the increase would be passed straight through to the retailer.¹³⁰⁵ This retailer told us that adding a third party (eg distributor) to the process would lead to an increase in cost because there would be an ‘extra part of the chain to pay for’. It noted that these costs will eventually be borne by the consumer.¹³⁰⁶

12.241 A retailer [REDACTED] found it difficult to see the appointment of an independent distributor as an effective remedy without knowing who the distributor is, the level of separation and future assurances. According to this retailer, Cérélia and the distributor could still essentially act as one entity.¹³⁰⁷ This retailer could not think of an example whereby it deals with a brand-owner/supplier on the one hand, and then also an independent distributor on behalf of that same brand-owner/supplier on the other, but noted in general it would prefer to deal directly with the owner of the brand (or an entity that has clear authority to make key strategic decisions in relation to the brand on an ongoing basis) in the context of discussing product development, innovation, etc.¹³⁰⁸

12.242 A retailer [REDACTED] told us that this remedy could mitigate the risk provided the distributor could source the relevant Jus-Rol products from another manufacturer. This might however cause inefficiencies in the form of additional costs and extra margins in the chain.¹³⁰⁹

12.243 A supplier [REDACTED] told us that it considered the Distribution Remedy to be a ‘fake solution’ as the independence of the distributor would be doubtful when its future is dependent on Cérélia. This supplier believes that price and margin will be steered by Cérélia, as is the case in this supplier’s own relationships with its distributors. In such relationships, this supplier has the final say in decisions despite the distributors being considered independent.¹³¹⁰

¹³⁰⁵ [REDACTED] Call Note [REDACTED] 2022, paragraph 2.

¹³⁰⁶ [REDACTED] Call Note [REDACTED] 2022, paragraphs 2 and 3.

¹³⁰⁷ [REDACTED] Call Transcript, [REDACTED] 2022, page 19 lines 8-23.

¹³⁰⁸ [REDACTED] Call Transcript, [REDACTED] 2022, page 20 lines 5-22, page 21 lines 6-11.

¹³⁰⁹ [REDACTED] Response to written questions, [REDACTED] 2022 Question 1 from questions asked on 22 November 2022.

¹³¹⁰ [REDACTED] Call Note [REDACTED] 2022, paragraphs 10, 11, 12 and 13.

- 12.244 A supplier [redacted] told us that it is not convinced by this remedy as Cérélia would still supply the majority of DTB products in the UK. According to this supplier, as prices are determined by manufacturing costs as well as what retailers are willing to pay, it does not see an impactful role for a distributor other than adding a level of complication compared to a direct relationship between retailer and supplier.¹³¹¹
- 12.245 A supplier [redacted] told us that for this remedy to be effective, the distributor would need to be able to freely choose a manufacturer for Jus-Rol. If Cérélia retained manufacturing, it would still determine cost price which could possibly make the distributor uncompetitive.¹³¹² This supplier, however, did not rule out taking on the remedy as it believes it is not in Cérélia's interest to price out the Jus-Rol brand from the market and that retailer familiarity with Jus-Rol makes it attractive.¹³¹³
- 12.246 A supplier [redacted] told us the role of a distributor depends on the trading agreement. For some brand owners, they sell their products and specified prices that are transparent, and others (which is more common in its own agreements) where they buy the product at a specified price from the manufacturer, and is free to sell at whatever price it can agree with the retailer. Distributors do not have much control over input prices as they look to maintain long term relationships with suppliers and as such, they will accept the supplier's price, particularly when they only source a product or brand from one supplier.¹³¹⁴
- 12.247 This supplier is not aware of models similar to the one Cérélia is proposing, where Cérélia has as much control of the market as it does. This supplier would not be interested in the remedy, [redacted]. This supplier also has no experience with fixed term contracts similar to the one Cérélia is proposing, and would struggle with this, but also notes that [redacted] years is a long time.¹³¹⁵
- 12.248 A supplier [redacted] told us that it did not think 'the engagement of a third-party distributor would remedy the situation' as Cérélia would still 'always' be in a position to control prices.¹³¹⁶
- 12.249 A supplier [redacted] told us that this remedy is unlikely to work without a brand-owner retaining influence over the distributor and onward supply. It considers that, whatever economic arrangements are in place, Cérélia would still have

¹³¹¹ [redacted] Call Note [redacted] 2022, paragraph 17.

¹³¹² [redacted] Call Note [redacted] 2022, paragraph 5.

¹³¹³ [redacted] Call Note [redacted] 2022, paragraph 6.

¹³¹⁴ [redacted] Call Note, [redacted] 2022, paragraphs 3,4 and 6.

¹³¹⁵ [redacted] Call Note, [redacted] 2022, paragraphs 7, 8 and 10.

¹³¹⁶ [redacted] response to written questions, [redacted] 2022, question 12

influence over the entire supply chain. In this supplier's view, the ability of a distributor to change manufacturer would not help as there are many other levers that a brand-owner could pull in order to exercise control over the distributor.¹³¹⁷

Assessment of effectiveness of the Distribution Remedy

- 12.250 First, we consider the framework under which we should assess the effectiveness of the Distribution Remedy and its risk profile.
- 12.251 C r lia has submitted that the Distribution Remedy would 'capture the essential features of a structural remedy'. However, CMA guidance says that '[a] divestiture seeks to remedy an SLC by either creating a new source of competition, through disposal of a business or set of assets to a new market participant, or by strengthening an existing source of competition, through disposal to an existing market participant independent of the merger parties... a divestiture remedy will involve the sale of an appropriate divestiture package to a suitable purchaser through an effective divestiture process'.¹³¹⁸
- 12.252 The Distribution Remedy involves C r lia entering into an exclusive distribution agreement with a third party. No business or assets are being disposed of, and there would be no sale proceeds. The market position of the third party taking on the remedy would itself be dependent on the detailed provisions of the exclusive distribution agreement, and ongoing compliance by C r lia with this agreement. We therefore do not consider it appropriate to evaluate this remedy as a structural one.
- 12.253 Instead, the remedy description appears to us to have the features of a behavioural remedy. CMA guidance says '[b]ehavioural remedies are designed to address an SLC and/or its adverse effects by regulating the ongoing conduct of parties following a merger.'¹³¹⁹ The importance of the exclusive distribution agreement to the outcome of this remedy indicates a material behavioural component to this proposal. We therefore assess the Distribution Remedy by reference to our guidance on behavioural remedies.

Framework of assessment

- 12.254 As set out at paragraph 12.64 above, the CMA's Merger Remedies Guidance lists four aspects to be considered in assessing the effectiveness of a remedy:

¹³¹⁷ [redacted] call note, [redacted] 2022, paragraphs 6 and 7.

¹³¹⁸ [Merger remedies guidance, CMA87](#), paragraphs 5.1 and 5.2.

¹³¹⁹ [Merger remedies guidance, CMA87](#), paragraph 7.1.

impact on the SLC and its adverse effects, appropriate duration and timing, practicality and risk profile.¹³²⁰

12.255 The guidance also highlights four key risks that the design of behavioural remedies should seek to avoid:¹³²¹

- (a) *Specification risks*: these risks arise if the form of conduct required to address the SLC or its adverse effects cannot be specified with sufficient clarity to provide an effective basis for monitoring and compliance.
- (b) *Circumvention risk*: as behavioural remedies generally do not deal with the source of an SLC, it is possible that other adverse forms of behaviour may arise if particular forms of behaviour are restricted. Therefore, to avoid or reduce these risks, behavioural measures need to deal with all the likely substantial forms in which enhanced market power may be applied.
- (c) *Distortion risks*: these are risks that behavioural remedies may create market distortions that reduce the effectiveness of these measures and/or increase their effective costs. Distortion risks may result from remedies overriding market signals or encouraging circumvention behaviour.
- (d) *Monitoring and enforcement risks*: even clearly specified remedies may be subject to significant risks of ineffective monitoring and enforcement. This may be due to a variety of causes, such as the volume and complexity of information required to monitor compliance; limitations in monitoring resources; asymmetry of information between the monitoring agency and the business concerned; and the long timescale of enforcement relative to a rapidly moving market.

12.256 The CMA will generally only accept behavioural remedies as the primary source of remedial action where:

- (a) structural remedies are not feasible;
- (b) the SLC is expected to have a short duration; or
- (c) at Phase 2, behavioural measures will preserve substantial RCBs that would be largely removed by structural measures.¹³²²

¹³²⁰ [Merger remedies guidance, CMA87](#), paragraph 3.5.

¹³²¹ [Merger remedies guidance, CMA87](#), paragraph 7.4.

¹³²² [Merger remedies guidance, CMA87](#), paragraph 7.2.

Our assessment of the effectiveness of the Distribution Remedy

- 12.257 Cérélia described its Distribution Remedy proposal in its response to the Remedies Notice, which was published on the CMA's website and shared with third parties before our calls with them. Cérélia then provided further detail on the remedy in the response hearing. We have taken into account the fact that third parties had not been provided with this detail and have placed appropriate weight on their evidence. Third party evidence was shared with Cérélia in the RWP.
- 12.258 We assessed the effectiveness of the Distribution Remedy in relation to the framework and risk profile set out in the previous section.
- 12.259 First, we note the CMA's Guidance¹³²³ concerning when behavioural remedies are appropriate. In this case, we have found an effective divestiture remedy (divestiture of the Jus-Rol business). The SLC is expected to endure, as it arises from a structural change in the market, and we have not found evidence of any likely future event that would mitigate this. RCBs, which we consider in the section beginning at paragraph 12.287 below, do not form part of our assessment of effectiveness.
- 12.260 The scope of the Distribution Remedy, as set out in Cérélia's response to the Remedies Notice, covers what it terms the SLC SKUs.¹³²⁴ The remedy would apply to grocery retail customers in the UK only.
- 12.261 We have considered the scope of a Jus-Rol remedy in relation to territories, customers and products in paragraphs 12.79 to 12.107. Our views on scope apply in a similar way to this remedy, and we therefore address it on the basis of it having a similar scope to that set out in paragraphs 12.104 to 12.107.
- 12.262 Under the terms of the Distribution Remedy, the distributor would be able to switch manufacturer. However, Cérélia would retain ownership and control of the Jus-Rol brand, with the distributor having, in our view, very limited influence over product formulation, brand positioning, marketing, NPD and other innovation. The Distribution Remedy would therefore not provide a solution to these aspects of the SLC, and we disagree with Cérélia's contention that the distribution remedy would simply replace GMI with a distributor/ licensor without changing the pre-Merger status quo. We address

¹³²³ [Merger remedies guidance, CMA87](#), paragraph 3.48.

¹³²⁴ These are the products where there is currently an overlap and customers are supplied by both Cérélia and Jus-Rol: ready rolled and block puff pastry, and ready rolled and block shortcrust pastry, all within the chilled range only.

whether the distributor might be given more influence through provisions in the distribution agreement in the section on specification risk below.

- 12.263 We also have concerns with the duration of the Distribution Remedy. Cérélia has proposed a [X]-year agreement. However, the SLC we have found arises from a structural change in the market that is likely to still be present after [X] years. Any remedial beneficial effect of the remedy will be extinguished after that time and it is likely that the adverse effects of the Merger will occur.
- 12.264 A further concern with the Distribution Remedy is that it does not directly address the adverse effects arising from the SLC. Under the remedy, the distributor would be charged a wholesale price by Cérélia for Jus-Rol products and would then attempt to sell the products to grocery retailers for a higher price to cover its costs and a profit margin. If Cérélia were to seek to degrade Jus-Rol in some other way arising from its continued ownership of the brand (such as degrading product quality), the distributor would have very limited negotiating leverage with Cérélia. It would either have to pass the degradation on to retailers, thereby crystallising the adverse effect arising from the SLC and rendering the remedy ineffective, or reduce its margins to reflect the lower quality, thereby making distribution a financially unattractive proposition for the distributor. This point was made by several third parties (see paragraphs 12.240 to 12.249).
- 12.265 Cérélia told us that the distributor would be free to move to a different manufacturer if it thought it could obtain better terms. While this could, in theory, place some constraint on Cérélia, there are a number of practical reasons why switching or the threat of switching is unlikely. These include:
- (a) Cérélia would still retain control of the brand and product formulation;
 - (b) the limited duration of the distribution arrangement, which would restrict the benefits of switching to a distributor; and
 - (c) if a distributor did switch to another manufacturer, Cérélia would have a more limited incentive to invest in developing the Jus-Rol brand in the form of increased product volumes.
- 12.266 These factors represent significant limitations on the effectiveness of the Distribution Remedy. Against this background, we considered the risk profile of the Distribution Remedy.

Specification risk

- 12.267 The Distribution Remedy would be implemented through a contract between Cérélia and a distributor. Cérélia has not provided details of the nature and

likely content of such a contract. In particular, no details were given in relation to, among other things, the terms of supply between Cérélia and the distributor, the limits to the distributor's exclusivity in terms of products, customers, and territories. A distributor may also wish for commitments from Cérélia in relation to maintenance of, and investment in, the Jus-Rol brand. In our view it could be difficult to capture and specify these commitments clearly and accurately, in a way that was not subject to future disagreement.

- 12.268 Any distribution agreement would also need to be robust to future changes in market conditions and supply arrangements (for example, the introduction of new products or selling Jus-Rol products to new customers). It is inherently uncertain what these changes may be, and there is therefore a substantial risk that the distribution agreement would not adequately capture them. Given the strong market position that Cérélia would enjoy, any matters that have not been specified in the distribution agreement (eg because they are unknown at the time) would need to be negotiated bilaterally in a context where Cérélia would be in a strong position to dictate terms.

Circumvention and distortion risks

- 12.269 In most commercial distribution agreements, the incentives of the manufacturer and distributor are aligned. However, if effective, the Distribution Remedy would limit Cérélia's market power by taking away its ability to negotiate prices with retailers directly.
- 12.270 We therefore consider that Cérélia would have a strong incentive to circumvent the stated intention of the remedy. Depending on the exact specification of the distribution agreement, Cérélia would have control not just over wholesale price (which it had pre-Merger), but also product formulation, brand positioning, marketing, NPD and other innovation (which it did not have pre-Merger). This would give it multiple ways in which it may apply its enhanced market power. While there may be some alignment between Cérélia and the distributor, at least initially, Cérélia's control of the Jus-Rol brand and its market power in PL give it the incentive and ability to circumvent the distribution agreement should the relationship become misaligned. In our view, this incentive and ability presents a significant risk of circumvention that may render the Distribution Remedy ineffective.
- 12.271 Given the limited alignment of incentives and Cérélia's position of strength in manufacturing, there is also a material risk that a distributor might walk away from the contract. As well as reverting to a situation in which the remedy was no longer having the desired remedial effect, it would potentially lead to disruptions in supply and possibly a situation where there is no independent distributor for Jus-Rol products for a period.

Monitoring and enforcement

- 12.272 C r lia submitted that no monitoring is required but would accept such a requirement if the CMA deemed it necessary.
- 12.273 Once the remedy is implemented, however, enforcement of the distribution agreement would fall to the parties to the agreement through private legal action not involving the CMA. Our powers of enforcement are confined to the terms of any final undertakings we accept from C r lia or order we make implementing the remedy.
- 12.274 The lack of CMA monitoring and enforcement powers present a further risk to the effectiveness of the Distribution Remedy.

Our view on effectiveness of the Distribution Remedy

- 12.275 We have considered the evidence from C r lia, GMI and third parties on the merits of the Distribution Remedy.
- 12.276 In our view, the Distribution Remedy fails to remedy the SLC or the adverse effects arising from it, as C r lia would retain ownership of the Jus-Rol brand and product formulations, and the ability and incentive to set (and potentially increase) wholesale prices. The combination of these factors makes it unlikely that this remedy will address the adverse effects arising from the SLC.
- 12.277 We also have concerns over the duration of the remedy, which does not match the enduring SLC, and the practicality of obtaining retailer consents. Finally, we have identified material risks in relation to specification, circumvention, monitoring and enforcement.
- 12.278 Our view is that the Distribution Remedy does not represent a comprehensive and effective remedy to the SLC that we have found.

Conclusions on remedy effectiveness

- 12.279 We have found that divestiture of the Jus-Rol business, as specified in paragraphs 12.36 to 12.37 and with the limitations in scope set out in paragraphs 12.104 to 12.107, to a suitable purchaser through the process specified in paragraphs 12.139 to 12.156 would be an effective remedy to the SLC and resulting adverse effects.
- 12.280 We have concluded that the following proposed remedies would not be effective and could not be amended in a way to make them effective:
- (a) The Production Line Remedy; and

(b) The Distribution Remedy.

12.281 We next assess the proportionality of effective remedies.

The proportionality of effective remedies

12.282 Having identified divestiture of Jus-Rol Business as the only effective remedy, we set out below our assessment of, and conclusions on, the proportionality of this remedy.

Framework for assessment of proportionality of merger remedies

12.283 In order to be reasonable and proportionate, the CMA will seek to select the least costly remedy, or package of remedies, that it considers will be effective. If the CMA is choosing between two remedies which it considers will be equally effective, it will select the remedy that imposes the least cost or that is least restrictive (we call this the ‘least onerous effective remedy’). In addition, the CMA will seek to ensure that no remedy is more onerous than necessary or disproportionate in relation to the SLC and its adverse effects.¹³²⁵

12.284 To determine this, we first consider whether there are any relevant costs associated with each effective remedy option. When considering relevant costs, the CMA's considerations may include (but are not limited to):¹³²⁶

- (a) Distortions in market outcomes;
- (b) compliance and monitoring costs incurred by the Parties, third parties, or the CMA; and
- (c) the loss of any RCBs that may arise from the Merger which are foregone as a result of the remedy.

12.285 The Guidance states that ‘[as] the merger parties have the choice of whether or not to proceed with the merger, the CMA will generally attribute less significance to the costs of a remedy that will be incurred by the merger parties than the costs that will be imposed by a remedy on third parties.’¹³²⁷

12.286 In particular, for completed mergers, the CMA will not normally take account of costs or losses that will be incurred by the merger parties as a result of a divestiture remedy’, as it is ‘for the merger parties to assess whether there is a

¹³²⁵ [Merger remedies guidance, CMA87](#), paragraph 3.6.

¹³²⁶ [Merger remedies guidance, CMA87](#), paragraph 3.10.

¹³²⁷ [Merger remedies guidance, CMA87](#), paragraph 3.8.

risk that a completed merger would be subject to an SLC finding, and the CMA would expect this risk to be reflected in the agreed acquisition price'.¹³²⁸

Relevant customer benefits

- 12.287 When deciding on remedies, the CMA may have regard to the effects of remedial action on any RCBs. An effective remedy could be considered disproportionate if it prevents customers from securing substantial benefits arising from the merger. This could arise where these benefits outweigh the SLC and any resulting adverse effects. Insofar as these benefits constitute RCBs,¹³²⁹ the statutory framework allows us to take them into account,¹³³⁰ which we do when we decide whether any remedy is appropriate.
- 12.288 RCBs that will be foregone due to the implementation of a particular remedy may be considered as costs of that remedy.¹³³¹ The CMA may modify a remedy to ensure retention of an RCB or it may change its remedy selection. Where there is more than one effective remedy, the CMA may decide to implement an alternative, effective, remedy which preserves RCBs or, in rare cases, it may decide that no remedy is appropriate.¹³³²
- 12.289 We set out the legal framework that we will apply, in accordance with the Act, to determine whether the benefits claimed by C er elia can be properly considered as constituting RCBs.

Legal Framework

- 12.290 The Act defines RCBs as a benefit to relevant customers in the form of lower prices, higher quality, or greater choice of goods or services in any market in the UK, or greater innovation in relation to those goods or services.¹³³³ Relevant customers are direct and indirect customers (including future customers) of the merger parties at any point in the chain of production and distribution and not limited to final consumers.¹³³⁴
- 12.291 The burden of proof of whether RCBs arise from a merger is on the merging parties. Our guidelines state that '[t]he merger parties will be expected to provide convincing evidence regarding the nature and scale of RCBs that they

¹³²⁸ [Merger remedies guidance, CMA87](#), paragraph 3.9.

¹³²⁹ [Section 30](#) of the Act.

¹³³⁰ [Section 35\(5\)](#) of the Act.

¹³³¹ [Merger remedies guidance, CMA87](#), paragraph 3.16.

¹³³² [Merger remedies guidance, CMA87](#), paragraph 3.16.

¹³³³ [Section 30\(1\)](#) of the Act.

¹³³⁴ [Section 30\(4\)](#) of the Act. See also [Merger remedies guidance, CMA87](#), paragraph 3.18.

claim to result from the merger and to demonstrate that these fall within the Act's definition of such benefits'.¹³³⁵

12.292 In addition, in the case of completed mergers, to be properly considered as an RCB under the statutory definition, the CMA must believe that:

(a) the benefit has accrued as a result of the creation of the relevant merger situation concerned or may be expected to accrue within a reasonable period as a result of the creation of that situation; and

(b) the benefit was, or is, unlikely to accrue without the creation of that situation or a similar lessening of competition.¹³³⁶

12.293 With regard to the latter, in practice the CMA will consider whether the merger parties' evidence is sufficient to demonstrate that the claimed benefit could not be achieved by any plausible less anti-competitive alternatives to the merger.

12.294 We consider whether the benefits are likely to be realised on the basis of the evidence presented to us. The level of information required to demonstrate a benefit will vary on a case-by-case basis. We would also expect to see evidence of support from customers and other third parties for the claimed RCBs. Where RCBs have been accepted by the CMA, parties have provided evidence of support for the merger from customers and third parties, detailed and advanced implementation plans in order to realise the benefits claimed and timing and likelihood that the benefits will be realised in a reasonable period. The merging parties' incentives to implement and pass on any benefits post-merger will also be relevant to the likelihood of RCBs being realised in practice.

RCBs submitted by Cérélia

12.295 Cérélia, in response to the remedies notice, identified the loss of RCBs as a cost of a remedy.¹³³⁷ It did not make a specific submission on RCBs but identified 'significant consumer benefits' which would be realised under its remedy proposals. Cérélia submitted that by retaining ownership of Jus-Rol, it would remain incentivised to invest in innovation and marketing which would

¹³³⁵ [Merger remedies guidance, CMA87](#), paragraph 3.20.

¹³³⁶ [Section 30\(2\)](#) of the Act.

¹³³⁷ [Cérélia's response to the Remedies Notice](#), 18 November 2022, paragraph 4.12.

benefit not only the Jus-Rol brand itself, but also other DTB suppliers, retailers, and end-consumers.¹³³⁸

- 12.296 Cérélia submitted that both its remedies proposals, the Distribution Remedy and the Production Line remedy, would allow these ‘significant’ consumer benefits to materialise, at a time when the UK economy and consumers ‘are lacking the benefits which investments into innovation and growth in the DTB category could deliver.’^{1339, 1340}
- 12.297 Cérélia submitted that a divestiture package including the Jus-Rol Business would extinguish these benefits, amounting to a significant cost of the remedy.¹³⁴¹
- 12.298 Cérélia submitted that its expertise in dough, marketing, R&D, purchasing and its investment in the Corby site would enable it to develop the Jus-Rol brand for the benefit of consumers.¹³⁴² At the Response Hearing, Cérélia submitted the following as ‘customer benefits’ of the Merger:¹³⁴³
- (a) Disintermediation - removes intermediary in the supply chain to allow producer to sell directly to customers;
 - (b) Makes the supply chain more efficient;
 - (c) Preserves Cérélia’s incentive/ability to invest in Jus-Rol-led category growth (increased customer choice, greater innovation);
 - (d) Brings more innovation and inspiration for consumers (encourages consumers to engage in healthy and cost-effective home-baking choices);
 - (e) Gives retailers the ability to accelerate smart PL innovation (by copying Jus-Rol); and
 - (f) Helps retailers optimise retail-level Jus-Rol/PL mix through brand development, driving penetration and frequency for the benefit of all stakeholders (retailers and consumers).
- 12.299 Cérélia told us these benefits were unlikely to arise absent the Merger and outweighed any adverse effects from the SLC.

¹³³⁸ Cérélia’s response to the Remedies Notice, 18 November 2022, paragraph 3.5.

¹³³⁹ Cérélia’s response to the Remedies Notice, 18 November 2022, paragraph 3.5.

¹³⁴⁰ Cérélia’s response to the Remedies Notice, 18 November 2022, paragraph 4.13.

¹³⁴¹ Cérélia’s response to the Remedies Notice, 18 November 2022, paragraph 4.14.

¹³⁴² Cérélia, Response Hearing Transcript, pages 73-74.

¹³⁴³ Cérélia, Response Hearing slide pack, 1 December 2022, slides 22-23.

- 12.300 Cérélia submitted that these benefits were RCBs within the meaning of the Act because they would result in lower prices and better quality of DTB products to customers in the UK.¹³⁴⁴
- 12.301 In response to the RWP, Cérélia submitted that the full divestiture remedy would destroy significant merger-specific RCBs. Cérélia said that it is incentivised to invest in innovation, NPD and growth of the UK DTB sector as a result of its significant investment into the Corby factory, and its focus on the DTB segment. It argued that any other purchaser of Jus-Rol would need to be in a similar position to Cérélia in order to be similarly incentivised. Cérélia cited the submission of a detailed business plan, recruitment of a brand marketing expert (for strategic investment) and brand agency (for NPD) as evidence of delivering specific and material customer and consumer benefits in the near future.¹³⁴⁵
- 12.302 Cérélia said that there was no evidence to conclude that an alternative purchaser of Jus-Rol would act like Cérélia [REDACTED]. Therefore, Cérélia considered it irrational for the CMA to conclude that significant brand investments are a likely consequence of a Jus-Rol Divestment.¹³⁴⁶

GMI's views on RCBs

- 12.303 GMI told us that the key risk of the full divestiture of Jus-Rol, was that technical development, new products and new innovation may be reduced and lost going forward.¹³⁴⁷ GMI said it had not done an assessment of other players however from its experience working with Cérélia that its technical capability was significant and [REDACTED].¹³⁴⁸
- 12.304 GMI did not make any submissions related to RCBs in its response to the RWP.

Submissions from third parties on RCBs

- 12.305 A retailer [REDACTED] told us that the Merger could potentially lead to more investment and innovation in the DTB category. It submitted that the DTB category is low on customer penetration with low annual buying frequency, meaning that there is opportunity for the category to grow.¹³⁴⁹ However, it

¹³⁴⁴ Cérélia's response to the Remedies Notice, page 76 lines 6-13.

¹³⁴⁵ Cérélia's response to RWP, 23 December, paragraphs 2.14 and 2.15.

¹³⁴⁶ Cérélia's response to RWP, 23 December, paragraph 2.16.

¹³⁴⁷ GMI Response Hearing Transcript, 1 December 2022, page 30 lines 16-19.

¹³⁴⁸ GMI Response Hearing Transcript, 1 December 2022, page 30 lines 23-25, page 31 line 1.

¹³⁴⁹ [REDACTED] response to written questions, [REDACTED] 2022, question 9.

submitted that, if the investment by Cérélia is unsuccessful in growing category penetration or stimulating demand, then another potential lever to drive growth would be to increase prices.¹³⁵⁰

12.306 A retailer [redacted] told us it did not identify any RCBs arising from the merger, and its only concern would be if Cérélia were to close its UK site.¹³⁵¹

12.307 A retailer [redacted] told us investment in the Jus-Rol brand would be a benefit.¹³⁵²

Assessment of RCBs claimed by Cérélia

12.308 In making our assessment of Cérélia's submissions on RCBs, we have had regard to the RCB assessment framework as set out above.

12.309 Cérélia has focused some of its submissions on RCBs on the fact that no other purchaser would have the same incentives to invest as it would. In our view, Cérélia post-Merger would be in an even stronger position in the market and would potentially have less incentive to invest as it would face substantially less competition. We have found it could raise profits by exploiting its market power and degrading PQRS. This enhanced market power would, in our view, make it less likely to innovate. We have also not seen persuasive evidence as to how growth in the DTB category benefits consumers in relation to lower prices, higher quality, or greater choice of goods or services.

Disintermediation and supply efficiency

12.310 We first considered the first two claimed benefits in paragraph 12.298:

(a) Disintermediation – the removal of an intermediary in the supply chain to allow the producer to sell directly to customers; and

(b) The making of the supply chain more efficient.

12.311 Cérélia has not provided detailed evidence to support its view or a quantification of the benefits foregone. Activities such as brand management, promotion and retailer negotiation would still need to be carried out by whoever owns the brand, whether or not that brand owner also manufactures the products. Cérélia also has not provided evidence on how these

¹³⁵⁰ [redacted] response to written questions, [redacted] 2022, question 9.

¹³⁵¹ [redacted] Call Note [redacted] 2022, paragraph 12.

¹³⁵² [redacted] Call Transcript, [redacted] 2022, page 28.

efficiencies might benefit consumers. We therefore do not consider these to be RCBs.

Incentives, innovation and retailer benefits

- 12.312 We then considered the remaining four claimed benefits:
- (a) Preserving Cérélia's incentive/ability to invest in Jus-Rol-led category growth (increased customer choice, greater innovation);
 - (b) Bringing more innovation and inspiration for consumers (encourages consumers to engage in healthy and cost-effective home-baking choices);
 - (c) Giving retailers the ability to accelerate smart PL innovation (by copying Jus-Rol); and
 - (d) Helping retailers optimise retail-level Jus-Rol/PL mix through brand development, driving penetration and frequency for the benefit of all stakeholders (retailers and consumers).
- 12.313 Cérélia has not provided evidence as to how its investment might qualify as a type of RCB under the Act. Cérélia has not provided us with evidence to enable us to believe that this investment will lead to lower prices or to a greater choice of DTB goods.
- 12.314 Having considered these representations, we are of the view that investment in the Jus-Rol business submitted by Cérélia as an RCB does not meet the relevant requirements to satisfy the definition of an RCB under the Act. Cérélia has not provided sufficient evidence demonstrating that this investment would only be realised as a result of the Merger. In our view, even without explicit focus on DTB, any new owner of Jus-Rol acquired through a divestiture process would be incentivised to invest and grow the brand/sector to maximise return on investment. This investment benefit claimed by Cérélia is therefore not Merger-specific.
- 12.315 Whilst category investment may be Cérélia's stated intention, and we have found no internal documentary evidence to the contrary, we consider that the Merger, which removes the constraint of a significant rival to Cérélia, is not likely to strengthen the incentive of Cérélia to reduce price or otherwise improve its offering for the benefit of consumers. As a result, we do not consider it likely that any RCBs will be foregone as a result of the remedy.
- 12.316 In addition, Cérélia has not provided evidence demonstrating that category investment and the resulting claimed benefits could only be achieved as a result of the Merger.

12.317 Having considered the evidence submitted by C  r  lia, we believe that investment in the Jus-Rol Business may be achieved without the Merger, in a less anti-competitive way. Consequently, we do not accept investment by C  r  lia in the Jus-Rol Business as an RCB for the purposes of the Act.

Summary of our views on the proposed RCBs

12.318 We have considered the evidence submitted by C  r  lia on the nature and scale of RCBs it sees as arising from the Merger. We have also taken account of the views of third parties.

12.319 We acknowledge that greater innovation and greater choice of goods are RCBs within the meaning of the Act. However, C  r  lia has not provided convincing evidence to demonstrate that these potential benefits are likely consequences of the Merger or that they are unlikely to accrue from any plausible less anti-competitive alternatives to the Merger.

12.320 In our view, although we acknowledge C  r  lia's expertise and stated intention to invest in the brand, any new owner of the Jus-Rol business would be similarly incentivised to invest in developing and marketing the Jus-Rol brand. Although C  r  lia has expertise in dough-related matters, we do not consider, on the basis of the evidence available, that only C  r  lia has the expertise and incentive to develop the Jus-Rol Business.

12.321 We have concluded that there are no RCBs arising from the Merger.

Proportionality

12.322 Having identified the least onerous effective remedy, we then consider whether this remedy would be disproportionate to the SLC and its resulting adverse effects. In doing so, we compare the extent of harm associated with the SLC with the relevant costs of the proposed remedy.¹³⁵³

Views of the parties

12.323 C  r  lia submitted that the divestiture of the Jus-Rol Business would be the most onerous effective remedy option, as it would include DTB products in categories unaffected by the SLC.¹³⁵⁴

¹³⁵³ [Merger remedies guidance, CMA87](#), paragraph 3.6.

¹³⁵⁴ [C  r  lia's response to the Remedies Notice](#), paragraphs 1.10 and 1.11.

- 12.324 Cérélia also submitted that the divestiture of the Jus-Rol business would produce disproportionate adverse effects, as Cérélia would no longer have [✂].¹³⁵⁵
- 12.325 Cérélia submitted that the Distribution Remedy and the Production Line Remedy are also effective remedies that would be less disproportionate compared to the divestiture of the Jus-Rol business.¹³⁵⁶

Assessment of proportionality

- 12.326 In our assessment of proportionality, we first identify those remedies that are likely to be effective and select the remedy with the lowest cost, or that is least restrictive (the least onerous effective remedy). We then consider whether this remedy is disproportionate to the SLC and its adverse effects.

Identification of the least onerous, effective remedy

- 12.327 We identified the divestiture of the Jus-Rol business, as specified in paragraphs 12.36 and 12.37, as the only effective remedy to the SLC that we have found.
- 12.328 For the reasons set out above, we consider that this remedy is the only one that would be effective in achieving the legitimate aim of comprehensively remedying the SLC and its resulting adverse effects. As there is not a choice of equally effective remedies, it is also the least onerous effective remedy. Below we set out our assessment of whether the proposed remedy is disproportionate to the SLC and its adverse effects.

Is the remedy disproportionate to the SLC and / or adverse effects?

- 12.329 We considered whether a divestiture of the Jus-Rol Business, in the manner outlined in paragraphs 12.36 to 12.157, was disproportionate to the SLC and its adverse effects.
- 12.330 RCBs that will be foregone due to the implementation of a particular remedy may be considered as costs of that remedy. As set out above, our view is that there are no RCBs arising from the Merger to be taken into account in the assessment of the proportionality of a divestiture of the Jus-Rol business.

¹³⁵⁵ [Cérélia's response to the Remedies Notice](#), paragraphs 1.11 and 1.13.

¹³⁵⁶ [Cérélia's response to the Remedies Notice](#), paragraph 1.21.

- 12.331 We disagree with Cérélia's view expressed in paragraph 12.324 that it would no longer have the contract security it enjoyed before the Merger. Cérélia's contract with Jus-Rol was due to expire in [X] and the Jus-Rol divestiture remedy includes the potential for a supply contract with the purchaser. Cérélia's future decisions on the location of its production facilities are not a relevant consideration for our proportionality assessment.
- 12.332 We have found that Cérélia's already strong position in the grocery retail DTB market will be substantially strengthened by the acquisition of Jus-Rol. We have concluded that the proposed Merger may be expected to result in a SLC, with resulting adverse effects which may include price rises and a reduction of innovation.
- 12.333 We note that divestiture of a business is by its nature an intrusive intervention. However, given the low level of costs (and lack of other effective remedy), we consider that this intrusion is justified to prevent customer detriment through the SLC.
- 12.334 We therefore consider that the remedy is not disproportionate to the SLC or its adverse effects.

Conclusion on proportionality

- 12.335 We conclude that a divestiture of the Jus-Rol Business is proportionate and effective remedy to the SLC and its adverse effects. It is therefore our preferred remedy.

Remedy implementation

- 12.336 Having identified the appropriate remedy, we now consider how it should be implemented.
- 12.337 The CMA has the choice of implementing any final remedy decision either by accepting final undertakings pursuant to Section 82 of the Act if the Parties wish to offer them, or by making a final order under Section 84 of the Act. The final undertakings must be accepted or the final order must be made within 12 weeks of publication of our final report (or extended once by up to 6 weeks under exceptional circumstances),¹³⁵⁷ including the period for any formal public consultation on the draft undertakings or order as specified in Schedule 10 of the Act.

¹³⁵⁷ [Section 82](#) (final undertakings) and [Section 84](#) (final order) of the Act.

12.338 In line with our Guidance, once this remedy has been fully implemented in line with the conclusions set out in this decision (see paragraph 12.157), we have decided that C  ria should be prohibited from subsequently acquiring the assets or shares of Jus-Rol Business or acquiring any material influence over them. Our Guidance states that the CMA will normally limit this prohibition to a period of 10 years.¹³⁵⁸ We find no compelling reason to depart from the Guidance in this case by seeking a shorter or longer prohibition period.

Decision on remedies

12.339 We conclude that a divestiture of the Jus-Rol Business, as specified in paragraphs 12.36 and 12.37, to a suitable purchaser through the process specified in paragraphs 12.139 to 12.156, would be as comprehensive a solution as is reasonable and practicable to the SLC and resulting adverse effects.

¹³⁵⁸ [Merger remedies guidance, CMA87](#), paragraph 5.10.